

# **EX. 246**

Date	Timekeeper	Description	Hours
1/4/2013	Alex Gotto		2.00
1/7/2013	Alex Gotto		1.50
1/9/2013	Alex Gotto		1.75
1/11/2013	Alex Gotto		3.50
1/14/2013	Alex Gotto		1.50
1/15/2013	Alex Gotto		3.00
1/16/2013	Alex Gotto		2.50
1/18/2013	Alex Gotto		4.50
1/21/2013	Alex Gotto		2.25
1/22/2013	Alex Gotto		0.50
5/9/2013	Alex Gotto		0.25
11/10/2013	Alex Gotto		2.50
11/18/2013	Alex Gotto		0.50
3/19/2014	Alex Gotto		0.20
3/11/2013	Alex Hancock		2.00
3/12/2013	Alex Hancock		2.00
3/13/2013	Alex Hancock		2.50
3/14/2013	Alex Hancock		2.00
3/15/2013	Alex Hancock		2.00
3/18/2013	Alex Hancock		1.50
9/11/2012	Alison Smith Gaffney		6.00
9/12/2012	Alison Smith Gaffney		8.00
9/12/2012	Alison Smith Gaffney		0.90
9/19/2012	Alison Smith Gaffney		2.80
9/20/2012	Alison Smith Gaffney		4.70
9/21/2012	Alison Smith Gaffney		6.30
9/23/2012	Alison Smith Gaffney		0.70
9/24/2012	Alison Smith Gaffney		6.00
10/2/2012	Alison Smith Gaffney		0.80
10/5/2012	Alison Smith Gaffney		1.60
10/8/2012	Alison Smith Gaffney		0.80
10/9/2012	Alison Smith Gaffney		5.90
10/10/2012	Alison Smith Gaffney		2.50
10/11/2012	Alison Smith Gaffney		7.20
10/12/2012	Alison Smith Gaffney		1.70
10/15/2012	Alison Smith Gaffney		5.80
10/16/2012	Alison Smith Gaffney		7.60
10/17/2012	Alison Smith Gaffney		7.90
10/18/2012	Alison Smith Gaffney		6.60

10/19/2012	Alison Smith Gaffney		6.40
10/25/2012	Alison Smith Gaffney		1.50
10/26/2012	Alison Smith Gaffney		3.30
3/13/2013	Alison Smith Gaffney		0.20
3/15/2013	Alison Smith Gaffney		0.60
3/18/2013	Alison Smith Gaffney		0.50
3/20/2013	Alison Smith Gaffney		0.70
3/21/2013	Alison Smith Gaffney		1.60
3/22/2013	Alison Smith Gaffney		3.60
3/25/2013	Alison Smith Gaffney		3.80
3/26/2013	Alison Smith Gaffney		0.90
4/4/2013	Alison Smith Gaffney		4.70
4/5/2013	Alison Smith Gaffney		5.80
4/8/2013	Alison Smith Gaffney		4.90
6/7/2013	Alison Smith Gaffney		0.80
6/19/2013	Alison Smith Gaffney		0.90
6/20/2013	Alison Smith Gaffney		4.70
6/24/2013	Alison Smith Gaffney		3.90
6/25/2013	Alison Smith Gaffney		3.80
6/26/2013	Alison Smith Gaffney		1.20
9/17/2012	Amy Hanson		8.00
9/18/2012	Amy Hanson		9.00
9/19/2012	Amy Hanson		5.20
9/20/2012	Amy Hanson		3.00
9/21/2012	Amy Hanson		4.00

9/24/2012	Amy Hanson		6.20
9/25/2012	Amy Hanson		7.50
9/26/2012	Amy Hanson		8.70
9/28/2012	Amy Hanson		2.00
9/28/2012	Amy Hanson		4.00
10/1/2012	Amy Hanson		4.30
10/2/2012	Amy Hanson		4.00
10/3/2012	Amy Hanson		4.50
10/4/2012	Amy Hanson		4.00
10/4/2012	Amy Hanson		0.50
10/5/2012	Amy Hanson		7.80
10/8/2012	Amy Hanson		8.30
10/15/2012	Amy Hanson		7.80
10/16/2012	Amy Hanson		9.70
10/17/2012	Amy Hanson		8.50
10/18/2012	Amy Hanson		4.50
10/18/2012	Amy Hanson		3.00

10/19/2012	Amy Hanson		10.20
10/26/2012	Amy Hanson		5.00
11/27/2012	Amy Hanson		0.50
7/28/2016	Amy Williams-Derry		0.90
7/29/2016	Amy Williams-Derry		1.20
8/2/2016	Amy Williams-Derry		0.40
8/3/2016	Amy Williams-Derry		0.80
8/7/2016	Amy Williams-Derry		6.00
8/8/2016	Amy Williams-Derry		4.00
8/19/2016	Amy Williams-Derry		6.00
10/26/2009	Ben Ellis		0.60
9/11/2013	Ben R. Watson		0.20
10/14/2013	Ben R. Watson		0.20
9/10/2012	Benjamin B. Gould		0.20
9/12/2012	Benjamin B. Gould		1.80
5/26/2011	Beth Leland		0.50
6/8/2011	Beth Leland		0.50
6/10/2011	Beth Leland		0.90

6/13/2011	Beth Leland		0.40
6/16/2011	Beth Leland		0.40
12/11/2012	Beth Leland		0.20
2/20/2013	Brian E. Spangler		0.60
2/25/2013	Brian E. Spangler		0.20
3/8/2013	Brian E. Spangler		0.30
3/13/2013	Brian E. Spangler		1.00
3/15/2013	Brian E. Spangler		0.20
3/20/2013	Brian E. Spangler		0.20
10/20/2009	Cari Campen Laufenberg		0.70
10/26/2009	Cari Campen Laufenberg		0.60
11/21/2013	Cari Campen Laufenberg		1.00
11/27/2013	Cari Campen Laufenberg		2.50
9/11/2012	Cate R. Brewer		1.50
9/12/2012	Cate R. Brewer		7.20
9/13/2012	Cate R. Brewer		0.50
9/13/2012	Cate R. Brewer		0.50
9/18/2012	Cate R. Brewer		0.10
10/4/2012	Cate R. Brewer		2.00
10/5/2012	Cate R. Brewer		1.50
10/8/2012	Cate R. Brewer		2.50
10/12/2012	Cate R. Brewer		0.40

10/17/2012	Cate R. Brewer		1.00
10/18/2012	Cate R. Brewer		2.00
10/23/2012	Cate R. Brewer		0.50
10/29/2012	Cate R. Brewer		0.60
11/16/2012	Cate R. Brewer		0.70
11/19/2012	Cate R. Brewer		1.00
11/27/2012	Cate R. Brewer		1.20
3/8/2013	Cate R. Brewer		0.30
3/18/2013	Cate R. Brewer		0.50
3/18/2013	Cate R. Brewer		0.40
4/4/2013	Cate R. Brewer		0.30
8/28/2013	Cate R. Brewer		0.60
8/29/2013	Cate R. Brewer		0.50
11/12/2013	Cate R. Brewer		0.60
11/13/2013	Cate R. Brewer		1.00
12/27/2013	Cate R. Brewer		0.30
12/31/2013	Cate R. Brewer		0.30
1/2/2014	Cate R. Brewer		1.10

12/12/2012	Cavin L. Parrilla		1.00
12/13/2012	Cavin L. Parrilla		5.50
12/14/2012	Cavin L. Parrilla		3.50
12/17/2012	Cavin L. Parrilla		1.50
12/18/2012	Cavin L. Parrilla		1.50
12/19/2012	Cavin L. Parrilla		3.00
12/20/2012	Cavin L. Parrilla		6.50
12/21/2012	Cavin L. Parrilla		6.50
12/24/2012	Cavin L. Parrilla		2.50
12/26/2012	Cavin L. Parrilla		2.00
1/2/2013	Cavin L. Parrilla		4.00
1/3/2013	Cavin L. Parrilla		8.50
1/4/2013	Cavin L. Parrilla		9.00
1/5/2013	Cavin L. Parrilla		3.50

1/6/2013	Cavin L. Parrilla		3.00
1/7/2013	Cavin L. Parrilla		6.50
1/8/2013	Cavin L. Parrilla		7.00
1/9/2013	Cavin L. Parrilla		7.70
1/10/2013	Cavin L. Parrilla		8.00
1/11/2013	Cavin L. Parrilla		7.00
1/12/2013	Cavin L. Parrilla		4.00
1/14/2013	Cavin L. Parrilla		7.50
1/15/2013	Cavin L. Parrilla		7.00
1/16/2013	Cavin L. Parrilla		7.50
1/17/2013	Cavin L. Parrilla		4.50
1/18/2013	Cavin L. Parrilla		6.00
1/22/2013	Cavin L. Parrilla		6.50

1/23/2013	Cavin L. Parrilla		6.50
1/24/2013	Cavin L. Parrilla		2.00
1/25/2013	Cavin L. Parrilla		0.50
1/28/2013	Cavin L. Parrilla		0.50
1/29/2013	Cavin L. Parrilla		1.00
1/30/2013	Cavin L. Parrilla		1.50
1/31/2013	Cavin L. Parrilla		2.00
2/4/2013	Cavin L. Parrilla		2.00
2/5/2013	Cavin L. Parrilla		0.50
2/6/2013	Cavin L. Parrilla		1.00
2/7/2013	Cavin L. Parrilla		1.00
2/8/2013	Cavin L. Parrilla		1.00
2/12/2013	Cavin L. Parrilla		2.00

2/13/2013	Cavin L. Parrilla		2.00
2/14/2013	Cavin L. Parrilla		1.00
2/15/2013	Cavin L. Parrilla		2.00
2/19/2013	Cavin L. Parrilla		2.00
2/20/2013	Cavin L. Parrilla		3.00
2/25/2013	Cavin L. Parrilla		2.00
2/26/2013	Cavin L. Parrilla		0.50
2/27/2013	Cavin L. Parrilla		3.00
2/28/2013	Cavin L. Parrilla		7.30
3/1/2013	Cavin L. Parrilla		3.00
3/4/2013	Cavin L. Parrilla		2.00
3/5/2013	Cavin L. Parrilla		1.00
3/6/2013	Cavin L. Parrilla		3.00

3/7/2013	Cavin L. Parrilla		2.00
3/8/2013	Cavin L. Parrilla		1.00
3/11/2013	Cavin L. Parrilla		1.50
3/12/2013	Cavin L. Parrilla		3.00
3/13/2013	Cavin L. Parrilla		0.30
3/14/2013	Cavin L. Parrilla		0.50
3/15/2013	Cavin L. Parrilla		0.30
3/18/2013	Cavin L. Parrilla		0.30
3/21/2013	Cavin L. Parrilla		1.00
3/25/2013	Cavin L. Parrilla		0.30
3/27/2013	Cavin L. Parrilla		0.50
3/28/2013	Cavin L. Parrilla		0.50
4/3/2013	Cavin L. Parrilla		0.50
4/4/2013	Cavin L. Parrilla		1.00

4/5/2013	Cavin L. Parrilla		1.00
4/8/2013	Cavin L. Parrilla		0.30
4/9/2013	Cavin L. Parrilla		0.30
4/15/2013	Cavin L. Parrilla		0.30
5/24/2013	Cavin L. Parrilla		0.20
6/7/2013	Cavin L. Parrilla		0.20
10/28/2013	Cavin L. Parrilla		0.50
10/29/2013	Cavin L. Parrilla		0.50
11/4/2013	Cavin L. Parrilla		0.50
11/6/2013	Cavin L. Parrilla		3.00

11/7/2013	Cavin L. Parrilla	[REDACTED]	6.00
11/8/2013	Cavin L. Parrilla	[REDACTED]	5.00
11/11/2013	Cavin L. Parrilla	[REDACTED]	0.50
11/12/2013	Cavin L. Parrilla	[REDACTED]	2.50
11/13/2013	Cavin L. Parrilla	[REDACTED]	0.40
11/14/2013	Cavin L. Parrilla	[REDACTED]	1.00
11/15/2013	Cavin L. Parrilla	[REDACTED]	0.50
11/26/2013	Cavin L. Parrilla	[REDACTED]	1.00
11/27/2013	Cavin L. Parrilla	[REDACTED]	1.00

12/20/2013	Cavin L. Parrilla	[REDACTED]	0.50
12/23/2013	Cavin L. Parrilla	[REDACTED]	0.20
12/24/2013	Cavin L. Parrilla	[REDACTED]	0.50
12/30/2013	Cavin L. Parrilla	[REDACTED]	0.30
1/2/2014	Cavin L. Parrilla	[REDACTED]	2.00
1/3/2014	Cavin L. Parrilla	[REDACTED]	0.50
1/8/2014	Cavin L. Parrilla	[REDACTED]	1.00
1/15/2014	Cavin L. Parrilla	[REDACTED]	1.00
1/23/2014	Cavin L. Parrilla	[REDACTED]	0.50

1/24/2014	Cavin L. Parrilla		0.50
1/27/2014	Cavin L. Parrilla		0.50
1/29/2014	Cavin L. Parrilla		0.50
2/13/2014	Cavin L. Parrilla		0.50
2/19/2014	Cavin L. Parrilla		0.50
1/20/2015	Cavin L. Parrilla		0.20
1/21/2015	Cavin L. Parrilla		0.20
8/8/2015	Cavin L. Parrilla		0.20
6/17/2016	Cavin L. Parrilla		0.10
2/12/2013	Chandler L. Clemons		5.33
2/13/2013	Chandler L. Clemons		6.75
2/14/2013	Chandler L. Clemons		5.83

2/15/2013	Chandler L. Clemons		8.67
2/18/2013	Chandler L. Clemons		7.00
2/19/2013	Chandler L. Clemons		7.75
2/20/2013	Chandler L. Clemons		7.75
2/21/2013	Chandler L. Clemons		8.50
2/22/2013	Chandler L. Clemons		7.75
2/25/2013	Chandler L. Clemons		7.83
2/26/2013	Chandler L. Clemons		5.50
2/27/2013	Chandler L. Clemons		3.83
2/28/2013	Chandler L. Clemons		8.75
3/1/2013	Chandler L. Clemons		5.83
3/4/2013	Chandler L. Clemons		6.50
3/5/2013	Chandler L. Clemons		9.75
3/6/2013	Chandler L. Clemons		7.80
3/7/2013	Chandler L. Clemons		7.75

3/8/2013	Chandler L. Clemons		8.75
3/9/2013	Chandler L. Clemons		5.75
3/10/2013	Chandler L. Clemons		7.00
3/11/2013	Chandler L. Clemons		7.25
3/12/2013	Chandler L. Clemons		9.75
3/13/2013	Chandler L. Clemons		7.75
3/14/2013	Chandler L. Clemons		9.25
3/15/2013	Chandler L. Clemons		5.75
3/18/2013	Chandler L. Clemons		7.25
3/19/2013	Chandler L. Clemons		8.75
10/29/2013	Cindy L. Buser		0.80
11/5/2013	Cindy L. Buser		6.60
11/6/2013	Cindy L. Buser		1.90
11/7/2013	Cindy L. Buser		0.90
11/8/2013	Cindy L. Buser		1.80
11/8/2013	Cindy L. Buser		3.80
11/11/2013	Cindy L. Buser		6.80

11/12/2013	Cindy L. Buser	8.10
11/27/2013	Cindy L. Buser	0.50
12/10/2013	Cindy L. Buser	3.70
12/11/2013	Cindy L. Buser	4.10
12/12/2013	Cindy L. Buser	1.30
12/13/2013	Cindy L. Buser	6.50
12/16/2013	Cindy L. Buser	1.10
12/18/2013	Cindy L. Buser	0.90
12/30/2013	Cindy L. Buser	2.80
1/2/2014	Cindy L. Buser	0.70
1/3/2014	Cindy L. Buser	1.00
1/6/2014	Cindy L. Buser	2.30
1/7/2014	Cindy L. Buser	4.80
1/8/2014	Cindy L. Buser	0.40
1/10/2014	Cindy L. Buser	3.30
1/13/2014	Cindy L. Buser	3.80
1/14/2014	Cindy L. Buser	1.70
1/15/2014	Cindy L. Buser	1.60
1/17/2014	Cindy L. Buser	1.30
1/23/2014	Cindy L. Buser	3.40
1/24/2014	Cindy L. Buser	4.60

2/6/2014	Cindy L. Buser	0.80
2/6/2014	Cindy L. Buser	0.10
2/13/2014	Cindy L. Buser	2.10
2/19/2014	Cindy L. Buser	0.20
2/19/2014	Cindy L. Buser	0.90
2/24/2014	Cindy L. Buser	4.70
2/25/2014	Cindy L. Buser	5.90
2/26/2014	Cindy L. Buser	6.30
2/27/2014	Cindy L. Buser	7.10
2/28/2014	Cindy L. Buser	1.80
2/28/2014	Cindy L. Buser	1.40
12/9/2013	Daniel Lenentine	2.75
11/9/2009	David S. Preminger	0.60
11/13/2009	David S. Preminger	0.40
10/15/2012	David S. Preminger	0.70
12/6/2012	David S. Preminger	0.40
12/11/2012	David S. Preminger	0.20
4/16/2013	David S. Preminger	0.30
6/6/2013	David S. Preminger	0.30
7/6/2011	Debra Lynn Wilcher	0.20
7/5/2013	Debra Lynn Wilcher	0.20
3/5/2015	Debra Lynn Wilcher	0.20
3/26/2015	Debra Lynn Wilcher	0.20
5/13/2015	Debra Lynn Wilcher	0.20

8/12/2016	Debra Lynn Wilcher		0.20
9/13/2010	Derek W. Loeser		1.40
9/15/2010	Derek W. Loeser		2.10
9/10/2012	Derek W. Loeser		1.40
9/11/2012	Derek W. Loeser		1.60
9/12/2012	Derek W. Loeser		2.20
9/26/2012	Derek W. Loeser		1.30
9/28/2012	Derek W. Loeser		2.40
10/1/2012	Derek W. Loeser		1.10
10/19/2012	Derek W. Loeser		1.90
10/22/2012	Derek W. Loeser		7.50
10/23/2012	Derek W. Loeser		6.60
10/24/2012	Derek W. Loeser		8.50
10/26/2012	Derek W. Loeser		1.30
10/29/2012	Derek W. Loeser		1.30
10/30/2012	Derek W. Loeser		2.20
10/31/2012	Derek W. Loeser		2.50
11/1/2012	Derek W. Loeser		1.30

11/2/2012	Derek W. Loeser		1.50
11/8/2012	Derek W. Loeser		1.40
11/12/2012	Derek W. Loeser		2.00
11/13/2012	Derek W. Loeser		1.60
11/14/2012	Derek W. Loeser		1.70
11/16/2012	Derek W. Loeser		2.10
11/19/2012	Derek W. Loeser		1.60
11/20/2012	Derek W. Loeser		1.10
11/25/2012	Derek W. Loeser		1.10
11/26/2012	Derek W. Loeser		1.70
11/28/2012	Derek W. Loeser		1.20
11/30/2012	Derek W. Loeser		1.40
12/6/2012	Derek W. Loeser		1.20
12/12/2012	Derek W. Loeser		1.70
12/18/2012	Derek W. Loeser		1.20

1/2/2013	Derek W. Loeser		0.90
1/18/2013	Derek W. Loeser		2.10
1/21/2013	Derek W. Loeser		1.00
1/23/2013	Derek W. Loeser		8.80
1/24/2013	Derek W. Loeser		8.90
1/28/2013	Derek W. Loeser		1.20
3/4/2013	Derek W. Loeser		0.50
3/13/2013	Derek W. Loeser		1.20
1/22/2015	Derek W. Loeser		1.00
2/1/2015	Derek W. Loeser		1.40
2/2/2015	Derek W. Loeser		1.00
2/3/2015	Derek W. Loeser		9.50
2/4/2015	Derek W. Loeser		8.50
6/10/2015	Derek W. Loeser		1.00
11/12/2012	Eric J. Fierro		1.00
11/19/2012	Eric J. Fierro		0.30
11/28/2012	Eric J. Fierro		1.50
12/5/2012	Eric J. Fierro		1.50
12/10/2012	Eric J. Fierro		0.30
12/12/2012	Eric J. Fierro		0.50
12/18/2012	Eric J. Fierro		0.50
12/27/2012	Eric J. Fierro		0.20
1/4/2013	Eric J. Fierro		2.00

