UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF JONATHAN GARDNER IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

JONATHAN GARDNER declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am a member of Labaton Sucharow LLP ("Labaton Sucharow" or "Lead Counsel"), Court-appointed lead counsel for Plymouth County Retirement System ("Lead Plaintiff" or "Plymouth") and the proposed Settlement Class in the above-captioned class action (the "Consolidated Action").[1] I am admitted to practice before this Court.

2. I have been actively involved in the prosecution of this case, am intimately familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my close supervision and participation in the Consolidated Action.

3. I respectfully submit this declaration in support of Lead Plaintiff's motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the partial settlement of this class action (the "Settlement") for $20,000,000 in cash (the "Settlement Amount"), and the plan of allocation for distribution of the net settlement proceeds (the "Plan of Allocation").[2] I also

[1] All capitalized terms used herein, unless otherwise defined, have the same meaning as that set forth in the Stipulation and Agreement of Settlement with Company and Individual Defendants (the "Stipulation"), dated December 21, 2011. (Docket No. 111-3).

[2] This declaration is submitted in support of a negotiated settlement and is, therefore, subject to Rule 408 of the Federal Rules of Evidence and inadmissible in

submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of counsel's expenses incurred during the prosecution of the Consolidated Action.

4. Both the Settlement and Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses have the support of Lead Plaintiff. *See* Declaration of William R. Farmer, Executive Director of Plymouth County Retirement System, in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action Settlement and Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, annexed hereto as Ex. 1.

I. THE SETTLEMENT BENEFITS TO THE SETTLEMENT CLASS

5. The Settlement, which this Court preliminarily approved in its January 18, 2012 Preliminary Approval Order Providing for Notice and Hearing in Connection With Proposed Partial Class Action Settlement (the "Preliminary Approval Order"), provides for the gross payment of $20,000,000 to secure a settlement of the claims alleged in the Consolidated Action against defendants Carter's, Inc. ("Carter's" or the "Company"), and Frederick J. Rowan II

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any proceeding, other than in connection with this Settlement. In the event the Court does not approve the Settlement, this declaration and the statements contained herein and in any supporting memoranda are made without prejudice to Lead Plaintiff's position on the merits.

("Rowan"), Joseph Pacifico ("Pacifico"), Michael D. Casey ("Casey"), Andrew North ("North"), Charles E. Whetzel, Jr. ("Whetzel"), and Joseph M. Elles ("Elles") (together, the "Individual Defendants" and, collectively with Carter's, "Settling Defendants"). If approved, the Settlement will finally resolve Lead Plaintiff's allegations against the Settling Defendants and release all claims (and related claims) against them in the Consolidated Action. Defendant PricewaterhouseCoopers LLP ("PwC") is not a party to the Settlement and the claims against PwC will continue to be litigated.

6. The Settling Defendants have not admitted liability or any wrongdoing as part of the Settlement, and they vigorously maintain that they are not liable to the Settlement Class.

7. All eligible Settlement Class Members who timely submit valid Proofs of Claim will receive a distribution from the Net Settlement Fund, which is the Settlement Fund, plus any accrued interest, minus administration expenses, Lead Counsel's fees and expenses approved by the Court, and any taxes incurred on the interest income earned by the Settlement Fund. The Court will be asked to approve the distribution of the Net Settlement Fund at a future date, once the administration is completed.

8. The Settlement provides an immediate and substantial recovery to Carter's investors, who faced a significant risk of no recovery at all. Indeed, the Court (Forrester, J.) previously granted the Defendants' motion to dismiss the First Amended Consolidated Class Action Complaint (the "FAC") on March 17, 2011 (the "Dismissal Order") (Docket No. 90), finding that Lead Plaintiff "should [still] be given an opportunity to restate [its] claims in a manner consistent with [the Court's] Order." Immediately following the Court's Dismissal Order, the Consolidated Action was reassigned to the Honorable Amy Totenberg, and Lead Plaintiff subsequently filed the operative Second Amended and Consolidated Class Action Complaint on July 20, 2011 (the "SAC") (Docket No. 97). The SAC includes new allegations stemming from investigations of the Company by the Securities and Exchange Commission (the "SEC") and the U.S. Department of Justice (the "DOJ"). The Settlement was reached before the Settling Defendants moved to dismiss the SAC.

9. The Dismissal Order held, *inter alia*, that (1) Lead Plaintiff had not established a strong inference of scienter for any of the alleged false and misleading statements and omissions (Docket No. 90 at 36-77); (2) mixed statements of present fact and forward-looking statements would be considered entirely forward-looking under Eleventh Circuit precedent, *id*. at 83-84; (3) the

forward-looking statements were protected by the statutory safe harbor, 15 U.S.C. § 78u-5(c)(1), since Lead Plaintiff had not established Defendants' actual knowledge of falsity and further, that allegedly false statements made after February 22, 2006 were accompanied by adequate cautionary language, *id*. at 84-87; and (4) because the group pleading doctrine did not survive the enactment of the Private Securities Litigation Reform Act (the "PSLRA"), Lead Plaintiff did not sufficiently allege that certain of the Individual Defendants made any allegedly false and misleading statement. *Id*. at 30-33.

10. There is a substantial risk the Court could find that the SAC failed to cure the deficiencies identified in the Dismissal Order as to the Settling Defendants. Even if the SAC did survive a second motion to dismiss, Lead Plaintiff would still need to overcome additional hurdles before the Settlement Class could possibly recover any damages, including class certification, summary judgment and trial. For example, the Settling Parties took very different positions on causation and damages issues that would likely be hotly contested during the Consolidated Action, including (1) the amount by which Carter's common stock was allegedly artificially inflated (the Settling Defendants deny that there was inflation) during the Class Period; and (2) the extent to which the various matters that Lead Plaintiff alleged were materially false or misleading influenced the price

of Carter's common stock during the Class Period (the Settling Defendants deny that they did). Further proceedings before the Court would also require considerable additional judicial resources, time, and expense. Given these and other difficulties that the Settlement Class faced in pursuing the claims against the Settling Defendants, the Settlement provides an excellent guaranteed recovery immediately.

11. The Settlement was reached only after extensive investigative efforts by Lead Counsel. Lead Counsel identified 160 potential witnesses, contacted 114 potential witnesses and interviewed approximately 68 third parties. Lead Counsel also conducted a thorough review of publicly available information, prepared and filed three detailed consolidated complaints, and researched and prepared Lead Plaintiff's opposition to Defendants' motion to dismiss the FAC. Lead Counsel further explored the factual and legal issues regarding loss causation by consulting a damages expert. These efforts provided Lead Plaintiff with a clear understanding of the strengths and weaknesses of its claims before it entered into the Settlement.

12. The negotiations leading up to the Settlement were also hard-fought, and efforts to settle the claims were successful only after a full day of mediation before former United States District Court Judge Layn R. Phillips ("Judge Phillips"). Judge Phillips is a former Assistant United States Attorney in the

Central District of California and a former United States Attorney for the Northern District of Oklahoma. He was appointed and served as a United States District Judge in the Western District of Oklahoma. After he resigned from the federal bench, he joined Irell & Manella LLP, where he specializes in complex civil litigation and mediations. Judge Phillips is one of the most experienced and respected mediators in the United States in securities class actions. Among the securities class action settlements that he mediated are the following: *In re Cendant Corp. Sec. Litig.* (D.N.J.); *UnitedHealth Grp. Inc. PSLRA Litig.* (D.Minn.); *In re Healthsouth Corp. Sec. Litig.* (N.D.Ala.); *In re Qwest Commc'n Int'l, Inc. Sec. Litig.* (D.Colo.); *In re Williams Sec. Litig.* (D.Okla.); *In re General Motors Corp. Sec. Litig.* (E.D.Mich.); *In re El Paso Corp. Sec. Litig.* (S.D.Tex.); *Brocade Commc'n Sys., Inc. Sec. Litig.* (N.D.Cal.); and *In re Refco, Inc. Sec. Litig.* (S.D.N.Y.).

13. Based on this declaration and for the reasons set forth in the accompanying memoranda,[3] Lead Plaintiff respectfully submits that the terms of the Settlement and Plan of Allocation are fair, reasonable and adequate in all

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[3] Also submitted herewith are: (1) Lead Plaintiff's Memorandum of Law in Support of Motion for Final Approval of Partial Class Action Settlement and Plan of Allocation; and (2) Lead Counsel's Memorandum of Law in Support of Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

respects and that the Court should approve those terms pursuant to Rule 23(e). In addition, Lead Counsel respectfully submits that its request for attorneys' fees and expenses is warranted and should be awarded in full.

II. THE COURT'S PRELIMINARY APPROVAL ORDER AND LEAD PLAINTIFF'S DISSEMINATION OF PRE-HEARING NOTICES

14. Lead Plaintiff moved for preliminary approval of the Settlement on December 21, 2011. (Docket No. 111). On January 19, 2012, the Court issued its Preliminary Approval Order, *see* Ex. 2, annexed hereto:

(a) granting preliminary approval to the Settlement as sufficiently fair, reasonable and adequate to warrant dissemination of notice to the Settlement Class;

(b) preliminarily certifying the Consolidated Action as a class action on behalf of the Settlement Class for the purposes of settlement only;

(c) preliminarily certifying Lead Plaintiff as Class Representative and Labaton Sucharow as Class Counsel;

(d) scheduling a hearing (the "Settlement Hearing") for May 31, 2012 at 11:00 a.m. to determine whether (1) the proposed Settlement of the Consolidated Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Settlement Class and should be granted final approval by the Court; (2) the Judgment as provided under the Stipulation should be entered; (3) the proposed Plan of Allocation should be finally approved; (4) the Settlement Class should be finally certified for purposes of effectuating a settlement only; and (5) Lead Counsel's application for attorneys' fees and expenses should be granted;

(e) approving the form, substance and requirements of the Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Notice"), Summary Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Summary Notice") and the Proof of Claim and Release form ("Proof of Claim") and approving the plan for mailing and distribution of the Notice and publishing of the Summary Notice;

(f) appointing Epiq Class Action & Claims Solutions, Inc. ("Epiq") to administer the notice program and Settlement, under the supervision of Lead Counsel; and

(g) establishing procedures and deadlines for providing notice to the Settlement Class and for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement, Plan of Allocation, and/or the application for attorneys' fees and reimbursement of expenses.

15. Annexed hereto as Ex. 3 is the Declaration of Claims Administrator ("Epiq Decl."), dated April 19, 2012. Pursuant to the Preliminary Approval Order, and under Lead Counsel's supervision, Epiq has mailed 90,096 copies of the Notice and Proof of Claim (together, the "Notice Packet") to all potential Settlement Class Members who could be reasonably identified, and to known brokers/nominees. *Id*. ¶¶7-15. Epiq and Lead Counsel also made the Notice and Proof of Claim readily available at www.carterssecuriteslitigation.com, and on the website of Lead Counsel, www.labaton.com. In further compliance with the Preliminary Approval Order, Epiq caused the Summary Notice to be timely

published in *Investor's Business Daily* and transmitted over *PR Newswire*. *Id*. ¶¶16-17.

16. The Notice describes, *inter alia*, the claims asserted in the Consolidated Action, the Settling Parties' contentions, the course of the Consolidated Action, the Settlement's terms, the Plan of Allocation, and Settlement Class Members' right to object to the Settlement or to seek exclusion from the Settlement Class. Ex. 3-A.[4] The Notice provides the deadlines for objecting to the Settlement or seeking exclusion from the Settlement Class, and advises potential Settlement Class Members of the scheduled Settlement Hearing. *Id*. at 13, 18. The Notice also notifies Settlement Class Members that aggregate attorneys' fees requested by Lead Counsel will not exceed 30% of the Settlement Fund and aggregate litigation expenses will not exceed $400,000, with interest earned on both amounts at a rate equal to the interest earned by the Settlement Fund. *Id*. at 17.

17. Although the dates for objecting to the Settlement and seeking exclusion from the Settlement Class have not yet passed, as discussed more fully

[4] Citations to exhibits that also attach internal sub-exhibits will be referenced as "Ex. ___-___." The first numerical reference refers to the designation of the entire exhibit attached hereto and the second reference refers to the designation within the exhibit itself.

infra, to date no investor has requested exclusion from the Settlement Class and no objections have been received.[5] *Id*. ¶¶43-46. Following the May 10, 2012 deadline for exclusions and objections, Lead Plaintiff will report on any exclusions and objections in its reply papers.

III. SUMMARY OF ALLEGATIONS AND CLAIMS

A. The Settling Parties

18. The proposed Settlement resolves claims against the Settling Defendants and their related parties brought on behalf of purchasers of Carter's publicly traded securities between March 16, 2005 and November 10, 2009, inclusive (the "Class Period"), for violations of Sections 10(b), 20(a), and 20(A) of the Securities Exchange Act of 1934 (the "Exchange Act").

19. Lead Plaintiff is an institutional investor that represents more than 9,700 active and retired public employees and is one of the largest public retirement systems in the Commonwealth of Massachusetts, managing approximately $636 million in assets. SAC ¶32. Lead Plaintiff purchased more than 61,000 shares of Carter's common stock during the Class Period at allegedly

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[5] Pursuant to the Notice, requests for exclusion must be mailed to Epiq and received or postmarked no later than May 10, 2012, and objections must be mailed or delivered to the Court and counsel for the Settling Parties no later than May 10, 2012.

artificially inflated prices and suffered damages as a result of Settling Defendants' alleged violations of the securities laws. (Docket No. 45.)

20. Additional Plaintiff Scott Mylroie, as set forth in the certification previously filed in the Mylroie Action, purchased Carter's common stock at allegedly artificially inflated prices during the Class Period, incurring an estimated loss of $5,198.49. (Docket No. 1).

21. Defendant Carter's is a Delaware corporation, headquartered in Atlanta, Georgia. Carter's designs, sources, and markets apparel for babies and young children in the United States. It primarily offers its children wear products under the Carter's, Child of Mine, Just One Year, and OshKosh brand names. The Company markets its products to national department stores, chain and specialty stores, off-price sales channels, and discount retailers. SAC ¶34.

22. The Individual Defendants were officers at Carter's during the relevant time period. SAC ¶¶35-40.

23. Rowan was Chief Executive Officer ("CEO") of Carter's from 1992 to August 1, 2008, served as Chairman of the Board from October 1996 to August 1, 2008, and was President of Carter's from 1992 to May 2004. SAC ¶35.

24. Pacifico was President of Carter's during the Class Period until December 21, 2009; Casey was Executive Vice-President and Chief Financial

Officer ("CFO") of Carter's, becoming CEO in August 2008 following Rowan's departure, and Chairman of the Board in September, 2009. SAC ¶36, 37.

25. Whetzel was Executive Vice-President, Chief Sourcing Officer. SAC ¶38.

26. North was Vice President of Corporate Compliance until July 2007, when he became Carter's Vice President of Finance under CFO Casey. North acted as Interim Chief Financial Officer from August 1, 2008 until January 19, 2009, when he returned to his previous position as Vice President of Finance. SAC ¶39.

27. Elles was hired by Carter's in 1996 as Vice President of Regional Accounts. Elles was Executive Vice President of Sales during the Class Period, until his departure from the Company in March 2009. SAC ¶40.

B. The Alleged Conduct

28. On July 20, 2011, Lead Plaintiff filed the SAC. The SAC is the operative complaint and alleges violations of the Exchange Act arising from misstatements and omissions allegedly made in connection with Carter's publicly-filed financials concerning (1) growth prospects of OshKosh; and (2) alleged "smoothing" of Carter's financial results through improper manipulation of accommodation payments.

1. The Accommodations Fraud

29. Specifically, the SAC alleged that the Individual Defendants "smoothed" Carter's financials (in violation of Generally Accepted Accounting Principles ("GAAP")) to portray the false impression that Carter's was a company capable of delivering consistent and predictable earnings, a quality prized by the investing public as reflective of management's perceived skill and credibility. The SAC alleged that Carter's and the Individual Defendants, over a period of almost six years, knowingly and recklessly manipulated the Company's financials in order to "smooth" the accounting of accommodation payments (also known as margin support payments) made by the Company to certain wholesale customers (the "Accommodations Fraud"). Through "smoothing," the Defendants allegedly were able to manipulate Carter's reported earnings upward in the event of an earnings shortfall, or "borrow" from earnings in the event of a surplus for use at a later date. SAC ¶¶81-104.

30. A standard feature of the retail industry, the Company used accommodation payments to facilitate the sales of Carter's merchandise in its customers' stores. The payments were charged against the net sales figure from which all of Carter's financials derived, because they ultimately reduced the value of the net sale to the customer. SAC ¶59. The SAC alleged that instead of

booking the payments in the same quarter as the sale to the relevant customer, as required by accounting rules, the Defendants selected particular quarters in which to book the accommodation payments, providing them with the flexibility to meet earnings guidance in a particular quarter, or to book charges in quarters that had a surplus of income to mask the cumulative payments.

31. The SAC alleged that as a result of the Accommodations Fraud, Carter's financial statements prior to and during the Class Period were rendered materially false and misleading, which the Company purportedly acknowledged by restating its financials for fiscal years 2004 through 2008, and for the first two quarters of 2009. SAC ¶¶146-159.

32. The SAC detailed how a lack of internal controls and a tight-knit executive culture allegedly allowed the Settling Defendants to perpetuate the Accommodations Fraud, which was discovered after a new CFO, Richard F. Westenberger ("Westenberger"), attempted to confirm accommodations with Kohl's Corporation ("Kohl's"), one of Carter's largest customers. SAC ¶¶60-71.

33. The SAC further alleged that the majority of the Individual Defendants' annual cash income was tied directly to Board-issued guidance – a recognized risk factor for fraud under auditing guidelines – and that the Individual

Defendants were especially concerned with meeting their internal earnings targets. SAC ¶¶110-126.

34. The SAC also alleged that the Individual Defendants knew about the fraudulent manipulation of accommodation payments to customers, and that accommodation payments were a heated point of discussion at internal meetings. SAC ¶¶134-140.

2. The OshKosh Fraud

35. The SAC alleged that at the same time the Individual Defendants were manipulating Carter's core financials by improperly booking accommodation payments in the wrong periods, Rowan, Casey, Pacifico, and Whetzel (the "OshKosh Defendants") misled and defrauded investors concerning the growth prospects of children's apparel manufacturer OshKosh B'Gosh, Inc. ("OshKosh"), a company that Carter's acquired in July 2005 (the "OshKosh Fraud"). SAC ¶¶236-341.

36. Carter's acquired OshKosh on July 14, 2005 for $312.1M, a price that included $151M in goodwill (over 48% of total acquisition cost). The SAC alleged that, although OshKosh had a recent history of operational difficulties, the OshKosh Defendants represented that it continued to have substantial brand recognition, and they had a definite plan to fix the brand, restore operating

margins, and turn OshKosh into the growth engine that would drive Carter's profitability going forward. SAC ¶¶236-243.

37. The SAC further alleged that the OshKosh Defendants systematically and consistently misrepresented the growth and profit opportunity of the OshKosh acquisition during the Class Period in order to artificially inflate the price of Carter's stock (above the inflation already caused by the ongoing Accommodations Fraud). The SAC further alleged that the OshKosh Defendants knew OshKosh's likely sales prospects well in advance of their falsely optimistic public statements because Carter's received orders on its designs nine months in advance of actual sales. The SAC described how the OshKosh Defendants knew by the fall of 2006 that their OshKosh design strategy had failed, resulting in a marked decrease in sales orders, with at least one major wholesaler (Macy's West) deciding not to carry the line at all. SAC ¶¶244-294.

38. The SAC alleged that the OshKosh Defendants profited significantly through bonuses tied to the OshKosh integration, and from selling shares of Carter's common stock based on information known only to them. The SAC described a "buddy pact" the OshKosh Defendants had with lower-ranking Carter's executives, who were discouraged from exercising their own shares while the OshKosh Defendants were actively engaged in their selling. Beginning in

October 2006, Rowan began unloading hundreds of thousands of his own shares in Carter's. In November 2006, Pacifico also began selling hundreds of thousands of his Carter's shares. By the time the truth regarding the OshKosh Fraud was disclosed, Rowan had sold 1,046,400 shares, netting $28.8 million; Casey had sold 161,200 shares ($4.9 million); Pacifico had sold 190,000 shares ($5.1 million); and Whetzel had sold 154,400 shares ($4.2 million). SAC ¶¶342-345.

39. The Settling Defendants deny all liability and any alleged wrongdoing.

C. The Truth Regarding the OshKosh Fraud Is Allegedly Disclosed

40. On July 24, 2007, after the market closed, Carter's announced it was writing-down all of the remaining goodwill booked for OshKosh at the time of the acquisition; some $142.9M, as well as a write-down of $12M on the separately-booked OshKosh trade name, and also announced a 45% decrease in OshKosh wholesale figures, allegedly conceding that OshKosh's growth prospects were essentially non-existent going forward. Carter's stock price plummeted 8.5% in one day, allegedly in response to the news. SAC ¶¶335-338.

D. The Truth Regarding the Accommodations Fraud Is Allegedly Disclosed

41. The SAC alleged that the Accommodations Fraud began to be revealed when Carter's new CFO, Westenberger, was hired in January 2009 to replace interim CFO North. SAC ¶141. An independent review by Westenberger led him to Kohl's, one of Carter's largest customers, to discuss a disputed accommodations payment that Pacifico had been trying to resolve. SAC ¶142. Westenberger's trip to Kohl's, which allegedly occurred without Pacifico's knowledge, was only a few weeks before Carter's was due to release its third quarter results for 2009. SAC ¶144. Following Westenberger's return, and his demand for a full review into the Company's accounting practices, Carter's issued a press release on the morning of October 27, 2009, announcing that it would delay its third quarter earnings release in order to complete a review of its accounting for margin support to its wholesale customers. SAC ¶¶142, 144. The stock plummeted 23% the day of the announcement on extremely heavy trading (14.2 million shares), and Goldman Sachs, a prominent analyst covering Carter's, suspended coverage of the Company following the announcement, citing "the lack of visibility around the magnitude and potential impact of this review." SAC ¶144.

42. On November 9, 2009, after the market had closed, the Settling Defendants issued another press release stating that, following the accounting review, the Company would restate its financials for fiscal years 2004-2008, and the first two quarters of 2009. This announcement triggered a further drop of 14% in Carter's stock price, with 5.5 million shares traded in one day. In comparison, the average daily trading volume during the Class Period was approximately 753,000 shares. The November 9, 2009 announcement stated that the accounting review was triggered by a disputed amount of margin support with a wholesale customer, and claimed the accounting improprieties were a result of margin support commitments that "were not disclosed" to the Company's finance group. SAC ¶¶72, 145.

43. Following the Company's announcement that it would need to restate its financials, both the SEC and DOJ launched investigations. The SEC investigated the Company for over a year, reviewing thousands of pages of documents produced by Carter's, Kohl's and PwC. Following its investigation, the SEC filed a complaint against Elles on December 20, 2010 (the "SEC Action"), alleging that Elles fraudulently manipulated Carter's accommodation payments

over a period of more than five years.[6] Elles subsequently filed an answer to the SEC complaint, admitting, *inter alia*, that accommodation payments were manipulated. According to Elles, Carter's senior management not only knew of the manipulation at all relevant times – they specifically instructed Elles to manipulate the accommodation payments. SAC ¶¶160-175.

IV. PROCEDURAL HISTORY OF THE CONSOLIDATED ACTION

44. In September 2008, Plymouth filed the initial proposed class action complaint against Carter's, certain of its officers and directors, and other defendants in the United States District Court for the Northern District of Georgia. On March 13, 2009, the Court appointed Lead Plaintiff, Lead Counsel and Page Perry LLC as Liaison Counsel[7] to represent the putative class. Lead Plaintiff filed the Amended Class Action Complaint for Violations of Federal Securities Laws (the "Complaint") on May 12, 2009. The Complaint asserted claims under Sections 10(b), 20(a), and 20A of the Exchange Act arising from alleged

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[6] On September 21, 2011 a federal grand jury indicted Elles for fraudulently manipulating accommodation payments. *See* 1:11-cr-00445 (UNA), Docket No. 1. On March 20, 2012, a superseding indictment was filed that added Pacifico as a defendant. *Id*., Docket No. 50.

[7] By order entered June 17, 2010, the Court agreed to the substitution of Evangelista & Associates, LLC as Liaison Counsel for Lead Plaintiff and the proposed class, and by motion filed April 3, 2012, the Court was asked to substitute Harris Penn Lowry Del Campo, LLP as Liaison Counsel for Evangelista & Associates, LLP.

misstatements and omissions regarding the growth prospects of OshKosh. On July 17, 2009, Carter's, Rowan, Pacifico, Casey and Whetzel moved to dismiss the Complaint, which Lead Plaintiff opposed on September 11, 2009.

45. On November 24, 2009, the Court (Forrester, J.) consolidated the case with a second putative class action, *Mylroie v. Carter's, Inc., et al*., No. 1:09-cv-03196-JOF. On January 15, 2010, in light of the Mylroie action, Carter's newly-announced intention to restate certain of its financial statements, and Lead Plaintiff's subsequent desire to amend the Complaint, the Court denied the July 17, 2009 motion to dismiss as moot with leave to renew.

46. Lead Plaintiff and additionally named plaintiff Mylroie ("Plaintiffs") filed the FAC on March 15, 2010, adding defendants North and Carter's auditor, PwC. The FAC alleged violations of the Exchange Act arising from misstatements and omissions made in connection with Carter's publicly-filed financials that concerned the growth prospects of OshKosh and the alleged "smoothing" of Carter's financial results through manipulation of accommodations payments.

47. On April 30, 2010, each of the defendants moved to dismiss the FAC. The motions were opposed by Lead Plaintiff on June 14, 2010 and were fully submitted by July 23, 2010. By the Dismissal Order entered March 17, 2011, the Court (Forrester, J.) granted defendants' motions to dismiss in their entirety and

gave Lead Plaintiff leave to amend. Immediately following the Dismissal Order, the Consolidated Action was reassigned to the Hon. Amy Totenberg.

48. On July 20, 2011, Lead Plaintiff filed the SAC, adding defendant Elles and additional allegations that developed since the filing of the FAC. The SAC is the operative complaint and alleges violations of the Exchange Act.

49. By consent order entered August 8, 2011, the Court stayed all proceedings so that Lead Plaintiff, Carter's and the Individual Defendants could pursue a potential negotiated resolution of the asserted claims. The Settling Parties engaged Judge Phillips, an impartial and experienced mediator, to assist them in their negotiations. On November 1, 2011, the Settling Parties met with Judge Phillips for a full day in-person mediation session in an attempt to reach a settlement. The mediation was preceded by the Settling Parties' exchange of mediation statements. Following a full day of negotiations, the Settling Parties agreed to settle all claims, and entered into a Settlement term sheet that was later replaced by the formal Stipulation.

50. On November 15, 2011, the Settling Parties submitted a joint status report informing the Court that the Settling Parties had mediated their dispute on November 1, 2011 and agreed to settle the claims (Docket No. 106).

51. On December 21, 2011, Lead Plaintiff filed its Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, supported by a memorandum of law and other papers (Docket No. 111).

52. The Court issued an order preliminarily approving the proposed partial class action settlement and providing for notice and hearing in connection therewith on January 19, 2012 (Docket No. 114).

53. PwC is the only remaining non-settling defendant. PwC filed a motion to dismiss the SAC on January 9, 2012, Lead Plaintiff filed its opposition to PwC's motion on February 23, 2012, and PwC filed its reply on March 26, 2012. (Docket Nos. 112, 116, 118).

V. INVESTIGATION AND INFORMAL DISCOVERY

54. The Settling Parties negotiated the Settlement on an informed basis and with a thorough understanding of the merits and value of the Settling Parties' claims and defenses.

55. Notwithstanding the PSLRA's automatic stay on discovery, Lead Plaintiff, through its counsel, conducted an extensive investigation of the claims asserted in the Consolidated Action.

56. This investigation began with a review of all relevant public information, including Carter's press releases, public statements, filings with the

SEC, regulatory filings and reports, as well as securities analysts' reports, advisories and media reports about the Company.

57. Lead Counsel also expended significant time and effort identifying and interviewing potential witnesses. Lead Counsel identified 160 potential witnesses, contacted 114, and was able to interview approximately 68 individuals. These interviews provided valuable information that further supported Lead Plaintiff's allegations and helped Lead Counsel to fully understand the relevant facts.

58. Lead Counsel has diligently litigated Lead Plaintiff's claims since the case's inception. This litigation process included (1) investigating and drafting the Complaint, FAC and SAC; (2) researching and drafting Lead Plaintiff's Opposition to the three separate briefs filed by the Settling Defendants in support of their motion to dismiss the FAC; (3) analyzing charging instruments, motion practice, and disclosures in the SEC Action and related criminal proceeding; and (4) researching and drafting Lead Plaintiff's mediation statement for the November 1, 2011 mediation session and responding to the Settling Defendants' mediation statements. These efforts required significant legal analyses with respect to the claims asserted in the Consolidated Action and the defenses thereto. Lead Counsel also consulted with a damages expert to analyze issues of loss causation and class-

wide damages, and with an accounting expert to analyze the Company's restatement and GAAP and GAAS issues.

59. With the benefit of this thorough investigation and full legal analyses of the Settling Parties' claims and defenses, Lead Plaintiff (as advised by Lead Counsel) has concluded that the Settlement is in all respects fair, adequate, reasonable and in the best interests of the Settlement Class.

VI. SETTLEMENT PROCESS

60. Lead Plaintiff and Settling Defendants participated in formal, arm's-length settlement negotiations during a full-day mediation before a highly regarded and experienced mediator, Judge Phillips. Ultimately, these negotiations resulted in an agreement to settle all claims, which was memorialized in a Settlement term sheet, and subsequently in the formal Stipulation.

61. The negotiations were well-informed by the Settling Parties' submission and exchange of detailed mediation statements expressing their respective views and frank discussions about the merits and limitations of the claims. Lead Plaintiff's perspective was honed through (1) months of extensive investigation by Lead Counsel, including interviews with numerous witnesses; (2) analysis of the publicly available information about Carter's and the Individual Defendants; (3) fully briefing the Defendants' motion to dismiss the FAC; (4)

analysis of the Dismissal Order; (5) analysis of papers filed in the SEC Action and Elles's criminal indictment; (6) damages analyses by a well-regarded consulting expert; and (7) analysis of the Company's restatement and GAAP violations by a well-respected and experienced accounting expert.

62. Throughout the settlement negotiations and mediation session, the strengths and weaknesses of the Settling Parties' respective claims and defenses were fully explored among the parties and separately with Judge Phillips. At the mediation the parties exchanged information regarding the merits of the claims and damages in the Consolidated Action, with Lead Plaintiff informally sharing information concerning its ongoing investigation.

63. This foundation enabled Lead Plaintiff and Lead Counsel to thoroughly evaluate the strengths and weaknesses of the Settlement Class's claims and the risks of continued litigation. Accordingly, Lead Plaintiff entered into the Settlement on a fully-informed basis.

VII. ASSESSMENT OF STRENGTHS AND WEAKNESSES OF THE CLAIMS

64. In deciding to enter into the Settlement, Lead Plaintiff and Lead Counsel considered, *inter alia*, (1) the substantial immediate benefit to Settlement Class Members; (2) the risk that the Court could grant the Settling Defendants' anticipated motion to dismiss the SAC and the prospects for a successful appeal of

the dismissal; (3) the risks and expense of continuing to litigate the settled claims, assuming the SAC survived a second motion to dismiss; (4) the expense of fact and expert discovery; (5) the strong likelihood of a complex and risky expert-driven challenge to class certification and the attendant risks (especially in a complex action such as this one) of maintaining class status through judgment; (6) Settling Defendants' probable motion for summary judgment at the close of discovery, which would lead to a "battle of the experts" on damages and loss causation; (7) the risk of prevailing through summary judgment; (8) the inherent delays in such litigation, including potential appeals; and (9) the risks of presenting a complex, fact-intensive case to a jury.

A. Defendants' Motion to Dismiss the FAC

1. The Settling Parties' Arguments

65. During the Consolidated Action, the Settling Defendants filed three briefs supporting their motion to dismiss the FAC. With respect to the alleged OshKosh-related misstatements, the Settling Defendants argued that (1) the misstatements were not actionable because the statements were legitimate economic projections protected by the PSLRA's provisions governing forward-

looking statements[8]; (2) there were no then-current facts contradicting the alleged misstatements, and that the projections later proved to be accurate; (3) the FAC's allegations failed to establish scienter because the alleged stock sales by certain Individual Defendants were not suspicious and were made pursuant to a trading plan; and (4) there were no factual allegations, such as internal documents, supporting actual knowledge of falsity. Docket No. 67-1 at 11. The Settling Defendants also argued that the FAC failed to establish loss causation because none of the alleged disclosures regarding the OshKosh Fraud were corrective. Docket No. 67-1 at 12.

66. The Settling Defendants also argued that dismissal of the Accommodations Fraud was warranted because the FAC failed to plead a strong inference of scienter as to those allegations. The Settling Defendants argued that confidential witness testimony was insufficiently particularized, in that it did not specify the dates, contexts and participants of particular meetings in which accommodations were discussed, and that the confidential witnesses were not accounting experts and did not, therefore, possess a basis for alleging improper booking of accommodations. The Settling Defendants also argued that the

[8] *See* 15 U.S.C. §78-5(c)(1); *see also Harris v. Ivax Corp.*, 182 F.3d 799, 803, 806-807 (11th Cir. 1999) (defendants "may avoid liability for forward-looking statements that prove false if the statement is 'accompanied by meaningful cautionary statements.'")

confidential witness accounts should be discounted as hearsay, or on the ground that the witness was a disgruntled former employee with "an axe to grind." *Id*. at 18. The Settling Defendants further contended that the FAC failed to establish recklessness because (1) GAAP violations and weaknesses in internal controls were insufficient, on their own, to raise an inference of scienter; and (2) allegations regarding Settling Defendants' compensation during the relevant period and a general motive to improve the Company's financial performance was insufficient evidence of motive to commit fraud. Docket No. 67-1 at 23.

67. Lead Plaintiff challenged each of these arguments in its omnibus Opposition, filed on June 14, 2010 (Docket No. 77).

68. Regarding the OshKosh Fraud claims, Lead Plaintiff argued that the alleged misstatements were not protected by the PSLRA's safe harbor provision because the alleged misstatements were based on omissions and misrepresentations of then-current fact (specifically, that the OshKosh Defendants knew that orders were plummeting, customers were abandoning the OshKosh line, and that there were no growth prospects for the OshKosh division). *Id*. at 16. Lead Plaintiff also argued that any cautionary language accompanying the alleged misstatements was inadequate, because the language warned only against the general risk of a future write-down, and not against the risk that the OshKosh Defendants would

misrepresent current facts known to them (including reductions in advance orders from wholesale customers) regarding OshKosh's growth prospects. *Id*. at 65. Lead Plaintiff further contended that confidential witness testimony supporting scienter for the OshKosh Fraud should not be discounted because the FAC had adequately established the basis for each witness's knowledge. *Id*. at 72.

69. Lead Plaintiff similarly argued that confidential witness testimony properly supported a strong inference that the Individual Defendants knew about the Accommodations Fraud. *Id*. at 74. Lead Plaintiff argued that confidential witness testimony was sufficiently particularized, and identified when accommodations were improperly booked and for which customer accounts. *Id*. at 78-79. Lead Plaintiff further contended that the FAC identified and described particular internal documents such as the "flux balance sheets" that showed how accommodations were booked in the wrong periods, and that the Individual Defendants had access to those documents throughout the relevant period. Lead Plaintiff also argued that the FAC established severe recklessness as to the Accommodations Fraud because (1) accommodations were a core operation at Carter's that required senior management's involvement, and that the Individual Defendants, as key officers, would have known if accommodations were improperly booked, particularly because accommodations affected Carter's net

sales and core financial metrics; (2) the Individual Defendants had ample financial incentive, through compensation packages and insider selling, to perpetuate the fraud; (3) Defendants' adoption of trading plans during the class period evidenced scienter; (4) the Company's stock repurchase plan supported scienter because it enabled Defendants to further inflate Carter's stock price; and (5) Carter's restatement supported scienter. *Id*. at 93.

2. The Dismissal Order

70. Ultimately, however, the Court (Forrester, J.) granted Defendants' motion to dismiss the FAC in its March 17, 2011 Dismissal Order (Docket No. 90), with leave to amend.

71. With respect to the OshKosh-related misstatements, the Dismissal Order held that mixed statements of present fact and forward-looking statements would be considered entirely forward-looking under Eleventh Circuit precedent. *Id*. at 83-84. The Dismissal Order found the alleged misstatements were forward-looking and protected by the statutory safe harbor, 15 U.S.C. § 78u-5(c)(1), because Lead Plaintiff had not established Defendants' actual knowledge of falsity and further, that allegedly false statements made after February 22, 2006 were accompanied by adequate cautionary language. *Id*. at 84-87. The Dismissal Order held that the group pleading doctrine did not survive the enactment of the PSLRA,

and Lead Plaintiff accordingly did not sufficiently allege that certain of the Individual Defendants made any allegedly false and misleading statement. *Id*. at 30-33.

72. The Dismissal Order further held that Lead Plaintiff had not established a strong inference of scienter for any of the alleged false and misleading statements and omissions, *id*. at 36-77, finding that confidential witness allegations were insufficiently particularized and based on hearsay. *Id*. at 39.

73. With regard to the Accommodations Fraud, the Dismissal Order found that the scienter allegations lacked specificity such as the dates when accommodations were improperly booked, how much was improperly booked, and which customers' accommodations payments were involved, *id*. at 40, and further found that confidential witness accounts describing the "flux balance sheets" were insufficiently particularized, and that the FAC did not "cite to a single flux balance sheet or give any real detail regarding the contents of any particular flux balance sheet." *Id*. at 43. The Dismissal Order concluded that "[s]cienter must be shown as to each Defendant and each alleged misrepresentation. Here, there are several Defendants and a large number of allegedly false statements spanning over a number of years, yet little to no discussion of exactly when Defendants knew of or began participating in the Accommodations Fraud." *Id*. at 44.

74. The Dismissal Order further held that the core operations allegations were insufficient, on their own, to support scienter, and that the FAC did not connect Casey and North's positions "to any particular statement." *Id*. at 47. Although the Dismissal Order found that the FAC had pled with particularity that "there was some correlation between Carter's performance and the award of stock options to the Individual Defendants," it was unclear "whether the Accommodations Fraud had any actual effect on Defendants' receipt of all of the performance-based stock options." *Id*. at 50. The Dismissal Order also found that Carter's restatement, although "an admission to a problem after the fact," "did not support "the existence of scienter at the time the statements were made." *Id*. at 53.

75. The Dismissal Order found that the FAC's scienter allegations against Whetzel, North, and Pacifico insufficient, given that they "rest[ed] almost entirely on motive and opportunity." The Dismissal Order acknowledged that "Casey and North give the court pause in light of the confidential witness allegations and their involvement in Carter's accounting and auditing." However, "the lack of particularity surrounding the allegations of scienter as to those two Defendants is fatal…because the [FAC] fails to establish when either Defendant knew of or began participating in the alleged Accommodations Fraud." *Id*. at 54. The Dismissal Order concluded that "[t]he competing and stronger inferences are that

Defendants were unaware that the accommodations were being improperly manipulated by others in the company, and Plaintiffs have only created a permissible or reasonable inference of scienter." *Id*. at 54.

76. With regard to the OshKosh Fraud, the Dismissal Order also found that the FAC had not established a strong inference of scienter:

> Many of the statements and allegations made by the Confidential Witnesses do not support an inference of scienter because none of the Confidential Witnesses say which Defendants knew what, when they knew it, or how they received the information that would have made them aware that their statements were false. The best allegation the Confidential Witnesses offer is that wholesale retailers placed orders months in advance, so Defendants would have been aware that the Fall 2006 line was not doing well. However, this in itself is not particularized because the [FAC] does not explain exactly what information the sell-through would have provided and to whom or when it was provided.

Id. at 65.

77. The Dismissal Order also found that Defendants' stock sales were not sufficient evidence of scienter because (1) some sales pre-dated when Defendants were alleged to have known about problems with OshKosh; (2) the FAC did not provide a trading history of sales made prior to the Class Period, such that the court could determine whether "the level of trading is dramatically out of line with prior trading practices," even though "the trading history here would be short due to the fact that Carter's did not go public until late 2003 and the class period starts in

early 2005"; (3) certain Individual Defendants sold stock after Carter's issued both positive and negative statements about OshKosh, or sold stock after the alleged partial disclosures regarding OshKosh, which made the sales less suspicious. *Id*. at 70-72.

78. The Dismissal Order acknowledged that Lead Plaintiff's allegations regarding Carter's stock repurchase plan "ha[d] some merit in the present case where some of the [i]ndividual OshKosh Defendants did sell stock in relatively close proximity to the announcement of the repurchase program results," but that "the existence of the stock repurchase plan alone certainly does not support a strong inference of scienter, as it merely pertains to Defendants' motive to commit fraud." *Id*. at 76. The Dismissal Order similarly found that allegations regarding Rowan's bonuses "[spoke] to motive, but again motive and opportunity are not enough." *Id*. at 77.

79. Finally, the Dismissal Order found that because the FAC did not establish a primary violation for the Accommodations Fraud or the OskKosh Fraud, Lead Plaintiff's claims under Sections 20(a) and 20(A) would be dismissed. *Id*. at 88-89. The Court granted leave to amend the FAC, noting that "many of the flaws with [the FAC] arise from a failure to plead with particularity and a failure to

allege a strong inference of scienter, and a more carefully drafted complaint might state a claim." *Id*. at 90.

B. Risks of Establishing Liability

80. Lead Plaintiff filed the SAC on July 20, 2011 (Docket No. 97). The SAC attempts to cure the pleading deficiencies that the Dismissal Order identified, and contains new allegations relating to the SEC Action. For example, the SAC cites Elles's answer to the SEC complaint, in which Elles admits that he was instructed by senior management to improperly book accommodation payments in the wrong periods. The SAC, however, faced significant challenges, with no guarantee that it could survive a renewed motion to dismiss.

81. For example, the Settling Defendants would likely argue with respect to the Accommodations Fraud claims that: (1) the SAC failed to plead a strong inference of scienter (and that Lead Plaintiff could not prove scienter) on the part of Casey, Rowan and North, the only Individual Defendants who allegedly made misstatements; (2) under *Janus Capital Grp., Inc. v. First Deriv. Traders*, 131 S. Ct. 2296 (2011), Elles, Pacifico and Whetzel did not "make" any alleged misstatements because none possessed "ultimate authority" over the alleged statements; and (3) because the SAC failed to plead a strong inference of scienter as to any Individual Defendant that "made" an alleged misstatement, and Lead

Plaintiff could not prove such scienter, scienter cannot be imputed to Carter's under Eleventh Circuit agency principles, *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1254 (11th Cir. 2008). The Settling Defendants would argue that the scienter allegations attributed to confidential witnesses were insufficiently particularized, because the allegations did not specify the particular dates on which Casey, Rowan and/or North met to discuss improperly booking accommodations, and further did not specify the amount improperly booked or identify the customers that were affected. The Settling Defendants would also likely argue that the confidential witnesses had no accounting expertise, and thus had no basis for their allegations that accommodations payments were improperly booked. Accordingly, the Settling Defendants would argue that the scienter allegations attributed to confidential witnesses should be discounted, such that scienter could not be sufficiently pled against Casey, Rowan or North

82. In response, Lead Plaintiff would argue that: (1) under the doctrine of corporate scienter, the individual possessing scienter need not be the same person who "made" the misstatements; (2) Elles possessed the requisite scienter (as demonstrated by the pleadings in the SEC and DOJ Action and would be

established during discovery),[9] which is imputable to Carter's under established agency principles; and (3) Casey, Rowan and North were all signatories to the allegedly false financials and possessed ultimate authority over the statements therein and each acted with scienter. However, there is a not-insignificant risk the Court would agree with the Settling Defendants' scienter arguments, application of *Janus*, and interpretation of Eleventh Circuit agency principles either in deciding a future motion to dismiss or motion for summary judgment.

83. With respect to the OshKosh Fraud claims, the Settling Defendants would likely challenge the alleged OshKosh-related misstatements as legitimate economic projections protected by the PSLRA's safe harbor provision, 15 U.S.C. §78-5(c)(1), and argue that the SAC does not establish a strong inference of scienter regarding the OshKosh Fraud. For example, the Settling Defendants would argue that statements in which they professed their belief that the OshKosh brand had "great potential" (*e.g.*, SAC ¶314), as well as statements in which they "projected" increases in OshKosh sales figures (*e.g.*, SAC ¶274), all concerned future economic performance, and that the accuracy of future projections can only be determined after those projections were made.

[9] Pacifico was indicted after the Settlement was reached.

84. Lead Plaintiff would argue, in response, that (1) the alleged misstatements related to historical or current facts, did not comprise "mixed" statements of present fact and future projection under *Harris*, 182 F.3d at 806-807, and therefore were not protected as forward-looking, *see, e.g.*, *In re Premiere Techs., Inc., Sec. Litig*., No. 98 cv 1804, 2000 WL 33231639, *17 (N.D. Ga. December 8, 2000) ("the statutory safe harbor does not preclude liability in this case. While some of the statements at issue appear to be forward looking, plaintiffs also refer to 'statements or omissions of historical facts or 'hard' facts about current or past conditions'"); and (2) because information provided by confidential witnesses demonstrates the Settling Defendants' knowledge that the alleged misstatements were false, any cautionary language accompanying the alleged misstatements could not have been "meaningful." *See, e.g., In re SeeBeyond Techs. Corp. Sec. Litig.*, 266 F.Supp.2d 1150, 1165-66 n.8 (the "cautionary statement cannot be evaluated without reference to the defendant's knowledge"). There is, however, a real risk that the Court could find the alleged misstatements not actionable and affirm the view, expressed in the Dismissal Order, that even those OshKosh-related misstatements that were mixed statements of current fact and future projections were wholly forward-looking and protected by the safe harbor.

85. Assuming the Court denied the Settling Defendants' anticipated motion to dismiss the SAC, Lead Plaintiff faced significant risks in proving to a jury that the alleged misstatements and omissions were materially misleading to investors, and that the Settling Defendants acted with scienter. The themes being developed by Carter's and the Individual Defendants could have traction with a jury. With respect to the OshKosh Fraud, the jury could credit the cautionary language and find that the alleged misstatements should not have influenced a reasonable investor.

86. A jury could also, of course, disregard the testimony of Lead Plaintiff's witnesses, find for the Defendants and award no damages.

87. Moreover, the underlying allegations and defenses in the Consolidated Action are intertwined with complicated facts concerning the growth prospects of an apparel manufacturer and alleged manipulation of financial results relating to accommodation payments. A jury would have to be educated on industry terms such as net sales, same store sales, SKUs, and the differences between wholesale customers and retail customers. Similarly, accounting for accommodations is complex, requiring that accommodations, budgeted on the strength of advance wholesale orders months before a seasonal line of clothing ships, be booked in the

quarter that the clothing ships, not the quarter in which accommodations are budgeted.

C. Risk of Establishing Damages

88. There were also significant challenges to establishing loss causation and damages. The Settling Defendants likely would have presented evidence, supported by expert analysis and testimony, that (1) Lead Plaintiff could not establish loss causation because the stock price drops were not caused by disclosures that related to the alleged false and misleading statements; and (2) damages would be curtailed by the PSLRA's 90-day "bounce-back" cap on damages, 15 U.S.C. § 78u-4(e). For example, the Settling Defendants would likely argue that the two alleged partial disclosures of the truth relating to the OshKosh Fraud were not corrective because they disclosed only revised economic forecasts, and thus did not relate to any alleged falsity regarding OshKosh's growth prospects. The Settling Defendants would also argue that because Carter's stock price was higher at the time of the first Accommodations Fraud partial disclosure than it had been for the majority of the Class Period, and "bounced back" after each subsequent disclosure, damages would be severely curtailed. Although Lead Plaintiff believes it could rebut these arguments with expert testimony, survive

summary judgment, and prevail at trial, battles between experts are notoriously difficult to assess.

89. Moreover, Lead Plaintiff would have to explain to a jury, *inter alia*, how various statements affected the market – a significant challenge in a complex case like this one.

90. Thus, the Settlement avoids the substantial risks that the Settlement Class could recover less, or nothing at all, from the Settling Defendants in a jury trial.

VIII. REACTION OF THE SETTLEMENT CLASS

91. The Notice provides that objections to the Settlement, Plan of Allocation, and/or the application for attorneys' fees and reimbursement of litigation expenses must be submitted to the Court and counsel by May 10, 2012. Similarly, requests for exclusion from the Settlement Class must be submitted to the Claims Administrator by May 10, 2012. Although more than 90,000 Notices have been disseminated to potential Settlement Class Members, to date no objections and no exclusion requests have been received. Ex. 3 ¶¶13, 43-46.

92. If any objections or requests for exclusion are received after this declaration is submitted, they will be addressed in Lead Plaintiff's May 24, 2012 reply papers.

IX. PLAN OF ALLOCATION

93. Pursuant to the Preliminary Approval Order, and as explained in the Notice, all Settlement Class Members who wish to participate in the Settlement must submit a Proof of Claim to the Claims Administrator, postmarked on or before June 1, 2012.

94. As set forth in the Notice, all eligible Settlement Class Members who timely submit valid Proofs of Claim will receive a distribution from the Net Settlement Fund, which is the Settlement Fund after deduction of administration expenses, Lead Counsel's fees and expenses approved by the Court, and any taxes incurred on the interest income earned by the Settlement Fund. The distribution of the Net Settlement Fund will be made upon court-approval and pursuant to the Plan of Allocation, set forth and described in detail in the Notice. *See* Ex. 3-A at 10-15. The Plan of Allocation was developed with the assistance of Lead Plaintiff's consulting damages expert.

95. The Plan of Allocation reflects an assessment, supported by Lead Plaintiff's consulting damages expert's analyses of Carter's share prices, of the impact of the alleged disclosures on Carter's share prices.[10] The computation of the "Recognized Loss" per share in the plan reflects price changes of Carter's

[10] Settling Defendants had no input into the Plan of Allocation.

common stock or options in reaction to certain public announcements regarding Carter's, adjusting for price changes that were attributable to market and industry influences, or other Company information unrelated to the alleged fraud, based on Lead Plaintiff's allegations in the SAC.

96. In order to take into account the two alleged frauds in the Consolidated Action, the amount of each net price decline under the Accommodations Fraud was weighted by 1, and the amount of each net price decline under the OshKosh Fraud was weighted by 1/4. This weighting impacted the values in Table A of the Plan of Allocation. These weights reflect Lead Plaintiff's and Lead Counsel's assessment of the relative strengths of each claim and the importance of each alleged Fraud in achieving the Settlement.

97. As the Notice explains, the Plan of Allocation apportions the recovery among Settlement Class Members who submit valid and timely Proofs of Claim, and purchased or acquired Carter's common stock or options during the Class Period. *Id*. Of the gross settlement of $20 million, the gross amount of $19.8 million (before fees, expenses, taxes, and interest) has been allocated for claims on transactions in Carter's common stock, and the gross amount of up to $200,000 (before fees, expenses, taxes, and interest) has been allocated for claims on

transactions in Carter's call and put options, reflecting estimated relative losses. *Id*. at 25.

98. The Plan of Allocation distributes the recovery according to when Settlement Class Members purchased, acquired and/or sold their shares of Carter's common stock or options. *Id*. at 25. Specifically, a claimant must have purchased Carter's securities during the Class Period and have held shares past at least one of the allegedly corrective disclosures on July 26, 2006; February 14, 2007; July 25, 2007; October 27, 2009; or November 10, 2009 in order to be eligible to recover, consistent with *Dura Pharms. Inc. v. Broudo*, 544 U.S. 336 (2005). Authorized Claimants can not recover more than their out-of-pocket loss.

99. To date, there have been no objections to the Plan of Allocation and Lead Plaintiff and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable, and should be approved.

X. THE BASIS OF LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

100. The work undertaken by Lead Counsel in prosecuting the settled claims and arriving at the Settlement has been time-consuming and challenging. Lead Counsel has represented the Settlement Class on a wholly contingent basis for over three and a half years and continues to litigate the claims against non-

settling defendant PwC. To date, Lead Counsel has not been paid any fees or expenses for their efforts in achieving the Settlement.

101. The Notice informs Settlement Class Members that Lead Counsel will apply for attorneys' fees of no more than 30% of the Settlement Fund, plus interest at the same rate earned by the Settlement Fund, and for reimbursement of litigation expenses of no more than $400,000, plus interest at the same rate earned by the Settlement Fund.

102. Lead Counsel now requests a fee of 28% of the Settlement Fund, or $5,600,000, plus accrued interest, and expenses in the amount of $225,693.33, plus interest. Both requests are below the amounts specified in the Notice. Based on the result achieved for the Settlement Class, the extent and quality of the work performed, the risks of the Consolidated Action and the contingent nature of the representation, Lead Counsel submits that a 28% fee for the $20 million recovered so far is justified and should be approved. Likewise, Lead Counsel submits that reimbursement of expenses of $225,693.33 is warranted.

103. Labaton Sucharow is among the nation's preeminent law firms in this area of practice and has served as lead or co-lead counsel on behalf of major institutional investors in numerous class litigation since the enactment of the PSLRA, including *In re American International Group, Inc. Sec. Litig.*, No. 04-

8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Sec. Litig*., No. 03-1501 (N.D.Ala.) (representing New Mexico State Investment Council, the New Mexico Educational Retirement Board and the State of Michigan Retirement System and securing settlements of more than $600 million); *In re Broadcom Corp. Class Action Litig.,* No. 06-5036 (C.D.Cal.) (representing the New Mexico State Investment Council and securing settlement of $160.5 million); and *In re Countrywide Sec. Litig*., No. 07-5295 (C.D.Cal.) (representing the State of New York and New York City Pension Funds and reaching settlements of more than $600 million). *See* Ex. 5-C.

104. As evidenced by the fee declarations submitted by Plaintiffs' counsel who performed work at the direction of Lead Counsel, 5,576.20 hours have been expended by counsel in the prosecution of the claims, from the inception of the case through April 13, 2012. (*See* Summary of Lodestars and Expenses, annexed as Ex. 4; the Declaration of Jonathan Gardner on Behalf of Labaton Sucharow LLP in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 19, 2012, ¶5; Declaration of David J. Worley on Behalf of Evangelista & Associates, LLC in Support of Lead Counsel's Motion for

Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 17, 2012, ¶6; Declaration of David J. Worley on Behalf of Page Perry, LLC in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 18, 2012, ¶6; Declaration of Michael G. McLellan on Behalf of Finkelstein Thompson LLP in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 13, 2012 ¶6; Declaration of Julie Prag Vianale on Behalf of Vianale & Vianale LLP in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 16, 2012, ¶6; Declaration of Ronen Sarraf on Behalf of Sarraf Gentile LLP in Support of Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated April 13, 2012, ¶6 annexed hereto as Ex. 5–A though 10–A. This includes time spent, *inter alia*: (1) seeking appointment as lead plaintiff; (2) investigating the claims alleged in the Complaint, FAC and SAC, including identifying, locating and interviewing potential witnesses; (3) preparing and filing the Complaint, FAC and SAC; (4) researching and drafting Lead Plaintiff's omnibus Opposition to Defendants' motions to dismiss the FAC; (5) preparation for and participation in mediation; (7) consulting with a damages and accounting expert; and (8) negotiating and finalizing the

Settlement. Additional time will be expended during the administration of the Settlement; however, Lead Counsel will not seek a fee for that work.

105. Plaintiffs' counsel's total "lodestar" is $3,018,556.00, when one multiplies the number of hours worked by the current billing rates for counsel's various professionals. *Id*. Dividing the requested fee by Plaintiffs' counsel's lodestar results in a "lodestar multiplier" of 1.86.

106. Plaintiffs' counsel also requests reimbursement of expenses incurred in connection with the Consolidated Action, in the amount of $225,639.33. Each law firm requesting reimbursement of expenses has submitted a declaration, which states that the expenses are: (i) reflected in the books and records maintained by the firm; and (ii) accurately recorded in their declaration. *See* Ex. 5-B; 6-B; 7-B; and 8-B.

107. Lead Counsel submits that the expenses are reasonable and were necessary for the successful prosecution of the case. Because counsel were aware that they might not recover any of these expenses unless and until the litigation was successfully resolved against the defendants, they took steps to minimize expenses whenever practical to do so without jeopardizing the vigorous and efficient prosecution of the case.

108. Approximately $120,000, or 50% of these expenses, relate to the cost of experts. Such expenses were critical to Lead Counsel's understanding of the claims and damages in the Consolidated Action and its success in achieving the proposed Settlement. Plaintiffs' counsel's expenses also reflect routine and typical expenditures incurred in the course of litigation, such as the costs of experts, legal research (*i.e.*, Westlaw and Lexis fees), travel, document duplication, telephone, FedEx, etc.). *Id*. These expenses are reasonable and were necessary for the successful prosecution of the case.

XI. MISCELLANEOUS EXHIBITS

109. Annexed hereto as Ex. 11 is a table setting forth billing rates for peer defense firms, which was compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings in 2010.

110. Annexed hereto as Ex. 12 is a true and correct copy of Dr. Jordan Milev, Robert Patton, Svetlana Starykh, and Dr. John Montgomery, *Recent Trends in Securities Class Litigation: 2011 Year-End Review* (NERA December 14, 2011).

111. Annexed hereto as Ex. 13 is a true and correct copy of, Ellen M. Ryan & Lauren E. Simmons, *Securities Class Action Settlements: 2011 Review and Analysis* (Cornerstone Research 2012).

112. Annexed hereto as Ex. 14 is a compendium of true and correct copies of all unpublished slip opinions cited in Lead Counsel's Memorandum of Law in Support of Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2012.

JONATHAN GARDNER

EXHIBIT 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF WILLIAM R. FARMER, EXECUTIVE DIRECTOR OF PLYMOUTH COUNTY RETIREMENT SYSTEM, IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, WILLIAM R. FARMER, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Executive Director of the Plymouth County Retirement System ("Plymouth"), which was appointed Lead Plaintiff in this action on March 13, 2009. Plymouth represents more than 9,700 active and retired public employees and is one of the largest public retirement systems in the Commonwealth of Massachusetts, managing approximately $636 million in assets. The System purchased more than 61,000 shares of Carter's common stock during the Class Period at allegedly artificially inflated prices and allegedly suffered damages.

2. I have been the primary representative overseeing the above-referenced class action (the "Consolidated Action") on behalf of Plymouth, and I regularly update the Board of Trustees regarding the status of the Consolidated Action.

3. I respectfully submit this declaration in support of Lead Plaintiff's motion for final approval of the proposed Settlement and Lead Counsel's request for attorneys' fees. The matters testified to herein are based on my personal knowledge and/or discussions with counsel and Plymouth employees.

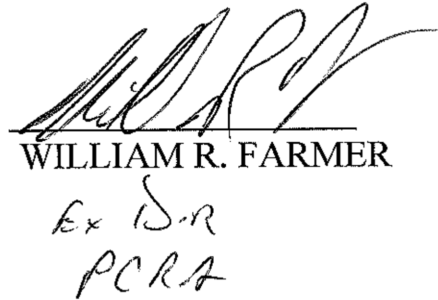
4. Plymouth endorses the Settlement and believes it provides a very favorable recovery for the Settlement Class. Plymouth also believes that Lead Counsel's request for attorneys' fees and expenses is fair and reasonable in light of the work performed for the Settlement Class and the result achieved.

5. Since Plymouth's appointment as Lead Plaintiff, I have been closely involved in the prosecution of the case and the eventual settlement of the claims against the Settling Defendants. I have regularly communicated with counsel, from initiation of the action to the present. Counsel consulted frequently with me concerning litigation strategy (such as decisions relating to motion practice, mediation and settlement) and kept me well-informed about the progress and status of this case.

6. Based on its involvement throughout the prosecution and resolution of the claims against the Settling Defendants, Plymouth believes that the proposed Settlement is fair, reasonable and adequate to the Settlement Class. It also believes that the proposed Settlement represents a substantial recovery, particularly in light of the substantial risks of continued litigation of the claims against the Settling Defendants, including the risk of a dismissal after a second round of motions to dismiss. Therefore, Plymouth strongly endorses approval of the Settlement by the court.

7. Plymouth also believes that Lead Counsel's request for an award of attorneys' fees in the amount of 28% of the Settlement Fund is fair and reasonable in light of the work performed on behalf of Lead Plaintiff and the Settlement Class. We have evaluated Lead Counsel's fee request by considering the amount and quality of the work performed and by considering the substantial recovery obtained for the Settlement Class. Plymouth further believes that the litigation expenses being requested for reimbursement are reasonable, and represent costs and expenses necessary for the prosecution and resolution of the claims. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at the most efficient cost, Plymouth fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

I hereby declare under penalty of perjury that the foregoing is true and correct, within the limits of my knowledge. Executed on April 13, 2012.



WILLIAM R. FARMER

Ex D.R

PCRA

EXHIBIT 2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	Civil Action No. 1:08-CV-2940-AT **PRELIMINARY APPROVAL ORDER PROVIDING FOR NOTICE AND HEARING IN CONNECTION WITH PROPOSED PARTIAL CLASS ACTION SETTLEMENT**

WHEREAS, on December 21, 2011, Plymouth County Retirement System ("Lead Plaintiff"), on behalf of itself and the Settlement Class, and Carter's, Inc. ("Carter's" or the "Company"), Frederick J. Rowan, II, Joseph Pacifico, Michael D. Casey, Andrew North, Charles E. Whetzel, Jr., and Joseph M. Elles (collectively, the "Settling Defendants") entered into a Stipulation and Agreement of Settlement with Company and Individual Defendants (the "Stipulation") in the above-titled litigation (the "Consolidated Action"), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the claims alleged in the Second Amended and Consolidated Class Action Complaint for Violations of Federal Securities Laws ("Second Amended

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Complaint") against the Settling Defendants on the merits and with prejudice (the "Settlement"); and the Court having read and considered the Stipulation and the accompanying exhibits; and the Settling Parties to the Stipulation having consented to the entry of this Order; and all capitalized terms used in this Order that are not otherwise defined herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 18th day of January, 2012 that:

1. The Court has reviewed the Stipulation and preliminarily finds the Settlement set forth therein to be fair, reasonable and adequate, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for the purposes of the Settlement only, the Consolidated Action as a class action on behalf of all Persons who purchased the publicly traded securities of the Company during the period from March 16, 2005 through November 10, 2009, inclusive, and were allegedly damaged thereby (the "Settlement Class"). Excluded from the Settlement Class are: the Defendants; the officers and directors of the Company, at all relevant times; any entity in which the Defendants have or had a controlling interest; members of the immediate families of the Individual Defendants; and the legal representatives, heirs, successors or

assigns of any excluded person. Also excluded from the Settlement Class will be any Person who timely and validly seeks exclusion from the Settlement Class.

3. The Court finds and concludes that the prerequisites of class action certification under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedures have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

(a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;

(b) there are questions of law and fact common to the Settlement Class Members;

(c) the claims of Lead Plaintiff are typical of the Settlement Class's claims;

(d) Lead Plaintiff and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class;

(e) the questions of law and fact common to Settlement Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that the claims of Settlement Class Members in the Consolidated Action are substantially similar and would, if tried, involve substantially identical proofs and may therefore be

efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is any interest among Settlement Class Members in individually controlling the litigation of their claims.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiff is certified as Class Representative for the Settlement Class, the law firm of Labaton Sucharow LLP is appointed Class Counsel for the Settlement Class, and the law firm of Evangelista & Associates, LLC is appointed Liaison Counsel for the Settlement Class.

5. A hearing (the "Settlement Hearing") pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on May 31, 2012, at 11:00 AM, in Courtroom 2308 for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment ("Judgment") as provided under the Stipulation should be entered, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Lead Plaintiff should be finally certified as Class Representative for the Settlement Class; and whether the law firm of Labaton Sucharow LLP should be finally appointed as Class Counsel for the Settlement Class;

(d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses (which may include an application for an award to Plaintiffs for reimbursement of its reasonable costs and expenses directly related to its representations of the Settlement Class); and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also adjourn the Settlement Hearing or modify any of the dates herein without further notice to members of the Settlement Class.

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7. The Court approves the form, substance and requirements of the Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release form ("Proof of Claim"), substantially in the forms annexed hereto as Exhibits 1 and 2, respectively.

8. The Court approves the retention of Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of this Order ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort. Carter's, to the extent it has not already done so, shall provide, or cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Plaintiffs, Lead Counsel, the Settlement Class or the Claims Administrator, a list in electronic searchable form of the names and last known addresses of the Persons who purchased the publicly traded securities of Carter's during the Class Period within ten (10) business days of execution of the Stipulation.

9. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased the publicly traded securities of Carter's during the Class Period. Such

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nominee purchasers are directed, within seven (7) calendar days of their receipt of the Notice, to either: (i) provide the Claims Administrator with lists of the names and last known addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial owners by first-class mail, or (ii) request additional copies of the Notice and Proof of Claim, and within seven (7) calendar days of receipt of such copies send them by first-class mail directly to the beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, after receipt by the Claims Administrator of proper documentation, for their reasonable expenses actually incurred in sending the Notices and Proofs of Claim to beneficial owners.

10. The Claims Administrator shall also post the Notice and Proof of Claim on its website. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing and posting of the Notice and Proof of Claim.

11. The Court approves the form of the Summary Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and

Expenses (the "Summary Notice") substantially in the form annexed hereto as Exhibit 3, and directs that Lead Counsel shall cause the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

13. In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Proof of Claim, substantially in the form annexed hereto as Exhibit 2, must be submitted to the Claims Administrator, at

the address indicated in the Notice, postmarked no later than 120 calendar days after the Notice Date. Such deadline may be further extended by Court Order or by Lead Counsel in their discretion. Each Proof of Claim shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion for an order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court.

(b) The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions, unless otherwise ordered by the Court: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead Counsel; (iii) if the person executing the Proof of Claim is

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acting in a representative capacity, a certification of her current authority to act on behalf of the Settlement Class Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted.

14. Settlement Class Members shall be bound by all orders, determinations and judgments in this Action, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is postmarked no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address and telephone number of the person seeking exclusion, that the sender requests "exclusion from the Settlement Class in *In re Carter's, Inc. Securities Litigation*, No. 1:08-CV-2940-AT (N.D.Ga.)" and must be signed by such person. Such Persons requesting exclusion are also directed to state: the date(s), price(s), and number(s) of shares of all purchases, acquisitions and sales of publicly traded securities of Carter's during

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the Class Period. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

15. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

16. The Court will consider any Settlement Class Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or reimbursement of expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers such that they are received or postmarked on or before twenty-one (21) calendar days before the Settlement Hearing, upon Lead Counsel, Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005 and Carter's Counsel, Randall W. Bodner, Esq., and James R. Drabick, Esq., Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, MA 02199-3600, on behalf of the Settling Defendants, and has filed said objections and supporting papers with the Clerk of the Court, United States District Court for the Northern District of Georgia, 2321 Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309. Any Settlement Class Member who does not make his, her or its objection in the

manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and other expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

17. Pending final determination of whether the Settlement should be approved, Lead Plaintiff, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties.

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18. As provided in the Stipulation, prior to the Effective Date, Lead Counsel may pay the Claims Administrator a portion of the reasonable fees and costs associated with giving notice to the Settlement Class and the review of claims and administration of the Settlement out of the Settlement Fund without further approval from the Defendants and without further order of the Court.

19. All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court and served on or before thirty-eight (38) calendar days prior to the date set herein for the Settlement Hearing. If reply papers are necessary, they are to be filed with the Court and served no later than seven (7) calendar days prior to the Settlement Hearing.

20. The passage of the Settlement Fund to the Escrow Account in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

21. All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Stipulation and/or further order of the Court.

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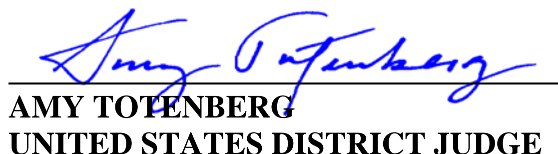
22. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against or to the prejudice of the Settling Parties, and the Settling Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to November 1, 2011.

23. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED this 18th day of January, 2012.



AMY TOTENBERG
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

IN RE CARTER'S, INC. SECURITIES LITIGATION	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF CLAIMS ADMINISTRATOR

I, Stephanie Thurin, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the claims administrator retained by lead counsel and appointed by the Court in the above-captioned matter (the "Consolidated Action").

2. I am overseeing and fully familiar with the efforts taken by Epiq in connection with the administration of the settlement reached in the Consolidated Action (the "Settlement") and, thus, this Declaration is based upon my personal knowledge and is accurate and truthful to the best of my knowledge.

3. Epiq is a firm with more than 40 years of experience in class action administration. Epiq's claims administration services include: (a) coordination of all notice requirements; (b) design of direct mail notice; (c) establishment of toll-free phone line and fulfillment services; (d) coordination with the U.S. Postal Service; (e) database management; (f) website hosting and management; (g) claims processing; and (h) preparation of reports to courts overseeing class action settlements describing Epiq's notice and claims administration activities.

4. Epiq has provided notification and claims administration services in numerous securities matters, including: *In re General Motors Corp. Securities and Derivative Litigation*, MDL No. 1749 (E.D. Mich.); *In re: Parmalat Securities*

Litigation, MDL No. 1653 (S.D.N.Y.); *In re Marvell Technology Group Ltd. Securities Litigation*, Case No. 06-6286 (N.D. Cal.); *In re: Brocade Securities Litigation*, Case No. 05-2042 (N.D. Cal.) and the Royal Dutch Shell Non-United States Residents Securities class action settlement under the supervision of the Amsterdam Court of Appeals, Case No. 10610887.

5. As a Project Manager, I am responsible for coordination of claims administration services for class action settlements. I oversee a multitude of services, such as document mailing, phone services, voice response units, live operators, website design and maintenance, mail processing, claims processing, distribution, and related reporting.

CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

6. Epiq's duties and responsibilities in the administration of the Settlement include:

(a) Executing the Court-approved direct mail notice program as follows:

i. developing and refining a mailing list of all potential class members who invested in the Carter's securities during the Class Period;

ii. engaging in a proactive calling campaign to brokers and nominees advising them of Court-ordered deadlines and the need for investor identities and addresses;

iii. printing the Court-approved Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Notice") and Proof of Claim and Release forms ("Proof of Claim," and, together with the Notice, "Notice Packets");

iv. searching the National Change of Address database for current names and/or addresses of potential class members;

v. mailing the applicable Notice Packets to all known potential class members who invested in Carter's securities, as well as to brokers and nominees;

vi. mailing copies of the Notice Packets to potential class members at the request of brokers and nominees;

vii. using best efforts to obtain correct addresses and re-mailing Notice Packets to individuals or entities whose Notice Packets were returned as undeliverable;

(b) publishing the Summary Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Summary Notice") in *PR Newswire* and *Investors' Business Daily*.

(c) developing and maintaining a dedicated settlement website to provide information about the proposed Settlement and case updates, the ability to download important documents and the ability for brokers and other nominees to file a claim online or provide a list of potential class members to be mailed the Notice Packet;

(d) maintaining a toll-free phone number for the Settlement to give callers access to information about the Settlement via an Interactive Voice Recording ("IVR") or the option to speak to live operators if potential class members have additional questions about their eligibility, how to file a claim, where to obtain documentation and other questions;

(e) renting a post office box to receive requests for exclusion, objections, Proofs of Claim and all other communications; and

(f) receiving, logging, and processing requests for exclusion, objections, fund transaction disputes, Proofs of Claim and all other communications.

MAILING OF THE NOTICE AND PROOF OF CLAIM

7. On January 10, 2012 Epiq received a list of the names and addresses of potential class members as provided by Carter's, Inc. Epiq imported this data

file and removed any exact duplicates. On February 2, 2012, Epiq mailed 459 copies of the Notice Packet by first-class mail to this initial list of potential class members. **Exhibit A** is a copy of the Notice Packet as it was mailed.

8. Epiq maintains and updates a list of banks, brokers, and other nominees. On February 2, 2012, Epiq mailed 3,736 copies of the Notice Packet to known banks, brokers and other nominees in the United States. Included with the Notice and Proof of Claim, Epiq forwarded a letter to the 3,736 brokers and nominees informing them of the Settlement and the Court-ordered deadline by which they needed to submit the names and addresses of any potential class members and instructions on how they can file a claim on behalf of their clients. A true and correct copy of the letter Epiq sent to all brokers and nominees is attached as **Exhibit B**.

9. As a result of that mailing, banks, brokers, and other nominees have sent Epiq (i) lists of potential class members and/or (ii) requests for quantities of unaddressed notices that the banks, brokers, and other nominees will forward to potential class members. Epiq fulfilled both types of requests as they were received.

10. After the letters were mailed to the brokers and nominees, Epiq also initiated an outbound calling campaign to the most common brokers and nominees informing them of the Settlement and the Court-ordered requirement that all potential class member data be provided to Epiq within seven calendar days of receipt of the Notice and reminding them of the Court deadlines.

11. Epiq continues to follow-up with these brokers and nominees to answer any questions they have about filing claims or providing names and addresses.

12. To date, as a result of the proactive broker-nominee outreach, Epiq has been able to compile an additional 83,509 names and addresses of potential class members. Brokers, nominees and institutional purchasers continue to provide additional names and addresses or are requesting copies of the Notice Packets for distribution to potential class members. Epiq continues to fulfill these requests expeditiously.

The Direct Notice Mailing And Remails

13. As of April 19, 2012, Epiq has sent via first-class mail, individual Notice Packets to 90,096 potential class members.

14. Any individual Notice Packet that is returned as undeliverable is processed and noted in our internal proprietary database and designated for further research. Epiq then conducts additional address research on any invalid or outdated address using the address locator database provided by LexisNexis. If a valid, current address is located, Epiq immediately remails the individual notice packet to the individual whose packet was returned initially as undeliverable.

15. To date, Epiq has received a total of 4,078 Notice Packets returned as undeliverable and has re-mailed a total of 463 Notice Packets to new addresses obtained through our research. Additional updated addresses were not available.

PUBLICATION NOTICE

16. Epiq caused the Court-approved Summary Notice to be published in *Investor's Business Daily* on February 14, 2012. Attached as **Exhibit C** is a true and correct copy of the Summary Notice and the confirmation from the publisher.

17. Epiq also caused the Court-approved Summary Notice to be transmitted over *PR Newswire* on February 14, 2012. Attached as **Exhibit D** is a true and correct copy of this press release.

SETTLEMENT INFORMATION CENTERS AND TELEPHONE SUPPORT

18. Epiq reserved a toll-free phone number for the Settlement and published this toll-free number in the Notice, Summary Notice, Proof of Claim, and on the Settlement website.

19. The toll-free number connects callers with the IVR. The IVR provides potential class members and others who call the toll-free telephone number access to additional information that has been pre-recorded and also live operators.

20. Specifically, the pre-recorded message provides callers with a brief summary of the proposed Settlement and the option to select one of several more detailed recorded messages addressing frequently asked questions. The IVR also allows callers to request that a copy of the Notice and/or Proof of Claim be mailed to them or to speak with a trained operator.

21. In general, the IVR script was designed to anticipate and provide accurate and clear answers to frequently asked questions about the proposed Settlement and has been reviewed and approved by Lead Counsel.

22. Epiq made the IVR available on February 2, 2012, simultaneous with the direct notice mailing.

23. The toll-free line and recorded information is available 24 hours a day, 7 days a week.

24. In addition, between the hours of 9:00 a.m. and 9:00 p.m. Eastern Standard Time, callers are able to speak to a live operator regarding the status of the Settlement, obtain help filling out and filing their Proofs of Claim and/or obtain answers to questions they may have about communications they receive from Epiq.

25. Epiq will continue operating, maintaining and, as appropriate, updating the IVR until the conclusion of the settlement administration.

26. As of April 19, 2012, Epiq's live agents have received and handled a total of 291 calls through the toll-free phone number, and the IVR recorded messages have handled a total of 333 calls for the Settlement.

27. Epiq will continue providing live operator support until the conclusion of the settlement administration.

EMAIL SUPPORT

28. Epiq established and maintains an email address for the Settlement and published this email address in the Notice, Proof of Claim, and on the Settlement website. The email address went live on February 2, 2012 and will continue operating until the conclusion of the settlement administration.

29. Potential class members may send emails regarding the status of the Settlement, obtain help filling out and filing their Proofs of Claim and/or obtain answers to questions they may have about communications they receive from Epiq through email. Potential class members, brokers, and nominees may also submit their Proofs of Claim or additional documentation through email.

30. As of April 19, 2012 Epiq's analysts have received and processed 225 emails through the Settlement email address.

WEBSITE FOR THE SETTLEMENT

31. Epiq reserved the following URL www.carterssecuritieslitigation.com for the Settlement.

32. This Settlement-specific website was established to answer questions of potential class members and others seeking information about the proposed

Settlement. The website went live on February 2, 2012 and will continue operating until the conclusion of the settlement administration.

33. The website contains a list of frequently asked questions, key deadlines associated with the Settlement, access to important case updates and documents, and information for broker-nominees regarding the Consolidated Action and the Settlement. The website also provides visitors with the ability to request a copy of the detailed Notice and Proof of Claim, and provides nominees with the ability to file their claims online or provide a list of potential class members online. Individuals seeking information about the proposed Settlement have the option to download, via the website, copies of the Summary Notice, detailed Notice, the Proof of Claim, the Preliminary Approval Order Providing for Notice and Hearing in Connection with Proposed Partial Class Action Settlement (the "Preliminarily Approved Order"), the Stipulation and Agreement of Settlement with Company and Individual Defendants, and the [Proposed] Final Order and Judgment.

34. The website will be updated as needed until the conclusion of the settlement administration.

35. As of April 19, 2012, the Settlement website had 1104 unique visitors and 8,496 individual hits to content within the site.

POST OFFICE BOX & WRITTEN COMMUNICATIONS

36. Epiq reserved a post-office box to receive written communications regarding the Settlement, and that address is: Carter's, Inc. Securities Litigation, P.O. Box 5110, Portland, OR 97208-5110.

37. This address was published in the Notice, Summary Notice, and Proof of Claim, as well as on the IVR recording and Settlement website.

38. Epiq has received, and continues to receive, written communications at this post-office box, including Proofs of Claim and other communications.