1/8/2013	Eric J. Fierro		4.00
1/9/2013	Eric J. Fierro		5.50
1/10/2013	Eric J. Fierro		3.00
1/31/2013	Eric J. Fierro		1.00
2/6/2013	Eric J. Fierro		0.30
3/6/2013	Eric J. Fierro		1.50
5/13/2013	Eric J. Fierro		0.20
6/21/2013	Eric J. Fierro		2.50
7/2/2013	Eric J. Fierro		0.80
7/3/2013	Eric J. Fierro		0.70
7/29/2013	Eric J. Fierro		0.60
7/30/2013	Eric J. Fierro		0.60
11/5/2013	Eric J. Fierro		1.00
11/11/2013	Eric J. Fierro		0.20
12/10/2013	Eric J. Fierro		1.00
1/10/2014	Eric J. Fierro		1.00
2/7/2014	Eric J. Fierro		1.00
2/28/2014	Eric J. Fierro		0.70
3/17/2014	Eric J. Fierro		1.00
2/4/2015	Eric J. Fierro		1.00
2/11/2015	Eric J. Fierro		1.00
7/13/2015	Eric J. Fierro		1.00
8/6/2015	Eric J. Fierro		0.50
10/15/2015	Eric J. Fierro		0.70
2/11/2016	Eric J. Fierro		0.50
5/11/2016	Eric J. Fierro		0.50
6/13/2016	Eric J. Fierro		1.00

8/9/2016	Eric J. Fierro		0.50
9/13/2016	Eric J. Fierro		1.20
10/19/2016	Eric J. Fierro		1.00
9/12/2012	Erin M. Hoffrance		0.50
9/27/2012	Erin M. Hoffrance		0.30
10/1/2012	Erin M. Hoffrance		0.10
10/4/2012	Erin M. Hoffrance		0.20
10/15/2012	Erin M. Hoffrance		0.10
3/5/2013	Erin M. Hoffrance		0.40
12/11/2013	Erin M. Hoffrance		0.40
7/28/2014	Erin M. Hoffrance		0.20
10/16/2012	Erin Riley		0.75
8/4/2010	Graham A. VanLeuven		3.20
8/5/2010	Graham A. VanLeuven		8.00
11/4/2009	Gretchen Obrist		3.40
11/5/2009	Gretchen Obrist		6.10
11/6/2009	Gretchen Obrist		2.40

11/9/2009 Gretchen Obrist

4.70

11/10/2009 Gretchen Obrist

2.90

11/11/2009 Gretchen Obrist

1.10

11/12/2009 Gretchen Obrist

3.80

11/13/2009 Gretchen Obrist

5.20

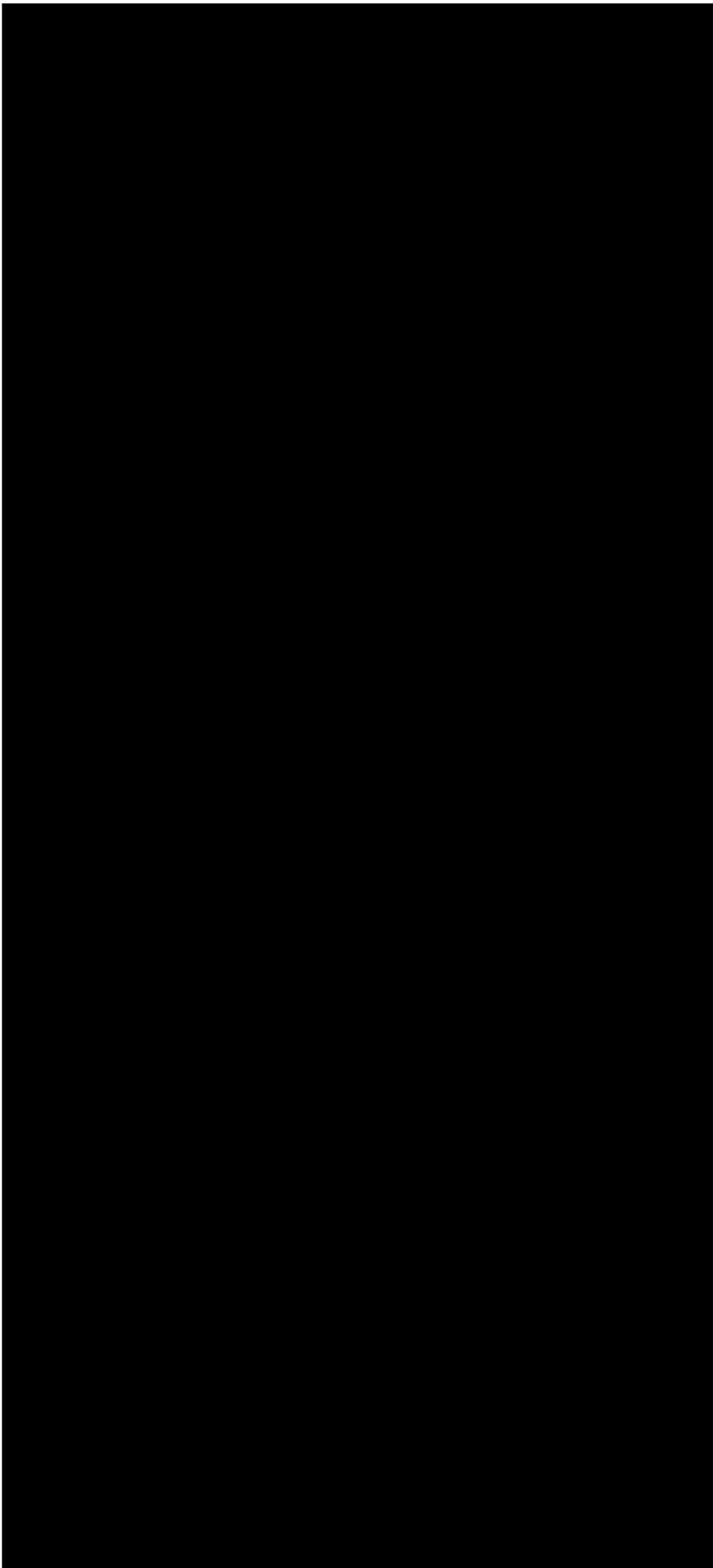
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6.50

11/17/2009 Gretchen Obrist

0.80

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11/24/2009	Gretchen Obrist		2.00
1/8/2010	Gretchen Obrist		0.30
3/21/2013	Gretchen Obrist		0.40
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10/11/2012	Harry J. Williams IV		2.10
10/12/2012	Harry J. Williams IV		11.70
10/15/2012	Harry J. Williams IV		4.20
10/16/2012	Harry J. Williams IV		6.30
10/17/2012	Harry J. Williams IV		4.90
10/26/2012	Harry J. Williams IV		1.80
11/8/2012	Havila C. Unrein		0.60
11/12/2012	Havila C. Unrein		0.20
11/19/2012	Havila C. Unrein		3.50



11/20/2012	Havila C. Unrein		3.00
11/25/2012	Havila C. Unrein		0.30
11/26/2012	Havila C. Unrein		4.10
11/27/2012	Havila C. Unrein		3.50
11/28/2012	Havila C. Unrein		2.00
11/30/2012	Havila C. Unrein		1.00
12/6/2012	Havila C. Unrein		2.50
12/7/2012	Havila C. Unrein		1.50
12/10/2012	Havila C. Unrein		0.60

12/11/2012	Havila C. Unrein		2.00
12/12/2012	Havila C. Unrein		2.00
12/14/2012	Havila C. Unrein		0.30
12/17/2012	Havila C. Unrein		3.50
12/18/2012	Havila C. Unrein		2.00
12/20/2012	Havila C. Unrein		1.50
12/28/2012	Havila C. Unrein		0.10
1/2/2013	Havila C. Unrein		1.50

1/3/2013	Havila C. Unrein		3.00
1/4/2013	Havila C. Unrein		1.00
1/7/2013	Havila C. Unrein		1.20
1/8/2013	Havila C. Unrein		1.70
1/9/2013	Havila C. Unrein		1.70
1/10/2013	Havila C. Unrein		0.50
1/11/2013	Havila C. Unrein		1.50
1/14/2013	Havila C. Unrein		1.00

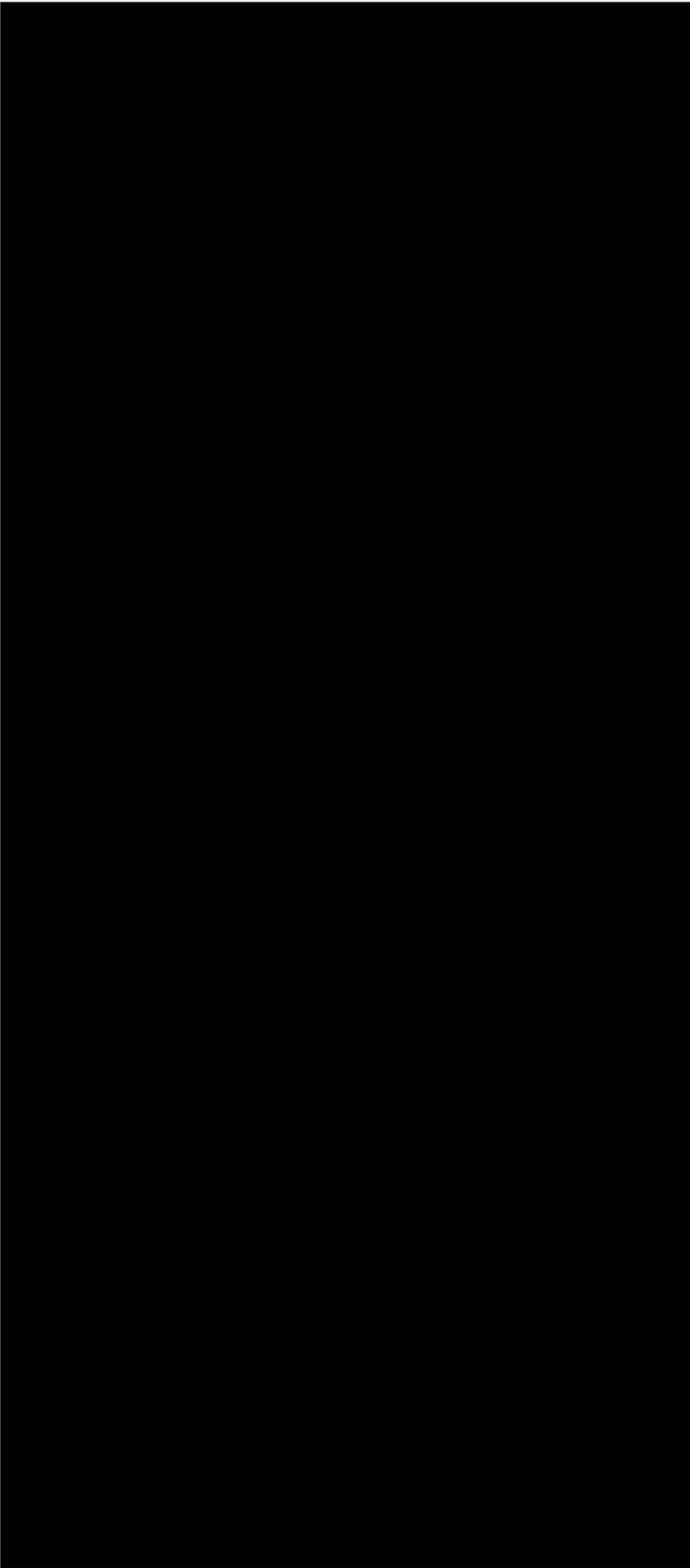
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1/15/2013	Havila C. Unrein		0.50
1/16/2013	Havila C. Unrein		1.50
1/17/2013	Havila C. Unrein		3.50
1/18/2013	Havila C. Unrein		0.40
1/22/2013	Havila C. Unrein		0.20
1/25/2013	Havila C. Unrein		2.00
1/28/2013	Havila C. Unrein		2.00
1/29/2013	Havila C. Unrein		0.30
1/31/2013	Havila C. Unrein		0.50
2/5/2013	Havila C. Unrein		0.50
2/6/2013	Havila C. Unrein		0.30

4/5/2013	Havila C. Unrein		2.00
5/24/2013	Havila C. Unrein		0.70
5/28/2013	Havila C. Unrein		1.00
5/29/2013	Havila C. Unrein		0.10
11/13/2013	Havila C. Unrein		0.30
11/4/2009	Jason Dillman		5.30
11/5/2009	Jason Dillman		4.80
11/6/2009	Jason Dillman		1.90
11/10/2009	Jason Dillman		1.10
11/11/2009	Jason Dillman		1.00
11/13/2009	Jason Dillman		2.50
11/16/2009	Jason Dillman		0.70
11/23/2009	Jason Dillman		0.10
11/30/2009	Jason Dillman		0.30
12/2/2009	Jason Dillman		0.10
12/21/2009	Jason Dillman		0.70
12/29/2009	Jason Dillman		1.50
1/25/2010	Jason Dillman		0.40
2/5/2010	Jason Dillman		0.30
2/17/2010	Jason Dillman		0.50
3/1/2010	Jason Dillman		0.20
3/9/2010	Jason Dillman		0.30
3/18/2010	Jason Dillman		0.60
4/5/2010	Jason Dillman		0.50
8/26/2010	Jason Dillman		1.30
6/8/2011	Jason Dillman		0.20
6/9/2011	Jason Dillman		0.50
6/10/2011	Jason Dillman		0.70

9/20/2011	Jason Dillman		1.00
10/6/2011	Jason Dillman		0.30
9/7/2012	Jason Dillman		2.30
9/10/2012	Jason Dillman		0.30
10/31/2012	Jason Dillman		1.20
11/1/2012	Jason Dillman		0.70
12/27/2012	Jason Dillman		0.50
1/28/2013	Jason Dillman		0.20
1/29/2013	Jason Dillman		2.00
1/30/2013	Jason Dillman		1.30
2/21/2013	Jason Dillman		1.50
2/22/2013	Jason Dillman		2.80
3/1/2013	Jason Dillman		1.50
3/6/2013	Jason Dillman		1.00
3/12/2013	Jason Dillman		0.80
3/14/2013	Jason Dillman		1.00
7/5/2013	Jason Dillman		0.30
2/13/2013	Jason K. Ho		6.00
2/14/2013	Jason K. Ho		8.00
2/15/2013	Jason K. Ho		7.50
2/19/2013	Jason K. Ho		8.00
2/20/2013	Jason K. Ho		8.00
2/21/2013	Jason K. Ho		8.00
2/22/2013	Jason K. Ho		8.00
2/23/2013	Jason K. Ho		6.00

2/24/2013	Jason K. Ho		2.00
2/25/2013	Jason K. Ho		10.00
2/26/2013	Jason K. Ho		7.50
2/27/2013	Jason K. Ho		4.00
2/28/2013	Jason K. Ho		8.00
3/1/2013	Jason K. Ho		4.00
3/4/2013	Jason K. Ho		9.00
3/5/2013	Jason K. Ho		9.00
3/6/2013	Jason K. Ho		8.00
3/7/2013	Jason K. Ho		8.00
3/8/2013	Jason K. Ho		8.00
3/9/2013	Jason K. Ho		5.00
3/10/2013	Jason K. Ho		8.00
3/11/2013	Jason K. Ho		10.00
3/12/2013	Jason K. Ho		10.00

3/13/2013	Jason K. Ho		8.00
3/14/2013	Jason K. Ho		8.00
3/15/2013	Jason K. Ho		4.00
3/18/2013	Jason K. Ho		9.50
3/19/2013	Jason K. Ho		7.50
6/21/2016	Jeffrey G. Lewis		0.20
11/5/2009	Jennifer Hill		2.00
11/6/2009	Jennifer Hill		1.50
8/12/2011	Jennifer Hill		1.00
3/15/2013	Jennifer Hill		2.30
3/19/2013	Jennifer Hill		1.50
10/21/2009	Jennifer Tuato'o		0.80
10/22/2009	Jennifer Tuato'o		0.70
10/6/2011	Jennifer Tuato'o		1.10
10/7/2011	Jennifer Tuato'o		2.60
10/12/2011	Jennifer Tuato'o		1.50



10/13/2011	Jennifer Tuato'o	2.80
10/14/2011	Jennifer Tuato'o	1.40
10/19/2011	Jennifer Tuato'o	0.70
10/24/2011	Jennifer Tuato'o	0.30
10/25/2011	Jennifer Tuato'o	0.70
10/26/2011	Jennifer Tuato'o	1.20
10/27/2011	Jennifer Tuato'o	1.20
11/1/2011	Jennifer Tuato'o	0.70
9/5/2012	Jennifer Tuato'o	2.60
9/6/2012	Jennifer Tuato'o	1.40

9/7/2012 Jennifer Tuato'o

4.30

9/10/2012 Jennifer Tuato'o

2.10

9/11/2012 Jennifer Tuato'o

4.20

9/12/2012 Jennifer Tuato'o

6.30

9/13/2012 Jennifer Tuato'o

0.80

9/14/2012 Jennifer Tuato'o

1.70

9/17/2012	Jennifer Tuato'o		0.60
9/18/2012	Jennifer Tuato'o		0.30
9/20/2012	Jennifer Tuato'o		0.70
9/21/2012	Jennifer Tuato'o		0.40
9/25/2012	Jennifer Tuato'o		0.40
10/2/2012	Jennifer Tuato'o		2.70
10/3/2012	Jennifer Tuato'o		2.70
10/4/2012	Jennifer Tuato'o		3.40
10/5/2012	Jennifer Tuato'o		5.70
10/8/2012	Jennifer Tuato'o		1.30

10/9/2012 Jennifer Tuato'o

1.30

10/10/2012 Jennifer Tuato'o

3.70

10/11/2012 Jennifer Tuato'o

4.30

10/12/2012 Jennifer Tuato'o

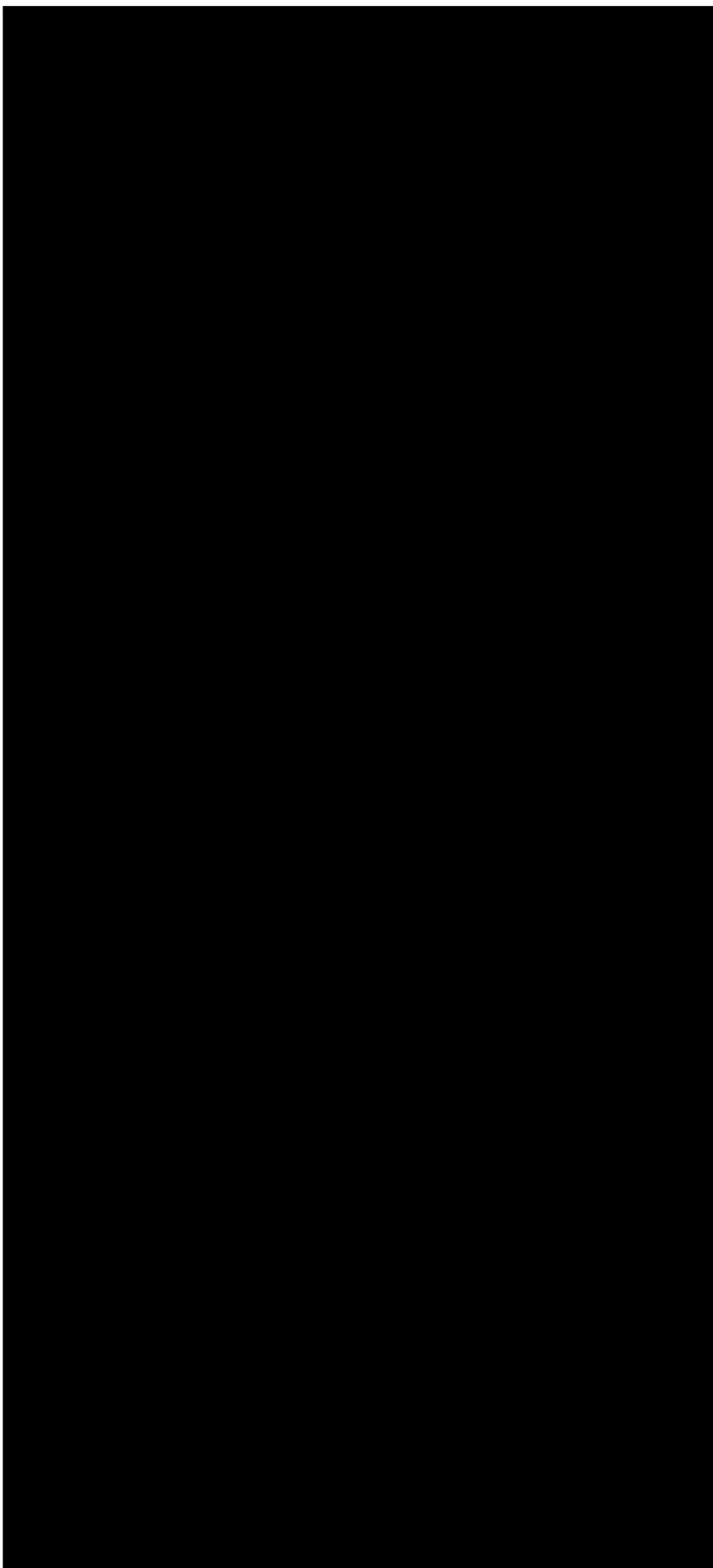
4.80

10/15/2012 Jennifer Tuato'o

3.60

10/16/2012 Jennifer Tuato'o

3.20



10/17/2012	Jennifer Tuato'o		5.70
10/18/2012	Jennifer Tuato'o		4.10
10/19/2012	Jennifer Tuato'o		0.80
10/23/2012	Jennifer Tuato'o		0.60
10/24/2012	Jennifer Tuato'o		2.30
10/30/2012	Jennifer Tuato'o		0.70
10/31/2012	Jennifer Tuato'o		0.60
11/1/2012	Jennifer Tuato'o		4.80
11/2/2012	Jennifer Tuato'o		3.40