39. As of April 19, 2012 Epiq has received 3,554 Proofs of Claim and 62 pieces of correspondence to the Settlement post-office box.

40. The deadline to submit Proofs of Claim, as set forth in the Notice, is June 1, 2012.

PLAN OF ALLOCATION AND CLAIMS PROCESSING

41. Epiq has reviewed the Plan of Allocation for distribution of the Net Settlement Fund, which is included in the Notice. Epiq has determined that it is able to administer the Settlement based on the Plan of Allocation, and has administered numerous other securities class action settlements with similar plans of allocation.

42. Epiq understands that the Plan of Allocation and the Preliminary Approval Order require Settlement Class Members to submit valid Proofs of Claim and supporting documentation. Such supporting documentation typically includes brokerage confirmation slips, or other documentation that is sufficiently reliable to establish the transactions in the relevant security while preventing acceptance of fraudulent claims. If/when Epiq receives Proofs of Claim without sufficient documentation, the claimant or their authorized representative will be advised of the deficiency and we will attempt to work with the claimant to assist them with remedying the deficiency.

OBJECTIONS AND EXCLUSION REQUESTS

43. Pursuant to the Preliminary Approval Order, entered January 18, 2012, Settlement Class Members have until May 10, 2012 to object to the Settlement.

44. To date, Epiq has received no objections to the Settlement.

45. Pursuant to the Preliminary Approval Order, Settlement Class Members also have until May 10, 2012 to request exclusion from the Settlement Class.

46. To date, no Settlement Class Members have contacted the Claims Administrator with requests to opt out of the Settlement.

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

Dated: 4/19/2012

Stephanie Thurin
Project Manager

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	) Civil Action No. 1:08-CV-2940-AT

NOTICE OF PENDENCY OF CLASS ACTION AND
PROPOSED PARTIAL SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES

If you purchased the publicly traded securities of Carter's, Inc. ("Carter's") during the period from March 16, 2005 through November 10, 2009, inclusive (the "Class Period"), and were allegedly damaged thereby, you may be entitled to a payment from this class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- If approved by the Court, the settlement will provide a $20 million settlement fund for the benefit of eligible investors (the "Settlement") who purchased the publicly traded securities of Carter's during the period from March 16, 2005 through November 10, 2009, inclusive, and were allegedly damaged thereby (the "Settlement Class").
- The Settlement resolves claims that the Settling Defendants (defined below) misled investors about Carter's financial condition and practices; avoids the costs and risks of continuing the litigation, pays money to investors like you, and releases the Settling Defendants from liability. The litigation continues against the remaining Non-Settling Defendant, PricewaterhouseCoopers LLP ("PwC").
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.
- The Court will review the Settlement at the Settlement Hearing to be held on May 31, 2012.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY JUNE 1, 2012	The only way to get a payment.
EXCLUDE YOURSELF BY MAY 10, 2012	Get no payment. This is the only option that allows you to ever bring or be part of any other lawsuit about the Released Claims against the Settling Defendants and the other Released Defendant Parties.
OBJECT BY MAY 10, 2012	Write to the Court about why you do not like the Settlement, the proposed Plan of Allocation and/or the request for attorneys' fees and reimbursement of expenses. You will still be a member of the Settlement Class.
GO TO A HEARING ON MAY 31, 2012	Ask to speak in Court about the Settlement at the Settlement Hearing.
DO NOTHING	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement and whether to finally certify this as a class action. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

SUMMARY OF THIS NOTICE

(a) Statement of Plaintiff's Recovery

Pursuant to this proposed partial Settlement, a Settlement Fund consisting of $20 million in cash, plus any accrued interest, has been established. Based on Lead Plaintiff's estimate of the number of shares of common stock entitled to participate in the Settlement, and assuming that all such shares entitled to participate do so, Lead Plaintiff estimates that the average recovery per damaged share of Carter's common stock would be approximately $0.30 per share, before deduction of Court-approved expenses, such as attorneys' fees and expenses.[1] A Settlement Class Member's actual recovery will be a portion of the Net Settlement Fund determined by comparing his or her Recognized Claim to the total Recognized Claims of all Settlement Class Members who submit acceptable Proofs of Claim. An individual Settlement Class Member's actual recovery will depend on, for example: (1) the total number of claims submitted; (2) when the Settlement Class Member purchased Carter's securities during the Class Period; (3) the purchase price paid; (4) the type of security purchased; and (5) whether those Carter's securities were held at the end of the Class Period or sold during the Class Period (and, if sold, when they were sold and the amount received). *See* the Plan of Allocation beginning on page 10 for more information on your Recognized Claim.

(b) Statement of Potential Outcome if the Action Continued to Be Litigated

The Settling Parties disagree on both liability and damages and do not agree on the average amount of damages, if any, that would be recoverable if Lead Plaintiff was to have prevailed on each claim alleged. The issues on which the Settling Parties disagree include, but are not limited to: (a) whether Settling Defendants made any material misstatements or omissions; (b) whether Settling Defendants acted with the required state of mind; (c) the amount by which Carter's securities were allegedly artificially inflated (if at all) during the Class Period; (d) the extent to which the various matters that Lead Plaintiff alleged were false and misleading influenced (if at all) the trading price of Carter's securities at various times during the Class Period; (e) whether any purchasers of Carter's securities have suffered damages as a result of the alleged misstatements and omissions in Carter's public statements; (f) the extent of such damages, assuming they exist; (g) the appropriate economic model for measuring damages; and (h) the extent to which external factors, such as general market and industry conditions, influenced the trading price of Carter's securities at various times during the Class Period.

The Settling Defendants deny that they did anything wrong, deny any liability to Lead Plaintiff, and deny that Lead Plaintiff and the Settlement Class have suffered any losses attributable to Settling Defendants' actions. While Lead Plaintiff believes that it has meritorious claims, it recognizes that there are significant obstacles in the way to recovery.

(c) Statement of Attorneys' Fees and Expenses Sought

Lead Counsel intend to make a motion asking the Court to award it attorneys' fees of no more than 30% of the Settlement Fund, and reimbursement of litigation expenses incurred in prosecuting this action in an amount not to exceed $400,000, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("Fee and Expense Application"). If the Court approves the Fee and Expense Application, the average cost of attorney's fees and litigation expenses will be less than $0.10 per

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[1] An allegedly damaged share might have been traded more than once during the Class Period, and the indicated average recovery would be the estimated average for each purchase of a share which allegedly incurred damages. Of the gross settlement amount, up to $200,000 (before fees, expenses, taxes, and interest) will be allocated for claims on transactions in Carter's call and put options, reflecting estimated relative losses.

share of common stock. The average cost per share will vary depending on the number of acceptable claims submitted. Lead Counsel has expended considerable time and effort in the prosecution of this litigation without receiving any payment, and has advanced the expenses of the litigation, such as the cost of experts, in the expectation that if it were successful in obtaining a recovery for the Settlement Class it would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovered as attorneys' fees.

(d) Further Information

Further information regarding this action and this Notice may be obtained by contacting Epiq Systems, Inc., the Claims Administrator: Carter's Securities Administrator, P.O. Box 5110, Portland, OR 97208-5110, 866-833-7918, www.carterssecuritieslitigation.com or Lead Counsel: Labaton Sucharow LLP, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com.

Do Not Call The Court With Questions About The Settlement

(e) Reasons for the Settlement

For Lead Plaintiff, the principal reason for the Settlement is the immediate benefit to the Settlement Class. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future.

For the Settling Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for the Settlement is to eliminate the expense, risks, and uncertain outcome of the litigation.

A. BASIC INFORMATION

1. Why did I get this Notice package?

You or someone in your family may have purchased the publicly traded securities of Carter's during the period from March 16, 2005 through November 10, 2009, inclusive.

The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about a proposed partial settlement of a class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. The Court will review the Settlement at a Settlement Hearing on May 31, 2012. If the Court approves the Settlement, and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

This package explains the lawsuit, the Settlement, Settlement Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of Georgia. This case results from the consolidation of two separately-filed actions, the first of which was filed by Plymouth County Retirement System and is referred to as the Plymouth Action and the second of which was filed by Scott Mylroie and is referred to as the Mylroie Action. The Consolidated Action is known as *In re Carter's, Inc. Securities Litigation*, No. 1:08-CV-2940-AT and is assigned to United States District Judge Amy Totenberg. The people who sued are called plaintiffs, and the companies and the persons they sued are called defendants.

The Lead Plaintiff in the Consolidated Action, representing the Settlement Class, is Plymouth County Retirement System.

The Settling Defendants in this partial Settlement are Carter's, Frederick J. Rowan, II, Joseph Pacifico, Michael D. Casey, Andrew North, Charles E. Whetzel, Jr., and Joseph M. Elles. The Consolidated Action continues against Non-Settling Defendant PricewaterhouseCoopers LLP ("PwC").

2. What is this lawsuit about?

The main complaint in the Consolidated Action is the Second Amended and Consolidated Class Action Complaint for Violations of Federal Securities Laws (the "Second Amended Complaint"). The Second Amended Complaint generally alleges, among other things, that the Defendants violated Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by making alleged misstatements and omissions during the Class Period in connection with Carter's publicly-filed financials. The alleged misstatements concern the growth prospects of children's apparel manufacturer OshKosh B'Gosh, Inc. ("OshKosh"), which was acquired by Carter's in July 2005, as well as an alleged "smoothing" of Carter's financial results by the manipulation of accommodation payments. The Second Amended Complaint further alleges that Lead Plaintiff and other Settlement Class Members purchased Carter's publicly traded securities during the Class Period at artificially inflated prices and were damaged thereby.

The Consolidated Action seeks money damages against the Settling Defendants for violations of the federal securities laws. The Settling Defendants deny all allegations of misconduct contained in the Second Amended Complaint, and deny having engaged in any wrongdoing whatsoever. The Settlement should not be construed or seen as evidence of or an admission or concession on the part of any Settling Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Settling Defendants have asserted.

3. Why is this a class action?

In a class action, one or more people called class representatives (in this case Lead Plaintiff Plymouth County Retirement System), sue on behalf of people who have similar claims. They are known as class members. Here, the Court certified this as a class action for purposes of the Settlement only. Bringing a case as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class. The Court will decide whether to finally certify this as a class action for Settlement purposes at the Settlement Hearing.

4. Why is there a Settlement?

The Court did not finally decide in favor of Lead Plaintiff or the Settling Defendants. Instead, both sides, with the assistance of former United States District Judge Layn R. Phillips acting as a mediator, agreed to a settlement. That way, they avoid the risks and cost of a trial and the people affected will get compensation immediately, rather than after the time it would take to have a trial and exhaust all appeals. Lead Plaintiff and Lead Counsel think the Settlement is in the best interest of all Settlement Class Members.

B. WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Settlement Class Member.

5. How do I know if I am part of the Settlement?

The Court directed, for the purpose of the proposed Settlement, that everyone who fits this description is a Settlement Class Member, unless they are an excluded person or they take steps to exclude themselves (*see* below): *all persons or entities who purchased the publicly traded securities of Carter's during the period from March 16, 2005 through November 10, 2009, inclusive and were allegedly damaged thereby.*

6. Are there exceptions to being included in the Settlement Class?

Excluded from the Settlement Class are: the Defendants; the officers and directors of the Company, at all relevant times; any entity in which the Defendants have or had a controlling interest; members of the immediate families of the Individual Defendants; and the legal representatives, heirs, successors or assigns of any excluded person. Also excluded from the Settlement Class will be any Person who timely and validly seeks exclusion from the Settlement Class in accordance with the requirements explained below.

If one of your mutual funds purchased or owned shares of Carter's securities during the Class Period, that alone does not make you a Settlement Class Member. You are only eligible to be a Settlement Class Member if you individually purchased or otherwise acquired Carter's securities during the Class Period. Check your investment records or contact your broker to see if you purchased or otherwise acquired Carter's securities during the Class Period.

If you sold Carter's securities during the Class Period, your sale alone does not make you a Settlement Class Member. You are eligible to be a Settlement Class Member only if you **purchased or otherwise acquired** your securities during the Class Period.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can call 866-833-7918 or visit **www.carterssecuritieslitigation.com** for more information. Or you can fill out and return the Proof of Claim and Release form ("Proof of Claim") described in question 10 to see if you qualify.

C. THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and the release of the Released Claims (defined below) against the Released Defendant Parties (defined below), the Settling Defendants have agreed to create a $20 million fund to be divided, after deduction of Court-awarded attorneys' fees and expenses, settlement administration costs, and any applicable taxes, among all Settlement Class Members who send in valid and timely Proofs of Claim.

9. How much will my payment be?

Your share of the fund will depend on several things, including: (1) the total amount of recognized claims sent in by other Settlement Class Members; (2) how many Carter's securities you bought and the type; (3) how much you paid for them; (4) when you bought them; (5) whether or when you sold them (and, if so, for how much you sold them).

Your recognized claim will be calculated according to the Recognized Loss formula shown below in the Plan of Allocation. It is unlikely that you will get a payment for your entire recognized claim, given the number of potential Settlement Class Members. After all Settlement Class Members have sent in their Proofs of Claim, the payment you get will be a portion of the Net Settlement Fund based on your Recognized Loss divided by the total of everyone's Recognized Losses, in each category of security. *See* the Plan of Allocation beginning on page 10 for more information on your Recognized Loss.

D. HOW YOU GET A PAYMENT—SUBMITTING A PROOF OF CLAIM

10. How can I get a payment?

To qualify for a payment, you must send in a completed Proof of Claim. A Proof of Claim is being circulated with this Notice. You may also get a Proof of Claim on the Internet at the websites for the Claims Administrator or Lead Counsel: **www.carterssecuritieslitigation.com** or **www.labaton.com**. The Claims Administrator can

also help you if you have questions about the form. Please read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail it **postmarked no later than June 1, 2012**.

11. When would I get my payment?

The Court will hold a Settlement Hearing on **May 31, 2012**, to decide whether to approve the Settlement. Even if the Court approves the Settlement, there may still be appeals, which can take time to resolve, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. All Proofs of Claim need to be submitted by **June 1, 2012**.

Once all the Proofs of Claim are processed and claims are calculated, Lead Counsel, without further notice to the Settlement Class, will apply to the Court for an order distributing the Net Settlement Fund to the members of the Settlement Class. Lead Counsel will also ask the Court to approve payment of the Claims Administrator's fees and expenses incurred in connection with giving notice and administering the Settlement. Please be patient.

12. What am I giving up to get a payment and by staying in the Settlement Class?

If you are a Settlement Class Member, unless you exclude yourself, you will stay in the Settlement Class, which means that upon the "Effective Date" you will release all "Released Claims" (as defined below) against the "Released Defendant Parties" (as defined below).

"Released Claims" means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including both known or Unknown Claims (as defined below), whether arising under federal, state, common or administrative law, or any other law, that Lead Plaintiff or any other Class Member: (i) have asserted in the Plymouth Action, Mylroie Action, or Consolidated Action; or (ii) could have asserted in any forum, that arise out, are based upon, or relate in any way, directly or indirectly, to the allegations, transactions, facts, events, occurrences, acts, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the complaints filed in the Plymouth Action, Mylroie Action, or Consolidated Action, and that relate in any way, directly or indirectly, to the purchase or acquisition during the Class Period of Carter's publicly traded securities. Released Claims do not include: (i) claims to enforce the Settlement; (ii) any governmental or regulatory agency's claims in any criminal or civil action against any of the Released Defendant Parties; (iii) claims in the shareholder derivative lawsuit entitled *Alvarado v. Bloom*, No. 2010-cv-186118 (Superior Court of Fulton County, Georgia); and (iv) claims against the Non-Settling Defendant.

"Unknown Claims" means any and all Released Claims, which the Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants' Claims that the Settling Defendants do not know or suspect to exist in his, her or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs and the Settling Defendants, shall expressly, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Plaintiffs, the other Settlement Class Members or the Settling Defendants may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants' Claims, but Plaintiffs and the Settling Defendants shall expressly, fully, finally and forever settle and release, and each other Settlement Class

Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and the Settling Defendants acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement.

"Released Defendant Parties" means the Settling Defendants and their respective past, current, and future trustees, officers, directors, partners, employees, contractors, auditors (other than PwC), principals, agents, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, divisions, joint ventures, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of Settling Defendants who are individuals, as well as any trust of which any Settling Defendant is the settlor or which is for the benefit of any of their immediate family members. For the avoidance of doubt, Released Defendant Parties does not include PwC.

The "Effective Date" will occur when an Order by the Court approving the Settlement becomes final and is not subject to appeal as set out more fully in the Stipulation and Agreement of Settlement with Company and Individual Defendants ("Stipulation") on file with the Court.

If you remain a member of the Settlement Class, all of the Court's orders in connection with the Settlement will apply to you and legally bind you.

E. EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue the Settling Defendants and the other Released Defendant Parties, on your own, about the Released Claims, then you must take steps to get out. This is called excluding yourself from—sometimes referred to as "opting out" of—the Settlement Class. Settling Defendants may withdraw from and terminate the Settlement if putative Settlement Class Members who purchased in excess of a certain amount of Carter's securities purchased during the Class Period exclude themselves from the Settlement Class.

13. How do I get out of the proposed Settlement?

To exclude yourself from the Settlement Class, you must send a signed letter by mail stating that you "request exclusion from the Settlement Class in *In re Carter's, Inc. Securities Litigation,* No. 1:08-CV-2940-AT (N.D.Ga.)." Your letter must state the date(s), price(s), and number(s) of shares of all your purchases, acquisitions, and sales of Carter's securities during the Class Period. In addition, be sure to include your name, address, telephone number and your signature. You must mail your exclusion request **postmarked no later than May 10, 2012**, to Epiq Systems, Inc., the Administrator at:

In re Carter's, Inc. Securities Litigation - EXCLUSIONS
Claims Administrator
P.O. Box 5110
Portland, OR 97208-5110

You cannot exclude yourself by telephone or by email. Your exclusion request must comply with these requirements in order to be valid. If you write to request to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit in connection with the Settlement, and you may be able to sue (or continue to sue) Settling Defendants and the other Released Defendant Parties in the future.

14. If I do not exclude myself, can I sue the Settling Defendants and the other Released Defendant Parties for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue Settling Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit speak to your lawyer in that case immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **May 10, 2012**.

15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, do not send in a Proof of Claim to ask for any money. But, you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Settling Defendants and the other Released Defendant Parties.

F. THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed the law firm of Labaton Sucharow LLP to represent all Settlement Class Members. These lawyers are called Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Lead Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Lead Counsel has not received any payment for its services in pursuing the claims against the Settling Defendants on behalf of the Settlement Class, nor has it been reimbursed for its litigation expenses. At the Settlement Hearing, or at such other time as the Court may order, Lead Counsel will ask the Court to award it, from the Settlement Fund, attorneys' fees of no more than 30% of the Settlement Fund, plus any interest on such amount at the same rate and for the same periods as earned by the Settlement Fund, and to reimburse its litigation expenses (such as the cost of experts) that have been incurred in pursuing the Consolidated Action. The request for reimbursement of expenses will not exceed $400,000, plus interest on the expenses at the same rate as may be earned by the Settlement Fund.

G. OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

18. How do I tell the Court that I do not like the proposed Settlement?

If you are a Settlement Class Member you can object to the Settlement or any of its terms, the certification of the class, the proposed Plan of Allocation and/or the application by Lead Counsel for an award of fees and expenses. You may write to the Court setting out your objection. You may give reasons why you think the Court should not approve any part or all of the Settlement terms or arrangements. The Court will consider your views if you file a proper objection within the deadline and according to the following procedures.

To object, you must send a signed letter stating that you object to the proposed settlement in "*In re Carter's, Inc. Securities Litigation*, No. 1:08-CV-2940-AT (N.D.Ga.)." Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s) and number(s) of shares of all purchases, acquisitions and sales of Carter's securities you made during the Class Period, and state the reasons why you object to the Settlement. Your objection must be filed with the Court and mailed or delivered to all the following **postmarked on or before May 10, 2012**:

COURT:
Clerk of the Court
United States District Court for the Northern District of Georgia
Richard B. Russell Federal Building and United States Courthouse
75 Spring Street, SW
Atlanta, GA 30303-3309

LEAD COUNSEL:
Jonathan Gardner
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

CARTER'S COUNSEL:
Randall W. Bodner
James R. Drabick
Ropes & Gray LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199-3600

19. What is the difference between objecting and seeking exclusion?

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

H. THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend, and you may ask to speak, but you do not have to do so.

20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Hearing at **11 a.m.** on **May 31, 2012**, at the United States District Court for the Northern District of Georgia in the Richard B. Russell Federal Building and United States Courthouse, Courtroom 2308, 75 Spring Street, SW, Atlanta, GA 30303-3309.

At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. The Court also will consider the proposed Plan of Allocation for the Net Settlement Fund and the application of Lead Counsel for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions set out in question 18 above. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the Settlement Hearing, but decisions regarding the conduct of the Settlement Hearing will be made by the Court. *See* question 22 for more information about speaking at the Settlement Hearing. After the Settlement Hearing, the Court will decide whether to approve the Settlement, and, if the Settlement is approved, how much attorneys' fees and expenses should be awarded to Lead Counsel. We do not know how long these decisions will take.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent. If you want to come to the hearing, you should check with Lead Counsel before coming to be sure that the date and/or time has not changed.

21. Do I have to come to the Settlement Hearing?

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and sent your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I speak at the Settlement Hearing?

If you object to the Settlement, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (*see* question 18 above) a statement stating that it is your "Notice of Intention to Appear in *In re Carter's, Inc. Securities Litigation*, No. 1:08-CV-2940-AT (N.D.Ga.)." Persons who intend to object to the Settlement, the Plan of Allocation, and/or Lead Counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must also include in their written objections the identity of any witness they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. You cannot speak at the Settlement Hearing if you excluded yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in questions 18 and 20.

I. IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against the Settling Defendants and the other Released Defendant Parties about the Released Claims in this case, ever again. To share in the Net Settlement Fund you must submit a Proof of Claim (*see* question 10). To start, continue or be a part of any <u>other</u> lawsuit against the Settling Defendants and the other Released Defendant Parties about the Released Claims in this case you <u>must</u> exclude yourself from this Settlement Class (*see* question 13).

J. GETTING MORE INFORMATION

24. Are there more details about the proposed settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation, dated December 21, 2011. You may review the Stipulation filed with the Court or documents filed during the case during business hours at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309.

You also can call the Claims Administrator toll free at 866-833-7918; write to Epiq Systems, Inc. at: ***In re Carter's, Inc. Securities Litigation*, Claims Administrator, P.O. Box 5110, Portland, OR, 97208-5110**; or visit the websites of the Claims Administrator or Lead Counsel at **www.carterssecuritieslitigation.com** and **www.labaton.com**, where you can find answers to common questions about the Settlement, download copies of the Stipulation or Proof of Claim, and locate other information to help you determine whether you are a Settlement Class Member and whether you are eligible for a payment.

Please Do Not Call The Court With Questions About The Settlement

K. PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG SETTLEMENT CLASS MEMBERS

25. How will my claim be calculated?

The purpose of the Plan of Allocation is to distribute settlement proceeds equitably to those Class Members who suffered economic losses resulting from the alleged misrepresentations and omissions by Settling Defendants in the Class Period. The Court may approve the Plan, or modify it without additional notice to the Class. Any order modifying the Plan will be posted on the settlement website at: www.carterssecuritieslitigation.com and at www.labaton.com.

The Net Settlement Fund will be the gross settlement of $20 million reduced by fees and expenses, reduced by taxes, and increased by interest earned on the settlement amount. The Net Settlement Fund will be distributed among those Class Members who submit timely and valid Proofs of Claim to the Claims Administrator, which are accepted for payment by the Court ("Authorized Claimants"). No distribution of funds among such Authorized Claimants will occur until (1) the Court has approved the Settlement and a plan of allocation, (2) the time has expired for any petition for rehearing or appeal of the Court's order(s) approving the Settlement and a plan of allocation; and (3) the Court has approved the Claims Administrator's determinations of eligible claims.

Investors in two categories of securities of Carter's - common stock and options on common stock - may be eligible to receive funds in the distribution. Of the gross settlement of $20 million, the gross amount of $19.8 million (before fees, expenses, taxes, and interest) has been allocated for claims on transactions in Carter's common stock, and the gross amount of up to $200,000 (before fees, expenses, taxes, and interest) has been allocated for claims on transactions in Carter's call and put options, reflecting estimated relative losses.

One requirement for eligibility to share in the distribution of the Net Settlement Fund is that Settlement Class Members must have purchased Carter's ("CRI") common stock, or purchased a call option on CRI common stock, or sold a put option on CRI common stock, during the "Eligibility Period" from March 16, 2005 through November 9, 2009, inclusive. The Eligibility Period ends on November 9, 2009, because the announcement representing the final allegedly corrective disclosure in the Class Period was made before the market opened on November 10, 2009.

Federal securities laws allow investors to recover for losses caused by disclosures which corrected Defendants' previous misleading statements or omissions, but not for losses caused by broad market conditions or by other events unrelated to a securities fraud. Therefore, a second requirement for eligibility, is that the Settlement Class Member held the CRI security at the time its price declined due to a disclosure of information which corrected an allegedly misleading statement or omission.

Lead Plaintiff and Lead Counsel have identified the following dates of such price declines: July 26, 2006; February 14, 2007; July 25, 2007; October 27, 2009; and November 10, 2009 (collectively; the "corrective disclosure dates"). In the case of CRI common stock, the Settlement Class Member must have bought the stock before one of these five corrective disclosure dates, and then held the security until at least one corrective disclosure date. If the stock was purchased and then sold before July 26, 2006; or purchased and then sold between consecutive corrective disclosure dates, those transactions are excluded from consideration in distribution of settlement proceeds. In the case of CRI call options, a claimant must have purchased the option before one of these five corrective disclosure dates and held it until at least one corrective disclosure date without closing out the position (either by expiration or by selling the option). In the case of CRI put options, a claimant must have sold the option before one of the five corrective disclosure dates and not closed out the position before the next corrective disclosure date (closed out either by expiration or by purchasing the option).

Federal law constrains price inflation under the 90-day-lookback provision of the Public Securities Litigation Reform Act of 1995 ("PSLRA"). In calculating Recognized Loss on the purchase of a share of CRI stock, Recognized Loss may not the exceed purchase price minus the 90-day-lookback mean price of $24.57.

After a Proof of Claim with adequate documentation is submitted to the Claims Administrator, a "Recognized Loss" will be calculated for each purchase of CRI stock or call option or sale of put option during the Eligibility Period, and for a claimant's total overall transactions in a particular category of security during the Eligibility Period. The Recognized Loss is not intended to be an estimate of the amount which might have been recovered after trial, or an estimate of the amount to be paid an Authorized Claimant from the Net Settlement Fund. The method for calculating Recognized Loss simply provides a basis for allocating the Net Settlement Fund proportionately among Authorized Claimants.

Two frauds have been alleged by Lead Plaintiff, as described in the Second Amended and Consolidated Class Action Complaint. The alleged "Accommodations Fraud" extended from and included the beginning of the Class Period on March 16, 2005, through November 9, 2009. The alleged "OshKosh Fraud" extended from and included February 22, 2006, through July 24, 2007. Following is a brief description of the announcements on the corrective disclosure dates that allegedly revealed the truth and dissipated the alleged frauds, as determined by Lead Plaintiff and Lead Counsel:

1. **July 26, 2006** (OshKosh Fraud): after market close on July 25, 2006, CRI gave earnings guidance for the remainder of 2006 which was less than analysts' expectations due to lower-than-expected sales of OshKosh fall products.

2. **February 14, 2007** (OshKosh Fraud): after market close on February 13, 2007, CRI reduced guidance for 2007 and acknowledged contribution from OshKosh would be less than previously planned.

3. **July 25, 2007** (OshKosh Fraud): after market close on July 24, 2007, CRI announced it was writing down all goodwill on its books from the OshKosh acquisition.

4. **October 27, 2009** (Accommodations Fraud): before market open on October 27, 2009, CRI announced it would delay release of third-quarter earnings to complete a review of margin support given wholesale customers.

5. **November 10, 2009** (Accommodations Fraud): after market close on November 9, 2009, CRI announced it would restate its financials for fiscal 2004-2008 and the first two quarters of fiscal 2009.

Recognized Loss on CRI Common Stock

If a claimant had a market gain from overall transactions in CRI common stock in the Eligibility Period March 16, 2005 through November 9, 2009, the value of his/her/its claim will be zero. If a claimant suffered an overall market loss on overall transactions in CRI common stock during the Eligibility Period, and that market loss was less than the sum of his/her/its total Recognized Losses on common stock calculated as described in this Plan, that claimant's Recognized Losses on common stock will be limited to the amount of the actual market loss. If a share was purchased on or after March 16, 2005, and held until at least through November 9, 2009 (the last corrective disclosure date), market gain or loss on that share purchase will be the difference between purchase price and the PSLRA 90-day-lookback mean price of $24.57. If a share was purchased on or after March 16, 2005, and sold on or before November 9, 2009, market gain or loss on that share purchase will be the difference between purchase price and sale price.

Lead Plaintiff's damages expert has calculated the price decline net of market and industry effects for each of the five corrective disclosure dates. (*See* Table A.) The net price declines are used to measure alleged inflation in stock price at each purchase and sale date, as described below. To calculate Recognized Loss, the amount of each net price decline under the Accommodations Fraud has been weighted by 1, and the amount of each net price decline under the OshKosh Fraud has been weighted by 1/4. These weights reflect Lead Plaintiff's and Lead Counsel's assessment of the relative strengths of each claim and the importance of each alleged Fraud in achieving the settlement.

The formulas for calculating Recognized Loss for purchases, or purchases followed by sales, of CRI common stock during the Eligibility Period are:

1. For a share purchased on or after March 16, 2005, and held until at least through November 9, 2009, Recognized Loss will be the lesser of: (a) the appropriate value from Table A (below) for that purchase date; or (b) purchase price minus $24.57. If purchase price minus $24.57 is less than zero, the Recognized Loss is zero.

2. For a share purchased on or after March 16, 2005, and sold on or before November 9, 2009, Recognized Loss will be the lesser of: (a) the appropriate value from Table A (below) for that purchase date and sale date; or (b) purchase price minus $24.57. If inflation at purchase is less than inflation at sale, the Recognized Loss is zero. If purchase price minus $24.57 is less than zero, the Recognized Loss is zero.

To match purchases and sales within the Eligibility Period, the Claims Administrator will apply a first-in, first-out ("FIFO") rule to holdings of CRI stock on March 15, 2005 (the day before the beginning of the Eligibility Period), and to purchases and sales of CRI stock during the Eligibility Period. For example, FIFO will match the first shares of CRI stock sold against any shares held as of March 15, 2005, and then against purchases during the Eligibility Period in chronological order, beginning with the earliest purchases during the Eligibility Period.

Sales matched to CRI common stock held as of March 15, 2005, will be excluded from calculation of Recognized Loss and market gain or loss.

No Recognized Loss will be calculated for any purchase of stock to cover a short sale.

If each Authorized Claimant's Recognized Loss on CRI common stock related to the Accommodations Fraud disclosure dates can be paid in full, and funds remain in that portion of the Net Settlement Fund allocated to common stock, the remaining amount in that portion of the Net Settlement Fund allocated to common stock will be proportionally redistributed among Authorized Claimants with Recognized Losses related to the OshKosh Fraud disclosure dates by increasing the weighting of the OshKosh Fraud to greater than 1/4 of the net price decline attributable to the OshKosh Fraud. If after such a redistribution, funds still remain in that portion of the Net Settlement Fund allocated to common stock, that remaining amount will be proportionally redistributed among Authorized Claimants with Recognized Losses on CRI options.

TABLE A

SHARE BOUGHT	**And SOLD** 3/16/05 – 7/25/06	**And SOLD 7/26/06** – 2/13/07	**And SOLD 2/14/07** – 7/24/07	**And SOLD 7/25/07** – 10/26/09	**And SOLD 10/27/09** – 11/9/09	**And HELD to 11/10/09** Or later
3/16/2005 - 2/21/06	$0.00	$0.00	$0.00	$0.00	$6.13	$8.09
2/22/06 - 7/25/06	$0.00	$0.70	$1.77	$2.23	$8.36	$10.32
7/26/06 - 2/13/07	NA	$0.00	$1.08	$1.54	$7.67	$9.63
2/14/07 - 7/24/07	NA	NA	$0.00	$0.46	$6.59	$8.55
7/25/07 - 10/26/09	NA	NA	NA	$0.00	$6.13	$8.09
10/27/09 - 11/9/09	NA	NA	NA	NA	$0.00	$1.96
11/10/09 or later	NA	NA	NA	NA	NA	$0.00

Recognized Loss on Purchase of CRI Call Options and Sale of CRI Put Options

A Recognized Loss on a transaction in call or put options will be calculated on an out-of-pocket basis, with the exception that options exercised or assigned during the Class Period will be treated as CRI common stock purchased on the exercise date.

Recognized Loss on Call Options Purchased

A claimant must have purchased the call option before at least one of the five corrective disclosure dates and held it until at least the next corrective disclosure date without closing out the position (either by expiration of the contract or by selling the contract).

If the call option was sold on or before November 9, 2009, and was not held to expiration, the Recognized Loss will be the purchase price minus the sale price. If the call option expired on or before November 9, 2009, the Recognized Loss will be the purchase price minus the value of the call option on the date of expiration. The value of the call option on the date of expiration will be the stock price at date of expiration, minus the strike price, but not less than zero.

If the call option was held unexpired at least through November 9, 2009, the Recognized Loss will be the purchase price minus the historical closing price of the call option on November 10, 2009. Purchases and subsequent sales of the same call options will be matched using FIFO, so that sales will be matched first against call options held on March 15, 2005, and then against the same call options in chronological order of

purchase during the Eligibility Period. Sales matched to call options held at the beginning of the Eligibility Period will be excluded from the calculations of Recognized Loss and market gain or loss.

Recognized Loss on Put Options Sold

A claimant must have sold the option contract before at least one of the five corrective disclosure dates and not closed out the position until at least the next corrective disclosure date (closed out either by expiration of the contract or by buying back the contract).

If the put option was repurchased on or before November 9, 2009, the Recognized Loss will be the repurchase price minus the sale price. If the put option expired on or before November 9, 2009, and the position was not closed out prior to expiration, the Recognized Loss will be the value of the put option on the date of expiration minus the sale price. The value of the put option on the date of expiration will be the strike price minus the stock price at date of expiration, but not less than zero.

If the put option was held unexpired at least through November 9, 2009, the Recognized Loss will be the historical closing price of the put option on November 10, 2009 minus the sale price. Sales and subsequent repurchases of the same put option will be matched using FIFO, so that repurchases will be matched first against the same put option sold on or before March 15, 2005 and having an open position, and then against the same put option in chronological order of sale during the Eligibility Period. Repurchases matched to put options sold before the beginning of the Eligibility Period will be excluded from the calculations of Recognized Loss and market gain or loss.

Additional Provisions Relating to Options

If a claimant had an overall market gain from overall transactions in options on CRI common stock in the Eligibility Period March 16, 2005 through November 9, 2009, the value of his/her/its claim will be zero. If a claimant suffered an overall market loss on overall transactions in options during the Eligibility Period, and that market loss was less than the sum of his/her/its total Recognized Losses on options calculated as described in this Plan, that claimant's Recognized Losses on options will be limited to the amount of the actual market loss on options.

Market gain or loss on an option will be calculated on an out-of-pocket basis excluding the requirement that the option be purchased or sold before a corrective disclosure date and the position held open until at least the next corrective disclosure date.

If each Authorized Claimant's Recognized Loss on CRI options can be paid in full, and funds remain in that portion of the Net Settlement Fund allocated to options, the remaining amount in that portion of the Net Settlement Fund allocated to options will be proportionally redistributed among Authorized Claimants with Recognized Losses on CRI common stock.

Other Provisions of the Plan of Allocation

Recognized Loss is zero on purchases of any shares of CRI common stock which were not publicly registered or were restricted from trading.

Purchases and sales of CRI stock and options will be considered to have occurred on the "contract" or "trade" date, as opposed to the "settlement" or "payment" date. The amount paid or received for such securities will exclude commissions, taxes, and fees.

Recognized Loss will be calculated only on purchases of CRI stock or options. No Recognized Loss will be calculated on receipt of such securities by gift, grant, inheritance, or operation of law.

Payment under the Plan of Allocation approved by the Court will be conclusive for all Authorized Claimants. Claimants whose claims are determined to have a value of zero will nevertheless be bound by the Settlement. No person shall have any claim against Lead Plaintiff, Lead Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, arising from distributions made substantially in accordance with the Plan of Allocation or further orders of the Court. Lead Plaintiff, Defendants, their respective counsel, Lead Plaintiff's consulting damages expert, the Claims Administrator and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund consistent with the

Plan of Allocation, or the determination, administration, calculation, or payment of any Proof of Claim, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

Each Authorized Claimant will recover his/her/its *pro rata* share of the Net Settlement Fund allocated to each category of security (*i.e.* common stock and options) based on his/her/its Recognized Loss on each category of security. To the extent there are sufficient funds in the Net Settlement Fund allocated to each security, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss on the respective category of security. If, however, the amount in the Net Settlement Fund for each security is not sufficient to permit payment of the total of all Recognized Losses within that category of security, then each Authorized Claimant will be paid the percentage of the Net Settlement Fund for that security that each Authorized Claimant's recognized claim bears to the total of the claims of all Authorized Claimants ("*pro rata* share") for that category of security. If the Authorized Claimant's total of *pro rata* claims for both common stock and options is less than $10.00, it will be removed from the calculation and will not be paid given the administrative expenses of processing payments.

Distributions to Authorized Claimants will be made after all claims have been processed and after the Court has approved the Claims Administrator's determinations. After an initial distribution of the Net Settlement Fund, if Lead Counsel in consultation with the Claims Administrator determines that redistribution(s) is cost-effective, the Claims Administrator will redistribute any funds remaining in the Net Settlement Fund to Authorized Claimants who have cashed their initial distribution checks, after payment from the Net Settlement Fund of any unpaid taxes, fees, or expenses incurred in administering the fund including in making distributions. If redistribution of funds remaining in the Net Settlement Fund is determined not to be cost-effective, the balance remaining in the Net Settlement Fund will be contributed to a nonsectarian nonprofit organization.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Northern District of Georgia with respect to his/her/its Proof of Claim.

L. SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased or otherwise acquired Carter's common stock (NYSE ticker: CRI; CUSIP 146229109; ISIN US1462291097) during the period from March 16, 2005 through November 10, 2009, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or otherwise acquired Carter's shares during such time period or; (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) days mail the Notice and Proof of Claim form directly to the beneficial owners of those Carter's shares.

If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator, Epiq Systems, Inc. at:

In re Carter's, Inc. Securities Litigation
Claims Administrator
P.O. Box 5110
Portland, OR 97208-5110

Dated: February 2, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re Carter's, Inc. Securities Litigation
Claims Administrator
P.O. Box 5110
Portland, OR 97208-5110

IMPORTANT INFORMATION & KEY DATES	
TOLL FREE NUMBER:	866-833-7918
WEBSITE:	www.carterssecuritieslitigation.com
EMAIL:	info@carterssecuritieslitigation.com
OBJECTION/EXCLUSION DEADLINE:	May 10, 2012
SETTLEMENT FAIRNESS HEARING:	May 31, 2012
DEADLINE TO SUBMIT CLAIM FORMS:	June 1, 2012

PROOF OF CLAIM AND RELEASE

To recover from the Net Settlement Fund as a Member of the Settlement Class in the action entitled *In re Carter's, Inc. Securities Litigation*, No. 1:08-CV-2940-AT (the "Consolidated Action"), you must complete and, on page 7 below, sign this Proof of Claim and Release form ("Proof of Claim"). If you fail to submit a timely, properly completed and addressed Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the partial Settlement of the Consolidated Action. Submission of this Proof of Claim, however, does not assure that you will share in the Settlement Fund.

YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM

POSTMARKED ON OR BEFORE JUNE 1, 2012, ADDRESSED AS FOLLOWS:

In re Carter's, Inc. Securities Litigation
Claims Administrator
P.O. Box 5110
Portland, OR 97208-5110

If you are NOT a Member of the Settlement Class (as defined in the Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses (the "Notice")) DO NOT submit a Proof of Claim.

If you are a Member of the Settlement Class and you have not timely requested exclusion, you will be bound by the terms of the Judgment entered in the Action, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.

DEFINITIONS

All capitalized terms not otherwise defined in this form shall have the same meaning as set forth in the Notice which accompanies this Proof of Claim.

Call Option: A contract that gives the purchaser the right to purchase the underlying common stock at a specified price up to a specified date from the writer of the option contract.

Put Option: A contract that gives the purchaser the right to sell common stock at a specified price up to a specified date to the writer of the option contract.

IDENTIFICATION OF CLAIMANT

If you purchased or otherwise acquired (including by exchange, conversion or otherwise) the publicly traded securities (*i.e.*, common stock and options) of Carter's, Inc. ("Carter's") during the period from March 16, 2005 through November 9, 2009, inclusive (the "Eligibility Period") and held the securities in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or otherwise acquired Carter's common stock or options during the Eligibility Period through a third party, such as a nominee or brokerage firm, you are the beneficial purchaser of these securities, but the third party is the record purchaser of these securities.

Use Part I of this form entitled "Claimant Identification" to identify each beneficial purchaser of Carter's securities that form the basis of this claim, as well as the purchaser of record if different. THIS CLAIM MUST BE SUBMITTED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR AUTHORIZED OR LEGAL REPRESENTATIVE(S) OF SUCH PURCHASER(S) OF THE CARTER'S SECURITIES UPON WHICH THIS CLAIM IS BASED.

All joint beneficial purchasers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of Persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of one of the beneficial owner(s) may be used in verifying this claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of your claim.

If you need help completing this claim form, you may contact the Claims Administrator for assistance: (866) 833-7918; www.carterssecuritieslitigation.com; or info@carterssecuritieslitigation.com.

IDENTIFICATION OF TRANSACTION(S)

Use Parts II and III of this form to supply all required details of your transaction(s) in Carter's common stock and options. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to: (i) **all** of your holdings of Carter's common stock and options as of the beginning of trading on March 16, 2005; (ii) **all** of your purchases, other acquisitions and sales of Carter's common stock and options which took place at any time beginning March 16, 2005 through, and including, November 9, 2009; and (iii) proof of your holdings of Carter's common stock and options as of the opening of trading on November 10, 2009, whether such purchases, acquisitions, sales, or transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

List each purchase, acquisition, sale, and transaction during the relevant periods separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each such transaction you list.

Copies of broker confirmations or other documentation of your purchases, acquisitions, sales, or transactions in Carter's securities should be attached to your claim. **DO NOT SEND ORIGINALS.** Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. The Claim Administrator may also request additional information as requested to efficiently and reliably calculate your losses.

If you need help, you may ask the Claims Administrator for assistance: (866) 833-7918; www.carterssecuritieslitigation.com; or info@carterssecuritieslitigation.com. Although the Claims Administrator does not have information about your transactions in Carter's securities, someone will be able to help you with the process of locating your information.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

In re Carter's, Inc. Securities Litigation
No. 1:08-CV-2940-AT
PROOF OF CLAIM
Must be Postmarked No Later Than:
June 1, 2012

Please Type or Print in the Boxes Below; Do NOT use Red Ink, Pencil, or Staples

PART I: CLAIMANT IDENTIFICATION

Last Name (Beneficial Owner) | MI | First Name (Beneficial Owner)

Last Name (Joint Beneficial Owner) | MI | First Name (Joint Beneficial Owner)

Business Name (Beneficial Owner)

Representative Name

Mailing Address (Street, P.O. Box, Suite or Office Number, as applicable)

PART I: CLAIMANT IDENTIFICATION (Continued)

City

State

Zip Code

Foreign Province

Foreign Country/Abbreviation

Social Security Number — — OR Tax Identification Number (TIN) —

Check appropriate box:

☐ Individual or Sole Proprietor ☐ Pension Plan ☐ Corporation ☐ Partnership

☐ Trust ☐ IRA ☐ Other ______________________ (please specify)

Telephone Number (work) — —

Telephone Number (home) — —

Facsimile Number — —

Email Address

(Username) @ (Domain name)

Account Number

Were your shares held in "street name" (*i.e.*, in the name of a stock broker or other nominee)? If so, that broker or nominee is the Record Owner. Please fill in the following line.

Record Owner's Name (if different from beneficial owner listed above); *e.g.* brokerage firm, bank, nominee, etc.

PART II: SCHEDULE OF TRANSACTIONS IN CARTER'S COMMON STOCK

A. Number of shares of Carter's common stock held at the beginning of trading on March 16, 2005:

.

B. Purchases or other acquisitions, including by way of exchange, conversion or otherwise (from March 16, 2005 to November 9, 2009, inclusive) of Carter's common stock:

Trade Date M M D D Y Y	Number of Shares Purchased or Acquired	Total Purchase Price *	Transaction Type †	Price per Share
	.	$.		$.
	.	$.		$.
	.	$.		$.

† **P** = Purchase, **A** = Acquisition, **R** = Receipt, **SP** = Stock Split (Please note, there was a stock split on June 7, 2006)

* Excluding taxes, fees, and commissions.

C. Sales (from March 16, 2005 to November 9, 2009, inclusive) of Carter's common stock:

Trade Date M M D D Y Y	Number of Shares Sold	Total Sales Price *	Transaction Type †	Price per Share
	.	$.		$.
	.	$.		$.
	.	$.		$.

† **S = Sale, D = Delivery**

D. Number of shares of Carter's common stock held at beginning of trading on November 10, 2009:

.

E. Check here if any of your purchases were used to cover a short position ("Short Sale") ☐

PART III: SCHEDULE OF TRANSACTIONS IN CARTER'S CALL OPTIONS

A. At the beginning of trading on March 16, 2005, the following call options on Carter's common stock were owned:

Date of Purchase M M D D Y Y	Number of Contracts	Expiration M M Y Y	Strike Price	Purchase Price Per Contract	Amount Paid*	Exercised "E" or Expired "X" (blank if neither)	Exercise Date M M D D Y Y
			$.	$.	$.		
			$.	$.	$.		
			$.	$.	$.		

B. Purchases, including by way of exchange, conversion or otherwise (between March 16, 2005 and November 9, 2009, inclusive) of call options on Carter's common stock:

Date of Purchase M M D D Y Y	Number of Contracts	Expiration M M Y Y	Strike Price	Purchase Price Per Contract	Amount Paid*	Exercised "E" or Expired "X" (blank if neither)	Exercise Date M M D D Y Y
			$.	$.	$.		
			$.	$.	$.		
			$.	$.	$.		

(Please note, there was a stock split on June 7, 2006. If you received shares in this split, you should indicate those shares above.)

C. Sales of call options on Carter's common stock in which call options were purchased on or before November 9, 2009 (include all such sales no matter when they occurred):

Date of Sale M M D D Y Y	Number of Contracts	Expiration M M Y Y	Strike Price	Sale Price Per Contract	Amount Received*
			$.	$.	$.
			$.	$.	$.
			$.	$.	$.

(Please note, there was a stock split on June 7, 2006. If you received shares in this split, you should indicate those shares above.)

* Excluding taxes, fees, and commissions.

PART III: SCHEDULE OF TRANSACTIONS IN CARTER'S CALL OPTIONS (Continued)

D. At the beginning of trading on November 10, 2009 the following call options written on Carter's common stock were open:

Number of Contracts	Expiration M M Y Y	Strike Price of Options	Sale Price Per Contract	Amount Received*	Assigned "A" or Expired "E" (blank if neither)	Assign Date M M D D Y Y
		$.	$.	$.		
		$.	$.	$.		
		$.	$.	$.		

PART IV: SCHEDULE OF TRANSACTIONS IN CARTER'S PUT OPTIONS

A. At the beginning of trading on March 16, 2005 the following put options written on Carter's common stock were open:

Number of Contracts	Expiration M M Y Y	Strike Price of Options	Sale Price Per Contract	Amount Received*	Assigned "A" or Expired "E" (blank if neither)	Assign Date M M D D Y Y
		$.	$.	$.		
		$.	$.	$.		
		$.	$.	$.		

B. Written (sold) put options on Carter's common stock (between March 16, 2005 and November 9, 2009, inclusive.) as follows:

Date of Writing (Sale) M M D D Y Y	Number of Contracts	Expiration of Options M M Y Y	Strike Price	Sale Price Per Contract	Amount Received*	Assigned "A" or Expired "E" (blank if neither)	Assign Date M M D D Y Y
			$.	$.	$.		
			$.	$.	$.		
			$.	$.	$.		

C. Purchases of put options on Carter's common stock that were written (sold) on or before November 9, 2009, (include all purchases no matter when they occurred):

Date of Purchase M M D D Y Y	Number of Contracts	Expiration M M Y Y	Strike Price of Options	Price Paid Per Contract	Aggregate Cost*
			$.	$.	$.
			$.	$.	$.
			$.	$.	$.

* Excluding taxes, fees, and commissions.

PART IV: SCHEDULE OF TRANSACTIONS IN CARTER'S PUT OPTIONS (Continued)

D. At the beginning of trading on November 10, 2009, the following put options on Carter's common stock were owned:

Date of Purchase M M D D Y Y	Number of Contracts	Expiration M M Y Y	Strike Price of Options	Purchase Price Per Contract	Amount Paid*	Exercised "E" or Expired "X" (blank if neither)	Exercise Date M M D D Y Y
			$.	$.	$.		
			$.	$.	$.		
			$.	$.	$.		

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

YOU ARE NOT FINISHED YET. YOU MUST READ THE RELEASE AND SIGN ON PAGE 7. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

PART V: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim under the terms of the Stipulation and Agreement of Settlement with Company and Individual Defendants ("Stipulation") described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Northern District of Georgia with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any Final Order and Judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales or holdings of Carter's securities during the relevant period and know of no other Person having done so on my (our) behalf.

PART VI: RELEASE AND CERTIFICATION

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Defendant Parties as those terms and terms related thereto are defined in the accompanying Notice.
2. This release shall be of no force or effect unless and until the Court approves the Stipulation and the Effective Date (as defined in the Stipulation) has occurred.
3. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.
4. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions, and sales and other transactions in Carter's common stock and options that occurred during the relevant time periods and the number of shares of Carter's common stock and options held by me (us) at the relevant time periods.
5. I (We) hereby warrant and represent that I (we) am (are) not excluded from the Settlement Class as defined in the annexed Notice.
6. The number(s) shown on this form is (are) the correct SSN/TIN; and
7. I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(C) of the Internal Revenue Code because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the Internal Revenue Service that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to backup withholding.

(NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, you must cross out Item 7 above.)

* Excluding taxes, fees, and commissions.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this __________ day of ______________________, in ____,
(Month / Year) (City)

____.
(State / Country)

Signature of Claimant

Print Name of Claimant

Date: __ __ – __ __ – __ __
M M D D Y Y

Signature of Joint Claimant, if any

Print Name of Joint Claimant

Date: __ __ – __ __ – __ __
M M D D Y Y

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and certification.
2. Remember to attach only copies of supporting documentation.
3. Do not send original stock certificates or documentation. These items cannot be returned to you by the Claims Administrator.
4. Keep a copy of the completed Proof of Claim and documentation for your records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator.
6. If you move, please send the Claims Administrator your new address.
7. If you have any questions or concerns regarding your Proof of Claim, please contact the Claims Administrator at the address on page 1 above or at 866-833-7918, or visit www.carterssecuritieslitigation.com.

EXHIBIT B

In re Carter's, Inc. Securities Litigation
P.O. Box 5110
Portland, OR 97208-5110

Website: www.carterssecuritieslitigation.com
Email: info@carterssecuritieslitigation.com
Phone: (866) 833-7918

NOTICE TO BROKERS, BANKS AND OTHER NOMINEES
In re Carter's, Inc. Securities Litigation, Case No. 1:08-CV-2940-AT (N.D.Ga.)

You may be a broker, bank or other nominee that purchased or sold Carters, Inc. ("Carter's") common stock and options on common stock, for the beneficial interest of a person or entity other than yourself.

The enclosed notice is regarding a proposed partial settlement of a class action lawsuit called *In re Carter's, Inc. Securities Litigation*. Beneficial owners and former owners of **Carter's common stock and options (Ticker: "CRI") purchased between March 16, 2005 and November 10, 2009**, inclusive, may qualify for a payment and/or act on other legal rights.

The Court has directed that
WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE
you either:

(a) Provide the Claims Administrator with a list of the names and last known addresses of beneficial owners of Carter's common stock and options; or

(b) Forward copies of the attached Notice and Proof of Claim to beneficial owners of Carter's common stock and options.

If you are providing a list of names and addresses to the Claims Administrator:

(a) Compile a list of names and addresses of beneficial owners of Carter's common stock and options. It is not necessary to remove duplicate names.

(b) Prepare the list in Microsoft Excel format following the "Electronic Name and Address File Layout" below. A preformatted spreadsheet can also be found on the "Nominees" page on the Settlement website: www.carterssecuritieslitigation.com.

(c) Burn the Microsoft Excel file(s) to a CD or DVD.

(d) Mail the CD or DVD to Epiq Systems, Inc., the Claims Administrator at:

In re Carter's, Inc. Securities Litigation
P.O. Box 5110
Portland, OR 97208-5110

If you are providing the Notice and Proof of Claim to beneficial owners:

If you elect to mail the Notice and Proof of Claim to beneficial owners yourself, additional copies of the Notice and Proof of Claim may be requested on the "Nominees" page on the Settlement website: www.carterssecuritieslitigation.com.

Expense Reimbursement

Reasonable expenses are eligible for reimbursement (including postage and costs to compile names and addresses), provided an invoice is timely submitted to the Claims Administrator.

Electronic Name and Address File Layout

Column	Description	Length	Notes
A	Account #	15	Unique identifier for each record.
B	Beneficial owner's first name	25	
C	Beneficial owner's middle name	15	
D	Beneficial owner's last name	30	
E	Joint beneficial owner's first name	25	
F	Joint beneficial owner's middle name	15	
G	Joint beneficial owner's last name	30	
H	Business or record owner's name	60	Businesses, trusts, IRAs, and other types of accounts.
I	Representative or contact name	45	
J	Address 1	35	
K	Address 2	25	
L	City	25	
M	U.S. state or Canadian province	2	US and Canada addresses only.[1]
N	Zip code	10	
O	Country (other than U.S.)	15	

If you have any questions, you may contact the Claims Administrator at 866-833-7918, or by email: info@carterssecuritieslitigation.com. Thank you for your cooperation.

[1]For countries other than the U.S. and Canada, place any territorial subdivision in "Address 2" field.

EXHIBIT C

AFFIDAVIT OF PUBLICATION

IN THE MATTER OF: In re Carter's Inc. Securities Litigation

STATE OF OREGON

ss:

COUNTY OF WASHINGTON

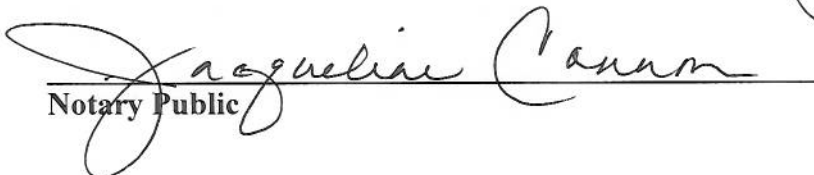
I, Brandon Schwartz, being duly sworn, hereby certify that (a) I am the Media Manager at Epiq Systems Class Action & Claims Solutions, an noticing administrator and (b) that the Notice of which the annexed is a copy was **published in the following publications:**

2.14.12 – Investor's Business Daily
2.14.12 – Press Release via PR Newswire

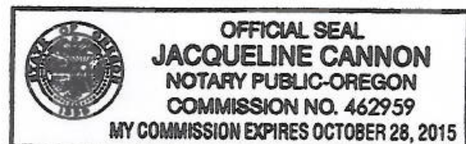
X______________________________
(Signature)

Media Manager
(Title)

Sworn to before me this: 20th **day of** February**, 2012**



Notary Public



INVESTOR'S BUSINESS DAILY®

Affidavit of Publication

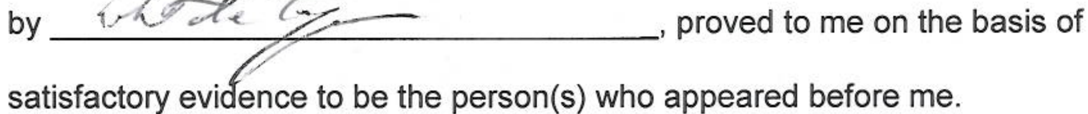
Name of Publication:	Investor's Business Daily
Address:	12655 Beatrice Street
City, State, Zip:	Los Angeles, CA 90066
Phone #:	310.448.6700
State of:	California
County of:	Los Angeles

I, Robert de Langre for the publisher of **Investor's Business Daily**, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice for Civil Action # 1:08-CV-2940-AT was printed in said publication on the following date:

February 14th, 2012

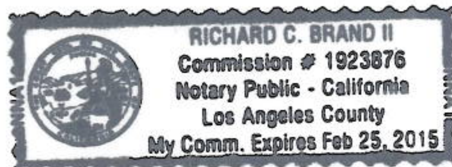
State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 14th day of February, 2012,



by ______________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature ______________________________ (Seal)



1-Month Winners & Losers

TOP 10

ETF	Symbol	RS Rtg	1-mth % chg
MV Egypt Index	EGPT	30	28.2
IS MSCI Turkey Invest	TUR	37	22.4
IS MSCI Poland	EPOL	17	20.5
VS Invrs VIX ShrtTrm	XIV	47	19.6
WT India Earn	EPI	35	19.4
IP India ETN	INP	34	18.1
IS MSCI Austria	EWO	19	18.0
Spdr S&P Emg Mkts SC	EWX	27	17.5
IP Natural Gas ETN	GAZ	4	16.6
Spdr S&P Emg Europe	GUR	29	16.0

BOTTOM 10

ETF	Symbol	RS Rtg	1-mth % chg
ProS VIX ST Futures	VIXY	10	-18.5
IP VIX Short-Term ETN	VXX	11	-18.2
ProS Short MSCI Emrg	EUM	20	-10.3
United States Nat Gas	UNG	2	-8.6
ProS Short QQQ	PSQ	16	-7.8
IP VIX Mid-Term ETN	VXZ	22	-7.6
ProS Short Russell 2000	RWM	15	-7.6
PS DB Gold Short ETN	DGZ	20	-5.9
IP DJ-UBS Cotton ETN	BAL	11	-5.1
ProS Short S&P 500	SH	19	-4.8

For Monday, Feb. 13, 2012. Ranked by Relative Strength

U.S. Stock/Broad Index

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
10.8	71	C	76.7	IS S&P SmCp 600	IJR	0.9	75.67	0.96	-35
12.9	71	B	63.0	PS QQQ	QQQ	0.7	63.05	0.57	-18
12.5	66	B	99.4	IS Russell 2000 Grwth	IWO	0.6	94.72	1.28	32
9.0	66	B-	83.8	IS S&P SC 600 Grwth	IJT	0.6	81.15	0.85	-49
11.7	64	B+	38.5	Schwab US Small Cap	SCHA	1.1	36.68	0.42	-25
3.9	64	B	47.2	VG Hi Dividend Yld	VYM	2.8	47.02	0.28	-17
9.6	63	C+	63.4	IS Russell 1000 Grwth	IWF	1.3	63.34	0.46	-7
11.6	63	B+	86.8	IS Russell 2000 Idx	IWM	1.3	82.32	1.05	-22
10.5	63	C+	77.0	IS Russell 2000 Val	IWN	1.8	72.56	0.83	23
7.5	63	C+	61.4	IS S&P 100 Index	OEF	1.9	61.31	0.45	-81
12.3	63	A-	61.0	VG Extd Market	VXF	1.0	58.24	0.57	6
9.9	63	B-	67.9	VG Growth	VUG	1.1	67.90	0.52	-24
11.5	63	B+	81.8	VG Small-Cp	VB	1.2	77.68	0.90	-35
12.1	63	A-	89.8	VG Small-Cp Growth	VBK	0.5	85.57	1.11	-49
1.3	61	B+	17.2	Alerian MLP	AMLP	5.9	16.84	0.03	-3
8.1	61	B+	32.7	Schwab US Large Cap	SCHX	1.7	32.27	0.2[illegible]	-24
7.8	61	B	62.7	VG S&P 500	VOO	1.9	61.92	0.4[illegible]	-20
10.7	60	B+	19.2	PS Dyn SmCap Grwth	PWT	..	17.61	0.2[illegible]	395
8.4	60	B	33.3	Schwab US Broad Mkt	SCHB	1.7	32.75	0.2[illegible]	-44
8.3	60	B	62.9	VG Large-Cap	VV	1.8	62.03	0.4[illegible]	-36
2.4	59	B-	55.3	IS DJ Select Divdnd	DVY	3.3	55.07	0.2[illegible]	-37
8.3	59	B	76.5	IS Russell 1000 Idx	IWB	1.8	75.14	0.5[illegible]	-21
8.5	59	C+	82.1	IS Russell 3000 Idx	IWV	1.7	80.48	0.5[illegible]	-55
11.4	59	B-	63.9	IS Russll MdCp Grwth	IWP	0.8	61.33	0.5[illegible]	-48
7.2	59	B-	72.3	IS S&P 500 Grwth	IVW	1.5	72.27	0.4[illegible]	-25
7.8	59	B	137.6	IS S&P 500 Index	IVV	1.9	135.82	0.9[illegible]	-46
11.6	59	B-	115.5	IS S&P MC 400 Grwth	IJK	0.6	110.15	1.2[illegible]	7
11.1	59	B-	101.8	IS S&P MdCp 400	IJH	1.1	97.32	1.0[illegible]	-49
10.4	59	A	88.3	IS S&P MdCp 400 Val	IJJ	1.6	83.87	0.7[illegible]	33
5.5	59	B-	129.1	Spdr Dow Jones	DIA	2.3	128.59	0.7[illegible]	-28
11.1	59	B	185.0	Spdr S&P Mid Cap 400	MDY	1.0	177.21	1.3[illegible]	-41
8.6	59	B	71.1	VG Total Stock Mkt	VTI	1.8	69.84	0.5[illegible]	-39
7.9	58	B	137.2	Spdr S&P 500	SPY	1.9	135.36	1.0[illegible]	-29
6.7	56	B	22.2	GH Multi-Asset	CVY	5.0	21.81	0.0[illegible]	-26
7.0	56	C+	70.9	IS Russell 1000 Val	IWD	2.1	67.95	0.4[illegible]	-44
10.0	56	C	112.9	IS Russell MdCp Indx	IWR	1.4	108.26	0.9[illegible]	-31
8.5	56	B-	49.6	IS Russell MdCp Val	IWS	2.0	47.09	0.3[illegible]	-53
8.3	56	B-	65.9	IS S&P 500 Value	IVE	2.1	62.65	0.1[illegible]	-26
9.3	56	C+	52.3	RX S&P 500 Equl Wght	RSP	1.4	50.59	0.3[illegible]	-30
3.8	56	C	56.1	Spdr S&P Dividend	SDY	3.1	55.93	0.7[illegible]	-15
4.7	56	C	57.8	VG Div Appr	VIG	2.0	57.24	0.2[illegible]	-27
11.0	56	B	83.2	VG Mid-Cap	VO	1.2	79.85	0.2[illegible]	-37
12.8	56	B-	70.4	VG Mid-Cap Growth	VOT	0.5	67.19	0.5[illegible]	-24
6.6	53	C-	58.8	VG Value	VTV	2.5	55.93	0.5[illegible]	-20
15.5	32	C-	12.4	PS Listed Priv Eq	PSP	6.7	9.23	0.[illegible]	-43
-5.6	19	D-	46.8	ProS Short Dow 30	DOG	..	36.64	-0.2[illegible]	-33
-7.3	19	C-	48.5	ProS Short S&P 500	SH	..	37.44	-0.[illegible]	-10
-11.7	16	D-	36.6	ProS Short QQQ	PSQ	..	27.63	-0.[illegible]	-24
-10.9	15	D-	38.2	ProS Short Russ 2000	RWM	..	26.45	-0.17	8

Leveraged

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
43.1	91	C+	97.1	ProS Ultrpro QQQ	TQQQ	..	97.27	2.5[illegible]	-13
27.0	87	C+	103.4	ProS Ultra QQQ	QLD	..	103.49	1.9[illegible]	-9
24.7	79	C-	88.0	ProS Ultrpro S&P 500	UPRO	0.0	75.00	1.3[illegible]	-34
26.1	77	C	92.7	DX LC Bull 3X Shrs	BGU	..	76.71	1.3[illegible]	-40
11.5	76	D+	67.7	ProS Ultra Dow 30	DDM	0.4	66.76	0.7[illegible]	-44
24.0	74	B	52.2	ProS Ultra Russ 2000	UWM	..	43.22	1.9[illegible]	-12
15.8	74	D-	56.9	ProS Ultra S&P 500	SSO	0.5	53.71	0.9[illegible]	-37
37.8	72	B	105.7	ProS Ultrpro Russ 2000	URTY	..	68.09	2.5[illegible]	18
37.4	69	D+	96.3	DX Sc Bull 3X Shrs	TNA	..	61.62	2.1[illegible]	-39
23.0	69	C-	79.6	ProS Ultra Midcap 400	MVV	..	68.09	1.3[illegible]	-63
-10.8	11	C-	22.9	ProS Ultsht Dow 30	DXD	..	13.66	-0.16	-33
-14.2	10	B-	28.7	ProS Ultsht S&P 500	SDS	..	16.55	-0.22	-30
-22.1	7	D+	63.8	ProS Ultsht QQQ	QID	..	35.16	-0.58	-12
-20.7	6	C-	66.6	ProS Ultsht Russ 2000	TWM	..	30.63	-0.82	-4
-21.9	5	C+	57.0	DX Bear 3X Shrs	BGZ	..	23.07	-0.48	-40
-15.9	5	C	48.1	ProS Ultp Sht Dow 30	SDOW	..	21.23	-0.42	-16
-20.6	5	C+	25.2	ProS Ultpro Sht SP500	SPXU	..	10.43	-0.24	-15
-31.4	3	D	34.9	ProS Ultpro Sht QQQ	SQQQ	..	13.51	-0.39	-28
-29.3	2	E	68.3	DX Sc Bear 3X Shrs	TZA	..	18.72	-0.78	-21
-29.0	2	C+	33.6	ProS Ultp Sht R 2000	SRTY	..	9.32	-0.37	-29

Sector/Industry

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
22.0	92	B	82.7	Spdr S&P Biotech	XBI	..	81.00	2.42	-7
21.7	91	A-	14.4	IS DJ US Home Const	ITB	0.6	14.46	0.32	-29
16.6	91	B+	122.5	IS Nasdaq Biotech	IBB	0.0	121.66	2.78	-23
19.0	89	B+	20.4	Spdr S&P Homebldrs	XHB	0.7	20.35	0.40	-44
9.6	77	B	57.8	Spdr S&P Retail	XRT	0.9	57.61	0.33	-42
10.4	76	B+	27.4	Spdr KBW Regnl Bnk	KRE	1.6	26.94	0.42	-35
7.7	75	C+	35.0	PS S&P SC Hlth Care	PSCH	0.8	33.96	0.55	-52
16.8	74	C	92.2	HT Regional Bank	RKH	1.6	82.77	0.92	-97
4.1	69	C+	40.4	JPMorgan Alerian ETN	AMJ	4.7	40.55	0.29	2
13.1	69	B+	69.6	VG Info Tech	VGT	0.7	69.39	0.48	35
13.3	68	B	72.7	IS DJ US Tech Idx	IYW	0.5	72.43	0.43	-24
9.3	68	B+	42.7	Spdr Cnsmr Discrtnry	XLY	1.4	42.65	0.34	1
8.2	68	C+	70.5	Spdr DJ Wil REIT	RWR	2.9	69.68	0.83	-61
10.8	68	B	28.3	Spdr Technology	XLK	1.3	28.21	0.18	-12
6.5	66	B-	119.0	HT Retail	RTH	1.6	118.94	0.44	-46
7.8	66	A-	76.6	IS Cohen&Steers	ICF	2.7	75.68	0.99	-34
8.0	66	B-	63.4	VG Reit	VNQ	3.3	62.66	0.63	2
8.2	64	B-	30.8	FrstTr Health Cre Alph	FXH	0.1	29.35	0.26	40
16.4	64	B+	26.1	FrstTr Materl Alphdx	FXZ	0.3	24.72	0.29	-61
14.1	63	B-	28.4	FrstTr Ndq100 Tech	QTEC	0.3	27.51	0.07	-6
14.1	63	D-	74.0	HT Pharmaceutical	PPH	3.0	73.70	0.68	-29
12.7	63	B-	35.0	HT Semiconductors	SMH	1.4	34.29	0.12	-4
8.1	63	B	63.0	IS DJ US Real Est	IYR	3.5	61.44	0.69	-21
10.0	63	A-	20.8	PS Aero & Defense	PPA	0.9	20.02	0.15	-95
4.0	62	B	36.6	Spdr Health Care	XLV	1.9	36.08	0.27	-18
10.9	62	B	39.0	Spdr Industrial	XLI	1.9	37.42	0.45	22
11.7	60	A-	22.9	FrstTr CnsmrDisc Alph	FXD	0.5	21.85	0.09	62
14.1	60	A-	20.6	PS Water Resource	PHO	0.5	19.23	0.31	-18
0.8	59	C	32.8	Spdr Consmr Stpls	XLP	2.7	32.75	0.14	-19
11.0	57	B-	15.8	FrstTr Financial Alpha	FXO	2.2	14.64	0.10	-43
8.9	57	B	27.2	PS DWA Tech Leadrs	PDP	0.1	25.96	0.21	-67
12.9	56	B-	101.6	IS DJ Transprtn Idx	IYT	1.4	95.06	1.30	29
6.9	56	B	67.6	IS DJ US Hlth Prvdr	IHF	0.1	62.94	0.57	-90
12.2	53	B+	35.2	VG Financials	VFH	1.8	30.99	0.35	-49
12.0	52	B+	61.6	IS DJ US Finl Indx	IYF	1.5	54.93	0.47	-13
15.9	52	B+	55.2	IS Phlx Sox Smcdct	SOXX	0.7	57.24	0.17	-84
15.2	52	D	65.6	IS S&P NAm Software	IGV	0.0	62.33	0.57	-40
10.2	50	B-	38.3	FrstTr DJ Internet	FDN	0.1	35.60	0.36	-73
15.1	50	B-	25.9	FrstTr Tech Alphdx	FXL	..	23.07	0.08	215
[illegible]	[illegible]	[illegible]	[illegible]	Spdr Financial	XLF	1.5	14.70	0.13	-36
9.3	49	B+	48.5	Spdr KBW Insurance	KIE	1.5	40.68	0.27	-90
10.9	48	B-	65.8	Spdr S&P O&G Expl	XOP	1.0	58.31	0.89	-53
-3.4	49	D-	35.2	Spdr Utilities	XLU	3.9	34.76	-0.04	-10
11.4	47	B-	75.5	IS DJ US Oil&Explr	IEO	0.5	68.44	0.70	-27
11.3	47	B	27.8	Spdr KBW Bank	KBE	1.7	22.07	0.17	-55
6.0	46	D	46.1	IS DJ US Energy Idx	IYE	1.3	42.23	0.37	-40
6.6	46	C+	45.6	IS S&P Glb Energy	IXC	2.1	40.70	0.45	-54
6.5	46	C	81.0	Spdr Energy	XLE	1.4	73.62	0.58	-30
11.7	43	B-	57.9	MV Agribusiness	MOO	0.6	52.66	0.59	-5
21.0	43	B-	20.6	PS Dyn Food & Bev	PBJ	0.9	19.36	0.05	-73
6.2	43	C-	118.4	VG Energy	VDE	1.5	107.07	0.92	-14
10.9	42	B	47.9	Spdr Materials	XLB	2.0	37.15	0.10	-34
9.5	40	B-	44.6	Spdr S&P O&G Equip	XES	0.2	37.94	0.43	-59
14.8	38	B	31.3	GX Silver Miners	SIL	0.1	24.23	0.02	-40
12.1	36	C+	84.8	IS DJ US Basic Mtrl	IYM	2.0	72.10	0.29	-32
12.6	35	B	23.6	GH Timber	CUT	2.0	18.62	0.29	-69
8.5	35	B+	16.1	IS FTSE Nareit Mort	REM	11.2	13.74	0.15	51
14.5	34	C	31.6	IS DJ US Broker Idx	IAI	1.1	23.95	0.16	-54
10.7	34	D+	69.4	IS DJ US Oil&Equipmt	IEZ	0.3	57.48	0.48	-56
11.6	34	B+	25.9	IS DJ US Telecom	IYZ	2.9	22.12	0.13	9
5.3	34	B+	48.3	IS S&P NAm Nat Res	IGE	1.1	40.96	0.20	-45
12.6	34	B	38.6	IS S&P NAm Network	IGN	0.3	30.80	0.10	-42
7.8	32	B	28.8	PS Dyn Oil/Gas Srvc	PXJ	0.0	21.74	0.17	-68
11.9	32	B-	41.7	Spdr OJ Wil Intl RE	RWX	3.8	35.62	0.25	-47
7.4	27	B-	25.3	FrstTr Energy Alphdx	FXN	0.4	20.73	0.09	-40
5.0	26	C	24.1	GH Canadian Ergy	ENY	2.2	17.69	0.09	6
16.8	24	B	46.9	FrstTr ISE Glb Copr	CU	3.9	34.22	0.32	19
13.0	24	C-	167.4	HT Oil Service	OIH	0.7	129.81	0.83	-37
5.6	22	C-	67.0	MV Gold Miners	GDX	0.3	54.30	-0.19	-49
17.5	21	A-	21.0	GX Copper Miners	COPX	3.7	15.09	0.11	-2
0.5	20	D+	23.8	FrstTr ISE Rev NatGas	FCG	0.4	18.29	0.25	74
8.8	17	C-	77.4	Spdr S&P Metal&Mng	XME	0.9	53.32	0.07	-4
22.0	16	C-	28.9	MV Rare Earth	REMX	..	18.20	0.24	-48
10.1	15	B	51.9	MV Coal	KOL	1.4	35.52	0.18	-47
22.3	14	C+	22.4	GX Uranium	URA	..	9.97	0.05	89
22.3	14	B+	11.4	PS Wh Clean Enrgy	PBW	1.8	6.20	0.00	-65
13.4	12	B	43.0	MV Jr Gold Mine	GDXJ	4.3	28.02	0.07	-31
13.0	12	C-	27.8	MV Urn/Nuc Enrg	NLR	11.5	16.77	0.18	-51
15.3	11	C+	22.8	MV Glb Alt Engy	GEX	2.7	12.58	-0.10	-60
38.1	7	B+	9.2	GH Solar	TAN	6.2	3.41	-0.04	67

Leveraged

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
45.0	89	B	57.2	DX Tech Bull 3X	TYH	0.0	52.86	1.10	65
25.3	79	A-	83.9	DX Rel Est Bull 3X	DRN	..	64.63	2.15	-55
16.6	79	B	65.2	ProS Ultra Real Est	URE	1.0	59.49	1.28	-3
26.4	66	B-	49.9	ProS Ultra Semicndctr	USD	0.1	42.84	-0.03	-58
24.9	60	B	75.9	ProS Ultra Financials	UYG	0.3	55.41	0.88	-50
39.2	47	B	171.4	DX Finl Bull 3X	FAS	..	90.32	2.23	-44
52.4	40	B+	75.4	DX Semicon Bull 3X	SOXL	..	39.56	0.41	-21
12.0	40	C-	63.6	ProS Ultra Oil & Gas	DIG	0.1	49.17	0.71	-59
25.1	27	B-	60.1	ProS Ultra Basic Mtrl	UYM	..	40.18	0.31	-56
15.7	22	C	93.3	DX Energy Bull 3X	ERX	..	54.21	1.23	-34
-21.6	11	B	32.1	ProS Ultsht Basic Mat	SMN	..	14.60	-0.12	-61
-12.0	11	B+	45.5	ProS Ultsht Oil & Gas	DUG	..	22.55	-0.39	-53
-21.1	8	D	97.2	ProS Ultsht Financial	SKF	..	46.81	-0.79	-47
-15.3	7	C	62.0	ProS Ultsht Real Est	SRS	..	31.15	-0.71	-30
-15.9	5	B	28.1	DX Energy Bear 3X	ERY	..	9.51	-0.22	-64
13.8	5	C-	43.6	DX Gld Mnr Bull 2X	NUGT	..	22.27	-0.20	-18
-30.4	3	D-	81.5	DX Finl Bear 3X	FAZ	..	25.99	-0.68	-35
-38.5	3	D+	115.5	DX Semicon Bear 3X	SOXS	..	34.99	-0.30	-42
-32.1	3	C-	29.7	DX Tech Bear 3X	TYP	..	11.07	-0.21	20
-21.9	2	C-	104.3	DX Rel Est Bear 3X	DRV	..	30.36	-1.07	-13