11/5/2012	Jennifer Tuato'o		0.70
11/7/2012	Jennifer Tuato'o		2.60
11/8/2012	Jennifer Tuato'o		4.30
11/9/2012	Jennifer Tuato'o		1.70
11/9/2012	Jennifer Tuato'o		0.80
11/12/2012	Jennifer Tuato'o		0.20
11/13/2012	Jennifer Tuato'o		0.60
11/26/2012	Jennifer Tuato'o		1.30

11/27/2012	Jennifer Tuato'o		3.40
11/28/2012	Jennifer Tuato'o		4.30
11/29/2012	Jennifer Tuato'o		5.70
11/30/2012	Jennifer Tuato'o		4.20
11/30/2012	Jennifer Tuato'o		1.30
12/3/2012	Jennifer Tuato'o		2.70
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12/7/2012	Jennifer Tuato'o		2.70

12/9/2012	Jennifer Tuato'o		3.00
12/10/2012	Jennifer Tuato'o		2.60
12/11/2012	Jennifer Tuato'o		0.70
12/11/2012	Jennifer Tuato'o		2.30
12/12/2012	Jennifer Tuato'o		3.70
12/18/2012	Jennifer Tuato'o		0.30
1/7/2013	Jennifer Tuato'o		1.40
1/8/2013	Jennifer Tuato'o		1.60
1/9/2013	Jennifer Tuato'o		1.20
1/11/2013	Jennifer Tuato'o		1.20
1/14/2013	Jennifer Tuato'o		2.10
1/15/2013	Jennifer Tuato'o		4.70

1/16/2013	Jennifer Tuato'o		2.70
1/17/2013	Jennifer Tuato'o		3.20
1/18/2013	Jennifer Tuato'o		1.30
1/22/2013	Jennifer Tuato'o		2.60
1/23/2013	Jennifer Tuato'o		2.80
1/24/2013	Jennifer Tuato'o		2.70
1/25/2013	Jennifer Tuato'o		2.10
1/28/2013	Jennifer Tuato'o		0.50
1/29/2013	Jennifer Tuato'o		1.60
1/30/2013	Jennifer Tuato'o		1.20
1/31/2013	Jennifer Tuato'o		1.70

2/1/2013	Jennifer Tuato'o	[REDACTED]	4.20
2/1/2013	Jennifer Tuato'o	[REDACTED]	0.80
2/4/2013	Jennifer Tuato'o	[REDACTED]	1.30
2/5/2013	Jennifer Tuato'o	[REDACTED]	1.20
2/6/2013	Jennifer Tuato'o	[REDACTED]	3.10
2/7/2013	Jennifer Tuato'o	[REDACTED]	4.80
2/8/2013	Jennifer Tuato'o	[REDACTED]	5.10
2/10/2013	Jennifer Tuato'o	[REDACTED]	4.00

2/11/2013 Jennifer Tuato'o

6.20

2/12/2013 Jennifer Tuato'o

6.70

2/12/2013 Jennifer Tuato'o

1.60

2/13/2013 Jennifer Tuato'o

11.20

2/14/2013 Jennifer Tuato'o

2.50

2/15/2013 Jennifer Tuato'o

2.80

2/19/2013	Jennifer Tuato'o	[REDACTED]	7.40
2/20/2013	Jennifer Tuato'o	[REDACTED]	4.60
2/20/2013	Jennifer Tuato'o	[REDACTED]	1.30
2/21/2013	Jennifer Tuato'o	[REDACTED]	6.70
2/21/2013	Jennifer Tuato'o	[REDACTED]	0.70
2/22/2013	Jennifer Tuato'o	[REDACTED]	5.70
2/25/2013	Jennifer Tuato'o	[REDACTED]	8.10
2/26/2013	Jennifer Tuato'o	[REDACTED]	6.10

2/27/2013 Jennifer Tuato'o

9.30

2/28/2013 Jennifer Tuato'o

7.10

3/1/2013 Jennifer Tuato'o

4.20

3/4/2013 Jennifer Tuato'o

6.20

3/5/2013 Jennifer Tuato'o

4.30

3/6/2013 Jennifer Tuato'o

4.60

3/7/2013 Jennifer Tuato'o

2.80

3/8/2013 Jennifer Tuato'o

4.80

3/11/2013 Jennifer Tuato'o

8.70

3/12/2013 Jennifer Tuato'o

5.20

3/13/2013 Jennifer Tuato'o

2.10

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3/19/2013	Jennifer Tuato'o		3.60
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8/27/2013	Jennifer Tuato'o		0.40
10/22/2013	Jennifer Tuato'o		0.70
10/29/2013	Jennifer Tuato'o		1.30

11/5/2013	Jennifer Tuato'o		0.60
11/6/2013	Jennifer Tuato'o		2.40
11/7/2013	Jennifer Tuato'o		5.10
11/8/2013	Jennifer Tuato'o		4.30
11/11/2013	Jennifer Tuato'o		0.30
11/13/2013	Jennifer Tuato'o		0.40
11/14/2013	Jennifer Tuato'o		0.30
12/4/2013	Jennifer Tuato'o		0.80
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12/13/2013	Jennifer Tuato'o		0.30
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12/17/2012	John M. Evans		2.20
12/18/2012	John M. Evans		2.50
12/26/2012	John M. Evans		1.80
12/27/2012	John M. Evans		0.70
1/2/2013	John M. Evans		2.70
1/3/2013	John M. Evans		2.70
1/7/2013	John M. Evans		0.70
1/8/2013	John M. Evans		1.20
1/10/2013	John M. Evans		1.70
1/14/2013	John M. Evans		2.20
1/18/2013	John M. Evans		1.50
1/29/2013	John M. Evans		1.50
1/30/2013	John M. Evans		1.50
2/1/2013	John M. Evans		1.20
2/6/2013	John M. Evans		2.20
2/8/2013	John M. Evans		1.00
2/11/2013	John M. Evans		1.00
2/12/2013	John M. Evans		2.40
2/13/2013	John M. Evans		1.60
2/19/2013	John M. Evans		2.10
2/21/2013	John M. Evans		0.40
2/25/2013	John M. Evans		2.50
2/26/2013	John M. Evans		0.70
2/27/2013	John M. Evans		2.40
3/1/2013	John M. Evans		1.20
3/11/2013	John M. Evans		2.50
3/14/2013	John M. Evans		0.70
3/25/2013	John M. Evans		1.50
3/26/2013	John M. Evans		1.20

3/27/2013	John M. Evans		1.20
11/5/2013	John M. Evans		2.30
11/6/2013	John M. Evans		2.60
11/7/2013	John M. Evans		3.50
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11/9/2013	John M. Evans		5.00
11/10/2013	John M. Evans		3.00
11/11/2013	John M. Evans		2.70
11/14/2013	John M. Evans		3.40
3/12/2013	Jonathan C. Whitney		7.00
3/13/2013	Jonathan C. Whitney		7.50
3/14/2013	Jonathan C. Whitney		7.50
3/15/2013	Jonathan C. Whitney		7.00
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3/19/2013	Jonathan C. Whitney		1.00
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10/25/2010	Juli E. Farris		0.40
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12/6/2010	Juli E. Farris		0.30
12/10/2010	Juli E. Farris		0.30
1/20/2011	Juli E. Farris		0.10
1/21/2011	Juli E. Farris		0.40
4/1/2011	Juli E. Farris		0.20
8/11/2011	Juli E. Farris		0.70
9/9/2011	Juli E. Farris		0.70

7/30/2012	Juli E. Farris		0.40
1/10/2013	Juli E. Farris		0.50
10/21/2013	Juli E. Farris		0.70
9/11/2012	Katherine E. Grant		4.50
9/12/2012	Katherine E. Grant		3.00
9/13/2012	Katherine E. Grant		2.50
9/14/2012	Katherine E. Grant		3.50
9/17/2012	Katherine E. Grant		1.00
10/19/2012	Katherine E. Grant		0.50
3/1/2012	Katie M. Sifferman		0.20
9/11/2012	Katie M. Sifferman		1.70
9/12/2012	Katie M. Sifferman		1.30
10/11/2012	Katie M. Sifferman		1.60
10/12/2012	Katie M. Sifferman		2.50
2/28/2014	Kelly A. Shenefield		0.50
2/28/2014	Kelly A. Shenefield		0.50
3/3/2014	Kelly A. Shenefield		0.20
5/5/2014	Kelly A. Shenefield		0.40
1/15/2014	Kevin P. Hammond		0.08
6/9/2016	Kris P. Bartlett		0.80
6/14/2016	Kris P. Bartlett		0.10
6/27/2016	Kris P. Bartlett		0.30
7/28/2016	Kris P. Bartlett		0.60
7/29/2016	Kris P. Bartlett		0.60
10/19/2016	Kris P. Bartlett		0.20
10/31/2016	Kris P. Bartlett		0.20

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10/22/2009	Laura R. Gerber		0.25
10/23/2009	Laura R. Gerber		0.25
10/23/2009	Laura R. Gerber		0.90
10/26/2009	Laura R. Gerber		2.10
10/28/2009	Laura R. Gerber		0.10
11/4/2009	Laura R. Gerber		0.80
11/5/2009	Laura R. Gerber		1.50
11/5/2009	Laura R. Gerber		0.75
11/6/2009	Laura R. Gerber		0.25
11/9/2009	Laura R. Gerber		0.10
11/13/2009	Laura R. Gerber		1.00
11/17/2009	Laura R. Gerber		0.70
11/19/2009	Laura R. Gerber		0.50
11/30/2009	Laura R. Gerber		0.40
9/14/2010	Laura R. Gerber		1.20
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9/15/2010	Laura R. Gerber		1.60
5/26/2011	Laura R. Gerber		0.50
6/1/2011	Laura R. Gerber		0.20
6/8/2011	Laura R. Gerber		0.20
6/8/2011	Laura R. Gerber		0.30
6/15/2011	Laura R. Gerber		2.40
6/16/2011	Laura R. Gerber		0.80
6/20/2011	Laura R. Gerber		1.70
6/21/2011	Laura R. Gerber		0.30
6/23/2011	Laura R. Gerber		0.20

6/24/2011	Laura R. Gerber		2.20
7/11/2011	Laura R. Gerber		0.80
7/15/2011	Laura R. Gerber		0.40
7/18/2011	Laura R. Gerber		0.20
7/19/2011	Laura R. Gerber		0.60
8/11/2011	Laura R. Gerber		0.30
9/19/2011	Laura R. Gerber		0.80
9/7/2012	Laura R. Gerber		8.30
9/10/2012	Laura R. Gerber		5.00
9/11/2012	Laura R. Gerber		10.40
9/12/2012	Laura R. Gerber		15.00
9/13/2012	Laura R. Gerber		1.40
9/14/2012	Laura R. Gerber		1.50
9/17/2012	Laura R. Gerber		0.60
9/18/2012	Laura R. Gerber		0.50
9/20/2012	Laura R. Gerber		0.25
9/21/2012	Laura R. Gerber		0.40
9/25/2012	Laura R. Gerber		1.00
9/26/2012	Laura R. Gerber		0.20
9/28/2012	Laura R. Gerber		0.50

9/30/2012	Laura R. Gerber		1.60
10/1/2012	Laura R. Gerber		0.60
10/1/2012	Laura R. Gerber		0.90
10/2/2012	Laura R. Gerber		2.80
10/5/2012	Laura R. Gerber		0.60
10/5/2012	Laura R. Gerber		1.50
10/9/2012	Laura R. Gerber		0.40
10/9/2012	Laura R. Gerber		1.20
10/10/2012	Laura R. Gerber		0.10
10/10/2012	Laura R. Gerber		7.60
10/11/2012	Laura R. Gerber		9.80
10/12/2012	Laura R. Gerber		8.20
10/15/2012	Laura R. Gerber		8.50
10/16/2012	Laura R. Gerber		0.40

10/16/2012	Laura R. Gerber		10.50
10/17/2012	Laura R. Gerber		10.10
10/18/2012	Laura R. Gerber		6.00
10/18/2012	Laura R. Gerber		3.20
10/19/2012	Laura R. Gerber		8.00
10/21/2012	Laura R. Gerber		1.80
10/21/2012	Laura R. Gerber		0.50
10/22/2012	Laura R. Gerber		0.10
10/22/2012	Laura R. Gerber		0.40
10/22/2012	Laura R. Gerber		2.00
10/23/2012	Laura R. Gerber		1.00
10/23/2012	Laura R. Gerber		1.90
10/23/2012	Laura R. Gerber		0.30
10/24/2012	Laura R. Gerber		1.50
10/25/2012	Laura R. Gerber		1.25
10/26/2012	Laura R. Gerber		7.30

10/29/2012	Laura R. Gerber		4.00
10/31/2012	Laura R. Gerber		2.90
11/8/2012	Laura R. Gerber		1.20
11/9/2012	Laura R. Gerber		0.30
11/9/2012	Laura R. Gerber		3.50
11/12/2012	Laura R. Gerber		0.20
11/12/2012	Laura R. Gerber		2.00
11/14/2012	Laura R. Gerber		0.90
11/14/2012	Laura R. Gerber		1.00
11/16/2012	Laura R. Gerber		1.50
11/19/2012	Laura R. Gerber		4.70

11/20/2012	Laura R. Gerber		0.80
11/21/2012	Laura R. Gerber		0.10
11/26/2012	Laura R. Gerber		6.60
11/27/2012	Laura R. Gerber		6.10
11/28/2012	Laura R. Gerber		2.20
11/30/2012	Laura R. Gerber		0.80
12/5/2012	Laura R. Gerber		1.20
12/5/2012	Laura R. Gerber		0.30
12/6/2012	Laura R. Gerber		3.20
12/7/2012	Laura R. Gerber		3.40
12/10/2012	Laura R. Gerber		0.50
12/11/2012	Laura R. Gerber		0.50

12/11/2012	Laura R. Gerber		0.50
12/11/2012	Laura R. Gerber		0.50
12/11/2012	Laura R. Gerber		0.30
12/12/2012	Laura R. Gerber		1.30
12/12/2012	Laura R. Gerber		0.30
12/12/2012	Laura R. Gerber		0.60
12/14/2012	Laura R. Gerber		0.40
12/17/2012	Laura R. Gerber		1.90
12/18/2012	Laura R. Gerber		1.60
12/19/2012	Laura R. Gerber		0.90
12/20/2012	Laura R. Gerber		0.30
12/21/2012	Laura R. Gerber		0.40
12/21/2012	Laura R. Gerber		5.00
12/26/2012	Laura R. Gerber		0.60
12/27/2012	Laura R. Gerber		3.10
12/28/2012	Laura R. Gerber		0.20
12/31/2012	Laura R. Gerber		3.00

1/2/2013	Laura R. Gerber		5.60
1/3/2013	Laura R. Gerber		3.30
1/4/2013	Laura R. Gerber		3.80
1/7/2013	Laura R. Gerber		2.60
1/8/2013	Laura R. Gerber		5.90
1/9/2013	Laura R. Gerber		1.00
1/9/2013	Laura R. Gerber		4.70
1/10/2013	Laura R. Gerber		2.20
1/11/2013	Laura R. Gerber		0.60
1/12/2013	Laura R. Gerber		3.00
1/14/2013	Laura R. Gerber		2.20
1/14/2013	Laura R. Gerber		4.10
1/15/2013	Laura R. Gerber		0.30
1/16/2013	Laura R. Gerber		2.10
1/16/2013	Laura R. Gerber		0.50
1/17/2013	Laura R. Gerber		0.20

1/17/2013	Laura R. Gerber		2.60
1/18/2013	Laura R. Gerber		1.30
1/22/2013	Laura R. Gerber		1.30
1/25/2013	Laura R. Gerber		3.90
1/28/2013	Laura R. Gerber		2.30
1/29/2013	Laura R. Gerber		0.80
1/31/2013	Laura R. Gerber		1.50
2/1/2013	Laura R. Gerber		0.30
2/4/2013	Laura R. Gerber		9.40
2/5/2013	Laura R. Gerber		1.10
2/6/2013	Laura R. Gerber		1.20
2/10/2013	Laura R. Gerber		5.00
2/11/2013	Laura R. Gerber		0.70
2/11/2013	Laura R. Gerber		1.90
2/12/2013	Laura R. Gerber		1.60

2/13/2013	Laura R. Gerber		5.50
2/14/2013	Laura R. Gerber		2.00
2/15/2013	Laura R. Gerber		1.70
2/18/2013	Laura R. Gerber		2.20
2/19/2013	Laura R. Gerber		2.60
2/20/2013	Laura R. Gerber		1.20
2/21/2013	Laura R. Gerber		3.20
2/25/2013	Laura R. Gerber		0.90
2/25/2013	Laura R. Gerber		0.30
2/26/2013	Laura R. Gerber		0.40
2/27/2013	Laura R. Gerber		4.50
2/28/2013	Laura R. Gerber		6.20
3/1/2013	Laura R. Gerber		0.90
3/4/2013	Laura R. Gerber		1.20
3/5/2013	Laura R. Gerber		1.90
3/6/2013	Laura R. Gerber		1.50
3/6/2013	Laura R. Gerber		1.60

3/6/2013	Laura R. Gerber		1.60
3/7/2013	Laura R. Gerber		0.80
3/8/2013	Laura R. Gerber		1.50
3/11/2013	Laura R. Gerber		0.30
3/11/2013	Laura R. Gerber		3.50
3/12/2013	Laura R. Gerber		4.00
3/13/2013	Laura R. Gerber		5.30
3/14/2013	Laura R. Gerber		0.20
3/15/2013	Laura R. Gerber		0.10
3/16/2013	Laura R. Gerber		0.20
3/18/2013	Laura R. Gerber		1.50
3/28/2013	Laura R. Gerber		0.30
3/29/2013	Laura R. Gerber		1.00
3/29/2013	Laura R. Gerber		0.20
4/1/2013	Laura R. Gerber		0.20
4/1/2013	Laura R. Gerber		1.40
4/1/2013	Laura R. Gerber		3.60

4/2/2013	Laura R. Gerber		0.10
4/3/2013	Laura R. Gerber		0.40
4/3/2013	Laura R. Gerber		5.00
4/4/2013	Laura R. Gerber		4.80
4/5/2013	Laura R. Gerber		3.40
4/8/2013	Laura R. Gerber		0.20
4/9/2013	Laura R. Gerber		1.10
4/10/2013	Laura R. Gerber		0.10
4/11/2013	Laura R. Gerber		0.50
4/12/2013	Laura R. Gerber		8.70
4/13/2013	Laura R. Gerber		0.70
4/15/2013	Laura R. Gerber		2.30
4/16/2013	Laura R. Gerber		0.10
4/17/2013	Laura R. Gerber		0.40
5/16/2013	Laura R. Gerber		1.10
5/20/2013	Laura R. Gerber		0.20
5/24/2013	Laura R. Gerber		3.00
5/28/2013	Laura R. Gerber		2.00
5/28/2013	Laura R. Gerber		2.70
5/29/2013	Laura R. Gerber		2.10
5/30/2013	Laura R. Gerber		0.10
5/30/2013	Laura R. Gerber		0.80

5/31/2013	Laura R. Gerber		1.50
6/3/2013	Laura R. Gerber		1.20
6/7/2013	Laura R. Gerber		3.00
6/18/2013	Laura R. Gerber		1.10
6/19/2013	Laura R. Gerber		0.10
6/25/2013	Laura R. Gerber		0.60
6/27/2013	Laura R. Gerber		1.40
6/28/2013	Laura R. Gerber		0.90
6/30/2013	Laura R. Gerber		1.40
7/2/2013	Laura R. Gerber		0.30
7/5/2013	Laura R. Gerber		3.60
7/6/2013	Laura R. Gerber		2.50
7/8/2013	Laura R. Gerber		0.30
7/10/2013	Laura R. Gerber		0.30
7/12/2013	Laura R. Gerber		1.90
7/16/2013	Laura R. Gerber		0.10
7/19/2013	Laura R. Gerber		0.80
7/22/2013	Laura R. Gerber		0.30
8/19/2013	Laura R. Gerber		0.10
8/22/2013	Laura R. Gerber		0.70
8/23/2013	Laura R. Gerber		1.30
8/26/2013	Laura R. Gerber		0.80
8/28/2013	Laura R. Gerber		3.30

8/29/2013	Laura R. Gerber		6.10
8/30/2013	Laura R. Gerber		4.90
9/3/2013	Laura R. Gerber		3.40
9/5/2013	Laura R. Gerber		1.50
9/6/2013	Laura R. Gerber		3.60
9/9/2013	Laura R. Gerber		1.50
9/10/2013	Laura R. Gerber		4.20
9/11/2013	Laura R. Gerber		2.60
9/12/2013	Laura R. Gerber		1.50
9/13/2013	Laura R. Gerber		0.30
9/13/2013	Laura R. Gerber		1.60
10/1/2013	Laura R. Gerber		1.00
10/1/2013	Laura R. Gerber		1.00
10/2/2013	Laura R. Gerber		0.50
10/17/2013	Laura R. Gerber		0.20
10/22/2013	Laura R. Gerber		0.80

10/23/2013	Laura R. Gerber		0.10
10/24/2013	Laura R. Gerber		0.20
10/28/2013	Laura R. Gerber		3.90
11/5/2013	Laura R. Gerber		0.30
11/6/2013	Laura R. Gerber		1.20
11/7/2013	Laura R. Gerber		0.40
11/8/2013	Laura R. Gerber		2.80
11/11/2013	Laura R. Gerber		0.40
11/12/2013	Laura R. Gerber		0.40
11/12/2013	Laura R. Gerber		0.70
11/12/2013	Laura R. Gerber		1.10
11/13/2013	Laura R. Gerber		1.60
11/14/2013	Laura R. Gerber		0.40
12/6/2013	Laura R. Gerber		0.30
12/9/2013	Laura R. Gerber		0.60
12/10/2013	Laura R. Gerber		0.90
12/11/2013	Laura R. Gerber		1.20
12/12/2013	Laura R. Gerber		0.70
12/13/2013	Laura R. Gerber		0.30

12/17/2013	Laura R. Gerber		9.00
12/18/2013	Laura R. Gerber		11.00
12/22/2013	Laura R. Gerber		0.40
12/23/2013	Laura R. Gerber		1.30
12/26/2013	Laura R. Gerber		0.20
12/27/2013	Laura R. Gerber		0.10
12/27/2013	Laura R. Gerber		0.20
12/30/2013	Laura R. Gerber		0.20
1/2/2014	Laura R. Gerber		0.20
1/6/2014	Laura R. Gerber		0.30
1/7/2014	Laura R. Gerber		0.30
1/15/2014	Laura R. Gerber		0.10
1/16/2014	Laura R. Gerber		0.10
2/6/2014	Laura R. Gerber		0.80
2/25/2014	Laura R. Gerber		0.10
2/27/2014	Laura R. Gerber		0.50
3/4/2014	Laura R. Gerber		1.00
6/30/2014	Laura R. Gerber		0.20
9/29/2014	Laura R. Gerber		0.40
12/2/2014	Laura R. Gerber		0.10
2/25/2015	Laura R. Gerber		0.30
3/17/2015	Laura R. Gerber		0.50
7/2/2015	Laura R. Gerber		0.90
7/6/2015	Laura R. Gerber		0.10
7/7/2015	Laura R. Gerber		0.20
7/30/2015	Laura R. Gerber		0.20
8/25/2015	Laura R. Gerber		0.40
8/26/2015	Laura R. Gerber		0.10
9/23/2015	Laura R. Gerber		0.10

2/4/2016	Laura R. Gerber		0.20
4/25/2016	Laura R. Gerber		0.20
5/12/2016	Laura R. Gerber		0.30
8/2/2016	Laura R. Gerber		1.90
8/3/2016	Laura R. Gerber		3.30
8/9/2016	Laura R. Gerber		0.10
9/8/2016	Laura R. Gerber		2.60
9/9/2016	Laura R. Gerber		0.40
9/22/2016	Laura R. Gerber		0.80
9/23/2016	Laura R. Gerber		0.80
12/6/2012	Lauren M. Arnaud		0.50
12/10/2012	Lauren M. Arnaud		2.00
12/13/2012	Lauren M. Arnaud		1.70
12/19/2012	Lauren M. Arnaud		0.50
1/2/2013	Lauren M. Arnaud		4.20
1/3/2013	Lauren M. Arnaud		3.50
1/4/2013	Lauren M. Arnaud		4.60

1/7/2013	Lauren M. Arnaud		1.80
1/8/2013	Lauren M. Arnaud		2.50
1/9/2013	Lauren M. Arnaud		1.20
1/10/2013	Lauren M. Arnaud		3.50
1/16/2013	Lauren M. Arnaud		1.20
1/17/2013	Lauren M. Arnaud		3.50
1/28/2013	Lauren M. Arnaud		0.80
1/29/2013	Lauren M. Arnaud		0.90
1/30/2013	Lauren M. Arnaud		0.80
1/31/2013	Lauren M. Arnaud		3.50
11/4/2013	Lauren M. Arnaud		0.40
1/12/2015	Laurie B. Ashton		0.70

1/18/2015	Laurie B. Ashton		0.90
6/8/2015	Laurie B. Ashton		1.00
6/10/2015	Laurie B. Ashton		1.50
6/27/2015	Laurie B. Ashton		1.20
9/17/2012	Lindsay N. Pearson		1.00
10/23/2012	Lindsay N. Pearson		2.00
1/3/2013	Loretta Y. Haley		2.00
1/4/2013	Loretta Y. Haley		2.00
1/7/2013	Loretta Y. Haley		2.00
1/8/2013	Loretta Y. Haley		2.00
1/10/2013	Loretta Y. Haley		2.00
2/28/2013	Loretta Y. Haley		2.00
10/21/2009	Lynn Lincoln Sarko		0.30
11/3/2009	Lynn Lincoln Sarko		0.50
11/22/2009	Lynn Lincoln Sarko		0.40
12/11/2009	Lynn Lincoln Sarko		1.00
1/12/2010	Lynn Lincoln Sarko		1.00
1/25/2010	Lynn Lincoln Sarko		0.50
2/3/2010	Lynn Lincoln Sarko		0.50
2/8/2010	Lynn Lincoln Sarko		0.50
3/2/2010	Lynn Lincoln Sarko		0.30
3/3/2010	Lynn Lincoln Sarko		0.80
3/12/2010	Lynn Lincoln Sarko		1.00
4/10/2010	Lynn Lincoln Sarko		0.50
4/11/2010	Lynn Lincoln Sarko		0.50
4/22/2010	Lynn Lincoln Sarko		0.50
4/29/2010	Lynn Lincoln Sarko		0.50

5/3/2010	Lynn Lincoln Sarko	0.50
5/29/2010	Lynn Lincoln Sarko	0.50
6/1/2010	Lynn Lincoln Sarko	0.20
7/28/2010	Lynn Lincoln Sarko	0.50
8/19/2010	Lynn Lincoln Sarko	0.50
8/22/2010	Lynn Lincoln Sarko	0.50
8/25/2010	Lynn Lincoln Sarko	0.50
1/22/2011	Lynn Lincoln Sarko	0.30
2/15/2011	Lynn Lincoln Sarko	0.50
2/15/2011	Lynn Lincoln Sarko	0.30
3/8/2011	Lynn Lincoln Sarko	0.50
7/22/2011	Lynn Lincoln Sarko	0.50
7/23/2011	Lynn Lincoln Sarko	0.50
8/22/2011	Lynn Lincoln Sarko	0.20
10/21/2011	Lynn Lincoln Sarko	1.00
10/25/2011	Lynn Lincoln Sarko	0.50
8/1/2012	Lynn Lincoln Sarko	0.30
9/5/2012	Lynn Lincoln Sarko	1.00
9/5/2012	Lynn Lincoln Sarko	0.30
9/6/2012	Lynn Lincoln Sarko	0.50
9/7/2012	Lynn Lincoln Sarko	1.50
9/10/2012	Lynn Lincoln Sarko	1.00
9/11/2012	Lynn Lincoln Sarko	2.40
9/12/2012	Lynn Lincoln Sarko	2.00
9/13/2012	Lynn Lincoln Sarko	0.20
9/16/2012	Lynn Lincoln Sarko	1.50
9/18/2012	Lynn Lincoln Sarko	2.50
9/19/2012	Lynn Lincoln Sarko	2.00
9/20/2012	Lynn Lincoln Sarko	0.30
9/24/2012	Lynn Lincoln Sarko	0.60
9/25/2012	Lynn Lincoln Sarko	1.30
9/26/2012	Lynn Lincoln Sarko	1.00
9/26/2012	Lynn Lincoln Sarko	0.30
9/27/2012	Lynn Lincoln Sarko	1.00
9/27/2012	Lynn Lincoln Sarko	0.20

9/28/2012	Lynn Lincoln Sarko	1.80
10/10/2012	Lynn Lincoln Sarko	1.00
10/11/2012	Lynn Lincoln Sarko	1.00
10/12/2012	Lynn Lincoln Sarko	0.50
10/17/2012	Lynn Lincoln Sarko	1.00
10/17/2012	Lynn Lincoln Sarko	0.50
10/18/2012	Lynn Lincoln Sarko	0.50
10/19/2012	Lynn Lincoln Sarko	0.60
10/22/2012	Lynn Lincoln Sarko	8.00
10/23/2012	Lynn Lincoln Sarko	8.00
10/24/2012	Lynn Lincoln Sarko	10.00
10/25/2012	Lynn Lincoln Sarko	0.20
10/29/2012	Lynn Lincoln Sarko	1.00
10/30/2012	Lynn Lincoln Sarko	0.50
10/31/2012	Lynn Lincoln Sarko	1.00
11/1/2012	Lynn Lincoln Sarko	2.00
11/2/2012	Lynn Lincoln Sarko	3.80
11/3/2012	Lynn Lincoln Sarko	1.00
11/5/2012	Lynn Lincoln Sarko	2.50
11/7/2012	Lynn Lincoln Sarko	2.00
11/8/2012	Lynn Lincoln Sarko	4.00
11/9/2012	Lynn Lincoln Sarko	2.50
11/12/2012	Lynn Lincoln Sarko	2.50
11/13/2012	Lynn Lincoln Sarko	3.00
11/14/2012	Lynn Lincoln Sarko	8.00
11/15/2012	Lynn Lincoln Sarko	1.00

11/15/2012	Lynn Lincoln Sarko	2.50
11/15/2012	Lynn Lincoln Sarko	7.50
11/15/2012	Lynn Lincoln Sarko	1.00
11/19/2012	Lynn Lincoln Sarko	1.00
11/19/2012	Lynn Lincoln Sarko	1.50
11/20/2012	Lynn Lincoln Sarko	0.20
11/20/2012	Lynn Lincoln Sarko	2.00
11/21/2012	Lynn Lincoln Sarko	2.00
11/26/2012	Lynn Lincoln Sarko	1.00
11/27/2012	Lynn Lincoln Sarko	0.50
11/28/2012	Lynn Lincoln Sarko	1.00
11/29/2012	Lynn Lincoln Sarko	0.50
12/5/2012	Lynn Lincoln Sarko	1.50
12/7/2012	Lynn Lincoln Sarko	2.50
12/9/2012	Lynn Lincoln Sarko	1.50
12/13/2012	Lynn Lincoln Sarko	1.40
12/14/2012	Lynn Lincoln Sarko	0.50
12/14/2012	Lynn Lincoln Sarko	1.90
12/15/2012	Lynn Lincoln Sarko	1.50
12/16/2012	Lynn Lincoln Sarko	2.00
12/17/2012	Lynn Lincoln Sarko	2.20
12/18/2012	Lynn Lincoln Sarko	2.00
12/19/2012	Lynn Lincoln Sarko	2.20
12/24/2012	Lynn Lincoln Sarko	2.00
12/28/2012	Lynn Lincoln Sarko	2.00
12/29/2012	Lynn Lincoln Sarko	2.00
1/2/2013	Lynn Lincoln Sarko	1.00

1/3/2013	Lynn Lincoln Sarko	4.00
1/3/2013	Lynn Lincoln Sarko	0.50
1/4/2013	Lynn Lincoln Sarko	3.00
1/7/2013	Lynn Lincoln Sarko	3.50
1/8/2013	Lynn Lincoln Sarko	4.00
1/9/2013	Lynn Lincoln Sarko	2.50
1/10/2013	Lynn Lincoln Sarko	1.00
1/11/2013	Lynn Lincoln Sarko	2.00
1/14/2013	Lynn Lincoln Sarko	3.20
1/15/2013	Lynn Lincoln Sarko	3.30
1/16/2013	Lynn Lincoln Sarko	2.00
1/17/2013	Lynn Lincoln Sarko	1.50
1/18/2013	Lynn Lincoln Sarko	2.50
1/19/2013	Lynn Lincoln Sarko	2.00
1/21/2013	Lynn Lincoln Sarko	1.50
1/22/2013	Lynn Lincoln Sarko	6.00
1/23/2013	Lynn Lincoln Sarko	3.00
1/24/2013	Lynn Lincoln Sarko	2.50
1/24/2013	Lynn Lincoln Sarko	5.50
1/24/2013	Lynn Lincoln Sarko	6.00

1/27/2013	Lynn Lincoln Sarko		1.00
1/27/2013	Lynn Lincoln Sarko		2.00
1/28/2013	Lynn Lincoln Sarko		2.00
1/29/2013	Lynn Lincoln Sarko		2.50
1/30/2013	Lynn Lincoln Sarko		3.00
2/1/2013	Lynn Lincoln Sarko		1.00
2/4/2013	Lynn Lincoln Sarko		2.00
2/5/2013	Lynn Lincoln Sarko		2.50
2/6/2013	Lynn Lincoln Sarko		3.00
2/7/2013	Lynn Lincoln Sarko		3.00
2/9/2013	Lynn Lincoln Sarko		1.00
2/10/2013	Lynn Lincoln Sarko		2.00
2/12/2013	Lynn Lincoln Sarko		2.40
2/13/2013	Lynn Lincoln Sarko		3.80
2/14/2013	Lynn Lincoln Sarko		2.50
2/15/2013	Lynn Lincoln Sarko		1.00
2/17/2013	Lynn Lincoln Sarko		1.00
2/18/2013	Lynn Lincoln Sarko		3.00
2/18/2013	Lynn Lincoln Sarko		0.50
2/19/2013	Lynn Lincoln Sarko		1.50
2/20/2013	Lynn Lincoln Sarko		2.00
2/21/2013	Lynn Lincoln Sarko		2.00
2/21/2013	Lynn Lincoln Sarko		0.30
2/22/2013	Lynn Lincoln Sarko		1.70
2/25/2013	Lynn Lincoln Sarko		2.50
2/26/2013	Lynn Lincoln Sarko		3.50

2/27/2013	Lynn Lincoln Sarko		3.50
2/27/2013	Lynn Lincoln Sarko		2.00
2/28/2013	Lynn Lincoln Sarko		3.00
3/1/2013	Lynn Lincoln Sarko		4.00
3/3/2013	Lynn Lincoln Sarko		2.00
3/4/2013	Lynn Lincoln Sarko		2.80
3/6/2013	Lynn Lincoln Sarko		2.00
3/11/2013	Lynn Lincoln Sarko		2.00
3/11/2013	Lynn Lincoln Sarko		0.50
3/11/2013	Lynn Lincoln Sarko		0.50
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4/7/2013	Lynn Lincoln Sarko		0.80
4/10/2013	Lynn Lincoln Sarko		1.50

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8/29/2013	Lynn Lincoln Sarko		1.00
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9/12/2013	Lynn Lincoln Sarko		1.00

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12/9/2013	Lynn Lincoln Sarko		2.00

12/17/2013	Lynn Lincoln Sarko		4.00
12/18/2013	Lynn Lincoln Sarko		8.00
12/19/2013	Lynn Lincoln Sarko		1.00
12/20/2013	Lynn Lincoln Sarko		2.00
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8/11/2015	Lynn Lincoln Sarko		1.30
8/12/2015	Lynn Lincoln Sarko		1.60
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8/13/2015	Lynn Lincoln Sarko		1.20
8/14/2015	Lynn Lincoln Sarko		2.20
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8/19/2015	Lynn Lincoln Sarko		1.20
8/19/2015	Lynn Lincoln Sarko		1.50

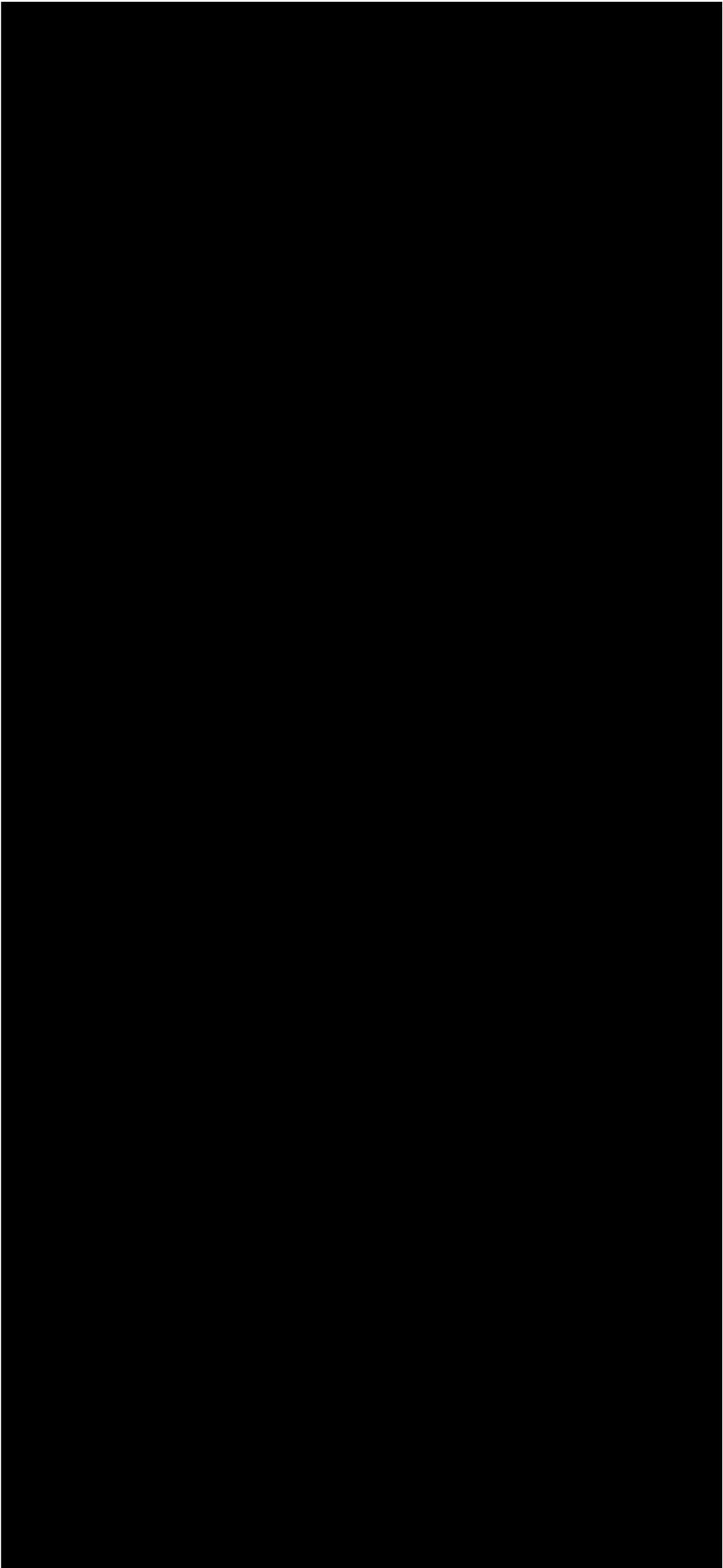
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8/2/2016	Lynn Lincoln Sarko		0.80
8/3/2016	Lynn Lincoln Sarko		0.50
8/8/2016	Lynn Lincoln Sarko		0.50
9/3/2016	Lynn Lincoln Sarko		0.50
10/7/2016	Lynn Lincoln Sarko		3.00

10/19/2016	Lynn Lincoln Sarko		2.10
10/21/2016	Lynn Lincoln Sarko		2.00
10/27/2016	Lynn Lincoln Sarko		2.00
10/28/2016	Lynn Lincoln Sarko		2.00
1/29/2013	Maggie A. Norton		1.90
1/30/2013	Maggie A. Norton		1.10
2/1/2013	Maggie A. Norton		5.00
2/4/2013	Maggie A. Norton		3.50
4/5/2013	Maggie A. Norton		0.70
2/6/2013	Margaret E. Wetherald		3.20
2/7/2013	Margaret E. Wetherald		4.60
2/8/2013	Margaret E. Wetherald		5.30
2/10/2013	Margaret E. Wetherald		0.50
2/11/2013	Margaret E. Wetherald		4.80
2/12/2013	Margaret E. Wetherald		4.20
2/13/2013	Margaret E. Wetherald		6.30