Global

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
12.8	67	B+	72.5	IS MSCI Thailand In	THD	2.7	67.81	0.71	-37
19.8	56	B	80.2	IS MSCI Brazil	EWZ	2.2	68.77	1.38	-22
13.5	55	B+	64.7	IS MSCI Mexico	EWW	1.3	61.01	0.64	-32
14.8	53	A	48.9	IS MSCI All Peru Cp	EPU	2.5	44.06	-0.15	-40
11.8	52	B	77.6	IS MSCI So Africa	EZA	2.8	68.25	0.89	14
12.0	50	B+	64.9	WT Emg Mk Hi Yld	DEM	4.0	57.43	0.73	4
8.2	49	B+	15.5	IS MSCI Malaysia	EWM	4.1	14.50	0.07	-24
5.5	49	B-	46.5	WT Jpn Smlcp Div	DFJ	2.0	43.95	0.54	144
1.7	47	C-	115.0	IS JPM USD Emg Mkts	EMB	4.7	111.57	0.59	28
10.6	47	B	19.8	PS DWA EmgMkt Tech	PIE	0.7	17.63	0.20	-16
12.6	46	B+	70.0	IS MSCI South Korea	EWY	1.2	58.82	1.11	-38
14.0	46	B+	55.4	IS S&P Latin Am 40	ILF	2.9	48.52	0.70	-28
8.7	44	A-	28.1	MV Emrg Mkts Bnd	EMLC	5.2	26.65	0.20	-41
4.3	44	B+	55.4	WT Asia Local Debt	ALD	1.9	52.22	0.00	61
15.6	44	A-	56.8	WT Emg Mk Sm Cap	DGS	3.5	47.80	0.59	-8
8.9	43	B-	51.0	IS MSCI ACWI	ACWI	2.2	45.94	0.50	-46
15.0	43	B+	50.4	IS MSCI Emrg Mkts	EEM	1.8	43.62	0.70	-16
17.0	43	A-	30.5	Spdr S&P BRIC 40	BIK	2.4	25.64	0.43	-67
7.7	42	B+	19.2	IS MSCI Untd Kingdm	EWU	3.0	17.41	0.20	-64
6.9	42	B	69.3	IS S&P Glb 100 Indx	IOO	2.9	61.91	0.52	-8
18.4	40	B+	52.3	IS MSCI Bric Idx	BKF	1.9	42.93	0.79	-40
2.9	40	C+	35.2	IS MSCI Indonesia	EIDO	1.2	30.16	0.45	82
14.3	40	B	30.2	Schwab Emerg Mkt	SCHE	2.1	26.13	0.45	-72
13.0	39	B+	46.4	IS Ftse China 25	FXI	1.9	39.42	0.49	-31
11.8	39	A-	19.7	IS MSCI Hong Kong	EWH	2.4	17.29	0.09	-55
13.1	39	B	36.1	IS MSCI Sweden	EWD	3.6	28.44	0.36	-67
6.9	39	C	28.6	IS MSCI Switzerland	EWL	2.3	24.17	0.23	-62
15.0	39	B+	50.9	VG MSCI Em Mkt	VWO	2.0	43.93	0.65	-26
9.7	39	C-	54.2	VG MSCI Europn	VGK	4.2	45.44	0.57	-41
17.2	37	C+	49.0	GH BRIC	EEB	3.4	41.04	0.63	-68
13.8	37	C	65.3	IS MSCI Asia Ex Jpn	AAXJ	1.8	56.79	0.51	67
25.3	37	B	70.7	IS MSCI Turkey Inve	TUR	2.2	51.56	1.22	8
3.9	37	D+	35.0	MV Indonesia	IDX	1.5	29.58	0.45	-17
4.8	37	D-	17.0	PS Intl Div Achvr	PID	3.1	15.27	0.13	-46
17.7	36	B+	14.6	IS MSCI Singapore	EWS	3.6	12.75	0.20	-41
8.5	35	C+	38.4	IS DJ Intl Selct Divnd	IDV	5.0	32.20	0.39	-50
9.4	35	A-	48.0	IS MSCI ACWI Ex US	ACWX	2.8	40.28	0.44	-82
15.0	35	B+	78.4	IS MSCI Chile Index	ECH	1.5	66.37	0.23	-53
12.7	35	B-	46.1	IS MSCI Eafe Sml Cp	SCZ	2.9	39.18	0.49	-12
23.5	35	B	24.6	PS India	PIN	..	20.13	0.35	-21
31.6	35	B	25.6	WT India Earn	EPI	0.8	20.53	0.35	-37
16.4	34	A-	29.1	IS MSCI Germany	EWG	3.0	22.38	0.24	-21
12.2	34	C	51.1	IS MSCI Pac Ex-Japn	EPP	3.9	43.66	0.66	-24
7.1	34	B	41.2	WT Jpn Total Div	DXJ	2.2	33.58	0.28	8
10.5	32	B-	52.3	VG Fts Wrd X-US	VEU	3.1	43.83	0.46	-31
8.8	31	B-	64.3	IS MSCI Eafe Idx	EFA	3.2	53.88	0.61	-25
6.8	31	B	11.6	IS MSCI Japan	EWJ	2.0	9.73	0.10	-41
9.6	31	A-	45.6	IS S&P Europe 350	IEV	3.3	36.98	0.37	-38
37.0	30	C+	19.8	MV Egypt Index	EGPT	2.2	12.96	0.94	174
9.4	30	C	30.7	Schwab Intl Equity	SCHF	2.9	25.63	0.28	-42
18.1	30	B-	41.3	Spdr S&P Russia	RBL	2.3	31.09	0.87	23
10.3	29	B-	28.4	IS MSCI Australia	EWA	4.6	23.65	0.38	9
13.9	29	B	16.1	IS MSCI Taiwan	EWT	3.5	13.34	0.14	-53
20.6	29	C+	58.4	Spdr S&P Emg Europe	GUR	3.2	43.39	1.05	-19
11.6	29	B-	33.2	Spdr S&P Intl Sm Cap	GWX	2.9	28.08	0.30	-54
9.1	29	B-	39.9	VG MSCI Eafe	VEA	3.1	33.41	0.38	-50
8.6	29	B-	59.8	VG MSCI Pacifc	VPL	3.1	51.67	0.59	-60
21.9	27	B-	56.9	Spdr S&P Emg Mkts SC	EWX	4.6	46.00	0.55	-41
18.8	26	B+	43.2	MV Russia	RSX	1.8	31.66	0.95	-15
5.8	25	B+	34.6	IS MSCI Canada	EWC	2.0	28.14	0.14	-36
5.9	25	B-	24.0	IS MSCI Netherlands	EWN	3.0	18.25	0.20	-69
10.8	24	B+	18.9	GX China Consumer	CHIQ	0.3	15.19	-0.02	-77
11.2	24	D	42.2	IS MSCI Emu Indx	EZU	3.7	31.03	0.23	-38
8.2	24	C+	23.9	PS DWA Dev Mkt Tch	PIZ	2.6	18.91	0.18	-36
9.7	23	B-	29.2	IS MSCI France	EWQ	3.1	21.47	0.13	-51
17.7	22	A-	31.0	GH China Sm Cap	HAO	2.7	22.72	-0.07	-30
10.1	22	B-	15.7	IS MSCI Belgium	EWK	4.8	11.66	0.19	-85
23.1	21	B+	60.4	MV Brazil Sc	BRF	2.5	44.86	0.94	-2
-13.4	20	C+	40.0	ProS Short MSCI Emrg	EUM	..	28.90	-0.46	-59
16.2	19	B-	24.5	IS MSCI Austria	EWO	3.6	16.52	0.20	205
11.5	18	B	20.1	IS MSCI Italy	EWI	4.1	13.37	0.08	8
18.5	18	A+	28.7	MV Vietnam	VNM	0.9	17.24	-0.29	77
20.2	17	B-	39.8	IS MSCI Poland	EPOL	4.8	26.01	0.59	-5
6.3	17	B	46.0	IS MSCI Spain	EWP	9.1	32.19	0.18	-79

Leveraged

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
-13.0	22	D+	45.3	ProS Ultsht MSCI Jpn	EWV	..	32.98	-0.65	-30
48.9	21	B+	227.8	DX Emg Mkt Bull 3X	EDC	0.3	111.08	4.95	-9
-23.7	10	C-	52.3	ProS Ultsht FTChna 25	FXP	..	23.18	-0.57	51
-25.6	9	B	51.0	ProS Ultsht MSCIEmrg	EEV	..	25.52	-0.85	-54
-36.3	4	D+	37.9	DX Emg Mkt Bear 3X	EDZ	..	12.55	-0.60	-33

Bond/Income

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
-3.4	76	D	125.0	IS Brcly 20+ Yr Trsy	TLT	3.4	117.14	0.15	-18
5.3	69	A-	113.7	IS S&P Natl Muni	MUB	3.1	113.94	1.35	88
2.1	67	C+	29.4	PS Build America	BAB	5.1	29.29	0.04	-18
2.6	64	C	25.3	PS Insrd Natl Muni	PZA	4.3	25.08	-0.01	-16
1.3	63	D+	9.5	PS Hi Yld Eq Div	PEY	3.6	9.37	0.04	-6
1.8	57	B-	24.3	Spdr Nv Brcly Muni	TFI	3.2	24.17	0.02	-64
-0.4	56	C+	106.7	IS Brcly 7-10 Yr Trs	IEF	2.5	105.17	-0.07	-70
1.7	56	C+	119.4	IS Brcly TIPS	TIP	3.9	118.69	0.24	-35
2.4	52	B+	116.8	IS Iboxx $ Invgrdcp	LQD	4.3	116.46	0.40	-28
0.0	47	C+	122.8	IS Brcly 3-7 Yr Trsy	IEI	1.6	122.07	-0.12	-60
1.4	47	A-	28.0	PS Emrg Mkt Sovgn	PCY	5.3	27.74	0.10	3
1.5	47	A	18.8	PS High Yld Corp	PHB	5.7	18.74	0.04	-2
0.9	47	C-	88.9	VG Intrmed-Term Bd	BIV	3.6	87.76	-0.02	-20
0.2	46	C+	111.1	IS Brcly Agg Bd Fd	AGG	2.8	110.45	0.04	-27
1.5	44	B-	79.2	VG St Corp Bond	VCSH	2.3	79.04	-0.07	-23
7.9	44	A-	54.6	WT Emg Mkt Loc Debt	ELD	4.3	52.48	0.21	42
1.2	43	C+	109.5	IS Brcly Intmd CrpBnd	CIU	3.6	108.49	0.04	-14
0.2	43	B-	109.2	IS Brcly MBS Fixed	MBB	3.3	108.24	0.05	31
1.2	43	B	92.8	IS Iboxx Hi Yd C Bd	HYG	7.3	90.51	0.26	-8
8.3	43	A	40.1	IS S&P US Pfd Stk	PFF	6.3	38.56	0.17	-1
9.2	43	B	18.4	PS Financial Prfd	PGF	7.0	17.61	0.11	-30
4.7	43	C	14.5	PS Preferred	PGX	6.4	14.33	0.07	68
0.5	43	B-	24.5	Spdr Nuv Brcly ST Bn	SHM	1.4	24.45	0.02	-25
0.2	43	B-	84.6	VG Total Bond Mkt	BND	3.1	83.69	0.00	-38
3.2	41	B	25.4	PS Senior Loan	BKLN	4.4	24.57	0.04	-27
0.6	40	C+	105.3	IS Brcly 1-3 Yr Cr	CSJ	1.8	104.84	0.09	-60
1.2	40	C-	54.3	Pimco 1-5Yr US TIPS	STPZ	2.9	53.99	0.03	-14
0.7	40	B+	101.3	Pimco Enhn ShrtMat	MINT	0.9	100.83	0.04	-45
9.3	40	A-	42.9	Spdr Brcly Conv Sec	CWB	3.4	39.53	0.17	29
2.7	40	B+	40.9	Spdr Brcly HiYld Bnd	JNK	7.4	39.47	0.00	0
5.6	40	B	63.6	Spdr DBIntlGvt Inf-Pro	WIP	4.4	59.92	-0.01	-6
0.3	40	D	81.9	VG Short-Term Bond	BSV	1.9	81.08	-0.08	2
-0.1	39	E	84.8	IS Brcly 1-3 Yr Trsy	SHY	0.8	84.41	-0.05	-46
0.0	37	B+	110.3	IS Brcly Shrt Trsy	SHV	0.1	110.18	0.00	31
-0.1	37	C-	25.1	PS VRDO Tax-Free	PVI	0.5	24.99	-0.01	-55
0.0	37	C-	45.9	Spdr Brcly 1-3 Mo Tbill	BIL	0.0	45.82	-0.01	-11
2.1	37	B	63.9	Spdr Brcly Intl Trs Bnd	BWX	3.4	60.06	0.00	48
2.8	15	B-	46.6	ProS Short 20+ Yr Trs	TBF	..	32.04	-0.06	-65

Leveraged

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
-10.0	97	C	80.3	DX 20+ Treas Bull 3X	TMF	..	64.38	0.33	-40
-0.1	16	D-	44.4	ProS Ultsht 7-10 Yr	PST	..	30.49	0.03	-67
5.5	7	B-	41.4	ProS Ultsht 20+ Yr	TBT	..	19.07	-0.04	-15
8.1	4	B-	255.7	DX 20+ Treas Bear 3X	TMV	..	73.44	-0.29	-7

Commodity/Currency

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
12.8	85	B	56.0	United States Gas LP	UGA	..	54.52	0.40	131
10.2	60	D	189.4	ETFS Gold Trust	SGOL	..	170.78	0.41	-43
10.4	60	C-	18.6	IS Gold Trust	IAU	..	16.81	0.04	-55
10.2	60	C+	185.8	Spdr Gold Trust	GLD	..	167.51	0.37	-44
1.7	57	B-	30.3	IP Crude Oil ETN	OIL	..	25.55	0.47	48
3.3	57	D+	34.6	PS DB Oil	DBO	..	29.52	0.46	10
8.2	57	E	16.9	Sprott Physical Gold	PHYS	..	14.93	0.00	-58
5.3	56	B+	25.3	PS DB G10 Currcy	DBV	..	25.03	0.11	30
1.5	56	C-	45.6	United States Oil LP	USO	..	38.69	0.67	49
4.7	53	A-	111.0	IP VIX S ETN	FXA	3.8	107.47	0.76	-48
7.1	50	B-	33.7	PS DB Energy Fund	DBE	..	29.58	0.11	-75
12.2	50	B-	69.5	PS DB Prec Metals	DBP	..	60.48	0.19	-77
33.9	47	C-	19.4	VS Invrs VIX ShrtTrm	XIV	..	8.72	0.64	62
-0.8	43	C	130.2	Currencyshrs Jpn Yen	FXY	..	126.86	0.07	-51
4.3	43	B+	39.4	IS S&P GSCI Cmd ETN	GSG	..	34.41	0.15	-44
-2.0	43	D+	22.9	PS DB US$ Bullish	UUP	..	22.03	-0.03	-70
6.3	40	B-	32.0	PS DB Commdty Idx	DBC	..	28.52	0.07	-12
1.9	37	D	105.6	Currencyshrs Can Dlr	FXC	0.2	99.50	0.35	-66
1.1	37	A-	25.4	WT Drf Chn Yuan	CYB	..	25.46	0.02	-51
21.6	35	C-	49.3	ETFS Silver Trust	SIVR	..	33.46	0.26	-59
28.1	34	C-	74.5	IP India ETN	INP	..	59.70	1.06	-50
21.6	34	B-	48.4	IS Silver Trust	SLV	..	32.75	0.24	-49
22.4	34	C-	87.0	PS DB Silver	DBS	..	58.76	0.47	-59
2.5	32	D	139.9	Currencyshrs SwFranc	FXF	..	107.72	0.10	-70
12.1	32	A-	61.7	IP Coppr ETN	JJC	..	49.39	-0.23	-4
1.8	32	B-	33.7	PS DB US$ Bearish	UDN	..	27.33	0.06	8
6.6	32	B-	73.0	US Commodity Index	USCI	..	62.24	0.13	-10
6.6	30	B+	85.3	ETFS Palladium Trust	PALL	..	68.85	-0.70	-46
1.9	27	C+	148.8	Currencyshrs Euro	FXE	0.2	131.34	0.16	-27
10.9	27	B+	25.8	PS DB Base Metals	DBB	..	20.69	-0.17	-54
4.2	26	C-	36.5	Gmhvn Contin Cmd	GCC	..	31.18	0.11	-5
6.8	26	A-	23.6	WT Drf Emg Curr	CEW	..	21.04	0.09	-42
2.7	24	B	53.2	IP DJ-UBS Cmdty ETN	DJP	..	43.96	0.11	-25
-3.3	24	C+	50.7	Teucrium Cmd Corn	CORN	..	40.61	0.46	-8
-12.2	22	C-	77.7	IP VIX M ETN	VXZ	..	53.27	-1.61	-14
0.1	21	B	69.0	IP Agri ETN	JJA	..	53.49	0.42	66
0.1	21	C	58.0	IP Grain ETN	JJG	..	45.06	0.75	45
6.7	21	C	23.0	Sprott Physical Silvr	PSLV	..	14.33	0.08	-53
-0.3	20	D-	35.6	PS DB Agriculture	DBA	..	28.80	0.19	-3
-10.3	20	C-	15.9	PS DB Gold Shrt ETN	DGZ	..	11.56	-0.04	-73
-1.3	18	C+	98.2	IP Softs ETN	JJS	..	68.42	-0.78	-88
-0.6	11	C-	117.3	IP DJ-UBS Cotton ETN	BAL	..	56.14	0.19	-67
-27.5	11	C+	59.2	IP VIX S ETN	VXX	..	25.76	-2.11	93
-27.7	10	C+	126.7	ProS VIX ST Futures	VIXY	..	54.74	-4.59	48
4.2	4	B-	9.1	IP Nat Gas ETN	GAZ	..	3.93	0.27	225
-19.8	2	C-	12.6	United States NatGas	UNG	..	5.18	-0.09	-16

Leveraged

12% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
20.6	69	C	122.3	ProS Ultra Gold	UGL	..	95.26	0.49	-60
19.9	67	D-	73.7	PS DB Gold DL ETN	DGP	..	57.08	0.23	-49
-4.3	64	D-	21.3	ProS Ultsht Euro	EUO	..	19.47	-0.08	-46
2.3	47	C-	64.8	ProS Ultra Crude Oil	UCO	..	41.90	1.35	31
1.3	27	D+	51.5	ProS Ultsht Yen	YCS	..	41.49	-0.07	-46
-19.4	14	B	30.4	ProS Ultsht Gold	GLL	..	15.96	-0.09	-48
-0.7	14	D-	16.9	PS DB Agri DL ETN	DAG	..	10.71	0.28	-61
-20.7	12	C+	8.7	PS DB Gold DS ETN	DZZ	..	4.32	-0.03	-63
45.5	1	C+	191.0	ProS Ultra Silver	AGQ	..	60.61	0.88	-47
-3.0	11	C-	80.7	PS DB Oil DS ETN	DTO	..	40.18	-1.46	8
-4.5	10	C+	71.4	ProS Ultsht Crude Oil	SCO	..	35.95	-1.27	37
-35.8	4	C	45.4	ProS Ultsht Silver	ZSL	..	10.19	-0.14	-52
-49.3	1	E	109.2	VS 2X VIX ShrtTrm ETN	TVIX	..	16.19	-2.86	206

ETF abbreviations: Bldrs=Builders; Brcly=Barclays; DB=Deutsche Bank; DX=DireXion; FrstTr=First Trust; GX=Global X; GH=Guggenheim; HT=Holdrs Trust; IP=iPath; IS=iShares; MV=Market Vectors; Nv=Nuveen; ProS=ProShares; PS=PowerShares; RX=Rydex; VG=Vanguard; VS=VelocityShares; WT=WisdomTree

IBD Meetup

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7:00PM
www.meetup.com/sanjoseibd

Mountain View, CA
Tuesday, February 28, 2012
7:00PM
www.meetup.com/mountainviewibd

Milpitas, CA
Wednesday, February 29, 2012
7:00PM
www.meetup.com/milpitasibd

Fremont, CA
Thursday, March 1, 2012
7:00PM
www.meetup.com/fremontibd

Seating is limited! Register for these free events at investors.com/meetup or call
1-800-811-2839

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LEGAL NOTICES

Legal Notice

In re CARTER'S, INC. SECURITIES LITIGATION — Civil Action No. 1:08-CV-2940-AT

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED PARTIAL SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES

TO: ALL PERSONS WHO PURCHASED THE PUBLICLY TRADED SECURITIES OF CARTER'S, INC. DURING THE PERIOD FROM MARCH 16, 2005 THROUGH NOVEMBER 10, 2009, INCLUSIVE, AND WERE ALLEGEDLY DAMAGED THEREBY (THE "SETTLEMENT CLASS").

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above-captioned action has been preliminarily certified as a class action for settlement purposes only and that a partial settlement for $20 million has been proposed with Carter's, Inc., Frederick J. Rowan, II, Joseph Pacifico, Michael D. Casey, Andrew North, Charles E. Whetzel, Jr., and Joseph M. Elles (collectively, the "Settling Defendants"). The case will continue against defendant PricewaterhouseCoopers LLP. A hearing will be held before the Honorable Amy Totenberg of the United States District Court for the Northern District of Georgia in the Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309, at 11:00 a.m., on May 31, 2012, in Courtroom 2308 to, among other things, determine whether the proposed settlement should be approved by the Court as fair, reasonable and adequate, determine whether the proposed plan of allocation for distribution of the settlement proceeds should be approved as fair and reasonable, and to consider the application of Lead Counsel for attorneys' fees and reimbursement of expenses. The Court may change the date of the hearing without providing another notice.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Notice") and a Proof of Claim and Release form ("Proof of Claim"), you may obtain copies of these documents by contacting the Claims Administrator, Epiq Systems, Inc. at: *In re Carter's, Inc. Securities Litigation*, Claims Administrator, P.O. Box 5110, Portland, OR 97208-5110, (866) 833-7918, **www.carterssecuritieslitigation.com**.

The Claims Administrator can also help you if you have questions about these documents. Inquiries, other than requests for the forms of Notice and Proof of Claim or the status of a claim, may be made to Lead Counsel: Labaton Sucharow LLP, Jonathan Gardner, 140 Broadway, New York, New York 10005, (888) 219-6877, www.labaton.com or settlementquestions@labaton.com.

If you are a Settlement Class Member, to be eligible to share in the distribution of the settlement proceeds you must submit a Proof of Claim postmarked **no later than June 1, 2012**. To exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is received or postmarked **no later than May 10, 2012**. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by the Final Order and Judgment of the Court. Any objections to the Settlement, plan of allocation or Lead Counsel's application for attorneys' fees and reimbursement of expenses must be filed with the Court and served on counsel for the Settling Parties in accordance with the instructions set forth in the Notice, such that they are received or postmarked **no later than May 10, 2012**. If you are a Settlement Class Member and do not submit an acceptable Proof of Claim, you will not share in the Settlement but you nevertheless will be bound by the Final Order and Judgment of the Court.

Further information may be obtained by contacting the Claims Administrator.

Dated: February 14, 2012

By Order of The Court
United States District Court
Northern District of Georgia

(866) 833-7918 • www.CartersSecuritiesLitigation.com

LEGAL NOTICES

Notice

AB Value Partners, L.P. and AB Opportunity Fund, LLC, private funds whose assets are managed by AB Value Management LLC, announce the results of its offer to purchase up to 230,000 common shares, par value $0.001 per share, of ELXSI Corporation at a price of $3.50 per share. The offer expired at 5 PM, NYC time, on February 10, 2012. Based on all information, including that which was received from the Depositary Trust and Clearing Corporation, 40,107 shares were properly tendered and not withdrawn. All validly tendered shares have been accepted for payment in accordance with the terms of the tender offer. AB Value Partners, L.P. and AB Opportunity Fund, LLC will acquire all 40,107 shares properly tendered and not withdrawn at a purchase price of $3.50 per share, net to the seller in cash, without interest and subject to applicable withholding taxes. Payment for the shares validly tendered and accepted for purchase under the offer, and return of any shares not accepted, will be made promptly. This announcement is not an offer to purchase shares nor a solicitation of an offer to sell shares. The offer was made solely by the Offer to Purchase and the related Letter of Transmittal.

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Civil Action No. 1:08-CV-2940-AT
In re Carter's Inc.
Securities Litigation

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED PARTIAL SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES

TO: ALL PERSONS WHO PURCHASED THE PUBLICLY TRADED SECURITIES OF CARTER'S, INC. DURING THE PERIOD FROM MARCH 16, 2005 THROUGH NOVEMBER 10, 2009, INCLUSIVE, AND WERE ALLEGEDLY DAMAGED THEREBY (THE "SETTLEMENT CLASS").

ATLANTA, GA, February 14, 2012/PR Newswire/ --- YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above-captioned action has been preliminarily certified as a class action for settlement purposes only and that a partial settlement for $20 million has been proposed with Carter's, Inc., Frederick J. Rowan, II, Joseph Pacifico, Michael D. Casey, Andrew North, Charles E. Whetzel, Jr., and Joseph M. Elles (collectively, the "Settling Defendants"). The case will continue against defendant PricewaterhouseCoopers LLP. A hearing will be held before the Honorable Amy Totenberg of the United States District Court for the Northern District of Georgia in the Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, SW, Atlanta, GA 30303-3309, at 11:00 a.m., on May 31, 2012, in Courtroom 2308 to, among other things, determine whether the proposed settlement should be approved by the Court as fair, reasonable and adequate, determine whether the proposed plan of allocation for distribution of the settlement proceeds should be approved as fair and reasonable, and to consider the application of Lead Counsel for attorneys' fees and reimbursement of expenses. The Court may change the date of the hearing without providing another notice.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Partial Settlement and Motion for Attorneys' Fees and Expenses ("Notice") and a Proof of Claim and Release form ("Proof of Claim"), you may obtain copies of these documents by contacting the Claims Administrator, Epiq Systems, Inc. at:

In re Carter's, Inc. Securities Litigation
Claims Administrator
P.O. Box 5110
Portland, OR 97208-5110

(866) 833-7918
www.carterssecuritieslitigation.com

The Claims Administrator can also help you if you have questions about these documents. Inquiries, other than requests for the forms of Notice and Proof of Claim or the status of a claim, may be made to Lead Counsel:

Labaton Sucharow LLP
Jonathan Gardner
140 Broadway
New York, New York 10005
(888) 219-6877
www.labaton.com or settlementquestions@labaton.com

If you are a Settlement Class Member, to be eligible to share in the distribution of the settlement proceeds you must submit a Proof of Claim postmarked no later than June 1, 2012. To exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is received or postmarked no later than May 10, 2012. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by the Final Order and Judgment of the Court. Any objections to the Settlement, plan of allocation or Lead Counsel's application for attorneys'

fees and reimbursement of expenses must be filed with the Court and served on counsel for the Settling Parties in accordance with the instructions set forth in the Notice, such that they are received or postmarked no later than May 10, 2012. If you are a Settlement Class Member and do not submit an acceptable Proof of Claim, you will not share in the Settlement but you nevertheless will be bound by the Final Order and Judgment of the Court.

Further information may be obtained by contacting the Claims Administrator.

Dated: February 14, 2012

By Order of The Court United States District Court Northern District of Georgia

###

/Contact (Press Only): Jonathan Gardner, (888) 219-6877
/URL: http://www.CartersSecuritiesLitigation.com
/Source: UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA

EXHIBIT 4

IN RE CARTER'S, INC. SECURITIES LITIGATION
(N.D. Ga. Case No. 08-CV-2940)

SUMMARY OF LODESTARS AND EXPENSES

FIRM	HOURS	LODESTAR	EXPENSES
Labaton Sucharow LLP	4796.7	$2,630,884.00	$218,261.25
Liaison Counsel (totals) - Evangelista & Associates, LLC - Page Perry LLC	473.3 172.1 301.2	$239,746.50 $87,553.50 $152,193.00	$2,075.01 $1,465.01 $610.00
Finkelstein Thompson LLP	200.1	$89,395.50	$5,357.07
Sarraf Gentile LLP	28.1	$15,180.00	$0.00
Vianale & Vianale LLP	78.0	$43,350.00	$0.00
TOTALS	**5,576.2**	**$3,018,556.00**	**$225,693.33**

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	)	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF JONATHAN GARDNER ON BEHALF OF LABATON SUCHAROW LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Jonathan Gardner, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Labaton Sucharow LLP. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. My firm, which served as Lead Counsel in the Consolidated Action, was involved in all aspects of the litigation and settlement of the action, as set forth in detail in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action Settlement and Plan of

Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff of my firm who was involved in the prosecution of the Consolidated Action, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

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

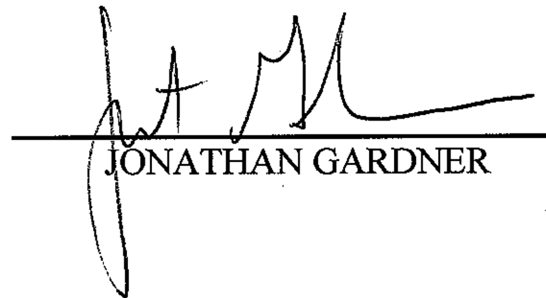
5. The total number of hours expended on this litigation by my firm during the Time Period is 4,796.7 hours. The total lodestar for my firm for those hours is $2,630,884.00.

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

7. As detailed in Exhibit B, my firm has incurred a total of $218,261.25 in un-reimbursed expenses incurred in connection with the prosecution of the Consolidated Action. The expenses incurred are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the some of the attorneys of my firm who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 19, 2012.



JONATHAN GARDNER

EXHIBIT A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: LABATON SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS	HOURLY RATE	CURRENT HOURS	CURRENT LODESTAR
Keller, C.	P	$850.00	186.9	$158,865.00
Belfi, E.	P	$775.00	13.3	$10,307.50
Gardner, J.	P	$750.00	488.2	$366,150.00
Zeiss, N.	OC	$700.00	107.3	$75,110.00
Scarlato, P.	OC	$650.00	38.5	$25,025.00
Goldman, M.	OC	$650.00	93.2	$60,580.00
Penny, B.	OC	$595.00	20.0	$11,900.00
Villegas, C.	A	$650.00	8.5	$5,525.00
Nguyen, A.	A	$600.00	1,863.3	$1,117,980.00
Ellman, A.	A	$600.00	47.3	$28,380.00
Hallowell, S.	A	$600.00	6.1	$3,660.00
Martin, C.	A	$575.00	81.3	$46,747.50
Smith, P.	A	$575.00	4.7	$2,702.50
Holmes, C.	A	$525.00	88.5	$46,462.50
Sundel, S.	A	$500.00	25.0	$12,500.00
Rado, A.	A	$500.00	13.4	$6,700.00
Gittleman, A.	A	$450.00	25.8	$11,610.00
Woller, S.	A	$425.00	10.8	$4,590.00
Dolgoff, M.	A	$415.00	13.2	$5,478.00
Hwang, J.	A	$350.00	10.2	$3,570.00
Richards, G.	A	$275.00	95.7	$26,317.50
Schervish, W.	LA	$510.00	5.0	$2,550.00
Ching, N.	RA	$405.00	5.5	$2,227.50
Chianelli, T.	RA	$295.00	20.9	$6,165.50
Bertuglia, P.	RA	$295.00	6.0	$1,770.00
Capuozzo, C.	RA	$285.00	4.8	$1,368.00
Gumeny, A.	I	$440.00	145.0	$63,800.00

PROFESSIONAL	STATUS	HOURLY RATE	CURRENT HOURS	CURRENT LODESTAR
Greenbaum, A.	I	$435.00	581.9	$253,126.50
Polk, T.	I	$410.00	203.7	$83,517.00
Wroblewski, R.	I	$400.00	11.0	$4,400.00
Malonzo, F.	PL	$335.00	402.8	$134,938.00
Rogers, D.	PL	$295.00	15.1	$4,454.50
Chiano, M.	PL	$295.00	13.0	$3,835.00
Wattenberg, S.	PL	$295.00	5.6	$1,652.00
Kupersmith, R.	PL	$295.00	81.2	$23,954.00
Cordoba-Riera, D.	PL	$280.00	3.8	$1,064.00
Chan, C.	PL	$275.00	12.8	$3,520.00
Jo, E.	PL	$260.00	18.3	$4,758.00
Buffong, M.	PL	$240.00	5.9	$1,416.00
Coleman, A.	PL	$215.00	3.5	$752.50
Murray, M.	PL	$150.00	9.7	$1,455.00
TOTAL			**4,796.7**	**$2,630,884.00**

*Partner (P) Associate (A)
Of Counsel (OC) Paralegal (PL)
Investigator (I) Research Analyst (RA)
Legal Analyst (LA)

EXHIBIT B

Exhibit B

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

DISBURSEMENT REPORT

FIRM: LABATON SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

DISBURSEMENT	TOTAL AMOUNT
Duplicating	$7,133.00
Telephone / Fax	$1,000.37
Messengers	$10.00
Filing Fees	$727.00
Mediation Fees	$17,200.00
Computer Research Fees	$10,465.15
Overnight Delivery Services	$366.92
Expert Fees	$119,751.20
Investigation Expenses	$46,509.51
Travel/Meals	$14,923.10
Notice to Class	$175.00
TOTAL	**$218,261.25**

EXHIBIT C

LABATON SUCHAROW LLP

INVESTOR PROTECTION LITIGATION

THE FIRM AND ITS ACHIEVEMENTS

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JAVIER BLEICHMAR, PARTNER 31
THOMAS A. DUBBS, PARTNER 33
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LOUIS GOTTLIEB, PARTNER 39
JAMES W. JOHNSON, PARTNER 40
CHRISTOPHER J. KELLER, PARTNER 41
EDWARD LABATON, PARTNER 43
CHRISTOPHER J. MCDONALD, PARTNER 45

JONATHAN M. PLASSE, PARTNER 46
HOLLIS SALZMAN, PARTNER 48
IRA A. SCHOCHET, PARTNER 49
MICHAEL W. STOCKER, PARTNER 51
JORDAN A. THOMAS, PARTNER 53
STEPHEN W. TOUNTAS, PARTNER 55
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Founded in 1963, Labaton Sucharow LLP ("Labaton Sucharow") is an internationally respected law firm with offices in New York, New York and Wilmington, Delaware and has relationships throughout the U.S., Europe and the world. The Firm consists of more than 60 attorneys and a professional support staff that includes certified public accountants, licensed private investigators, resident securities analysts and 17 paralegals. The Firm prosecutes major complex litigation in the United States, and has successfully conducted a wide array of representative actions (principally class, mass and derivative) in the areas of securities, antitrust, merger/ acquisition, limited partnership, ERISA, product liability, and consumer litigation. Labaton Sucharow's Securities Litigation Group offers comprehensive services for our institutional investor clients and has recovered, through trial and settlement, more than $4 billion for the benefit of investors who have been victimized by such diverse schemes as stock price manipulation, mismanagement, and fraudulent offerings of securities. Through its efforts, the litigation group has also obtained meaningful corporate governance reforms to minimize the likelihood of repetitive wrongful conduct. Visit our website at **www.labaton.com** for more information about our dynamic firm.

CORPORATE GOVERNANCE

Labaton Sucharow is committed to corporate governance reform. Through its leadership of membership organizations which seek to advance the interests of shareholders and consumers, Labaton Sucharow seeks to strengthen corporate governance and support legislative reforms which improve and preserve shareholder and consumer rights.

The Firm is a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware ("The Center"). The Center provides a forum for business leaders, directors of corporate boards, the legal community, academics, practitioners, graduate and undergraduate students, and others interested in corporate governance issues to meet and exchange ideas. One of Labaton Sucharow's partners, Edward Labaton, is a member of the Advisory Committee of The Center. Additionally, Mr. Labaton has served for more than 10 years as a member of the Program Planning Committee for the annual ALI-ABA Corporate Governance Institute, and serves on the Task Force on the Role of Lawyers in Corporate Governance of the Association of the Bar of the City of New York.

Through the aegis of NASCAT, a membership organization of approximately 100 law firms that practice class action and complex civil litigation, the Firm continues to advocate against those who would legislatively seek to weaken shareholders' rights, including their right to obtain compensation through the legal system.

From 2009-2011 Partner Ira A. Schochet served as President of NASCAT, following in the footsteps of Chairman Lawrence A. Sucharow who held the position from 2003-2005.

On behalf of its institutional and individual investor clients, Labaton Sucharow has achieved some of the largest precedent-setting settlements since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and has helped avert future instances of

securities fraud by negotiating substantial corporate governance reforms as conditions of many of its largest settlements.

Because of the depth of their experience and deep commitment to the principles of corporate governance, many Labaton Sucharow partners have served as featured speakers on topics relating to corporate governance and reform at various symposia and lectures.

As a result of Labaton Sucharow's extensive experience and commitment to corporate governance reform, the Firm's clients have secured meaningful reforms, in addition to substantial monetary recoveries, in significant settlements such as:

- ***In re Waste Management, Inc. Securities Litigation***, Civ. No. H-99-2183 (S.D. Tex.): Labaton Sucharow, acting as Lead Counsel for the State of Connecticut Retirement Plans & Trust Funds, caused the Company to present a binding resolution to declassify its board of directors, which was approved by its shareholders. As a consequence of Labaton Sucharow's efforts, the Company further agreed to amend its Audit Committee charter, which led to its enhanced effectiveness.
- ***In re Vesta Insurance Group Securities Litigation***, Civ. No. CV-98-W-1407-S (N.D. Ala.): Labaton Sucharow, acting as Lead Counsel for the Florida State Board of Administration, caused the Company to adopt provisions requiring that: (i) a majority of its Board members be independent; (ii) at least one independent director be experienced in corporate governance; (iii) the audit, nominating and compensation committees be comprised entirely of independent directors; and (iv) the audit committee comply with the recommendations of the Blue Ribbon Panel on the effectiveness of audit committees.

- ***In re Orbital Sciences Corporation Securities Litigation***, Civ. No. 99-197-A (E.D. Va.): Labaton Sucharow, acting as Lead Counsel for the New York City Pension Funds, negotiated the implementation of measures concerning the Company's quarterly review of its financial results, the composition, role and responsibilities of its Audit and Finance committee, and the adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.
- ***In re Bristol-Myers Squibb Securities Litigation***, Civ. No. 00-1990 (D.N.J.): Labaton Sucharow, acting as Lead Counsel for the LongView Collective Investment Fund of the Amalgamated Bank, negotiated noteworthy corporate governance reforms. Bristol-Myers Squibb ("BMS") agreed to publicly disclose the following information concerning all of its drugs marketed for at least one indication: a description of the clinical study design and methodology; results of the clinical trials; and safety results, including the reporting of adverse events seen during the clinical trials. The disclosures are posted on BMS's website, *www.BMS.com*, as well as an industry website, *www.clinicalstudyresults.org*. BMS agreed to post these disclosures for a 10-year period following approval of the settlement, and has further agreed that any modifications to the disclosure protocol must be approved by the Court, at the request of Labaton Sucharow as Lead Counsel, unless the modifications increase the scope of the disclosures. The corporate reform measures obtained in this case exceed the scope of reforms obtained by the New York State Attorney General's office in the settlement of an action against GlaxoSmithKline ("GSK") arising from the sale of Paxil, an

antidepressant. The Paxil settlement is limited to drugs sold in the United States, whereas as a result of the BMS settlement, the company must post the clinical trial results of drugs marketed in any country throughout the world.

- ***The Boeing Company,*** Civ. No. 03 CH 15039 and Civ. No. 03 CH 16301 (Cook Co., Ill, Ch. Div.): In 2006, Labaton Sucharow, acting as Lead Counsel for Plaintiffs in a derivative class action against the directors of The Boeing Company ("Boeing"), achieved a landmark settlement establishing unique and far-reaching corporate governance standards relating to ethics compliance, provisions that obligated Boeing to contribute significant funds over and above base compliance spending to implement the various prescribed initiatives. The terms were well designed to provide for early detection and prevention of corporate misconduct. They were comprehensive and integrated, enhancing effectiveness by providing for top-down oversight, direction and planning; and buttressed by extensive and coordinated bottom-up and horizontal reporting. In addition, the reforms were also designed to enhance Board independence and effectiveness and, by creating a direct reporting role to the Board, the independence of the management level oversight functions.
- ***In re Take-Two Interactive Securities Litigation***, No. 06-CV-803-RJS (S.D.N.Y.): In 2009, Labaton Sucharow, acting as Lead Counsel for Lead Plaintiffs New York City Employees' Retirement System, New York City Police Pension Fund and New York City Fire Department Pension Fund in a securities class action against Take-Two Interactive Software, Inc. ("Take-Two") and its officers and directors, achieved significant corporate governance reforms. Take-

Two was required to adopt a policy, commonly referred to as "clawback" provision, providing for the recovery of bonus or incentive compensation paid to senior executives in the event that such compensation was awarded based on financial results later determined to have been erroneously reported as a result of fraud or other knowing misconduct by the executive. The Company was also required to adopt a policy requiring that its Board of Directors submit any stockholder rights plan (also commonly known as a "poison pill") that is greater than 12 months in duration to a vote of stockholders. Finally, Take-Two was required to adopt a bylaw providing that no business may be properly brought before an annual meeting of stockholders by a person other than a stockholder unless such matter has been included in the proxy solicitation materials issued by the Company.

NOTABLE LEAD COUNSEL APPOINTMENTS

Labaton Sucharow's institutional and individual investor clients are regularly appointed by federal courts to serve as lead plaintiffs in prominent securities litigations brought under the PSLRA. Since 1995, dozens of state, city and county public pension funds and union funds have selected Labaton Sucharow to represent them in federal securities class actions and advise them as securities litigation/investigation counsel. Listed below are several of our current notable Lead and Co-Lead Counsel appointments.

IN RE THE BEAR STEARNS COMPANIES INC. SECURITIES, DERIVATIVE AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION
NO. CV :08-MD-01963-RWS (S.D.N.Y.)

Representing Michigan Retirement Systems
as Co-Lead Plaintiff

City of New Orleans Employees' Retirement System v. PrivateBancorp, Inc., et al
No.1:10-cv-06826 (N.D. Ill.)

Representing the State-Boston Retirement System as Co-Lead Plaintiff

In re Goldman Sachs Group Inc. Securities Litigation
No. 1:10-CV-03461(S.D.N.Y.)

Representing the Arkansas Teacher Retirement System as Co-Lead Plaintiff

TRIAL EXPERIENCE

Few securities class action cases go to trial. But when it is in the best interests of its clients and the class, Labaton Sucharow repeatedly has demonstrated its willingness and ability to try these complex securities cases before a jury. Labaton Sucharow's recognized willingness and ability to bring cases to trial significantly increases the ultimate settlement value for shareholders.

In *In re Real Estate Associates Limited Partnership Litigation*, when defendants were unwilling to settle for an amount Labaton Sucharow and its clients viewed as fair, we tried the case with co-counsel for six weeks and obtained a landmark $184 million jury verdict in November 2002. The jury supported plaintiffs' position that defendants knowingly violated the federal securities laws, and that the general partner had breached his fiduciary duties to plaintiffs. The $184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the plaintiff class, consisting of 18,000 investors, recovered 100% of their damages.

NOTABLE SUCCESSES

Labaton Sucharow has achieved notable successes in major securities litigations on behalf of its clients and certified investor classes.

- Labaton Sucharow served as Co-Lead Counsel in ***In re HealthSouth Securities Litigation***, Civ. No CV-03-BE-1500-S (N.D. Ala.), a case stemming from the largest fraud ever perpetrated in the healthcare industry. In early 2006, Lead Plaintiffs negotiated a settlement of $445 million with defendant HealthSouth. This partial settlement, comprised of cash and HealthSouth securities to be distributed to the class, is one of the largest in history. On June 12, 2009, the Court also granted final approval to a $109 million settlement with defendant Ernst & Young LLP ("E&Y") believed to be the eighth largest securities fraud class action settlement with an auditor. In addition, on July 26, 2010, the Court granted final approval to a $117 million partial settlement with the remaining principal defendants in the case, UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello and William McGahan (the "UBS Defendants"). The total value of the settlements for Healthsouth stockholders and Healthsouth bondholders, who were represented by separate counsel, is $804.5 million.
- In ***In re American International Group, Inc. Securities Litigation***, Master File No. 04 Civ. 8141 (JES) (AJP) (S.D.N.Y.), Lead Counsel Labaton Sucharow represents Lead Plaintiff Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund, along with the Attorney General of the State of Ohio. On October 3, 2008, a $97.5 million settlement between the Lead Plaintiff and PricewaterhouseCoopers LLP was announced. The settlement, which still must be approved by the Court, was the eighth largest at the time by an accounting firm to settle a securities fraud class action. On July 16, 2010, an agreement on the terms of a proposed $725

million settlement was announced, which, if approved by the Court, would resolve the Ohio Funds' claims against AIG and certain individual AIG directors and officers.

- On behalf of the New York State Common Retirement Fund and five New York City public pension funds, Labaton Sucharow served as Lead Counsel in ***In re Countrywide Financial Corporation Securities Litigation***, No. CV 07-05295 MRP (MANx) (C.D. Cal.), for claims alleging that Countrywide, one of the nation's largest mortgage lenders, and other defendants violated the federal securities laws by making misstatements and omitting material facts about Countrywide's policies and procedures for underwriting loans that entailed greater risk than disclosed. The parties have agreed to a Settlement whereby Countrywide and its auditing firm, KPMG LLP, together have paid $624 million in cash, with a portion set aside for up to two years to satisfy certain opt-out claims. This recovery is among the largest securities fraud settlements since the enactment of the PSLRA. On March 10, 2011, the Settlement was granted final approval.
- ***In re Waste Management, Inc. Securities Litigation***, Civ. No. H-99-2183 (S.D. Tex.). In 2002, Judge Melinda Harmon approved an extraordinary settlement that provided for recovery of $457 million in cash, plus an array of far-reaching corporate governance measures. At that time, this settlement was the largest common fund settlement of a securities action achieved in any court within the Fifth Circuit and the third-largest achieved in any federal court in the nation. Judge Harmon noted, among other things, that Labaton Sucharow "obtained an

outstanding result by virtue of the quality of the work and vigorous representation of the Class."

- In ***In re General Motors Corp. Securities Litigation***, No. 06-1749, (E.D. Mich.), Co-Lead Counsel Labaton Sucharow represented Lead Plaintiffs Deka Investment GmbH and Deka International S.A. Luxembourg in claims alleging that General Motors, and certain of GM's officers and directors (including CEO Rick Wagoner), issued a series of false and misleading statements to investors about the auto maker's financial health going back to 2000. On July 21, 2008, a settlement was reached whereby GM made a cash payment of $277 million and Defendant Deloitte & Touche LLP, which served as GM's outside auditor during the period covered by the action, agreed to contribute an additional $26 million in cash.
- In ***In re PaineWebber Limited Partnerships Litigation***, Master File No. 94 Civ. 832/7 (SHS) (S.D.N.Y.), Judge Sidney H. Stein approved a settlement valued at $200 million and found "that Class Counsel's representation of the Class has been of high caliber in conferences, in oral arguments and in work product."
- ***Eastwood Enterprises, LLC v. Farha et al.***, 8:07-cv-1940-T-33EAJ (M.D. Fla.). On behalf of The New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, Co-Lead Counsel for the Class, Labaton Sucharow LLP, negotiated a $200 million settlement over allegations that WellCare Health Plans, Inc., a Florida-based managed healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Under the terms of the settlement, which is still subject to approval by

the Court, WellCare agreed to pay an additional $25 million in cash if, at any time in the next three years, WellCare is acquired or otherwise experiences a change in control at a share price of $30 or more after adjustments for dilution or stock splits.

- In ***In re El Paso Corporation Securities Litigation***, Civ. No. H-02-2717 (S.D. Tex.), Labaton Sucharow secured a $285 million class action settlement against the El Paso Corporation. The case involved a securities fraud stemming from the Company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. The settlement was approved by the Court on March 6, 2007.
- ***In re Bristol-Myers Squibb Securities Litigation***, Civ. No. 00-1990 (D.N.J.). After prosecuting securities fraud claims against BMS for more than five years, Labaton Sucharow reached an agreement to settle the claims for $185 million and significant corporate governance reforms. This settlement is the second largest recovery against a pharmaceutical company, and it is the largest recovery ever obtained against a pharmaceutical company in a securities fraud case involving the development of a new drug. Moreover, the settlement is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not involve a restatement of financial results.
- On behalf of Lead Plaintiff New Mexico State Investment Council, Labaton Sucharow served as Lead Counsel in ***In re Broadcom Corp. Securities Litigation***, No. CV-05036-R (C.D. Cal.), a case stemming from Broadcom Corp.'s $2.2 billion restatement of its historic financial statements for 1998-2005 - the

largest restatement in history due to options backdating. In December 2009, New Mexico reached an agreement-in-principle with Broadcom and two individual defendants to resolve this matter for $160.5 million, the second largest up-front cash settlement ever recovered from a company accused of options backdating.

- In ***In re Mercury Interactive Corp. Securities Litigation***, Civ. No. 5:05-CV-3395 (N.D. Cal.), Labaton Sucharow reached an agreement to settle for $117.5 million, a figure representing one of the largest known settlements in a securities fraud litigation based upon options backdating. The allegations in *Mercury* concern backdated option grants used to compensate employees and officers of the Company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of Mercury shareholders and the investing public. Labaton Sucharow and Hewlett-Packard's counsel executed a Stipulation of Settlement and the Court granted preliminary approval of the settlement on June 2, 2008. On September 25, 2008, the Court granted final approval of the settlement.
- In the well-known ***In re Prudential Securities Inc. Limited Partnership Litigation***, Civ. No. M-21-67 (S.D.N.Y.), the late Judge Milton Pollack cited the "Herculean" efforts of Labaton Sucharow and its Co-Lead Counsel and, in approving a $110 million partial settlement, stated that "this case represents a unique recovery – a recovery that does honor to every one of the lawyers on your side of the case."

- ***In re Vesta Insurance Group, Inc. Securities Litigation***, Civ. No. CV-98-AR-1407 (N.D. Ala.). After years of protracted litigation, Labaton Sucharow secured a settlement of $78 million on the eve of trial.
- ***In re St. Paul Traveler's II Securities Litigation***, Civ. No. 04-4697 (JRT/FLN) (D. Minn.), the second of two cases filed against St. Paul Travelers by Labaton Sucharow, arose from the industry-wide insurance scandal involving American International Group, Marsh McClennan, the St. Paul Companies and numerous other insurance providers and brokers. On July 23, 2008, the Court granted final approval of the $77 million settlement and certified the settlement Class.
- In ***In re St. Paul Travelers Securities Litigation***, 04-CV-3801 (D. Minn.), Labaton Sucharow was able to successfully negotiate the creation of an all cash settlement fund to compensate investors in the amount of $67.5 million in November 2005. This settlement is one of the largest securities class action settlements in the Eighth Circuit.
- In ***In re Monster Worldwide, Inc. Securities Litigation***, No. 07-CV-02237 (S.D.N.Y.), Labaton Sucharow represented Middlesex County Retirement System in claims alleging that Defendants engaged in a long-running scheme to backdate Monster's stock option grants to attract and retain employees without recording the resulting compensation expenses. On November 25, 2008, the Court granted final approval of the $47.5 million settlement.
- In ***Abrams v. VanKampen Funds, Inc.***, 01 C 7538 (N.D. Ill.), in January 2006 Labaton Sucharow obtained final approval of a $31.5 million settlement in an

innovative class action concerning VanKampen's senior loan mutual fund, alleging that the fund overpriced certain senior loan interests where market quotations were readily available. The gross settlement fund constitutes a recovery of about 70% of the class's damages as determined by plaintiffs' counsel.

- In ***Desert Orchid Partners, L.L.C. v. Transactions Systems Architects, Inc.***, Civ. No. 02 CV 533 (D. Neb.), Labaton Sucharow represented the Genesee Employees' Retirement System as Lead Plaintiff in claims alleging violations of the federal securities laws. On March 2, 2007, the Court granted final approval to the settlement of this action for $24.5 million in cash.
- ***In re Orbital Sciences Corp. Securities Litigation***, Civ. No. 99-197-A (E.D. Va.). After cross-motions for summary judgment were fully briefed, defendants (and Orbital's auditor in a related proceeding) agreed to a $23.5 million cash settlement, warrants, and substantial corporate governance measures.
- On September 9, 2008, the Court granted final approval of the $20 million settlement in ***In re International Business Machines Corp. Securities Litigation***, Civ. No. 1:05-cv-6279 (AKH) (S.D.N.Y.), in which Labaton Sucharow served as Lead Counsel. The action alleged that that International Business Machines Corp. ("IBM"), and its Chief Financial Officer, Mark Loughridge, made material misrepresentations and omissions concerning IBM's expected 2005 first quarter earnings, IBM's expected 2005 first quarter operational performance, and the financial impact of IBM's decision to begin expensing stock options on its 2005 first quarter financial statements.

- In ***In re Just for Feet Noteholder Litigation***, Civ. No. CV-00-C-1404-S (N.D. Ala.), Labaton Sucharow, as Lead Counsel, represented Lead Plaintiff Delaware Management and the Aid Association for Lutherans with respect to claims brought on behalf of noteholders. On October 21, 2005, Chief Judge Clemon of the U.S. District Court for the Northern District of Alabama preliminarily approved Plaintiffs' settlement with Banc of America Securities LLC, the sole remaining defendant in the case, for $17.75 million. During the course of the litigation, Labaton Sucharow obtained certification for a class of corporate bond purchasers in a ground-breaking decision, *AAL High Yield Bond Fund v. Ruttenberg*, 229 F.R.D. 676 (N.D. Ala. 2005), which is the first decision by a federal court to explicitly hold that the market for high-yield bonds such as those at issue in the action was efficient.
- In ***In re American Tower Corporation Securities Litigation***, Civ. No. 06 CV 10933 (MLW) (D. Mass.), Labaton Sucharow represented the Steamship Trade Association-International Longshoreman's Association Pension Fund (STA-ILA) in claims alleging that certain of American Tower Corporation's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant policies and accounting, causing damages to investors. On June 11, 2008, the Court granted final approval of the $14 million settlement.
- In ***In re CapRock Communications Corp. Securities Litigation***, Civ. No. 3-00-CV-1613-R (N.D. Tex.), Labaton Sucharow represented a prominent

Louisiana-based investment adviser in claims alleging violations of the federal securities laws. The case settled for $11 million in 2003.

- In ***In re SupportSoft Securities Litigation***, Civ. No. C 04-5222 SI (N.D. Cal.), Labaton Sucharow secured a $10.7 million settlement on October 2, 2007 against SupportSoft, Inc. The action alleged that the defendants had artificially inflated the price of the Company's securities by re-working previously entered into license agreements for the Company's software in order to accelerate the recognition of revenue from those contracts.
- In ***In re InterMune Securities Litigation***, Master File No. 03-2454 SI (N.D. Cal. 2005), Labaton Sucharow commenced an action on behalf of its client, a substantial investor, against InterMune, a biopharmaceutical firm, and certain of its officers, alleging securities fraud in connection with InterMune's sales and marketing of a drug for off-label purposes. Notwithstanding higher pleading and proof standards in the jurisdiction in which the action had been filed, Labaton Sucharow utilized its substantial investigative resources and creative alternative theories of liability to successfully obtain an early, pre-discovery settlement of $10.4 million. The Court complimented Labaton Sucharow on its ability to obtain a substantial benefit for the Class in such an effective manner.
- Labaton Sucharow served as Lead Counsel in ***In re HCC Insurance Holdings, Inc. Securities Litigation***, Civ. No. 4:07-cv-801 (S.D. Tex.), a case alleging that certain of HCC's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant

policies and accounting, causing damages to investors. On June 17, 2008, the Court granted final approval of the $10 million settlement.

- In ***In re Adelphia Communications Corp. Securities & Derivative Litigation***, Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.), Labaton Sucharow represents the New York City Employees' Retirement System (and certain other New York City pension funds) and the Division of Investment of the New Jersey Department of the Treasury in separate individual actions against Adelphia's officers, auditors, underwriters, and lawyers. To date, Labaton Sucharow has fully resolved certain of the claims brought by New Jersey and New York City for amounts that significantly exceed the percentage of damages recovered by the Class. New Jersey and New York City continue to prosecute their claims against the remaining defendants.
- In ***STI Classic Funds v. Bollinger Industries, Inc.***, No. 96-CV-0823-R (N.D. Tex.), Labaton Sucharow commenced related suits in both state and federal courts in Texas on behalf of STI Classic Funds and STI Classic Sunbelt Equity Fund, affiliates of the SunTrust Bank. As a result of Labaton Sucharow's efforts, the class of Bollinger Industries, Inc. investors on whose behalf the bank sued obtained the maximum recovery possible from the individual defendants and a substantial recovery from the underwriter defendants. Notwithstanding a strongly unfavorable trend in the law in the State of Texas, and strong opposition by the remaining accountant firm defendant, Labaton Sucharow has obtained class certification and continues to prosecute the case against that firm.

- In ***Rosengarten v. International Telephone & Telegraph Corp.***, Civ. No. 76-1249 (N.D.N.Y.), Judge Morris Lasker noted that the Firm "served the corporation and its stockholders with professional competence as well as admirable intelligence, imagination and tenacity."

- In ***In re Prudential-Bache Energy Income Partnerships Securities Litigation***, MDL No. 888, an action in which Labaton Sucharow served on the Executive Committee of Plaintiffs' Counsel, Judge Marcel Livaudais, Jr., of the United States District Court for the Eastern District of Louisiana, observed that:

> Counsel were all experienced, possessed high professional reputations and were known for their abilities. Their cooperative effort in efficiently bringing this litigation to a successful conclusion is the best indicator of their experience and ability . . . .
>
> The Executive Committee is comprised of law firms with national reputations in the prosecution of securities class action and derivative litigation. The biographical summaries submitted by each member of the Executive Committee attest to the accumulated experience and record of success these firms have compiled.

Among the institutional investor clients Labaton Sucharow represents and advises are:

Arkansas Teacher Retirement System
Baltimore County Retirement System
Bristol County Retirement Board
California Public Employees' Retirement System
City of New Orleans Employees' Retirement System
Connecticut Retirement Plans & Trust Funds
Division of Investment of the New Jersey Department of the Treasury
Doubloon Capital LLC
Genesee County Employees' Retirement System
Illinois Municipal Retirement Fund
Louisiana Municipal Police Employees' Retirement System

Teachers' Retirement System of Louisiana
Macomb County Employees Retirement System
Metropolitan Atlanta Rapid Transit Authority
Michigan Retirement Systems
Middlesex Retirement Board
Mississippi Public Employees' Retirement System
New York City Pension Funds
New York State Common Retirement Fund
Norfolk County Retirement System
Office of the Ohio Attorney General and several of its Retirement Systems
Oklahoma Firefighters Pension and Retirement System
Plymouth County Retirement System
Office of the New Mexico Attorney General and several of its Retirement Systems
Rhode Island State Investment Commission
San Francisco Employees' Retirement System
State of Oregon Public Employees' Retirement System
State of Wisconsin Investment Board
State-Boston Retirement System
Steamship Trade Association/International Longshoremen's Association
Virginia Retirement Systems

COMMENTS ABOUT OUR FIRM BY THE COURTS

Many federal judges have commented favorably on the Firm's expertise and results achieved in securities class action litigation. Judge John E. Sprizzo complimented the Firm's work in *In re Revlon Pension Plan Litigation*, Civ. No. 91-4996 (JES) (S.D.N.Y.). In granting final approval to the settlement, Judge Sprizzo stated that "[t]he recovery is all they could have gotten if they had been successful. I have probably never seen a better result for the class than you have gotten here."

Labaton Sucharow was a member of the Executive Committee of Plaintiffs' Counsel in *In re PaineWebber Limited Partnerships Litigation*, Master File No. 94 Civ. 8547 (SHS). In approving a class-wide settlement valued at $200 million, Judge Sidney H. Stein of the Southern District of New York stated:

> The Court, having had the opportunity to observe first hand the quality of Class Counsel's representation during this litigation, finds that Class Counsel's representation of the Class has been of high caliber in conferences, in oral arguments and in work product.

Judge Lechner, presiding over the $15 million settlement in *In re Computron Software Inc. Securities Class Action Litigation*, Civ. No. 96-1911 (AJL) (D.N.J.), where Labaton Sucharow served as Co-Lead Counsel, commented that

> I think it's a terrific effort in all of the parties involved . . . , and the co-lead firms . . . I think just did a terrific job.
>
> You [co-lead counsel and] Mr. Plasse, just did terrific work in the case, in putting it all together . . . .

In *Middlesex County Retirement System v. Monster Worldwide, Inc.*, No. 07-cv-2237 (S.D.N.Y.), Judge Rakoff appointed Labaton Sucharow as Lead Counsel, stating that "the Labaton firm is very well known to courts for the excellence of its representation."

In addition, Judge Rakoff commented during a final approval hearing that "the quality of the representation was superb" and "[this case is a] good example of how [the] securities class action device serves laudatory public purposes."

During a fairness hearing in the *In re American Tower Corporation Securities Litigation*, No. 06-CV-10933 (MLW) (D. Mass.), Chief Judge Mark L. Wolf stated:

> "[t]he attorneys have brought to this case considerable experience and skill as well as energy. Mr. Goldsmith has reminded me of that with his performance today and he maybe educated me to understand it better."

PRO BONO ACTIVITIES

Our attorneys devote substantial time to *pro bono* activities. Many of our attorneys participated in the Election Protection Program sponsored in 2004 by the Lawyers Committee for Civil Rights Under the Law to ensure that every voter could vote and every vote would count. In addition, the Firm's attorneys devote their time to *pro bono* activities in the fields of the arts, foundations, education, and health and welfare issues.

WOMEN'S INITIATIVE AND MINORITY SCHOLARSHIP

Labaton Sucharow founded a Women's Initiative to reflect the Firm's commitment to the advancement of women professionals. The goal of the initiative is to bring professional women together to collectively advance women's influence in business. Each event showcases a successful woman role model as a guest speaker. We actively discuss our respective business initiatives and hear the guest speaker's strategies for success. Labaton Sucharow mentors and promotes the professional achievements of the young women in our ranks and others who join us for events. The Firm also is a member of the National Association of Women Lawyers (NAWL). For more information regarding Labaton Sucharow's Women's Initiative, please visit http://www.labaton.com/en/about/women/Womens-Initiative.cfm

Further, as part of an effort to increase attorney diversity, the Firm has established an annual scholarship program at Brooklyn Law School that provides a $5,000 scholarship and a summer associate position at the Firm to a member of a minority group. Currently, there are two minority associates employed by Labaton Sucharow who were recipients of this scholarship.

ATTORNEYS

Among the attorneys at Labaton Sucharow who are involved in the prosecution of securities actions are partners Lawrence A. Sucharow, Martis Alex, Mark S. Arisohn, Christine S. Azar, Eric J. Belfi, Joel H. Bernstein, Javier Bleichmar, Thomas A. Dubbs, Joseph A. Fonti, Jonathan Gardner, David J. Goldsmith, Louis Gottlieb, James W. Johnson, Christopher J. Keller, Edward Labaton, Christopher J. McDonald, Jonathan M. Plasse, Hollis L. Salzman, Ira A. Schochet, Michael W. Stocker, Jordan A. Thomas, and Stephen W. Tountas; senior counsel Richard T. Joffe and Joseph V. Sternberg; of counsel attorneys Dominic J. Auld, Mark S. Goldman, Terri Goldstone, Barry M. Okun, Paul Scarlato, and Nicole M. Zeiss. A short description of the qualifications and accomplishments of each follows.

LAWRENCE A. SUCHAROW, CHAIRMAN

lsucharow@labaton.com

Lawrence A. Sucharow, a nationally recognized leader of the securities class action bar, is the chairman of Labaton Sucharow. In this capacity, he participates in developing the litigation and settlement strategies for many of the class action cases Labaton Sucharow prosecutes.

For more than three decades, Mr. Sucharow has devoted his practice to counseling clients and prosecuting cases on complex issues involving securities, antitrust, business transaction, product liability, and other class actions. Mr. Sucharow has successfully recovered more than $1 billion on behalf of institutional investors such as state, city, county and union pension funds, shareholders of public companies, bondholders, purchasers of limited partnership interests, purchasers of consumer products and individual investors.

Mr. Sucharow obtained $225 million in savings for the class of In re CNL Resorts, Inc. Securities Litigation. In other recently settled actions, Mr. Sucharow undertook a lead role in obtaining benefits for class members of $200 million (*In re Paine Webber Incorporated Limited Partnerships Litigation*); $110 million partial settlement (*In re Prudential Securities Incorporated Limited Partnerships Litigation*); $91 million (*In re Prudential Bache Energy Income Partnerships Securities Litigation*); and more than $92 million (*Shea v. New York Life Insurance Company*). In approving the *Prudential* settlement, Judge Milton Pollack referred to the efforts of plaintiffs' counsel as "Herculean," stating: "…this case represents a unique recovery – a recovery that does honor to every one of the lawyers on your side of the case."

In addition, in 2002 Mr. Sucharow served as Co-Trial Counsel in a six-week trial of a federal securities law claim on behalf of 18,000 passive investors in the Real Estate Associates limited partnerships. That trial resulted in an unprecedented $182 million jury verdict.

Mr. Sucharow is the author of "Schapiro Takes Right Path On Market Reform, But Auditors, Lawyers and Shareholders Need Better Tools," *Pensions & Investments*, June 1, 2009. He is the co-author of "How Courts Analyze Guilty Pleas and Government Investigations When Considering the Plausibility of an Antitrust Conspiracy After Twombly," *BNA's Class Action Litigation Report*, March 26, 2010; "Death of the Worldwide Class?," *BNA's Securities Regulation & Law Report*, June 22, 2009, and "Executive Compensation: Despite reforms, pay is less transparent and shareholder-friendly than in the past," *New York Law Journal*, March 20, 2008.

Mr. Sucharow is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and

was the founding chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association from 1988-1994. He was honored by his peers by his election to serve a two-year term as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms which practice complex civil litigation including class actions.

Mr. Sucharow earned a B.B.A., *cum laude*, from Baruch School of the City College of the City University of New York in 1971 and a J.D., *cum laude*, from Brooklyn Law School in 1975.

Mr. Sucharow is admitted to practice in New York, New Jersey, and Arizona, as well as before the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Arizona, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

As a result of his career accomplishments, Mr. Sucharow is one of only four plaintiff's securities lawyers in the United States independently selected by *Chambers and Partners USA* to be in its highest category, Band 1, (Plaintiffs Securities Class Actions). In August 2010, he was recognized by *Law360* as one the ten Most Admired Securities Attorneys in the United States. Mr. Sucharow has received a rating of AV from the publishers of the Martindale-Hubbell directory.

MARTIS ALEX, PARTNER

malex@labaton.com

Martis Alex concentrates her practice on prosecuting complex securities fraud cases on behalf of institutional investors. She has extensive experience managing complex nationwide litigation, including securities class actions as well as product liability and consumer fraud

litigation. She has successfully represented investors and consumers in cases that achieved cumulative recoveries of hundreds of millions of dollars for plaintiffs.

Ms. Alex was an integral part of the team that successfully litigated *In re Bristol Myers Squibb Securities Litigation*, where Labaton Sucharow was able to secure a $185 million settlement on behalf of investors, as well as meaningful corporate governance reforms that will affect future consumers and investors alike. She is currently litigating *In re American International Group, Inc. Securities Litigation*, a major securities class action brought by Lead Plaintiff Ohio (comprised of several of Ohio's retirement systems). Ms. Alex was Lead Trial Counsel and Chair of the Executive Committee in *Zenith Laboratories Securities Litigation*, a federal securities fraud class action which settled during trial, and achieved a significant recovery for investors. She also was Chair of the Plaintiffs' Steering Committee in *Napp Technologies Litigation*, where Labaton Sucharow won substantial recoveries for families and firefighters injured in a chemical plant explosion.

Ms. Alex served as Co-Lead Counsel or in a leadership role in several securities class actions that achieved substantial awards for investors, including *Cadence Design Securities Litigation*, *Halsey Drug Securities Litigation*, *Slavin v. Morgan Stanley, Lubliner v. Maxtor Corp.* and *Baden v. Northwestern Steel and Wire*. She also served on the Executive Committee or in other leadership roles in national product liability actions against the manufacturers of breast implants, orthopedic bone screws, and atrial pacemakers, and was a member of the Plaintiffs' Legal Committee in the national litigation against the tobacco companies.

Ms. Alex is the author of "Women in the Law: Many Mentors, Many Lessons: A Baby Boomer's Perspective," *New York Law Journal*, November 8, 2010; and the co-author of "Role of the Event Study in Loss Causation Analysis," *New York Law Journal*, August 20, 2009.

Prior to entering private practice, Ms. Alex was a trial lawyer with the Sacramento, California District Attorney's Office. She is a frequent speaker at national conferences on product liability and securities fraud litigation, and is a recipient of the American College of Trial Lawyers' Award for Excellence in Advocacy.

Ms. Alex earned a J.D. from McGeorge Law School and a Masters Degree in Psychology from California State College. She is admitted to practice in New York, California, the United States Supreme Court, and in Federal Courts in several jurisdictions.

MARK S. ARISOHN, PARTNER

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Mark S. Arisohn, a trial lawyer since 1973, concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

For the past 37 years, Mr. Arisohn's extensive trial experience in jury and non-jury matters has been in the state and federal courts nationwide. He has also argued in the New York Court of Appeals, the United States Court of Appeals for the Second Circuit and appeared before the United States Supreme Court in the landmark insider trading case of *Chiarella v. United States.*

Most recently, Mr. Arisohn was lead trial counsel in a securities class action against BankAtlantic Bancorp, Inc. and several of its highest officers. After a four-week trial in the federal court in Miami, the jury found BankAtlantic and its two senior officers liable for securities fraud because they intentionally lied about and failed to disclose the extent of the bank's lending risk. This was only the 10th securities fraud class action to go to trial since passage of the Private Securities Litigation Reform Act in 1995 and is the first securities class action case arising out of the financial crisis to go to jury verdict. Following the trial, *The*

AmLaw Litigation Daily named Mr. Arisohn "Litigator of the Week." On April 25, 2011, Judge Ungaro vacated the jury's verdict. Lead Counsel is looking forward to a favorable review of the issues by the appellate court.

Mr. Arisohn's areas of practice have been wide-ranging, including prosecuting and defending individuals and corporations in cases involving securities fraud, mail and wire fraud, bank fraud and RICO violations. He has represented public officials, individuals and companies in the construction and securities industries as well as professionals accused of regulatory offenses and professional misconduct. He also has appeared as trial counsel for both plaintiffs and defendants in civil fraud matters and corporate and business commercial matters, including shareholder litigation, business torts, unfair competition and misappropriation of trade secrets.

A prominent trial lawyer, Mr. Arisohn has also authored numerous articles including "Electronic Eavesdropping," *New York Criminal Practice*, LEXIS - Matthew Bender, 2005; "Criminal Evidence," *New York Criminal Practice*, Matthew Bender, 1986; and "Evidence," New York Criminal Practice, Matthew Bender, 1987. He was a contributing author of *Business Crime*, Matthew Bender, 1981.

Mr. Arisohn is an active member of the Association of the Bar of the City of New York and has served on its Judiciary Committee, the Committee on Criminal Courts, Law and Procedure, the Committee on Superior Courts and the Committee on Professional Discipline. He serves as a mediator for the Complaint Mediation Panel of the Association of the Bar of the City of New York where he mediates attorney client disputes and as a hearing officer for the New York State Commission on Judicial Conduct where he presides over misconduct cases brought against judges.

He earned his B.S. and M.S. degrees from Cornell University in 1968 and 1969 and received his J.D. from Columbia University School of Law in 1972.

Mr. Arisohn is admitted to practice in New York and the District of Columbia as well as before the United States District Courts for the Southern, Eastern and Northern Districts of New York; the Northern District of Texas; the Northern District of California; the United States Court of Appeals for the Second Circuit; and the United States Supreme Court.

Mr. Arisohn has received a rating of AV from the publishers of the Martindale-Hubbell directory.

CHRISTINE S. AZAR, PARTNER

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A seasoned litigator of investor rights, Christine S. Azar is the partner in charge of Labaton Sucharow LLP's Delaware office.

Prior to joining Labaton Sucharow, Ms. Azar practiced corporate litigation at Blank Rome LLP with a primary focus on corporate governance, shareholders' rights and other disputes in courts nationwide as well as in the Delaware Court of Chancery.

Ms. Azar began her career at Grant & Eisenhofer, P.A., where she specialized in the representation of institutional investors in complex federal and state securities and corporate governance actions.

Ms. Azar is the co-author of the following articles: "M&A on the rise - and litigation may well follow," *The National Law Journal*, April 4, 2011; "Running on Empty," *The Deal Magazine*, February 18, 2011; "Appointment of Lead Plaintiff Under the Private Securities Litigation Reform Act: Update 2001", 1269 PLI/Corp 689 (September 2001); and "Appointment

of Lead Plaintiff Under the Private Securities Litigation Reform Act: Update 2000", 199 PLI/Corp 455 (September 2000).

Ms. Azar earned a B.S., *cum laude*, from James Madison University in 1988. She earned a J.D., *cum laude*, from the University of Notre Dame Law School in 1991.

Ms. Azar is admitted to practice in Delaware, New Jersey and Pennsylvania.

ERIC J. BELFI, PARTNER

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Eric J. Belfi is an accomplished litigator in a broad range of commercial matters. He concentrates his practice in the investigation and initiation of securities and shareholder class actions, with an emphasis on the representation of major international and domestic pension funds and other institutional investors.

Prior to entering private practice, Mr. Belfi served as an Assistant Attorney General for the State of New York and an Assistant District Attorney for the County of Westchester. As a prosecutor, Mr. Belfi investigated and prosecuted numerous white-collar criminal cases, including securities law violations and environmental crimes. In this capacity, he presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Mr. Belfi is a regular speaker and author on issues involving shareholder litigation, particularly as it relates to international institutional investors. He co-authored "The Proportionate Trading Model: Real Science or Junk Science?," 52 *Cleveland St. L. Rev.* 391 (2004-05) and "International Strategic Partnerships to Prosecute Securities Class Actions," *Investment & Pensions Europe*. Over the last several years, Mr. Belfi has served as a panelist at programs on U.S. class actions in numerous European countries. He also participated in a panel

discussion regarding socially responsible investments for public pension funds during the New England Public Employees' Retirement Systems Forum.

Mr. Belfi received a B.A. from Georgetown University in 1992 and a J.D. from St. John's University School of Law in 1995. He is an associate prosecutor for the Village of New Hyde Park, and is also a member of the Federal Bar Council and the Association of the Bar of the City of New York.

Mr. Belfi is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, the District of Colorado, the District of Nebraska, and the Eastern District of Wisconsin.

JOEL H. BERNSTEIN, PARTNER

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With more than 30 years' experience in the area of complex litigation, Joel H. Bernstein concentrates his practice in the protection of investors who have been victimized by securities fraud and breach of fiduciary duty. His expertise in the area of shareholder litigation has resulted in the recovery of hundred of millions of dollars in damages to wronged investors.

Mr. Bernstein advises numerous large public pension funds, hedge funds, other institutional investors and individual investors with respect to securities litigation in the federal and state courts as well as in arbitration proceedings before the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations.

Mr. Bernstein has played a central role in numerous high profile cases, including *In re Paine Webber Incorporated Limited Partnerships Litigation*, $200 million settlement; *In re Prudential Securities Incorporated Limited Partnerships Litigation*, $130 million settlement; *In re Prudential Bache Energy Income Partnerships Securities Litigation*, $91 million settlement;

Shea v. New York Life Insurance Company, $92 million settlement; and, *Saunders et al. v. Gardner*, $10 million -- then the largest punitive damage award in the history of the NASD. Most recently, Mr. Bernstein was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, a figure representing one of the largest known settlements or judgments in a securities fraud litigation based upon options backdating.

A leading figure in his area of practice, Mr. Bernstein is frequently sought out by the press to comment on securities law and also has authored numerous articles on related issues, including "Stand Up to Your Stockbroker, Your Rights As An Investor." He is a member of the American Bar Association and the New York County Lawyers' Association.

Mr. Bernstein earned a J.D. from Brooklyn Law School in 1975 and received his undergraduate degree from Queens College in 1971.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second and Third Circuits. He is a member of the American Bar Association and the New York County Lawyers' Association.

Mr. Bernstein has received a rating of AV from the publishers of the Martindale-Hubbell directory.

JAVIER BLEICHMAR, PARTNER

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Javier Bleichmar concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Since joining Labaton Sucharow, Mr. Bleichmar was instrumental in securing a $77 million settlement in the *In re St. Paul Travelers Securities Litigation II* on behalf of the Lead Plaintiff, the Educational Retirement Board of New Mexico.

Most recently, he has been a member of the team prosecuting securities class actions against British Petroleum and The Bear Stearns Companies, Inc.

Mr. Bleichmar is very active in educating European institutional investors on developing trends in the law, particularly the ability of international investors to participate in securities class actions in the United States. Through these efforts, many of Mr. Bleichmar's European clients were able to join the Foundation representing investors in the first securities class action settlement under a recently enacted Dutch statute against Royal Dutch Shell.

Prior to joining Labaton Sucharow, Mr. Bleichmar practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted securities actions on behalf of institutional investors. He was actively involved in the *In re Williams Securities Litigation*, which resulted in a $311 million settlement, as well as securities cases involving Lucent Technologies, Inc., Conseco, Inc. and Biovail Corp.

Mr. Bleichmar graduated from Phillips Academy, Andover in 1988, earned a B.A. from the University of Pennsylvania in 1992 and a J.D. from Columbia University Law School in 1998. He was a managing editor of the *Journal of Law and Social Problems*. Additionally, he was a Harlan Fiske Stone Scholar. As a law student, Mr. Bleichmar served as a law clerk to the Honorable Denny Chin, United States District Court Judge for the Southern District of New York.

After law school, Mr. Bleichmar authored the article "Deportation As Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law,"*14 Georgetown Immigration Law Journal* 115 (1999).

Mr. Bleichmar is admitted to practice in New York as well as before the following United States District Courts: the Southern and Eastern Districts of New York, the Northern District of

Oklahoma, the Western District of Washington, the Southern District of Florida, the Eastern District of Missouri, and the Northern District of Illinois. He also is admitted to practice before the United States Court of Appeals for the Second, Eighth and Ninth Circuits.

Mr. Bleichmar is a native Spanish speaker and fluent in French.

THOMAS A. DUBBS, PARTNER

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Thomas A. Dubbs specializes in the representation of institutional investors including pension funds in securities fraud and other types of litigation. A recognized leader in the field, Mr. Dubbs represented the first major private institutional investor to become a lead plaintiff in a class action under the Private Securities Litigation Reform Act.

Mr. Dubbs currently serves as Lead or Co-Lead Counsel in federal securities class actions against AIG, Wellcare and Bear Stearns, among others.

Most recently, Mr. Dubbs has played a central role in numerous high profile cases, including *In re HealthSouth Securities Litigation*, $804.5 million settlement; *In re Broadcom Corp. Securities Litigation*, $160.5 million settlement; *In re Vesta Insurance Group, Inc. Securities Litigation*, $79 million settlement; and *In re St. Paul Travelers II Securities Litigation*, $77 million settlement.

Representing an affiliate of the Amalgamated Bank, the largest labor-owned bank in the United States, a Labaton Sucharow team led by Mr. Dubbs successfully litigated a class action against Bristol-Myers Squibb, which resulted in a settlement of $185 million and major corporate governance reforms.