2/14/2013	Margaret E. Wetherald		2.20
2/15/2013	Margaret E. Wetherald		3.50
2/15/2013	Margaret E. Wetherald		3.40
2/16/2013	Margaret E. Wetherald		1.00
2/17/2013	Margaret E. Wetherald		3.60
2/18/2013	Margaret E. Wetherald		1.60
2/19/2013	Margaret E. Wetherald		8.50
2/20/2013	Margaret E. Wetherald		8.30
2/21/2013	Margaret E. Wetherald		7.80



2/22/2013	Margaret E. Wetherald	9.10
2/25/2013	Margaret E. Wetherald	1.60
2/26/2013	Margaret E. Wetherald	7.20
2/27/2013	Margaret E. Wetherald	4.80
2/28/2013	Margaret E. Wetherald	4.20
3/1/2013	Margaret E. Wetherald	0.50
3/3/2013	Margaret E. Wetherald	1.20
3/4/2013	Margaret E. Wetherald	5.30

3/5/2013	Margaret E. Wetherald		2.90
3/6/2013	Margaret E. Wetherald		7.60
3/7/2013	Margaret E. Wetherald		1.80
3/8/2013	Margaret E. Wetherald		9.10
3/10/2013	Margaret E. Wetherald		2.90
3/11/2013	Margaret E. Wetherald		7.50
3/12/2013	Margaret E. Wetherald		4.40
3/13/2013	Margaret E. Wetherald		6.20
3/14/2013	Margaret E. Wetherald		0.70
3/15/2013	Margaret E. Wetherald		9.30

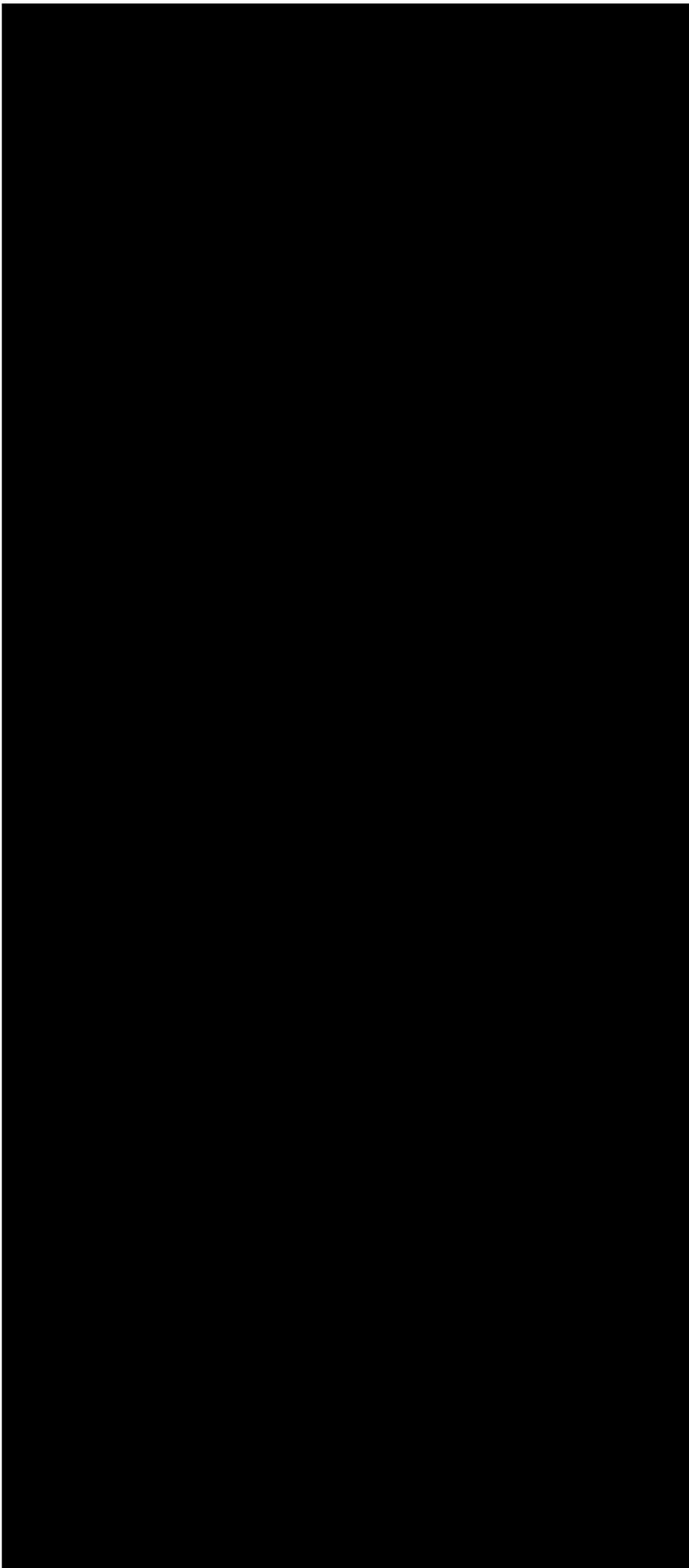
3/18/2013	Margaret E. Wetherald	1.60
3/21/2013	Margaret E. Wetherald	2.10
3/22/2013	Margaret E. Wetherald	2.30
4/5/2013	Margaret E. Wetherald	1.60
4/9/2013	Margaret E. Wetherald	1.10
4/17/2013	Margaret E. Wetherald	0.40
6/5/2013	Margaret E. Wetherald	2.20
6/7/2013	Margaret E. Wetherald	2.20
6/10/2013	Margaret E. Wetherald	7.40
7/23/2013	Margaret E. Wetherald	0.50
11/15/2013	Margaret E. Wetherald	0.80
2/26/2015	Margaret E. Wetherald	0.70
6/10/2011	Melanie A. Pugh	1.20
6/13/2011	Melanie A. Pugh	5.30
6/14/2011	Melanie A. Pugh	6.30
6/15/2011	Melanie A. Pugh	7.10
6/16/2011	Melanie A. Pugh	1.80
3/8/2013	Michael J. Thompson	2.00
3/11/2013	Michael J. Thompson	3.50
3/12/2013	Michael J. Thompson	2.00
3/13/2013	Michael J. Thompson	2.00
3/14/2013	Michael J. Thompson	2.00
3/15/2013	Michael J. Thompson	1.25
3/18/2013	Michael J. Thompson	2.50
10/23/2013	Michael J. Thompson	1.00
10/24/2013	Michael J. Thompson	2.00
11/7/2013	Michael J. Thompson	2.00

11/12/2013	Michael J. Thompson		0.50
6/10/2011	Michael S. Cady		2.00
6/13/2011	Michael S. Cady		2.80
6/23/2011	Michael S. Cady		3.20
6/24/2011	Michael S. Cady		2.80
6/27/2011	Michael S. Cady		3.30
11/5/2009	Nathan F. Moe		3.00
11/6/2009	Nathan F. Moe		4.00
9/13/2016	Robert O. Mittenthal		0.50
9/9/2014	Sandra J. Douglas		0.50
10/23/2013	Sara Duncan Lenentine		0.80
10/24/2013	Sara Duncan Lenentine		5.00
10/25/2013	Sara Duncan Lenentine		4.30
11/10/2013	Sara Duncan Lenentine		8.80
11/11/2013	Sara Duncan Lenentine		0.50
12/10/2013	Sara Duncan Lenentine		0.10
11/28/2012	Sara Lenentine		5.10
11/29/2012	Sara Lenentine		3.30
12/3/2012	Sara Lenentine		1.40
12/5/2012	Sara Lenentine		0.80

12/5/2012	Sara Lenentine	[REDACTED]	0.90
12/6/2012	Sara Lenentine	[REDACTED]	2.30
12/7/2012	Sara Lenentine	[REDACTED]	1.60
12/11/2012	Sara Lenentine	[REDACTED]	5.90
12/12/2012	Sara Lenentine	[REDACTED]	1.70
12/14/2012	Sara Lenentine	[REDACTED]	7.60
12/17/2012	Sara Lenentine	[REDACTED]	3.10
12/18/2012	Sara Lenentine	[REDACTED]	4.90
12/19/2012	Sara Lenentine	[REDACTED]	1.00
12/20/2012	Sara Lenentine	[REDACTED]	4.10
12/21/2012	Sara Lenentine	[REDACTED]	6.40

1/2/2013	Sara Lenentine		6.40
1/3/2013	Sara Lenentine		2.40
1/4/2013	Sara Lenentine		4.00
1/7/2013	Sara Lenentine		2.00
1/8/2013	Sara Lenentine		3.00
1/9/2013	Sara Lenentine		7.50
1/10/2013	Sara Lenentine		5.60
1/11/2013	Sara Lenentine		6.90
1/12/2013	Sara Lenentine		2.50
1/14/2013	Sara Lenentine		6.40

1/15/2013	Sara Lenentine	[REDACTED]	6.20
1/16/2013	Sara Lenentine	[REDACTED]	6.50
1/17/2013	Sara Lenentine	[REDACTED]	5.90
1/18/2013	Sara Lenentine	[REDACTED]	5.80
1/22/2013	Sara Lenentine	[REDACTED]	2.90
1/23/2013	Sara Lenentine	[REDACTED]	0.90
1/28/2013	Sara Lenentine	[REDACTED]	6.20
1/29/2013	Sara Lenentine	[REDACTED]	4.60
1/30/2013	Sara Lenentine	[REDACTED]	7.00



1/31/2013	Sara Lenentine		7.90
2/1/2013	Sara Lenentine		8.50
2/4/2013	Sara Lenentine		6.00
2/5/2013	Sara Lenentine		5.90
2/6/2013	Sara Lenentine		7.20
2/7/2013	Sara Lenentine		7.70
2/8/2013	Sara Lenentine		1.00

2/8/2013	Sara Lenentine		5.80
2/9/2013	Sara Lenentine		5.50
2/10/2013	Sara Lenentine		0.50
2/11/2013	Sara Lenentine		5.90
2/12/2013	Sara Lenentine		9.40
2/13/2013	Sara Lenentine		7.20
2/14/2013	Sara Lenentine		6.70
2/15/2013	Sara Lenentine		7.30
2/17/2013	Sara Lenentine		3.50
2/18/2013	Sara Lenentine		1.00
2/19/2013	Sara Lenentine		6.40
2/20/2013	Sara Lenentine		8.60

2/21/2013	Sara Lenentine		7.30
2/22/2013	Sara Lenentine		5.70
2/25/2013	Sara Lenentine		2.60
2/27/2013	Sara Lenentine		9.50
2/28/2013	Sara Lenentine		7.90
3/1/2013	Sara Lenentine		6.50
3/4/2013	Sara Lenentine		7.50
3/5/2013	Sara Lenentine		6.40
3/6/2013	Sara Lenentine		1.00
3/6/2013	Sara Lenentine		5.40

3/7/2013	Sara Lenentine	[REDACTED]	6.10
3/8/2013	Sara Lenentine	[REDACTED]	6.50
3/11/2013	Sara Lenentine	[REDACTED]	9.50
3/12/2013	Sara Lenentine	[REDACTED]	9.50
3/13/2013	Sara Lenentine	[REDACTED]	9.20
3/18/2013	Sara Lenentine	[REDACTED]	1.00
3/25/2013	Sara Lenentine	[REDACTED]	1.00
4/1/2013	Sara Lenentine	[REDACTED]	1.10

4/3/2013	Sara Lenentine		1.00
4/5/2013	Sara Lenentine		1.80
12/19/2012	Susan V. James		2.20
1/7/2013	Susan V. James		2.50
1/9/2013	Susan V. James		1.00
1/10/2013	Susan V. James		3.40
1/11/2013	Susan V. James		0.40
1/14/2013	Susan V. James		3.20
1/15/2013	Susan V. James		3.10
1/17/2013	Susan V. James		0.80
1/18/2013	Susan V. James		1.80
1/28/2013	Susan V. James		2.40
1/29/2013	Susan V. James		3.80
1/30/2013	Susan V. James		3.20
1/31/2013	Susan V. James		4.20
2/1/2013	Susan V. James		2.00

2/4/2013	Susan V. James		1.20
2/5/2013	Susan V. James		2.80
2/6/2013	Susan V. James		2.40
2/7/2013	Susan V. James		3.20
2/11/2013	Susan V. James		1.70
2/12/2013	Susan V. James		3.00
2/13/2013	Susan V. James		2.70
2/14/2013	Susan V. James		0.50
2/19/2013	Susan V. James		0.50
2/27/2013	Susan V. James		2.50
2/28/2013	Susan V. James		1.80
3/1/2013	Susan V. James		0.50
3/6/2013	Susan V. James		1.30
4/3/2013	Susan V. James		2.50
4/4/2013	Susan V. James		1.70
11/5/2013	Susan V. James		3.30
11/6/2013	Susan V. James		2.20

11/7/2013	Susan V. James		2.00
11/8/2013	Susan V. James		2.00
11/10/2013	Susan V. James		3.00
11/11/2013	Susan V. James		4.70
1/24/2014	Susan V. James		1.50
3/6/2015	T. David Copley		6.00
3/17/2015	T. David Copley		1.30
5/12/2015	T. David Copley		3.30
5/13/2015	T. David Copley		2.80
7/9/2015	T. David Copley		0.60
8/25/2015	T. David Copley		0.50
8/26/2015	T. David Copley		2.40
8/28/2015	T. David Copley		2.20
9/1/2015	T. David Copley		0.50
9/3/2015	T. David Copley		1.50
9/11/2015	T. David Copley		0.30
9/14/2015	T. David Copley		0.30
9/23/2015	T. David Copley		0.30
10/22/2015	T. David Copley		0.50
12/10/2015	T. David Copley		0.40
12/14/2015	T. David Copley		0.80
12/15/2015	T. David Copley		0.90
12/16/2015	T. David Copley		2.30
12/17/2015	T. David Copley		0.50
12/21/2015	T. David Copley		2.80
12/22/2015	T. David Copley		0.40
12/23/2015	T. David Copley		2.20

1/12/2016	T. David Copley	0.10
1/15/2016	T. David Copley	1.50
2/2/2016	T. David Copley	1.20
2/3/2016	T. David Copley	0.40
2/4/2016	T. David Copley	0.50
2/9/2016	T. David Copley	1.40
2/10/2016	T. David Copley	0.50
2/16/2016	T. David Copley	0.20
2/19/2016	T. David Copley	1.20
2/25/2016	T. David Copley	2.00
3/11/2016	T. David Copley	0.10
3/22/2016	T. David Copley	0.70
3/24/2016	T. David Copley	2.00
3/25/2016	T. David Copley	0.80
3/28/2016	T. David Copley	1.00
4/8/2016	T. David Copley	0.80
4/15/2016	T. David Copley	1.40
4/20/2016	T. David Copley	0.40
4/21/2016	T. David Copley	1.20
4/27/2016	T. David Copley	0.60
5/2/2016	T. David Copley	0.40
5/3/2016	T. David Copley	0.60
5/4/2016	T. David Copley	1.80
5/5/2016	T. David Copley	0.30

5/9/2016	T. David Copley		0.80
5/10/2016	T. David Copley		0.70
5/11/2016	T. David Copley		0.70
5/12/2016	T. David Copley		0.90
5/13/2016	T. David Copley		0.80
5/23/2016	T. David Copley		0.50
5/24/2016	T. David Copley		0.30
5/26/2016	T. David Copley		0.70
6/8/2016	T. David Copley		1.30
6/13/2016	T. David Copley		1.50
6/14/2016	T. David Copley		1.20
6/15/2016	T. David Copley		0.90
6/16/2016	T. David Copley		0.70
6/17/2016	T. David Copley		0.80
6/20/2016	T. David Copley		1.30
6/21/2016	T. David Copley		2.90

6/22/2016	T. David Copley		7.90
6/23/2016	T. David Copley		17.60
6/28/2016	T. David Copley		2.90
6/30/2016	T. David Copley		0.40
7/12/2016	T. David Copley		0.40
7/13/2016	T. David Copley		0.90
7/21/2016	T. David Copley		0.50
9/7/2016	T. David Copley		3.20
9/8/2016	T. David Copley		5.40
9/9/2016	T. David Copley		3.90
9/14/2016	T. David Copley		0.50
9/15/2016	T. David Copley		0.50
9/16/2016	T. David Copley		0.50
10/3/2016	T. David Copley		1.70
10/12/2016	T. David Copley		0.40
10/21/2016	T. David Copley		0.40

10/26/2016	T. David Copley		1.00
10/27/2016	T. David Copley		0.30
10/29/2016	T. David Copley		0.30
11/1/2016	T. David Copley		6.00
11/2/2016	T. David Copley		15.60
10/23/2009	Tana Lin		1.60
<b>Grand Total</b>			<b>4,769.45</b>

# **EX. 247**

## LIEFF CABRASER HEIMANN &amp; BERNSTEIN, LLP

Report created on 3/22/2017 3:44:10 PM  
Timekeeper: allFrom: INCEPTION  
To: 08/31/16