Mr. Dubbs is the author of "Shortsighted?," *Investment Dealers' Digest*, May 29, 2009; "A Scotch Verdict on 'Circularity' and Other Issues," 2009 *Wis. L. Rev.* 455 n.2 (2009); and

several columns in UK-wide pensions publications focusing on securities class actions and corporate governance. He also is the co-author of the following articles: "In Debt Crisis, An Arbitration Alternative," *The National Law Journal*, March 16, 2009; "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 1, 2009; "Auditor Liability in the Wake of the Subprime Meltdown," *BNA's Accounting Policy & Practice Report*, November 14, 2009; and "US Focus: Time for Action," *Legal Week*, April 17, 2008.

Mr. Dubbs frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems and the Council of Institutional Investors.

Prior to joining Labaton Sucharow, Mr. Dubbs was Senior Vice President & Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated where he represented the firm in many class actions, including the First Executive and Orange County litigations. Before joining Kidder, Mr. Dubbs was head of the litigation department at Hall, McNicol, Hamilton & Clark, where he was the principal partner representing Thomson McKinnon Securities Inc. in litigation matters including class actions such as the *Petro Lewis* and *Baldwin United* litigations.

Mr. Dubbs earned a B.A. and a J.D. from the University of Wisconsin-Madison in 1969 and 1974, respectively. He received an M.A. from the Fletcher School of Law & Diplomacy, Tufts University in 1971.

Mr. Dubbs is admitted to practice in New York as well as before the United States District Court for the Southern District of New York; the United States Courts of Appeals for the Second, Ninth and Eleventh Circuits; and the United States Supreme Court. He is a member of

the New York State Bar Association, the Association of the Bar of the City of New York, and the American Society of International Law.

Mr. Dubbs has been recognized by *The National Law Journal*, *Chambers and Partners USA* and the *Lawdragon 500*. Mr. Dubbs has received a rating of AV from the publishers of the Martindale-Hubbell directory.

JOSEPH A. FONTI, PARTNER

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Joseph A. Fonti concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Fonti is actively involved in prosecuting *In re HealthSouth Securities Litigation*, *In re Broadcom Corp. Securities Litigation*, *In re Celestica Inc. Securities Litigation* and *Caisse de Depot du Quebec v. Vivendi et al*.

Mr. Fonti has successfully litigated complex civil and regulatory securities matters, including obtaining a favorable judgment after trial. Prior to joining Labaton Sucharow, Mr. Fonti was an attorney at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted securities class actions on behalf of institutional investors, including class actions involving WorldCom, Bristol-Myers, Omnicom, Biovail, and the mutual fund industry scandal. Mr. Fonti's work on these cases contributed to historic recoveries for shareholders, including the $6.15 billion recovery in the WorldCom litigation and the $300 million recovery in the Bristol-Myers litigation, alleging accounting fraud and improper inventory practices.

Mr. Fonti began his legal career at Sullivan & Cromwell, where he represented several Fortune 500 corporations, focusing on securities matters and domestic and international commercial law. Mr. Fonti also represented clients in complex investigations conducted by federal regulators, including the U.S. Securities and Exchange Commission. Over the past

several years, he has represented victims of domestic violence in affiliation with inMotion, an organization that provides *pro bono* legal services to indigent women.

Mr. Fonti earned a B.A., *cum laude*, from New York University in 1996 and a J.D. from New York University School of Law in 1999, where he was active in the Marden Moot Court Competition and served as a Student Senator-at-Large of the NYU Senate. As a law student, he served as a law clerk to the Honorable David Trager, United States District Court Judge for the Eastern District of New York.

Mr. Fonti is admitted to practice in New York, as well as before the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the Ninth and Eleventh Circuits and the United States Supreme Court.

JONATHAN GARDNER, PARTNER

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Jonathan Gardner concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Mr. Gardner has participated in many of the Firm's significant matters including *In re MF Global Securities Litigation*, which resulted in a recovery of $90 million for investors. Mr. Gardner also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in an action against the Fund's former independent auditor and a member of the Fund's general partner as well as numerous former limited partners who received excess distributions. He has successfully recovered over $5.2 million for the Successor Liquidating Trustee from overwithdrawn limited partners and $29.9 million from the former auditor.

Mr. Gardner has been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million

settlement), *In re SafeNet, Inc. Securities Litigation* ($25 million settlement), and *In re Semtech Securities Litigation* ($20 million settlement). He also was involved in *In re Mercury Interactive Corp. Securities Litigation*, which settled for $117.5 million, a figure representing one of the largest known settlements or judgments in a securities fraud litigation based upon options backdating.

In 2005, Mr. Gardner litigated claims of securities fraud, common law fraud, breach of contract, defamation, and civil RICO violations against CFI Mortgage Inc. and its principals in federal court. Following a five-day jury trial, Mr. Gardner secured a verdict of over $50 million.

Prior to practicing securities litigation, Mr. Gardner was actively involved in litigating all aspects of commercial and business disputes from pre-dispute investigation and settlement to trials and appeals before state and federal courts, as well as arbitration and mediation forums.

Mr. Gardner is the co-author of "Pre-Confirmation Remedies to Assure Collection of Arbitration Rewards," *New York Law Journal*, October 12, 2010.

Mr. Gardner earned a B.S.B.A. from American University in 1987 and a J.D. from St. John's University Law School in 1990.

Mr. Gardner is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the United States Court of Appeals for the Ninth Circuit. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

DAVID J. GOLDSMITH, PARTNER

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David J. Goldsmith has more than ten years of experience representing institutional and individual investors in securities litigation.

Most recently, Mr. Goldsmith was an integral member of the team representing the New York State Common Retirement Fund and the New York City Pension Funds as lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*. The $624 million settlement is one of the largest securities fraud settlements in U.S. history.

Mr. Goldsmith also represents the Genesee County (Mich.) Employees' Retirement System as a lead plaintiff in several securities matters including actions against Spectranetics Corporation, Merck & Co., and CBeyond, Inc., and previously against Transaction Systems Architects, Inc. He was instrumental in achieving a significant settlement in an action alleging stock option backdating at American Tower Corporation, and was a member of the team representing the Connecticut Retirement Plans and Trust Funds in an action against Waste Management, Inc. that resulted in one of the largest securities class action settlements ever achieved up to that time.

Mr. Goldsmith played a key role in a series of cases alleging that mutual funds sold by Van Kampen, Morgan Stanley and Eaton Vance defrauded investors by overpricing senior loan interests. Mr. Goldsmith obtained a decision in one of these actions excluding before trial certain opinions of a nationally recognized economist who regularly serves as a defense expert in such cases. In 2001, Mr. Goldsmith obtained one of the earliest decisions finding that a class action had been improperly removed under the Securities Litigation Uniform Standards Act of 1998.

Mr. Goldsmith has lectured frequently on class actions and securities litigation for continuing legal education programs and investment symposia.

Mr. Goldsmith earned B.A. and M.A. degrees from the University of Pennsylvania. He received a J.D. from the Benjamin N. Cardozo School of Law, where he was managing editor of

the *Cardozo Arts & Entertainment Law Journal*. Mr. Goldsmith served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York.

He is admitted to practice in New York and New Jersey as well as before the United States District Courts for the Southern and Eastern Districts of New York; the District of New Jersey; the District of Colorado, the Western District of Michigan; and the United States Courts of Appeals for the First, Second, Fifth, Eighth and Ninth Circuits.

LOUIS GOTTLIEB, PARTNER

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Lou Gottlieb has successfully represented institutional and individual investors in numerous securities and consumer class action cases, resulting in cumulative settlements well in excess of $500 million.

Mr. Gottlieb was an integral part of the Firm's representation of the Connecticut Retirement Plans and Trust Funds in *In re Waste Management, Inc. Securities Litigation*, which resulted in a $457 million settlement, one of the largest settlements ever achieved in a securities class action. The settlement also included corporate governance enhancements, including an agreement by management to support a campaign to obtain shareholder approval of a resolution to declassify its board of directors, and a resolution to encourage and safeguard whistleblowers among the company's employees.

Mr. Gottlieb has led litigation teams in the *Metromedia Fiber Networks*, *Maxim Pharmaceuticals*, and *PriceSmart* securities fraud class action litigations as well as a consumer breach of contract class action against New York Life Annuities. He is also helping to lead major class action cases against the company and related defendants in *In re American*

International Group Inc. Securities Litigation, *In re Royal Bank of Scotland Group plc Securities Litigation*, and in *In re Satyam Computer Services, Ltd. Securities Litigation*.

Mr. Gottlieb has made presentations on punitive damages at Federal Bar Association meetings and has often spoken on securities class actions for institutional investors.

Mr. Gottlieb graduated first in his class from St. John's School of Law. Prior to joining Labaton Sucharow, he clerked for the Hon. Leonard B. Wexler of the Eastern District of New York, and he was a litigation associate with Skadden Arps Slate Meagher & Flom. He has also enjoyed a successful career as a public school teacher and as a restaurateur.

Mr. Gottlieb is admitted to practice in New York and Connecticut as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Fifth and Seventh Circuits.

JAMES W. JOHNSON, PARTNER

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James W. Johnson specializes in complex litigation, with primary emphasis on class actions involving securities fraud.

Mr. Johnson has successfully litigated a number of high profile securities and RICO class actions, including: *In re Bristol-Myers Squibb Co. Securities Litigation*, in which the Court, after approving a settlement of $185 million coupled with significant corporate governance reforms, recognized plaintiffs' counsel as "extremely skilled and efficient"; *In re HealthSouth Corp. Securities Litigation*, which resulted in a total settlement of $804.5 million; *In re Vesta Insurance Group, Inc. Securities Litigation*, which resulted in a recovery of almost $80 million for the plaintiff class; and *Murphy v. Perelman*, which, along with a companion federal action, *In re National Health Laboratories, Inc. Securities Litigation*, brought by Co-Counsel, resulted in a

recovery of $80 million. *In County of Suffolk v. Long Island Lightning Co.*, Mr. Johnson represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial, which resulted in a $400 million settlement. The Second Circuit, in awarding attorneys' fees to Plaintiff, quoted the trial judge, Honorable Jack B. Weinstein, as stating "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried."

Mr. Johnson also assisted in prosecuting environmental damage claims on behalf of Native Americans resulting from the Exxon Valdez oil spill.

He is the co-author of "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 2009.

Mr. Johnson received a B.A. from Fairfield University in 1977 and a J.D. from New York University School of Law in 1980.

He is admitted to practice in New York and Illinois as well as before the United States District Courts for the Southern, Eastern and Northern Districts of New York; the Northern District of Illinois; the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh and Eleventh Circuits; and the United States Supreme Court.

He is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee.

Mr. Johnson has received a rating of AV from the publishers of the Martindale-Hubbell directory.

CHRISTOPHER J. KELLER, PARTNER

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Christopher J. Keller concentrates his practice in sophisticated securities class action litigation in federal courts throughout the country.

Mr. Keller has served as lead counsel in over a dozen options backdating class actions filed under the federal securities laws. He was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, which is one of the largest settlements to date in an options backdating class action. He also serves as Co-Lead Counsel in *In re Satyam Computer Services, Ltd. Securities Litigation*.

Mr. Keller was a member of the trial team that successfully litigated the *In re Real Estate Associates Limited Partnership Litigation* in the United States District Court for the Central District of California. The six-week jury trial resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995.

Mr. Keller is very active in investigating and initiating securities and shareholder class actions. He also concentrates his efforts on educating institutional investors on developing trends in the law and new case theories. Mr. Keller is a regular speaker at institutional investor gatherings as well as a frequent speaker at continuing legal education seminars relating to securities class action litigation.

Mr. Keller is the co-author of the following articles: "The Benefits of Investor Protection," *Law360*, October 11, 2011; "SEC Contemplating Governance Reforms," Executive Counsel, December 2010; "Is the Shield Beginning to Crack?," *New York Law Journal*, November 15, 2010; "Say What? Pay What? Real World Approaches to Executive Compensation Reform," *Corporate Counsel*, August 5, 2010; "Reining in the Credit Ratings Industry," *New York Law Journal*, January 11, 2010; "Japan's Past Recession Provides a Cautionary Tale," *The National Law Journal*, April 13, 2009; "Balancing the Scales: The Use of Confidential Witnesses in Securities Class Actions," *BNA's Securities Regulation & Law Report*,

January 19, 2009; "Eyeing Executive Compensation," *The National Law Journal*, November 17, 2008; and "Tellabs: PSLRA Pleading Test Comparative, Not Absolute," *New York Law Journal*, October 3, 2007.

Mr. Keller earned a B.S. from Adelphi University in 1993 and a J.D. from St. John's University School of Law in 1997.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, the District of Colorado and the United States Supreme Court. Mr. Keller is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association.

EDWARD LABATON, PARTNER

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An accomplished trial lawyer and Partner with the Firm, Edward Labaton has devoted his 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court. Mr. Labaton has played a lead role as plaintiffs' class counsel in a number of successfully prosecuted high profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Mr. Labaton has been President of the Institute for Law and Economic Policy since its founding in 1996. The Institute co-sponsors at least one annual symposium with a major law school dealing with issues relating to the civil justice system. In 2010 he was appointed to the

newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Mr. Labaton is also a member of the Advisory Committee of the Weinberg Center for Corporate Governance of the University of Delaware, a Director of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Mr. Labaton is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council and the New York State Bar Association, where he has served as a member of the House of Delegates.

Mr. Labaton is the co-author of "It's Time to Resuscitate the Shareholder Derivative Action," *The Panic of 2008: Causes, Consequences, and Implications for Reform*, Lawrence Mitchell and Arthur Wilmarth, Jr., eds, (Edward Elgar, 2010).

For more than 30 years, he has lectured in the areas of federal civil litigation, securities litigation and corporate governance. Mr. Labaton graduated *cum laude* with a B.B.A. from

Baruch College, City College of New York in 1952 and earned his LL.B. from Yale University in 1955.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Central District of Illinois; the United States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits; and the United States Supreme Court.

Mr. Labaton has received a rating of AV from the publishers of the Martindale-Hubbell directory.

CHRISTOPHER J. MCDONALD, PARTNER

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Christopher J. McDonald, a member of the Firm's Antitrust Practice Group, represents businesses, associations and individuals injured by anticompetitive activities. Mr. McDonald's practice also involves prosecuting complex securities fraud cases on behalf of institutional investors.

In the antitrust field, Mr. McDonald currently represents end-payors (e.g., union health and welfare funds and consumers) of the prescription drug TriCor® in the *In re TriCor Indirect Purchaser Antitrust Litigation*. The drug's manufacturer and U.S. marketer are alleged to have unlawfully impeded the introduction of lower-priced generic alternatives in violation of federal and state antitrust laws. The case is set to go to trial in early November 2008.

In the securities field, Mr. McDonald is currently prosecuting *In re Schering-Plough Corporation/ENHANCE Securities Litigation* to recover losses investors suffered after the disclosure of negative clinical trial data for Vytorin®, a fixed-dose combination pill comprised of ezitimibe (Schering-Plough's Zetia®) and simvastatin (Merck & Co., Inc.'s Zocor®). He was

also part of the team that litigated *In re Bristol-Myers Squibb Securities Litigation*, where Labaton Sucharow was able to secure a $185 million settlement and meaningful corporate governance reforms on behalf of Bristol-Myers Squibb shareholders following negative disclosures about omapatrilat, an experimental hypertension drug. The settlement with BMS is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not involve a restatement of financial results.

A litigator for most of his career, Mr. McDonald also has in-house and regulatory experience. As a senior attorney with a telecommunications company he regularly addressed legal, economic and public policy issues before state public utility commissions.

Mr. McDonald received his undergraduate degree, *cum laude*, from Manhattan College in 1985, and a J.D. from Fordham University School of Law in 1992, where he was on the *Law Review*.

Mr. McDonald is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Western District of Michigan; and the United States Courts of Appeals for the Second, Third and Federal Circuits. He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

JONATHAN M. PLASSE, PARTNER

jplasse@labaton.com

An accomplished litigator, Jonathan M. Plasse has devoted over 30 years of his practice to the prosecution of complex cases involving securities class action, derivative, transactional, and consumer litigation. Currently, he is prosecuting securities class actions against Schering-Plough, Fannie Mae and Morgan Stanley.

Most recently, Mr. Plasse was an integral member of the team representing the New York State Common Retirement Fund and the New York City Pension Funds as lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*. The $624 million settlement is one of the largest securities fraud settlements in U.S. history. His other recent successes include serving as Co-Lead Counsel in *In re General Motors Corp. Securities Litigation* ($303 million settlement) and *In re El Paso Corporation Securities Litigation* ($285 million settlement). Mr. Plasse also served as Lead Counsel in *In re Waste Management Inc. Securities Litigation*, where he represented the Connecticut Retirement Plans and Trusts Funds, and obtained a settlement of $457 million.

Mr. Plasse serves as the Chair of the Securities Litigation Committee of the Association of the Bar of the City of New York. He has also chaired and been a regular speaker at continuing legal education seminars relating to securities class action litigation.

Mr. Plasse received a B.A. degree, *magna cum laude*, from the State University of New York in Binghamton in 1972. He received a J.D. from Brooklyn Law School in 1976, where he served as a member of the *Brooklyn Journal of International Law*.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.

Mr. Plasse has received a rating of AV from the publishers of the Martindale-Hubbell directory.

HOLLIS SALZMAN, PARTNER

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Hollis Salzman is Managing Chair of the Firm's Antitrust Practice Group. She primarily represents clients in cases involving federal antitrust law violations. Her work in the area of antitrust law has been recognized in the 2008 Plaintiffs' Hot List published by *The National Law Journal*. She is also involved in the Firm's securities litigation practice group where she represents institutional investors in portfolio monitoring and securities litigation. Some of Ms. Salzman's clients include MARTA and the City of Macon, Georgia.

Ms. Salzman is actively engaged in the prosecution of major antitrust class actions pending throughout the United States. She is presently Co-Lead Counsel in many antitrust cases, including: *In re Air Cargo Shipping Services Antitrust Litigation*, *In re Marine Hoses Antitrust Litigation*, and *In re Puerto Rican Cabotage Antitrust Litigation*.

She also served as Co-Lead Counsel in several antitrust class actions which resulted in extraordinary settlements for class members, such as *In re Air Cargo Shipping Services Antitrust Litigation* ($85 million partial settlement from certain defendants); *In re Abbott Labs Norvir Antitrust Litigation* ($10 million settlement); *In re Buspirone Antitrust Litigation* ($90 million settlement); *In re Lorazepam & Clorazepate Antitrust Litigation* ($135.4 million settlement) and *In re Maltol Antitrust Litigation* and *Continental Seasonings Inc. v. Pfizer, Inc., et al.*, ($18.45 million settlement). Additionally, she was principally responsible for administering a $65 million settlement with certain brand-name prescription drug manufacturers where their conduct allegedly caused retail pharmacy customers to overpay for their prescription drugs.

Ms. Salzman is the co-author of the following articles: "Iqbal And The Twombly Pleading Standard," *CompLaw 360*, June 15, 2009; "Analysis of Abbott Laboratories Antitrust

Litigation," *Pharmaceutical Law & Industry Report*, June 20, 2008; and "The State of State Antitrust Enforcement," NYSBA *NYLitigator*, Winter 2003, Vol. 8, No. 1.

She is a Co-Chair of the New York State Bar Association, Commercial & Federal Litigation Section – Antitrust Committee, and a member of the Association of the Bar of the City of New York Antitrust Committee and Women's Antitrust Bar Association. Ms. Salzman also provides *pro bono* representation to indigent and working-poor women in matrimonial and family law matters.

Ms. Salzman received a J.D. from Nova University School of Law in 1992 and a B.A. in Economics from Boston University in 1987.

Ms. Salzman is admitted to practice in New York, New Jersey, and Florida as well as before the United States District Courts for the Southern and Eastern Districts of New York; the Southern and Middle Districts of Florida; and the United States Court of Appeals for the Eleventh Circuit.

IRA A. SCHOCHET, PARTNER

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Ira A. Schochet has over 20 years of experience in commercial litigation, with primary emphasis on class actions involving securities fraud.

Mr. Schochet has played a leading role in litigation resulting in multimillion dollar recoveries for class members in cases such as those against Countrywide Financial Corp., Caterpillar, Inc., Spectrum Information Technologies, Inc., InterMune, Inc., and Amkor Technology, Inc. In *Kamarasy v. Coopers & Lybrand*, a securities fraud class action, Mr. Schochet led a team that won a settlement equal to approximately 75% of the highest possible damages that class members could have recovered. The Court in that case complimented him for

"the superior quality of the representation provided to the class." In approving the settlement he achieved in the *InterMune* litigation, the Court complimented Mr. Schochet's ability to obtain a significant cash benefit for the class in a very efficient manner, saving the class from additional years of time, expense and substantial risk. Mr. Schochet represented one of the first institutional investors acting as a Lead Plaintiff in a post-Private Securities Litigation Reform Act case, *STI Classic Funds v. Bollinger, Inc.*, and obtained one of the first rulings interpreting that statute's intent provision in a manner favorable to investors.

From 2009-2011, Mr. Schochet served as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation.

Since 1996, Mr. Schochet has acted as chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. In that capacity, he has served on the Executive Committee of the Section and was the primary author of articles and reports on a wide variety of issues relating to class action procedure. Such issues include revisions to that procedure proposed over the years by both houses of the United States Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include "Proposed Changes in Federal Class Action Procedure," "Opting Out On Opting In," and "The Interstate Class Action Jurisdiction Act of 1999." He also has lectured extensively on securities litigation at continuing legal education seminars.

Mr. Schochet earned a B.A., *summa cum laude*, from the State University of New York at Binghamton in 1977, and a J.D. from Duke University School of Law in 1981.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Central District of Illinois, the Northern District of Texas, and the United States Court of Appeals for the Second Circuit.

Mr. Schochet has received a rating of AV from the publishers of the Martindale-Hubbell directory.

MICHAEL W. STOCKER, PARTNER

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Michael W. Stocker represents institutional investors in commercial litigation, shareholder advocacy, and corporate governance matters. His work has won repeated accolades in *The National Law Journal*'s Plaintiffs' Hot List.

Earlier in his career, Mr. Stocker worked as a senior staff attorney with the United States Court of Appeals for the Ninth Circuit, and completed a legal externship with United States Magistrate Judge (now District Judge) Phyllis J. Hamilton of the Northern District of California.

Mr. Stocker's recent publications include: "What is the Most Important Volcker Rule Issue that Regulators Must Address Next Year?," *Bloomberg Law*, January 3, 2012; "A scandal like Olympus can happen in the U.S.," *Institutional Investor*, December 17, 2011;"Proposals to reform credit-rating firms falling short," *Pensions & Investments*, October 31, 2011; "The Benefits of Investor Protection," *Law360*, October 11, 2011; "U.S. Changing to Looser Accounting Standards," *Executive Counsel*, August/September 2011; "Government Reliance on Private Litigants Diverges With Court Trends," *New York Law Journal*, September 9, 2011; "Handle with Care," Corporate Counsel, July 2011; "Shell Game," *The Deal*, June 10, 2011; "Are Regulators Retreating From Dodd-Frank?," *Institutional Investor*, May 24, 2011; "Resolving the deadlock over credit ratings," *Pensions & Investments*, April 4, 2011; "M&A on

the rise - and litigation may well follow," *The National Law Journal*, April 4, 2011; "Running on Empty," *The Deal Magazine*, February 18, 2011; "SEC Contemplating Governance Reforms," *Executive Counsel*, December 2010; "SEC paper focuses on proxy voting shortcomings," *The National Law Journal*, November 15, 2010; "Is the Shield Beginning to Crack?," *New York Law Journal*, November 15, 2010; "What Wall Street Can Learn From the BP Spill," *Institutional Investor*; November 1, 2010; "Automated Trading Leaving Retail Investors In The Dust," (Opinion), Forbes.com, October 15, 2010; "Toyota Debacle Spurs Reform Questions," *Directorship*, August 9, 2010; "Say What? Pay What? Real World Approaches to Executive Compensation Reform," *Corporate Counsel*, August 5, 2010; "SEC Measures To Prevent Flash Crashes Are Sensible, But Are They Enough?" (Opinion), Forbes.com, May 20, 2010; "A Recall for Toyota's Corporate Governance?" (Opinion), *Pensions & Investments*, April 5, 2010,"Reining in the Credit Ratings Industry," *New York Law Journa*l, January 11, 2010; and "It's Time to Resuscitate the Shareholder Derivative Action," *The Panic of 2008: Causes, Consequences, and Implications for Reform*, Lawrence Mitchell and Arthur Wilmarth, Jr., eds, (Edward Elgar, 2010).

Mr. Stocker has offered financial commentary and analysis to Fox Business, BBC4 Radio, and on the Canadian Broadcasting Corporation's Lang & O'Leary Exchange, and is a frequent speaker and panelist on topics relating to financial reform.

Mr. Stocker is also the Chief Contributor to "Eyes On Wall Street" (www.eyesonwallstreet.com), Labaton Sucharow's blog on economics, corporate governance, and other issues of interest to investors.

Mr. Stocker earned a B.A. from the University of California, Berkeley, in 1989, a J.D. from the University of California, Hastings College of Law, in 1995, and a Master of Criminology degree from the Law Department of the University of Sydney in 2000.

He is admitted to practice in California and New York as well as before the United States District Courts for the Northern and Central Districts of California, the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Eighth and Ninth Circuits. Mr. Stocker is a member of the National Association of Public Pension Attorneys (NAPPA).

JORDAN A. THOMAS, PARTNER

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Jordan A. Thomas exclusively concentrates his practice on investigating and prosecuting securities fraud on behalf of whistleblowers and institutional clients. As Chair of the Firm's Whistleblower Representation practice, Mr. Thomas protects and advocates for whistleblowers throughout the world who have information about potential violations of the federal securities laws. He strongly believes that whistleblowers play a critical role in protecting investors and is deeply committed to helping courageous whistleblowers come forward and report securities violations to law enforcement authorities without having personal or professional regrets.

A career public servant and seasoned trial lawyer, Mr. Thomas joined Labaton Sucharow from the Securities and Exchange Commission where he served as an Assistant Director and, previously, as an Assistant Chief Litigation Counsel in the Division of Enforcement. He had a leadership role in the development of the Commission's Whistleblower Program, including leading fact-finding visits to other federal agencies with whistleblower programs, drafting the proposed legislation and implementing rules and briefing House and Senate staffs on the

proposed legislation. He is also the principal architect and first National Coordinator of the Commission's Cooperation Program, an initiative designed to facilitate and incentivize individuals and companies to self-report securities violations and participate in its investigations and related enforcement actions. In recognition of his important contributions to these national initiatives, while at the Commission, Mr. Thomas was a recipient of the Arthur Mathews Award, which recognizes "sustained demonstrated creativity in applying the federal securities laws for the benefit of investors," and, on two occasions, the Law and Policy Award.

Throughout his tenure at the Commission, Mr. Thomas was assigned to many of the Commission's highest-profile matters such as those involving Enron and Fannie Mae. He successfully investigated, litigated and supervised a wide variety of enforcement matters involving violations of the Foreign Corrupt Practices Act, issuer accounting fraud and other disclosure violations, audit failures, insider trading, market manipulations, offering frauds and broker-dealer, investment adviser and investment company violations. His cases resulted in monetary recoveries for harmed investors in excess of $35 billion.

Prior to joining the Commission, Mr. Thomas was a Trial Attorney at the Department of Justice, where he specialized in complex financial services litigation involving the FDIC and Office of Thrift Supervision. He began his legal career as a Navy Judge Advocate on active duty and continues to serve as a senior officer in the Reserve Law Program. Earlier, Mr. Thomas worked as a stockbroker.

Throughout his career, Mr. Thomas has received numerous awards and honors. At the Commission, he was the recipient of four Chairman's Awards, four Division Director's Awards and a Letter of Commendation from the United States Attorney for the District of Columbia. He is also a decorated military officer, who has twice been awarded the Rear Admiral Hugh H.

Howell Award of Excellence—the highest award the Navy can bestow upon a reserve judge advocate.

Mr. Thomas is a frequent speaker at prominent law schools and legal conferences on securities enforcement and whistleblower issues.

STEPHEN W. TOUNTAS, PARTNER

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Stephen W. Tountas concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mr. Tountas is actively involved in prosecuting *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, *Medoff v. CVS Caremark Corporation et al*, and two individual actions related to *In re Adelphia Communications Corp. Securities & Derivative Litigation*.

Since joining Labaton Sucharow, Mr. Tountas has been responsible for prosecuting several of the Firm's options backdating cases, including *In re Broadcom Corp. Securities Litigation* ($160.5 million settlement), *In re Amkor Technologies Inc. Securities Litigation* ($11.25 million settlement), *In re HCC Insurance Holdings, Inc. Securities Litigation* ($10 million settlement), and *In re American Tower Corp. Securities Litigation* ($14 million settlement). Among other matters, Mr. Tountas was also a member of the team responsible for prosecuting *In re VERITAS Software Corp. Securities Litigation*, which settled for $21.5 million.

Prior to joining Labaton Sucharow, Mr. Tountas practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP. During his time there, he prosecuted the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of $92.4 million, as well as securities cases involving Biovail Corp., MasTec, Inc., Collins & Aikman Corp. and Scottish Re

Group. His work on the securities class action against Biovail Corp. contributed to a settlement of $138 million.

Mr. Tountas earned a B.A. from Union College in 2000 and a J.D. from Washington University School of Law in 2003. As a law student, he served as Editor-in-Chief of the *Washington University Journal of Law & Policy* and was a finalist in the Environmental Law Moot Court Competition. Additionally, Mr. Tountas worked as Research Assistant to Joel Seligman, one of the country's foremost experts on securities law. In May 2003, he received the Scribe's Award in recognition of his Note entitled, *Carnivore: Is the Regulation of Wireless Technology a Legally Viable Option to Curtail the Growth of Cybercrime?*, 11 Wash. U. J.L. & Pol'y 351.

Mr. Tountas is admitted to practice in New York and New Jersey, as well as before the United States District Courts for the Southern District of New York and the District of New Jersey, and the United States Court of Appeals for the Second, Third and Ninth Circuits.

RICHARD T. JOFFE, SENIOR COUNSEL

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Richard Joffe's practice focuses on class action litigation, including securities fraud, antitrust and consumer fraud cases. Since joining the Firm, Mr. Joffe has represented such varied clients as institutional purchasers of corporate bonds, Wisconsin dairy farmers, and consumers who alleged they were defrauded when they purchased annuities. He played a key role in shareholders obtaining a $303 million settlement of securities claims against General Motors and its outside auditor.

Prior to joining Labaton Sucharow, Mr. Joffe was an associate at Gibson, Dunn & Crutcher LLP, where he played a key role in obtaining a dismissal of claims against Merrill

Lynch & Co. and a dozen other of America's largest investment banks and brokerage firms, who, in *Friedman v. Salomon/Smith Barney, Inc.*, were alleged to have conspired to fix the prices of initial public offerings.

Mr. Joffe also worked as an associate at Fried, Frank, Harris, Shriver & Jacobson where, among other things, in a case handled *pro bono*, he obtained a successful settlement for several older women who alleged they were victims of age and sex discrimination when they were selected for termination by New York City's Health and Hospitals Corporation during a city-wide reduction in force.

He co-authored "Protection Against Contribution and Indemnification Claims" in *Settlement Agreements in Commercial Disputes* (Aspen Law & Business, 2000).

Mr. Joffe earned a B.A., *summa cum laude*, from Columbia University in 1972, and a Ph.D. from Harvard University in 1984. He received a J.D. from Columbia Law School in 1993.

Mr. Joffe is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second, Third, Ninth and Eleventh Circuits. He is a member of the Association of the Bar of the City of New York and the American Bar Association.

Long before becoming a lawyer, Mr. Joffe was a founding member of the internationally famous rock and roll group, Sha Na Na.

JOSEPH V. STERNBERG, SENIOR COUNSEL

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Joseph V. Sternberg is a trial and appellate lawyer with more than 35 years of experience in the areas of civil and class action litigation. He has prosecuted cases that have resulted in the return of hundreds of millions of dollars to class members. Among the numerous landmark cases

in which Mr. Sternberg has participated are *Limmer v. Medallion Group, Inc.*, *Koppel v. Wien*, *In re Energy Systems Equipment Leasing Securities Litigation*, *Koppel v. 4987 Corp.*, *Gunter v. Ridgewood Energy Corp.*, and *In re Real Estate Associates Limited Partnership Litigation*.

Mr. Sternberg authored "Using and Protecting Against Rule 12(b) and 9(b) Motions," *The Practical Litigator*, September 1993.

Mr. Sternberg earned a B.A. from Hofstra University in 1963 and a J.D. from New York University School of Law in 1966.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeals for the Second and Third Circuits.

He has received a rating of AV from the publishers of the Martindale-Hubble Directory.

DOMINIC J. AULD, OF COUNSEL

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Dominic J. Auld joined Labaton Sucharow with over seven years of experience in the area of securities class action litigation. He has also worked in the areas of environmental and antitrust litigation. Mr. Auld is primarily responsible for working with the client and case development departments in identifying meritorious securities fraud cases and presenting them to the institutional investors harmed by the conduct at issue. Mr. Auld focuses on the Firm's existing relationships with institutional investors from his home country of Canada, and is also part of the Firm's outreach to other institutions worldwide.

Prior to joining Labaton Sucharow, Mr. Auld practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he began his career as a member of the litigation team responsible for prosecuting the landmark WorldCom action which resulted in a settlement

of over $6 billion. He also has a great deal of experience in working directly with institutional clients affected by securities fraud and worked extensively with the Ontario Teachers' Pension Plan in their actions *In re Nortel Networks Corporation Securities Litigation*, *In re Williams Securities Litigation*, and *In re Biovail Corporation Securities Litigation* - cases that settled for a total of over $1.7 billion. In the last two years, Mr. Auld has focused his practice on client relationships and development, and regularly advises large worldwide institutional investors on their rights and avenues of recovery available in the U.S. Courts and elsewhere.

He is a regular speaker at law and investment conferences and recently published an article on executive compensation in *Benefits Canada* magazine.

Mr. Auld earned a B.A. (hons) from Queen's University in Kingston, Ontario, Canada in 1992 and a J.D. from Lewis and Clark Law School in Portland, Oregon in 1998 where he was an annual member of the Dean's List. As a law student, he served as a founding member of the law review, *Animal Law*, which explores legal and environmental issues relating to laws such as the Endangered Species Act.

Mr. Auld is admitted to practice in New York.

MARK S. GOLDMAN, OF COUNSEL

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Mark S. Goldman has 22 years' experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud, and violations of federal and state antitrust laws.

Mr. Goldman is currently prosecuting securities fraud claims on behalf of institutional and individual investors against a pharmaceutical company alleged to have misrepresented the status of clinical drug trials, hedge funds that misrepresented the net asset value of investors'

shares, and a high tech company that did not disclose declining sales in its initial public offering materials. In addition, Mr. Goldman is participating in litigation brought against international air cargo carriers charged with conspiring to fix fuel and security surcharges, and domestic manufacturers of air filters, OSB, flat glass and chocolate, also charged with price fixing.

Recently, Mr. Goldman successfully litigated a number of consumer fraud cases brought against insurance companies challenging the manner in which they calculated life insurance premiums. He also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act, engaged in short swing trading. In addition, Mr. Goldman participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for $2.5 billion.

Mr. Goldman earned a B.A. from The Pennsylvania State University in 1981 and a J.D. from the University of Kansas School of Law in 1986.

He is admitted to practice in Pennsylvania.

Mr. Goldman has received a rating of AV from the publishers of the Martindale-Hubbell directory.

TERRI GOLDSTONE, OF COUNSEL

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Terri Goldstone concentrates her practice on prosecuting complex securities litigations on behalf of institutional investors.

Prior to joining Labaton Sucharow, Ms. Goldstone worked as an associate at Schwartz Goldstone & Campisi LLP. During her time there, she litigated personal injury cases and was the liaison to union members injured in the course of their employment.

Ms. Goldstone began her career as an Assistant District Attorney at the Bronx County District Attorney's Office.

Ms. Goldstone earned a B.A., *cum laude*, from American University in 1994. She earned a J.D. from Emory University School of Law in 1998, where she was a member of the Dean's List. During law school, Ms. Goldstone was a member of the International Law Society and was a semi-finalist in the Emory Appellate Advocacy Competition.

Ms. Goldstone is admitted to practice in New York.

BARRY M. OKUN, OF COUNSEL

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Barry Michael Okun is a seasoned trial and appellate lawyer with more than 20 years' experience in a broad range of commercial litigation. Mr. Okun has litigated several leading commercial law cases, including the first case in which the United States Supreme Court ruled on issues relating to products liability.

Mr. Okun has argued appeals before the United States Court of Appeals for the Second Circuit and the Appellate Divisions of three out of the four judicial departments in New York State. He has appeared in numerous trial courts throughout the country.

Mr. Okun received a B.A. from the State University of New York at Binghamton and is a *cum laude* graduate of the Boston University School of Law, where he was Articles Editor of the *Law Review*.

He is admitted to practice in New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Seventh and Eleventh Circuits, and the United States Supreme Court.

PAUL SCARLATO, OF COUNSEL

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Paul Scarlato has over 20 years' experience litigating complex commercial matters, primarily in the prosecution of securities fraud and consumer fraud class actions and shareholder derivative actions.

Mr. Scarlato has litigated numerous cases on behalf of institutional and individual investors involving companies in a broad range of industries, many of which involved financial statement manipulation and accounting fraud. Mr. Scarlato was one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.*, a securities-fraud class action case that recovered $25 million for investors just weeks before trial and, was one of the lead counsel in *Seidman v. American Mobile Systems, Inc.*, a securities-fraud class action case that resulted in a favorable settlement for the class on the eve of trail. Mr. Scarlato also served as co-lead counsel in *In re: Corel Corporation Securities Litigation*, and as class counsel in *In re AOL Time Warner Securities Litigation*, a securities fraud class action that recovered $2.5 billion for investors.

After law school, Mr. Scarlato served as law clerk to Judge Nelson Diaz of the Court of Common Pleas of Philadelphia County, and Justice James McDermott of the Pennsylvania Supreme Court. Thereafter, he worked in the tax department of a "big-six" accounting firm prior to entering private practice.

Mr. Scarlato earned a B.A. in Accounting from Moravian College in 1983 and a J.D. from Delaware Law School of Widener University in 1986.

He is admitted to practice in Pennsylvania and New Jersey.

NICOLE M. ZEISS, OF COUNSEL

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Nicole M. Zeiss works principally in the area of securities class action litigation. Before joining Labaton Sucharow, Ms. Zeiss worked for MFY Legal Services, practicing in the area of poverty law and at Gaynor & Bass doing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Ms. Zeiss was part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*. Labaton Sucharow was able to secure a $185 million settlement on behalf of investors, as well as meaningful corporate governance reforms that will affect future consumers and investors alike. She has also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund and banking industries.

Ms. Zeiss maintains a commitment to *pro bono* legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

Ms. Zeiss earned a B.A. from Barnard College in 1991 and a J.D. from Benjamin N. Cardozo School of Law in 1995. She is admitted to practice in New York.

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF DAVID J. WORLEY ON BEHALF OF EVANGELISTA & ASSOCIATES, LLC IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

David J. Worley, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. From March 15, 2010 until March 9, 2012 I was Of Counsel to the law firm of Evangelista & Associates, LLC ("Evangelista & Associates," or "Evangelista firm"). I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. Evangelista & Associates, which served as Liaison Counsel in the Consolidated Action, was involved in all aspects of the litigation and settlement of the action, as set forth in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action Settlement and Plan

of Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The principal tasks undertaken by Evangelista & Associates included: conducting legal research on claims at issue and procedural questions; conducting forensic research into the operations of the company; reviewing and evaluating confidential witness statements; drafting and revising pleadings; arranging filing and service of pleadings; reviewing and analyzing SEC filings; briefing motions; attending and participating in litigation strategy; attending and participating in court hearings; attending and participating in mediation; negotiating with opposing counsel; and acting as liaison counsel with the Court and clerk's office.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff of Evangelista & Associates who was involved in the prosecution of the Consolidated Action, and the lodestar calculation based on the firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by the firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates for the attorneys and professional support staff in Evangelista & Associates included in Exhibit A are the same as the regular rates

charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

6. The total number of hours expended on this litigation by Evangelista & Associates during the Time Period is 172.1 hours. The total lodestar for the firm for those hours is $87,553.50.

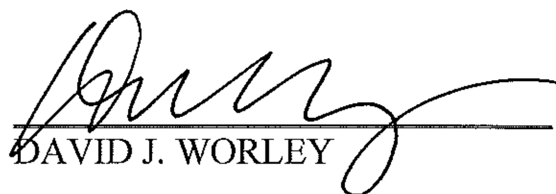
7. Evangelista & Associates' lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in the firm's billing rates.

8. As detailed in Exhibit B, Evangelista & Associates has incurred a total of $1465.01 in unreimbursed expenses incurred in connection with the prosecution of the Consolidated Action. The expenses incurred are reflected on the books and records of Evangelista & Associates. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. I have been given access to and reviewed all of the time and expense records of Evangelista & Associates relating to this action used to prepare the schedules attached hereto and base this declaration on my personal knowledge of those records and the practices of the firm.

10. With respect to the standing of Evangelista & Associates, attached hereto as Exhibit C is a brief biography of the firm as well as biographies of the some of the attorneys of my firm who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17, , 2012.



DAVID J. WORLEY

EXHIBIT A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: EVANGELISTA & ASSOCIATES, LLC
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
David J. Worley	OC	595	88.3	$52,538.50
James M. Evangelista	P	595	34.7	$20,646.50
Brian C. Bradley	FA	450	18.8	$8460.00
Barry Kaltman	PL	195	30.3	$5908.50
TOTAL			**172.1**	**$87,553.50**

*Partner (P) Associate (A) Forensic Accountant(FA)
Of Counsel (OC) Paralegal (PL)
Investigator (I) Research Analyst (RA)

EXHIBIT B

Exhibit B

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

DISBURSEMENT REPORT

FIRM: EVANGELISTA & ASSOCIATES, LLC
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

DISBURSEMENT	TOTAL AMOUNT
Duplicating	$30.09
Postage	$5.55
Telephone / Fax	
Messengers	
Filing Fees	$150.00
Transcripts	
Computer Research Fees	
Overnight Delivery Services	
Expert Fees	
Travel/Meals	$1279.37
Court Reporters	
TOTAL	**$1465.01**

EXHIBIT C

EVANGELISTA & ASSOCIATES, LLC

FINANCIAL FRAUD AND OTHER COMPLEX LITIGATION

One Glenlake Parkway, Suite 700
Atlanta, GA 30328
404.478.7195
www.eafirm.com

Overview

Evangelista & Associates, LLC focuses on complex, high value, financial fraud-related litigation and class action litigation.

Among our interrelated practice areas, we represent institutional and individual investors in securities fraud class actions, shareholder class actions (i.e., merger & acquisition) and shareholder derivative litigation, particularly litigation against banking and other financial institutions. We also represent bankruptcy trustees and other stakeholders in direct litigation against corporate officers and directors, as well as accounting and other professionals, for breaches of their fiduciary duties. Our attorneys have represented plaintiffs in major consumer class action litigation.

Unlike most other law firms, we have in-house forensic banking, financial fraud and accounting expertise. Our in-house forensic investigator, with many years of experience in the banking industry and as a financial fraud litigation consultant, enhances our ability to identify and focus on the issues that matter, and develop and successfully prosecute viable causes of action.

Our practice extends to both state and federal courts throughout the United States. We associate with local co-counsel as needed, and have been retained as co-counsel to assist other attorneys who wish to benefit from our depth of experience.

Our Litigation Experience

Our principals have aggressively and successfully litigated cases on behalf of aggrieved investors throughout the United States in significant securities fraud matters and have served in various leadership roles in securities fraud class action litigation against such well-known public companies as AFC Enterprises, Airgate PCS, Beazer Homes, BellSouth, Biogen Idec, Carter’s, Chicago Bridge & Iron, CNF, The Coca-Cola Company, Coca-Cola Enterprises, Cryolife, Dell, Elan Pharmaceuticals, Encysive Pharmaceuticals, First Horizon Pharmaceuticals, Hewlett-Packard, Immucor, Internap Internet Services, MBNA, Mirant, New York Community Bancorp, Par Pharmaceuticals, Profit Recovery Group, Providian Financial Corp, Rhodia, Select Medical, Spectrum Brands, TyCom, Vivendi, Vonage, Witness Systems, and Washington Mutual.

Representative shareholder class and derivative litigation matters we have handled include actions against CNF, Inc. (breach of fiduciary duties, including corporate waste); Hythiam Corp and Comprehensive Care Corp (breach of fiduciary duties relating to procedurally and financially unfair attempted acquisition); Guitar Center, Inc. (breach of fiduciary duties relating to procedurally and financially unfair going private transaction); Beazer Homes USA, Inc. (breach of fiduciary duties, including corporate waste); and HBOC McKesson and Per Se Inc. (breach of fiduciary duties arising from procedurally and financially unfair acquisition).

Among other matters, our attorneys are currently engaged in a number of high profile, high value, complex financial fraud related litigations, including:

- Counsel to a Liquidating Trustee in fraud action against former auditors of bankrupt public company. *Darryl S. Laddin as Liquidating Trustee v. Tauber & Balser, P.C.*, Adversary Proceeding No. 10-72007, Case Nos. 08-67659 (JB) (Bkcy, N.D.GA) *(In re Verso Technologies, Inc.*).

- Co-lead counsel in shareholder derivative action against officers and directors of Bank of America for breaching their fiduciary duties in connection with the acquisition of Merrill Lynch. *In re Bank of America Corporation Stockholder Derivative Litigation*, C.A. No. 4307-VCS (D. Del).

- Counsel to the City of Atlanta, Fulton County (Georgia) and Dekalb County (Georgia) relating to violations of the Fair Housing Act by mortgage issuers and related parties, leading to massive defaults and foreclosures damaging the City.

- Co-lead counsel to investors in Section 11 securities fraud class action against The Evergreen Ultra Short Opportunities Fund for misrepresenting its risks and investment strategy. *In re Evergreen Ultra Short Opportunities Fund Securities Litigation*, 08-CV-11064 (D. Mass).

- Counsel to a Liquidating Trustee in action against former officers and directors of Verso Technologies, a bankrupt company, for breach of defendants' fiduciary duties. *Darryl S. Laddin as Liquidating Trustee v. Odom, et al*, 1:09-cv-1293 (BBM) (N.D.GA) *(In re Verso Technologies, Inc.*).

- Counsel to securities investors in Section 10(b) securities fraud class action against Carter's, Inc. for various false and misleading statements relating to Carter's financial condition and future prospects. *Plymouth County Retirement Systems v. Carter's, Inc. et al*, 08-CV-2940-JOF (N.D. Ga.).

- Counsel to a Liquidating Trustee in breach of fiduciary duty action against officers and directors, and outside attorneys, of Verilink Technologies, Inc., a bankrupt company. *Laddin v. Belden, et al*, 08-80072 (JAC) (N.D.Ala, Bkcy.) *(In re Verilink*).

- Counsel to securities investors in Section 10(b) securities fraud class action against Internap Network Services, Corp. for various false and misleading statements relating to Internap's financial condition and future prospects arising from an acquisition. *Anastasio et al v. Internap Network Services Corp.*, 08-CV-3462-JOF (N.D. Ga.).

- Counsel to consumers in class action against Fifth Third Bancorp for a variety of claims relating to overdraft fee charges. *Willard v. Fifth Third Bancorp et al*, 10-CV-271-JOF (N.D. Ga.).

- Counsel to employee investors in ERISA class action against Delta Airlines for a breach of fiduciary duties. *Cinotto v. Delta Airlines, Inc. at al*, 09-CV-1739-JOF (N.D. Ga.).

The breadth of our attorneys' experience is reflected in the leading roles they served in the prosecution of the following securities litigation in which their former firms had served as lead or co-lead counsel, including:

- *In Re AFC Enterprises Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:03-CV-817-TWT;

- *Baker v. MBNA Corp.,* United States District Court for the District of Delaware, Civil Action No. 05-272;

- *In Re BellSouth Corporation Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV2142-WSD;

- *Campagnuola v. Cerner Corporation et al*, United States District Court for the Western District of Missouri, Civil Action No. 4:03-CV296-DW;

- *In Re Choicepoint, Inc., Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:05-CV-686-JTC;

- *In Re: Coca-Cola Enterprises Inc., Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 06-CV-275-TWT;

- *In Re Cryolife Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-1868-BBM;

- *In Re Dell, Inc. Sec. Litig.,* United States District Court for the Western District of Texas, Civil Action No. A-06-CA726-SS;

- *In Re First Horizon Pharmaceutical Corporation Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-2332-JOF;

- *In Re Friedman's Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:03-CV-3475-WSD;

- *In Re Mirant Corporation Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV1467-WSD;

- *Olsen v. New York Community Bankcorp Inc. et al,* United States District Court for the Eastern District of New York, Civil Action No. 2:04-CV-04165-ADS;

- *Oppenheim Pramerica Asset Management, et al v. Encysive Pharmaceuticals Inc. et al,* United States District Court for the Southern District of Texas, Civil Action No. 4:06-CV-3022;

- *In Re Par Pharm. Sec. Litig.,* United States District Court for the District of New Jersey, Civil Action No. 06-CV-03226, (Lead Plaintiffs' Executive committee);

- *In Re Profit Recovery Group International, Inc. Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. Master File No. C 01-3952 CRB;

- *In Re Providian Financial Corp. Sec. Litig*., United States District Court for the Northern District of California, Civil Action No. 1:002-CV-1416-CC;

- *In Re: Rhodia S.A. Sec. Litig.,* United States District Court for the Southern District of New York, Civil Action No. 1:05-md-11714DAB;

- *In Re Scientific-Atlanta, Inc., Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:002CV-1416-CC;

- *Spectrum Brands Inc. Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:05-CV-2494-WSD;

- *South Ferry LP #2 v. Killinger, (Washington Mutual, Inc.);* United States District Court for the Western District of Washington, Civil Action No. CV04-1599C;

- *In Re Vivendi Universal, S.A. Sec. Litig.,* United States District Court for the Southern District of New York, Civil Action No. 1:02-CV-5571-RJH;

- *Weimon et al v. Chicago Bridge & Iron CO. N.V. et al,* United States District Court for the Southern District of New York, Civil Action No. 1:06-CV-1283-JES;

- *In Re Witness Systems Inc. Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:06-CV-1894-CC;

<u>Notable Results</u>

The quality and level of our principals' hard work is reflected in the results they directly helped to achieve during their prior affiliations including:

- *In Re Providian Financial Corp. Sec. Litig.,* C 01-3952 (N.D. Ca.) ($65 million settlement);

- *In Re Dell, Inc., Securities Litig.,* 1:06-cv-726 (W.D.Tx.) ($40 million settlement);

- *Eaves et al v. Earthlink*, Case No. 05-CV-97274 (GA Sup. Ct., Fulton Cty) (settlement on behalf of 850,000 class members for improper termination fee charges).

- *Baker v. MBNA Corp.,* 05-cv-0272 (D. Del.) ($25 million settlement);

- *In Re Cryolife Sec. Litig.,* No. 1:02-CV-01868 (N.D. Ga.) ($23.25 million settlement);

- *In Re AFC Enterprises Sec. Litig.,* No. 1:03-CV-817 (N.D. Ga.) ($18 million settlement);

- *In Re First Horizon Pharmaceutical Corporation Sec. Litig.,* United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-2332-JOF ($4.65 million settlement);

- *In Re Comprehensive Care Corp. Shareholder Litig.,* Cons. C.A. No. 2692 (halted procedurally unfair merger); and

- *Criddle v. CNF, Inc.,* CA No. 434340 (San Mateo, Ca.) (derivative action resulted in corporate governance changes to address specific misconduct alleged in the complaint relating to aircraft safety and maintenance reporting issues).

Indeed, speaking directly to Mr. Evangelista while with his prior firm and during an attorneys' fee hearing, the Hon. Charles R. Breyer congratulated the $65 million class settlement he helped achieve and stated:

> [Y]ou worked ... like demons. You absolutely worked. And by working as hard as you worked, you got it. You got the settlement that I have to believe was a good settlement. ... So I thought you did a fine job, and you came right up to the plate when it was necessary.

In *Re Providian Financial Corp. Sec. Litig.,* Master File No. C 01-3952 CRB (N.D.Cal.).

<u>Our Professionals</u>

James M. Evangelista

Jim Evangelista has over twenty years of diverse, hands-on, complex financial fraud, commercial and class action litigation experience representing both plaintiffs and defendants in federal and state courts around the United States with extensive experience in electronic discovery matters.

Mr. Evangelista's broad plaintiffs' experience includes the representation of institutional pension funds, corporations and individual investors in securities fraud class action, merger and acquisition, shareholder derivative, and general business tort and commercial litigation against public companies such as AT&T, Bank of America, Beazer Homes USA Inc., BellSouth Corp., Cingular Wireless, Coca Cola Enterprises, Inc., Dell Inc., Mirant Corp., New York Community Bankcorp, Spectrum Brands Inc., Verizon, Vonage Holdings Corp., and Washington Mutual Bank. During his career Mr. Evangelista has helped investors and other clients recover over $200 million in losses from securities fraud and other wrongdoing, has fought procedurally and financially unfair acquisitions of public companies and breaches of fiduciary duty by corporate

management and boards of directors, and has forced one public company's board to adopt new corporate governance measures designed to improve worker safety and management accountability.

On the defense side, and primarily during his decade tenure at Skadden Arps Slate Meagher & Flom LLP and LeBoeuf, Lamb Greene & MacRae LLP, Mr. Evangelista assisted a substantial number of Fortune 100 and other corporate clients in high profile class action matters and internal corporate investigations including the Metropolitan Life Insurance Company in the Insurance Sales Practices Litigation, Aventis CropScience/Bayer CropScience in the StarLink™ Corn Litigation, and Compaq Computer Company in the Floppy Disk Controller Litigation. Mr. Evangelista also participated in the Independent Counsel's investigation of the United States Justice Department's prosecution of Banca Nazionale del Lavoro for illegal loans to the Government of Iraq (the "Iraqgate Scandal"), the Independent Administrator's court appointed oversight of the International Brotherhood of Teamsters, and in the internal investigations regarding illegal political campaign contributions by a large public utility and improper player and team owner conduct within a major national sports association.

Mr. Evangelista is admitted to the United States Court of Appeals for the First, Second, Eighth, Ninth and Eleventh Circuits; the United States District Courts for the Northern District of Georgia, Southern and Eastern Districts of New York, the District of New Jersey; and the State Bars of Georgia, New York, New Jersey, Colorado and the District of Columbia.

Mr. Evangelista attended Rutgers University in New Brunswick, New Jersey, and graduated in 1988 with a dual degree in Economics and Political Science. In 1991 Mr. Evangelista earned his J.D. from Rutgers University School of Law, in Camden, New Jersey, where he was Articles Editor of the school's Law Review and a recipient of its International Law Honors Program Award.

Publications

- *Polishing the Gold Standard on the E-Discovery Cost-Shifting Analysis: Zubulake v. UBS Warburg LLC et al*, 9 J. Tech. L. & Pol'y 1 (2004);

- Note, *Toward a More Competitive Common Market: European Economic Community Council Regulation No. 4064/89, On the Control of Corporate Mergers Within the European Community,* 22 Rutgers L.J. 457 (1991); and

- Comment, *Cogdell v. Hospital Center At Orange*, 22 Rutgers L.J. 255 (1990)(addressing New Jersey's entire controversy doctrine).

Reported Decisions Include

- *Atwater v. National Football League Players Ass'n,* NO. 1:06 CV 1510, 2007 WL1020848 (N.D.Ga., March 29, 2007) (Slip Op.) (denying defendants' motion to dismiss business tort litigation);

- *Wagner v. First Horizon Pharmaceutical Corp.,* 464 F.3d 1273 (11th Cir. 2006)(reversing district court's refusal to permit repleading on securities fraud complaint);

- *Koehler v. Green,* 370 F. Supp. 2d 904 (E.D. Mo. 2005) (granting defendants/motion to dismiss breach of fiduciary duty complaint); and

- *In Re Novastar Financial Securities Litigation,* No. 04-0330-CV-W-ODS, slip op., 2005 WL 1279033 (W.D. Mo., May 12, 2005) (denying defendants' motion to dismiss securities fraud case).

David J. Worley

David Worley has twenty years of experience in complex civil trial and appellate litigation, including many years representing trustees of union pension funds and international and local unions, with substantial experience in portfolio monitoring and securities and other class action litigation. He has repeatedly been named a Georgia "SuperLawyer" in the field of securities litigation. Among the major securities cases he managed were *In re Cryolife Securities Litigation* and *In re AFC Enterprises Securities Litigation*, cases that produced two of the ten largest securities fraud settlements in the history of the Northern District of Georgia.

Among Mr. Worley's noteworthy securities fraud class action litigation experience on behalf of institutional and individual clients as court-appointed lead or co-lead counsel, head or co-head of litigation teams, and/or active participation are the following matters:

- Represented national union pension fund and local union pension plan on behalf of class in securities fraud litigation against Beazer Homes USA, Inc.;

- Represented trust fund on behalf of class in securities fraud litigation against Witness Systems, Inc.;

- Represented investment trading company on behalf of class in securities fraud litigation against Coca Cola Enterprises, Inc.;

- Represented institutional and individual investors on behalf of class in securities fraud action against Cryolife, Inc.;

- Represented institutional and individual investors on behalf of class in securities fraud action against AFC Enterprises, Inc.;

- Represented individual investors on behalf of class in securities fraud action against Profit Recovery Group;

- Represented a state retirement system on behalf of class in securities fraud litigation against Providian Financial Corp.

David Worley's consumer and ERISA class-action litigation experience includes:

- Currently represents individual consumers on behalf of nationwide class against Earthlink, Inc., in Georgia state court action for imposition of improper early termination fees;

- Represented individual telecommunications customers on behalf of class in action against national telecommunications companies for violation of wiretapping statutes;

- Represented class of air traffic controllers in action under ERISA for payment of dental benefits; and

- Represented company employees in class action under ERISA arising from securities fraud by national auto parts manufacturer.

Mr. Worley has represented union pension funds in over 70 separate litigation actions in federal courts around the nation. Among Mr. Worley's noteworthy reported decisions are:

- *Atwater v. National Football League Players Ass'n*, 2007 WL 1020848, 181 L.R.R.M. (BNA) 2993 (N.D. Ga. 2007);
- *National Air Traffic Controllers Ass'n v. Dental Plans, Inc.,* 2006 WL1663286, 38 Employee Benefits Cases (BNA) 2755 (N.D. Ga. 2006);
- *Hipps v. United Steelworkers of America*, 2001 U.S. Dist. LEXIS 4716, 85 FEP Cases (BNA) 367 (N.D. Ga. 2001);
- *Hoffman v. St. Joseph's Hospital,* 1998 WL 283540, 4 Wage & Hour Cases 2nd (BNA) 972 (N.D. Ga. 1998);
- *Turlington v. Atlanta Gas Light Co.,* 135 F.3d 1428 (11th Cir. 1998);
- *Turner v. American Federation of Teachers, Local 1565*, 138 F.3d 878 (11th Cir. 1998);
- *Evans v. McClain of Georgia, Inc.,* 131 F.3d 957 (11th Cir. 1997); and
- *Harrison v. Northwest Airlines, Inc.,* 162 L.R.R.M. (BNA), 2062 (N.D. Ga. 1999).

Mr. Worley has served a Chair of the Labor and Employment Law Sections of both the State Bar of Georgia and the Atlanta Bar Association and as Co-Chair of the Federal Legislative Developments Committee of the American Bar Association's Committee on Labor and Employment Law. He has lectured on arbitration, litigation and election law topics at numerous continuing legal education seminars. For many years he was a member of the AFL-CIO Lawyers Coordinating Committee. From 1998 to 2001, Worley served as Chairman of the Democratic Party of Georgia and a member of the Democratic National Committee, and has been a delegate to four Democratic National Conventions. He currently serves as a member of the Georgia State Election Board and as a member of the Democratic National Committee.

Mr. Worley received his undergraduate degree cum laude from Harvard College in 1980, and graduated from the University of Virginia School of Law in 1985, where he was a member of the National Moot Court Team and received the Johnson & Swanson Award for excellence in written advocacy. He has been admitted to the trial and appellate courts of Georgia, the United States District Courts for the Northern and Middle Districts of Georgia, the Eleventh Circuit U.S. Court of Appeals, and the United States Supreme Court. He is a member of the American Bar Association, the Atlanta Bar Association, the Federal Bar Association, and the State Bar of Georgia.

Norman J. Slawsky

Norman Slawsky has been practicing law for over twenty-five years and is an experienced trial lawyer, advocate, arbitrator, and mediator. Mr. Slawsky represents numerous Taft-Hartley pension plans, health plans, and apprenticeship plans, and labor organizations. He has represented both plaintiffs and defendants in employment discrimination cases, wage and hour cases, ERISA and other labor and employment cases. He also serves as a municipal attorney and as an arbitrator for commercial and employment cases with the American Arbitration Association.

Mr. Slawsky has served as Chair of both the State Bar of Georgia Labor and Employment Law Section and the Atlanta Bar Association Labor and Employment Law Section. In addition, he is a member of the International Foundation of Employee Benefit Plans, the American Bar Association Labor and Employment Law Section, and is a Fellow of the College of Labor and Employment Lawyers.

Mr. Slawsky is a graduate of the State University of New York, Binghamton, with a B.A. in Economics; The City University of New York, with an M.A. in Mathematics; and the University of Georgia School of Law with a J.D.

Mr. Slawsky has authored articles and has served as a speaker on employee benefits, labor and employment law, and municipal law.

Reported Decisions Include

- *City of Atlanta v. Southern States PBA,* 276 Ga. App. 446 (2005);
- *Kollman v. IBEW Local 613,* 2000 WL 22047882(N.D.Ga. 2003), *aff'd,* 369 F.3d 1209 (11th Cir. 2004);
- *Hoffman v. St. Joseph's Hospital*, 1998 WL 283540 (N.D.Ga. 1998);
- *Stewart v. KHD Deutz of America Corp.,* 75 F.3d 1522 (11th Cir. 1996);
- *Bowen v. Griffith*, 258 Ga. 162 (1988);

- *UFCW v. Amberjack, Ltd.*, 253 Ga. 438 (1984).

Linda S. Brown

During her long career in the banking and trust, ERISA consulting, and mutual fund industries, Ms. Brown has obtained extensive experience in the analysis of various banking, fiduciary, mutual fund, ERISA, tax, and related federal regulatory and compliance matters.

Ms. Brown is highly experienced in reviewing and analyzing complex commercial contracts, as well as retirement plans and mutual fund products designed and marketed to ERISA plans. In connection with these matters, Ms. Brown also has developed tremendous expertise in federal tax, investment, and banking laws and regulations.

While serving in her capacity as an officer and a NASD Series 26 licensed principal of a mutual fund company, Ms. Brown reviewed and approved marketing materials for compliance with federal regulations. In addition, Ms. Brown has extensive experience interfacing with IT system consultants relating to regulatory and other compliance and reporting functions.

Ms. Brown is admitted to the State Bar of Texas. She received her B.A. from the University of Texas in 1974 and her J.D. from the University of Houston in 1977.

Leslie G. Toran

Leslie Glover Toran has a long-held interest in the efficient and fair functioning of the financial markets and banking system.

Ms. Toran received her B.A. in economics from the Andrew Young School of Policy Studies at Georgia State University where she was a faculty scholar and Hope Grant recipient. After graduating with her degree in economics, and prior to attending law school, Ms. Toran was employed as an Equity Research Associate with Trusco Capital Management. As an equity research associate,she assisted in the management of mutual funds, endowments, and other institutional investment portfolios. Ms. Toran received her J.D. *cum laude* from the Georgia State University College of Law in 2004. While in law school, Ms. Toran served as the Symposium Editor of the *Law Review* and was a member of the College's Moot Court Board. She also served as a graduate research assistant to Professor Ellen Podgor and assisted Professor Podgor in researching and editing a tome on white collar crime. Ms. Toran also received an honors designation for her performance in the College's mandatory Litigation Workshop and received CALI awards for achieving the highest grade in her class in Constitutional Law, Basic Federal Income Taxation, and Corporate Finance. Ms. Toran interned for Justice Carol Hunstein of the Supreme Court of Georgia during her last year of law school.

Since graduating from law school, Ms. Toran has garnered significant experience litigating cases involving securities fraud, breach of fiduciary duty, corporate mismanagement, violations of intellectual property rights, antitrust violations, and other complex commercial matters. Ms. Toran has represented both plaintiffs and defendants in individual actions and class actions and in both state and federal courts. Ms. Toran has also published an article related to her federal courts practice: *Federal Jurisdiction Based on Removal,* ABA Practice Essentials Book, copyright 2008 (coauthor Sarah Grider Cronan).

Ms. Toran is admitted to the State Bar of Georgia and to the United States District Court for the Northern District of Georgia.

Brian C. Bradley

Brian C. Bradley is our in-house Forensic Accountant and financial fraud litigation consultant. For over thirteen years Mr. Bradley has managed engagements involving complex forensic analysis in cases involving violations of securities and banking laws and regulations. His diversified experience includes high profile securities fraud class actions across a broad range of businesses. His contribution has resulted in successful recoveries of claims against Fortune 500 companies, financial institutions and Big Four accounting firms. In addition, Mr. Bradley has over a decade of valuable experience in accounting, reporting and audit functions within federally insured and other financial institutions.

Mr. Bradley received his B.S. degree in Business Administration with a major in accounting from the University of Houston.

EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	) Civil Action No. 1:08-CV-2940-AT

DECLARATION OF DAVID J. WORLEY ON BEHALF OF PAGE PERRY, LLC IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

David J. Worley, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. From February 15, 2008 until March 9, 2012, I was a partner in the law firm of Page Perry, LLC. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. Page Perry, LLC, which served as Liaison Counsel in the Consolidated Action, was involved in all aspects of the litigation and settlement of the action, as set forth in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action Settlement and Plan

of Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The principal tasks undertake by Page Perry, LLC included: conducting legal research on claims at issue and procedural questions; conducting forensic research into the operations of the company; reviewing and evaluating confidential witness statements; drafting and revising pleadings; arranging filing and service of pleadings; reviewing and analyzing SEC filings; briefing motions; attending and participating in litigation strategy; attending and participating in mediation; attending and participating in hearings; negotiating with opposing counsel; and acting as liaison counsel with the Court and clerk's office.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff of Page Perry, LLC who was involved in the prosecution of the Consolidated Action, and the lodestar calculation based on the firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates for the attorneys and professional support staff of Page Perry, LLC included in Exhibit A are the same as the regular rates charged

for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

6. The total number of hours expended on this litigation by Page Perry, LLC during the Time Period is 301.2 hours. The total lodestar for Page Perry, LLC for those hours is $152,193.00.

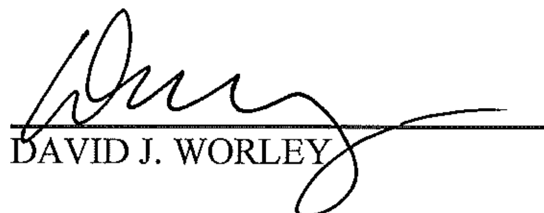
7. Page Perry, LLC's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in Page Perry's billing rates.

8. As detailed in Exhibit B, Page Perry, LLC has incurred a total of $610.00 in unreimbursed expenses incurred in connection with the prosecution of the Consolidated Action. The expenses incurred are reflected on the books and records of the firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. I have been given access to and reviewed all of the time and expense records of Page Perry relating to this action used to prepare the schedules attached hereto and base this declaration on my personal knowledge of those records and the practices of the firm.

10. With respect to the standing of Page Perry, LLC, attached hereto as Exhibit C is a brief biography of the firm as well as biographies of some of the attorneys of Page Perry, LLC who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2012.



DAVID J. WORLEY

EXHIBIT A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: PAGE PERRY LLC
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Alan R. Perry	P	595	2.6	$1547.00
Brian C. Bradley	F	450	109.5	$49,275.00
David J. Worley	P	595	92.4	$54,978.00
Joy L. Cagle	PL	175	21.5	$3762.50
Julie A. Arms	AST	75	2	$150.00
James M. Evangelista	P	595	61.9	$36,830.50
Stuart J. Guber	OC	500	11.3	$5650.00
TOTAL			**301.2**	**$152,193.00**

*Partner (P) Associate (A) Forensic Accountant (F)
Of Counsel (OC) Paralegal (PL) Assistant(AST)
Investigator (I) Research Analyst (RA)

EXHIBIT B

Exhibit B

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

DISBURSEMENT REPORT

FIRM: PAGE PERRY LLC
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

DISBURSEMENT	TOTAL AMOUNT
Duplicating	$88.90
Postage	$9.50
Telephone / Fax	
Messengers	$369.12
Filing Fees	
Transcripts	
Computer Research Fees	$122.48
Overnight Delivery Services	
Expert Fees	
Travel/Meals	
Service of Process	$20.00
TOTAL	**$610.00**

EXHIBIT C

PAGE PERRY, LLC

SECURITIES FRAUD AND SHAREHOLDER LITIGATION RESUME

1040 Crown Pointe Parkway
Suite 150
Atlanta, GA 30338
(770) 673-0047 (telephone)
(770) 673-0120 (facsimile)

The Firm

Page Perry, LLC is an investor-focused law firm. Among our inter-related practice areas, we represent institutional and individual investors in securities fraud class actions, shareholder class actions (i.e., merger & acquisition) and shareholder derivative litigation.

Our practice and reputation are national in scope. We routinely practice in state and federal courts throughout the United States and are often associated as co-counsel to assist other attorneys who wish to benefit from the Firm's depth and scope of experience in securities-related litigation and arbitration.

To date, our attorneys have helped hundreds of investors recover well over $1 billion in funds lost due to a variety of fraudulent practices.

Trial Experience

First and foremost, we are trial lawyers. Page Perry attorneys have over 200 years of combined, focused, litigation experience including extensive experience litigating securities fraud class actions and arbitrations, complex business torts, consumer class action and other high-profile litigation matters. Collectively, our attorneys have tried a total of over 300 bench and jury trials and arbitrations.

In addition to expertise regarding electronic discovery matters, we also have an experienced in-house forensic accountant and other technical support.

Focused Securities Litigation Experience

Page Perry attorneys have aggressively and successfully litigated cases on behalf of aggrieved investors throughout the United States in significant securities fraud matters. Our attorneys have served in various leadership roles in securities fraud class action litigation against such well-known public companies as AFC Enterprises, Airgate PCS, Beazer Homes, BellSouth, Biogen Idec, Chicago Bridge & Iron, CNF, The Coca-Cola Company, Coca-Cola Enterprises, Cryolife, Dell, Elan Pharmaceuticals, Encysive Pharmaceuticals, First Horizon Pharmaceuticals, Hewlett-Packard, Immucor, MBNA, Mirant, New York Community Bancorp, Oxford Health Plans, Par Pharmaceuticals, Profit Recovery Group, Providian Financial Corp, Rhodia, Select Medical, Spectrum Brands, TyCom, Vivendi, Vonage, Witness Systems, and Washington Mutual.

Representative shareholder class and derivative litigation matters handled by Page Perry attorneys include actions against CNF, Inc. (breach of fiduciary duties, including corporate waste); Hythiam Corp and Comprehensive Care Corp (breach of fiduciary duties relating to procedurally and financially unfair attempted acquisition); Guitar Center, Inc. (breach of fiduciary duties relating to procedurally and financially unfair going private transaction); Beazer Homes USA, Inc. (breach of fiduciary duties, including corporate waste); and HBOC McKesson and Per Se Inc. (breach of fiduciary duties arising from procedurally and financially unfair acquisition).

In February 2008 Page Perry LLC expanded its securities litigation practice with the addition of two new members, David Worley and James Evangelista. Prior to joining Page Perry, these members had served in leading roles in the prosecution of the following securities litigation in which their former firms had served as lead or co-lead counsel:

- *In Re AFC Enterprises Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:03-CV-817-TWT;
- *Baker v MBNA Corp.* United States District Court for the District of Delaware, Civil Action *No. 05-272;*
- *In Re BellSouth Corporation Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-2142-WSD;
- *Campagnuola v. Cerner Corporation et al*, United States District Court for the Western District of Missouri, Civil Action No. 4:03-CV-296-DW;
- *In Re Choicepoint, Inc., Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:05-CV-686-JTC;
- *In Re: Coca-Cola Enterprises Inc., Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 06-CV-275-TWT ;
- *In Re Cryolife Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-1868-BBM;
- *In re Dell, Inc. Sec. Litig.*, United States District Court for the Western District of Texas, Civil Action No. A-06-CA726-SS;
- *In re First Horizon Pharmaceutical Corporation Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-2332-JOF;
- *In re Friedman's Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:03-CV-3475-WSD;
- *Marsden v. Select Med. Corp.*, United States District Court for the Eastern District of Pennsylvania, Civil Action No. *CV04-4020;*
- *In re Mirant Corporation Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-1467-WSD;

- *Olsen v. New York Community Bankcorp Inc. et al*, United States District Court for the Eastern District of New York, Civil Action No. 2:04- CV-04165-ADS;

- *Oppenheim Pramerica Asset Management, et al v. Encysive Pharmaceuticals Inc et al*, United States District Court for the Southern District of Texas, Civil Action No. 4:06-cv-3022;

- *In re Par Pharm. Sec. Litig.*, United States District Court for the District of New Jersey, Civil Action No. 06-CV-03226, (Lead Plaintiffs' Executive committee);

- *In re Profit Recovery Group International, Inc. Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. Master File No. C 01-3952 CRB;

- *In re Providian Financial Corp.nc. Sec. Litig.*, United States District Court for the Northern District of California, Civil Action No. 1:002-CV-1416-CC;

- *In Re: Rhodia S.A. Sec. Litig.*, United States District Court for the Southern District of New York, Civil Action No. 1:05-md-11714-DAB;

- *In re Scientific-Atlanta, Inc., Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:002-CV-1416-CC;

- *Spectrum Brands Inc. Sec. Litig.*, United States District Court for the Northern District of Georgia, Civil Action No. 1:05-CV-2494-WSD;

- *South Ferry LP #2 v. Killinger, (Washington Mutual, Inc.);* United States District Court for the Western District of Washington, Civil Action No *CV04-1599C;*

- *In re Vivendi Universal, S.A. Sec. Litig.*, United District Court for the Southern District of New York, Civil Action No. 1:02-CV-5571-RJH;

- *Welmon et al v. Chicago Bridge & Iron CO. N.V. et al*, United States District Court for the Southern District of New York, Civil Action No. 1:06-CV-1283-JES;

- *In re Witness Systems Inc. Sec. Litig.*, United District Court for the Northern District of Georgia, Civil Action No. 1:06-CV-1894;

Notable Results

The quality and level of our attorneys' hard work is reflected in recent results they directly helped to achieve during their prior affiliations including:

- *In Re Oxford Health Plans,* MDL No. 1222 (CLB) (S.D.N.Y.) ($300 million settlement);
- *In Re Providian Financial Corp. Sec. Litig., C 01-3952* (N.D. Ca.) ($65 million settlement);
- *In re Cryolife Sec. Litig.*, No. 1:02-CV-01868 (N.D. Ga.) ($23.25 million settlement);
- *In re AFC Enterprises Sec. Litig., No. 1:03-CV-817* (N.D. Ga.) ($18 million settlement);
- *In re Comprehensive Care Corp. Shareholder Litig.,* Cons. C.A. No. 2692 (halted procedurally unfair merger); and
- *Criddle v CNF, Inc.,* CA No. 434340 (San Mateo, Ca.) (derivative action resulted in corporate governance changes to address specific misconduct alleged in the complaint relating to aircraft safety and maintenance reporting issues).

Indeed, speaking directly to Mr. Evangelista while with his prior firm and during an attorneys' fee hearing, the Hon. Charles R. Breyer congratulated the $65 million class settlement he helped achieve and stated:

> [Y]ou worked . . . like demons. You absolutely worked. And by working as hard as you worked, you got it. You got the settlement that I have to believe was a good settlement. . . . So I thought you did a fine job, and you came right up to the plate when it was necessary.

In Re Providian Financial Corp. Sec. Litig., Master File No. C 01-3952 CRB (N.D.Cal.).

Our Professionals

J. Boyd Page

J. Boyd Page is widely recognized as one of the leading investor attorneys in the country. During his career he has handled some of the largest investment fraud cases filed in courts and arbitration forums. He has represented injured investors from virtually every state in the country. He has assisted thousands of securities abuse victims in recovering over $500 million. He has recovered $1 million or

more for investors on 24 separate occasions, including 10 different occasions since January, 2005. Of course, those past successes do not guarantee similar results under different factual and legal circumstances.

Mr. Page was a founding partner in the Atlanta firm of Page & Bacek LLP, which is now Page Perry, LLC. Mr. Page was born in Kingsport, Tennessee and attended elementary and high school there. He graduated from the University of Virginia with a Bachelor of Science with Distinction in Commerce in 1970. After receiving his undergraduate degree, Mr. Page attended the University of Virginia Law School. Upon graduation in 1973, Mr. Page came to Atlanta and entered into the private practice of law.

A trial attorney, Mr. Page practices primarily in the areas of general commercial and investment disputes. In the securities area, he has extensive experience representing investors against brokerage firms, issuers of securities and others. Some of Mr. Page's cases were chronicled in Kurt Eichenwald's best-selling book, "Serpent on the Rock," the story of Prudential Securities' limited partnership problems. Mr. Page also has been a major participant in an array of large tort and class actions, including actions against Prudential Securities, Marriott, D.H. Blair, and PaineWebber.

Mr. Page has served as adjunct professor of law, teaching "Introduction to Civil Practice" at the Emory University School of Law. In addition, he has regularly spoken on securities/investment related topics, at numerous seminars sponsored by PIABA, the American Bar Association, the Practicing Law Institute, the American Law Institute, the Georgia Institute of Continuing Legal Education, the Association for Investment Management and Research, the North American Securities Administrators Association, the Northwest Center for Professional Education, the American Arbitration Association, the Institute for International Research, and the InterAmerican Bar Association.