## 3344-0002 STATE STREET - ARKANSAS TEACHERS

Date	Timekeeper	Narrative	Hours	Task Code
7/22/2008	ALAMEDA, SCOTT	Research and print out information re [REDACTED] funds from State Street Funds.	0.6	
3/12/2010	ALAMEDA, SCOTT	CD duplications.	0.4	
2/15/2011	ANTHONY, RICHARD	Search for information on former employees: Dimitri (Dmitri) Prianjinski, Mark Lacey and Kimberly Walski.	0.7	
3/9/2011	ANTHONY, RICHARD	Search for former employees of State Street Corporation that worked with Forex accounts.	1.8	
4/7/2015	ASHLYNN, WILLOW	Analyze contents of numerous production discs.	1.9	
4/10/2015	ASHLYNN, WILLOW	Discuss pending project with K. Dugar.	0.2	
5/13/2015	ASHLYNN, WILLOW	Review email from R. Wintterle; review data in question; reply re same.	0.4	
5/15/2015	ASHLYNN, WILLOW	Email re project to K. Dugar.	0.2	
5/20/2015	ASHLYNN, WILLOW	Discuss project with R. Sturtevant and K. Dugar; project planning and creation of directory in P drive; begin drafting detailed instructional memoranda for reviewers.	3.3	
5/21/2015	ASHLYNN, WILLOW	Create draft instructions; revisions to same; discussions with K. Dugar and R. Sturtevant re same. Review folder structure and foldered documents in State Street Catalyst database.	2.6	
5/22/2015	ASHLYNN, WILLOW	Review email and review attachment. Reply re same.	0.6	
5/26/2015	ASHLYNN, WILLOW	Discussion of project with K. Dugar; respond to inquiry by R. Wintterle; further discussion with K. Dugar re V. Weiss, surface review of memoranda; reply email to V. Weiss.	1.9	
5/27/2015	ASHLYNN, WILLOW	Locate and download exhibits; save same; troubleshoot failed hyperlinks; emails to/from Word Processing re same; discussions and emails with K. Dugar re same.	5.7	
5/28/2015	ASHLYNN, WILLOW	Downloading exhibits; review memoranda; hyperlink exhibits for multiple memoranda.	7.5	
5/29/2015	ASHLYNN, WILLOW	Create Excel spreadsheet re project status; email draft to K. Dugar and meet to discuss project; review and hyperlink memo of J. Glyyard; email to D. Chiplock re same. Draft group email re additional topic memos; respond to inquiry from P. Roos.	4.2	
6/1/2015	ASHLYNN, WILLOW	Discussion with K. Dugar re project; create excel spreadsheet to track memo status; review memos, quality check hyperlinks and respond to emails re project.	3.1	
6/2/2015	ASHLYNN, WILLOW	Review and continue hyperlinking extensive memo of L. Nutting; email re same; follow up re additional memoranda.	2.3	
6/4/2015	ASHLYNN, WILLOW	Review contract attorney memoranda; locate documents; batch print documents; upload and hyperlink documents.	3.7	
6/5/2015	ASHLYNN, WILLOW	Review memo of Leah Nutting; locate documents; print; export and hyperlink same.	5.2	
6/8/2015	ASHLYNN, WILLOW	Troubleshoot failed search for StateSt_CA_LIT05881083-1098; emails with K. Dugar and C. Jordan re same.	0.5	
6/9/2015	ASHLYNN, WILLOW	Search for, bulk print, download and upload specific documents to P drive; hyperlink citations in memorandum of J. Leggett. Email re same to D. Chiplock.	4.1	
6/11/2015	ASHLYNN, WILLOW	Review status log; responses and update Excel.	0.2	
6/16/2015	ASHLYNN, WILLOW	Locate, bulk print, download and save documents to the P drive; hyperlink memoranda. Review and reply to C. Jordan's email inquiry. Email to D. Chiplock enclosing hyperlinked memo.	2.1	
6/22/2015	ASHLYNN, WILLOW	Troubleshoot deletion of categorization tags within Catalyst; emails re same; discuss approach with K. Dugar; search database for specific bates, bulk print, download and save to P drive.	3.9	
6/23/2015	ASHLYNN, WILLOW	Multiple emails with A. Eyck re categorization folders and location of search results; creation of topic memo folder. Review memo of R. Wintterle and respond to inquiry re her project memo status.	2.2	
6/25/2015	ASHLYNN, WILLOW	Review and respond to inquiry from C. Jordan re new topic memo folder.	0.2	
6/26/2015	ASHLYNN, WILLOW	Reviewing and hyperlinking memoranda.	2.2	
6/29/2015	ASHLYNN, WILLOW	Locate documents using Catalyst via bates number, bulk print, download and save documents to P drive; review memoranda and hyperlink same.	4.1	
6/30/2015	ASHLYNN, WILLOW	Meet with K. Dugar re project status. Discuss and send group email notifying reviewers to wind down the project.	0.5	
7/1/2015	ASHLYNN, WILLOW	Draft emails to all review attorneys re wind-down; meet with K. Dugar; review incoming memo of J. Glyyard.	3.4	
7/2/2015	ASHLYNN, WILLOW	Surface review of multiple incoming memos for specific content; respond to some; meet with K. Dugar re same. Search for documents; bulk print, download, save and hyperlink citations within Code of Conduct memorandum.	4.3	
7/6/2015	ASHLYNN, WILLOW	Complete hyperlinking memo of R. Wintterle; email to D. Chiplock re same. Review and reply to email from J. Zaul re memo, review same.	2.7	
7/7/2015	ASHLYNN, WILLOW	Update reviewer status on Excel spreadsheet.	0.4	
7/8/2015	ASHLYNN, WILLOW	Review and reply to request, replace document with updated version.	0.4	
7/21/2015	ASHLYNN, WILLOW	Discuss Catalyst database with K. Dugar; telephone conversations with and email to M. Hastings re closing database and archival of data.	1.1	
7/23/2015	ASHLYNN, WILLOW	Email to Catalyst requesting status of export and invoice.	0.2	
7/24/2015	ASHLYNN, WILLOW	Phone call and email follow up with Catalyst to close database and obtain final status.	0.2	
7/27/2015	ASHLYNN, WILLOW	Review emails from M. Hastings of Catalyst re invoicing and archival of the database; discuss with K. Dugar; locate bates numbers as an example. Complete draft archival form. Email Federal Express account number to Catalyst for return of all physical media.	0.7	
7/28/2015	ASHLYNN, WILLOW	Complete Catalyst Database Deactivation and Archival form, obtain signature, scan and email same to Catalyst. Read email threads.	0.3	
8/1/2015	ASHLYNN, WILLOW	Check on status of Catalyst export/archival. Email to M. Calangian re same.	0.2	
1/21/2015	ASHUR, TANYA	Attend Catalyst document review software training for document review, review complaint and coding guide in preparation for document review.	3.5	
1/22/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000364534 - SST_KHR_SSGM_E000364201.	8	
1/23/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000390792 - SST_KHR_SSGM_E000391375.	8	
1/26/2015	ASHUR, TANYA	Review State Street docs, SST_KHR_SSGM_E000379362 - SST_KHR_SSGM_E000392109.	8	
1/27/2015	ASHUR, TANYA	Review State Street docs, SST_KHR_SSGM_E000341201 - SST_KHR_SSGM_E000341653.	8	
1/28/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000342006 - SST_KHR_SSGM_E000342679.	8	
1/29/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000342925 - SST_KHR_SSGM_E000343411.	8	
1/30/2015	ASHUR, TANYA	Review State Street docs, SST_KHR_SSGM_E000343424 - SST_KHR_SSGM_E000344670.	8	
2/2/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000238809 - SST_KHR_SSGM_E000349909.	8	
2/3/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000350920 - SST_KHR_SSGM_E000352426.	8	
2/4/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000352431 - SST_KHR_SSGM_E000352836.	8	
2/5/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000352883 - SST_KHR_SSGM_E000353293.	8	
2/6/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000353305 - SST_KHR_SSGM_E000353676.	8	
2/9/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000353698 - SST_KHR_SSGM_E000354012.	8	
2/10/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000354014 - SST_KHR_SSGM_E000354409.	8	
2/11/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000354459 - SST_KHR_SSGM_E000354908.	8	
2/12/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000354913 - SST_KHR_SSGM_E000355524.	8	
2/13/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000355533 - SST_KHR_SSGM_E000355900.	8	
2/17/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000355911 - SST_KHR_SSGM_E000356457.	8	
2/18/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000356472 - SST_KHR_SSGM_E3569912.	8	
2/19/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000357045 - SST_KHR_SSGM_E000357448.	8	
2/20/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000357451 - SST_KHR_SSGM_E000357881.	8	
2/23/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000357899 - SST_KHR_SSGM_E358356.	8	
2/24/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000358438 - SST_KHR_SSGM_E000359060.	8	
2/25/2015	ASHUR, TANYA	Review State Street documents, SST_KHR_SSGM_E000359064 - SST_KHR_SSGM_E000359410.	8	
3/3/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000361717 - SST_KHR_SSGM_E000362085).	8	
3/4/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000362109 - SST_KHR_SSGM_E000363220).	8	
3/5/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000363266 - SST_KHR_SSGM_E000364100).	8	

3/6/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000364108 - SST_KHR_SSGM_E000364537).	8	
3/9/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000364543 - SST_KHR_SSGM_E000365012).	8	
3/10/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000365030 - SST_KHR_SSGM_E000365659).	8	
3/11/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000365717 - SST_KHR_SSGM_E000366075).	8	
3/12/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000366077 - SST_KHR_SSGM_E000367062).	8	
3/13/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000367108 - SST_KHR_SSGM_E000367633).	8	
3/16/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000524340 - SST_KHR_SSGM_E000524913).	8	
3/17/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000524919 - SST_KHR_SSGM_E000525337).	8	
3/18/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000525343 - SST_KHR_SSGM_E000525750).	8	
3/19/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000525814 - SST_KHR_SSGM_E000526122).	8	8
3/20/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000526124 - SST_KHR_SSGM_E000527278).	8	8
3/23/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000527281 - SST_KHR_SSGM_E000528150).	8	8
3/24/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000528165 - SST_KHR_SSGM_E000528566).	8	8
3/25/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000528809 - SST_KHR_SSGM_E000529179).	8	8
3/27/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000529185 - SST_KHR_SSGM_E000529602).	8	8
3/30/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000529607 - SST_KHR_SSGM_E000530105).	8	8
3/31/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000530112 - SST_KHR_SSGM_E000530508).	8	8
4/1/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000530510 - SST_KHR_SSGM_E000531093).	8	8
4/2/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000531163 - SST_KHR_SSGM_E000532415).	8	8
4/3/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000532425 - SST_KHR_SSGM_E000532922).	8	8
4/8/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000532927 - SST_KHR_SSGM_E000533410).	8	8
4/7/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000533436 - SST_KHR_SSGM_E000534179).	8	8
4/8/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000534180 - SST_KHR_SSGM_E000534732).	8	8
4/9/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000534748 - SST_KHR_SSGM_E000535110).	8	8
4/10/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000535164 - SST_KHR_SSGM_E000535617).	8	8
4/13/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000536210 - SST_KHR_SSGM_E000536660).	8	8
4/14/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000536662 - SST_KHR_SSGM_E000537194).	8	8
4/15/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000537197 - SST_KHR_SSGM_E000538123).	8	8
4/16/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000538124 - SST_KHR_SSGM_E000539103).	8	8
4/17/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000538124 - SST_KHR_SSGM_E000539103).	8	8
4/20/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000538124 - SST_KHR_SSGM_E000539103).	8	8
4/21/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000544487 - SST_KHR_SSGM_E000547298).	8	8
4/22/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000547320 - SST_KHR_SSGM_E000548102).	8	8
4/23/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000548116 - SST_KHR_SSGM_E000548352).	8	8
4/24/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000548354 - SST_KHR_SSGM_E000548740).	8	8
4/27/2015	ASHUR, TANYA	Review State Street documents (SSFQDOL-E000028104 - SST_KHR_SSGM_E000708760).	8	8
4/28/2015	ASHUR, TANYA	Review State Street documents (SSFQDOL-E000074446 - SST_KHR_SSGM_E000077668).	8	8
4/29/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000704767 - SST_KHR_SSGM_E001187650).	8	8
4/29/2015	ASHUR, TANYA	Review State Street documents (SST_LIT011635.019 - SST_KHR_SSGM_E001402078).	8	8
5/1/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001401844 - SST_KHR_SSGM_E001187027).	8	8
5/4/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001403912 - SST_KHR_SSGM_E002871101).	8	8
5/5/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000939337 - SST_KHR_SSGM_E001027336).	8	8
5/6/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001202487 - SST_KHR_SSGM_E001658268).	8	8
5/7/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000512322 - SST_KHR_SSGM_E000545132).	8	8
5/8/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001631554 - SST_KHR_SSGM_E001667438).	8	8
5/11/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000555334 - SST_KHR_SSGM_E000706004).	8	8
5/12/2015	ASHUR, TANYA	Review State Street documents (StateSt_CA_LIT00378055 - StateSt_CA_LIT00389681).	8	8
5/13/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000861551 - SST_KHR_SSGM_E000999800).	8	8
5/14/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001412932 - SST_KHR_SSGM_E001660560).	8	8
5/15/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E002864624 - SST_KHR_SSGM_E002886009).	8	8
5/18/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E002674426 - SST_KHR_SSGM_E002892930).	8	8
5/19/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001140309 - SST_KHR_SSGM_E001217228).	8	8
5/20/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001326300 - SST_KHR_SSGM_E001451432).	8	8
5/21/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E001855635 - SST_KHR_SSGM_E001901187).	8	8
5/22/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E002415769 - SST_KHR_SSGM_E002599601).	8	8
5/26/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E002675899 - SST_KHR_SSGM_E002875851).	8	8
5/27/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E002884431 - SST_KHR_SSGM_E002886009).	8	8
5/28/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000057511 - SST_KHR_SSGM_E000008122).	8	8
5/29/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000019263 - SST_KHR_SSGM_E000063864).	8	8
6/1/2015	ASHUR, TANYA	Review documents (SST_KHR_SSGM_E000063872 - SST_KHR_SSGM_E000073697).	8	8
6/2/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000076240 - SST_KHR_SSGM_E000077438).	8	8
6/3/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000077470 - SST_KHR_SSGM_E000078212).	8	8
6/4/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000078340 - SST_KHR_SSGM_E000079512).	8	8
6/5/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000081304 - SST_KHR_SSGM_E000081982).	8	8
6/8/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000082339 - SST_KHR_SSGM_E000083379).	8	8
6/10/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000092565 - SST_KHR_SSGM_E000093152).	8	8
6/11/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000095426 - SST_KHR_SSGM_E000098359).	8	8
6/12/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000099020 - SST_KHR_SSGM_E000112692).	8	8
6/15/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000127399 - SST_KHR_SSGM_E000183091).	8	8
6/16/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000195059 - SST_KHR_SSGM_E000256093).	8	8
6/17/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000256462 - SST_KHR_SSGM_E000270654).	8	8
6/18/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000271411 - SST_KHR_SSGM_E000290300).	8	8
6/19/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000328755 - SST_KHR_SSGM_E000330441).	8	8
6/22/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000399546 - SST_KHR_SSGM_E000411373).	8	8
6/23/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000411383 - SST_KHR_SSGM_E000420555).	8	8
6/24/2015	ASHUR, TANYA	Review State Street documents (SST_KHR_SSGM_E000420626 - SST_KHR_SSGM_E000422506).	8	8
6/25/2015	ASHUR, TANYA	Draft and edit "best execution" memo.	8	8
6/26/2015	ASHUR, TANYA	Draft and edit "best execution" memo.	8	8
10/7/2009	BARNETT, KATHRYN	Receive data disks, emails with co counsel regarding distribution of same and arrange for copying of same.	0.4	
12/30/2009	BARNETT, KATHRYN	Review draft supplement statement of case; email with team regarding same.	1.2	
6/6/2011	BEHRMANN, DAWN	Get pleadings and create binders for S. Fineman, D. Chiplock and M. Miami.	0.7	
12/10/2012	BEHRMANN, DAWN	Attempt to open disk of documents for D. Chiplock. Download encryption software. Work with Help Desk. Emails to K Dugar regarding documents.	0.7	
2/21/2013	BLOOMFIELD, JOSHUA	Review emails, pleadings and memoranda in connection with case project and assignment.	4.5	
2/21/2013	BLOOMFIELD, JOSHUA	Telephone conference with K. Dugar re Catalyst training; familiarize with Catalyst Insight review tool and database.	1.5	
2/22/2013	BLOOMFIELD, JOSHUA	Document review.	5	
2/22/2013	BLOOMFIELD, JOSHUA	Review emails, pleadings and memoranda in connection with case project and assignment.	2.8	
2/22/2013	BLOOMFIELD, JOSHUA	Telephone conference with D. Chiplock re case overview.	0.3	
2/25/2013	BLOOMFIELD, JOSHUA	Document review.	7	
2/25/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	1	
2/26/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
2/26/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
2/27/2013	BLOOMFIELD, JOSHUA	Document review.	4	
2/28/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
2/28/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
3/1/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
3/1/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/3/2013	BLOOMFIELD, JOSHUA	Document review.	4	
3/4/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	

3/4/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/5/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
3/5/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/6/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
3/6/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/7/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
3/7/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/8/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
3/8/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
3/10/2013	BLOOMFIELD, JOSHUA	Document review.	6	
3/11/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
3/11/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
3/12/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
3/12/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
3/13/2013	BLOOMFIELD, JOSHUA	Document review.	4	
3/14/2013	BLOOMFIELD, JOSHUA	Document review.	7.5	
3/14/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.5	
3/15/2013	BLOOMFIELD, JOSHUA	Document review.	5.8	
3/15/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/17/2013	BLOOMFIELD, JOSHUA	Document review.	8	
3/19/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
3/19/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/20/2013	BLOOMFIELD, JOSHUA	Document review.	4.8	
3/20/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/21/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
3/21/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/22/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
3/22/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/23/2013	BLOOMFIELD, JOSHUA	Document review.	8	
3/24/2013	BLOOMFIELD, JOSHUA	Document review.	8	
3/25/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
3/25/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.5	
3/26/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
3/26/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.3	
3/27/2013	BLOOMFIELD, JOSHUA	Document review.	5.8	
3/27/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
3/28/2013	BLOOMFIELD, JOSHUA	Document review.	8	
3/29/2013	BLOOMFIELD, JOSHUA	Document review.	4	
3/30/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/1/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/2/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/3/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/4/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
4/4/2013	BLOOMFIELD, JOSHUA	Review and respond to emails in connection with case project and assignment.	0.3	
4/5/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/7/2013	BLOOMFIELD, JOSHUA	Document review.	4	
4/9/2013	BLOOMFIELD, JOSHUA	Document review.	3.8	
4/9/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
4/10/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/11/2013	BLOOMFIELD, JOSHUA	Document review.	7.8	
4/11/2013	BLOOMFIELD, JOSHUA	Review emails in connection with case project and assignment.	0.3	
4/12/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/13/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/16/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/17/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/18/2013	BLOOMFIELD, JOSHUA	Document review.	7	
4/18/2013	BLOOMFIELD, JOSHUA	Telephone conference with review team re review status.	1	
4/19/2013	BLOOMFIELD, JOSHUA	Document review.	5.5	
4/19/2013	BLOOMFIELD, JOSHUA	Draft email re Catalyst performance.	0.3	
4/19/2013	BLOOMFIELD, JOSHUA	Telephone call with K. Dugar re Catalyst performance.	0.3	
4/20/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/21/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/23/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/24/2013	BLOOMFIELD, JOSHUA	Document review.	6	
4/25/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/26/2013	BLOOMFIELD, JOSHUA	Document review.	8	
4/30/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/1/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/2/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/3/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/4/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/5/2013	BLOOMFIELD, JOSHUA	Document review.	5	
5/7/2013	BLOOMFIELD, JOSHUA	Document review.	4	
5/8/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/9/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/10/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/11/2013	BLOOMFIELD, JOSHUA	Document review.	4	
5/12/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/13/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/14/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/15/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/16/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/18/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/19/2013	BLOOMFIELD, JOSHUA	Document review.	4	
5/20/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/22/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/23/2013	BLOOMFIELD, JOSHUA	Document review.	8	
5/24/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/25/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/26/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/28/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/29/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/30/2013	BLOOMFIELD, JOSHUA	Document review.	6	
5/31/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/1/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/2/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/4/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/5/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/6/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/7/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/8/2013	BLOOMFIELD, JOSHUA	Document review.	8	

6/9/2013	BLOOMFIELD, JOSHUA	Document review.	4	
6/11/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/12/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/13/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/14/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/15/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/16/2013	BLOOMFIELD, JOSHUA	Document review.	4	
6/18/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/19/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/20/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/21/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/22/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/23/2013	BLOOMFIELD, JOSHUA	Document review.	6	
6/25/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/26/2013	BLOOMFIELD, JOSHUA	Document review.	4	
6/27/2013	BLOOMFIELD, JOSHUA	Document review.	4	
6/28/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/29/2013	BLOOMFIELD, JOSHUA	Document review.	8	
6/30/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/1/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/2/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/3/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/6/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/8/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/9/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/10/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/11/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/12/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/14/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/15/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/16/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/18/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/19/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/20/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/22/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/23/2013	BLOOMFIELD, JOSHUA	Document review.	4	
7/25/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/26/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/27/2013	BLOOMFIELD, JOSHUA	Document review.	8	
7/28/2013	BLOOMFIELD, JOSHUA	Document review.	4	
7/29/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/30/2013	BLOOMFIELD, JOSHUA	Document review.	6	
7/31/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/1/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/2/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/3/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/5/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/6/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/7/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/8/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/9/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/10/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/12/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/13/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/14/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/15/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/16/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/17/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/19/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/20/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/21/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/22/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/23/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/24/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/26/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/27/2013	BLOOMFIELD, JOSHUA	Document review.	8	
8/28/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/29/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/30/2013	BLOOMFIELD, JOSHUA	Document review.	6	
8/31/2013	BLOOMFIELD, JOSHUA	Document review.	6	
9/3/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/4/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/5/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/6/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/7/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/8/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/9/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/10/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/12/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/13/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/14/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/15/2013	BLOOMFIELD, JOSHUA	Document review.	4	
9/16/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/17/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/18/2013	BLOOMFIELD, JOSHUA	Document review.	6	
9/19/2013	BLOOMFIELD, JOSHUA	Document review.	6	
9/20/2013	BLOOMFIELD, JOSHUA	Document review.	6	
9/22/2013	BLOOMFIELD, JOSHUA	Document review.	6	
9/23/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/24/2013	BLOOMFIELD, JOSHUA	Document review.	8	
9/25/2013	BLOOMFIELD, JOSHUA	Document review.	7	
9/26/2013	BLOOMFIELD, JOSHUA	Document review.	3	
1/22/2015	BLOOMFIELD, JOSHUA	Document review; background case materials and exemplar hot documents.	8	
1/25/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000236246 to SST_KHR_SSGM_E000235110.	8	
1/27/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000235093 to SST_KHR_SSGM_E000234506.	8	
1/28/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000233261 to SST_KHR_SSGM_E000198989.	6	
1/29/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000235448 to SST_KHR_SSGM_E000216253.	6	
1/30/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000216250 to SST_KHR_SSGM_E000198073.	8	
1/31/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000196054 to SST_KHR_SSGM_E000182314.	6	
2/1/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000195945 to SST_KHR_SSGM_E000182198.	6	
2/3/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM_E000180284 to SST_KHR_SSGM_E000146487.	8	