Mr. Page has testified before Congressional Subcommittees on the securities arbitration process. He has been interviewed by and quoted in leading newspapers and business periodicals on many occasions regarding investors' rights and investment disputes -- including The Wall Street Journal, The New York Times, The Financial Times, Money Magazine, USA Today, The Washington Post, Business Week, Registered Representative Magazine, Worth Magazine, Smart Money Magazine, The Atlanta Journal & Constitution, The Securities Arbitration Commentator, and The Fulton County Daily Report, among others.

Mr. Page is a past member of the National Association of Securities Dealer's ("NASD's") National Arbitration Committee and the NASD's Securities Arbitration Policy Task Force. Mr. Page has also served on the Advisory Board of the Securities Arbitration Commentator, the Georgia Penny Stock Advisory Committee and the American Arbitration Association's Securities Arbitration Policy Committee. Mr. Page was a founder and past president of the Public Investors Arbitration Bar Association. He is currently the co-chair of the American Bar Association's Securities Arbitration Subcommittee.

Mr. Page is a member of the American Bar Association, the State Bar of Georgia, the Atlanta Bar Association, and the American Trial Lawyers Association.

Publications

"Problematic Hearing Issues in Securities Arbitration: Some Possible Approaches, Strategies and Solutions," Public Investors Bar Association, 2006 and Practising Law Institute, 2007.

"The Use of Experts in Securities Arbitration," Practising Law Institute, 2001.

"Emerging Developments in Securities Arbitration," Practising Law Institute, 1997.

"Securities Arbitration and Litigation: The Changing Landscape," Glasser Legalworks, 1996.

"Developments in Securities Arbitration and Other Regulatory Issues," Practising Law Institute, 1996.

"Arbitration--Has the Favored Child Become Spoiled," ABA, 1996.

"The Role of Mediation and Early Neutral Evaluation in Facilitating Settlement Negotiations," Practising Law Institute, 1995.

"Representing Customers in Securities Arbitration: Key Considerations in Addressing Case Approach Pleadings, Credibility, Damages and the Role of the Law in Arbitration," Practising Law Institute, 1994.

"Settlement of Securities Disputes," Practising Law Institute, 1993.

"Determining Credibility in Securities Arbitration Proceedings," Practising Law Institute, 1993.

"The Claimant's Development and Presentation of Evidence in Arbitration Proceedings," Practising Law Institute, 1992.

"Representing Customers in Securities Arbitration," ABA, 1992.

"Securities Arbitration: Is the Playing Field Level From the Customer's Perspective?" ALI-ABA 1991.

"Representing Claimants in Securities Arbitration" Practising Law Institute, 1990-1991.

Alan R. Perry, Jr.

Alan R. Perry, Jr. has over 25 years experience in handling complex securities matters (litigation and arbitration) as well as other litigation matters. Among other things, he participated in the prosecution of many securities class actions, including the Oxford Health Plans securities fraud class action that resulted in a $300 million recovery for investors. Mr. Perry has served as lead or co-lead counsel in approximately a dozen jury trials and arbitrations and has argued

numerous appeals. He has appeared in federal court cases in Atlanta, San Francisco, Minneapolis, New York, Houston and Chicago, among others. His diverse Georgia state court practice has taken him from Valdosta and Columbus, Greensboro, Conyers and Ellijay, to courts in each of the five Atlanta metropolitan-area counties. Before forming Page Perry, LLC, and during his years as an associate and then partner at the Atlanta-based firm Kilpatrick Stockton, Mr. Perry's trial experience ranged from plaintiffs' personal injury and wrongful death cases (including a multi-million dollar recovery in a medical malpractice matter) to complex business litigation.

Mr. Perry is admitted to practice before all Georgia trial and appellate courts, the United States District Court for the Northern District of Georgia, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. He is a member of the American Bar Association (Litigation Section: Class Actions and Derivative Suits/Securities Litigation Committees), the State Bar of Georgia, the Association of Trial Lawyers of America, the Georgia Trial Lawyers Association, the Atlanta Bar Association, and the Lawyers Club of Atlanta.

Mr. Perry received his B.A. degree from the University of North Carolina at Chapel Hill (1976 with honors) and his J.D. degree from the University of Michigan (1980 magna cum laude). He was a member of the Order of the Coif and a Note Editor on the Journal of Law Reform. From 1980 to 1981, he clerked for Judge Edward A. Tamm of the U.S. Court of Appeals for the District of Columbia Circuit.

Mr. Perry has been active in pro bono matters, working closely with Hands on Atlanta, Habitat for Humanity, and other community organizations. He is a Life Fellow of the Lawyers Foundation of Georgia.

James M. Evangelista

Jim Evangelista has over seventeen years of diverse, hands-on, complex commercial and class action litigation experience representing both plaintiffs and defendants in federal and state courts around the United States with extensive experience in electronic discovery matters.

Mr. Evangelista's broad plaintiffs' experience includes the representation of institutional pension funds, corporations and individual investors in securities fraud class action, merger and acquisition, shareholder derivative, and general business tort and commercial litigation against public companies such as *AT&T, Beazer Homes USA Inc., BellSouth Corp., Cingular Wireless, Coca Cola Enterprises, Inc., Dell Inc., Mirant Corp., New York Community Bankcorp, Spectrum Brands Inc., Verizon, Vonage Holdings Corp.,* and *Washington Mutual Bank.* During his career Mr. Evangelista has helped investors and other clients recover over $100 million in losses from securities fraud and other wrongdoing, has fought procedurally and financially unfair acquisitions of public companies and breaches of fiduciary duty by corporate management and boards of directors, and has forced one public company's board to adopt new corporate governance measures designed to improve worker safety and management accountability.

On the defense side, and primarily during his decade tenure at Skadden Arps Slate Meagher & Flom LLP and LeBoeuf, Lamb Greene & MacRae LLP, Mr. Evangelista assisted a substantial number of Fortune 100 and other corporate clients in high profile class action matters and internal corporate investigations including the Metropolitan Life Insurance Company in the *Insurance Sales Practices Litigation*, Aventis CropScience/Bayer CropScience in the *StarLink™ Corn Litigation*, and Compaq Computer Company in the *Floppy Disk Controller Litigation*. Mr. Evangelista also participated in the Independent Counsel's investigation of the United States Justice Department's prosecution of Banca Nazionale del Lavoro for illegal loans to the Government of Iraq (the "Iraqgate Scandal"), the Independent Administrator's court appointed oversight of the International Brotherhood of Teamsters, and in the internal investigations regarding illegal political campaign contributions by a large public utility and improper player and team owner conduct within a major national sports association.

Mr. Evangelista is admitted to the United States Court of Appeals for the First, Second, Eighth, Ninth and Eleventh Circuits; the United States District Courts for the Northern District of Georgia, Southern and Eastern Districts of New York, and the District of New Jersey; and the State Bars of Georgia, New York, New Jersey, Colorado and the District of Columbia.

Mr. Evangelista attended Rutgers University in New Brunswick, New Jersey, and graduated in 1988 with a dual degree in Economics and Political Science. In 1991 Mr. Evangelista earned his J.D. from Rutgers University School of Law, in Camden, New Jersey, where he was Articles Editor of the school's Law Review and a recipient of its International Law Honors Program Award.

Publications

• *Polishing the Gold Standard on the E-Discovery Cost-Shifting Analysis: Zubulake v. UBS Warburg LLC et al*, 9 J. Tech. L. & Pol'y 1 (2004);

• Note, *Toward a More Competitive Common Market: European Economic Community Council Regulation No. 4064/89, On the Control of Corporate Mergers Within the European Community*, 22 Rutgers L.J. 457 (1991); and

• Comment, *Cogdell v. Hospital Center At Orange*, 22 Rutgers L.J. 255 (1990)(addressing New Jersey's entire controversy doctrine).

Reported Decisions Include

• *Atwater v. National Football League Players Ass'n*, NO. 1:06 CV 1510, 2007 WL1020848 (N.D.Ga., March 29, 2007) (Slip Op.) (denying defendants' motion todismiss business tort litigation);

• *Wagner v. First Horizon Pharmaceutical Corp.*, 464 F.3d 1273 (11th Cir. 2006)(reversing district court's refusal to permit repleading on securities fraud

complaint);

• *Koehler v. Green*, 370 F. Supp. 2d 904 (E.D. Mo. 2005) (granting defendants'motion to dismiss breach of fiduciary duty complaint); and

• *In re Novastar Financial Securities Litigation*, No. 04-0330-CV-W-ODS, slip op.,2005 WL 1279033 (W.D. Mo., May 12, 2005) (denying defendants' motion to dismiss securities fraud case).

David J. Worley

David Worley has nearly 20 years of experience in complex civil trial and appellate litigation, including many years representing trustees of union pension funds and international and local unions, with substantial experience in portfolio monitoring and securities and other class action litigation. He has repeatedly been named a Georgia "SuperLawyer" in the field of securities litigation. Among the major securities cases he managed were *In re Cryolife Securities Litigation* and *In re AFC Enterprises Securities Litigation*, cases that produced two of the ten largest securities fraud settlements in the history of the Northern District of Georgia.

Among Mr. Worley's noteworthy securities fraud class action litigation experience on behalf of institutional and individual clients as court-appointed lead or co-lead counsel, head or co-head of litigation teams, and/or active participation are the following matters:

• Represented national union pension fund and local union pension plan on behalf of class in securities fraud litigation against Beazer Homes USA, Inc.;

• Represented trust fund on behalf of class in securities fraud litigation against Witness Systems, Inc.;

• Represented investment trading company on behalf of class in securities fraud litigation against Coca Cola Enterprises, Inc.;

• Represented institutional and individual investors on behalf of class in securities fraud action against Cryolife, Inc.;

• Represented institutional and individual investors on behalf of class in securities fraud action against AFC Enterprises, Inc.;

• Represented individual investors on behalf of class in securities fraud action against Profit Recovery Group;

• Represented a state retirement system on behalf of class in securities fraud litigation against Providian Financial Corp.

David Worley's consumer and ERISA class-action litigation experience includes:

• Currently represents individual consumers on behalf of nationwide class against Earthlink, Inc., in Georgia state court action for imposition of improper early termination fees;

• Represented individual telecommunications customers on behalf of class in action against national telecommunications companies for violation of wiretapping statutes;

• Represented class of air traffic controllers in action under ERISA for payment of dental benefits; and

• Represented company employees in class action under ERISA arising from securities fraud by national auto parts manufacturer.

Mr. Worley has represented union pension funds in over 70 separate litigation actions in federal courts around the nation. Among Mr. Worley's noteworthy reported decisions are:

• *Atwater v. National Football League Players Ass'n*, 2007 WL 1020848, 181 L.R.R.M. (BNA) 2993 (N.D. Ga. 2007);

• *National Air Traffic Controllers Ass'n v. Dental Plans, Inc.*, 2006 WL1663286, 38 Employee Benefits Cases (BNA) 2755 (N.D. Ga. 2006);

• *Hipps v. United Steelworkers of America*, 2001 U.S. Dist. LEXIS 4716, 85 FEP Cases (BNA) 367 (N.D. Ga. 2001);

• *Hoffman v. St. Joseph's Hospital*, 1998 WL 283540, 4 Wage & Hour Cases 2nd (BNA) 972 (N.D. Ga. 1998);

• *Turlington v. Atlanta Gas Light Co.*, 135 F.3d 1428 (11th Cir. 1998);

• *Turner v. American Federation of Teachers, Local 1565*, 138 F.3d 878 (11th Cir. 1998);

• *Evans v. McClain of Georgia, Inc.*, 131 F.3d 957 (11th Cir. 1997); and

• *Harrison v. Northwest Airlines, Inc.*, 162 L.R.R.M. (BNA), 2062 (N.D. Ga. 1999).

Mr. Worley has served a Chair of the Labor and Employment Law Sections of both the State Bar of Georgia and the Atlanta Bar Association and as Co- Chair of the Federal Legislative Developments Committee of the American Bar Association's Committee on Labor and Employment Law. He has lectured on arbitration, litigation and election law topics at numerous continuing legal education seminars. For many years he was a member of the AFL-CIO Lawyers Coordinating Committee. From 1998 to 2001, Worley served as Chairman of the Democratic Party of Georgia and a member of the Democratic National Committee, and has been a delegate to four Democratic National Conventions. He currently serves as a member of the Georgia State Election Board.

Mr. Worley received his undergraduate degree *cum laude* from Harvard College in 1980, and graduated from the University of Virginia School of Law in 1985, where he was a member of the National Moot Court Team and received the Johnson & Swanson Award for excellence in written advocacy. He has been admitted to the trial and appellate courts of Georgia, the United States District Courts for the Northern and Middle Districts of Georgia, the Eleventh Circuit U. S. Court of Appeals, and the United States Supreme Court. He is a member of the American Bar Association and the State Bar of Georgia.

J. Steven Parker

Mr. Parker has extensive experience in the areas of securities litigation and regulation. He is a member of the firm's Regulatory Practice Group, representing individuals, broker-dealers, and investment advisors in regulatory and enforcement matters. Additionally, he represents investors and others in securities litigation and arbitration matters.

From 2001 to 2003, Mr. Parker served as the Director of the Securities Division of the State of Georgia. He joined other state regulators in prosecuting enforcement cases against nine leading Wall Street investment banking firms, resulting in a $1.4 billion global settlement. Included in this amount were civil penalties payable to Georgia of $4.7 million, and an additional $5.4 million paid into a special trust fund to be used on investor education and awareness programs in Georgia.

He and his enforcement staff also prosecuted dozens of individuals selling illegal payphone sale-leaseback interests and short-term promissory notes. Of the hundreds of victims of these schemes, many were elderly citizens who lost their life savings in those schemes. In these cases, he frequently worked closely in coordinated investigations and enforcement actions with the Securities and Exchange Commission and the National Association of Securities Dealers.

Mr. Parker was formerly a member of the North American Securities Administrators Association from 2001 to 2003, serving on its Enforcement Section Committee during 2002 and 2003. Additionally, he served on tasks forces investigating sales practices relating to viatical investments and variable annuities. He regularly interacted with securities regulators of all 50 states, the District of Columbia, Puerto Rico and Canada. He is presently the State Securities Law and Regulation Liaison for the American Bar Association and is the Director of Smart Investing Forum, Inc., a nonprofit corporation providing investor education services.

Prior to joining the Georgia Securities Division, he was a Partner in the Decatur, Georgia law firm of Parker, Terry and Center. He was an Associate at Kilpatrick & Cody (now Kilpatrick Stockton) in Atlanta from 1987 to 1990.

Mr. Parker received a B.A. degree from Furman University in Greenville, South Carolina (1983, magna cum laude), and a J.D. degree from the University of Georgia School of Law (1986, magna cum laude). He was Recent Developments

Editor of the Georgia Journal of International and Comparative Law (1985-86) and a member of the Order of the Coif (1986). Upon graduation from law school, Mr. Parker served as a Law Clerk to the Honorable Dudley H. Bowen of the U.S. District Court for the Southern District of Georgia.

Mr. Parker is a member of the Business Law Section of the State Bar of Georgia and is admitted to practice before all Georgia Courts, the U.S. District Courts for the Northern and Southern Districts of Georgia, and the Eleventh U.S. Circuit Court of Appeals.

Daniel I. MacIntyre

Dan MacIntyre, Chair of the firm's business and transactional practice group, brings to Page Perry, LLC thirty five years of experience representing clients in securities, corporate and general business matters. Mr. MacIntyre leads the firm's growth of its corporate and securities transactional practice, including private placements of securities, creation and operation of corporations, LLCs and other business entities, mergers and acquisition, corporate governance matters, and internal investigations. Mr. MacIntyre will also continue, working with his new partners, to represent customers, brokers and advisors in disputes concerning investments, advise securities industry firms and professionals in regulatory and compliance matters and represent targets and witnesses in investigations and proceeding before the United States Securities and Exchange Commission (SEC), NASD and the Securities Commissioners of Georgia and other states.

Mr. MacIntyre began his legal career as an Assistant Attorney General for the State of Georgia representing the Georgia Securities Commissioner. In that capacity, he was the Commissioner's representative on the committee which drafted the Georgia Securities Act of 1973, which is still in force. Mr. MacIntyre also drafted the Commissioner's initial regulations under the new act and assisted and advised the Commissioner in developing an enforcement department. Mr. MacIntyre remained a Special Assistant Attorney General for many years after entering private practice, and has continued throughout his career to be a member and sometimes chair of numerous committees that have advised the Georgia Securities Commissioner and the Georgia Legislature on securities law legislation and other securities law matters.

While serving as Assistant Attorney General, Mr. MacIntyre prepared for the Attorney General a definitive Opinion as to when a real estate syndication would be considered a Security subject to Georgia Securities law. That opinion was further publicized in an Article authored by Mr. MacIntyre and published at 11 Ga. Bar J. 153 (1975).

Mr. MacIntyre entered private practice in 1976. In 1979, he began his own firm which grew into a seven attorney firm. In 1990, Mr. MacIntyre merged his practice into the firm of Wilson Strickland and Benson where he remained for 10 years, becoming chair of that firm's business practice group. In 2000, Mr. MacIntyre joined the firm of Shapiro Fussell as Chairman of its business practice group. Through all of these changes, including his most recent move to Page

Perry, LLC, Mr. MacIntyre has retained a solid base of loyal clients who appreciate his personal and professional representation.

In the private practice of law, Mr. MacIntyre has achieved substantial success handling both civil and regulatory matters.

In his first civil securities litigation, Mr. MacIntyre represented the Teacher's Retirement System of Georgia in a Federal Securities Exchange Act case against a failed real estate investment trust and a major national stock brokerage concerning the sale to Teachers of a $15,000,000.00 subordinated debenture. The suit was successful in obtaining for Teachers property that was ultimately sold for more than $15,000,000.00, despite the fact that the Debenture which Teachers bought was subordinate to several hundred million dollars of senior and secured debt.

While principal of his own firm, Mr. MacIntyre represented 54 major investors who had lost tens of millions of dollars in a series of failed gas and oil partnerships in simultaneous civil actions against six stock brokerage firms. These cases were resolved with a settlement which the brokers and syndicator required be maintained confidential.

While a partner with Wilson Strickland and Benson, Mr. MacIntyre was engaged by the outside directors of a public company to conduct an internal investigation of suspected misconduct by the company's top management. Following Mr. MacIntyre's report of his investigation, the suspect top officers were removed and subject to actions by the SEC. The directors who engaged Mr. MacIntyre to conduct the investigation were ultimately vindicated by the SEC.

While a partner with Shapiro Fussell, Mr. MacIntyre obtained a $5.2 Million Award against Citigroup in an NASD Arbitration on behalf of two individuals who had sold their business through a Citigroup predecessor for stock that turned out to be worthless.

Mr. MacIntyre is an Atlanta native. He was educated in the Atlanta public schools, attended Georgia Tech and graduated from the University of North Carolina (Chapel Hill) where he was honored by membership in Phi Beta Kappa. Mr. MacIntyre is a graduate of the University of Georgia Law School, cum laude, where he was honored by membership in Phi Kappa Phi Honorary Society. While in law school, Mr. MacIntyre served on the Editorial Board of the Georgia Law Review and as Justice (President) of Phi Alpha Delta Legal Fraternity. Between college and law school, Mr. MacIntyre served in the United States Navy as an officer and Naval Aviator, earning four strike/flight Air Medals during two tours aboard the USS Hornet in the waters around Viet Nam. Mr. MacIntyre was promoted to the rank of Lieutenant Commander while serving in the Naval Reserves during law school.

Mr. MacIntyre is a member of the State Bar of Georgia and of the American and Atlanta Bar Associations. He is a member of the Section of each of these Bar Associations that focuses on Corporate, Securities and Business law.

James A. Nofi

James A. Nofi represents customers in securities arbitrations, brokers in employment disputes and arbitrations, and brokers, brokerage firms, and investment advisers in regulatory investigations and proceedings. Before relocating to Atlanta, he practiced law in New York in the areas of securities regulation, enforcement, and civil litigation for 20 years, including 12 years at the Division of Enforcement of the New York Stock Exchange, Inc., rising to the level of Trial Counsel.

With extensive experience in conducting securities industry investigations and prosecutions, including appeals, Mr. Nofi is knowledgeable about broker/dealer compliance issues in the areas of sales practice (unauthorized, unsuitable, and excessive trading), financial/operational areas (net capital and customer protection), and trading matters (market maintenance, market manipulation, and other trading violations). Mr. Nofi also served as lead counsel in an Exchange disciplinary matter in which, for the first time, the sanctions required a non-publicly traded broker-dealer to add an independent director to its board. He is a co-author of The Enforcement Role of the New York Stock Exchange, 85 NW.U.L.REV. 637 (Spring 1991).

Mr. Nofi has represented customers pursuing arbitration claims involving, among other things, unsuitable investments, churning, variable annuities, fraud, misrepresentations, the submission of forged documents, and claims under ERISA. He has represented clients in matters before the SEC, the NASD, and the Securities Division of the Secretary of State of Georgia. He has written and lectured on various topics of securities regulation. In September 2006, Mr. Nofi was a member of a Labor and Employment Law delegation to China through the People to People Ambassadors Program.

Mr. Nofi is a member of the American Bar Association and its Litigation Section, where he is a member of the Securities Regulation, Trial Practice, and Trial Evidence subcommittees. He is also a member of the New York State Bar Association, the New York City Bar Association, and the Securities Industry and Financial Markets Association Compliance and Legal Division.

Born in Brooklyn, New York, Mr. Nofi graduated from New York University Washington Square and University College of Arts and Science with a B.A. in history, cum laude, in 1978. He received his J.D. degree from New York University School of Law in 1981 and was admitted to the bar in New York in 1982. He was admitted to the bars of the United States District Courts for the Southern, Eastern, Northern, and Western Districts of New York, and the United States Court of Appeals for the Second Circuit. Mr. Nofi was admitted to the bar in Georgia and to the United States District Court for the Northern District of Georgia in 2004.

Samuel T. Brannan

Mr. Brannan is a native Atlantan. His practice is focused on the representation of investors in matters involving breach of duty, fraud, mismanagement, unsuitable

investments and advice, and other broker misconduct. He has represented investors from all walks of life in securities arbitrations for over 15 years. During this time, he has participated in over 100 securities arbitration cases and has assisted aggrieved investors in recovering millions of dollars.

Mr. Brannan and is admitted to practice before all Georgia Courts, including the Georgia Supreme Court, the Georgia Court of Appeals, and the U.S. District Court for the Northern District of Georgia. He has argued before those courts on a number of occasions.

He is a member of the State Bar of Georgia, the Atlanta Bar Association, and the Public Investors Arbitration Bar Association ("PIABA"). He is the author of Arguments and Authorities Supporting the Viability of Holder Claims, 13 PIABA Bar J. 47 (Summer 2006), also to be published in the 2007 edition of PLI Securities Arbitration.

Mr. Brannan has spoken to professional and civic groups, including CPAs and their clients, on how to spot red flags of securities account mismanagement and other topics. Mr. Brannan has developed and maintains a database of public information on potential arbitrators and mediators and brings extensive experience to bear in the selection of independent and impartial arbitrators.

Mr. Brannan is currently involved in a group of cases seeking to make whole a large number of investors who were fraudulently induced by a single bad broker and his firm to purchase variable life insurance products they did not need with exorbitant annual premiums they could not afford.

Mr. Brannan received his J.D. degree in 1990 from the Georgia State University College of Law. He served on the Editorial Board of the Georgia State University Law Review and received American Jurisprudence Awards in Business Associations and Criminal Procedure and an Outer Barristers Guild Award.

Mr. Brannan joined the United States Air Force in 1976. He served as a medical laboratory technician at Reese Air Force Base, Texas, and Nellis Air Force Base, Nevada, obtained his Medical Technologist certification from the U.S. Department of Health and Human Services, and was honorably discharged as a Staff Sergeant (E-6) in 1984. Mr. Brannan attended Wayland Baptist University in Plainview, Texas, while on active duty, and graduated with a bachelor's degree in 1985. From 1985 to 1986, he completed one year of the MBA program at Georgia State University and then entered law school. From 1984 to 1989, he was employed as a Medical Technologist with St. Mary's Hospital, Lubbock, Texas, Veterans Administration Hospital, Decatur, Georgia, and Smith Kline Bioscience Laboratories, Atlanta, Georgia.

Jason R. Doss

Jason Doss has devoted his practice to representing individual investors across the country in securities arbitrations, court proceedings and consumer class action litigation involving issues related to unsuitable investments, churning, variable annuities, fraud, misrepresentations and the submission of falsified documents.

Over the last two years, Mr. Doss has worked with union organizations to help protect its members from falling victim to investment abuse. In July 2006, Jason Doss was a speaker at the Communication Workers of America (CWA) Retired Members Council's Annual Meeting in Las Vegas, Nevada.

Also, in 2006, Mr. Doss helped to create the non-profit organization Smart Investing Forum that is devoted to investor education. Jason Doss is currently the Program Coordinator of Smart Investing Forum.

In addition, leading business publications such as Investment News have relied on Mr. Doss for analysis of investment related legal issues.

In 2005, Mr. Doss co-authored a legal article entitled, Georgia Securities Act — Let the Buyer Beware!, which was published in the Georgia Bar Journal.

Since 2001, Mr. Doss has been a member of the Public Investor Arbitration Bar Association (PIABA), an international organization devoted to protecting the rights of the investing public. Jason Doss has been a member of the Editorial Board of the PIABA Bar Journal and currently serves as its Editor-In-Chief.

Jason Doss received his J.D. degree from Florida State University College of Law in May 2002 and served on the FSU Alumni Board of Directors from 2002-2005. While at Florida State, Mr. Doss received the Mock Trial Best Advocate Award and the Mock Trial Coaches Award. He is licensed to practice in both Georgia and Florida.

Linda S. Pacer

Linda S. Pacer is a securities lawyer and litigator who launched her own practice in 2003 after successfully representing individual, corporate and institutional investors in federal and state court, and NASD and NYSE arbitration and mediation proceedings for nearly 15 years. She has worked on cases in alliance with Page Perry, LLC since 2004.

In addition to her extensive experience with claims for breach of fiduciary duty, suitability, unauthorized trading and violations of federal and state securities laws, Ms. Pacer has special expertise in ERISA fiduciary issues involving investments in pension plans and retirement funds. As counsel for the retirement trusts of a New York union affiliated with the AFL-CIO and an international trade association, she won a large multimillion settlement in a complex securities and ERISA case against a leading broker-dealer. In that case, she persuaded the U.S. Secretary of Labor to file amicus curiae briefs on behalf of her clients in both the district and appellate court actions. Ms. Pacer's ERISA experience includes 401(k) and other defined contribution plans, as well as traditional pension and other defined benefit plans.

Most recently, Ms. Pacer has focused her practice on multimillion cases arising from analyst misconduct and conflicts of interest. She has represented individual clients in disputes involving the "private banking" and "private wealth management" divisions of the world's leading securities and investment firms. She has also counseled individual and institutional clients in disputes

concerning exchange funds, collateralized mortgage obligations and other sophisticated investment strategies. Ms. Pacer is co-author of an article on the Private Securities Litigation Reform Act published in the Civil Rico Report (Sept. 1996).

Prior to moving to Atlanta in 1987, Ms. Pacer was an associate with the Washington, D.C. office of New York's Fried, Frank, Harris, Shriver & Jacobson, where she worked with a former general counsel and chairman of the SEC on several high-profile cases. She also advised major banks and financial institutions on administrative, compliance and enforcement matters involving the SEC, Federal Reserve Board, Office of Comptroller of Currency and other bank regulatory agencies. During her tenure at Fried Frank, Ms. Pacer designed and implemented defensive strategies and securities compliance programs for investment banks, broker-dealers, mutual fund companies and other financial services clients. She continues to have an interest in legal risk management.

Ms. Pacer earned a B.A. degree summa cum laude in history and French from Daemen College in Amherst, New York, and M.A. and Ph.D. in history from the State University of New York at Buffalo. She received her Juris Doctor degree in 1982 from the University of Pennsylvania Law School, where she took several courses in conjunction with the Wharton School. She is a member of the New York Bar, Pennsylvania Bar and State Bar of Georgia, and is admitted to practice before all Georgia state courts, the United States District Court for the Northern District of Georgia and the Eleventh Circuit Court of Appeals.

Brian C. Bradley

Brian C. Bradley joined the firm in 2008 as a Forensic Accountant. Over the last eleven years, Mr. Bradley has assisted counsel by managing engagements involving complex forensic analysis in cases involving violations of securities and banking laws and regulations. His diversified experience includes high profile class actions across a broad range of businesses. His contribution has resulted in successful recoveries of claims against Big Four accounting firms and Fortune 500 companies. In addition, Mr. Bradley has over a decade of valuable experience in accounting, reporting and audit functions with financial institutions.

Mr. Bradley received his B.S. degree in Business Administration with a major in accounting from the University of Houston.

David K. Weiskircher

David Weiskircher is a securities consultant in the law firm of Page Perry, LLC. A native of Ohio, Mr. Weiskircher moved with his family to Florida in 1966. He received his Bachelor of Arts degree from Georgia State University with honors in his major field of study.

For over six years, Mr. Weiskircher supervised the stock transfer, dividend disbursement and proxy solicitation department of a major Florida bank, during which time he was promoted to Corporate Trust Officer. Mr. Weiskircher then became an Operations Manager for a major Southeast regional brokerage firm. Soon thereafter, he was recruited by the firm's Compliance Director to move to Atlanta to work as a Compliance Administrator overseeing the trading activities and broker conduct in over 30 branch offices. In 1985, Mr. Weiskircher joined a national brokerage firm as Operations Manager in that firm's largest branch office in the Southeast. Mr. Weiskircher was then chosen to help the firm open and run a new branch office in the city of Atlanta.

Mr. Weiskircher serves as an arbitrator for the National Association of Securities Dealers, Inc. Mr. Weiskircher has attended several arbitrator training seminars sponsored by the National Association of Securities Dealers, Inc., including the Calculation of Damages, Expungement and Chairperson Training programs. Mr. Weiskircher is also an Associate member of the American Bar Association. In September 2006, Mr. Weiskircher attended the International Traders' Forum in Versailles, France.

As a securities consultant for Page Perry, LLC, Mr. Weiskircher is responsible for analyzing and evaluating cases from an operations, supervisory and compliance viewpoint. Mr. Weiskircher has been involved in cases that have involved stocks, bonds, options, mutual funds, annuities, insurance, commodities, limited partnerships, collateralized mortgage obligations and exchange funds. In addition, Mr. Weiskircher has assisted in investor claims concerning unsuitability, unauthorized trading, misrepresentation and churning, as well as assisting with employment disputes.

EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF MICHAEL G. McLELLAN ON BEHALF OF FINKELSTEIN THOMPSON LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Michael G. Mclellan, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Finkelstein Thompson LLP. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. My firm, which served as additional counsel in the Consolidated Action, participated in various aspects of the litigation and settlement of the action, as set forth in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The principal tasks undertaken by my firm included: Researching, investigating, and filing an action; analyzing, editing, and otherwise commenting on the Consolidated Amended Complaint; providing significant legal research and drafting assistance in opposing Defendants' Motions to Dismiss; and providing other significant research and drafting assistance in pleadings filed in this case. My firm worked closely with Lead Counsel and operated under Lead Counsel's supervision.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff of my firm who was involved in the prosecution of the Consolidated Action, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

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

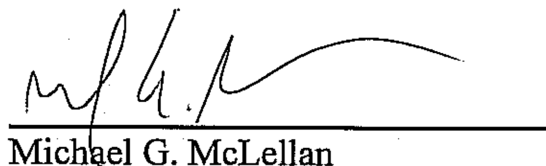
6. The total number of hours expended on this litigation by my firm during the Time Period is 200.10 hours. The total lodestar for my firm for those hours is $ 89,395.50.

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

8. As detailed in Exhibit B, my firm has incurred a total of $5,357.07 in unreimbursed expenses incurred in connection with the prosecution of the Consolidated Action. The expenses incurred are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the some of the attorneys of my firm who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 13, 2012.



Michael G. McLellan

A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: FINKELSTEIN THOMPSON LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Burton H. Finkelstein	P	825	.30	$ 247.50
L. Kendall Satterfield	P	715	3.80	$ 2,717.00
Donald J. Enright	P	625	19.70	$ 12,312.50
Mila F. Bartos	P	660	1.10	$ 726.00
Tracy D. Rezvani	P	625	.10	$ 62.50
Michael G. McLellan	P	525	71.40	$ 37,485.00
Mark L. Punzalan	A	375	68.20	$ 25,575.00
Thomas M. Gottschlich	A	300	28.20	$ 8,460.00
Roberto G. Garcia	F/A	440	2.20	$ 968.00
Julia M. Dito	PL	220	.50	$ 110.00
Jeremy H. Rothstein	PL	220	1.10	$ 242.00
File Clerks	FC	140	3.50	$ 490.00
TOTAL			***200.10***	***$ 89,395.50***

*Partner	(P)	Associate	(A)
Of Counsel	(OC)	Paralegal	(PL)
Investigator	(I)	Research Analyst	(RA)
Financial Analyst	(F/A)	File Clerk	(FC)

B

Exhibit B

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

DISBURSEMENT REPORT

FIRM: FINKELSTEIN THOMPSON LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

DISBURSEMENT	TOTAL AMOUNT
Duplicating	$ 707.45
Postage	$ 16.48
Telephone / Fax	$ 1.22
Messengers	
Filing Fees	$ 570.00
Transcripts	
Computer Research Fees	$ 4,000.00
Overnight Delivery Services	$ 21.92
Expert Fees	
Travel/Meals	$ 40.00
Court Reporters	
TOTAL	***$ 5,357.07***

C

FIRM RESUME
2012

1077 30th Street, NW, Suite 150 · Washington, DC 20007

100 Bush Street, Suite 1450 · San Francisco, CA 94104

FINKELSTEIN THOMPSON LLP

FINKELSTEIN THOMPSON LLP ("the firm"), is a thirteen-lawyer litigation firm, with offices in Washington, D.C. and San Francisco, CA, focusing primarily on complex financial litigation involving antitrust violations, fraud and crime in the banking, securities and commodities industries, and consumer fraud.

By concentrating exclusively on litigation, rather than a generalized transactional practice, the firm avoids the conflicts of interest, both actual and philosophical, that can arise from multi-faceted representation, and is able to offer the kind of hard-hitting approach that modern financial litigation demands. Since 1993, the firm has served in a leadership position in cases that have recovered many hundreds of millions of dollars for investors and consumers.

Because the outcome of litigation is often dependent on the strength of expert testimony, the firm has developed strong working relationships with nationally prominent outside consultants in the areas of securities, commodities, antitrust, banking, consumer fraud, marketing and economics.

HISTORY

The firm was founded in March 1977 by Burton H. Finkelstein and Douglas G. Thompson, Jr. The firm's offices are located in Georgetown and in San Francisco in the Financial District.

EXPERIENCE

Our named partners have over seventy years combined experience in the prosecution and defense of complex financial civil and criminal matters. Senior partner Burton H. Finkelstein is the former head of the Administrative and Criminal Trial Unit of the Securities and Exchange Commission. Douglas G. Thompson, Jr. is an alumnus of the securities litigation group of a major Washington, D.C. law firm. The other partners and associates have extensive experience in a variety of complex litigation fields. The firm has sixteen lawyers and a Chartered Financial Analyst. The firm has practiced before the Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Trade Commission, Federal Communications Commission, U.S. Copyright Office, New York Stock Exchange, Chicago Board of Trade, National Association of Securities Dealers, National Futures Association, and in various state and federal trial and appellate courts across the country, in civil and criminal enforcement matters and in private damage litigation. The firm has considerable expertise and experience in defending and prosecuting complex financial class action claims.

The firm is involved in class action litigation in federal and state courts nationwide. We have developed a reputation for successful and thorough representation of class clients against many of the largest and most powerful companies in the country. As part of our efforts to serve our clients' interests in the most effective and efficient manner possible, the firm has established ongoing relationships with other class action law firms whose size, location or expertise complement our own. We have won judgments and negotiated settlements that have recovered an aggregate of over one billion dollars for class members.

SECURITIES & COMMODITIES CLASS ACTION LITIGATION

Since its inception in 1977, the firm's securities litigation practice has extended across a wide range of shareholders' securities litigation, from accounting fraud, allegations of insider trading, proxy statement fights, and minority shareholder rights being violated, to cases alleging misstatements in prospectuses. The firm regularly litigates substantive federal issues under the Securities Act of 1933, the Securities Exchange Act of 1934, the Reform Act of 1995, tenders offers under the Williams Act, derivative suits under State and Federal law, and unfair business practices claims.

Our clients include institutional investors, pension funds, high-net worth individuals and retail investors. While few class action securities suits go to trial, substantial skill and experience is required to investigate, prepare, and litigate the underlying claims to successful resolution. The firm enjoys a national reputation for high-quality and successful recoveries for our clients.

The firm also selectively prosecutes actions pursuant to the Commodity Exchange Act regarding market manipulations involving commodity futures and options. To date, the firm has enjoyed considerable success in these matters, which are recognized as some of the most difficult causes of action to successfully pursue.

SETTLED REPRESENTATIVE SECURITIES AND COMMODITIES CLASS ACTION CASES

1. In re Merrill Lynch & Co., Inc. Research Reports Litigation, MDL 1484 (S.D.N.Y.) – Executive Committee member; Lead Counsel in six of the underlying actions; $125 million settlement achieved.

2. In re Natural Gas Commodity Litigation, No. 03cv6186 (S.D.N.Y.) – Co-Lead Counsel; over $100 million achieved in settlements.

3. PaineWebber Securities Litigation, No. 94cv8547 (S.D.N.Y) – Executive Committee member; $200 million settlement achieved.

4. Freeland v. Iridium World Communications, Ltd., No. 99cv1002 (D.D.C.) – Liaison Counsel and Executive Committee member; $47.5 million settlement achieved.

5. Prudential Securities Litigation, MDL 1005 (S.D.N.Y.) – Executive Committee member & Co-Chair of Settlement Committee; $150 million settlement achieved.

6. Kidder Peabody Securities Litigation, No. 94cv3954 (S.D.N.Y.) – Executive Committee member; $19 million settlement achieved.

7. Rudolph vs. UT Starcom, et al, No. 3:07-CV-04578-SI (N.D.Ca.) – The firm serves as sole Lead Counsel in a securities fraud class action against UT Starcom and certain officers in connection alleged illegal backdating of executive stock options. $9.5 million settlement achieved

8. Holly Glenn v. Polk Audio, Inc., No. 99cv4768 (Md. Cir. – Baltimore) – Co-lead Counsel; $4.8 million settlement achieved (an increase of nearly 50% of shareholder buyout value).

9. Grecian v. Meade Instruments, Inc., No. 06cv908 (C.D. Cal.) – Sole Lead Counsel on behalf of shareholders claiming securities fraud violations related to alleged illegal backdating of executive stock options. Settlement achieved for $3 million and corporate governance changes.

ANTITRUST CLASS ACTION LITIGATION

Federal and state antitrust laws are primarily concerned with protecting the economy and promoting competition between businesses by preventing (i) collusion among “competitors” that might result in restraints on competition in a given industry or market, and (ii) anti-competitive conduct by a particular entity who holds monopoly power in a given industry or market.

The firm is involved in several cases on behalf of individuals and businesses that have been injured by the anti-competitive behavior of other companies. These cases involve allegations such as market manipulation, monopolization, price-fixing, and predatory practices. Below is a sample of the cases in which we have been intensively involved:

SETTLED REPRESENTATIVE ANTITRUST CLASS ACTION CASES

1. In re Relafen Antitrust Litigation, No. 01cv12239 (D. Mass.) – Executive Committee member in federal direct purchaser case, settlement achieved - $175 million.

2. Heliotrope General, Inc. v. Sumitomo Corporation, et al., Master Case No. 701679 (Cal. Super. - San Diego) – Co-Lead Counsel; settlement achieved - $100 million.

3. National Metals, Inc. v. Sumitomo Corp., No. 734001 (Cal. Super. - San Diego) – Co-Lead Counsel, settlements achieved with several defendants for $81 million.

4. In re Warfarin Sodium Antitrust Litigation, MDL 1232 (D. Del.) – Discovery Committee member and Co-lead Counsel in state case; settlement achieved in the companion national case - $44.5 million.

5. Ryan Rodriguez v. West Publishing Corp. and Kaplan, Inc., No. CV-05-3222 R(MCx) (Cal. Central District Court) – An antitrust class action where FT LLP

served as one of three law firms alleging nationwide national antitrust violations. $49 million settlement finally approved.

6. In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, No. 05cv1671 (C.D. Cal.) – Co-Lead Counsel in a certified class action lawsuit that alleges antitrust and common law violations which resulted in increased prices for RFG for purchasers. $48 million settlement achieved

ONGOING REPRESENTATIVE ANTITRUST CLASS ACTION CASES

1. In Re Webkinz Antitrust Litigation, MDL 1987 (N.D. Cal.): Plaintiff retailers allege that Defendant Ganz, the manufacturer of Webkinz toys, violated federal antitrust laws and state consumer statutes by illegally tying the sale of popular Webkinz toys to the purchase of unrelated Ganz products, among other things.

2. In re Modafinil Antitrust Litigation, MDL 1797 (E.D. Pa.): Plaintiff purchasers allege that Defendant Cephalon entered into a conspiracy with the manufacturers of generic versions of its drug Provigil, violating federal antitrust law by delaying the launch of generics and dividing the resulting profits.

CONSUMER CLASS ACTION LITIGATION

In federal and state courts throughout the country, the firm represents consumers who have been injured or defrauded. Our cases involve individuals or classes of individuals who have been physically or economically damaged by the wrongdoing of others. Some of our cases seek to obtain financial relief, medical monitoring, injunctions and revised notification for classes of plaintiffs. Some of the cases we have brought include:

SETTLED REPRESENTATIVE SECURITY BREACH CLASS ACTION CASES

1. In Re TJX Companies Retail Security Breach Litigation, MDL 1838 (D. Mass.) Counsel in class action lawsuit alleging statutory and common law violations that resulted in a security breach of consumers' debit and credit card information. $200 million settlement achieved.

2. Lockwood v. Certegy Check Serv., Inc., No. 8:07-cv-01434-SDM-TGW (M.D. Fla.) Counsel in class action lawsuit alleging common law violations that resulted in a security breach of consumers' personal and financial information. Available benefits made to Settlement Class Members of over $500 million.

3. In re Countrywide Financial Corp. Customer Data Security, MDL 1998 (W.D. Ky.) Co-lead counsel in class action lawsuit alleging violations of common law, the California Business and Professions Code, and the Fair Credit Report Act, for data breach involving consumers' personal and financial information. Settlement resulted in a credit monitoring protection package for the class, the creation of an identity theft reimbursement fund of $5 million, and the creation of an expense

reimbursement fund for class members of $1.5 million to compensate class members for actions taken as a result of the data breach.

SETTLED REPRESENTATIVE CONSUMER CLASS ACTION CASES

1. Gael M. Carter, et al. v. Associates Financial Services Co., Inc., et al., No. 96cv4652 (Tex. Dist. – Dallas County) – The firm played a pivotal role in pursuing the claims of millions of class members in a number of suits in states across the country against The Associates n/k/a Citifinancial, alleging consumer fraud relating to home equity and personal loan terms. Settlements achieved in the state, federal and companion FTC cases totaling $240 million.

2. Cavan et al. v. Sears Roebuck & Co. and Whirlpool Corp., No. 04CH10354 (Ill. Circuit Court - Cook County) – Co-Lead counsel for consumer class action based upon the sale of Calypso® washing machines. Nationwide settlement reached and approved by the Court.

2. In re Diet Drugs Products Liability Litigation, MDL 1203 (E.D. Pa.). Co-Chair of the Non-PMC litigation group prosecuting class certification of claims not advanced by Plaintiffs' Management Committee.

3. Schulte v. Fifth Third Bank, 1:09-cv-06655 (N.D. Ill.) – Co-lead counsel in a consumer class action alleging re-sequencing of consumer banking transactions in highest to lowest order with intention of maximizing overdraft fee revenue. Nationwide settlement resulted in a settlement fund of $9.5 million and injunctive relief valued at over $100 million. First re-sequencing/overdraft fee settlement in the nation where bank agreed to terminate high to low re-sequencing as part of relief to the class.

ONGOING REPRESENTATIVE SECURITY BREACH CLASS ACTION CASES

1. In Re Hannaford Bros. Co. Customer Data Security Breach Litigation, MDL 1954 (D. Me.) Counsel in class action lawsuit alleging statutory and common law violations that resulted in a security breach of consumers' debit and credit card information.

2. In re Heartland Payment Systems Inc. Customer Data Security Breach Litigation, MDL 2046 (S.D. Tex.). Co-Lead Counsel in class action lawsuit alleging statutory and common law violations that resulted in a security breach of consumers' personal and financial information.

3. Richardson, et al. v. Tricare Management Activity, et al., 1:11-cv-01961 (D.D.C.) Law suit alleging violations of the federal Privacy Act as a result of a security breach of insureds' personal and health information.

ONGOING REPRESENTATIVE CONSUMER CLASS ACTION CASES

1. In re Avandia Marketing, Sales Practices and Products Liability Litigation, MDL 1871 (E.D. Pa.) - FT serves as a member of the Plaintiffs Steering Committee and Co-Chair of the Class Action Sub-Committee. The suit alleges that SmithKline Beecham Corporation d/b/a GlaxoSmithKline used marketing schemes to deliberately conceal and affirmatively misrepresent the significant heart attack or heart-disease related risks associated with the use of the Avandia, Avandamet and Avandaryl – medications used to treat Type II diabetes.

2. In re Darvocet, Darvon and Propoxyphene Products Liability Litigation., MDL 2226 (E.D.Ky.)- FT serves as a member of the Plaintiffs Steering Committee. The suit alleges that brand and generic manufacturers of the pain killer deliberately concealed and misrepresented significant cardiac risks associated with the use of the drug.

ONGOING REPRESENTATIVE THIRD-PARTY PAYOR CLASS ACTION CASES

1. United Benefit Fund v. GlaxoSmithKline LLC, MDL 1871 (E.D. Pa.)- the firm serves a member of the Plaintiffs' Steering Committee, Co-Chairs the Class Action Sub-Committee, and is counsel of record for a third-party payor class action alleging that GSK created, monitored and/or controlled various marketing firms, physicians and ghostwriters to promote and disseminate – through sponsored events and publications – misleading messages about safety and efficacy relating to the use of Avandia.

FALSE CLAIMS ACT LITIGATION

The firm maintains an active practice under the Federal False Claims Act (also known as "*qui tam*" litigation). Through representation of whistleblowers who have independent knowledge of government contract fraud, the firm seeks to secure the return of millions of dollars to federal and state treasuries. Currently, the firm has investigated and filed *qui tam* claims in connection with the student loan industry. The following are matters that have been unsealed and in litigation:

1. Filed Under Seal, (D. Nev.). FT seeks to recover for the U.S. Government, under the False Claims Act, treble damages and civil penalties arising from a pharmaceutical manufacturer's conduct causing false claims under the relevant state and federal Medicare and Medicaid statutes.

2. Filed Under Seal, (E.D. Va.)- the firm serves a local counsel in a case to recover for the U.S. Government, under the False Claims Act and relevant state False Claims statutes, treble damages and civil penalties arising from false claims made against Medicare and Medicaid in connection with the provision of rehabilitation services.

BURTON H. FINKELSTEIN
Partner

BURTON H. FINKELSTEIN has practiced securities litigation for more than forty years, first with the Securities and Exchange Commission, and then in private practice. At the SEC, he was special trial counsel and an Assistant Director of the Enforcement Division, where he was in charge of the administrative, civil and criminal litigation nationwide enforcement program. In 1970, he joined the New York firm of Phillips, Nizer, Benjamin, Krim & Ballon and was a partner in their Washington, D.C. office until 1977, when he and Mr. Thompson formed the firm now known as FINKELSTEIN THOMPSON LLP.

In private practice, Mr. Finkelstein has participated in more than twenty securities fraud trials in cities throughout the United States, representing broker-dealers, principals and securities salesmen, attorneys, accountants, publicly and privately held companies and officers and directors of such companies. He has also represented companies and individuals in SEC investigations, and has served as special counsel to public companies in conducting internal investigations.

Mr. Finkelstein earned a B.B.A. degree in accounting from City College of New York in 1959 and an L.L.B. degree from the University of Pennsylvania in 1962. After military service and a brief stint as law clerk to the General Counsel of the Federal Power Commission, he began his securities litigation career as trial counsel at the SEC's Washington Regional Office.

Mr. Finkelstein has appeared as a panelist in securities litigation and enforcement seminars for the Practicing Law Institute, New York Law Journal and the American Law Institute - American Bar Association (ALI-ABA). He was an adjunct professor of law at Georgetown University Law School from 1979 to 1998. His course was entitled "Securities and Financial Frauds - Enforcement and Litigation."

DOUGLAS G. THOMPSON, JR.
Partner

DOUGLAS G. THOMPSON, JR. has specialized in administrative and civil trial and appellate litigation in private practice for over twenty years. His practice has been concentrated in the areas of securities, commodities, banking, communications, and other complex business and financial transactions. Mr. Thompson has represented clients in federal court and before the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, the Federal Communications Commission, the Copyright Royalty Tribunal, and the Criminal Division of the Department of Justice. Over the past several years, Mr. Thompson has litigated securities and commodities claims in failed savings and loan cases on behalf of the RTC and FDIC. As lead counsel for the FDIC, Mr. Thompson recently won a jury verdict of more than $1 million after a lengthy trial involving commodities fraud issues.

Mr. Thompson received his A.B. and M.A. degrees in economics from Stanford University and his J.D. degree from Stanford Law School in 1969. He taught at the Stanford Law School in 1969-70 and clerked for Judge Ben. C. Duniway of the United States Court of Appeals, Ninth Circuit, in 1970-71. Following his clerkship, Mr. Thompson joined the law firm of Wilmer, Cutler & Pickering, Washington, D.C., where he was a litigator in communications and securities law. In 1977, he joined with Mr. Finkelstein in the formation of the firm now known as FINKELSTEIN THOMPSON LLP.

Mr. Thompson is a member of the bar of the District of Columbia and the State of California and of several federal district and appellate courts.

L. KENDALL SATTERFIELD
Partner

KENDALL SATTERFIELD joined FINKELSTEIN THOMPSON LLP in 1985. Mr. Satterfield practices in the fields of both antitrust and consumer fraud class action litigation. Additionally, he has represented private clients and federal banking agencies in civil and administrative litigation involving securities and commodities fraud, federal banking law and accountant malpractice. Mr. Satterfield also represents Canadian broadcasters and television production companies in matters involving cable television copyright royalties before the United States Copyright Office and has practiced before the Federal Communications Commission.

Mr. Satterfield is a 1981 graduate of Ohio Northern University where he received a Bachelor of Sciences degree with Highest Honors in Business Administration. He then attended Emory University where he received his Juris Doctor in 1984. He is a member of the District of Columbia and Georgia Bars.

MILA F. BARTOS
Partner

MILA F. BARTOS has been with FINKELSTEIN THOMPSON LLP since January 1995. Ms. Bartos practices in the fields of both antitrust litigation and consumer fraud class action cases, including adulterated and toxic products. She is a 1990 graduate of the University of Wisconsin - Madison where she received a joint Bachelor of Arts degree in English and Communications. Ms. Bartos then attended the American University Washington College of Law where she received her Juris Doctor in 1993. At American University, Ms. Bartos was a co-founder of the *American University Journal of Gender and Law* and was a member of the Editorial Board.

Ms. Bartos is the author of the article, "Law Firm Collaboration Via Extranets" published in the Law Library Resource Xchange. She is also an active member of the Chairman's Council of the Appleseed Foundation. Ms. Bartos is a member of the Maryland and District of Columbia Bars.

TRACY D. REZVANI
Partner

TRACY D. REZVANI joined FINKELSTEIN THOMPSON LLP in September 1996. Ms. Rezvani practices in the fields of consumer, antitrust and securities fraud litigation. She is a 1993 graduate of the University of Maryland-College Park where she received a Bachelor of Science degree in Business & Management. Ms. Rezvani then attended the George Washington University Law School where she received her Juris Doctor in May 1996. At George Washington University, Ms. Rezvani was a member editor of *The George Washington Journal of International Law & Economics*.

Ms. Rezvani is a member of the District of Columbia and Maryland Bars and is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the District of Columbia Circuit, and the U.S. District Courts for the Districts of Maryland the District of Columbia and the District of Colorado. Ms. Rezvani served as an editor for the Iranian-American Bar Association's *IABA Review* from 2005 to 2007.

Publications, Presentations and Recognitions

Ms. Rezvani writes and speaks regularly regarding consumer litigation. Her presentations include:

- The NetDiligence Cyber Risk & Privacy Liability Forum: *Data Breach Liability: An Unstable Legal Environment* (HB Litigation Conference June 7, 2010).

- Private Attorney General Actions and Beyond: Recent Court Decisions Interpreting the D.C. Consumer Protection & Procedures Act, District of Columbia Bar, Antitrust and Consumer Law Section (May 25, 2010).

- Summer 2006 Brown Bag luncheon presentation at the District of Columbia Bar, Antitrust and Consumer Law Section focused on "representative" actions brought by "private attorneys general" pursuant to the District of Columbia Consumer Protection Procedures Act.

- *Avandia - Current Litigation, Status of the MDL and Future Trials* (HB Litigation Conference March 26, 2009)

- Summer 2009 D.C. Superior Court Training Seminar on District of Columbia Consumer Protection Procedures Act

- DC Bar Continuing Legal Education Program: *Developments in Class Action Litigation 2010* (December 9, 2010)

Her published works include:

- *From Marbury to Rasul: Two Centuries' Expansion on the Question of Jurisdiction*, 1 IABA Review 10 (Winter 2005).

- *The Plight of Padilla: The Impact of Supreme Court Decisions on the Future of Detainees*, 2 IABA Review 12 (Spring 2006).

- *Class Counsel: Conflicts Between Duties To the Class Representative And To The Class*, ABA Antitrust Compliance Bulletin, (Vol. 1, No. 4 November 2007)
- *CAFA Used to Maintain a Non-Class Case in Federal Court*, Class Action Fairness Act Blog, (17 October 2008)

Ms. Rezvani practices in the Washington, D.C. office.

RICHARD M. VOLIN
Partner

RICHARD M. VOLIN joined FINKELSTEIN THOMPSON LLP in September, 1997 and currently practices in the fields of antitrust and consumer fraud litigation. He is a 1991 graduate of the University of Michigan at Ann Arbor, where he received a Bachelor of Arts degree in English. Mr. Volin then attended the George Washington University Law School, where he received his Juris Doctor with Honors in 1996. During law school, Mr. Volin worked as an intern for the Honorable Marian Blank Horn in the United States Court of Federal Claims. Upon graduation, he served as a judicial law clerk to the Honorable Conrad N. Koch and the Honorable Betty J. Lester in the New Jersey Superior Court for Essex County.

He is a member of the Bars of Maryland, New Jersey and the District of Columbia, and is admitted to practice in the United States District Courts for the District of Columbia, the District of Maryland and the District of New Jersey.

Mr. Volin practices in the Washington, D.C. office.

ROSEMARY M. RIVAS
Partner

ROSEMARY M. RIVAS joined FINKELSTEIN THOMPSON LLP in October 2006 and practices in the fields of antitrust, consumer fraud, and securities litigation. Before joining Finkelstein Thompson LLP, she worked at a San Francisco based law firm representing consumers in class action litigation. Ms. Rivas graduated from San Francisco State University in 1997 and received a Bachelor of Arts in Political Science. She received her Juris Doctorate from the University of California, Hastings College of Law in 2000. While in law school, Ms. Rivas served as the Senior Note Editor for the Hastings Constitutional Law Quarterly and was honored with the American Jurisprudence Award in Wills and Trusts.

In 2009, Ms. Rivas was selected as a *Rising Star* by Law & Politics Magazine which recognizes the best lawyers 40 years old or under or in practice for ten years or less. Ms. Rivas is court-appointed interim co-lead class counsel in *In Re Facebook PPC Advertising Litigation*, Case No. C 09-03043 JF (N.D. Cal.) and also serves in a leadership capacity in a number of other complex cases, including *In Re DirecTV Early Cancellation Fee Litigation*, Case No. 09-MDL-2093 AG (C.D. Cal.).

Ms. Rivas is a member of the California bar and is admitted to practice in the Central, Eastern, Northern, and Southern U.S. District Courts of California. Ms. Rivas is also admitted to practice before the Ninth Circuit Court of Appeals. Previously, she served as a Board Member and Diversity Director of the Barristers Club of the San Francisco Bar Association.

She practices in the firm's San Francisco office.

MICHAEL G. McLELLAN
Partner

MICHAEL G. McLELLAN joined FINKELSTEIN THOMPSON LLP in May 2004. Mr. McLellan practices in the fields of securities, antitrust and consumer fraud litigation. He is a 1996 graduate of the University of South Carolina, where he received a Bachelor of Arts degree in English. Mr. McLellan also attended the University of South Carolina School of Law, where he received his Juris Doctor in 2003. During law school, Mr. McLellan served as Articles Editor for the South Carolina Law Review and was awarded membership in the Order of the Wig and Robe. Upon graduation, Mr. McLellan attended the American University Washington College of Law, where he received an LL.M. in Law and Government, magna cum laude in 2004. While pursuing his LL.M. degree, Mr. McLellan worked as an intern for the Securities and Exchange Commission in the Division of Enforcement and volunteered as a Constitutional Law teacher at Ballou Stay High School. He additionally worked as an independent researcher for the Association of Corporate Counsel.

Mr. McLellan is a member of the South Carolina and District of Columbia bars. He practices in the Washington, D.C. office.

STAN M. DOERRER
Associate

STAN M. DOERRER joined FINKELSTEIN THOMPSON LLP in March 2006. Mr. Doerrer practices in the fields of securities, antitrust and consumer fraud litigation. He graduated cum laude from Colorado College in 1998, where he received a Bachelor of Arts degree in Economics. Mr. Doerrer worked as a management consultant for four years prior to attending the George Washington Law School where he received his Juris Doctorate degree in 2005. While in law school, Mr. Doerrer completed a legal internship with the U.S. Department of Justice Antitrust Division and served as an Articles Editor for the *American Intellectual Property Law Association Quarterly Journal*.

Mr. Doerrer is a member of the Colorado and District of Columbia bars and practices in the Washington, D.C. office.

ROSALEE B. C. THOMAS
Associate

ROSALEE THOMAS has been associated with FINKELSTEIN THOMPSON LLP since October 2006 and practices in the fields of antitrust, consumer fraud and securities litigation. Ms. Thomas graduated from Columbia University in 1999, where she studied Political Science. She received her Juris Doctorate from Georgetown Law in 2004 and was recognized as a Pro Bono Pledge Honoree. While in law school, Ms. Thomas participated in the Street Law Clinic and served as a student attorney with the D.C. Law Students in Court Clinical Program. Ms. Thomas also completed a clerkship at the U.S. Consumer Product Safety Commission.

Ms. Thomas is a member of the New Jersey and District of Columbia bars and is admitted to practice in the District of New Jersey. She practices in the Washington, D.C. office.

EUGENE J. BENICK
Associate

EUGENE BENICK has been associated with FINKELSTEIN THOMPSON LLP since September 2008 and practices in the fields of antitrust, consumer fraud and securities litigation. He also served as a law clerk for the firm beginning in May 2007. Mr. Benick graduated summa cum laude from The Richard Stockton College of New Jersey in 2005, where he received a Bachelor of Arts degree in Political Science. He attended the American University Washington College of Law and received his Juris Doctor cum laude in 2008.

While in law school, Mr. Benick interned at the United States District Court for the District of Columbia under the Honorable Royce C. Lamberth. He also clerked for the Environmental Protection Agency's Resource Conservation and Recovery Act Division and was a Summer Associate with the American International Group (AIG).

Prior to joining FT, Mr. Benick published an article in the Washington College of Law Business Law Brief titled, The Flood After the Storm: The Hurricane Katrina Homeowners' Insurance Litigation. Mr. Benick is admitted to the Virginia and District of Columbia bars, and practices in the Washington, D.C. office.

DANIELLE A. STOUMBOS
Associate

DANIELLE STOUMBOS joined Finkelstein Thompson LLP in January 2011 and practices in the fields of antitrust, consumer fraud and securities litigation. Prior to joining Finkelstein Thompson LLP, she worked as an associate at a Bay Area firm litigating mass torts, product liability and personal injury cases on behalf of plaintiffs.

Ms. Stoumbos received her Juris Doctorate from the University of San Francisco School of Law in 2009, magna cum laude. Ms. Stoumbos graduated cum laude from the California State University, Long Beach in 2005, where she received her Bachelor of Business Administration with a focus in Finance, Real Estate and Law.

While in law school, Ms. Stoumbos served on the Law Review Executive Board as a Comments Editor, was the Vice-President of the Business Law Association, and was a student advocate for the Investor Justice Clinic. She received numerous CALI awards for the highest grade in Civil Procedure, Securities Regulation and Community Property. In the summer of 2008, she externed for the United Sates Securities and Exchange Commission Summer Honors Program, Division of Enforcement in Washington D.C. During her third year of law school, she clerked for the Honorable A. James Robertson, II at the San Francisco Superior Court. Currently, Ms. Stoumbos is a member of the San Francisco Trial Lawyers Association, Hellenic Law Society, Queen's Bench, and Consumer Attorneys of California.

Ms. Stoumbos is a member of the California Bar, and practices in the San Francisco office.

ROBERT O. WILSON
Associate

ROBERT WILSON has been associated with FINKELSTEIN THOMPSON LLP since March 2011 and practices in the fields of antitrust, consumer fraud, and securities litigation. Mr. Wilson graduated from James Madison University in 2003, with a Bachelor of Arts in English, with a minor in Theatre. He graduated cum laude from George Mason University School of Law in 2008. While in law school, he served on the editorial board of the *George Mason University Civil Rights Law Journal*.

Prior to joining Finkelstein Thompson, Mr. Wilson served as law clerk to the Hon. David S. Schell in the Circuit Court of Fairfax County, Virginia from 2008 to 2009. He then independently practiced in the areas of civil and criminal litigation in Fairfax, Virginia from 2009 to 2011.

Mr. Wilson's published works include *Free Speech v. Trial by Jury: The Role of the Jury in the Application of the* Pickering *Test*, 18 GEORGE MASON UNIVERSITY CIVIL RIGHTS LAW JOURNAL 389 (2008); and Dura Pharmaceuticals: *Loss Causation Redefined or Merely Clarified?*, JOURNAL OF TAXATION AND REGULATION OF FINANCIAL INSTITUTIONS, September/October 2007, at 5 (with Donald J. Enright).

Mr. Wilson is a member of the Virginia and District of Columbia bars and practices in the Washington, D.C. office.

NATALIE WENGROFF
Paralegal

NATALIE WENGROFF joined FINKELSTEIN THOMPSON LLP in September 2010. She received a Bachelor of Arts in History and Political Science from the University of Michigan. Prior to joining FT, she worked as an intern for the Bronx District Attorney's Office and a Circuit Court judge in Washtenaw County, Michigan.

Ms. Wengroff works in the Washington, D.C. office.

BITA ASSAD
Paralegal

BITA ASSAD joined FINKELSTEIN THOMPSON LLP in August 2011. She received a Bachelor of Arts in Social Studies from Harvard University. Prior to joining FT, she worked as an intern for Amnesty International in Athens, Greece and at Scholars at Risk in New York City, New York.

Ms. Assad works in the San Francisco office.

EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF RONEN SARRAF ON BEHALF OF SARRAF GENTILE LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Ronen Sarraf, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Sarraf Gentile LLP. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. My firm, which served as counsel to plaintiff Michael A. Woods in the Consolidated Action, was involved in a variety of aspects of the litigation and settlement of the action, as set forth in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Partial Class Action

Settlement and Plan of Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The principal tasks undertaken by my firm included: communicating with the client and co-counsel; reviewing documents and information submitted by the client; researching facts and law regarding the filing and prosecution of this action; preparing filings in support of our client; reviewing the settlement and further prosecution of this action; and, serving at the direction of Lead Counsel's supervision.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff of my firm who was involved in the prosecution of the Consolidated Action, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

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

6. The total number of hours expended on this litigation by my firm during the Time Period is 28.10 hours. The total lodestar for my firm for those hours is $15,180.00.

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

8. With respect to the standing of my firm, attached hereto as Exhibit B is a brief biography of my firm as well as biographies of the some of the attorneys of my firm who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 13, 2012.

Ronen Sarraf

EXHIBIT A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: SARRAF GENTILE LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Ronen Sarraf	P	$550.00	22.60	$12,430.00
Joseph Gentile	P	$500.00	5.50	$2,750.00
TOTAL			**28.10**	**$15,180.00**

*Partner	(P)	Associate	(A)
Of Counsel	(OC)	Paralegal	(PL)
Investigator	(I)	Research Analyst	(RA)

EXHIBIT B

SARRAF GENTILE LLP
ATTORNEYS AT LAW

450 Seventh Avenue · New York, New York 10123 · T 212.868.3610 · F 212.918.7967
www.sarrafgentile.com

FIRM BIOGRAPHY

SARRAF GENTILE LLP practices in a wide variety of litigation, with an emphasis on class, derivative and other complex multi-party actions. The firm is devoted to protecting the interests of businesses, investors, retirees and consumers who have been defrauded. The firm's practice involves securities, labor and antitrust laws, consumer fraud statutes, product liability claims and corporate governance matters. The firm maintains offices in New York City.

A few of the cases in which the firm is or has been involved include:

> *In re RCN Corp. ERISA Litigation*, where the firm served as Co-Lead Counsel on behalf of a class of plan participants in the RCN 401(k) retirement plan and recovered $5.375 million on behalf of the class for violations of the federal labor laws.
>
> *The Education Station Day Care Centers v. Yellow Book USA, Inc.*, where the firm represented a class of advertisers in the Yellow Book telephone directory for deceptive practices and helped recover over $70 million on behalf of the class for violations of consumer protection laws.
>
> *Schottenfeld Qualified Associates LP v. Workstream Inc, et al.*, where the firm served as Co-Lead Counsel on behalf of a class of purchasers of Workstream stock and recovered $3.9 million on behalf of the class for violations of the federal securities laws.
>
> *In re Wm. Wrigley Jr. Company Shareholders Litigation,* where the firm served as Co-Lead Counsel on behalf of the shareholders of Wrigley and obtained therapeutic relief on behalf of shareholders in connection with the merger between Wrigley and Mars.

Sidore v. Bradley, et al., No. 10-cv-2466 (D. Kan.), where the firm served as Co-Lead Counsel in a shareholder derivative action and obtained a payment to the company of $225,000 from its former chief executive officer and numerous corporate governance changes.

Dickerson v. Feldman, et al., where the firm served as Co-Lead Counsel on behalf of plan participants in the Solutia Inc. 401(k) retirement plan and recovered $4.5 million in cash and a bankruptcy estate claim valued at $6.65 million on behalf of the class for violations of the federal labor laws.

Henkel v. Gemstar-TV Guide International, Inc. where the firm served as Co-Lead Counsel on behalf of the shareholders of Gemstar and obtained therapeutic relief on behalf of shareholders in connection with the merger between Genstar and Macrovision

Melms v. Home Solutions of America, Inc., where the firm served as Co-Lead Counsel on behalf of a class of purchasers of Home Solutions stock and recovered $5.1 million on behalf of the class for violations of the federal securities laws.

In re Host America Corp. Derivative Litigation, where the firm served as Co-Lead Counsel in a shareholder derivative action and obtained numerous corporate governance changes on behalf of the company.

In re Ferro Corp. ERISA Litigation, where the firm served as Co-Lead Counsel on behalf of a class of participants in the Ferro 401(k) retirement plan and recovered $4 million on behalf of the class for violations of the federal labor laws.

Stevens v. GlobeTel Communications Corp., where the firm served as Co-Lead Counsel on behalf of a class of purchasers of GlobeTel stock and recovered $2.3 million on behalf of the class for violations of the federal securities laws.

Mellott v. ChoicePoint Inc., where the firm served as Co-Lead Counsel on behalf of a class of participants in the ChoicePoint Inc. 401(k) retirement plan and obtained numerous therapeutic governance changes to the plan's administration.

Francis v. Comerica Inc., where the firm served as Co-Lead Counsel on behalf of a class of participants in the Comerica 401(k) retirement plan and recovered over $2 million on behalf of the class for violations of the federal labor laws.

Wagner v. Republic of Argentina, where the firm served as counsel to purchasers of sovereign debt and obtained a multi-million dollar judgment on their behalf against the Republic of Argentina.

Resnik v. Lucent Technologies Inc., et al.,where the firm served as Co-Lead Counsel on behalf of the shareholders of Lucent and obtained therapeutic relief on behalf of shareholders in connection with the merger between Lucent and Alcatel.

In re Palm Treo 600 and 650 Litigation, where the firm served as a member of the Executive Committee on behalf of a class of purchasers of the Palm Treo 600 and 650 for violations of consumer protection laws.

THE ATTORNEYS

RONEN SARRAF has been actively litigating securities, corporate and complex commercial class actions for his entire legal career. He is a graduate of Brooklyn Law School, where he served as Managing Editor of the *Brooklyn Journal of International Law* and was a member of the Moot Court Honor Society. While in law school, Mr. Sarraf clerked for the Honorable Richard F. Braun, New York State Supreme Court, and was a research assistant to former SEC commissioner, Roberta S. Karmel. Mr. Sarraf earned a B.A. from Queens College and graduated with Departmental Honors in History.

Mr. Sarraf is admitted to practice in the States of New York, the State of New Jersey, the United States Courts of Appeal for the Second, Seventh and Eleventh Circuit, the District Courts for the Southern, Eastern and Western Districts of New York, the District of New Jersey, the District of Connecticut, the Eastern District of Wisconsin, the District of Colorado, and the Eastern District of Michigan.

JOSEPH GENTILE has been actively litigating securities, corporate and complex commercial class actions for his entire legal career. He is a graduate of Boston College Law School, where he clerked for the Honorable Reginald C. Lindsay of the United States District Court for the District of Massachusetts. Mr. Gentile was also an intern at the Major Crimes Bureau at the Queens County District Attorney's Office as well as an intern at Bronx Legal Services. Mr. Gentile earned a B.S. from Fordham University, where he participated in the Business School's Honors Program, and graduated Cum Laude.

Mr. Gentile is admitted to practice in the State of New York and the Southern and Eastern Districts of New York.

EXHIBIT 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re CARTER'S, INC. SECURITIES LITIGATION	))))))	Civil Action No. 1:08-CV-2940-AT

DECLARATION OF JULIE PRAG VIANALE ON BEHALF OF VIANALE & VIANALE LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Julie Prag Vianale, Esq., declares as follows, pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Vianale & Vianale LLP. I submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all plaintiffs' counsel who contributed to the prosecution of the claims in the above-captioned action (the "Consolidated Action") from inception through April 13, 2012 (the "Time Period").

2. My firm served as additional counsel in the Consolidated Action. We were involved in a variety of aspects of the litigation and settlement, as set forth in the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for

Final Approval of Partial Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

3. Our firm did the following work in the case: we represented lead plaintiff movant Michael A. Woods in connection with his motion for appointment as lead plaintiff; we assisted in factual investigation, as requested by lead counsel; we reviewed and commented on drafts of the Amended Complaints filed by lead counsel; and we analyzed the arguments made by defendants in support of motions to dismiss filed in the case, and our firm's partner Kenneth Vianale researched and drafted a response brief in opposition to the motions to dismiss. I worked on this action myself, together with my partner Kenneth J. Vianale, for a total of 70 attorney hours. Some work was also done by a paralegal (8 hours). All of our work after the appointment of lead counsel was performed together with, and under the supervision of, court appointed lead counsel.

4. The schedule attached hereto as Exhibit A summarizes the time spent by each attorney and paralegal of my firm who was involved in the prosecution of the Consolidated Action, and includes a lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates for the attorneys and paralegal in my firm included in Exhibit A are the same as the regular rates charged for their services in non-contingent matters and/or have been accepted in other securities or shareholder litigations.

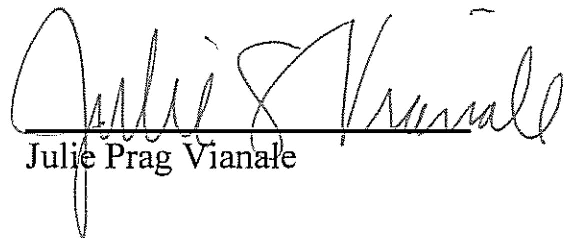
6. The total number of hours expended on this litigation by my firm during the Time Period is 78 hours. The total lodestar for my firm for those hours is $43,350.00.

7. My firm incurred no expenses for which it seeks reimbursement in this case.

8. Attached hereto as Exhibit B is our firm resume, which includes biographies of the attorneys of my firm who worked on the Consolidated Action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 16, 2012.



Julie Prag Vianale

EXHIBIT A

Exhibit A

IN RE CARTER'S, INC. SEC. LITIG.
No. 08-2940 (N.D. Ga.)

LODESTAR REPORT

FIRM: VIANALE & VIANALE LLP
REPORTING PERIOD: INCEPTION THROUGH APRIL 13, 2012

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Kenneth J. Vianale	P	$600.00	69	$41,400.00
Julie Vianale	P	$550.00	1	550.00
Ismael Aviles	PL	$175.00	8	1,400.00
TOTAL			**78**	**$43,350.00**

*Partner (P) Associate (A)
Of Counsel (OC) Paralegal (PL)
Investigator (I) Research Analyst (RA)

EXHIBIT B

Exhibit B

VIANALE & VIANALE LLP
BOCA RATON, FLORIDA
WWW.VIANALELAW.COM

FIRM RESUME

Vianale & Vianale LLP focuses its law practice on representing investors in class and derivative actions under federal and state securities laws. Federal and state courts in Florida and elsewhere have appointed us to serve as lead plaintiff's counsel in securities fraud class actions. We are also often appointed to serve as liaison counsel in securities fraud class actions filed in Florida's federal courts. A representative list of the firm's lead and liaison counsel appointments is provided below.

The firm's partners, Kenneth J. Vianale and Julie Prag Vianale, have extensive courtroom experience in both civil and criminal cases. Mr. Vianale has over 20 years of experience in the area of securities litigation, including five years during which he focused on securities cases as a federal prosecutor in New York. We are proud of our record of service to shareholders and the court in the role of lead and liaison counsel in these important cases.

KENNETH J. VIANALE

Mr. Vianale founded Vianale & Vianale LLP with his wife, Julie, in January 2003. The firm has offices in Boca Raton, Florida. Mr. Vianale graduated *summa cum laude* from St. Francis College, and received his J.D. degree in 1984 from St. John's Law School where he was an editor of the *Law Review*. Mr. Vianale served as law clerk in 1985-1986 to Lloyd F. MacMahon, United States District Judge for the Southern District of New York. Mr. Vianale was an Assistant United States Attorney for the Southern District of New York from 1988 to 1995 where he worked extensively in the Securities and Commodities Frauds Unit, and held the executive position of Deputy Chief of the Criminal Division (1995). Mr. Vianale was a partner in the firm of Milberg Weiss Bershad Hynes & Lerach LLP and managed its Florida office from 1998 to 2002 before founding Vianale & Vianale LLP.

Mr. Vianale's practice focuses on plaintiffs' securities class actions and shareholder derivative actions. He has served as a Trial Advocacy Instructor at the Benjamin N. Cardozo School of Law and as a lecturer at the Practicing Law Institute in New York City. Mr. Vianale is a member of the bars of New York and Florida, and numerous federal trial and appellate courts, including the United States Supreme Court.

Mr. Vianale has successfully argued appeals in significant securities fraud cases, including the following:

Helwig v. Vencor, Inc., 251 F.3d 540 (6th Cir. 2001) (*en banc* decision)

Morse v. McWhorter (Columbia/HCA) , 290 F.3d 795 (6th Cir. 2002)

Before forming Vianale & Vianale LLP, Mr. Vianale handled numerous securities and shareholder derivative actions at the trial and appellate court level, including the following securities fraud actions that resulted in substantial recoveries for class members:

In re CHS Electronics (S.D. Fla.) (Gold, J.)

In re Able Telcom (S.D. Fla.) (Hurley, J.)

Sherleigh Associates v. Windmere Corp. (S.D. Fla.) (Lenard, J.)

In re Phoenix Int'l (S.D. Fla.)

Holmes v. Baker ("Aviation Sales"), (S.D. Fla.) (Moreno, J.)

Katz v. Carnival Corp. (S.D. Fla.) (Moore, J.)

In re Cyber-Care Sec. Litig. (S.D. Fla.) (Ryskamp, J.)

In re Pinnacle Holdings (M.D. Fla.) (Whittemore, J.)

In re PowerCerv Sec. Litig. (M.D. Fla.) (Merryday, J.)

Helwig v. Vencor, *Inc.* (W.D. Ky.) (Johnson, J.)

JULIE PRAG VIANALE

Julie Prag Vianale has been practicing law for 27 years and has concentrated her career primarily on securities litigation and federal criminal defense.

Ms. Vianale graduated Phi Beta Kappa with high honors in English from the University of Maryland at College Park. She received her law degree in 1984 from the University of Virginia School of Law.

After completing law school, Ms. Vianale served as law clerk to the Honorable Anthony A. Alaimo, United States District Judge for the Southern District of Georgia. She became associated with the New York law firm of Botein Hays & Sklar in 1985, where she concentrated her practice in the areas of commercial litigation and criminal defense.

In 1989, Ms. Vianale became a trial attorney with the Federal Public Defender's Office in Manhattan. In her eight years as a trial attorney in this office, she gained extensive courtroom experience, representing defendants in bail hearings, motion hearings, trials and sentencings.

Prior to forming Vianale & Vianale LLP, Ms. Vianale pursued a solo practice, first in White Plains, New York and later in Boca Raton, Florida. Her solo practice focused on federal and state civil and criminal litigation.

Ms. Vianale is admitted to practice law in the States of Florida and New York, in the United States District Courts for the Southern and Middle Districts of Florida, the Southern and Eastern Districts of New York, the District of Connecticut, and in the

United States Court of Appeals for the Eleventh Circuit. Ms. Vianale is an active member of the Federal Bar Association, the Palm Beach County Bar Association and the Florida Association of Women Lawyers. She has completed training at the National Criminal Defense College and has served as a trial advocacy instructor in seminars sponsored by the National Institute for Trial Advocacy.