2/4/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000230533 to SST_KHR_SSGM E000217117.	6	
2/5/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000217106 to SST_KHR_SSGM E000215988.	8	
2/6/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000215990 to SST_KHR_SSGM E000199745.	8	
2/7/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000199679 to SST_KHR_SSGM E000198705.	4	
2/8/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000198669 to SST_KHR_SSGM E000196456.	6	
2/9/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000197780 to SST_KHR_SSGM E000188302.	8	
2/10/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000188258 to SST_KHR_SSGM E000185356.	8	
2/11/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000185342 to SST_KHR_SSGM E000182764.	6	
2/12/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000182759 to SST_KHR_SSGM E000173573.	6	
2/13/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000173565 to SST_KHR_SSGM E000141292.	6	
2/17/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000233077 to SST_KHR_SSGM E000229210.	8	
2/18/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000229202 to SST_KHR_SSGM E000223167.	3	
2/19/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000223143 to SST_KHR_SSGM E000216583.	6	
2/20/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000216577 to SST_KHR_SSGM E000215806.	6	
2/22/2015	BLOOMFIELD, JOSHUA	Document review, bates range SST_KHR_SSGM E000215798 - SST_KHR_SSGM E000210366.	6	
2/28/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000222758 to SST_KHR_SSGM E000216494.	6	
3/1/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000216493 to SST_KHR_SSGM E000213046.	6	
3/3/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000194366 to SST_KHR_SSGM E000188072.	6	
3/4/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000187705 to SST_KHR_SSGM E000184061.	6	
3/5/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000184038 to SST_KHR_SSGM E000182249.	8	
3/8/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000182225 to SST_KHR_SSGM E000180033.	8	
3/7/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000234619 to SST_KHR_SSGM E000197803.	6	
3/8/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000196832 to SST_KHR_SSGM E000142483.	6	
3/9/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000235393 to SST_KHR_SSGM E000233158.	8	
3/10/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000233159 to SST_KHR_SSGM E000229717.	8	
3/11/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000229711 to SST_KHR_SSGM E000224327.	8	
3/13/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000229020 to SST_KHR_SSGM E000156256.	8	
3/15/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000196399 to SST_KHR_SSGM E000194696.	8	
3/17/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000196052 to SST_KHR_SSGM E0001838086.	6	
3/18/2015	BLOOMFIELD, JOSHUA	Document review, Bates range SST_KHR_SSGM E000187181 to SST_KHR_SSGM E000185328.	6	
3/19/2015	BLOOMFIELD, JOSHUA	Document review, Bates range SST_KHR_SSGM E000185245 to SST_KHR_SSGM E000183441.	8	
3/20/2015	BLOOMFIELD, JOSHUA	Document review, Bates range SST_KHR_SSGM E000232863 to SST_KHR_SSGM E000185686.	8	
3/22/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000185211 to SST_KHR_SSGM E000141031.	6	
3/24/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000230978 to SST_KHR_SSGM E000221872.	8	
3/25/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000212659 to SST_KHR_SSGM E000211876.	8	
3/26/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000222399 to SST_KHR_SSGM E000216749.	8	
3/27/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000216743 to SST_KHR_SSGM E000216018.	6	
3/28/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000215772 to SST_KHR_SSGM E000212039.	6	
3/31/2015	BLOOMFIELD, JOSHUA	Reviewed documents Bates range SST_KHR_SSGM E000212034 to SST_KHR_SSGM E000209355.	6	
4/1/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000200567 to SST_KHR_SSGM E000199097.	6	6
4/2/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000198953 to SST_KHR_SSGM E000197996.	8	
4/3/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000197314 to SST_KHR_SSGM E000196027.	8	
4/4/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000195736 to SST_KHR_SSGM E000194751.	6	
4/5/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000194600 to SST_KHR_SSGM E000188772.	6	
4/7/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000147218 to SST_KHR_SSGM E000166966.	8	8
4/8/2015	BLOOMFIELD, JOSHUA	Review documents: Bates range SST_KHR_SSGM E000167042 to SST_KHR_SSGM E000181968.	6	
4/9/2015	BLOOMFIELD, JOSHUA	Document review, Bates range SST_KHR_SSGM E000181971 to SST_KHR_SSGM E000185634.	8	
4/10/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000185638 to SST_KHR_SSGM E000194724.	6	
4/11/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000195411 to SST_KHR_SSGM E000199257.	6	
4/12/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000200571 to SST_KHR_SSGM E000216538.	6	
4/14/2015	BLOOMFIELD, JOSHUA	Document review of Bates range SST_KHR_SSGM E000181284 to SST_KHR_SSGM E000183491.	8	
4/15/2015	BLOOMFIELD, JOSHUA	Document review of Bates range SST_KHR_SSGM E000184244 to SST_KHR_SSGM E000191541.	6	
4/16/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000194421 to SST_KHR_SSGM E000195752.	8	
4/17/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000195775 to SST_KHR_SSGM E000199005.	6	
4/18/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000200279 to SST_KHR_SSGM E000215732.	6	8
4/19/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000216223 to SST_KHR_SSGM E000223044.	6	
4/20/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000188814 to SST_KHR_SSGM E000195285.	6	
4/21/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000195290 to SST_KHR_SSGM E000196094.	6	
4/22/2015	BLOOMFIELD, JOSHUA	Review of documents Bates range SSFXDOL-E000075905 to SST_KHR_SSGM E000766580.	8	
4/23/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000766632 to SST_KHR_SSGM E001319061.	8	
4/24/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001365433 to SST_KHR_SSGM E0002670419.	8	
4/25/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E002678983 to StateSt_CA_LIT06325126.	4	
4/27/2015	BLOOMFIELD, JOSHUA	Document review: Bates range StateSt_CA_LIT00426059 to StateSt_CA_LIT05987904.	8	
4/28/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000010270 to SST_KHR_SSGM E000729484.	8	
4/29/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000732822 to StateSt_CA_LIT06203147.	8	
4/30/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000120346 to SST_KHR_SSGM E000768449.	8	
5/1/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000773905 to StateSt_CA_LIT01926560.	8	
5/4/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000083858 to SST_KHR_SSGM E0000873834.	6	
5/5/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000876568 to StateSt_CA_LIT05977836.	6	
5/8/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000004441 to SST_KHR_SSGM E001103651.	8	
5/7/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001104814 to SST_KHR_SSGM E002886074.	8	
5/8/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000010280 to StateSt_CA_LIT01982478.	8	
5/9/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000007461 to SST_KHR_SSGM E0001696315.	4	
5/12/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000102065 to StateSt_CA_LIT06142728.	8	
5/13/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000004418 to SST_KHR_SSGM E000502334.	8	
5/14/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000685035 to SST_KHR_SSGM E001212934.	8	
5/15/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001231651 to SST_KHR_SSGM E002886037.	8	
5/16/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SS-CAL00169 to SST_KHR_SSGM E000737404.	4	
5/17/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000740718 to StateSt_CA_LIT05879382.	4	
5/19/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000046221 to StateSt_CA_LIT05071404.	8	
5/20/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SS-CAL06728 to SST_KHR_SSGM E001039624.	8	
5/21/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001288741 to StateSt_CA_LIT02239685.	8	
5/22/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000759194 to StateSt_CA_LIT06008905; draft memo re "Riskless Transactions/Riskless" topic.	8	
5/23/2015	BLOOMFIELD, JOSHUA	Draft memo re "Riskless Transactions/Riskless" topic.	4	
5/24/2015	BLOOMFIELD, JOSHUA	Draft memo re "Riskless Transactions/Riskless" topic.	4	
5/26/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000077343 to StateSt_CA_LIT00472516; Draft memo re "Riskless Transactions/Riskless" topic.	8	
5/27/2015	BLOOMFIELD, JOSHUA	Document review of Bates range SSFXDOL-E000030645 to SST_KHR_SSGM E000995293; finalize memo re "Riskless Transactions/Riskless" topic.	8	
5/28/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001102603 to StateSt_CA_LIT04947920.	8	
5/29/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000422035 to SST_KHR_SSGM E002782489.	8	
6/1/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000064088 to SST_KHR_SSGM E001211438.	8	
6/2/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001276445 to StateSt_CA_LIT05881594.	8	
6/3/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SSFXDOL-E000015354 to SST_KHR_SSGM E001195493.	8	
6/4/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E001322613 to StateSt_CA_LIT06208909.	8	
6/5/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST-ARTRS 0059672 to StateSt_CA_LIT06326823.	8	
6/8/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000001044 to SST_KHR_SSGM E000216140.	8	
6/9/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000216746 to SST_KHR_SSGM E000452845.	8	
6/10/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000452861 to SST_KHR_SSGM E000495689.	8	
6/11/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM E000495695 to SST_KHR_SSGM E001102460.	8	

6/12/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E001102461 to SST_KHR_SSGM_E001177412.	8
6/15/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E001177428 to SST_KHR_SSGM_E001354699.	8
6/16/2015	BLOOMFIELD, JOSHUA	Document review of Bates ranges SST_KHR_SSGM_E001354709 to SST_KHR_SSGM_E001503137.	8
6/17/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E001503645 to SST_KHR_SSGM_E001854009.	8
6/18/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E001854011 to SST_KHR_SSGM_E002220454.	8
6/19/2015	BLOOMFIELD, JOSHUA	Document review - Bates range SST_KHR_SSGM_E002221007 to SST_KHR_SSGM_E002886069.	8
6/22/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SS-CAL07008 to SS_CAL_E0039364.	8
6/23/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SS_CAL_E0039495 to StateSt_CA_LIT06326485.	8
6/24/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E001399434 to StateSt_CA_LIT06287130.	8
6/25/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E000001746 to SST_KHR_SSGM_E000924328.	8
6/26/2015	BLOOMFIELD, JOSHUA	Document review: Bates range SST_KHR_SSGM_E000924815 to SST_KHR_SSGM_E001888481.	8
2/19/2013	BREHM, ELIZABETH	Introductory calls and training; background reading to familiarize with case.	6
2/20/2013	BREHM, ELIZABETH	Document review.	9.3
2/21/2013	BREHM, ELIZABETH	Read opposition to motion to dismiss; document review.	4
2/22/2013	BREHM, ELIZABETH	Document review of State Street documents.	7.5
2/22/2013	BREHM, ELIZABETH	Weekly report for D. Chiplock.	0.5
2/23/2013	BREHM, ELIZABETH	Document review and communication with other document reviewers.	3
2/25/2013	BREHM, ELIZABETH	Document review and communication with other document reviewers.	7.3
2/26/2013	BREHM, ELIZABETH	Document review.	6.8
2/27/2013	BREHM, ELIZABETH	Document review.	6
2/28/2013	BREHM, ELIZABETH	Document review.	5
3/1/2013	BREHM, ELIZABETH	Document review.	5
3/4/2013	BREHM, ELIZABETH	Document review.	5
3/5/2013	BREHM, ELIZABETH	Document review; communication with other reviewers.	7.3
3/6/2013	BREHM, ELIZABETH	Document review.	6.3
3/7/2013	BREHM, ELIZABETH	Document review; communication with K. Dugar re document review software.	6.3
3/8/2013	BREHM, ELIZABETH	Document review.	7
3/11/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock.	6
3/12/2013	BREHM, ELIZABETH	Document review.	2.3
3/13/2013	BREHM, ELIZABETH	Document review; weekly report.	5.5
3/14/2013	BREHM, ELIZABETH	Document review; email communication with review team and Catalyst support.	6.5
3/15/2013	BREHM, ELIZABETH	Document review.	4.5
3/18/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamond.	4.3
3/19/2013	BREHM, ELIZABETH	Document review.	5.5
3/20/2013	BREHM, ELIZABETH	Document review.	5.3
3/21/2013	BREHM, ELIZABETH	Document review.	6.3
3/22/2013	BREHM, ELIZABETH	Document review.	3.5
3/25/2013	BREHM, ELIZABETH	Document review.	3
3/26/2013	BREHM, ELIZABETH	Document review.	3
3/27/2013	BREHM, ELIZABETH	Document review.	5.5
3/28/2013	BREHM, ELIZABETH	Document review.	5.5
3/29/2013	BREHM, ELIZABETH	Document review.	4.5
4/1/2013	BREHM, ELIZABETH	Document review.	5.3
4/2/2013	BREHM, ELIZABETH	Document review.	5.3
4/3/2013	BREHM, ELIZABETH	Document review.	6.8
4/4/2013	BREHM, ELIZABETH	Document review.	3.3
4/5/2013	BREHM, ELIZABETH	Document review.	5.3
4/7/2013	BREHM, ELIZABETH	Document review.	0.3
4/8/2013	BREHM, ELIZABETH	Document review.	6.8
4/9/2013	BREHM, ELIZABETH	Document review.	4.3
4/10/2013	BREHM, ELIZABETH	Document review.	1.3
4/11/2013	BREHM, ELIZABETH	Document review.	3
4/12/2013	BREHM, ELIZABETH	Document review.	5.3
4/15/2013	BREHM, ELIZABETH	Document review.	3.5
4/16/2013	BREHM, ELIZABETH	Document review.	6.3
4/17/2013	BREHM, ELIZABETH	Document review.	4
4/18/2013	BREHM, ELIZABETH	Document review; call with D. Chiplock and review team.	6.5
4/19/2013	BREHM, ELIZABETH	Document review.	5.3
4/22/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamond.	4
4/23/2013	BREHM, ELIZABETH	Document review.	5.3
4/24/2013	BREHM, ELIZABETH	Document review.	5.8
4/25/2013	BREHM, ELIZABETH	Document review.	2
4/26/2013	BREHM, ELIZABETH	Document review.	4.5
4/29/2013	BREHM, ELIZABETH	Document review.	7
4/30/2013	BREHM, ELIZABETH	Document review.	2.3
5/1/2013	BREHM, ELIZABETH	Document review.	2.5
5/2/2013	BREHM, ELIZABETH	Document review.	6.3
5/3/2013	BREHM, ELIZABETH	Document review.	6.3
5/7/2013	BREHM, ELIZABETH	Document review.	5.3
5/8/2013	BREHM, ELIZABETH	Document review.	4
5/9/2013	BREHM, ELIZABETH	Document review.	2.5
5/10/2013	BREHM, ELIZABETH	Document review.	5
5/15/2013	BREHM, ELIZABETH	Document review.	5.5
5/16/2013	BREHM, ELIZABETH	Document review.	5
5/17/2013	BREHM, ELIZABETH	Document review.	5
5/20/2013	BREHM, ELIZABETH	Document review.	5.3
5/21/2013	BREHM, ELIZABETH	Document review.	5.3
5/22/2013	BREHM, ELIZABETH	Document review.	6.3
5/23/2013	BREHM, ELIZABETH	Document review.	5.3
5/24/2013	BREHM, ELIZABETH	Document review.	4.8
5/28/2013	BREHM, ELIZABETH	Document review.	6
5/29/2013	BREHM, ELIZABETH	Document review.	5.5
5/30/2013	BREHM, ELIZABETH	Document review.	6
5/31/2013	BREHM, ELIZABETH	Document review.	6.3
6/3/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamond.	7.3
6/4/2013	BREHM, ELIZABETH	Document review.	5.3
6/5/2013	BREHM, ELIZABETH	Document review.	7.3
6/6/2013	BREHM, ELIZABETH	Document review.	5
6/7/2013	BREHM, ELIZABETH	Document review.	6
6/10/2013	BREHM, ELIZABETH	Document review.	6.5
6/11/2013	BREHM, ELIZABETH	Document review.	5.3
6/12/2013	BREHM, ELIZABETH	Document review.	5.5
6/13/2013	BREHM, ELIZABETH	Document review.	4.5
6/14/2013	BREHM, ELIZABETH	Document review.	7
6/17/2013	BREHM, ELIZABETH	Document review.	4
6/18/2013	BREHM, ELIZABETH	Document review.	6
6/19/2013	BREHM, ELIZABETH	Document review.	4
6/20/2013	BREHM, ELIZABETH	Document review.	5.5
6/21/2013	BREHM, ELIZABETH	Document review.	4.3
6/24/2013	BREHM, ELIZABETH	Document review.	6.5
6/25/2013	BREHM, ELIZABETH	Document review.	3.8

6/26/2013	BREHM, ELIZABETH	Document review.	4	
6/27/2013	BREHM, ELIZABETH	Document review.	5.3	
6/28/2013	BREHM, ELIZABETH	Document review.	4.5	
7/1/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	4.8	
7/2/2013	BREHM, ELIZABETH	Document review.	2.5	
7/3/2013	BREHM, ELIZABETH	Document review.	7	
7/8/2013	BREHM, ELIZABETH	Document review.	8	
7/9/2013	BREHM, ELIZABETH	Document review.	1	
7/10/2013	BREHM, ELIZABETH	Document review.	5	
7/11/2013	BREHM, ELIZABETH	Document review.	6	
7/12/2013	BREHM, ELIZABETH	Document review.	5.3	
7/15/2013	BREHM, ELIZABETH	Document review.	5.5	
7/16/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.5	
7/17/2013	BREHM, ELIZABETH	Document review.	4.8	
7/18/2013	BREHM, ELIZABETH	Document review.	6.3	
7/19/2013	BREHM, ELIZABETH	Document review.	5.5	
7/22/2013	BREHM, ELIZABETH	Document review.	6.3	
7/23/2013	BREHM, ELIZABETH	Document review.	2	
7/25/2013	BREHM, ELIZABETH	Document review.	5	
7/26/2013	BREHM, ELIZABETH	Document review.	4	
7/29/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.3	
7/30/2013	BREHM, ELIZABETH	Document review.	4	
7/31/2013	BREHM, ELIZABETH	Document review.	5	
8/1/2013	BREHM, ELIZABETH	Document review.	5	
8/2/2013	BREHM, ELIZABETH	Document review.	4.3	
8/5/2013	BREHM, ELIZABETH	Document review.	5	
8/6/2013	BREHM, ELIZABETH	Document review.	4	
8/7/2013	BREHM, ELIZABETH	Document review.	4	
8/8/2013	BREHM, ELIZABETH	Document review.	5.8	
8/9/2013	BREHM, ELIZABETH	Document review.	5.3	
8/12/2013	BREHM, ELIZABETH	Document review.	6.5	
8/13/2013	BREHM, ELIZABETH	Document review.	5	
8/14/2013	BREHM, ELIZABETH	Document review.	1.8	
8/15/2013	BREHM, ELIZABETH	Document review.	4	
8/16/2013	BREHM, ELIZABETH	Document review.	6	
8/19/2013	BREHM, ELIZABETH	Document review.	4.5	
8/20/2013	BREHM, ELIZABETH	Document review.	4.5	
8/21/2013	BREHM, ELIZABETH	Document review.	3	
8/22/2013	BREHM, ELIZABETH	Document review.	5.5	
8/23/2013	BREHM, ELIZABETH	Document review.	4	
8/26/2013	BREHM, ELIZABETH	Document review.	3	
8/27/2013	BREHM, ELIZABETH	Document review.	2	
8/28/2013	BREHM, ELIZABETH	Document review.	2	
8/29/2013	BREHM, ELIZABETH	Document review.	5	
8/30/2013	BREHM, ELIZABETH	Document review.	6	
9/3/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	7.5	
9/4/2013	BREHM, ELIZABETH	Document review.	5	8
9/5/2013	BREHM, ELIZABETH	Document review.	2.5	
9/6/2013	BREHM, ELIZABETH	Document review.	7	
9/9/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.3	
9/10/2013	BREHM, ELIZABETH	Document review.	4	
9/11/2013	BREHM, ELIZABETH	Document review.	5	
9/12/2013	BREHM, ELIZABETH	Document review.	5.5	
9/13/2013	BREHM, ELIZABETH	Document review.	5	
9/16/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6	
9/17/2013	BREHM, ELIZABETH	Document review.	5	
9/18/2013	BREHM, ELIZABETH	Document review.	5.5	
9/19/2013	BREHM, ELIZABETH	Document review.	4.8	
9/20/2013	BREHM, ELIZABETH	Document review.	5	
9/23/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6	
9/24/2013	BREHM, ELIZABETH	Document review.	5.5	
9/25/2013	BREHM, ELIZABETH	Document review.	4.5	
9/26/2013	BREHM, ELIZABETH	Document review.	5.8	
9/27/2013	BREHM, ELIZABETH	Document review.	5.3	
9/30/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.5	
10/1/2013	BREHM, ELIZABETH	Document review.	4	
10/2/2013	BREHM, ELIZABETH	Document review.	4	
10/3/2013	BREHM, ELIZABETH	Document review.	5.5	
10/4/2013	BREHM, ELIZABETH	Document review.	5.3	
10/7/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6	
10/8/2013	BREHM, ELIZABETH	Document review.	7	
10/9/2013	BREHM, ELIZABETH	Document review.	5	
10/10/2013	BREHM, ELIZABETH	Document review.	5.5	
10/11/2013	BREHM, ELIZABETH	Document review.	4	
10/14/2013	BREHM, ELIZABETH	Document review.	5	
10/15/2013	BREHM, ELIZABETH	Document review.	7	
10/17/2013	BREHM, ELIZABETH	Document review.	5.5	
10/18/2013	BREHM, ELIZABETH	Document review.	5.3	
10/20/2013	BREHM, ELIZABETH	Document review.	2.3	
10/21/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.3	
10/22/2013	BREHM, ELIZABETH	Document review.	4.8	
10/23/2013	BREHM, ELIZABETH	Document review.	5.5	
10/24/2013	BREHM, ELIZABETH	Document review.	5.3	
10/25/2013	BREHM, ELIZABETH	Document review.	5.5	
10/28/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5	
10/29/2013	BREHM, ELIZABETH	Document review.	3.8	
10/30/2013	BREHM, ELIZABETH	Document review.	4	
10/31/2013	BREHM, ELIZABETH	Document review.	3.3	
11/1/2013	BREHM, ELIZABETH	Document review.	5.5	
11/4/2013	BREHM, ELIZABETH	Document review.	6.5	
11/5/2013	BREHM, ELIZABETH	Document review.	6	
11/6/2013	BREHM, ELIZABETH	Document review.	4	
11/7/2013	BREHM, ELIZABETH	Document review.	4.8	
11/8/2013	BREHM, ELIZABETH	Document review.	5	
11/11/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6	
11/12/2013	BREHM, ELIZABETH	Document review.	4	
11/13/2013	BREHM, ELIZABETH	Document review.	3.5	
11/14/2013	BREHM, ELIZABETH	Document review.	7	
11/15/2013	BREHM, ELIZABETH	Document review.	6.5	
11/18/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.3	
11/19/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.5	