SIGNIFICANT CASES AND COUNSEL APPOINTMENTS

Since its opening in 2003, we have served as lead or liaison counsel in many securities cases in state and federal court.

We were one of four law firms that prosecuted an important shareholder derivative suit in Florida, *Klein v. Broadhead,* Case No. 02-20170-CIV-GOLD (S.D. Fla.). The suit, brought under Florida state law, challenged the findings and conclusions of a Special Litigation Committee of FPL Group, Inc. that sanctioned the receipt of millions of dollars in compensation by nine top FPL executives as "change in control" payments in connection with FPL's abandoned merger with Entergy Corporation in 2001. Plaintiffs alleged that the "change in control" payments that these FPL executives received were excessive, served no corporate purpose in light of FPL's abandonment of the merger, and should be returned in part to the Company. The full facts of that case are set forth in Judge Gold's opinion denying defendants' motion to dismiss, *Klein v. Broadhead,* Case No. 02-20170-CIV-GOLD, 2004 U.S. Dist. LEXIS 919 (S.D. Fla. Jan. 20, 2004). The Court approved a $22.25 million settlement of the case. .

We have served as court-appointed lead counsel in the following federal securities cases:

- *Bielanski v. Salberg & Co., P.A.* (Singing Machine Securities Litigation) (S.D. Fla.) (Zloch, J.)(as co-lead counsel, firm successfully settled Section 10(b) case on behalf of shareholder class)
- *In re Saf T Lok Securities Litigation* (S.D. Fla.)(Ryskamp, J.)(as sole-lead counsel, firm settled Section 10(b) case with claimants receiving 100% of recognized losses)
- *In re Commercial Consolidators Sec. Litig.* (S.D. Fla.)(Moore, J.)(as co-lead counsel firm successfully settled Section 10(b) case)
- *In re FAO, Inc. Sec. Litig.* (E.D. Pa.)(Baylson, J.)(as co-lead counsel, firm successfully settled Section 10(b) case)
- *In re Hamilton Bancorp, Inc. Sec. Litig.*, (S.D. Fla.) (Martinez, J.)(as co-lead counsel, firm successfully settled Section 10(b) case)
- *In re Tower Automotive Sec. Litig*. (S.D.N.Y.)(Sweet, J.)(firm appointed to serve as co-lead counsel in Section 10(b) litigation)
- *Davidco Investors LLC v. Anchor Glass Container Corporation* (M.D. Fla.)(Bucklew, J.)(as co-lead counsel, firm successfully settled Section 11 and 10(b) claims for $ 5.5 million).
- *Culp v. Gainsco*, *Inc.* (N.D. Tex.)(Means, J.)(as co-lead counsel, firm successfully settled Section 10(b) claims for $4 million)
- *In re ProNetLink Securities Litigation* (S.D.N.Y.)(Owen, J.)(firm appointed to serve as co-lead counsel in Section 10(b) litigation)
- *Mahoney v. Andrews (*E med Soft Securities Litigation)(E.D. Ohio)(firm appointed to serve as co-lead counsel in Section 10(b) litigation)
- *In re Recoton Corporation Sec. Litig*. (M.D. Fla.)(Antoon, J.)(firm appointed to serve as co-lead counsel in Section 10(b) litigation)

The firm has been appointed by Judges in the Southern District of Florida to serve as liaison counsel in the following federal securities cases:

In re Andrx Corporation Sec. Litig. (S.D. Fla.)(Martinez, J.)

In re Mastec Inc. Sec. Litig. (S.D. Fla.)(Moreno, J.)

Mazur v. Lampert (Concord Camera Securities Litigation)(S.D. Fla.)(Lenard, J.)

Stevens v. Globetel Communications Corp. (S.D. Fla.)(Altonaga, J.)

Lowry v. Andrx Corporation (S.D. Fla.)(Dimitrouleas, J.)

We have also represented shareholders in breach of fiduciary duty actions against the boards of various companies prosecuted in state courts, including the following:

Lasker v. Kanas (NorthFork Bancorporation) (Sup. Ct. N. Y. County)(as co-lead counsel, firm settled shareholder lawsuit for $20 million and equitable relief)

EXHIBIT 11

Rate Distributions by Title Over Time 2007-2010

		Count	Low	25th Percentile	Median	75th Percentile	High
Partners							
All Partners	2010	407	$450	$725	$845	$945	$1,075
	2009	358	$425	$745	$850	$945	$1,050
	2008	321	$335	$595	$695	$795	$1,200
	2007	416	$330	$600	$705	$810	$995
Sr. Partners	2010	303	$550	$775	$885	$950	$1,050
	2009	249	$500	$800	$900	$960	$1,050
	2008	208	$350	$670	$750	$828	$1,200
	2007	314	$395	$650	$750	$825	$995
Mid-Level Partners	2010	74	$450	$700	$730	$825	$950
	2009	78	$425	$695	$768	$861	$1,005
	2008	57	$335	$580	$635	$710	$865
	2007	54	$420	$564	$630	$704	$850
Jr. Partners	2010	29	$550	$625	$675	$760	$1,075
	2009	31	$550	$620	$685	$740	$845
	2008	55	$350	$543	$590	$625	$740
	2007	48	$330	$520	$565	$615	$900
Of Counsel	2010	103	$475	$675	$720	$778	$995
	2009	78	$450	$650	$695	$775	$925
	2008	88	$330	$485	$548	$638	$925
	2007	113	$360	$525	$570	$625	$895
Associates							
All Associates	2010	1001	$135	$405	$505	$585	$845
	2009	1002	$135	$400	$465	$580	$815
	2008	454	$195	$325	$415	$490	$750
	2007	642	$165	$345	$420	$485	$665
Sr. Associates	2010	170	$300	$556	$630	$680	$845
	2009	148	$225	$529	$610	$650	$815
	2008	62	$220	$450	$490	$584	$675
	2007	145	$300	$450	$515	$550	$645
Mid-Level Associates	2010	341	$175	$475	$555	$605	$680
	2009	315	$200	$470	$540	$605	$775
	2008	209	$200	$395	$465	$520	$750
	2007	316	$185	$365	$438	$480	$665
Jr. Associates	2010	452	$175	$375	$440	$505	$650
	2009	485	$150	$375	$430	$480	$675
	2008	160	$195	$295	$338	$415	$675
	2007	167	$165	$265	$335	$370	$485
Paralegals	2010	367	$80	$185	$230	$263	$385
	2009	300	$105	$190	$220	$250	$385
	2008	151	$75	$160	$200	$225	$355

1. Percentiles within title and year across all firms sampled for that year.

EXHIBIT 12

NERA
ECONOMIC CONSULTING

14 December 2011

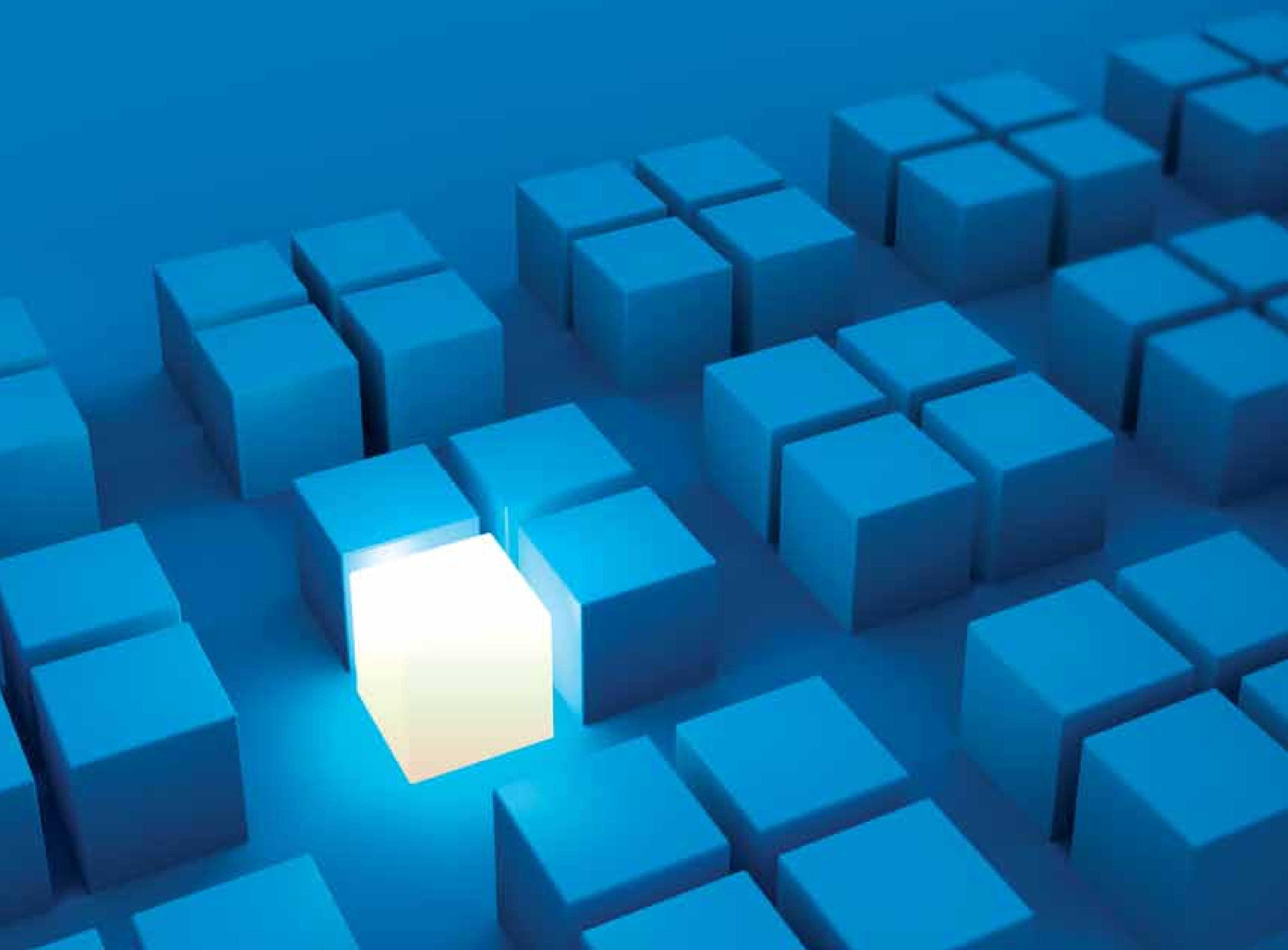
Recent Trends in Securities Class Action Litigation: 2011 Year-End Review

Pace of Overall Filings Holds Steady; Suits against Chinese Companies Surge

By Dr. Jordan Milev, Robert Patton, Svetlana Starykh, and Dr. John Montgomery

Insight in Economics™

The explosion of suits against Chinese companies, the continued dominance of M&A cases, and the sunset of credit crisis-related litigation made 2011 an interesting year in filings.



Recent Trends in Securities Class Action Litigation: 2011 Year-End Review

By Dr. Jordan Milev, Robert Patton, Svetlana Starykh, and Dr. John Montgomery

14 December 2011

Year 2011 Highlights in Filings

- Pace of standard filings in line with past three years
- Suits against Chinese companies increased sharply
- M&A objection suits continue to comprise a large proportion of filings
- Credit crisis-related filings continue to dwindle

Year 2011 Highlights in Settlements

- Median settlement down from last year, yet still third highest on record
- Number of settled cases is lower than in previous years
- Lower aggregate plaintiffs' attorney fees, consistent with lower aggregate settlement payout

Introduction[1]

The pace of filings of class actions under federal securities and commodity laws held relatively steady in 2011 as compared to the past three years. Behind this apparently steady number, however, was a substantial shift in the composition of cases filed. Two types of suits have primarily accounted for this compositional shift: M&A objection suits and suits involving Chinese companies listed in the US.

The brisk rate of filings of shareholder class actions against Chinese companies this year has drawn much attention. It represents the most notable development in the composition of filings this year.

Cases alleging breach of fiduciary duty in connection with a merger or an acquisition continue to be filed in large numbers. The number so far this year, 61, has declined only slightly from last year's total of 68 such suits. M&A objection lawsuits continue to be the single largest category of non-standard cases tracked by NERA.

In 2010, M&A cases took that top spot from credit crisis-related suits. Presently, the wave of credit crisis-related filings largely seems to have subsided. With 11 federal class actions filed in 2011 relating to the credit crisis, such litigation is approximately one-third of its level last year, when it had already declined by about two-thirds from its 2008 peak. The percentage of suits alleging damages in connection with complex financial instruments such as mortgage-backed securities and collateralized debt obligations has also declined from the elevated levels observed over the past several years to levels consistent with those observed in 2005 and 2006.

The median settlement in 2011 fell to $8.7 million, below last year's record high of $11.0 million, and lower than both 2009 and 2010, but still the third highest since the passage of the Private Securities Litigation Reform Act (PSLRA) in late 1995.

The number of settlements in 2011 declined as compared to previous years. This development, combined with a lower average settlement size, means that the aggregate amount paid out in settlements this year is on track to be the lowest since 2005, as are aggregate plaintiffs' attorney fees.

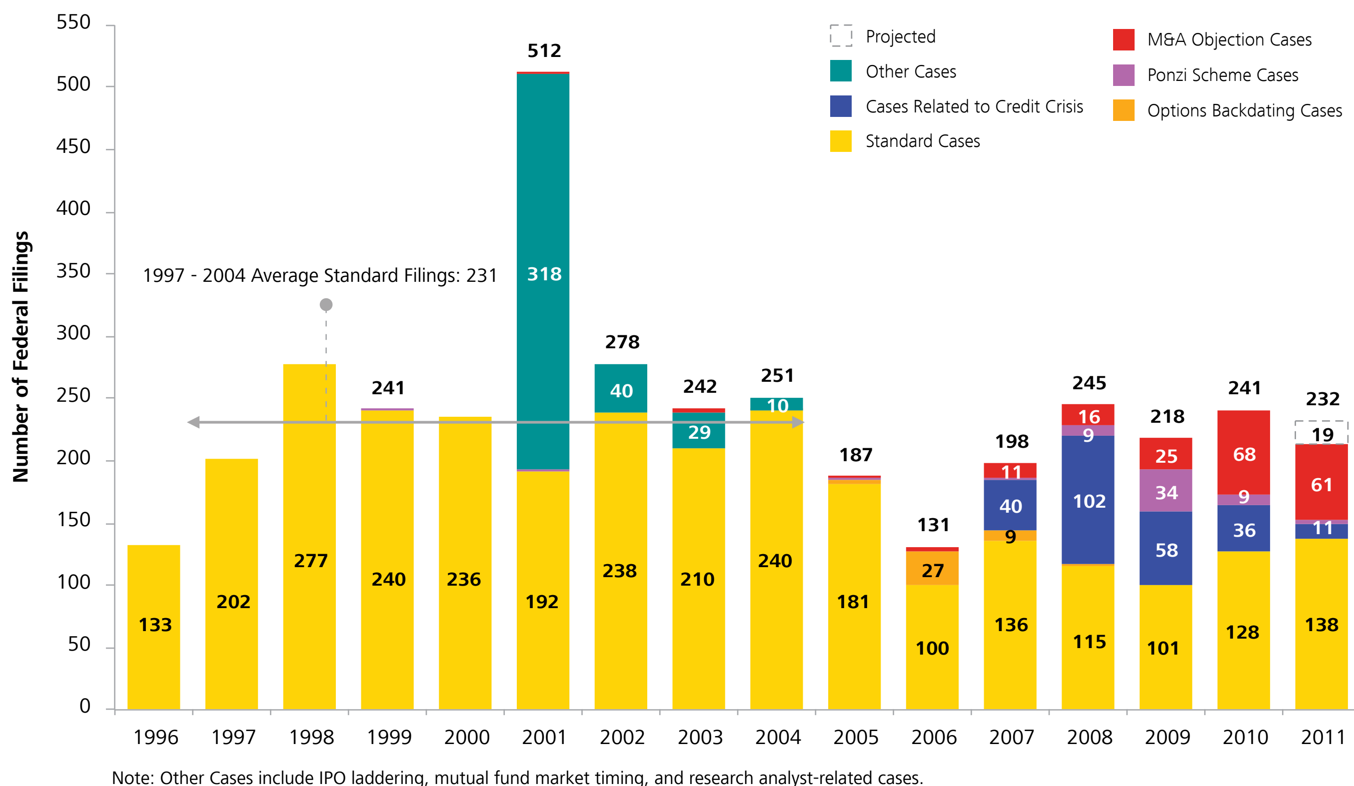
Trends in Filings[2]

Securities class actions have been filed at a slower pace in the second half of 2011 than in the first half, and 2011 filings are on track to be slightly below the total in 2010. As Figure 1 shows, the 232 filings that we project for 2011, based on the 213 filings observed through the end of November, are broadly in line with the levels observed over the previous three years.

While the annual number of filings has not varied a great deal over the past several years, the mix of cases filed has changed substantially. Suits objecting to a merger or an acquisition have accounted for nearly 29% of all filings so far in 2011, and filings against Chinese companies have accounted for approximately 18%.[2] Credit crisis-related suits have dwindled to just 5% of all 2011 filings and only three Ponzi scheme-related securities class actions were filed this year. In 2008, by contrast, approximately two out of every five suits were credit crisis-related, while M&A-related suits and lawsuits against Chinese companies together accounted for just 9% of filings. Figure 2 illustrates the change in composition with a comparison of the mix of suits filed in 2008 and in 2011 to date.

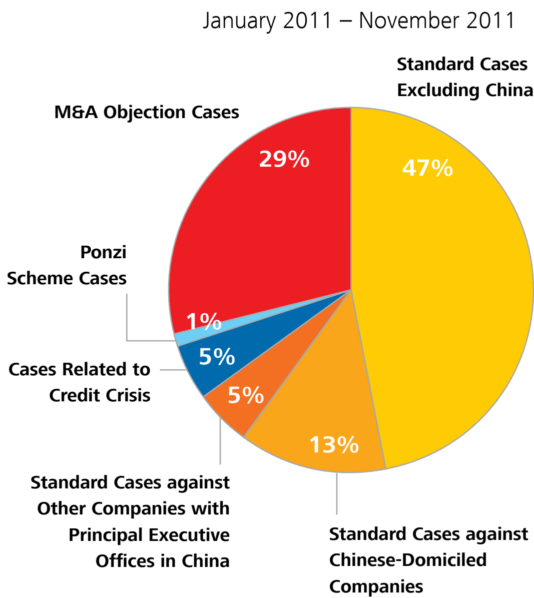
While the number of filings that we label as "standard" has risen from 128 last year to 138 in

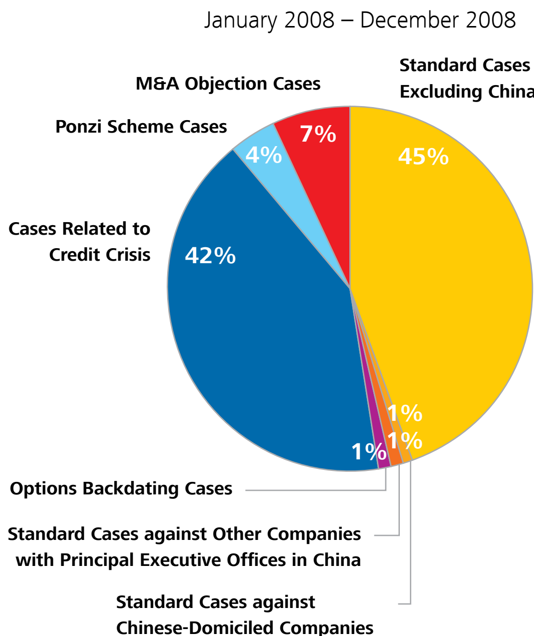
Figure 1. **Federal Filings** January 1996 – November 2011



Note: Other Cases include IPO laddering, mutual fund market timing, and research analyst-related cases.

Figure 2. **Federal Filings**





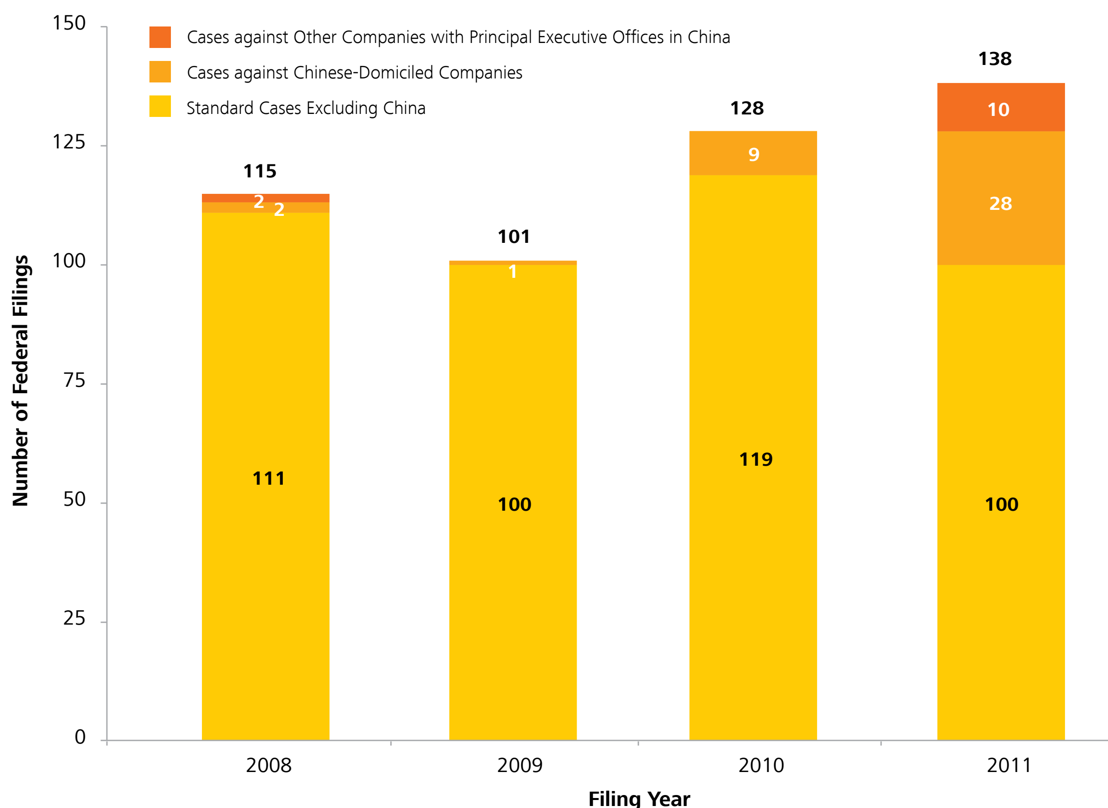
2011 through the end of November, this increase is fully accounted for by filings against Chinese companies—those domiciled and/or with their principal executive offices in China.[4] Excluding these cases reveals a sequential decline, as compared to last year, in the number of standard filings that do not involve Chinese companies. See Figure 3.[5]

With the passage of time since the extreme market turbulence of late 2008 and early 2009, the continuing decline in filings relating to the global credit crisis is not unexpected. Moreover, this dynamic may be driven in part by the statute of limitations: an action alleging violation of the Securities Exchange Act of 1934 must be filed within two years after the discovery of the facts constituting the violation or within five years after the violation.[6]

The recent wave of Ponzi scheme cases, which began with the uncovering of Bernard Madoff's scheme in December 2008 and crested in 2009, was also in part a consequence of the credit crisis. In a Ponzi scheme, investors are paid returns from funds contributed by new investors; thus, the scheme requires a steady flow of investors contributing funds. The credit crisis and economic recession saw an unprecedented number of Ponzi schemes collapse, in part because the financial and economic downturn reduced the inflow of new funds into such schemes and increased their investors' demand for redemptions.[7]

The M&A objection cases filed at a high rate in 2010 and 2011 are fundamentally different from typical shareholder class actions. Instead of proposing a class of investors who transacted in a security during a particular period of time, plaintiffs' attorneys bring this type of lawsuit on behalf of all shareholders of a target company in a merger or acquisition, and allege that the directors of the target company breached their fiduciary duty to shareholders by accepting a price for the company's shares that was too low.

Figure 3. **Standard Cases**
January 2008 – November 2011



Filings by Type of Security

We have also looked at the types of securities named in a lawsuit, and in particular whether the damages alleged in each case related to securities issued by a publicly traded company—such as its common stock or debt—or to other types of securities such as mortgage-backed securities, other asset-backed securities, collateralized debt obligations, tax revenue bonds, mutual funds, real estate investments, and feeder-fund shares. In 2009, at the height of the credit crisis, over 30% of suits (67 of 218 total) involved securities other than ones issued by publicly traded companies, and as recently as 2010, nearly 20% did. So far in 2011, however, just nine securities class actions, less than 5% of the total, have involved such securities. This year's level is consistent with levels observed prior to the credit crisis. See Figure 4.

Filings by Circuit

Traditionally, filings have been concentrated in two US circuits: the Second Circuit (encompassing New York, Connecticut, and Vermont), and the Ninth Circuit (including California, Washington, Arizona, and certain other Western states and territories). This year, the pattern has continued; with 52 filings so far in the Second Circuit and 57 in the Ninth, these two circuits have accounted for more than half of all filings so far in 2011. See Figure 5.

In contrast to the overall concentration of lawsuits in these two circuits, M&A objection suits have been more evenly distributed. Of the 61 such cases filed this year, there were between eight and 10 merger objection cases filed in each of the Third, Fourth, Fifth, and Ninth Circuits, and between two and five such cases in each of the First, Second, Sixth, Seventh, and Tenth Circuits.

Figure 4. **Securities Issued by Publicly Traded Companies and Other Securities, by Filing Year**
January 2005 – November 2011

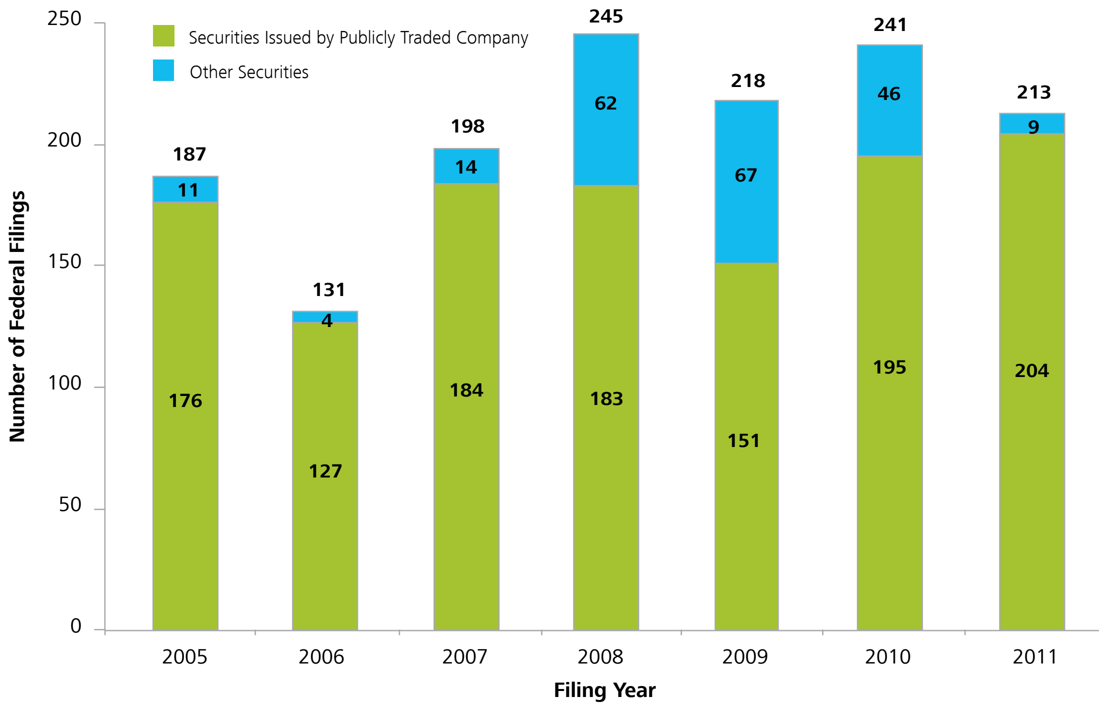
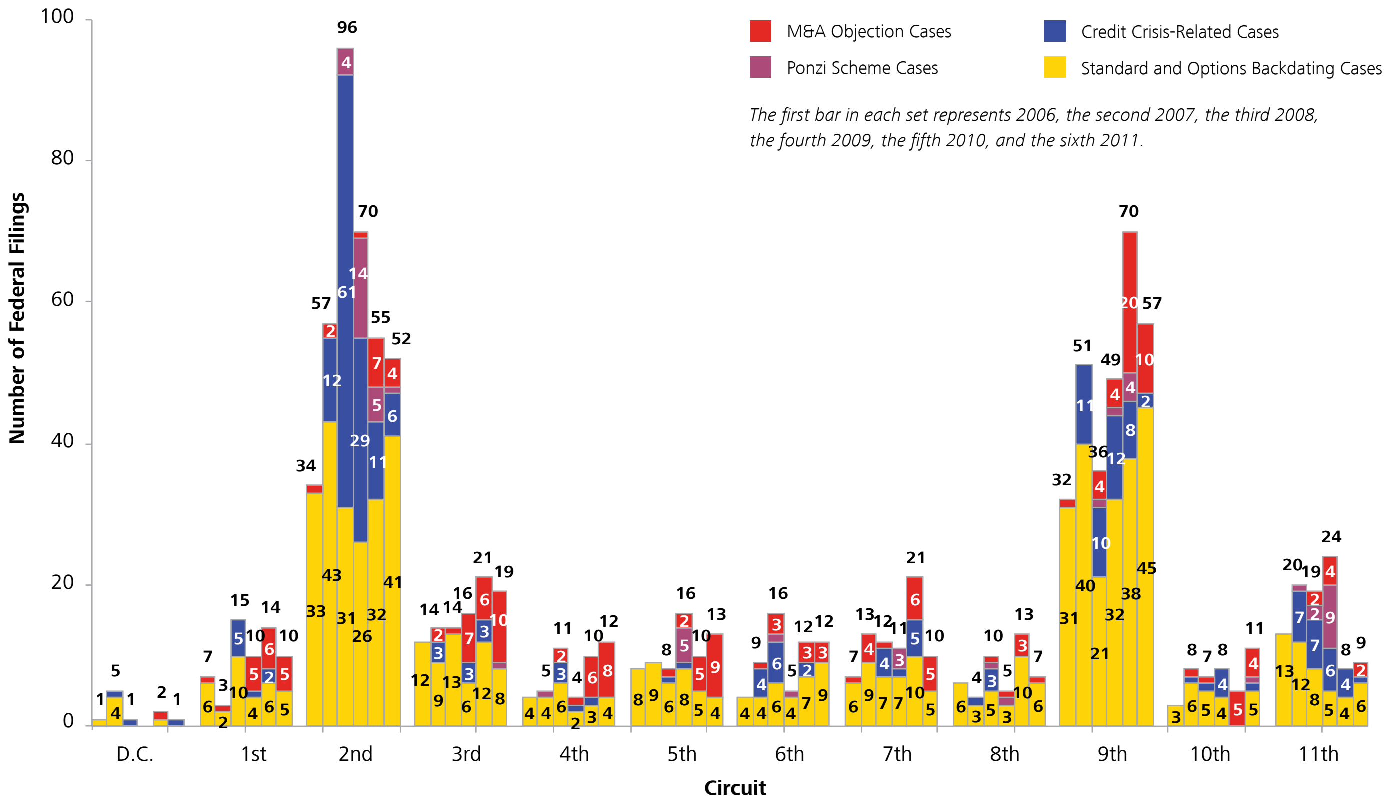


Figure 5. **Federal Filings by Circuit, Year, and Type of Case**
January 1, 2006 – November 30, 2011



Filings by Sector

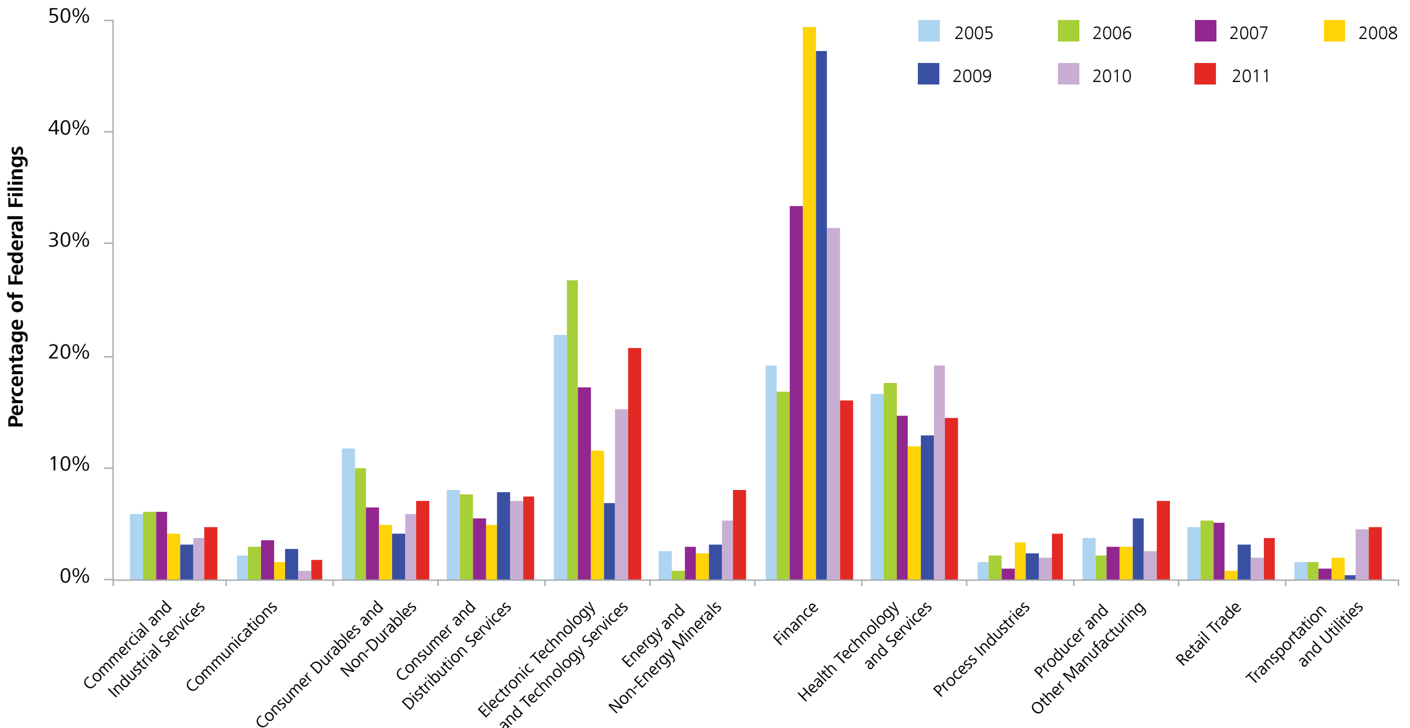
Filings against companies in the financial sector have declined along with filings related to the credit crisis. Securities class actions against financial sector companies have accounted for about 16% of cases so far in 2011, as contrasted with nearly half in 2008 and 2009. The 2011 proportion is in line with the pre-credit crisis average. Moreover, of all class actions filed against financial sector firms as primary defendants, less than a third involved allegations relating to the credit crisis.

Filings have not been concentrated against companies in any one sector in 2011 in the way the financial sector was disproportionately represented in suits filed in 2008 and 2009. More filings were against companies in the electronic technology and technology services sector than in any other sector, with such cases accounting for approximately 21% of filings. Health technology and services companies accounted for 15% of filings. See Figure 6.

Many M&A objection cases filed in 2011 have targeted firms in the electronic technology sector: 10 cases, or about 16% of all merger objection filings in 2011, have been filed against companies in this sector, whereas less than 5% of all mergers announced in 2011 have involved the acquisition of firms in the electronic technology sector. Defendants in M&A objection litigation have also included companies in the energy and non-energy minerals sector (eight cases, or about 13%), the health technology sector (nine cases, or 15%) and the utilities sector (six cases, or 10%).

As in 2010, relatively few filings this year have targeted an accounting co-defendant along with the issuer. See Figure 7. This is in spite of an increase in filings with accounting-related allegations (discussed further below). Many of the filings in 2011 with accounting allegations were against companies domiciled in China, and these tended not to have accounting co-defendants.

Figure 6. **Percentage of Filings by Sector and Year**
January 2005 – November 2011



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Figure 7. **Percentage of Federal Filings in Which an Accounting Firm Is a Co-Defendant**
January 2005 – November 2011

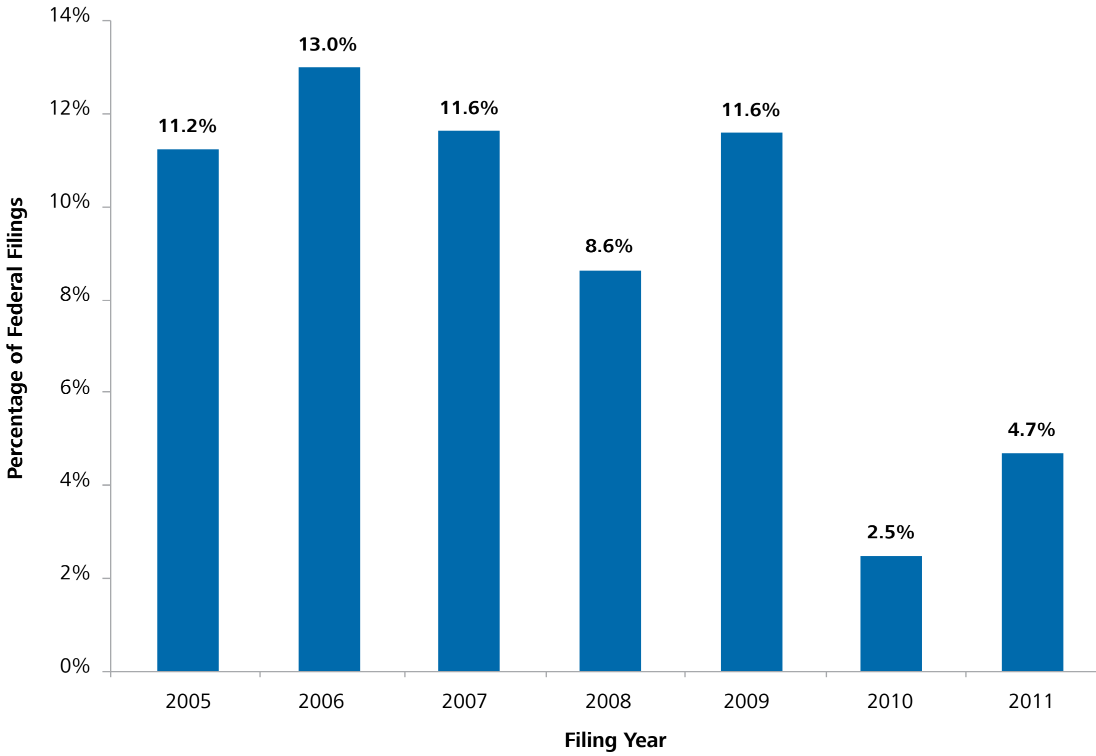
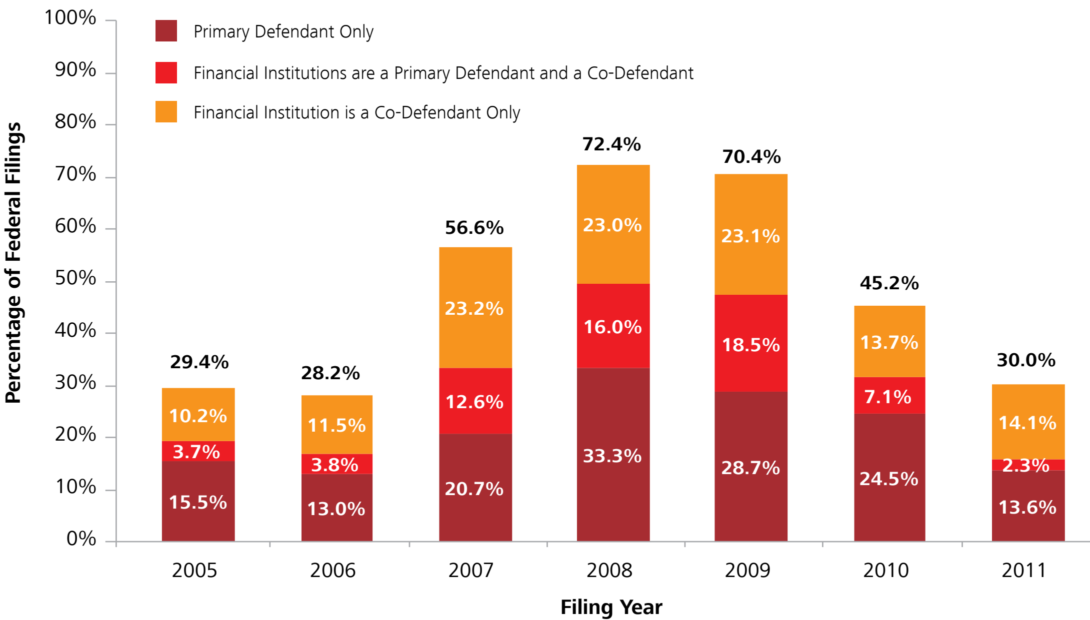


Figure 8. **All Federal Cases in which Financial Institutions Are Named Defendants**
January 2005 – November 2011



As Figure 8 shows, 14.1% of filings in 2011 involved a financial institution as co-defendant but not primary defendant, and 30% of cases involved financial institutions as either co-defendant or primary defendant, or both. The proportion of suits naming a financial institution as a defendant is down from a peak of nearly 72.4% in 2008 at the height of credit crisis filings and more in line with the levels in 2005 and 2006, before the financial crisis.

Filings by Defendant Issuer Country

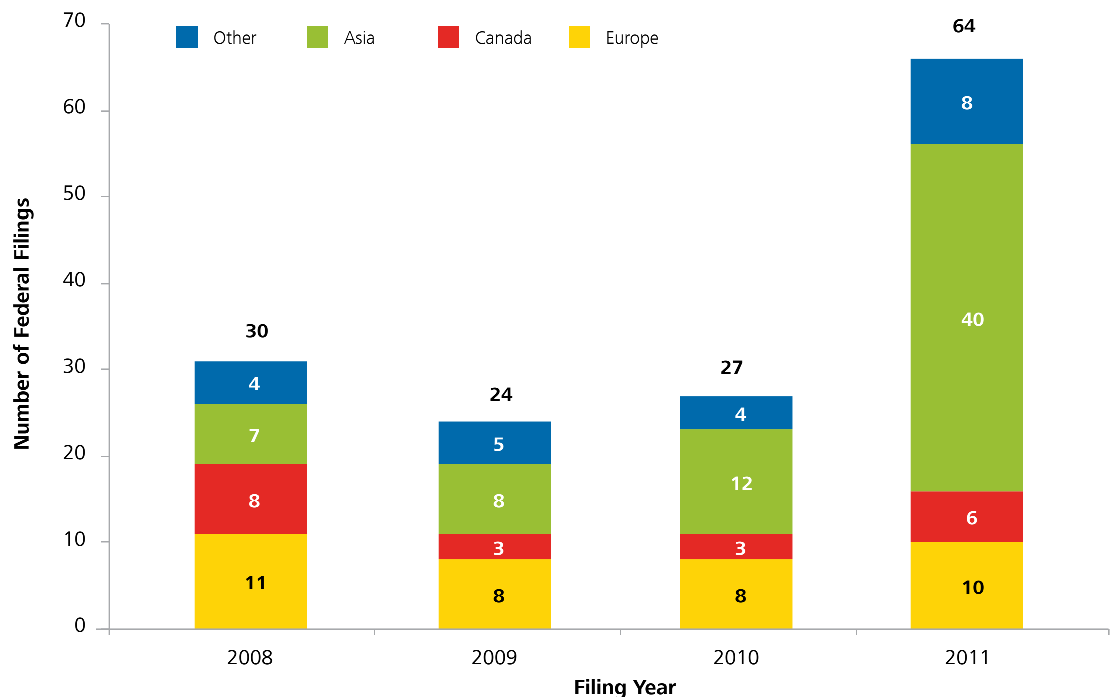
Sixty-four filings in 2011, more than a third of total filings, have been against foreign-domiciled issuers. As Figure 9 shows, this number is more than double the count observed in recent years.

The increase in suits against foreign companies is largely accounted for by the surge in filings against Chinese-domiciled companies.[8] From January to November 2011, there have been a total of 29 filings against Chinese-domiciled companies. However, even this number appears to understate the number of filings against Chinese issuers, as not all companies based in China are legally domiciled there. If we define a Chinese company as one that is either domiciled in China or that has its principal executive offices in China, there have been 39 suits against Chinese companies in 2011.

The pace of these suits may have slowed somewhat in the second half of 2011. Using the more inclusive concept of what constitutes a Chinese company, suits against Chinese issuers fell from 27, or more than one-fifth of filings in the first half of the year, to 12 in the period from July through November, a number still above last year's total of 10 cases. See Figure 10. The decline in filings against Chinese companies accounts for a substantial fraction of the decline in the pace of overall filings in the second half of 2011, as compared to the first half.

To a greater extent than for filings overall, suits against Chinese companies have been concentrated in the Second Circuit and Ninth Circuits, with only five of 29 such cases not filed in one of those two circuits. Twenty-seven filings against Chinese companies—more than

Figure 9. **Filings by Year and Company Domicile**
January 2008 – November 2011



Note: Companies with principal executive offices in China are included in the totals for Asia.

Figure 10. **Number of Federal Filings Against Companies Domiciled in China and Other Chinese Companies** January 2008 – November 2011

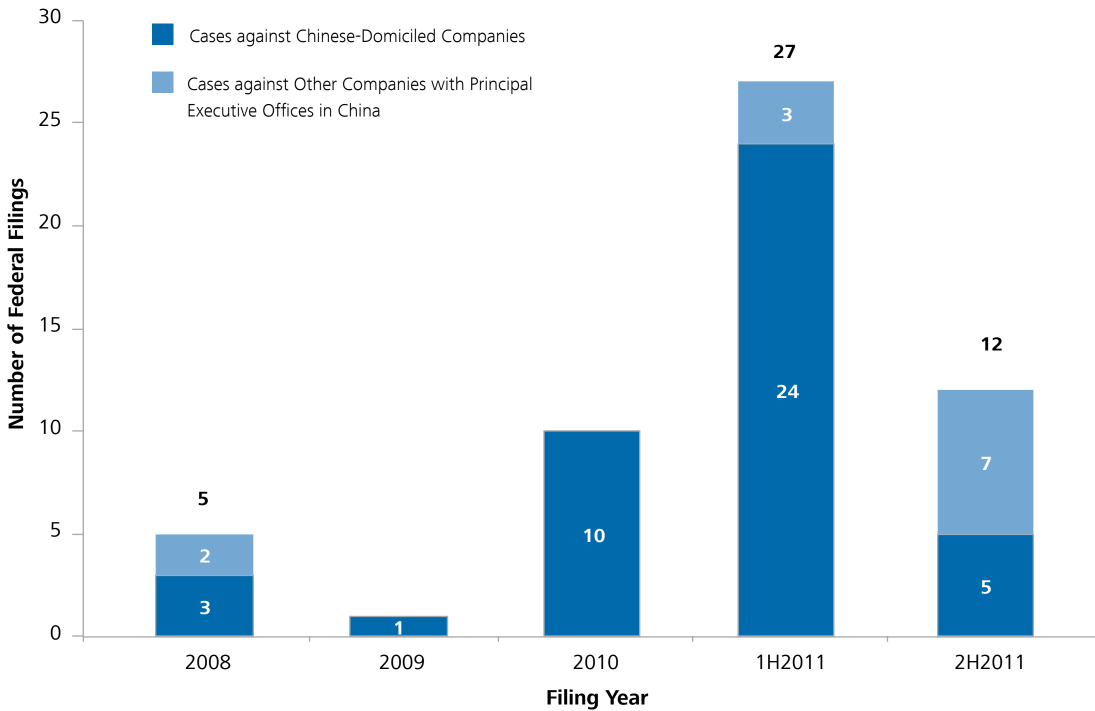
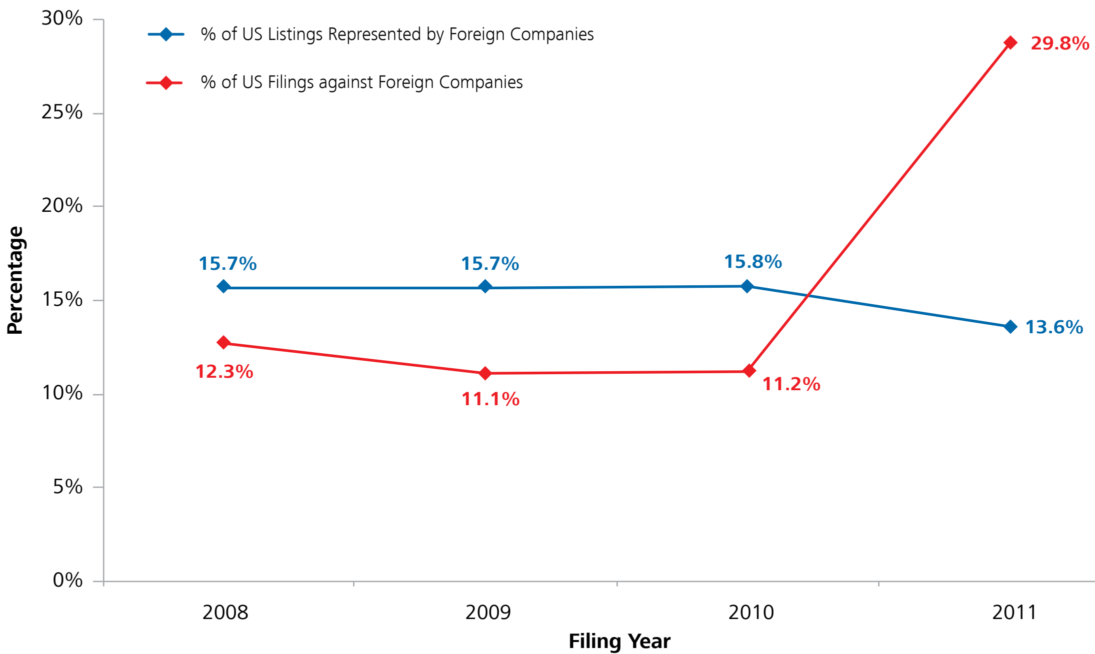


Figure 11. **Proportion of Federal Filings and Listed Companies that Involve Foreign Companies** January 2008 – November 2011



Note: Companies with principal executive offices in China are included in the counts of foreign companies.

90%—made accounting allegations. Suits against Chinese companies comprised more than half of all filings with accounting-related allegations. As Figure 11 indicates, the proportion of suits against foreign-domiciled issuers is more than twice the proportion of foreign companies among overall US listings.

Time to File

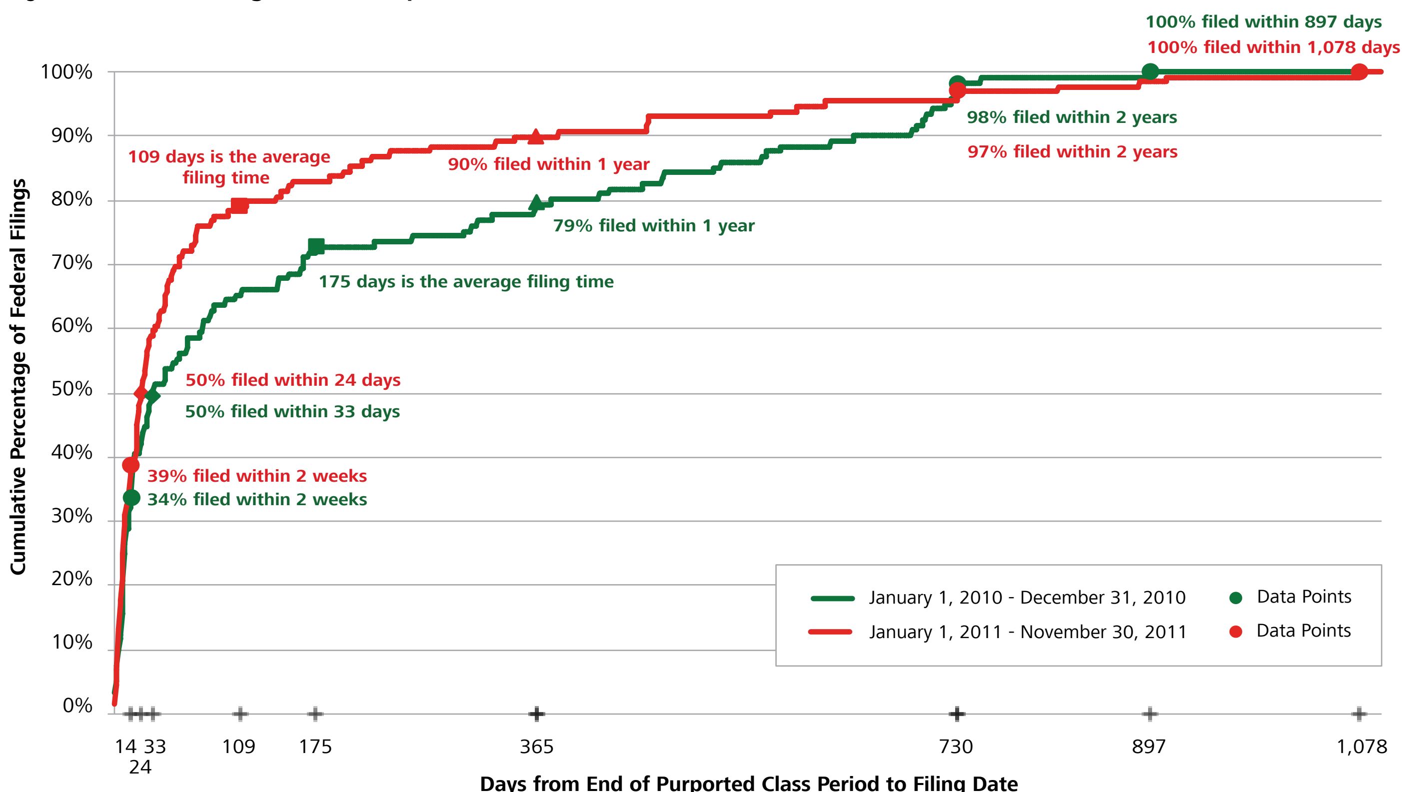
On average, cases were filed considerably faster in 2011: the average time to file in 2011 was 109 days, as compared to 175 days last year. See Figure 12. It appears that plaintiffs' attorneys have largely worked through the backlog of potential cases that arose during the credit crisis.

Trends in Allegations

We track the allegations in each class action filing and classify allegations according to any common themes that emerge, as well as already established broad categories. With nearly half of filings in 2011 either against a Chinese issuer or involving objections to a merger or an acquisition, it is not surprising that the two most frequently observed allegations this year have been accounting allegations (common in the Chinese issuer suits) and breach of fiduciary duty (characteristic of M&A objection litigation). See Figure 13. Suits against Chinese companies comprised 26 of 87 total securities class actions with accounting allegations in 2011 and were only one of the 61 M&A objection cases. Figure 13 uses counts of the number of allegations to calculate the proportion of various allegations in federal filings and there often are multiple allegations in each lawsuit.

Other prominent categories of allegations include misleading earnings guidance and other product/operational defects. Only 5% of the total number of cases filed this year contain allegations concerning defects of financial products, as compared to 15% in 2007-2009, at the height of the wave of litigation related to the financial crisis.

Figure 12. **Time to Filing of First Complaint**



Note: Excludes cases with time from end of purported class period to first filing greater than 1,095 days or indeterminate (because class period end not specified in complaint).

Figure 13. **Allegations in Federal Filings**
January 2005 – November 2011

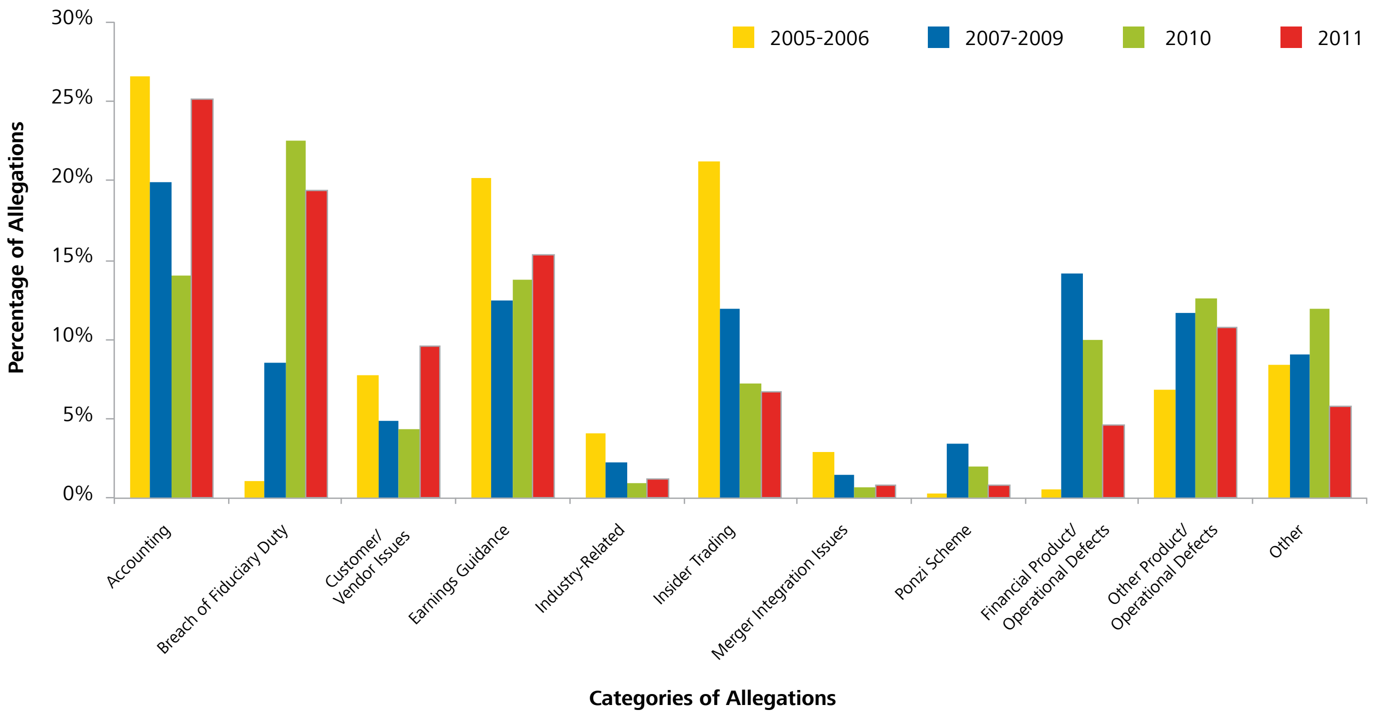
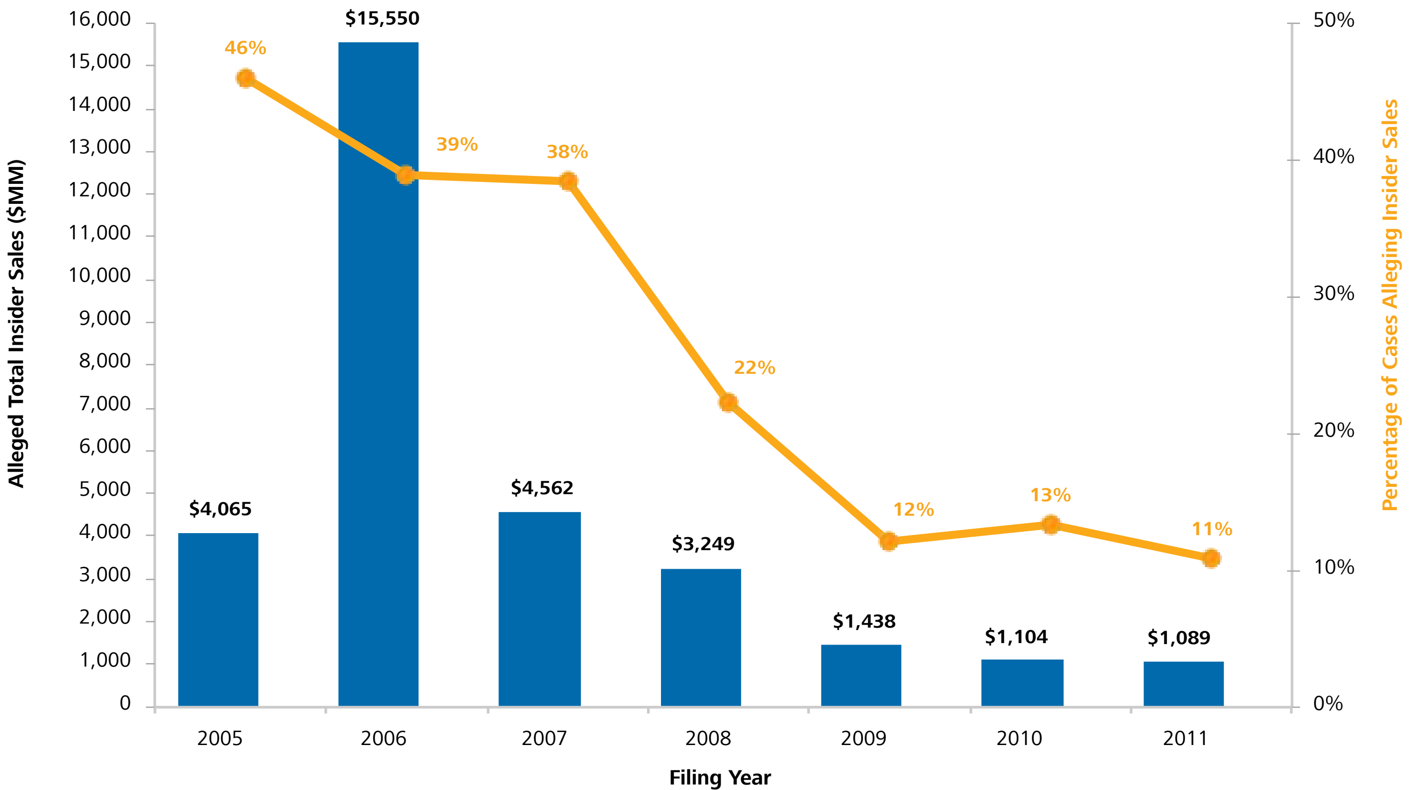


Figure 14. **Alleged Total Insider Sales and Percentage of Cases Alleging Insider Sales By Filing Year**
January 1, 2005 – November 30, 2011



Insider Sales

The proportion of filings alleging insider sales in 2011 has fallen to a new low since 2005, the earliest year for which we have collected these data. See Figure 14. It appears that, consistent with the previous two years, plaintiffs seldom used insider sales to support a showing of scienter in 2011 filings.

Resolutions

The typical securities class action takes several years to reach a final resolution, and a few cases take a decade or more. To get a sense of how cases are ultimately resolved, we analyzed the most recent cohort of cases in which all cases have been resolved: those filed in 2000. As Figure 15 shows, of the 236 cases filed in that year, 149, slightly less than two-thirds, reached a settlement, and 87 cases, or 37%, were dismissed.[9]

Figure 15. **Status of 236 Federal Securities Class Actions Filed in 2000**
As of November 30, 2011

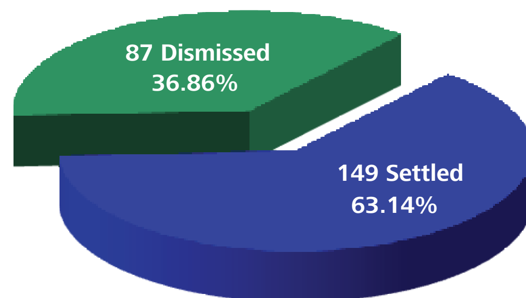


Figure 16 shows the proportion of cases settled, dismissed, and pending, by filing year, annually from 2000 to present. If we focus on the cohort of cases filed in 2001 or 2002, we see that the proportion of settlements and dismissals for resolved cases are similar to those for the cohort of cases filed in 2000. Of cases filed in 2010, about one-third have reached some resolution, with dismissals outnumbering settlements two to one.

Settlements at Various Stages of Litigation

NERA's current predicted settlement model is estimated using over 1,000 historical settlements in securities class actions and predicts expected settlement and related statistics using a set of case-specific variables that NERA's research has indicated are statistically significant in explaining the variation in settlement amounts. For a particular case that has not yet settled, in addition to the standard predicted settlement model, an alternative model can be run based on a sub-sample of cases with similar factors, such as same industry or circuit, or factors that are not currently included in the main predicted settlement model, such as the procedural history of the case.

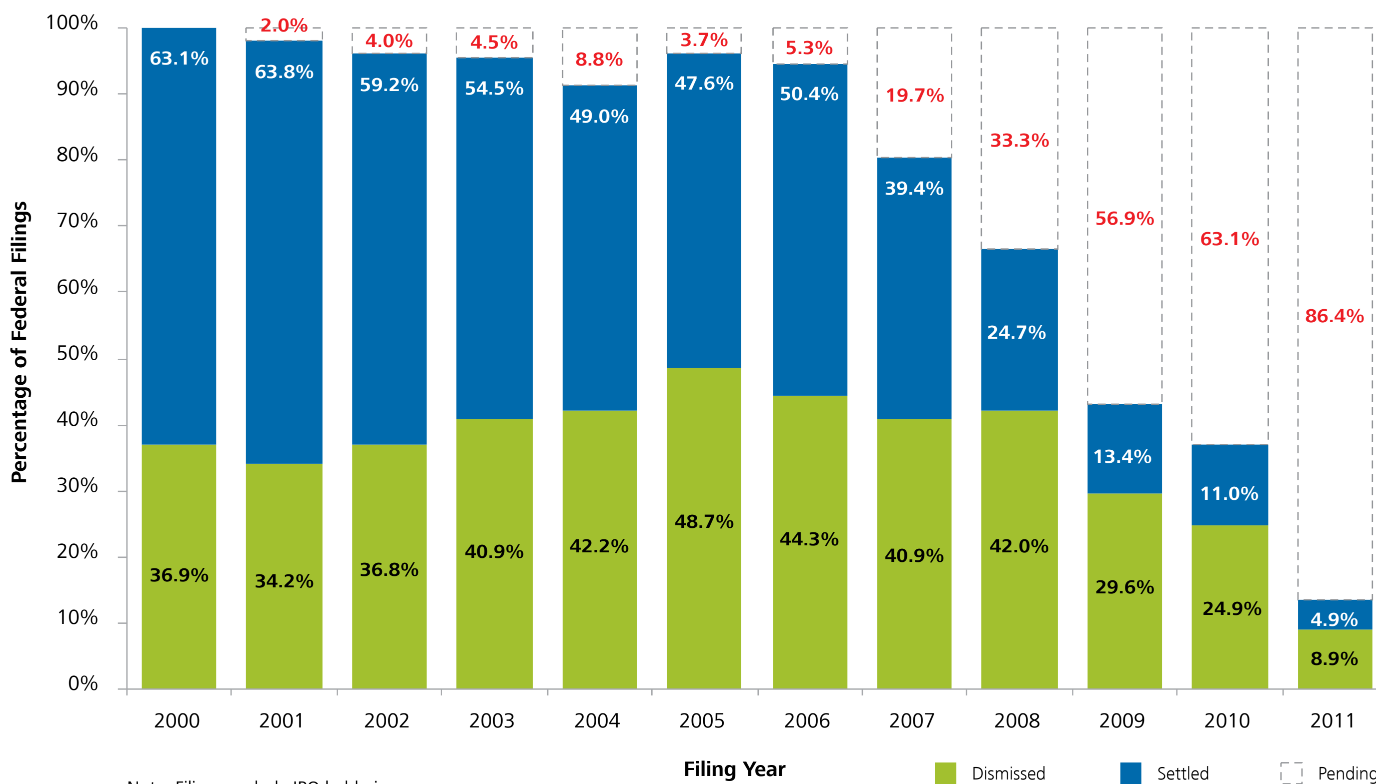
For example, we can apply the above approach to gauge the extent to which settlements depend on the stage at which they occur. We have performed this analysis with respect to motion for summary judgment using a limited number of cases for NERA's proprietary database on securities class action settlements and using NERA's predicted settlement model. For cases with denied or partially denied motions for summary judgment, the median settlement is, on average, 62% above the one predicted using NERA's current predicted settlement model, which does not currently take into account such motions.

Securities Class Action Trials

The data presented in Figures 15 and 16 on settlements and dismissals show that these outcomes account for nearly all of resolved securities class actions. Few securities class actions proceed to trial, and fewer still reach a trial verdict.

Indeed, since the passage of the PSLRA in late 1995, there have been only 29 securities class action trials, as compared to a total number of over 3,800 filings. Table 1 provides details of cases that have gone to trial over this period. Plaintiffs have prevailed in seven cases, defendants have won 10, and the other 12 trial

Figure 16. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000 – November 2011



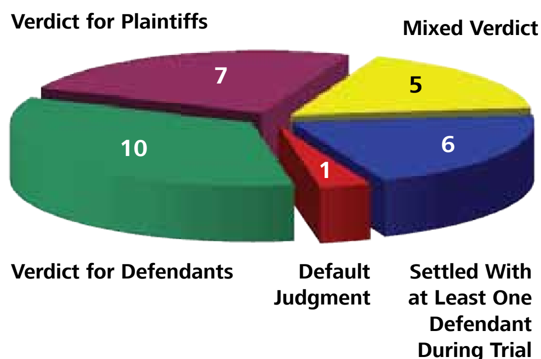
Note: Filings exclude IPO laddering cases.

cases resulted in mixed verdicts, settlements during trial, or a default judgment. The status of these 29 shareholder class actions trials is depicted graphically in Figure 17.

In December of this year, a settlement of $145 million was reached in the Apollo Group Securities litigation. The case had been filed in 2004 in the District of Arizona in the Ninth Circuit. In January 2008, a verdict for the plaintiffs resulted in an award estimated at $277.5 million in the aggregate; later that year, however, the verdict was reversed and the award vacated. In June 2010, however, the verdict was reinstated by the Ninth Circuit Court of Appeals, and in March 2011 the Supreme Court declined to hear the case. The case had been returned to district court, where further procedural issues remained to be heard, when the settlement was announced.

There were also several notable developments in the first half of the year. In February 2011, a jury found for plaintiffs in the Homestore litigation,

Figure 17. **Status of 29 Shareholder Class Actions That Went to Trial After PSLRA**
As of November 30, 2011



against the company's former CEO Stuart Wolff, the sole remaining defendant, and in April 2011, a jury verdict against BankAtlantic Bankcorp, Inc. was set aside in the only credit crisis-related case to go to trial.

Table 1. **Twenty-Nine Securities Class Actions that Went to Trial after PSLRA**

	Case (1)	Federal Circuit (2)	File Year (3)	Trial Year[1] (4)
I. Verdict for Defendants (10)				
1	American Mutual Funds (Fee Litigation)[2]	9	2004	2009
2	American Pacific Corp.[3]	9	1993	1997
3	BankAtlantic Bancorp, Inc.[4]	11	2007	2011
4	Biogen Inc.	1	1994	1998
5	Everex Systems Inc.[5]	9	1992	2002
6	Health Management, Inc.	2	1996	1999
7	JDS Uniphase Corp.	9	2002	2007
8	NAI Technologies, Inc.	2	1994	1996
9	Thane International, Inc.[6]	9	2003	2009
10	Tricord Systems, Inc.	8	1994	1997
II. Verdict for Plaintiffs (7)				
1	Apollo Group, Inc.[7]	9	2004	2010
2	Claghorn / Scorpion Technologies, Inc.	9	1998	2002
3	Computer Associates International, Inc.	2	1991	2000
4	Helionetics, Inc.	9	1994	2000
5	Homestore.com, Inc.[8]	9	2001	2011
6	Real Estate Associates, LP	9	1998	2002
7	US Banknote Corp.[9]	2	1994	1997
III. Mixed Verdict (5)				
1	Clarent Corp.[10]	9	2001	2005
2	Digitran Systems, Inc.[11]	10	1993	1996
3	Household International, Inc.[12]	7	2002	2009
4	ICN Pharmaceuticals, Inc.[13]	2	1987	1996
5	Vivendi Universal, S.A.[14]	2	2002	2010
IV. Settled During Trial[15] (6)				
1	AT&T	3	2000	2004
2	First Union National Bank / First Union Securities / Cypress Funds	11	2000	2003
3	Globalstar Telecommunications, Ltd.	2	2001	2005
4	Heartland High-Yield / Short Duration High-Yield Municipal Bond Funds	7	2000	2005
5	Safety-Kleen Corp. (Bondholders Litigation)[16]	4	2000	2005
6	WorldCom	2	2002	2005
V. Default Judgment (1)				
1	Equisure Inc.[17]	8	1997	1998

Notes:

Until otherwise noted, all these cases went to a jury trial. Data are from case dockets. Cases within each group presented in alphabetical order.

1 Trial Year shows the year in which the trial began or, when there are relevant post-trial developments (such as a ruling on an appeal or a re-trial), the most recent such deveopment.

2 Judgment for defendants entered 12/28/2009 after a 7/28/2009-8/7/2009 bench trial.

3 On 11/27/95 the US District Court granted in part the Company's motion for summary judgment ruling that the Company had not violated the federal securities laws in relation to disclosure concerning the Company's agreements with Thiokol. The remaining claims, which related to allegedly misleading or inadequate disclosures regarding Halotron, were the subject of a jury trial that began in December 1995 and ended on 1/17/96. The jury reached a unanimous verdict that neither the Company nor its directors and officers made misleading or inadequate statements regarding Halotron. Verdict was appealed, but on 6/5/97 was affirmed by the Ninth Circuit Court of Appeals.

Table 1 Notes: continued

4 On 11/18/10 the jury returned a verdict in the plaintiffs' favor, finding seven of the statements to have been false, and awarding damages of $2.41 per share. On 4/25/11 the jury verdict was set aside by the court in a post-trial ruling. Judge opinion granted the defendants' motion for judgment as a matter of law and indicated that she will enter judgment in defendants' favor following remaining procedural issues.

5 1998 verdict for defendants was reversed and remanded by the Ninth Circuit Court of Appeals; 2002 retrial again yielded a verdict for defendants.

6 On 6/10/05 bench trial verdict dismissed the case. Thereafter, plaintiffs filed a notice of appeal from the trial verdict in favor of the defendants. On 11/26/07, the US Court of Appeals of the Ninth Circuit issued an Opinion reversing and remanding the action back to District Court with instructions to enter judgment in favor of the plaintiffs, to address loss causation, and to conduct further proceedings consistent with this opinion. On 12/5/08 the defendants filed a Motion for Judgment On Loss Causation and a Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. On 3/17/09, the Court granted the defendants' Motion for Judgment On Loss Causation but denied the Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. Final Judgment on behalf of the defendants was entered on 3/25/09.

7 On 1/16/08 a federal jury found Apollo Group Inc. and certain former officers liable for securities fraud and ordered them to pay approximately $280 million to shareholders. On 8/8/08 the District Court overturned the jury verdict; Federal Judge James A. Teilborg's order vacated the judgment and entered judgment in defendants' favor. Following the dismissal, a notice of appeal was filed on 8/29/08. On 6/23/10 the United States Court of Appeals for the Ninth Circuit reversed the District Court's post-trial ruling and remanded the case with instructions that the District Court enter judgment in accordance with the jury's verdict.

8 On 1/25/11, a civil jury trial commenced against the sole remaining defendant in the case—Stuart H. Wolff, the company's former Chairman and CEO. On 2/24/11 a Central District of California rendered a verdict on behalf of plaintiffs. The jury found that the defendant, Stuart H. Wolff, had violated the federal securities laws in connection with a series of statements the company made in 2001. All other defendants had previously settled or been dismissed.

9 Judge subsequently vacated the jury verdict and approved a settlement.

10 Chairman of Clarent found liable; Ernst & Young found not liable.

11 A 9/30/96-10/24/96 jury trial resulted in a mixed verdict, with liability found for Digitran Systems, Inc. and its former president, but no liability found for other individual defendants and the auditor, Grant Thornton.

12 The jury found in favor of the defendants with respect to 23 of the alleged misstatements, but in favor of the plaintiffs with respect to 17 other statements.

13 Hung jury.

14 The trial started 10/5/09. On 1/29/10 the jury returned a verdict against the company on all 57 of the plaintiffs' claims. However, the jury also found that the two individual defendants (former CEO Jean-Marie Messier and former CFO Guillaume Hannezo) were not liable.

15 At least one defendant settled after the trial began, but prior to judgment.

16 Some director-defendants settled during the trial. Default judgment against CEO and CFO, who failed to show up for trial.

17 Default judgment against Equisure Inc., which failed to show up for trial.

Proportion of Settlements with a "Blow-Up" Provision

A "blow-up" provision typically states that the settlement will be invalidated if more than a certain proportion of the class opts out. In 2011, the proportion of settlements with such provisions increased to a record 40% of all settlements. That proportion had never previously exceeded 30%. See Figure 18.

Information on the proportion of investors who opt out of class actions is not publicly available, but the increasing use of blow-up provisions may reflect an increasing tendency of investors to opt out. The use of blow-up provisions reflects defendants' efforts to ensure that a settlement disposes of a significant part of the litigation risk and that any outstanding claims will be on behalf of a relatively minor portion of the class.

Proportion of Settled Cases with a Parallel Derivative Action

In 2011, 56% of settled cases had a parallel derivative action. This proportion is somewhat lower than last year, but remains above 50%, as has been the case since 2007. See Figure 19.

Settlements

Because most securities class actions ultimately settle, we analyze settlement trends in depth. One statistic of interest is the annual average settlements: by this measure, settlements have fallen this year, with settlements in 2011 averaging $31 million, well below the 2010 average of $108 million. See Figure 20.

However, the annual average settlement can be affected substantially by outliers: very small or very large settlements. For example, the 2010 figure includes the $7.2 billion Enron settlement.[10] If we exclude the very largest settlements—those

Figure 18. **Proportion of Settlements with a "Blow-Up" Provision**
Cases Filed Since January 1, 1996 and Settled Before December 31, 2011

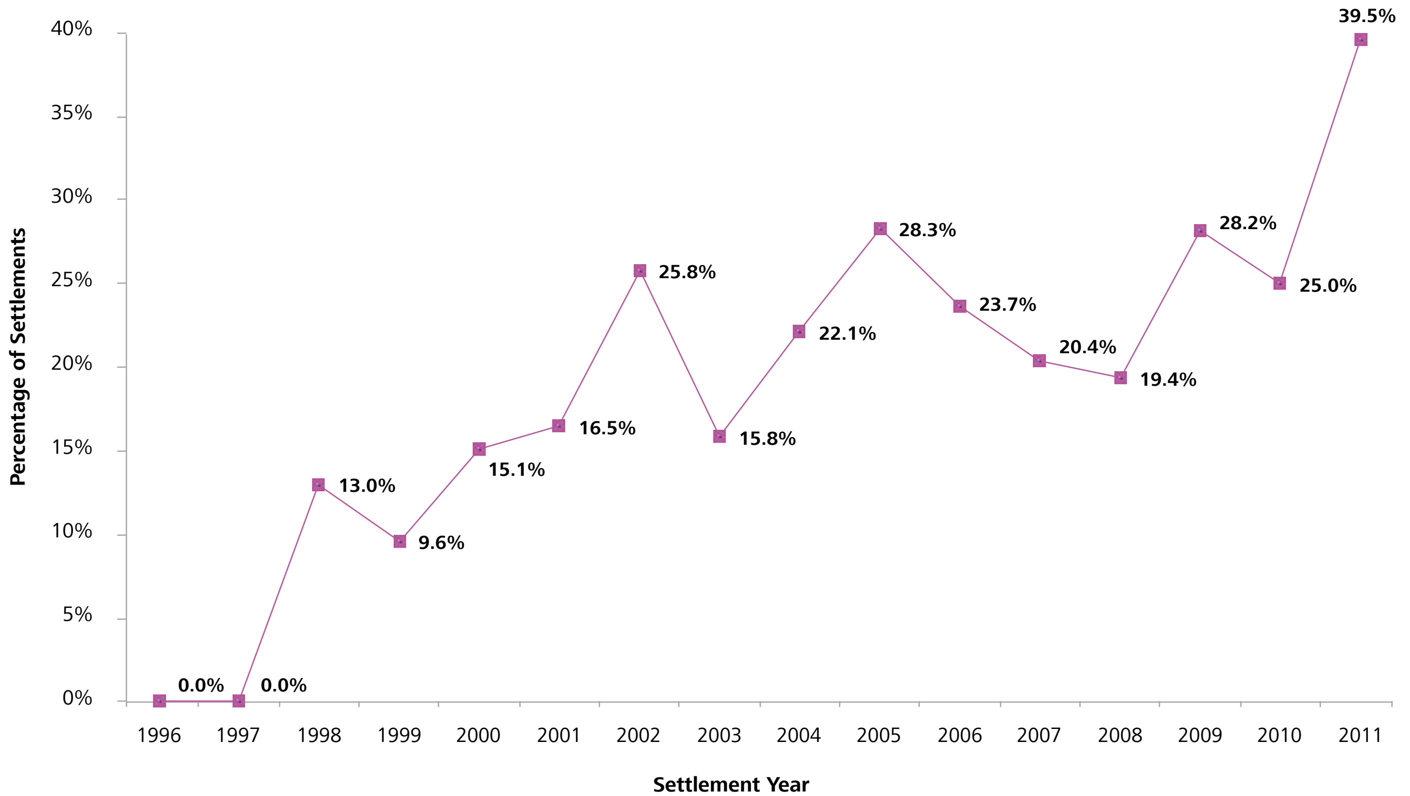
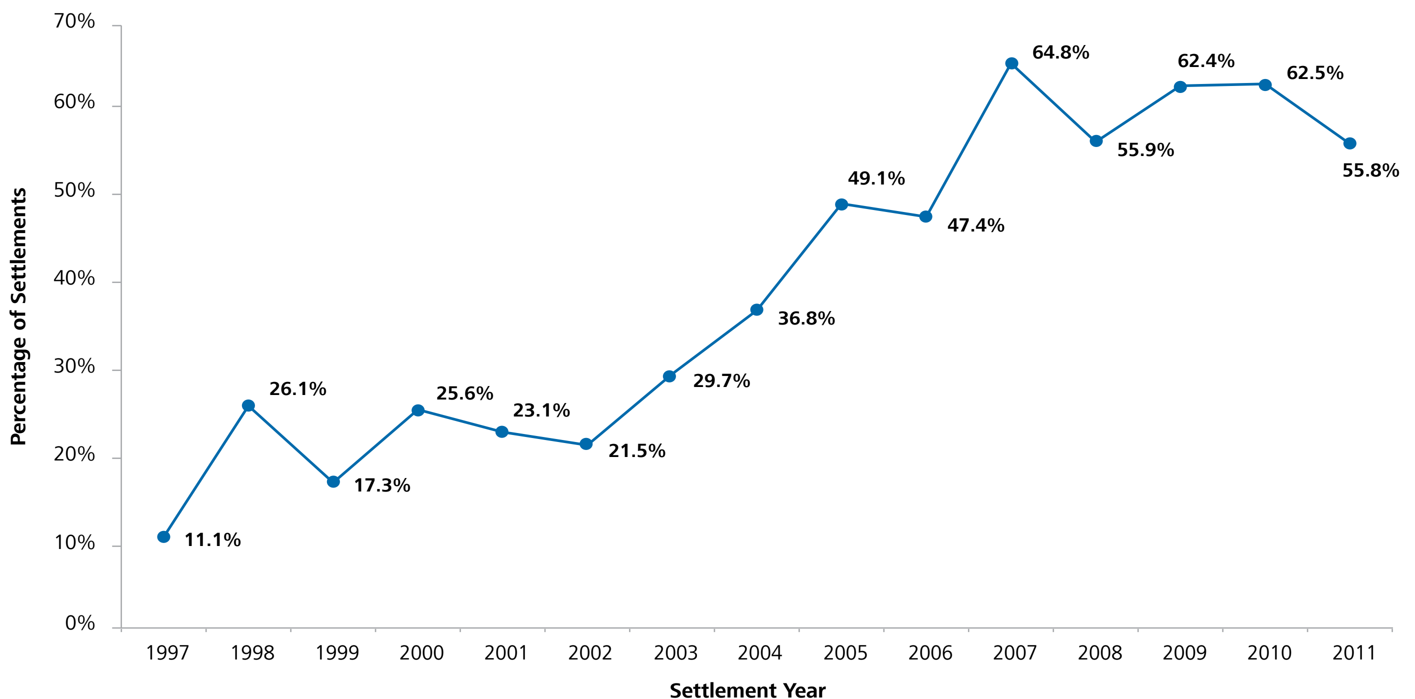
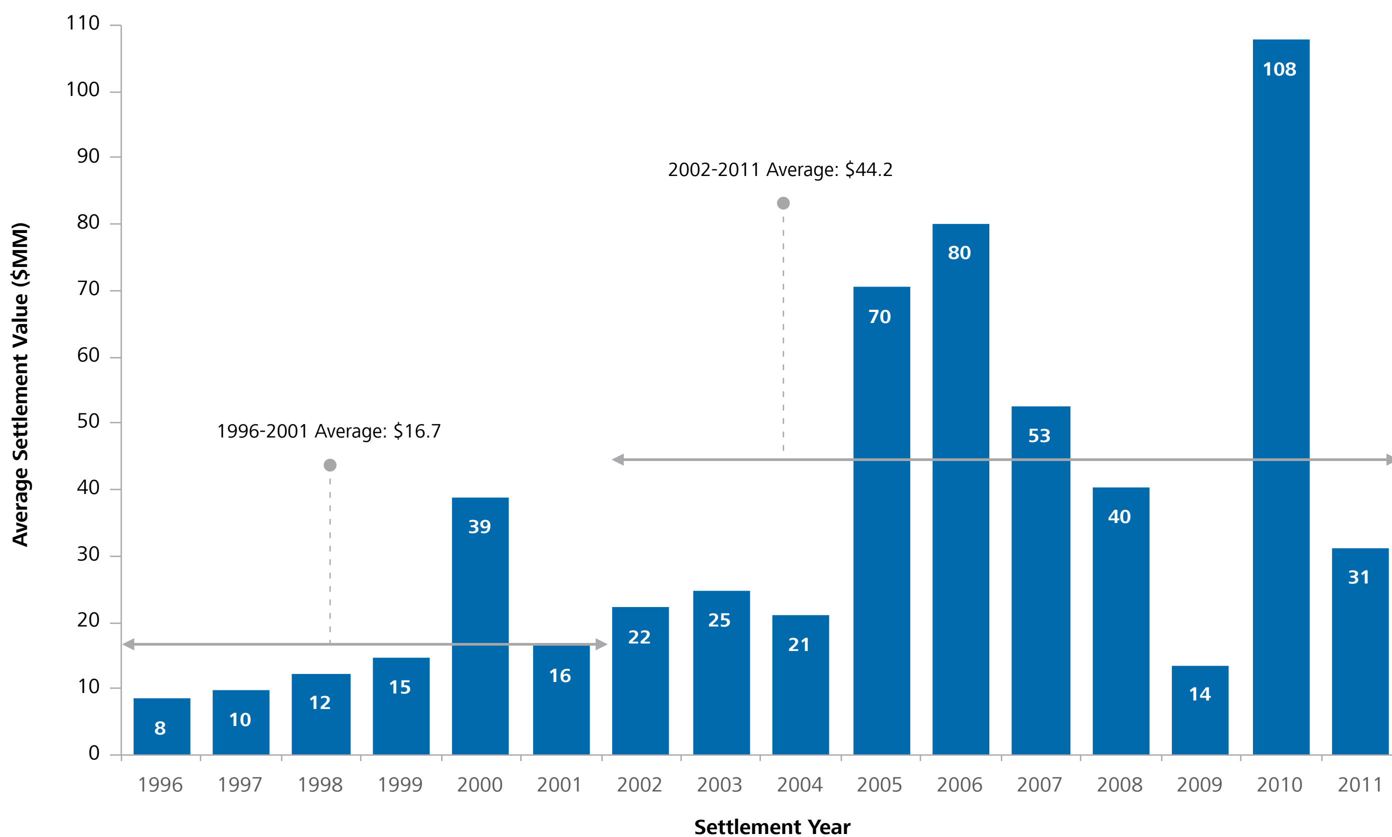


Figure 19. **Proportion of Settled Cases with a Parallel Derivative Action**
Cases Filed Since January 1997 and Settled Before December 2011



Note: We excluded cases filed and settled in 1996 because there was only one case and it had a derivative action.

Figure 20. **Average Settlement Value ($MM), All Settlements**
January 1996 – December 2011



Note: Settlements include IPO laddering cases.

exceeding $1 billion—as well as the 309 small settlements that were approved in 2009 for IPO laddering cases (most of which were filed in 2001), there is still a substantial decline from 2010 to 2011, albeit not as steep: from $40 million in 2010 to $31 million this year. See Figure 21.

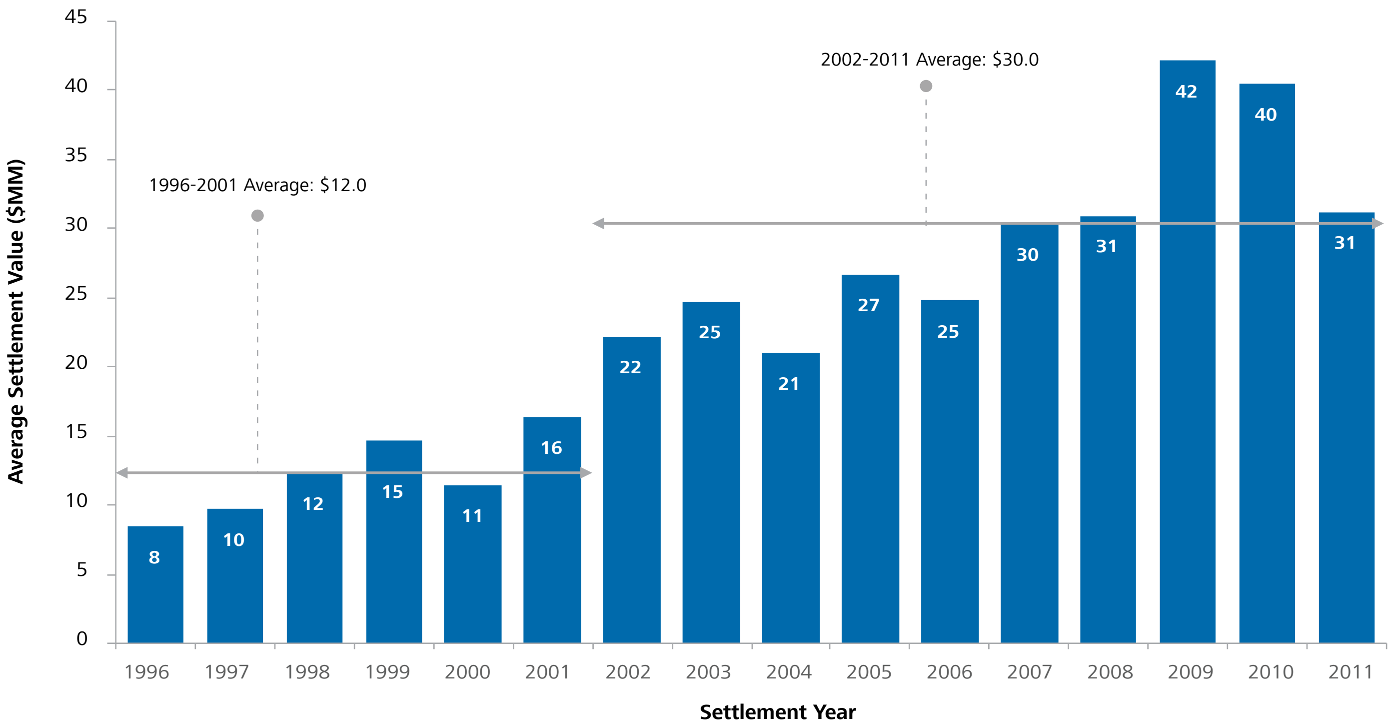
An alternative metric is the annual median settlement amount: the level that half of all settlements that year exceeded and half fell below. In a sense, this provides a measure of the size of a typical settlement. In 2010, the median settlement reached an all-time high of $11 million, but in 2011, it fell to $8.7 million, below the previous two years but still the third highest on record. See Figure 22.

Distribution of Settlements

Figure 23 shows that 54% of cases that settled in 2011 or have a scheduled court approval date from January to December 2011 did so for less than $10 million, well up from the 41% observed in 2010, but roughly in line with the proportion observed in 2006 through 2009.[11]

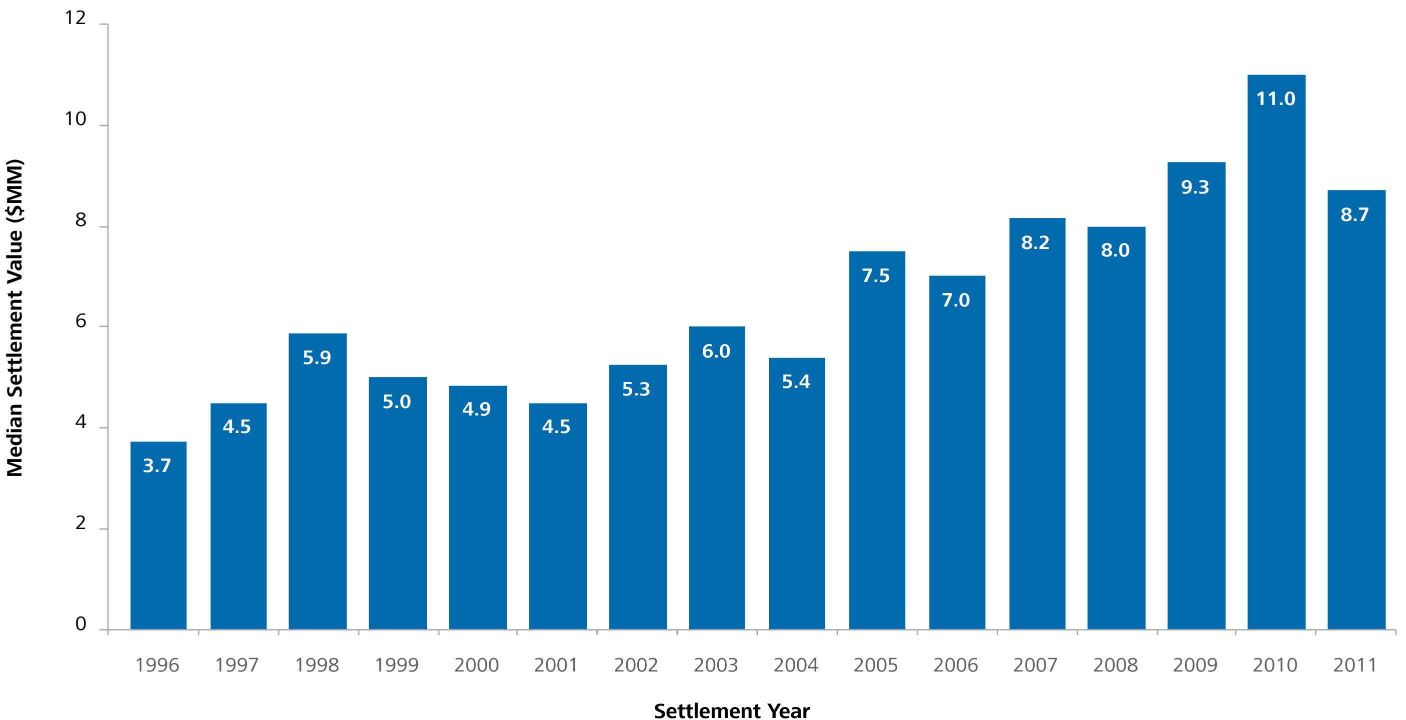
Turning to the upper end of the distribution, only 6% of 2011 settlements (five settlements in total) were for more than $100 million, down from 8% in the prior year. The largest settlement approved in 2011, by far, was for $627 million in the Wachovia Preferred Securities and Bond/Notes matter featuring credit crisis-related allegations.[12]

Figure 21. **Average Settlement Value ($MM), Excluding Settlements over $1 Billion and 309 Settlements in IPO Securities Litigation**
January 1996 – December 2011



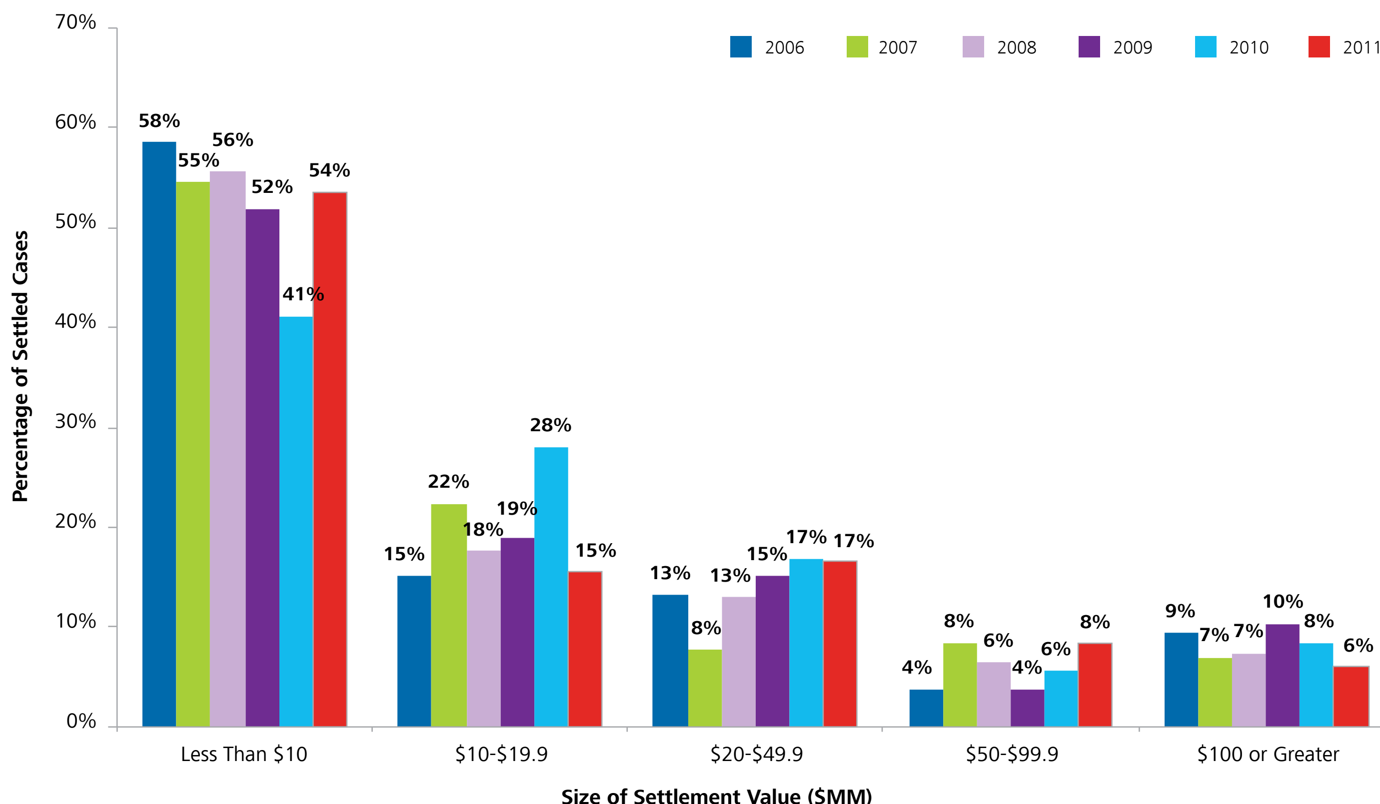
Note: Average settlement excludes the following final settlements over $1 billion: Cendant (2000), WorldCom (2005), Royal Ahold (2006), AOL Time Warner (2006), Nortel Networks I (2006), Nortel Networks II (2006), Tyco International (2007), McKesson HBOC (2008), and Enron (2010).

Figure 22. **Median Settlement Value ($MM)**
January 1996 – December 2011



Note: Settlements exclude IPO laddering cases.

Figure 23. **Distribution of Settlement Values ($MM)**
January 2006 – December 2011



Note: Settlements exclude IPO laddering cases.

Table 2 presents the top 10 securities class action settlements of all time. These settlements all exceed $1 billion, and therefore no settlements from 2011 are included on the list.

The aggregate amount paid in settlements is at its lowest level since 2004. See Figure 24. This is due both to a low average settlement and relatively few cases settling this year. The number of cases for which settlement was approved in 2011 is the lowest since the passage of the PSLRA.

Institutional and Pension Plan Lead Plaintiff Participation

The proportion of settled cases with an institutional lead plaintiff has risen sharply, as has the fraction of such settlements in which the institutional lead plaintiff was a public pension plan. NERA's research on the factors that explain the amounts for which cases have settled historically finds that institutional lead plaintiff participation is associated with larger settlements. In the last several years we have noticed a trend towards increased participation by institutions as lead plaintiffs. That proportion is somewhat lower this year than in 2009 or 2010, but at 62.8% it is above the levels observed prior to 2009. Public pension plans accounted for more than half of institutional lead plaintiffs in 2011. See Figure 25.

Plaintiffs' Attorneys' Fees and Expenses

The settlement values that we report include plaintiffs' attorney fees and expenses, in addition to the amounts ultimately paid to the class. Figure 26 shows fees and expenses as a proportion of settlement value for settlements finalized from 1996 to 2011.

Figure 24. **Aggregate Settlement Value ($MM) By Settlement Year**
January 1996 – December 2011

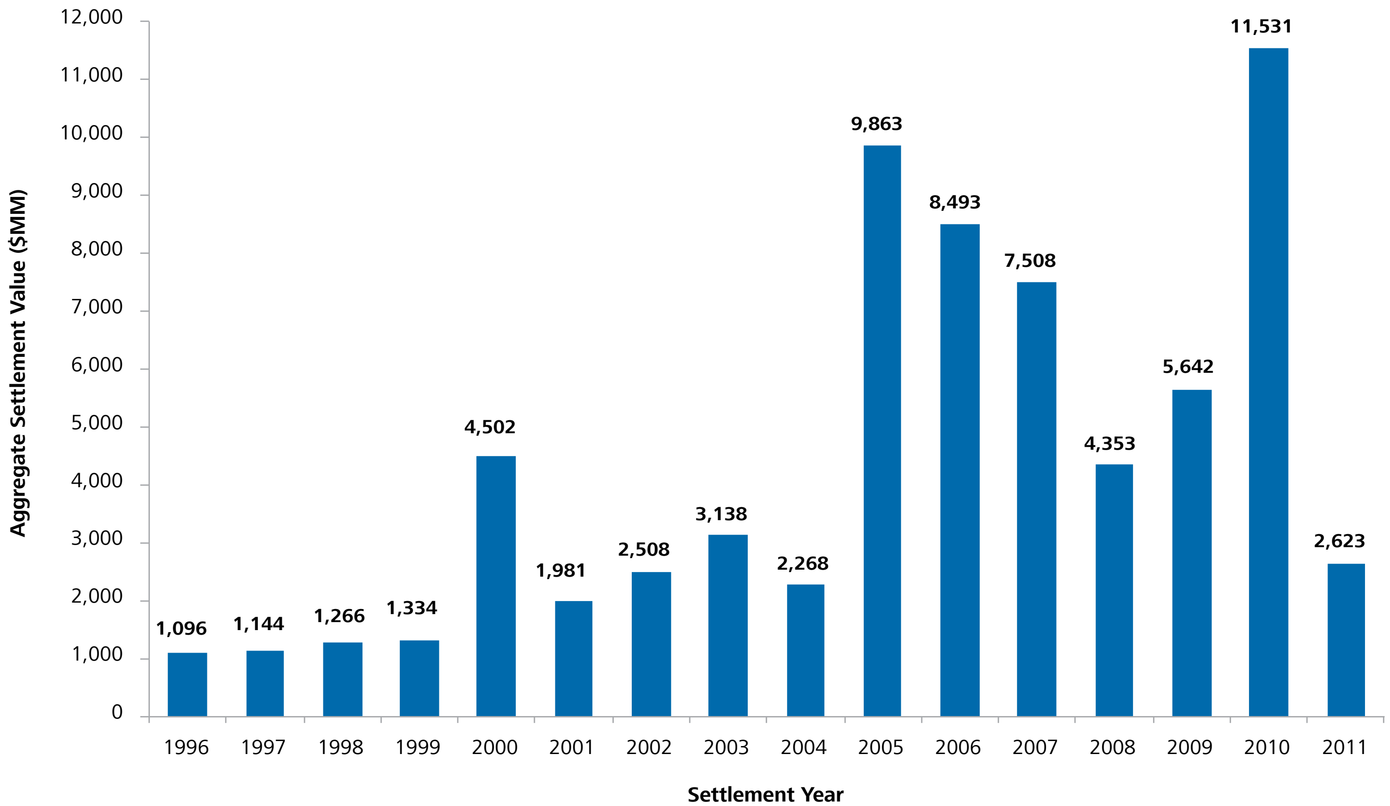
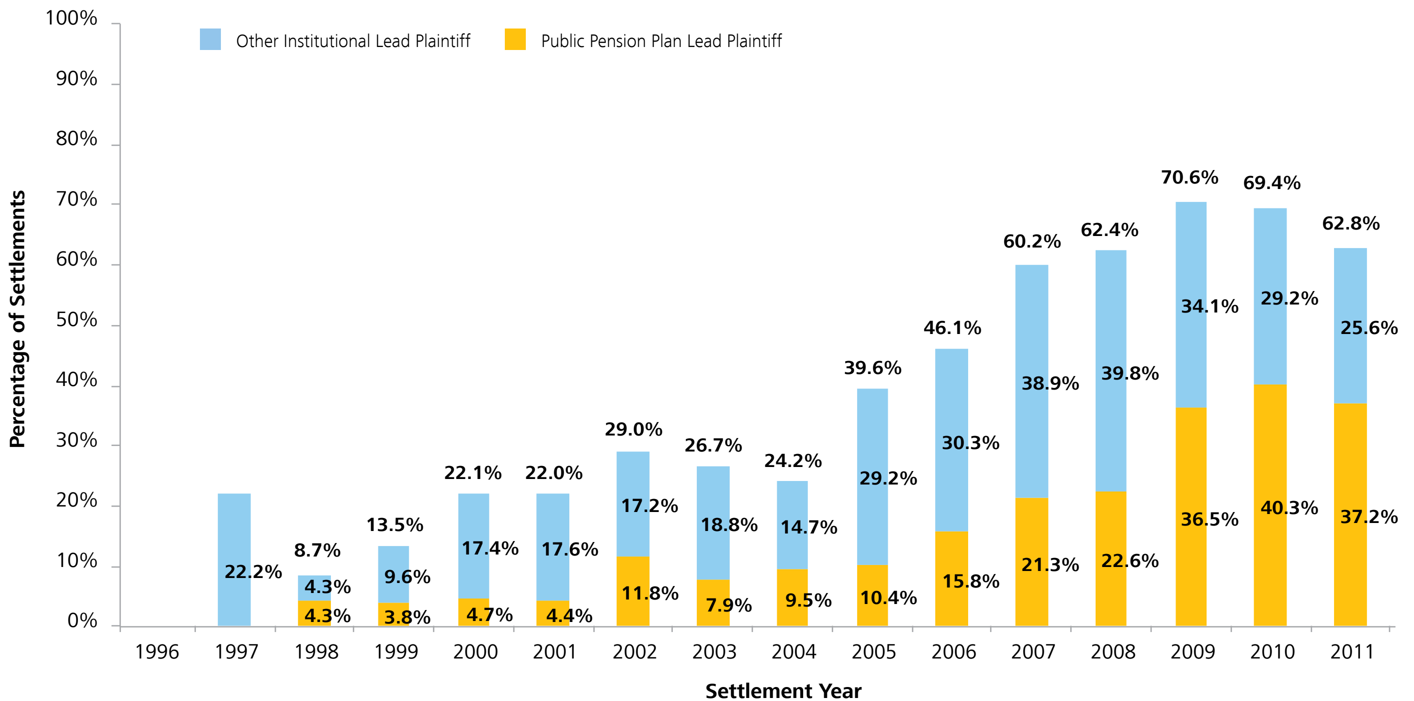


Figure 25. **Proportion of Settlements with Institutional Lead Plaintiff**
Cases Filed Since January 1996 and Settled Before December 2011



Note: There is no data shown for 1996 because no case filed in 1996 settled that same year.

Table 2. **Top 10 Securities Class Action Settlements** As of November 30, 2011

			Total	Settlements with Co-Defendants that Were			
		Settlement	Settlement	**Financial Institutions**[1]		**Accounting Firms**[1]	
Ranking	Company	Year	Value ($MM)	Value ($MM)	Percent ($MM)	Value	Percent
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Enron Corp.[2]	2010	$7,242	$6,903	95%	$73	1%
2	WorldCom, Inc.[3]	2005	$6,158	$6,004	98%	$65	1%
3	Cendant Corp.[4]	2000	$3,692	$342	9%	$467	13%
4	Tyco International, Ltd.	2007	$3,200	*n.a.*	*n.a.*	$225	7%
5	AOL Time Warner Inc.	2006	$2,650	*n.a.*	*n.a.*	$100	4%
6	Nortel Networks (I)	2006	$1,143	*n.a.*	*n.a.*	*n.a.*	*n.a.*
7	Royal Ahold, NV	2006	$1,100	*n.a.*	*n.a.*	*n.a.*	*n.a.*
8	Nortel Networks (II)	2006	$1,074	*n.a.*	*n.a.*	*n.a.*	*n.a.*
9	McKesson HBOC Inc.	2008	$1,043	$10	1%	$73	7%
10	American International Group, Inc.[5]	2010	$1,010	*n.a.*	*n.a.*	$98	10%
	Total		$28,311	$13,259	47%	$1,099	4%

Note that for this summary table only, tentative and partial settlements are included for comparison, and "Settlement Year" in this table represents the year in which the last settlement—whether partial or final—had the first fairness hearing. For partial tentative settlements, "Settlement Year" is the year in which this settlement was announced.

1 If "n.a.", either the case did not have a financial institution or an accounting firm co-defendant, or none of the settlement value in column (4) was paid by a financial institution or an accounting firm co-defendant.

2 This settlement includes eight partial settlements. All remaining defendants in this case were dismissed on December 2, 2009. The fairness hearing for the last tentative partial settlement with Goldman Sachs was held on February 4, 2010.

3 The settlement value incorporates a $1.6 million settlement in the MCI WorldCom TARGETS case.

4 The settlement value incorporates a $374 million settlement amount in the Cendant PRIDES I and PRIDES II cases. Settlement in the Cendant PRIDES I case was a non-cash settlement valued at $341.5 million. The settlement value also incorporates 50% of December 29, 2007 separate settlement of claims of Cendant and certain former HFS officers against E&Y. Under the terms of the Cendant Settlement, the Class is entitled to 50% of Cendant's net recovery from E&Y. The additional recovery to the class is $131.75 million.

5 This settlement includes one final partial settlement and three tentative settlements.

In general, the proportion of a settlement taken by fees and expenses declines as the settlement size rises. For settlements below $5 million, for example, the median plaintiffs' attorney fees are a third of the settlement amount, while for settlements of over $500 million, fees fall to below 10%. Median plaintiff expense ratios fall over this settlement range as well, from 5.4% for settlements below $5 million to 0.5% for settlements above $500 million.

Aggregate plaintiffs' attorneys' fees fell in 2011 to their lowest level since 2004. We attribute this decline to a combination of the lower average and median settlement size, and fewer settlements (87 in 2011 as compared to 110 in 2010 and 108 in 2009 not related to IPO laddering cases). See Figure 27.

Investor Losses versus Settlements

Historically, "investor losses" have been a powerful predictor of settlement size. NERA's investor losses variable is a proxy for the aggregate amount that class period buyers of the stock of the issuer defendant lost from holding

Figure 26. **Median Plaintiffs' Attorneys' Fees and Expenses As Percent of Settlement Value**
January 1996 – June 2011

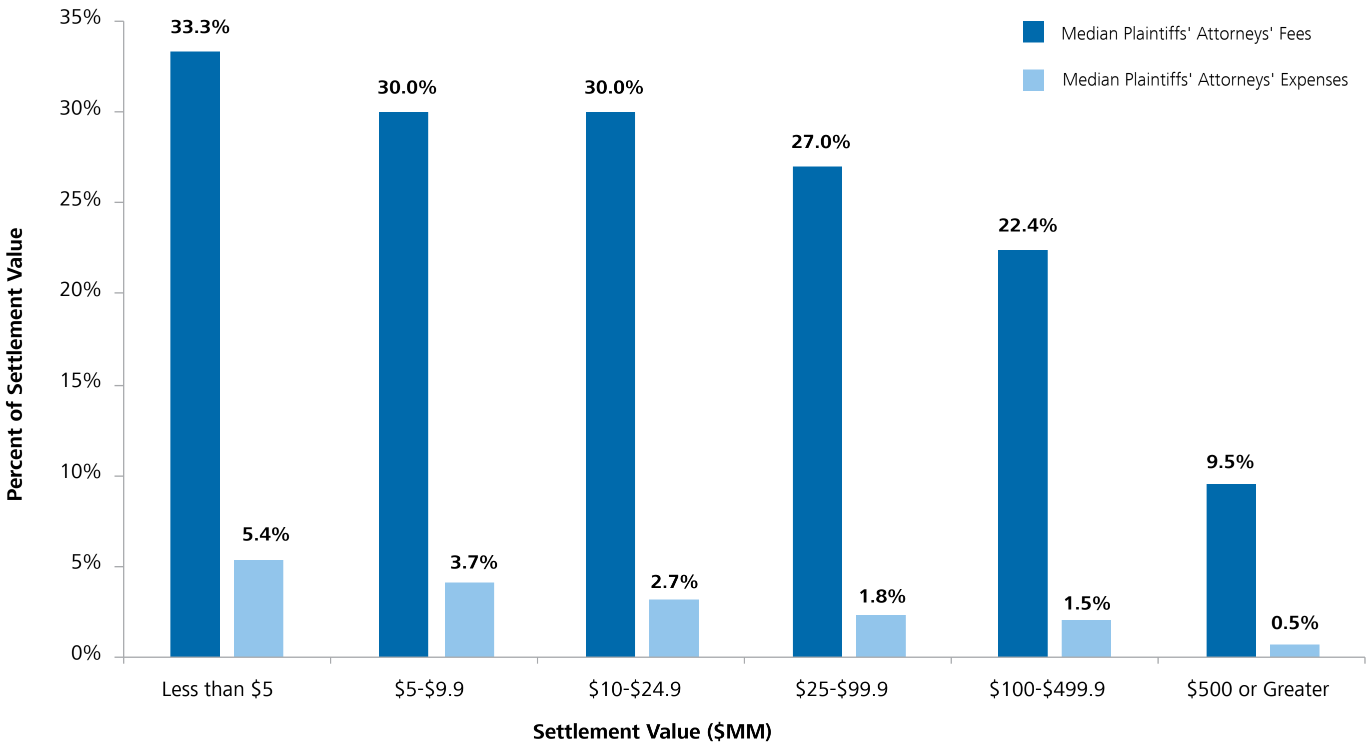
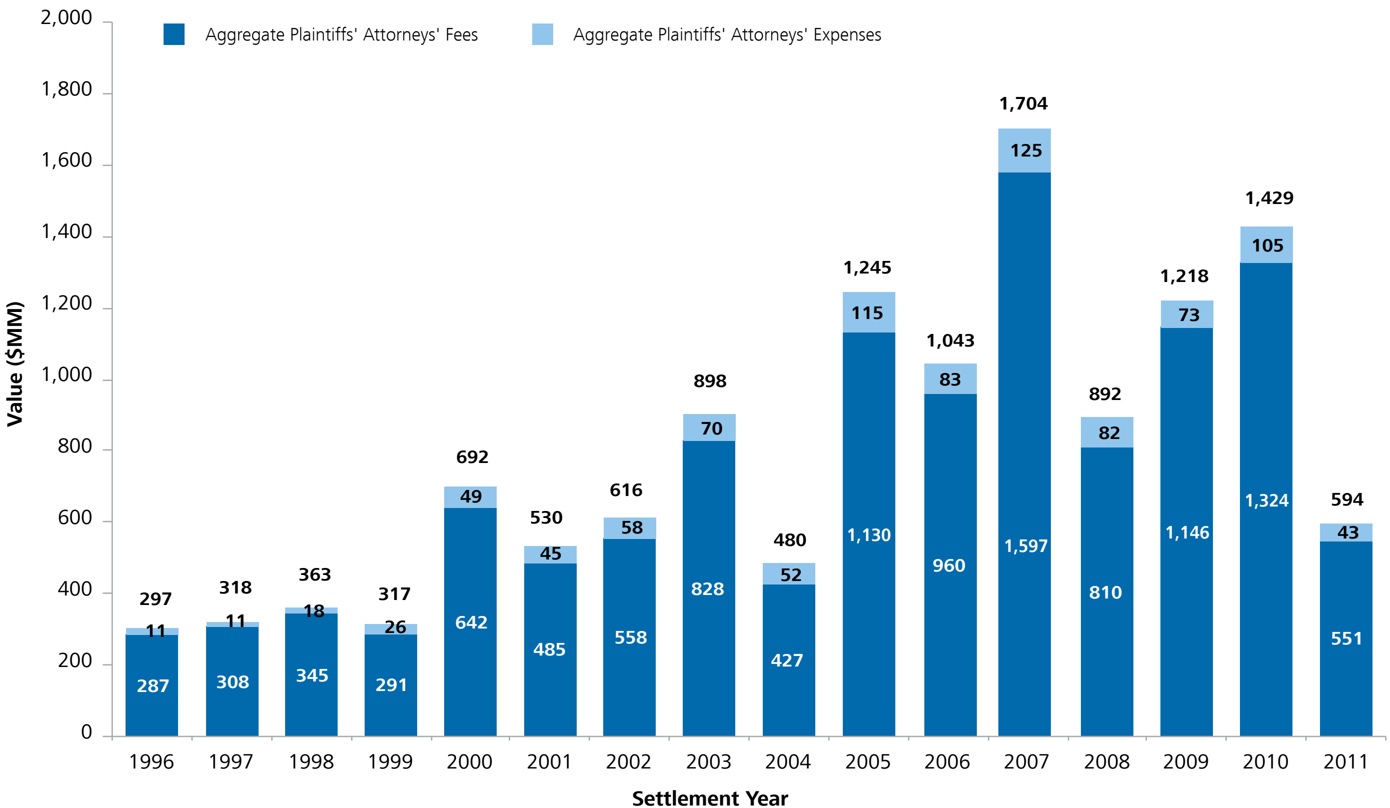


Figure 27. **Aggregate Plaintiffs' Attorneys' Fees and Expenses**
January 1996 – December 2011



that stock rather than investing in the broader market. The variable explains more than half of the variance in the settlements in our database.[13]

In general, as investor losses grow, so does settlement size, but the relationship is not linear. In particular, settlement size tends to rise less than proportionately, so small cases typically settle for a higher fraction of investor losses (i.e., more cents on the dollar) than larger cases. For example, cases with investor losses below $20 million on average settle for 38.0% of investor losses, while cases with investor losses over $1 billion settle for an average of 2.3% of investor losses. See Figure 28.

Note that the investor losses variable is not a measure of damages; rather it is a rough proxy for the size of investors' claims. Thus, our findings on the ratio of settlement to investor losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the "size" of the case.

Median investor losses for settled cases have soared post-PSLRA, from $64 million for 1996 settlements to a record $911 million for cases settling in the first half of 2011.[14] In July, we noted that a combination of low settlement values and record high median investor losses ($911 million) had driven the median ratio of settlement size to investor losses to a record low of 1.0% in the first half of 2011. We suggested that settlements may have been depressed by the effect of the economic downturn on defendants' ability to pay.

Looking at the data for 2011 as a whole, the picture has changed somewhat since we last reported in our mid-year release. As Figure 29 indicates, median investor losses were $493 million for 2011, well below the level that prevailed in the first half of this year. Nonetheless, median investor losses in 2011 are the second highest on record.

Figure 28. **Settlement Value as a Percent of Investor Losses, by Level of Investor Losses**
January 1996 – December 2011

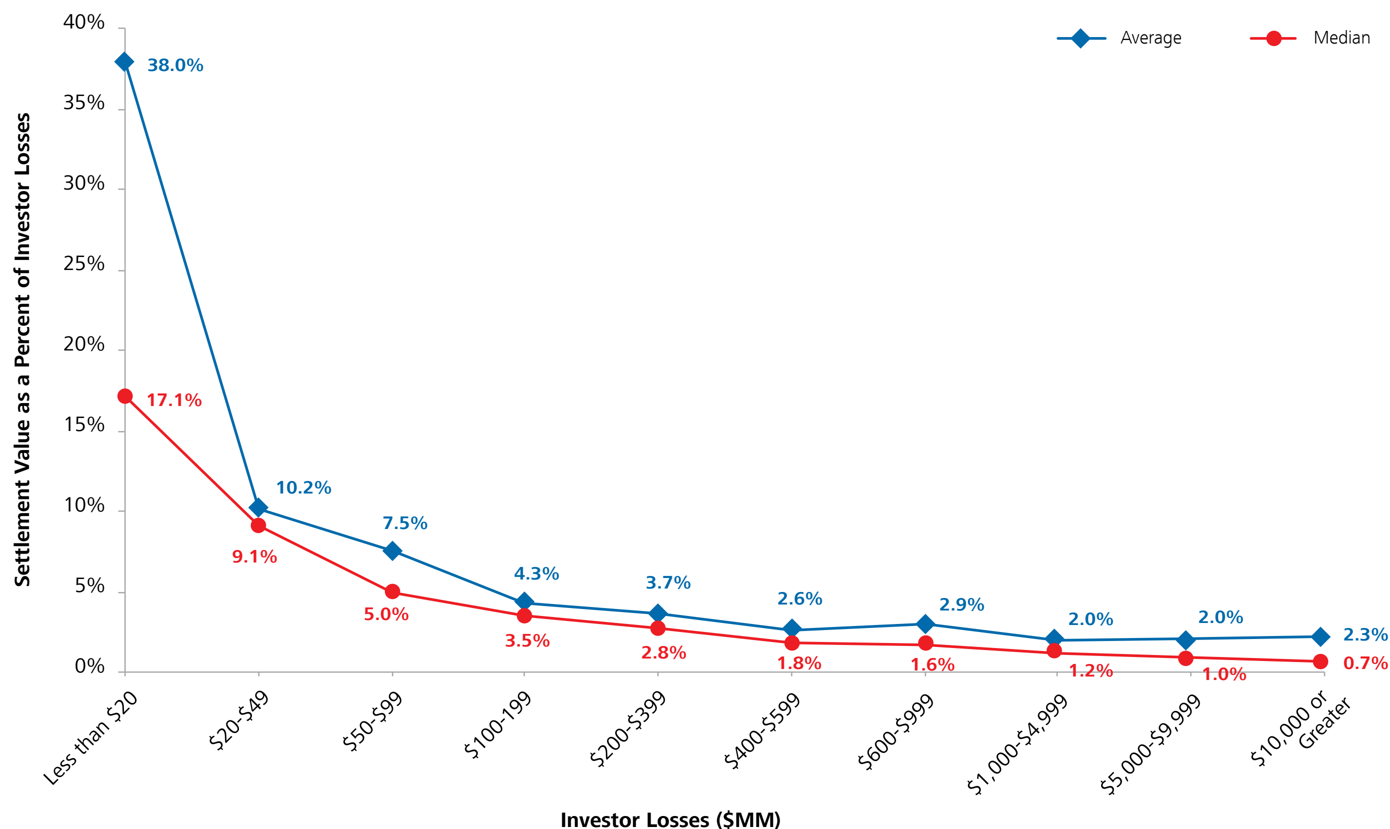
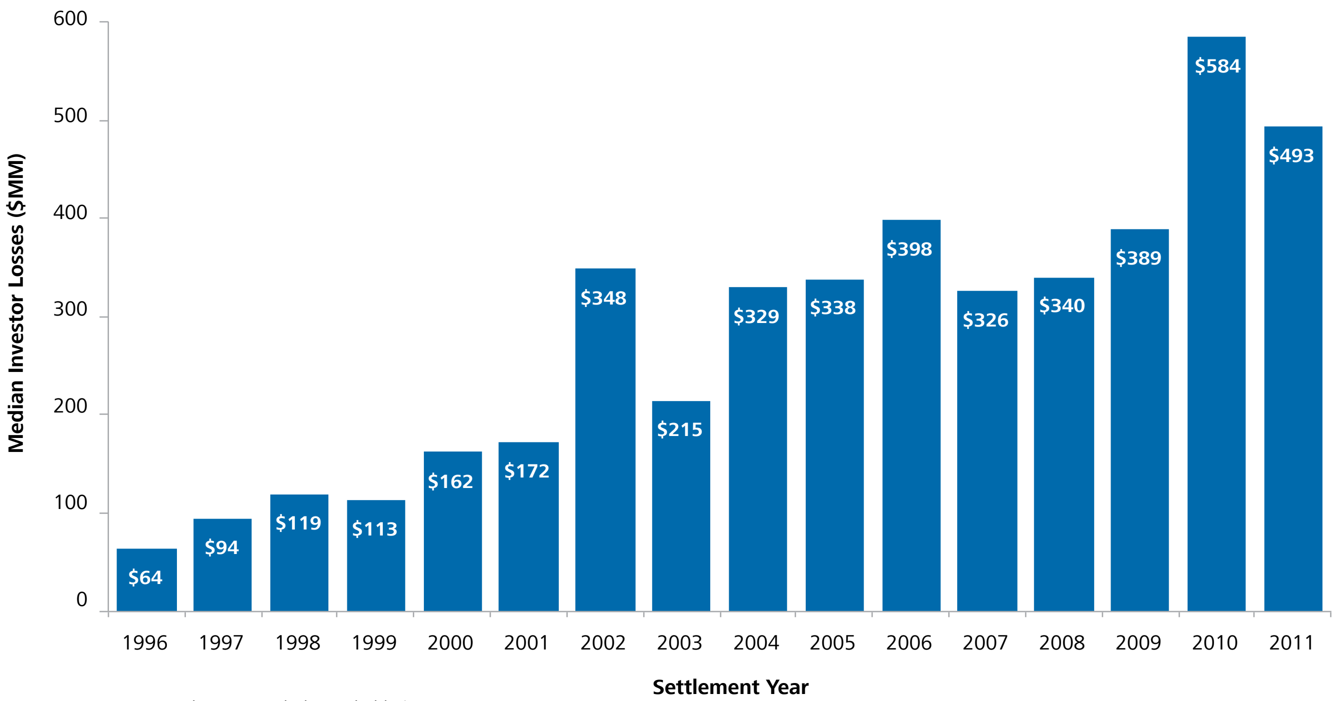
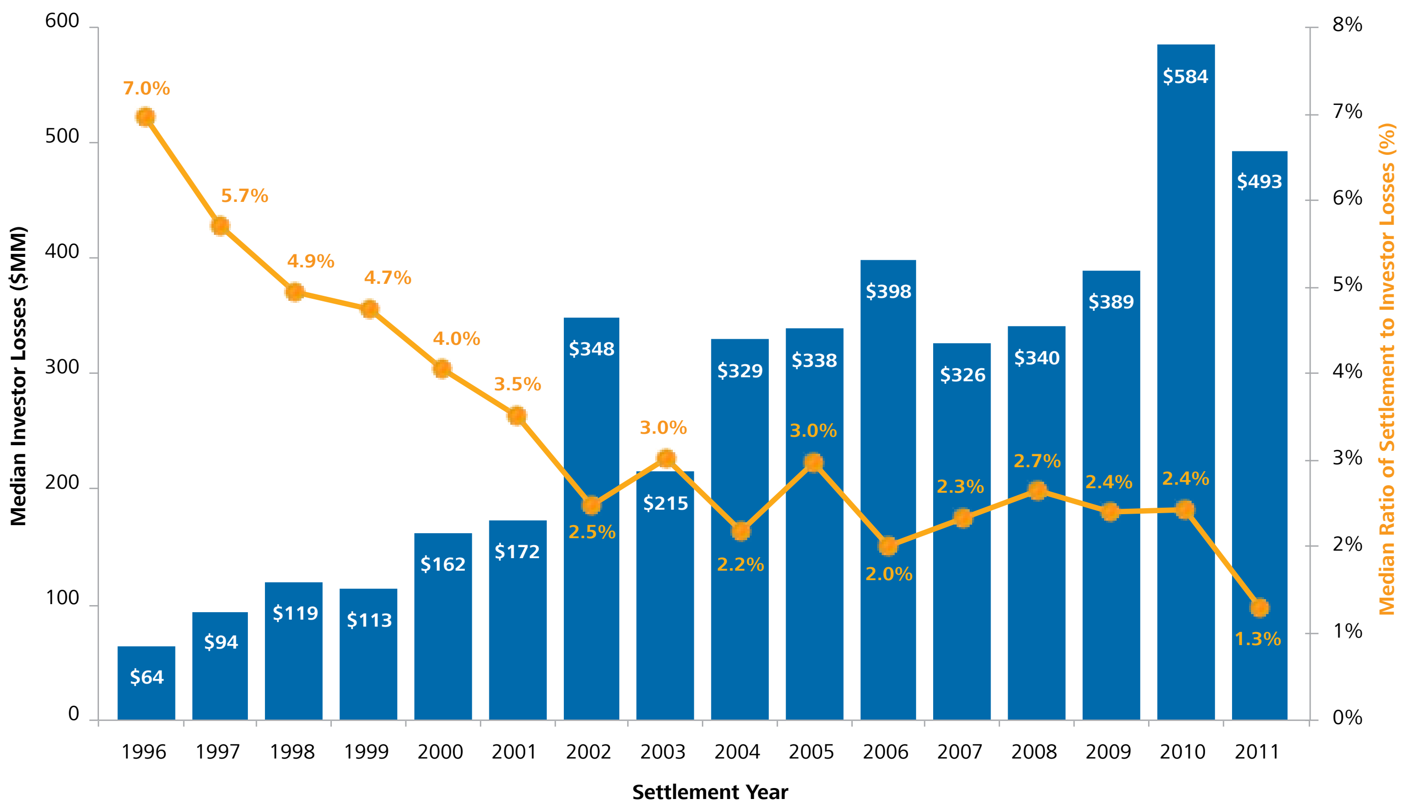


Figure 29. **Median Investor Losses ($MM) By Settlement Year**
January 1996 – December 2011



Note: Settlements exclude IPO laddering cases.

Figure 30. **Median Investor Losses and Median Ratio of Settlement to Investor Losses By Settlement Year**
January 1996 – December 2011



Note: Settlements exclude IPO laddering cases.

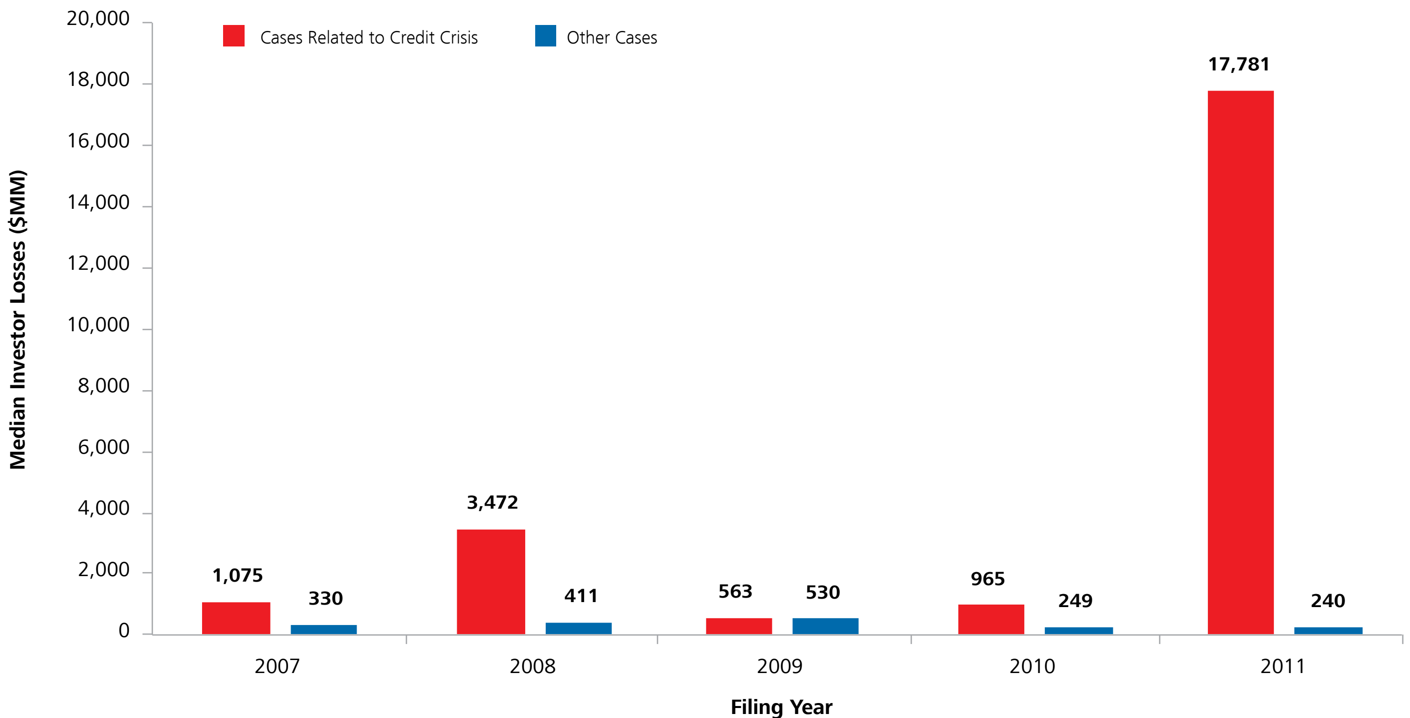
At 1.3%, the median ratio of settlement to investor losses is a post-PSLRA low. See Figure 30.

Investor losses in credit crisis cases have generally exceeded losses in other types of cases. For cases filed in 2011, this pattern was particularly striking, with median investor losses for credit crisis cases reaching nearly $18 billion as compared to $240 million for other cases. See Figure 31. Note that there are only five credit crisis-related cases that were filed in 2011, and caution should be used when drawing any conclusions based on such a small sample.

Because of the strong statistical relationship between investor losses and settlement size described above, investor losses for recent filings give some indication of what settlement values can be expected when these cases settle in the future. By comparing investor losses for cases that have settled in a particular year with investor losses for cases filed in that year, we can get a sense of how settlements over the subsequent few years are likely to compare with settlements in that year.

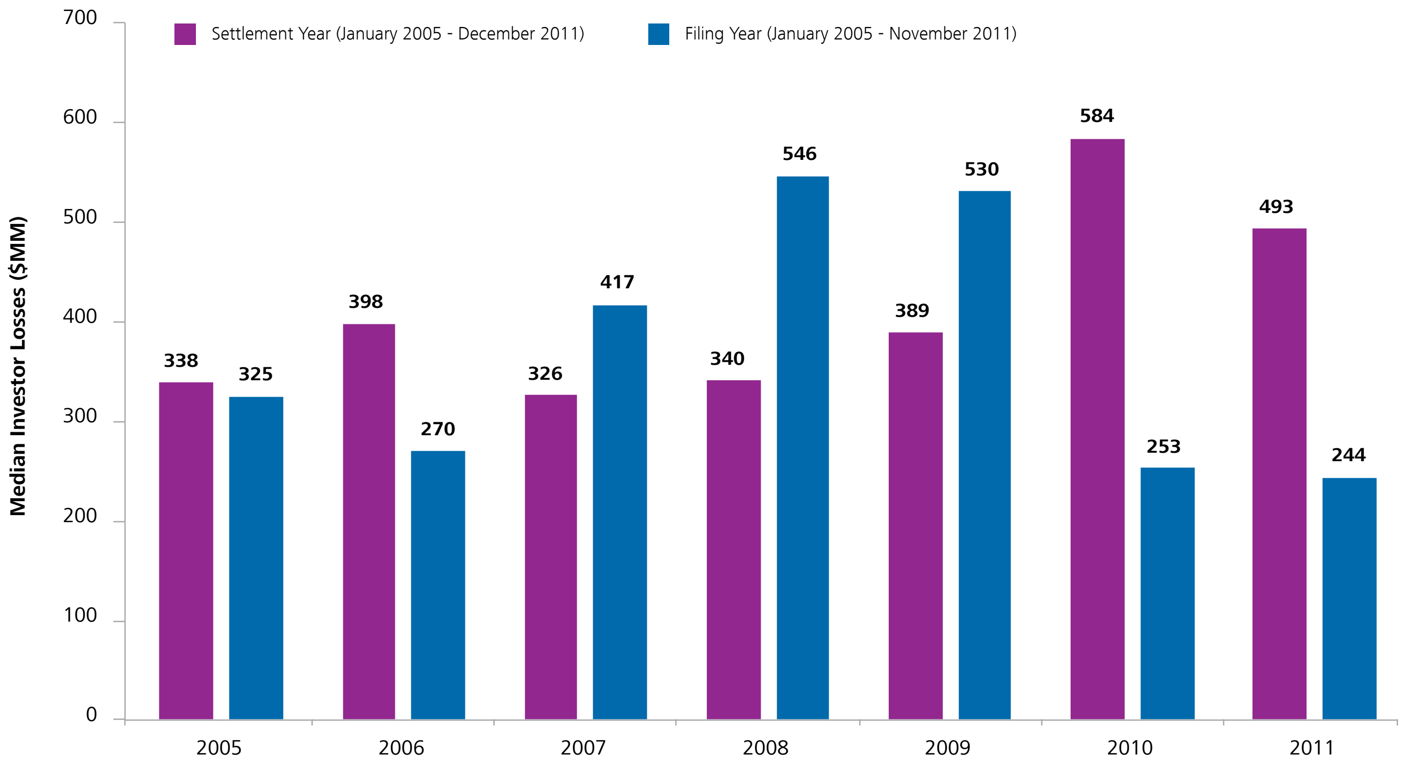
Prior to the credit crisis, the median value of investor losses for cases settled in a particular year was consistently higher than for cases filed in that year. This pattern reversed itself during 2007-2009, however, as the credit crisis produced filings of cases with very high investor losses. However, the pre-credit crisis pattern returned last year and has continued to hold in 2011, with median investor losses once again lower for newly filed cases than for newly settled cases. See Figure 32.

Figure 31. **Median Investor Losses ($MM) for Cases Related to Credit Crisis and Other Cases By Filing Year**
January 2007 – November 2011



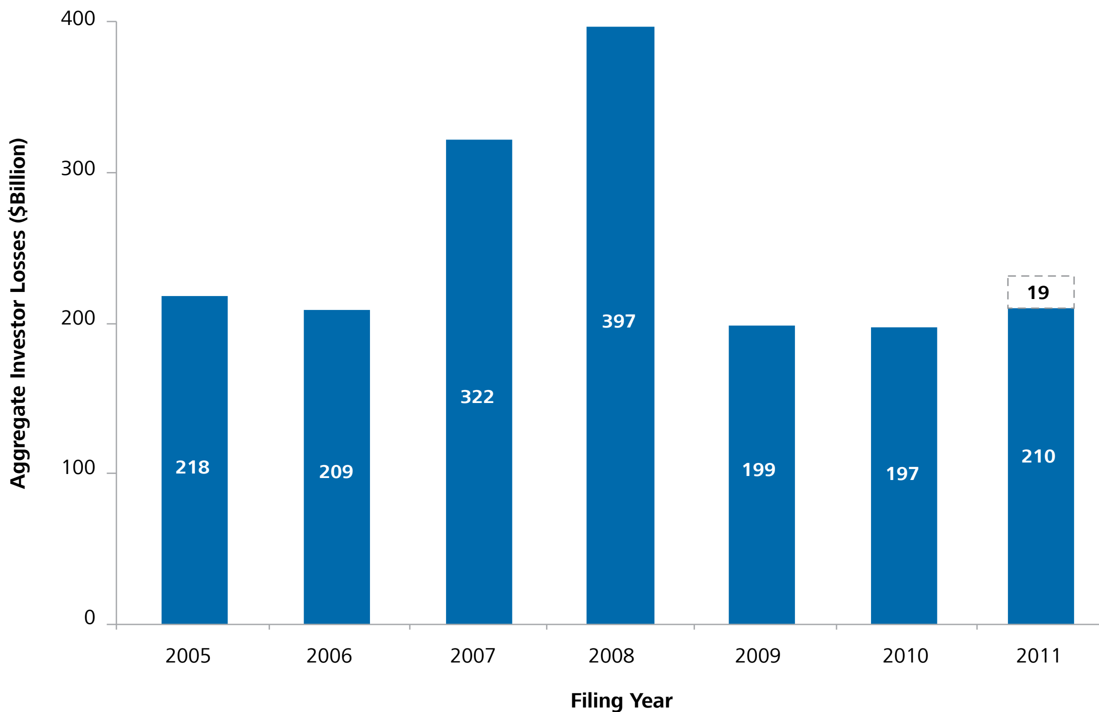
Notes: Other Cases include standard and options backdating cases.

Figure 32. **Federal Filings Median Investor Losses ($MM) By Settlement and Filing Year**



Note: Settlements exclude IPO laddering cases.

Figure 33. **Aggregate Investor Losses ($Billion) By Filing Year**
January 2005 – November 2011



Cases filed over the first 11 months of this year had aggregate investor losses of $210 billion; if this pace persists in December, total investor losses for cases filed in 2011 will be $229 billion, exceeding 2009 and 2010 and slightly exceeding the average aggregate investor losses prior to 2007. See Figure 33.

Conclusion

The year 2011 may be remembered as the year that saw the explosion of Chinese company-related lawsuits, the continued dominance of M&A cases alleging breach of fiduciary duty, and the sunset of credit crisis-related litigation. However, other notable developments that merit mention include the third highest median settlement value on record, a relatively low recovery rate by plaintiffs, and, for a second year, relatively low median investor losses for filed cases, which may point to a decline in the size of settlements going forward.

Looking ahead, it would be interesting to see how the level of filings will change or whether new categories of litigation will emerge.

The opinions expressed herein do not necessarily represent the views of NERA Economic Consulting or any other NERA consultant. Please do not cite without explicit permission from the authors.

Notes

[1] This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Elaine Buckberg, Frederick C. Dunbar, Todd Foster, Vinita M. Juneja, Denise Neumann Martin, Ronald I. Miller, Stephanie Plancich, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. The authors also thank Jake George and David I. Tabak for helpful comments to this version. In addition, we thank Carlos Soto, Nicole Roman, and other researchers in NERA's Securities and Finance Practice for their valuable assistance with this paper. These individuals receive credit for improving this paper; all errors and omissions are ours.

[2] NERA tracks class actions filed in federal court and involving alleged violations of the federal securities laws. If multiple such actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, multiple actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect that consolidation. Therefore, our count for a particular year may change over time. Different assumptions for consolidating filings would likely lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.

[3] Any discussion regarding filings in 2011 refers to filings from January 1, 2011 to November 30, 2011.

[4] Our normal approach to geographical classification is to use the country of domicile for the defendant company. Many of the defendant Chinese companies, however, obtained their US listing through a reverse merger, and consequently report a US domicile. For this reason, we have also tracked companies listed as having their principal executive offices in China.

[5] In our presentation of annual filings in Figure 1, we break out certain types of cases of special interest including, in recent years, cases relating to the credit crisis, options backdating, Ponzi schemes, and mergers and acquisitions, with the balance of filings labeled as "standard." We do not treat as non-standard filings against issuers from a particular country, such as China, as they are similar to other cases in terms of allegations. However, because these cases are of special interest due to the unprecedented number of suits against issuers from that one country, in Figure 3 we present them as separate from standard filings, a possible alternative view.

[6] That limitation applies as to "a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(47))." See 28 U.S.C. 1658(b). On the other hand, the explicit language of Section 13 of the Securities Act of 1933, applicable to claims alleging violations of Sections 11 and 12 of that Act, requires that actions must be brought within one year "after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence." See 15 U. S. C. §77m.

[7] Jory, Surendranath and Mark J. Perry, "Ponzi Schemes: A Critical Analysis," *Journal of Financial Planning*, July 2011. Available at: http://www.fpanet.org/journal/BetweentheIssues/LastMonth/Articles/PonziSchemes/.

[8] Subtracting the 29 suits against Chinese-domiciled companies in 2011 from both the total number of filings against foreign issuers and from total filings, the proportion of 2011 suits against foreign issuers in January through November 2011 would be 27 of 184, or 14.7%. As can be seen from Figure 11, this would fall slightly below the proportion in the last three years.

[9] Four cases filed in 2000 went to trial; all settled and are included in settled cases.

[10] Even though parties had reached a last partial tentative settlement prior to 2010, this tentative settlement received final court approval in February 2010.

[11] Settlements are assigned to the year of final court approval; thus our count of 2011 settlements includes announced settlements with a court hearing scheduled for December.

[12] *In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.).

[13] Technically, the investor losses variable explains more than half of the variance in the logarithm of settlement size. Investor losses over the class period are measured relative to the S&P 500, using a proportional decay trading model to estimate the number of affected shares of common stock. We measure investor losses only if the proposed class period is at least two days; this restriction effectively excludes merger objection cases from our investor losses statistics. Our sample includes more than 1,000 post-PSLRA settlements.

[14] See Figure 33, "Recent Trends in Securities Class Action Litigation: 2011 Mid-Year Review," by Dr. Jordan Milev, Robert Patton, and Svetlana Starykh.

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EXHIBIT 13

CORNERSTONE RESEARCH
ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

Securities Class Action Settlements

2011 Review and Analysis

Ellen M. Ryan
Laura E. Simmons

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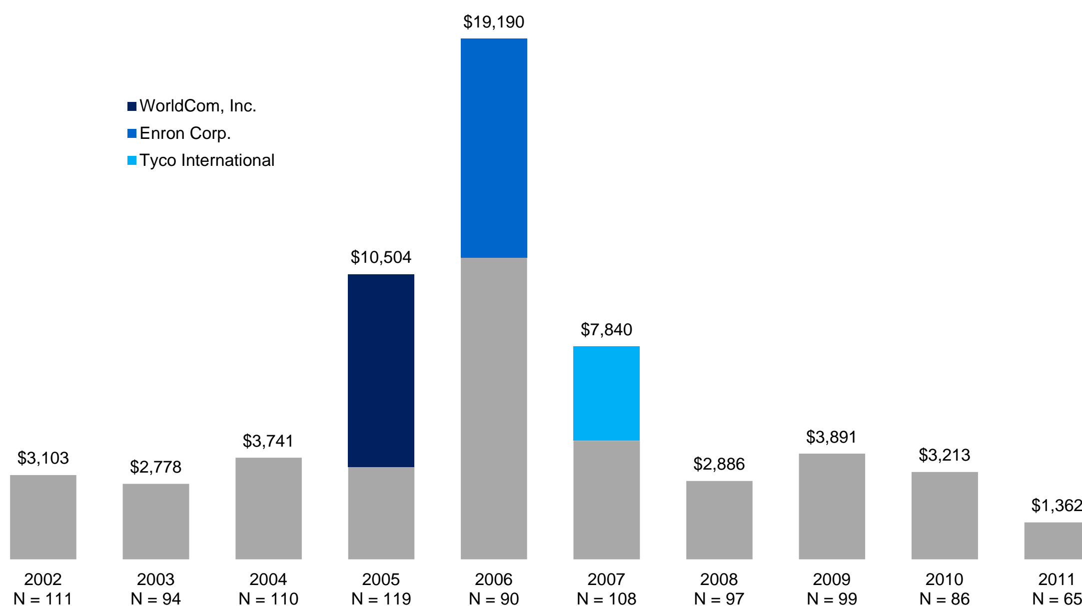
INTRODUCTION

In 2011, there were 65 court-approved securities class action settlements involving $1.4 billion in total settlement funds—the lowest number of approved settlements and corresponding total settlement dollars in more than 10 years. The number of settlements approved in 2011 decreased by almost 25 percent compared with 2010 and was more than 35 percent below the average for the preceding 10 years. Further, the total dollar value of settlements declined by 58 percent, from $3.2 billion in 2010 to $1.4 billion in 2011. The change in the number of settlements from 2010 to 2011 is one of the two largest year-over-year declines (settlements in 2006 were also nearly 25 percent lower than the number of settlements in 2005) and, combined with a year-over-year decrease in settlements in 2010, the first time there has been a decline in the number of settled cases for two consecutive years. The 2011 total settlement value of $1.4 billion is more than 50 percent below the next lowest value ($2.8 billion in 2002) for any of the years in the period from 2002 to 2010.[1]

FIGURE 1: TOTAL SETTLEMENT DOLLARS
2002–2011
Dollars in Millions



Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used.

In this report, we explore causes for the declines noted above and discuss additional observations related to securities class action settlements. These settlements are identified based on a review of case activity collected by RiskMetric Group's Securities Class Action Services (SCAS).[2] In our study, the designated settlement year corresponds to the year in which the hearing to approve the settlement was held.[3] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[4]

CASES SETTLED IN 2011

The median settlement amount for the 65 cases with court-approved settlements decreased substantially in 2011 to $5.8 million, an almost 50 percent decline from the $11.3 million median in 2010, and represents the lowest median settlement amount among all post–Reform Act years.[5]

The average reported settlement amount also decreased from $36.3 million in 2010 to $21.0 million in 2011 and remains substantially below the average of $55.2 million for all post–Reform Act settlements through 2010. Excluding the top three post–Reform Act settlements illustrated in Figure 1 (WorldCom, Enron, and Tyco) from this analysis, the average settlement amount of $21.0 million in 2011 is still well below the historical average of $39.9 million for cases settled from 1996 through 2010 and is the lowest average settlement amount in the last decade.

FIGURE 2: SETTLEMENT SUMMARY STATISTICS

Dollars in Millions

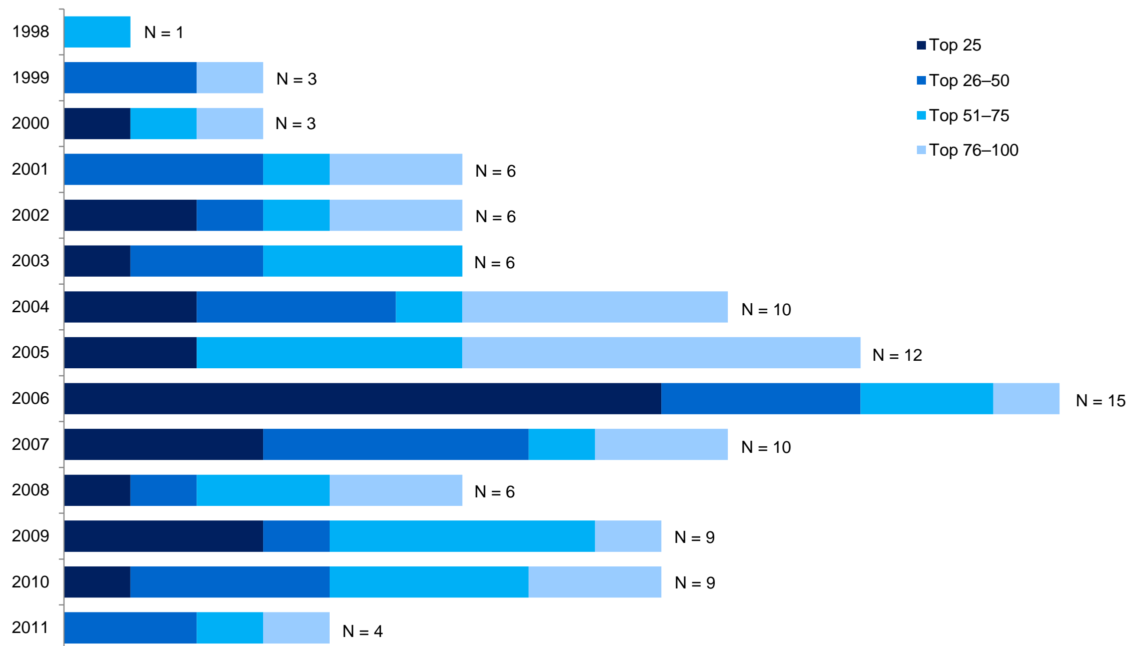
	2011	Settlements through 2010
Minimum	$0.6	$0.1
Median	$5.8	$8.1
Average	$21.0	$55.2
Maximum	$208.5	$8,070.0
Total Amount	$1,362.0	$66,712.6

Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used. Excluding the top three settlements illustrated in Figure 1, the average and total settlement amounts through 2010 are $36.5 million and $44,008.9 million, respectively.

The decline in the average settlement amount in 2011 is due in part to a decline in very large settlements. For the fourth consecutive year, no single securities class action settlement exceeded $1 billion. Additionally, the average settlement amount for "mega-settlements" (settlements of $100 million or more) declined more than 27 percent from 2010 to 2011. In 2011, there were three mega-settlements in our study.

In fact, mega-settlements accounted for only 40 percent of total settlement dollars in 2011—the lowest proportion since 2001. In contrast, over the past five years, mega-settlements have accounted for an average of 71 percent of settlement dollars. As shown in Figure 3, only four settlements in 2011 ranked in the top 100 of post–Reform Act settlements and none ranked in the top 25.[6]

FIGURE 3: TIMING OF TOP 100 POST–REFORM ACT SETTLEMENTS

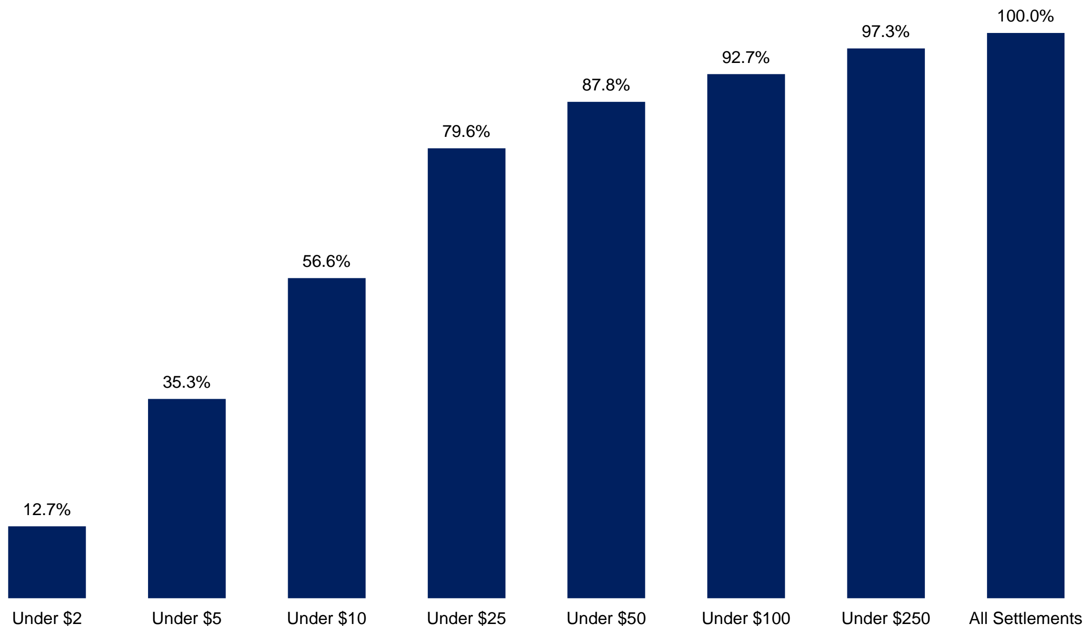


Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used.

Despite the publicity that often accompanies mega-settlements, more than half of post–Reform Act cases have settled for less than $10 million (see Figure 4). Approximately 80 percent of post–Reform Act cases have settled for less than $25 million, and only 7 percent of cases have settled for $100 million or higher.

FIGURE 4: CUMULATIVE DISTRIBUTION OF SETTLEMENT AMOUNTS 1996–2011

Dollars in Millions

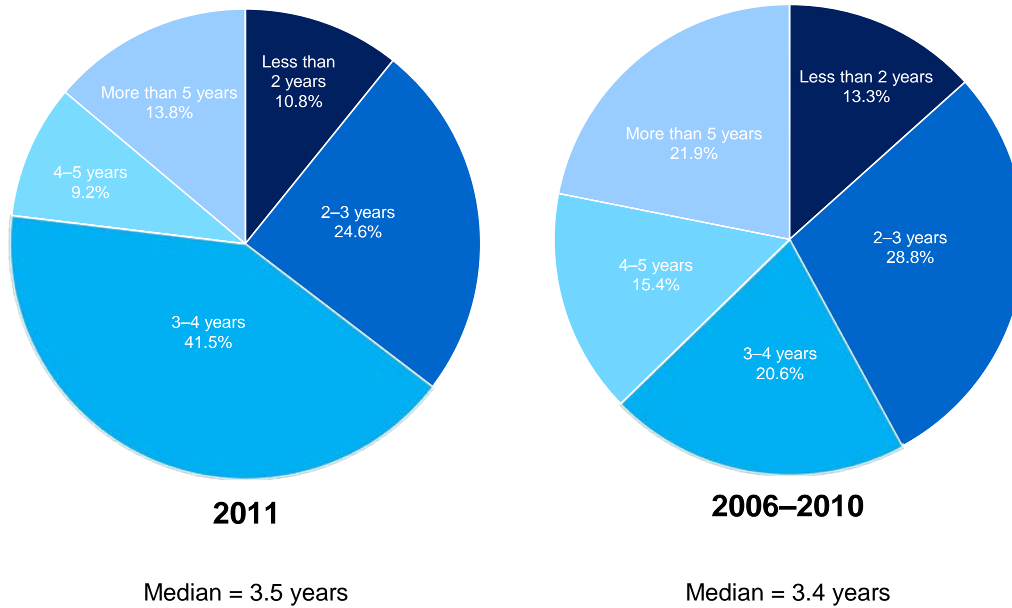


Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used.

A review of publicly available settlement materials indicates that in 2011, nearly 80 percent of settlements with identifiable contributions from Directors and Officers (D&O) insurance proceeds were funded 100 percent by such policies, compared with approximately 60 percent in 2010. This apparent increase in the proportion of settlement amounts covered by D&O insurance may be a function of the lower overall settlement amounts in 2011 and an increase in the level of D&O coverage carried by firms.[7]

In 2011, the concentration of settlements occurring within three to four years of the case-filing date increased to more than 40 percent, compared with approximately 20 percent for cases settled during the last five years. Compared with prior years, fewer cases were settled in either less than three years or more than four years in 2011.

FIGURE 5: DURATION FROM FILING DATE TO SETTLEMENT HEARING DATE



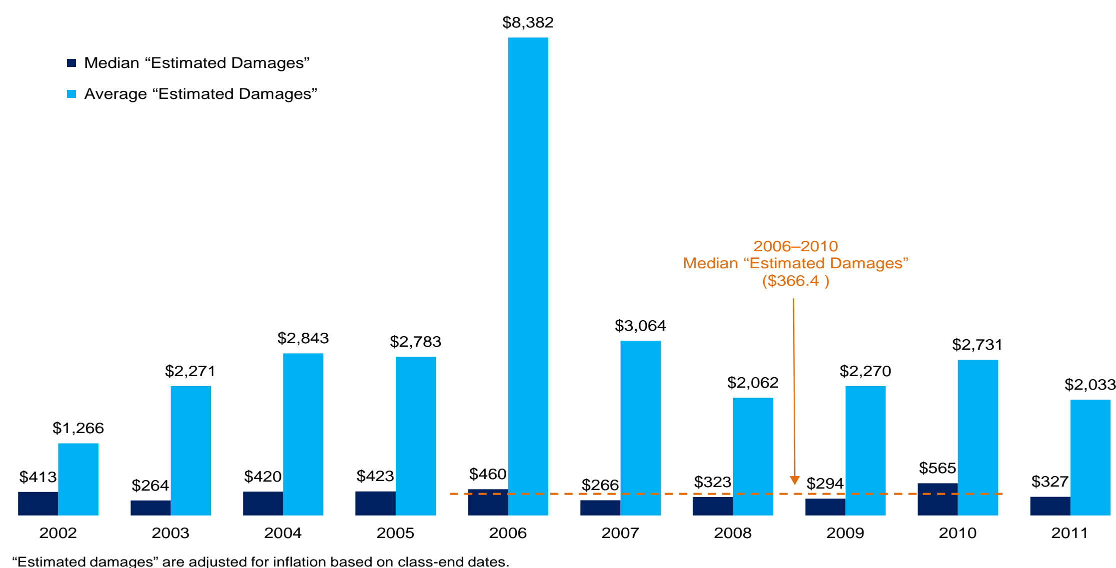
SETTLEMENTS AND DAMAGES ESTIMATES

For purposes of our research, we use a highly simplified approach to calculate "estimated damages," which is based on a modified version of a calculation method historically used by plaintiffs in securities class actions.[8] We make no attempt to link these simplified calculations of shareholder losses to the allegations included in the associated court pleadings. Accordingly, we do not intend for any damages estimates presented in this report to be indicative of actual economic damages borne by shareholders. Various models and alternative calculations could be used to assess defendants' potential exposure in securities class actions, but our application of a consistent method allows us to identify and examine certain trends in "estimated damages."[9]

Median "estimated damages" decreased in 2011 by more than 40 percent from the median reported for cases settled in 2010. Since "estimated damages" are the most important factor in determining settlement amounts, the decrease in "estimated damages" in 2011 likely had a major contribution to the decline in settlement amounts compared with 2010.

FIGURE 6: MEDIAN AND AVERAGE "ESTIMATED DAMAGES" 2002–2011

Dollars in Millions



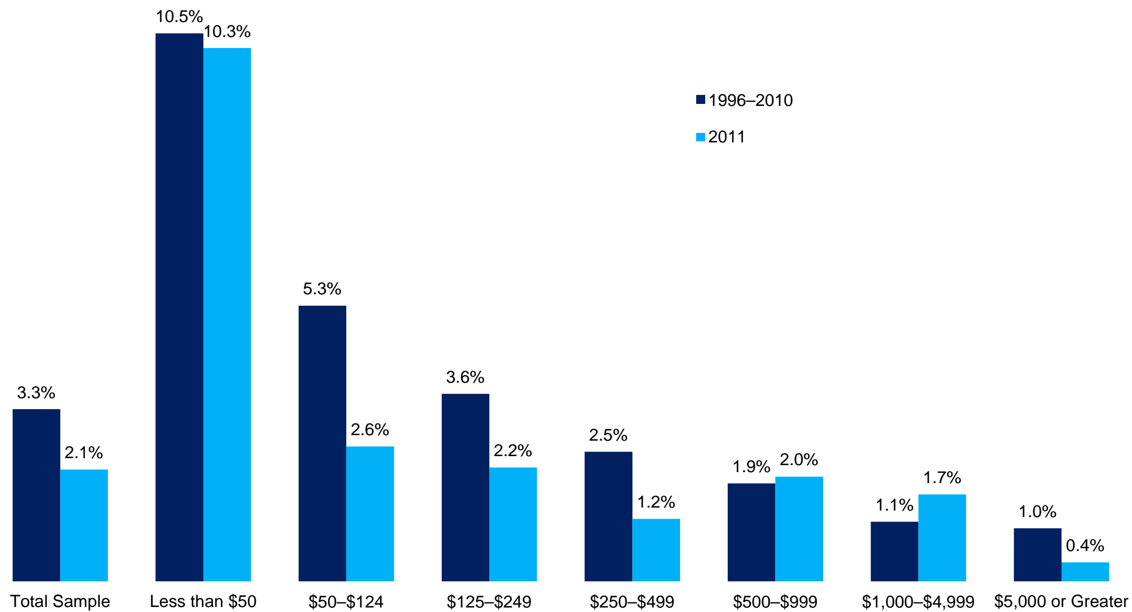
"Estimated damages" are adjusted for inflation based on class-end dates.

Average "estimated damages" for 2011 are the lowest since 2002. This is consistent with the lower average settlement amounts that we observe for the year-over-year comparison as well as the longer-term comparison. A shorter average class period length in 2011 also may have contributed to the lower damages. In 2011, the average class period length for settled cases was 1.3 years, 32 percent shorter than the average class period length for the prior five years and the lowest average for any single year during that period. In addition to the shorter-than-average class period length, we observe that the median reported trading volume during the alleged class period for cases settled in 2011—many of which had class periods that included intervals of low market volatility—was more than 30 percent lower than the median reported trading volume in 2010. Lower reported trading volume would also contribute to lower damages.

As we have described in prior reports, settlements generally increase as "estimated damages" increase; however, settlements as a percentage of "estimated damages" typically decrease as damages increase (see Figure 6). This is particularly true for very large cases. In 2011, settlements followed this general pattern.

FIGURE 7: MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" BY DAMAGES RANGES

Dollars in Millions



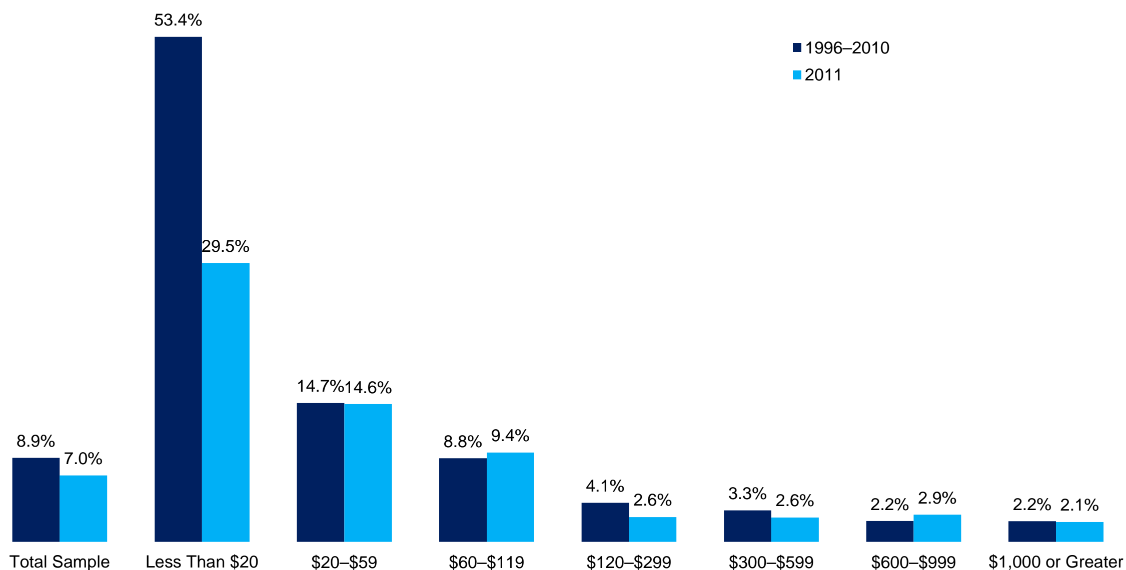
Overall, in 2011, median settlements as a percentage of "estimated damages" were substantially lower compared to the median for prior post–Reform Act years. This is surprising given that "estimated damages" in 2011 were low and the typical pattern is that settlements decrease as a percent of "estimated damages" when "estimated damages" increase. The overall lower median settlements as a percentage of "estimated damages" in 2011 were primarily driven by cases with "estimated damages" less than $500 million.

Disclosure Dollar Loss (DDL) is another simplified measure of shareholder losses. DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.[10] As in the case of "estimated damages," we do not attempt to link DDL to the allegations included in the associated court pleadings. This measure also does not capture additional stock price declines during the alleged class period that may affect certain purchasers' potential damages claims. Thus, as this measure does not isolate movements in the defendant's stock price that are related to case allegations, it is not intended to represent an estimate of damages. The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.

The median DDL associated with settled cases in 2011 decreased to $111 million, representing a 45 percent year-over-year decline and a 23 percent decline compared with the median for the preceding five years. With settlements as a percentage of DDL declining as DDL increases, the relationship between settlements and DDL is similar to that between settlements and "estimated damages."

FIGURE 8: MEDIAN SETTLEMENTS AS A PERCENTAGE OF DDL BY DDL RANGE

Dollars in Millions



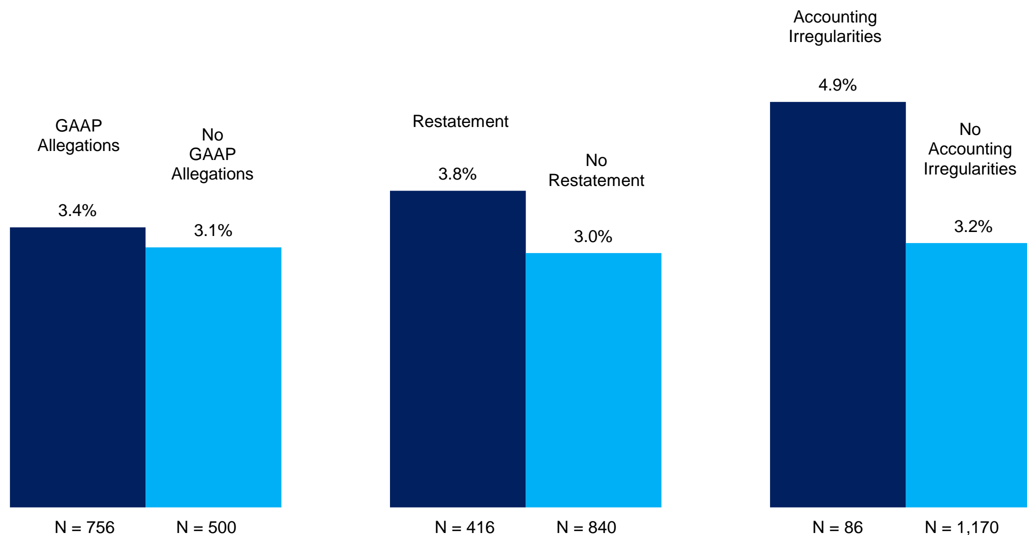
ANALYSIS OF SETTLEMENT CHARACTERISTICS

In addition to "estimated damages" and DDL, there are a number of important determinants of settlement outcomes, which we have identified from among more than 60 variables that we collect and analyze as part of our research. In this section, we provide information regarding several of these factors.

Accounting allegations play a central role in many securities class actions. However, among settlements in 2011, allegations related to violations of generally accepted accounting principles (GAAP) were included in only about 45 percent of settled cases compared with nearly 70 percent of settled cases in 2010 and 68 percent for the prior five years. Settlements that included instances of a restatement (or announcement of a possible restatement) of financials also declined substantially, from more than 40 percent for cases from 2006 to 2010 (and more than 45 percent for cases in 2010) to just under 25 percent in 2011. As others have suggested, declines in restatements and other accounting issues in recent years may be a function of improved corporate governance following the passage of the Sarbanes-Oxley Act of 2002.[11]

While cases involving restatements of financial statements have settled for higher percentages of "estimated damages" compared with cases that do not involve restatements, cases in which the issuer defendant acknowledged the presence of accounting irregularities, specifically intentional misstatements or omissions in financial statements, have settled for even higher amounts (see Figure 9). Simply stated, cases for which accounting fraud has been acknowledged settle for higher amounts compared with accounting restatement cases.

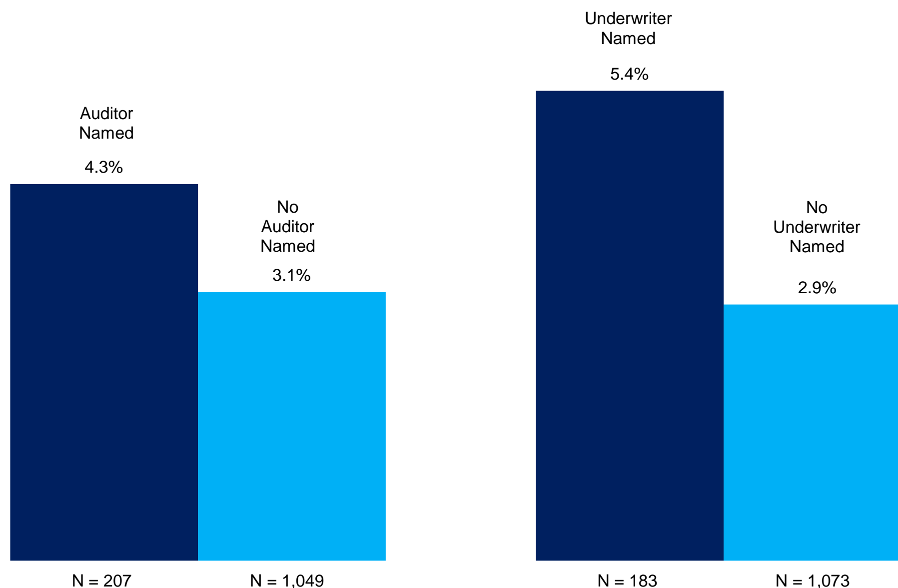
FIGURE 9: MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND ACCOUNTING ALLEGATIONS 1996–2011



Similarly, the presence of third-party defendants is associated with higher settlements as a percentage of "estimated damages." Third parties provide an additional source of funds. The inclusion of third-party defendants also is closely related to the type of allegations involved in the case. While outside auditors historically were named in approximately 30 percent of cases involving restatements of financial statements, they were named in less than 10 percent of financial restatement cases in 2011. As shown in Figure 9, cases in which an outside auditor was named as a defendant have settled for relatively higher percentages of "estimated damages" when compared with the set of all cases not involving auditor defendants.

The presence of underwriter defendants is highly correlated with the inclusion of Section 11 claims. The percentage of total settlements involving underwriters matched the all-time high of 26 percent reached in 2010. As 60 percent of those cases that settled in 2011 had filing dates in 2007 and 2008, this continued high level can be attributed to the large number of case filings involving Section 11 claims and underwriter defendants during those years.[12] The percentage of underwriter defendants also remained high among cases filed in 2009; thus, we expect that underwriter defendants will continue to be a significant factor among settlements in the near future as these cases reach the settlement stage.

FIGURE 10: MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND THIRD-PARTY DEFENDANTS 1996–2011



There are 68 cases in our research sample that did not involve Rule 10b-5 claims (i.e., involved *only* Section 11 and/or 12(a)(2) claims). Nearly 50 percent of these were settled in the past three years. Further, 2011 is the first year in which we observe that more than 20 percent of settled cases did not involve Rule 10b-5 claims.

The median settlement amount of $3.3 million for these cases is lower than the median settlement amount for cases involving Rule 10b-5 claims, while median settlements as a percentage of "estimated damages" are higher at 7.4 percent. "Estimated damages" tend to be smaller for cases involving only Section 11 claims, and thereby we would expect these cases to have higher median settlement as a percentage of "estimated damages" than cases with Rule 10b-5 claims only.

FIGURE 11: SETTLEMENTS BY NATURE OF CLAIM

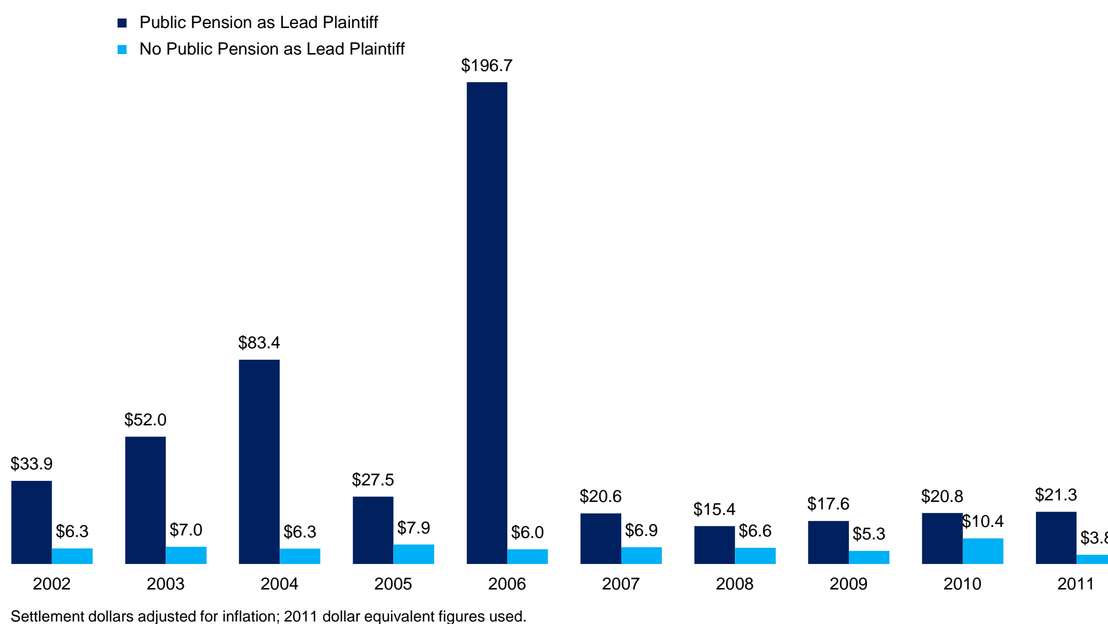
Dollars in Millions

	Number of Cases	Median Settlement	Median Settlement as a Percentage of "Estimated Damages"
Section 11 and/or 12(a)(2) Only Claims	68	$3.3	7.4%
Both Rule 10b-5 and Section 11 and/or 12(a)(2) Claims	228	$10.8	3.6%
Rule 10b-5 Only Claims	960	$6.8	3.0%
All Post–Reform Act Settlements	**1,256**	**$7.0**	**3.3%**

Institutional investors continue to play an active role as lead plaintiffs in post–Reform Act class actions. In 2011, institutions served as lead plaintiffs in nearly 60 percent of settlements—a decrease from their involvement in 2010 settlements but still above the 10-year average of nearly 45 percent. Among the various types of institutional investor lead plaintiffs, the most common are public pensions and unions. Further, unions and public pensions have increased their presence as lead plaintiffs considerably since the early part of the past decade.

FIGURE 12: MEDIAN SETTLEMENT AMOUNTS AND PUBLIC PENSIONS 2002–2011

Dollars in Millions



Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used.

We find that the presence of public pensions as lead plaintiffs is associated with significantly higher settlement amounts.[13] This observation could be explained by these relatively sophisticated investors choosing to participate in stronger cases. In addition, public pensions tend to be involved in larger cases in which they, as the plaintiffs, may have the potential for higher-magnitude claims against the defendants. In fact, since 2002, median "estimated damages" in settlements involving public pensions as lead plaintiffs are nearly five times the size of median "estimated damages" in class actions not involving public pensions. Additionally, statistical analysis of the association between settlement amounts and participation of public pensions as lead plaintiffs shows that even when controlling for "estimated damages" (a proxy for case size) and other observable factors that affect settlements, the presence of a public pension as a lead plaintiff is still associated with a statistically significant increase in settlement size.[14] A list of control variables considered when testing the effect of public pensions serving as lead plaintiffs can be found on page 19.

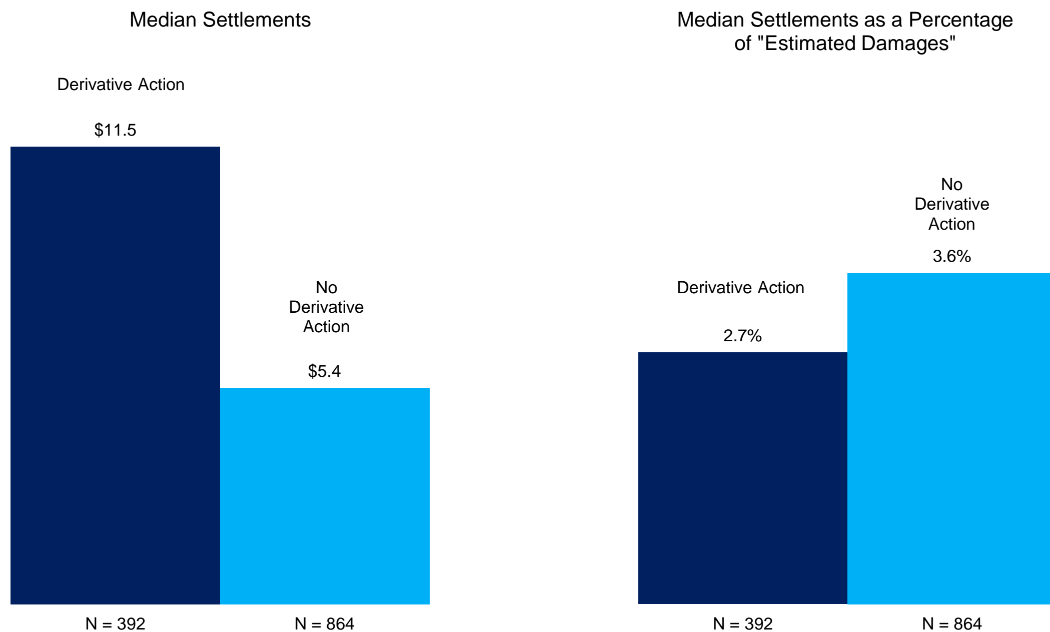
The number of settled cases involving the filing of a companion derivative action decreased in 2011 compared with 2010. Slightly less than 40 percent of cases settled in 2011 were accompanied by a derivative action filing compared with more than 45 percent of cases settled in 2010. The 2011 percentage is still higher than the post–Reform Act average of approximately 30 percent. Although settlement of a derivative action does not necessarily result in a cash payment,[15] settlement amounts for class actions that are accompanied by derivative actions are significantly higher than those for cases without companion derivative actions (this is true whether or not the settlement of the derivative action coincides with the settlement of the underlying class action or occurs at a different time).

When considered as a percentage of "estimated damages," settlements for cases with accompanying derivative actions are lower than settlements for cases with no identifiable derivative action. This lower percentage likely reflects the larger "estimated damages" that are associated with these cases. In fact, the median "estimated damages" for cases involving derivative actions is more than twice that for cases without an accompanying derivative action.

Accompanying derivative actions were filed in the state of Delaware for 11 percent of settled cases. We observe a threefold increase in median "estimated damages" associated with this group of cases than cases with accompanying derivative actions filed in other states. Consistent with the higher median "estimated damages," our data indicate that a case with a companion derivative action filed in Delaware is associated with higher settlement amounts when compared with a case with a companion derivative action filed elsewhere.

FIGURE 13: MEDIAN SETTLEMENTS AND DERIVATIVE ACTIONS 1996–2011

Dollars in Millions

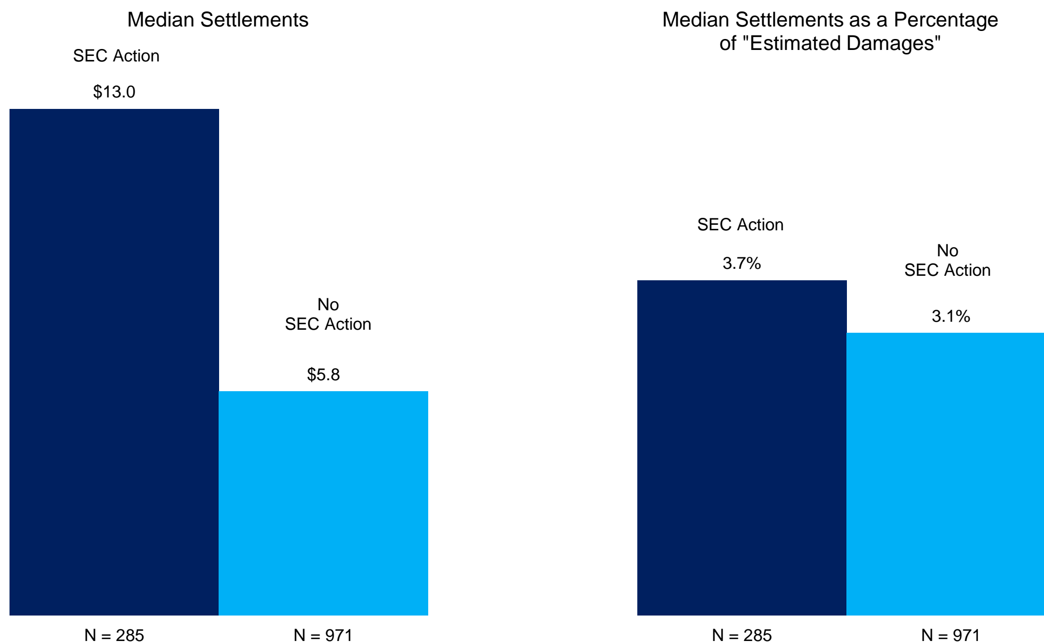


Using a regression analysis to control for "estimated damages" and other observable factors that influence securities class action settlements, we find that cases involving companion derivative actions are associated with significantly higher settlement amounts. In addition to their correlation with higher "estimated damages," class actions accompanied by derivative actions tend to be associated with other

factors discussed in this report, including accounting allegations, related actions brought by the Securities and Exchange Commission (SEC), and public pensions as lead plaintiffs—all of which are important determinants of settlement amounts. Due to these confounding factors, it is particularly important to analyze the relation between companion derivative actions and class action settlement amounts in a multivariate context (i.e., allowing multiple variables to be considered simultaneously).

Cases that involve SEC actions are associated with significantly higher settlements and continue to exhibit higher settlements as a percentage of "estimated damages." The percentage of settled cases that involved the remedy of a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding) prior to the settlement of the class action was less than 10 percent in 2011 compared with 30 percent in 2010. However, SEC enforcement activity has continued at a strong pace in the last few years, including the largest number of enforcement actions filed in 2011 than in any prior year.[16] Accordingly, we would expect the percentage of class action settlements with corresponding SEC actions to increase in the next few years as these cases are resolved.

FIGURE 14: MEDIAN SETTLEMENTS AND SEC ACTIONS
1996–2011
Dollars in Millions



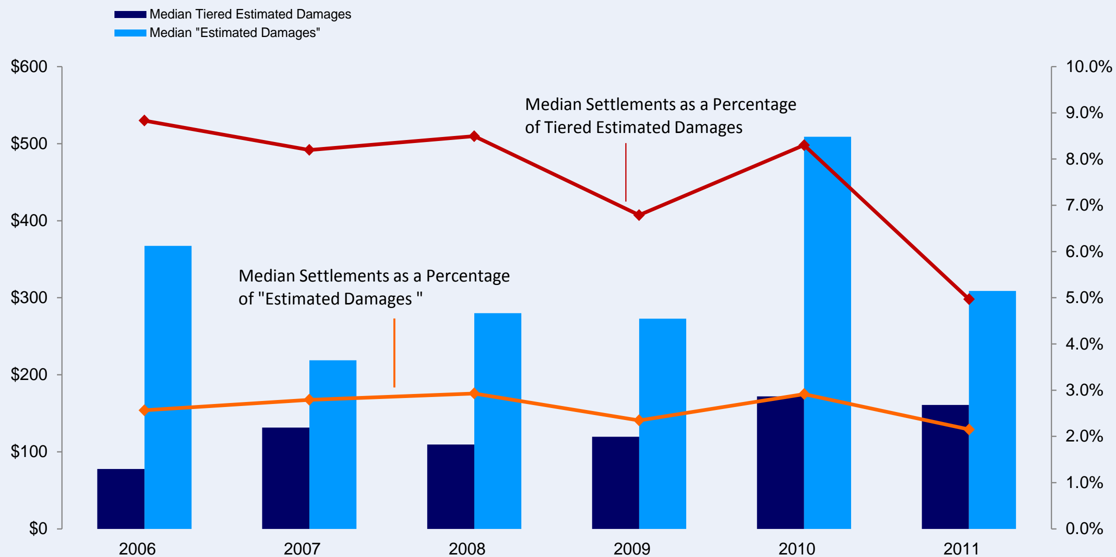
DURA CONSIDERATIONS

As discussed in *Securities Class Action Settlements—2009 Review and Analysis*, the landmark decision in 2005 by the U.S. Supreme Court in *Dura Pharmaceuticals v. Broudo* (*Dura*) determined that plaintiffs must show a causal link between alleged misrepresentations and the subsequent actual losses suffered by plaintiffs. *Dura* has had considerable influence on securities class action damages calculations. As a result of the decision, damages cannot be attributed to shares sold before information regarding the alleged fraud reaches the market. Accordingly, we began to analyze cases filed subsequent to 2005 by testing a variable that is based on the stock-price drops on alleged corrective disclosure dates and which creates a single or tiered value line (depending on the number of disclosure dates), hereafter referred to as tiered estimated damages.

While the tiered estimated damages variable has not yet surpassed our traditional measure of "estimated damages" as a predictor of settlement outcomes, it is highly correlated with settlement amounts based on cases settled through 2011. We plan to continue our analysis of this variable in the future, as we expect that it may eventually surpass our traditional measure of "estimated damages."

FIGURE 15: TIERED ESTIMATED DAMAGES

Dollars in Millions



THE STATE OF CREDIT-CRISIS CLASS ACTIONS

While filings of cases related to the credit crisis declined in 2011, settlements of these cases increased. Overall, these cases continue to settle at a slower rate than traditional cases. Of the more than 200 credit-crisis cases filed, approximately 30 have settled to date.[17] Twenty-three of these settlements are included in our sample, 10 of which had settlement hearing dates during 2011.[18] See *Securities Class Action Filings—2011 Year in Review* (*2011 Filings Report*) for further discussion regarding filings trends associated with these cases.

Figure 14 presents a summary comparison of credit-crisis and non-credit-crisis case characteristics for settled cases.[19] Since most settlements of credit-crisis cases have occurred during the 2009 to 2011 time frame, our comparison group comprises non-credit-crisis cases settled during this same period. As shown, credit-crisis cases have settled for substantially higher dollar amounts but lower percentages of "estimated damages" compared with non-credit-crisis cases. While the frequency of credit-crisis settlements accompanied by SEC actions is slightly lower than other types of cases, the percentage of settlements involving contributions from third-party codefendants is significantly higher. In addition, while the percentage of credit-crisis cases involving GAAP violations is significantly higher than other types of cases, the percentage of credit-crisis cases involving financial restatements is significantly lower. This is likely due to credit-crisis cases often involving allegations related to the allowance for loan losses. As an estimate account, changes in the allowance for loan losses are generally reflected prospectively, rather than requiring restatement.

FIGURE 16: CREDIT-CRISIS-RELATED SETTLEMENTS COMPARATIVE CHARACTERISTICS 2009–2011

Dollars in Millions

	Settlement Amount		Settlements as a Percentage of "Estimated Damages"		Percentage of Cases That Include				
	Median	Average	Median	Average	Corresponding SEC Action	Related Derivative Action	Contribution from Codefendant(s)	GAAP Violations	Financial Restatement
Credit-Crisis Related	$31.3	$85.2	2.0%	3.0%	17%	48%	22%	74%	17%
Non-Credit-Crisis Related	$8.0	$27.4	2.6%	4.7%	22%	42%	6%	62%	42%

SETTLEMENTS BY PLAINTIFF COUNSEL, JURISDICTION, AND INDUSTRY

The list of firms most frequently involved with securities class action settlements as lead or colead plaintiff counsel has remained the same during the past few years. The law firm of Robbins Geller Rudman & Dowd (Robbins Geller) was the most active firm for the period from 2010 to 2011, involved in almost 35 percent of settled cases. As reported in the *2011 Filings Report*, Robbins Geller was also the most active firm in terms of case filings in recent years, suggesting that this firm is likely to continue to maintain the largest market share for settlements in future years.

Overall, in the last two years, we have observed an increased concentration of plaintiff law firms serving as lead or colead counsel as three firms accounted for more than 50 percent of all settled cases during 2010 and 2011.

FIGURE 17: PLAINTIFF LAW FIRMS BY PERCENTAGE OF SETTLED CASES 2010–2011

Plaintiff Law Firm	Percent of Settled Cases	Median Settlements as a Percentage of "Estimated Damages"
Robbins Geller Rudman & Dowd	35%	2.7%
Labaton Sucharow	13%	3.2%
Bernstein Litowitz Berger & Grossmann	10%	3.1%

The Second and Ninth Circuits continue to dominate in terms of securities class action activity, and based on recent case filing history, we expect this to continue.[20] Although these circuits consistently represent the top two in settlement volume, their relative activity levels reflect concentrations of cases by industry sector (i.e., technology firms in the Ninth Circuit and financial-sector firms in the Second Circuit). Accordingly, the large number of cases settled in the Second Circuit in 2011 reflects the prevalence of litigation against financial institutions in recent years.

FIGURE 18: SETTLEMENTS BY FEDERAL COURT CIRCUIT

Dollars in Millions

	Number of Cases		Median Settlements	
Circuit	**2011**	**1996–2010**	**2011**	**1996–2010**
First	3	71	$10.5	$6.0
Second	27	212	4.0	9.0
Third	3	119	8.9	7.0
Fourth	4	40	3.0	7.3
Fifth	2	96	3.3	6.0
Sixth	0	61	–	12.7
Seventh	9	55	7.4	7.5
Eighth	1	40	5.8	8.5
Ninth	12	312	8.2	7.0
Tenth	1	48	8.5	7.2
Eleventh	3	112	12.5	4.4
All Federal Cases	**65**	**1,166**	**$5.8**	**$8.1**

Settlement dollars adjusted for inflation; 2011 dollar equivalent figures used.

While the technology and financial industry sectors historically have ranked as the top two in number of cases among all post–Reform Act settlements, median settlements and "estimated damages" are highest among the financial and pharmaceuticals sectors. Moreover, when controlling for other variables that influence settlement outcomes, industry sector is not a significant determinant of settlement amounts.

FIGURE 19: SETTLEMENTS BY INDUSTRY SECTOR 1996–2011

Dollars in Millions

Industry	**Median Settlements**	**Median "Estimated Damages"**	**Median Settlements as a Percentage of "Estimated Damages"**
Financial	$12.8	$514.1	3.4%
Telecommunications	$8.4	$372.6	2.3%
Pharmaceuticals	$8.0	$416.9	2.3%
Healthcare	$6.3	$212.1	3.5%
Technology	$5.9	$211.2	3.0%
Retail	$5.8	$183.2	4.3%

CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Features of securities cases that may affect settlement outcomes are often correlated, as noted in this report. Regression analysis makes it possible to examine the effects of these factors simultaneously. Accordingly, as part of our ongoing research on securities class action settlements, we applied regression analysis to study factors associated with settlement outcomes. Analysis performed on our sample of post–Reform Act cases settled through December 2011 reveals that the variables that are important determinants of settlement amounts include the following.[21, 22]

- Simplified "estimated damages"
- DDL
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- Indicator of the year in which the settlement occurred
- Indicator of whether intentional misstatements or omissions in financial statements were reported by the issuer
- Indicator of whether there was a corresponding SEC action against the issuer or whether other defendants are involved
- Indicator of whether an auditor is a named codefendant
- Indicator of whether an underwriter is a named codefendant
- Indicator of whether a companion derivative action is filed
- Indicator of whether a public pension is a lead plaintiff
- Indicator of whether noncash components, such as common stock or warrants, make up a portion of the settlement fund
- Indicator of whether securities other than common stock are alleged to be damaged

Settlements are higher when "estimated damages," DDL, defendant asset size, or number of docket entries are higher. Settlements are also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a corresponding SEC action, an accountant named as codefendant, an underwriter named as codefendant, a corresponding derivative action, a public pension involved as lead plaintiff, a noncash component to the settlement, or securities other than common stock alleged to be damaged. Settlements are lower if the settlement occurred in 2004 or later.

Our clients have found our regression analysis to be a useful tool in estimating expected settlement amounts for securities class actions. While our primary approach is designed toward understanding and predicting the total settlement amount, we also have the ability to estimate the probabilities associated with reaching alternative settlement levels. These probabilities can be a useful analysis for our clients in considering the different layers of insurance coverage available and likelihood of contributing to the settlement fund. Regression analysis can also be used to explore hypothetical scenarios, including but not limited to the effects on settlement amounts given the presence or absence of particular factors that we have found to significantly affect settlement outcomes.

CONCLUDING REMARKS

In 2011, the number of cases approved for settlement represented a record low over the last decade. We attribute this decline in settlements largely to the drop in filings of traditional securities class actions that began in 2006 (see *2011 Filings Report*).[23] During the period from 2007 through 2009, the lower rate of traditional case filings was partially offset by cases brought in conjunction with the credit crisis. However, as previously mentioned, credit-crisis cases have tended to take longer to settle than traditional cases. These factors reduced the number of settlements approved in 2011.

The 10-year-low median and average settlement amounts observed for 2011 are driven in part by lower "estimated damages." However, since settlements as a percentage of "estimated damages" also declined in 2011, other factors further contributed to the reduced settlement values. Substantial declines in the number of settled cases involving accounting-related allegations, overlapping SEC actions, and companion derivative actions occurred during 2011. Since these factors tend to be associated with higher settlement amounts, the reduction in cases with these characteristics may explain the lower 2011 settlement values.

Looking ahead, it is difficult to project future settlement trends. We typically look to characteristics of cases recently filed to anticipate settlement trends in upcoming years. Shareholder losses (as measured by DDL) for cases filed over the last few years have fluctuated substantially, suggesting no clear trend for the size of future settlements. However, considering that the $725 million partial settlement approved in February 2012 in the *American International Group, Inc., Securities Litigation* matter exceeds 50 percent of the total value of 2011 settlements, it appears likely that the total dollar amount for settlements will return to more typical levels in 2012.

RESEARCH SAMPLE

Our database is limited to cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes comprising only bondholders, preferred stockholders, etc., and cases alleging fraudulent depression in price). Our sample is also limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations. Our current sample includes 1,273 securities class actions filed after passage of the Reform Act [1995] and settled from 1996 through 2011.

DATA SOURCES

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the University of Chicago Booth Center for Research in Security Prices (CRSP), Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

ENDNOTES

1 Settlement amounts are based on agreed-upon amounts at the time of settlement, including the disclosed value of any noncash components. Figures do not reflect attorneys' fees, additional amounts that may be paid to the class from related derivative, SEC, or other regulatory settlements, or amounts that may have been settled by opt-out investors. Contingency settlement amounts are also not included in the settlement total.

2 Available on a subscription basis.

3 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

4 Our categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount, but the settlement hearing date is not changed.

5 Excluding 1996, the first year following passage of the Reform Act, in which there was only one settlement that met our sample criteria.

6 Based on our sample inclusion criteria, as previously described on page 1.

7 Towers Watson's latest study on D&O insurance trends reported that more than 25 percent of public companies increased their coverage, while only 5 percent of public firms decreased their coverage. See Towers Watson, "Directors and Officers Liability Survey 2011 Summary of Results," March 2012, http://www.towerswatson.com/assets/pdf/6532/Towers-Watson-Directors-and-Officers-Liability-2011-Survey.pdf.

8 Our simplified "estimated damages" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are determined from a market-adjusted backward value line. For cases involving only Section 11 and/or 12(a)(2) claims, damages are determined from a model that caps the purchase price at the offering price. Volume reduction assumptions are based on the location of the exchange on which the issuer's common stock traded. Finally, no adjustments for institutions, insiders, or short sellers are made to the float.

9 We excluded 16 settlements out of the 1,273 cases in our sample from calculations involving "estimated damages" due to stock data availability issues. The WorldCom settlement was also excluded from these calculations because most of the settlements in that matter related to liability associated with bond offerings (and our research does not compute damages related to securities other than common stock).

10 DDL is calculated for the class-ending disclosure that resulted in the first filed complaint.

11 The D&O Diary, "Restatements Decline—Again," Kevin LaCroix, March, 10, 2010, http://www.dandodiary.com/2010/03/articles/corporate-governance/restatements-decline-again/.

12 *Securities Class Action Filings—2011 Year in Review,* Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, 2012.

13 The extraordinarily high median settlement amount for public-pension-led settlements in 2006 was driven by six separate settlements in excess of $1 billion.

14 This regression analysis may not control for the potential endogeneity in the choice by public pension plans to participate in a class action.

15 Derivative cases are often resolved with changes made to the issuer's corporate governance practices, accompanied by little or no cash payment; this continues to be true despite the increase in corporate controls introduced after the passage of the Sarbanes-Oxley Act of 2002. For purposes of the analyses in this report, a derivative action—generally a case filed against officers and directors on behalf of the issuer corporation—must have allegations similar to the class action in nature and time period to be considered an accompanying action.

16 U.S. Securities and Exchange Commission, *FY 2011 Performance and Accountability Report*, p. 2, http://www.sec.gov/about/secpar/secpar2011.pdf.

17 Sources for the categorization of "credit crisis" include the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research and the D&O Diary (www.dandodiary.com).

18 The remaining credit-crisis cases settled do not meet our sample criterion of requiring common stock as part of the class.

19 In considering these comparisons, we caution that it is possible that the characteristics of credit-crisis cases that have settled to date could potentially differ from those of the remaining group of cases yet to be settled.

[20] *Securities Class Action Filings—2011 Year in Review,* Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, 2012.

[21] Our settlement database includes publicly available and measurable information about settled cases. Nonpublic or nonmeasurable factors, such as relative case merits or the limits of available insurance, are not reflected in the model to the extent that such factors are not correlated with the variables that are accessible to us (that is, publicly available and measurable factors).

[22] Due to the presence of a small number of extreme observations in the data, we apply logarithmic transformations to settlement amounts, estimated damages, DDL, the defendant's total assets, and the number of docket entries.

[23] Traditional securities class actions are considered to be those alleging fraudulent activity during a specified period, i.e., excluding cases focused on merger and acquisition transactions, Ponzi schemes, and credit-crisis cases.

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Ellen Ryan is a manager in the securities practice in Cornerstone Research's Boston office. She has consulted on economic and financial issues in a variety of cases, including securities class action lawsuits, financial institution breach of contract matters, and antitrust litigation. Ms. Ryan also has worked with testifying witnesses in corporate governance and breach of fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently Ms. Ryan focuses on post–Reform Act settlement research as well as general practice area business and research.

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Laura Simmons is an assistant professor in the Mason School of Business at the College of William & Mary and a senior advisor at Cornerstone Research. She is a certified public accountant and has over seventeen years of experience in accounting practice and economic and financial consulting. Her consulting experience has focused on damage and liability issues in securities litigation, as well as accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, and research on securities lawsuits.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. Dr. Simmons was a consultant at Cornerstone Research for over ten years, most recently as a principal. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at settlement.database@cornerstone.com. The authors request that you reference Cornerstone Research in any reprint of the charts and tables included in this study and include a link to the report: www.cornerstone.com/securities_settlements_2011_pdf.

Additional information about our research and analysis in securities class action filings and settlements can be found at www.cornerstone.com/securities.

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EXHIBIT 14

**COMPENDIUM OF UNREPORTED ORDERS
AWARDING ATTORNEYS' FEES WITHIN ELEVENTH CIRCUIT**

AAL High Yield Bond Fund, et al. v. Ruttenberg, et al., No. 00-1404, slip op. (N.D. Ala. Dec. 14, 2005) (awarding 30% of $17.75 million settlement fund).

In re AFC Enters., Inc. Sec. Litig., No 03-cv-0817, slip op. (N.D. Ga. Sept. 28, 2005) (awarding 30% of $22.2 million settlement fund).

In re Choicepoint, Inc. Sec. Litig., No. 05-cv-00686, slip op. (N.D. Ga. July 21, 2008) (awarding 30% of $10 million settlement fund).

In re Clarus Corp. Sec. Litig., No. 00-cv-2841, slip op. (N.D. Ga. Jan. 6, 2005) (awarding 33 1/3% of $4.5 million settlement fund).

In re Cryolife, Inc. Sec. Litig., No. 02-cv-1868, slip op. (N.D. Ga. Nov. 9, 2005) (awarding 30% of $23.25 million settlement).

In re Profit Recovery Group Int'l, Inc. Sec. Litig., No. 00-cv-1416, slip op. (N.D. Ga. May 26, 2005) (awarding 33 1/3% of $6.75 million settlement).

FILED
2005 Dec-14 AM 11:28
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

AAL HIGH YIELD BOND FUND and DELAWARE DELCHESTER FUND, a series of Delaware Group Income Funds and formerly a series of Delaware Group Income Funds, Inc., on behalf of themselves individually and all others similarly situated,	
Plaintiffs,	
- against -	2:00-CV-01404-UWC
HAROLD RUTTENBERG; RANDALL L. HAINES; DELOITTE & TOUCHE LLP; and BANC OF AMERICA SECURITIES LLC f/k/a NATIONSBANC MONTGOMERY SECURITIES LLC, on behalf of itself and a class of underwriters,	
Defendants.	

ORDER APPROVING ATTORNEYS' FEES AND EXPENSES INCURRED IN SETTLEMENT OF CLAIMS AGAINST BANC OF AMERICA SECURITIES LLC, AND LEAD PLAINTIFF'S COSTS DIRECTLY RELATING TO ITS REPRESENTATION OF THE CLASS

WHEREAS, the Court, having considered the Stipulation of Settlement by and among Lead Plaintiffs and the Class ("Plaintiffs") and Defendant Banc of America Securities LLC ("BAS"), and Plaintiffs' Counsel's application for attorneys' fees and reimbursement of their expenses, and Lead Plaintiff Delaware Delchester's application for reimbursement of its costs;

WHEREAS, the Court, having conducted a Settlement Hearing concerning the fairness of the proposed Settlement, and Plaintiffs' Counsel's application for attorneys' fees and

reimbursement of their expenses, and Lead Plaintiff Delaware Delchester's application for reimbursement of its costs; and

WHEREAS, no objection having been received before or heard at the Settlement Hearing regarding either the proposed Settlement, or Plaintiffs' Counsel's application for attorneys' fees and reimbursement of their expenses, or Lead Plaintiff Delaware Delchester's application for reimbursement of its costs; and

WHEREAS, the Court, having reviewed the entire record of the action, including the affidavit submitted on behalf of Lead Plaintiff Delaware Delchester Fund detailing the cost of its lost working time directly resulting from its representation of the Class,

THE COURT FINDS that:

Based on Plaintiffs' Counsel's fee agreement with Lead Plaintiffs, as well as on such factors as the successful result obtained for the Class, the absence of any objections from any Class Members, the percentage fee awarded in similar cases, the fact that the fee has been entirely contingent, the time, labor and skill that has been required on the part of Plaintiffs' Counsel—including the skill of Plaintiffs' Counsel in negotiating a fair Settlement—and Plaintiffs' Counsel's considerable experience, reputation and ability, Plaintiffs' Counsel should be awarded attorneys' fees of 30% of the gross Settlement Fund, or $5,325,000.00, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund; and

Plaintiffs' Counsel's litigation expenses and its costs of giving notice to the Class, in the total amount of $791,701.39, are reasonable expenses of the kind customarily charged to clients, and were necessarily incurred to obtain the Settlement herein; and

Pursuant to the Private Securities Litigation Reform Act (the "PSLRA"), 15 U.S.C. § 78u-4(a)(4), the expenses that Lead Plaintiff Delaware requests to be reimbursed, in

the amount of $39,310.00, directly relate to its representation of the Class, and are reasonable; and therefore,

IT IS HEREBY ORDERED that:

Plaintiffs' Counsel shall be awarded a fee of 30% of the gross Settlement Fund, or $5,325,000.00, and reimbursed $791,701.39 from the Settlement Fund for litigation expenses and the cost of giving notice to the Class, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund; and

Pursuant to the Private Securities Litigation Reform Act (the "PSLRA"), 15 U.S.C. § 78u-4(a)(4), Lead Plaintiff Delaware shall be reimbursed $39,310.00 for its costs directly relating to its representation of the Class, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund.

Done this 14th day of December. 2005.

U.W. Clemon
Chief United States District Judge

FILED IN OPEN COURT
U.S.D.C. Atlanta

SEP 28 2005

LUTHER D. THOMAS, Clerk
By: S. Sewell Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE AFC ENTERPRISES, INC. SECURITIES LITIGATION	Consolidated Civil Action No. 1:03-CV-0817-TWT

ORDER AND FINAL JUDGMENT

This matter is before the Court on the Parties' proposed class action settlement. The proposed settlement encompasses the following cases pending before the Court:

James Nugent v. AFC Enterprises, Inc., Frank Belatti and Gerald Wilkins, No. 1:03-CV-0817;

Fred Cruz v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-0836;

George Royal v. Frank J. Belatti, Gerald J. Wilkins and AFC Enterprises, Inc.; No. 1:03-CV-0857;

Yasuo Yaezawa v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-0944;

Alicia Reed v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-1173;

Dennis C. Smith v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-1211;

Lynne N. Read v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-1320; and

Mark Rice v. AFC Enterprises, Inc., Frank Belatti and Gerald J. Wilkins, No. 1:03-CV-1357.

The above actions have been consolidated for all purposes under the caption In re AFC Enterprises, Inc. Securities Litigation, Consolidated Civil Action No. 1:03-CV-0817-TWT (the "Action"), and expressly includes any and all claims of Mary T. Williams, individually, and on behalf of those similarly situated, which claims are set forth in the Third Consolidated Amended Class Action Complaint ("TCACC").

The Parties have submitted a stipulated Agreement of Settlement dated June 16, 2005 (the "Stipulation") that, together with the exhibits accompanying the Stipulation, sets forth the terms and conditions for settlement and dismissal of the Action with prejudice. Having read and considered the Stipulation (the defined terms of which are incorporated herein) and the exhibits annexed thereto and having conducted a hearing on September 28, 2005, to determine: (1) whether the terms and conditions of the Stipulation are fair, reasonable, and adequate for the settlement of all claims asserted by the Class against the Defendants in the Action, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are Class Members or Sub-Class Members who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement

proceeds among the Class Members; and (4) whether and in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses; the Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased the common stock of AFC Enterprises, Inc. ("AFC") during the period between March 2, 2001, and March 24, 2003, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of AFC's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of Investors Business Daily pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation, it is **ORDERED** and **ADJUDGED** as follows:

1. The Court has jurisdiction over the subject matter of the Action, the Representative Plaintiffs, all Class and Sub-Class Members, and the Defendants.

2. The Court finds, given the settlement context in which the Stipulation is presented, that the prerequisites for a class action under Federal Rules of Civil

Procedure 23(a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Representative Plaintiffs are typical of the claims of the Class they seek to represent; (d) the Representative Plaintiffs have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this action as a class action on behalf of the following Class:

> All persons who purchased the common stock of AFC between March 2, 2001 and March 24, 2003 (the "Class Period"), including those who purchased AFC shares pursuant or traceable to the Company's IPO Registration Statement and Prospectus for its March 2, 2001 IPO of 10,781,250 shares of common stock at $17 per share, and were damaged thereby. Excluded from the Class are Defendants, members of the immediate family of the Defendants, any subsidiary or affiliate of AFC and the directors and officers of AFC or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

The Court further and finally certifies the following Sub-Class:

> All persons who purchased the common stock of AFC in or traceable to the 7 million share secondary public offering of AFC common stock at $23.00 per share that occurred on or about December 6, 2001, and were damaged thereby. Excluded from the Class are Defendants, members of the immediate family of the Defendants, any subsidiary or affiliate of AFC and the directors and officers of AFC or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

4. Notice of the Pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the Pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Action, which the Court finds was filed on a good faith basis in accordance with the PSLRA and Rule 11 of the Federal Rules of Civil Procedure, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against any and all of the Defendants.

6. As used in this Order and Final Judgment, the terms "Settled Claims," "Released Parties," and "Settled Defendants' Claims" shall have the meanings specified below:

(a) "Released Parties" means: the Defendants, their respective present and former parents, subsidiaries, divisions and affiliates, the present and former employees, members, shareholders, partners, partnerships, principals, officers and directors of each of them, the present and former attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors (excluding expressly AFC's rights and claims against Arthur Andersen, LLP, Robert Johnson, William Peard and Alan N. Crawford), insurers (excluding expressly AFC's rights and claims against Executive Risk and/or its other insurers), and agents of each of them, and the predecessors, estates, heirs, executors, trusts, trustees, administrators, successors and assigns of each; all members of the syndicate of underwriters, listed on p. 72 of the prospectus for the AFC IPO, and all members of the syndicate of underwriters listed on p. 85 of the prospectus for the AFC SPO and any person or entity which is or was related to or affiliated with any of the foregoing or in which any of the foregoing persons and entities has or had a controlling interest and the present and former employees, members, shareholders, partners, partnerships, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries,

consultants, representatives, accountants and auditors, insurers, and agents of each of them.

(b) "Settled Claims" means collectively any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, whether asserted in federal or state court, arbitration or any other forum domestic or foreign, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in the Action by the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them against any of the Released Parties and that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the TCACC or other previous or amended complaints (including any claims asserted in, or which might have been asserted in the underlying action which is currently on appeal and styled AFC Enterprises, Inc. et al. v. Mary T. Williams , No. 04-10104-H (11th Cir.)) and

relate to the purchase of shares of the common stock of AFC during the Class Period, including, without limitation, the purchase or sale of shares in AFC's IPO and SPO.

(c) "Settled Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Representative Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

(d) "Unknown Claims" shall mean and include any Settled Claims which Representative Plaintiffs or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its decision making with respect to this Settlement, including, without limitation, the decision not to object to this Settlement. With respect to any and all Settled Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Representative Plaintiffs shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment

shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

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

Representative Plaintiffs shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable and equivalent to California Civil Code § 1542. Representative Plaintiffs and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims, but Representative Plaintiffs shall expressly and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or

existence of such different or additional fact. Representative Plaintiffs acknowledge and accept, and the Class Members shall be deemed by operation of the Judgment to have acknowledged and accepted, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

7. In the event that the Effective Date does not occur, the parties shall be returned to their respective positions as of April 14, 2005, and the provisions of Paragraph 28 of the Stipulation shall apply.

8. Upon the Effective Date hereof, Representative Plaintiffs shall, and each of the Class Members shall be deemed to have, and by operation of law shall have, on behalf of themselves and the successors and assigns of any of them, fully, finally, and forever released, relinquished, and discharged all Settled Claims with prejudice whether or not such Class Member executes and delivers the Proof of Claim and Release.

9. Upon the Effective Date hereof, each of the Defendants shall be deemed to have, and by operation of this Judgment shall have fully, finally and forever released, relinquished and discharged all Settled Defendants' Claims with prejudice.

10. Representative Plaintiffs, each Class Member, and the successors and assigns of any of them are barred and enjoined forever from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of

law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting against any of the Released Parties, and each of them, any of the Released Claims.

11. Pursuant to the PSLRA, the Released Parties are hereby discharged from all claims for contribution or indemnification by any person or entity, whether presently a party to the Action and whether arising under state, federal or common law, based upon, arising out of, relating to, or in connection with the Settled Claims. Accordingly, to the full extent provided by the PSLRA, the Court hereby bars all claims for contribution or indemnification against the Released Parties in the event that any other person who is not presently a party to the Action is sued by the Class or any Class Member based on any facts that arise out of or relate to the Settled Claims, then that party shall be barred from asserting claims for contribution or indemnification against the Released Parties, and the plaintiff in such an action shall be required to reduce any judgment obtained by the greater of the Settlement Agreement (or his/her/its proportionate share thereof) or the Released Parties' proportionate fault.

12. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or that Plaintiffs would have been able to prove or recover any damages under the CACC, as amended, or the Williams Complaint;

(b) offered or received against Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) construed as or received in evidence as an admission, concession or presumption against Representative Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the CACC or in any of the complaints filed in the Action or the Williams case would not have exceeded the Settlement Fund.

13. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Settlement Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

14. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the settlement set forth in the Stipulation and finds that said settlement is, in all respects, fair, reasonable, and adequate to, and in the best interest of, the Representative Plaintiffs, the Class and SPO Sub-Class, and each of the Class Members. The Court further finds that the settlement set forth in Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Plaintiffs, the Class, the Sub-Class and Defendants. Accordingly, the settlement embodied in the Stipulation is hereby approved in all

respects and shall be consummated in accordance with its terms and provisions. The parties are hereby directed to perform the terms of the Stipulation.

15. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded $607,115.06 in reimbursement of expenses and 30 % of the escrow account maintained by the Class Escrow Agent in fees, with interest at the same net rate that the Settlement Fund earns. Such amounts shall be payable immediately after the entry of this Order. This award of fees shall apply to amounts currently in the escrow account maintained by the Class Escrow Agent as well as any amounts paid into such escrow account in the future pursuant to Paragraph 10(b)-(c) of the Stipulation. Cauley, Bowman, Carney & Williams, P.L.L.C is hereby awarded $113,063.66 in reimbursement of expenses and 30 % of the escrow account maintained by the Sub-Class Escrow Agent in fees, with interest at the same net rate that the Settlement Fund earns. Such amounts shall be payable immediately after the entry of this Order. This award of fees shall apply to amounts currently in the escrow account maintained by the Sub-Class Escrow Agent as well as any amounts paid into such escrow account in the future pursuant to Paragraph 10(b)-(c) of the Stipulation. Plaintiffs' Co-Lead Counsel and Cauley,

Bowman, Carney & Williams, P.L.L.C shall thereafter allocate their respective attorneys' fees amongst other Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Litigation.

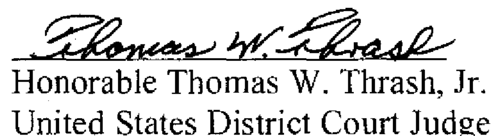
17. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

18. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: Atlanta, Georgia

September 28, 2005.



Honorable Thomas W. Thrash, Jr.
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE CHOICEPOINT, INC.
SECURITIES LITIGATION

CONSOLIDATED
CIVIL CASE NO.
1:05-CV-00686-JTC

ORDER GRANTING ATTORNEY FEES AND EXPENSES

This matter having come before the Court on June 12, 2008, on the motion of Lead Counsel for an award of attorney fees and expenses; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this Litigation to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of March 6, 2008 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this motion and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby **GRANTS** Lead Counsel attorney fees of 30% of the

Settlement Fund and expenses in an aggregate amount of $175,584.29 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees shall be allocated by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Class.

4. The awarded attorney fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

SO ORDERED, this 21st day of July, 2008.

JACK T. CAMP
UNITED STATES DISTRICT JUDGE

1-6-05
FILED IN OPEN COURT
Luther D. Thomas, Clerk
By: [signature]
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE CLARUS CORPORATION SECURITIES LITIGATION	CASE NO. 1:00-CV-2841-CAP

~~[PROPOSED]~~ ORDER AND FINAL JUDGMENT

On the sixth day of January, 2005, this matter came before the Court for hearing pursuant to the Order of this Court dated November 19, 2004 ("the "Order") to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated August 3, 2004 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants in the Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Settlement Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Settlement Class; and (4) whether and in what amount

to award Plaintiffs' Counsel fees and reimbursement of expenses; the Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that due and adequate notice having been given to the Settlement Class as required in the Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Judgment incorporates by reference the definitions used in the Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, the Plaintiffs, all Settlement Class Members, and the Defendants.

3. The Court finds that with respect to the Settlement Class, the prerequisites for a class action under Fed. R. Civ. P. 23 (a) and (b)(3) have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Settlement Class Representatives have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law

and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure this Court hereby finally certifies this action as a class action for purposes of this Settlement on behalf of all persons and entities who purchased or otherwise acquired Clarus Corporation ("Clarus") common stock between December 8, 1999 and October 25, 2000, inclusive (the "Settlement Class"). Excluded from the Settlement Class are Defendants, members of each Individual Defendant's immediate family, any entity in which Defendants or any excluded person has or had a controlling interest, the officers and directors of Clarus, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party. Also excluded from the Settlement Class are the persons and/or entities who requested exclusion from the Settlement Class as listed on Exhibit A annexed hereto.

5. Notice of the Pendency of this Action as a Class Action and of the Proposed Settlement was the best practicable notice under the circumstances, including individual notice given to all Settlement Class Members who could be

identified with reasonable effort. The form and method of notifying the Settlement Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995.

6. The Settlement is approved as fair, reasonable and adequate, and the Settlement Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

7. The Complaint is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

8. Upon the Effective Date hereof, the Lead Plaintiffs and each of the Settlement Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties, regardless of whether such Settlement Class Member executes and delivers a Proof of Claim and Release, and such Settlement Class Members are permanently enjoined from filing or pursuing any Released Claim against any Released Party.

9. Upon the Effective Date hereof, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished and discharged all Settled Defendants' Claims.

10. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence,

fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Plaintiffs or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

11. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

12. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

13. Lead Plaintiff John Nittolo is hereby awarded $ 6,000, Lead Plaintiff T.F.M. Investment Group is hereby awarded $ 8,950, Lead Plaintiff Ronald Williams is hereby awarded $ 13,750, and Plaintiff William Dell is hereby awarded $ 1,680, for their reasonable costs and expenses (including lost wages) directly relating to their representation of the Settlement Class, which amounts shall be paid to them from the Settlement Fund.

14. Plaintiffs' Counsel are hereby awarded 33 1/3% of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and $ 523,406.54 in reimbursement of expenses, which amounts shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

15. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the settlement has created a fund of $4.5 million ($4,500,000) in cash that is already on deposit, plus interest thereon and that numerous Settlement Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Counsel;

(b) Over 57,757 copies of the Notice were disseminated to putative Settlement Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in the amount of up to 33⅓% of the Gross Settlement Fund and for reimbursement of expenses in an amount of approximately $550,000 and for awards to Plaintiffs John Nittolo, T.F.M. Investment Group, Ronald Williams, and William Dell for their reasonable costs and expenses (including lost wages) directly relating to their representation of the Settlement Class, in an amount not to exceed $35,000 collectively, to be paid solely from the Settlement Fund, subject to approval by the Court as permitted pursuant to 15 U.S.C. §78u-4(4), and only three objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The action involves complex factual and legal issues and was actively prosecuted over three years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the Settlement Class may have recovered less or nothing from the Defendants;

(f) Plaintiffs' Counsel have devoted over 13,009.2 hours, with a lodestar value of $4,133,312.50, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

16. Without affecting the finality of this Judgment in any way, exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with

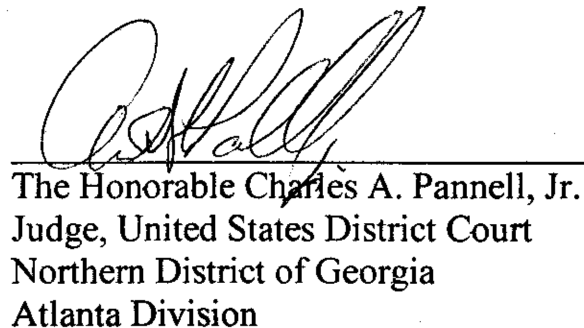
administering and distributing the settlement proceeds to the members of the Settlement Class.

17. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED

Dated: Atlanta, Georgia
Jan 6th, 2005



The Honorable Charles A. Pannell, Jr.
Judge, United States District Court
Northern District of Georgia
Atlanta Division

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE CRYOLIFE, INC. SECURITIES LITIGATION	:	Consolidated CIVIL ACTION NO. 1:02-CV-1868 BBM

FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE

On the 9th day of November, 2005, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the settlement set forth in the Stipulation of Settlement dated August 29, 2005 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims asserted by the Class against Defendants in the complaint now pending in this Court under the above caption, including the release of Defendants, and should be approved; (2) whether judgment should be entered dismissing the Consolidated Amended Complaint on the merits and with prejudice in favor of Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award Plaintiffs' Counsel fees and

reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased the common stock of CryoLife, Inc. ("CryoLife") between April 2, 2001 and August 14, 2002, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of CryoLife's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *Investor's Business Daily* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that the contributions to the Settlement Fund are fair and that said Settlement is, in all respects, fair, reasonable, and adequate to the Class.

4. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Class, this Court hereby dismisses with prejudice and without costs (except as otherwise provided in the Stipulation) the Litigation against the Released Parties.

5. The Court finds that the Stipulation and the Settlement are fair, reasonable, and adequate as to each of the Settling Parties, and that the Stipulation and the Settlement are hereby finally approved in all respects.

6. As used in this Order and Final Judgment, the terms "Released Claims," "Released Parties," and "Settled Defendants' Claims" shall have the meanings specified below:

(a) "Released Claims" means any and all claims (including "Unknown Claims" as defined below), debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common

law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and unknown claims that relate to the purchase, acquisition, or ownership of the securities of CryoLife during the Class Period and that: (i) have been asserted in the Actions by the Class Members or any of them against any of the Released Parties; or (ii) could have been asserted in any forum by the Class Members or any of them against any of the Released Parties which arise out of, are based upon, or are in any way related to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the complaints which were filed in each of the Actions or in the Consolidated Amended Complaint.

(b) "Released Parties" means any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, advisors, insurers, and investment advisors, auditors, accountants and any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of Defendants.

(c) "Settled Defendants' Claims" means all claims, demands, losses, rights, and causes of action of any nature whatsoever, that have been or could have been asserted in the Action or any forum by the Released Parties or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, Class Members or Plaintiffs' Counsel, which arise out of or relate in any way to the institution, prosecution, assertion, settlement, or resolution of the Litigation (except for claims to enforce the Settlement); provided, however, that "Settled Defendants' Claims" shall not include any rights or claims of Defendants against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives, or any rights or claims of their insurers against Defendants, under or related to any policies of insurance.

(d) "Unknown Claims" means any Released Claim which any Class Member does not know or suspect to exist in such party's favor at the time of the release of the Released Parties which, if known by such party, might have affected such party's settlement with and release of the Released Parties, or might have affected such party's decision not to object to this settlement. With respect to any and all Released Claims, upon the Effective Date, the Class Members shall expressly, and by operation of the Order and Final Judgment shall have expressly

waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

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

The Class Members by operation of the Order and Final Judgment shall have expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. The Class Members may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims, but the Class Members, upon the Effective Date, by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach

of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

7. Upon the Effective Date hereof, the Lead Plaintiffs and each of the Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against any and all Released Parties regardless of whether such Class Member executes and delivers a Proof of Claim and Release.

8. Upon the Effective Date hereof, each of the Defendants shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Settled Defendants' Claims.

9. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this action as a class action on behalf of all Persons who purchased or otherwise acquired the common stock of CryoLife between April 2, 2001 and August 14, 2002, inclusive. Excluded from the Class is anyone named as a Defendant in this action; members of the immediate family of any such Defendant; any entity in which any such Defendant or family member has or had a controlling interest; the officers and directors of CryoLife, Inc.; or the legal affiliates, representatives, controlling persons, predecessors in interest, heirs, assigns, or any other successors in interest of any such excluded party. Also

excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") sent to potential Class Members, as listed on Exhibit 1 annexed hereto.

10. With respect to the Class, this Court, having previously found that this action meets the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for certification as a class action, now finds again and finally confirms that the prerequisites for class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied in that: (a) the Members of the Class are so numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Lead Plaintiffs are typical of the claims of the Class; (d) the Lead Plaintiffs and their counsel have fairly and adequately represented and protected the interests of all of the Class Members; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

11. The notice provided to the Class was the best notice practicable under the circumstances, including the individual notice to all Members of the Class who could be identified through reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

12. The Plan of Allocation as set forth in the Notice is approved as fair and reasonable, and Plaintiffs' Co-Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

13. Plaintiffs' Co-Lead Counsel are hereby awarded 30% of the Gross Settlement Fund in fees, which the Court finds to be fair and reasonable, and $553,012.42 in reimbursement of expenses. The attorneys' fees and expenses awarded shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of

attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the sole discretion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Litigation.

14. Lead Plaintiffs Peter and Alison Hilbig are hereby awarded $12,993.31, Lead Plaintiff Richard Lippe is hereby awarded $23,650.00 and Lead Plaintiff Stanley R. Levine is hereby awarded $24,500.00. Such awards are for reimbursement of these Lead Plaintiffs' reasonable costs and expenses (including lost wages) directly related to their representation of the Class, § 78u-4(a)(4).

15. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the settlement has created a fund of $23.25 million in cash and stock, of which $19.5 million in cash is already on deposit and of which $3.75 million in cash or stock will be deposited on or before the Effective Date, plus interest thereon, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) Over 16,000 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for

attorneys' fees in the amount of up to 30% of the Gross Settlement Fund and for reimbursement of expenses in an amount of approximately $600,000 and no objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Co-Lead Counsel contained in the Notice;

(c) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The action involves complex factual and legal issues and was actively prosecuted over 3 years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

(f) Plaintiffs' Co-Lead Counsel have devoted over 16,500.50 hours, with a lodestar value of $6,435,481.65, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

16. Neither the Stipulation nor the Settlement:

(a) shall be offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any allegations by any of the Plaintiffs in the Actions, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) shall be offered or received against Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant; or

(c) shall be construed as or received in evidence as an admission, concession or presumption against Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable under the complaints would not have exceeded the Gross Settlement Fund.

17. Except as otherwise provided in Paragraph 4 above, Lead Plaintiffs, each Class Member, and the successors and assigns of any of them are barred and enjoined forever from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration

tribunal, administrative forum of any kind, asserting against any of the Released Parties, and each of them, any of the Released Claims.

18. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, costs, interest, and expenses (including fees and costs of experts and/or consultants) in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

19. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

20. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: November 9, 2005

s/Beverly B. Martin
THE HONORABLE BEVERLY M. MARTIN
UNITED STATES DISTRICT JUDGE

FILED IN CLERK'S OFFICE
May 26, 2005
Luther D. Thomas, Clerk
By: [signature]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE PROFIT RECOVERY GROUP INTERNATIONAL, INC. SECURITIES LITIGATION	CIVIL ACTION FILE NO. 1:00-CV-1416-CC

FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE

On the 26th day of May, 2005, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the settlement set forth in the Stipulation of Settlement dated February 8, 2005 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims asserted by the Class against the Defendants in the complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members

of the Class; and (4) whether and in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased the common stock of Profit Recovery Group International, Inc. ("Profit Recovery") between July 19, 1999 and July 26, 2000, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of Profit Recovery's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *Investor's Business Daily* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the settlement set forth in the Stipulation and finds that the contributions to the Settlement Fund are fair and that said settlement is, in all respects, fair, reasonable, and adequate to the Class.

4. Except as to any individual claim of those Persons (identified in Exhibit A attached hereto) who have validly and timely requested exclusion from the Class, this Court hereby dismisses with prejudice and without costs (except as otherwise provided in the Stipulation) the Litigation against the Defendants.

5. The Court finds that the Stipulation and the settlement are fair, reasonable, and adequate as to each of the Settling Parties, and that the Stipulation and the settlement are hereby finally approved in all respects, and the Settling Parties are hereby directed to perform the terms of the Stipulation.

6. Upon the Effective Date hereof, the Lead Plaintiffs and each of the Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all claims (including, but not limited to, Unknown Claims), demands, losses, rights, and causes of action of any nature whatsoever, whether known or unknown, whether

suspected or unsuspected, whether concealed or hidden, whether accrued or unaccrued, by any Lead Plaintiff or Class Member against the Released Persons, whether under state or federal law, based upon or arising out of, or related to the purchase or sale of Profit Recovery common stock during the Class Period and any acts, facts, transactions, events, occurrences, disclosures, statements, omissions, or failures to act, at anytime during the Class Period, including without limitation those which were alleged in the Litigation, or those which could or might have been alleged in the Litigation based upon such acts, facts, transactions, events, occurrences, disclosures, statements, omissions, or failures to act alleged in the Litigation (the "Released Claims") against each and all of the Defendants and their respective past, present and future directors, officers, employees, partners, members, principals, agents, underwriters, insurers (including Federal Insurance Company and St. Paul Mercury Insurance Company), co-insurers, reinsurers, controlling shareholders, attorneys, law firms (including Alston & Bird LLP), accountants or auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which any Defendant has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any

Defendant and/or member(s) of his family (the "Released Persons"), regardless of whether such Class Member executes and delivers a Proof of Claim and Release.

7. Upon the Effective Date hereof, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all claims (including, but not limited to, Unknown Claims), demands, losses, rights, and causes of action of any nature whatsoever, whether known or unknown, whether suspected or unsuspected, whether concealed or hidden, whether accrued or unaccrued, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, Class Members or Plaintiffs' Counsel, which arise out of or relate in any way to the institution, prosecution, assertion, settlement, or resolution of the Litigation (except for claims to enforce the Settlement) (the "Settled Defendants' Claims").

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifiers this action as a class action on behalf of all Persons who purchased the common stock of Profit Recovery between July 19, 1999 and July 26, 2000, inclusive. Excluded from the Class are Defendants, members of the immediate families of the Individual Defendants, any entities in which any

Defendant has a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the legal representatives, heirs, successors, predecessors in interest, affiliates or assigns of any Defendant. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") sent to potential Class Members, as listed on Exhibit A annexed hereto.

9. With respect to the Class, this Court, having previously found that this action meets the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for certification as a class action, now finds again and finally confirms that the prerequisites for class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied in that: (a) the Members of the Class are so numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Lead Plaintiffs are typical of the claims of the Class; (d) the Lead Plaintiffs and their counsel have fairly and adequately represented and protected the interests of all of the Class Members; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class;

and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

10. The notice provided to the Class was the best notice practicable under the circumstances, including the individual notice to all Members of the Class who could be identified through reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

11. The Plan of Allocation as set forth in the Notice is approved as fair and reasonable, and Plaintiffs' Co-Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

12. Plaintiffs' Co-Lead Counsel are hereby awarded 33 1/3 % of the Gross Settlement Fund in fees, which the Court finds to be fair and reasonable, and $735,628.00 in reimbursement of expenses. The attorneys' fees and expenses awarded shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund

with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the sole discretion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Litigation.

13. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the settlement has created a fund of $6.75 million in cash that is already on deposit, plus interest thereon, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Counsel;

(b) Over 19,800 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in the amount of up to 33-1/3% of the Gross Settlement Fund and for reimbursement of expenses in an amount of approximately $700,000, two objections were filed against the terms of the proposed Settlement, and no objections were filed against the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The action involves complex factual and legal issues and was actively prosecuted over 4.5 years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

(f) Plaintiffs' Counsel have devoted over 10,052 hours, with a lodestar value of $3,800,045.40, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

14. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of Profit Recovery or the Individual Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of,

any fault or omission of Profit Recovery or any of the Individual Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Profit Recovery or any of the Individual Defendants may file the Stipulation and/or this Judgment in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

16. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, costs, interest, and expenses (including fees and costs of experts and/or consultants) in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

17. In the event that the settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

18. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: May 26, 2005

THE HONORABLE CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

EXHIBIT A
Requests for Exclusion

1. Mark Arena
2. Richard K. Hose