11/20/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.8	
11/21/2013	BREHM, ELIZABETH	Document review.	4.8	
11/22/2013	BREHM, ELIZABETH	Document review.	6	
11/25/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	6.3	
11/26/2013	BREHM, ELIZABETH	Document review.	7.3	
11/27/2013	BREHM, ELIZABETH	Document review.	7.8	
11/30/2013	BREHM, ELIZABETH	Document review.	5	
12/2/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	7	
12/3/2013	BREHM, ELIZABETH	Document review.	3.3	
12/4/2013	BREHM, ELIZABETH	Document review.	4.3	
12/5/2013	BREHM, ELIZABETH	Document review.	6	
12/6/2013	BREHM, ELIZABETH	Document review.	5	
12/9/2013	BREHM, ELIZABETH	Document review.	5	
12/10/2013	BREHM, ELIZABETH	Document review.	5.5	
12/11/2013	BREHM, ELIZABETH	Document review.	7.5	
12/12/2013	BREHM, ELIZABETH	Document review.	4	
12/13/2013	BREHM, ELIZABETH	Document review.	6.5	
12/16/2013	BREHM, ELIZABETH	Document review.	5	
12/17/2013	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5	
12/18/2013	BREHM, ELIZABETH	Document review.	4.3	
12/19/2013	BREHM, ELIZABETH	Document review.	4.8	
12/20/2013	BREHM, ELIZABETH	Document review.	6.3	
12/23/2013	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6.8	
12/24/2013	BREHM, ELIZABETH	Document review.	3.5	
12/26/2013	BREHM, ELIZABETH	Document review.	4.3	
12/27/2013	BREHM, ELIZABETH	Document review.	5	
12/30/2013	BREHM, ELIZABETH	Document review.	6.5	
12/31/2013	BREHM, ELIZABETH	Document review.	4.3	
1/2/2014	BREHM, ELIZABETH	Document review.	8	
1/3/2014	BREHM, ELIZABETH	Document review.	7.5	
1/6/2014	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5	
1/7/2014	BREHM, ELIZABETH	Document review.	1.5	
1/10/2014	BREHM, ELIZABETH	Document review.	4.3	
1/13/2014	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	6.3	
1/14/2014	BREHM, ELIZABETH	Document review.	5.3	
1/15/2014	BREHM, ELIZABETH	Document review.	3	
1/16/2014	BREHM, ELIZABETH	Document review.	2.3	
1/17/2014	BREHM, ELIZABETH	Document review.	5	
1/19/2014	BREHM, ELIZABETH	Document review.	5.5	
1/20/2014	BREHM, ELIZABETH	Document review.	6.3	
1/21/2014	BREHM, ELIZABETH	Document review.	5	
1/22/2014	BREHM, ELIZABETH	Document review.	5.3	
1/23/2014	BREHM, ELIZABETH	Document review.	6.3	
1/24/2014	BREHM, ELIZABETH	Document review.	5	
1/27/2014	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	2.5	
1/28/2014	BREHM, ELIZABETH	Document review.	4	
1/29/2014	BREHM, ELIZABETH	Document review.	4.3	
2/7/2014	BREHM, ELIZABETH	Document review.	6.5	
2/12/2014	BREHM, ELIZABETH	Document review.	3	
2/13/2014	BREHM, ELIZABETH	Document review.	4	
2/14/2014	BREHM, ELIZABETH	Document review.	5	
2/15/2014	BREHM, ELIZABETH	Document review.	4.5	
2/18/2014	BREHM, ELIZABETH	Document review.	4.8	
2/20/2014	BREHM, ELIZABETH	Document review.	2.5	
2/21/2014	BREHM, ELIZABETH	Document review.	6.5	
2/24/2014	BREHM, ELIZABETH	Document review.	5.3	
2/25/2014	BREHM, ELIZABETH	Document review.	6	
2/26/2014	BREHM, ELIZABETH	Document review.	2.3	
2/27/2014	BREHM, ELIZABETH	Document review.	4	
2/28/2014	BREHM, ELIZABETH	Document review.	1.5	
3/3/2014	BREHM, ELIZABETH	Document review.	3	
3/6/2014	BREHM, ELIZABETH	Document review.	2	
3/7/2014	BREHM, ELIZABETH	Document review.	2.3	
3/12/2014	BREHM, ELIZABETH	Document review.	4.5	
3/22/2014	BREHM, ELIZABETH	Document review.	4	
3/27/2014	BREHM, ELIZABETH	Document review.	5	
3/28/2014	BREHM, ELIZABETH	Document review.	5.8	
3/31/2014	BREHM, ELIZABETH	Document review.	4.5	
4/1/2014	BREHM, ELIZABETH	Document review.	4.8	
4/3/2014	BREHM, ELIZABETH	Document review.	4.5	
4/4/2014	BREHM, ELIZABETH	Document review.	2.5	
4/7/2014	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	3	
4/8/2014	BREHM, ELIZABETH	Document review.	4.5	
4/11/2014	BREHM, ELIZABETH	Document review.	2.8	
4/16/2014	BREHM, ELIZABETH	Document review.	3.5	
4/23/2014	BREHM, ELIZABETH	Document review.	2.5	
4/28/2014	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5.3	
4/29/2014	BREHM, ELIZABETH	Document review.	2	
4/30/2014	BREHM, ELIZABETH	Document review.	2.5	
5/1/2014	BREHM, ELIZABETH	Document review.	2	
5/2/2014	BREHM, ELIZABETH	Document review.	1.3	
5/7/2014	BREHM, ELIZABETH	Document review.	2	
5/8/2014	BREHM, ELIZABETH	Document review; weekly report to D. Chiplock and N. Diamand.	3.3	
5/20/2014	BREHM, ELIZABETH	Document review.	3.5	
5/22/2014	BREHM, ELIZABETH	Document review.	2	
5/27/2014	BREHM, ELIZABETH	Document review.	4	
5/28/2014	BREHM, ELIZABETH	Document review; weekly report to N. Diamand and D. Chiplock.	5	
5/29/2014	BREHM, ELIZABETH	Document review.	3	
5/30/2014	BREHM, ELIZABETH	Document review.	2.5	
6/4/2014	BREHM, ELIZABETH	Document review.	1.3	
6/6/2014	BREHM, ELIZABETH	Document review.	1.3	
6/7/2014	BREHM, ELIZABETH	Document review.	1	
6/11/2014	BREHM, ELIZABETH	Document review.	2.3	
6/12/2014	BREHM, ELIZABETH	Document review.	2.5	
6/18/2014	BREHM, ELIZABETH	Document review.	2	
6/23/2014	BREHM, ELIZABETH	Document review.	2.3	
6/28/2014	BREHM, ELIZABETH	Document review.	2	
6/29/2014	BREHM, ELIZABETH	Document review.	5.3	
6/30/2014	BREHM, ELIZABETH	Document review.	6.8	
7/1/2014	BREHM, ELIZABETH	Document review.	7.3	
7/2/2014	BREHM, ELIZABETH	Document review.	2	

7/4/2014	BREHM, ELIZABETH	Document review.	3	
7/7/2014	BREHM, ELIZABETH	Document review.	2.3	
7/8/2014	BREHM, ELIZABETH	Document review.	3.3	
7/9/2014	BREHM, ELIZABETH	Document review.	1.5	
7/12/2014	BREHM, ELIZABETH	Document review.	3.3	
7/16/2014	BREHM, ELIZABETH	Document review.	2.3	
7/21/2014	BREHM, ELIZABETH	Document review.	2.5	
8/15/2014	BREHM, ELIZABETH	Document review.	2.5	
8/18/2014	BREHM, ELIZABETH	Document review.	3	
8/23/2014	BREHM, ELIZABETH	Document review.	3.3	
8/24/2014	BREHM, ELIZABETH	Document review.	3	
8/25/2014	BREHM, ELIZABETH	Document review.	6	
9/5/2014	BREHM, ELIZABETH	Document review.	3.8	
9/6/2014	BREHM, ELIZABETH	Document review.	2	
9/11/2014	BREHM, ELIZABETH	Document review.	3.8	
9/12/2014	BREHM, ELIZABETH	Document review.	3.5	
9/19/2014	BREHM, ELIZABETH	Document review.	1.8	
9/21/2014	BREHM, ELIZABETH	Document review.	1.8	
9/23/2014	BREHM, ELIZABETH	Document review.	2.5	
9/24/2014	BREHM, ELIZABETH	Document review.	2.8	
9/30/2014	BREHM, ELIZABETH	Document review.	2	
10/1/2014	BREHM, ELIZABETH	Document review.	2.5	
10/6/2014	BREHM, ELIZABETH	Document review.	3.3	
10/7/2014	BREHM, ELIZABETH	Document review.	3.3	
10/8/2014	BREHM, ELIZABETH	Document review.	2	
10/10/2014	BREHM, ELIZABETH	Document review.	3.3	
10/14/2014	BREHM, ELIZABETH	Document review.	3	
10/19/2014	BREHM, ELIZABETH	Document review.	3	
10/23/2014	BREHM, ELIZABETH	Document review.	3.8	
10/30/2014	BREHM, ELIZABETH	Document review.	3.3	
11/6/2014	BREHM, ELIZABETH	Document review.	3	
11/7/2014	BREHM, ELIZABETH	Document review.	2.8	
11/9/2014	BREHM, ELIZABETH	Document review.	3.3	
11/16/2014	BREHM, ELIZABETH	Document review.	3.5	
11/17/2014	BREHM, ELIZABETH	Document review.	4.8	
11/18/2014	BREHM, ELIZABETH	Document review.	2.5	
12/1/2014	BREHM, ELIZABETH	Document review.	3.5	
12/2/2014	BREHM, ELIZABETH	Document review.	1.5	
12/3/2014	BREHM, ELIZABETH	Document review.	4.3	
12/4/2014	BREHM, ELIZABETH	Document review.	5	
12/7/2014	BREHM, ELIZABETH	Document review.	2.8	
12/8/2014	BREHM, ELIZABETH	Document review.	6.5	
12/9/2014	BREHM, ELIZABETH	Document review.	7.5	
12/10/2014	BREHM, ELIZABETH	Document review.	7	
12/11/2014	BREHM, ELIZABETH	Document review.	8	
12/12/2014	BREHM, ELIZABETH	Document review.	8.3	
12/15/2014	BREHM, ELIZABETH	Document review.	8.3	
12/16/2014	BREHM, ELIZABETH	Document review.	7	
12/17/2014	BREHM, ELIZABETH	Document review.	8.3	
12/18/2014	BREHM, ELIZABETH	Document review.	4.8	
12/19/2014	BREHM, ELIZABETH	Document review.	4	
12/23/2014	BREHM, ELIZABETH	Document review.	5	
12/24/2014	BREHM, ELIZABETH	Document review.	4	
12/29/2014	BREHM, ELIZABETH	Document review.	7.5	
12/30/2014	BREHM, ELIZABETH	Document review.	6.5	
12/31/2014	BREHM, ELIZABETH	Document review.	5.8	
1/1/2015	BREHM, ELIZABETH	Document review.	4	
1/2/2015	BREHM, ELIZABETH	Document review.	5.8	
1/5/2015	BREHM, ELIZABETH	Document review.	7	
1/6/2015	BREHM, ELIZABETH	Document review.	4	
1/7/2015	BREHM, ELIZABETH	Document review.	3	
1/8/2015	BREHM, ELIZABETH	Document review.	3.5	
1/15/2015	BREHM, ELIZABETH	Document review.	3	
1/19/2015	BREHM, ELIZABETH	Document review.	3	
2/4/2015	BREHM, ELIZABETH	Document review.	5.3	
2/5/2015	BREHM, ELIZABETH	Document review.	4.8	
2/6/2015	BREHM, ELIZABETH	Document review.	4	
2/7/2015	BREHM, ELIZABETH	Document review.	5	
2/10/2015	BREHM, ELIZABETH	Document review; code documents in Thornton Naumes document review folders.	3.3	
2/13/2015	BREHM, ELIZABETH	Document review; code documents in Thornton Naumes folders.	3.3	
4/3/2015	BREHM, ELIZABETH	Document Review for Thornton Naumes.	5	
1/29/2015	BUTMAN, JADE	Review amended complaint; review document review issue coding guide; review documents.	8	
1/30/2015	BUTMAN, JADE	Review amended complaint; review document review issue coding guide; review documents.	8	
2/2/2015	BUTMAN, JADE	Review documents.	8	
11/10/2010	CABRASER, ELIZABETH	Conference with Robert Lief and conference with Robert Lief and S. Fineman re status and strategy. Boston filing.	1.5	
11/11/2010	CABRASER, ELIZABETH	Conference with Robert Lief, et al., re joint agreement - Arkansas.	0.3	
11/12/2010	CABRASER, ELIZABETH	Legal research.	0.4	
2/7/2011	CABRASER, ELIZABETH	Correspondence with L. Hazam et al., re class action complaint.	1	
2/7/2011	CABRASER, ELIZABETH	Correspondence with L. Hazam, Robert Lief re status and strategy.	0.5	
2/8/2011	CABRASER, ELIZABETH	Conference call and review class action complaint.	1.3	
2/8/2011	CABRASER, ELIZABETH	Correspondence and conference call re class definition.	0.5	
2/8/2011	CABRASER, ELIZABETH	Legal research; Correspondence re class definition and allegations.	1.2	
2/10/2011	CABRASER, ELIZABETH	Correspondence with co-counsel re revisions to class complaint.	0.5	
2/10/2011	CABRASER, ELIZABETH	Telephone conference with Robert Lief re status and strategy; Review complaint.	0.7	
2/15/2011	CABRASER, ELIZABETH	Legal research re class definition and claims.	0.7	
2/28/2011	CABRASER, ELIZABETH	Conference call with Robert Lief L. Hazam and co-counsel re class issues and strategy.	0.5	
4/19/2011	CABRASER, ELIZABETH	Legal research (pleading standards and recent cases.)	1.3	
5/8/2012	CABRASER, ELIZABETH	Correspondence with D. Chiplock and telephone conference with R. Lief re hearing, motion to dismiss, chambers conference, strategy.	1.2	
5/9/2012	CABRASER, ELIZABETH	Conference with R. Lief, D. Chiplock re strategy.	0.5	
5/10/2012	CABRASER, ELIZABETH	Conference with R. Lief, D. Chiplock and telephone conference with co-counsel re status and strategy (settlement and class issues).	0.5	
6/4/2012	CABRASER, ELIZABETH	Telephone conference with R. Lief re issues and strategy.	0.5	
7/10/2012	CABRASER, ELIZABETH	Conference with R. Lief re status and strategy, settlement.	1	
11/15/2012	CABRASER, ELIZABETH	Conference/settlement conference (chambers) with Judge Wolf.	0.4	
11/20/2012	CABRASER, ELIZABETH	Research, prepare, attend conference call with co-counsel re discovery strategy.	2.5	
11/21/2012	CABRASER, ELIZABETH	Correspondence with plaintiffs' counsel re discovery.	0.5	
11/14/2013	CABRASER, ELIZABETH	Telephone conference with R. Lief re status and strategy.	0.5	
12/19/2013	CABRASER, ELIZABETH	Legal research; review presentation, memos re class certification issues.	2	
6/25/2014	CABRASER, ELIZABETH	Telephone conference with R. Lief re status and strategy.	0.3	

9/5/2014	CABRASER, ELIZABETH	Conference with R. Lief, D. Chiplock, S. Fineman re status and strategy.	0.5
12/14/2014	CABRASER, ELIZABETH	Conference with R. Lief, D. Chiplock re mediation, strategy.	0.3
12/17/2014	CABRASER, ELIZABETH	Conference re class certification issue, strategy, experts.	0.5
12/18/2014	CABRASER, ELIZABETH	Conference with R. Lief re mediation status and strategy.	0.4
1/29/2015	CABRASER, ELIZABETH	Telephone conference with R. Lief re mediation status and strategy.	0.3
2/5/2015	CABRASER, ELIZABETH	Telephone conference with R. Lief re settlement status and strategy.	0.4
2/12/2015	CABRASER, ELIZABETH	Correspondence and telephone conference with R. Lief re settlement status, process, strategy.	1
2/12/2015	CABRASER, ELIZABETH	Telephone conference with R. Lief re settlement status and strategy.	0.4
2/13/2015	CABRASER, ELIZABETH	Conference/Telephone Call/R. Lief re settlement status/processes/strategy	1
2/18/2015	CABRASER, ELIZABETH	Telephone Call/review re settlement status and strategy	0.6
2/23/2015	CABRASER, ELIZABETH	Conference/review re settlement strategy.	0.5
2/23/2015	CABRASER, ELIZABETH	Confer with R. Lief re settlement strategy.	0.5
2/25/2015	CABRASER, ELIZABETH	Conference with R. Lief, D. Chiplock, S. Fineman re settlement/litigation strategy and issues.	1
3/5/2015	CABRASER, ELIZABETH	Telephone call with R. Lief re: settlement status and strategy.	0.5
7/13/2015	CABRASER, ELIZABETH	Conference with Thorton re settlement approval.	0.4
9/15/2015	CABRASER, ELIZABETH	Correspond with counsel re settlement procedure and strategy.	0.5
10/10/2015	CABRASER, ELIZABETH	Telephone call with R. Lief re status and strategy.	0.4
4/7/2015	CALANGIAN, MARGIE	Review disc provided in State Street by California of Litigation. Create media list.	1.2
5/27/2015	CALANGIAN, MARGIE	Analysis of the document requested with hyperlink.	0.3
6/2/2015	CALANGIAN, MARGIE	Assistance with finding documents from Catalyst database.	0.3
9/10/2015	CALANGIAN, MARGIE	Convert DAT file to Excel format and create a list of fields from load file provided.	1.3
4/21/2016	CALANGIAN, MARGIE	Search, consolidate and provide document, media, materials and data statistics.	2.5
4/22/2016	CALANGIAN, MARGIE	Search, consolidate and provide document, media, materials and data statistics.	0.5
5/16/2012	CARNAM, TODD	Find email address of Executive Director of [REDACTED]	0.2
9/23/2013	CARNAM, TODD	Pull various transcripts in related litigation for D. Chiplock.	0.9
9/24/2013	CARNAM, TODD	Follow-up with two separate court reporters re transcripts ordered.	0.7
9/27/2013	CARNAM, TODD	Follow up on ordered transcripts in related case for D. Chiplock.	0.4
9/30/2013	CARNAM, TODD	Continue ordering certain transcripts, per D. Chiplock's requests.	0.9
2/27/2014	CARNAM, TODD	Pull for D. Chiplock underlying Class Certification opinion that preceded certain case he passed along.	0.3
8/4/2008	CHAPIN-RIENZO, SHANDA	Research desk request: search for State Street Bank place of incorporation and headquarters.	2
4/15/2008	CHIPLOCK, DANIEL	State Street: Group call.	1
4/16/2008	CHIPLOCK, DANIEL	Conference with J. Gross and J.A. Kruse re State Street; legal research assignments; emails re same.	0.7
5/2/2008	CHIPLOCK, DANIEL	Review State Street disclosure statement; telephone conference with J.A. Kruse re same.	1.9
5/5/2008	CHIPLOCK, DANIEL	Review disclosure statement re State Street for State Street case investigation.	2.6
5/29/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse and J. Gross re State Street research.	0.4
7/10/2008	CHIPLOCK, DANIEL	Review disclosure statement re State Street and draft memo re same; telephone conferences and emails with J.A. Kruse, J. Gross and K. Dugar re same.	5
7/11/2008	CHIPLOCK, DANIEL	Research and draft sections of State Street memo relating to introduction and preemption; emails to team re same.	4.8
7/14/2008	CHIPLOCK, DANIEL	Do legal research and draft State Street memo sections [REDACTED] emails to J.A. Kruse, K. Dugar and J. Gross re same.	6.2
7/15/2008	CHIPLOCK, DANIEL	Research and draft sections of State Street memo [REDACTED] CO; emails to J.A. Kruse and K. Dugar re same.	8.4
7/16/2008	CHIPLOCK, DANIEL	Emails with J.A. Kruse and K. Dugar re State Street memo.	0.4
7/17/2008	CHIPLOCK, DANIEL	Do research [REDACTED] for State Street memo; revise same.	2.8
7/17/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo.	0.2
7/18/2008	CHIPLOCK, DANIEL	Research [REDACTED] for State Street memo; edit same and email J.A. Kruse and K. Dugar re same.	2.8
7/19/2008	CHIPLOCK, DANIEL	Email J.A. Kruse and K. Dugar re State Street memo and 10K review.	0.1
7/22/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo [REDACTED]	0.1
7/31/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse and R. Heimann re State Street memo.	0.2
8/4/2008	CHIPLOCK, DANIEL	Edit and revise State Street memo [REDACTED]; email same to team for review.	3.9
8/5/2008	CHIPLOCK, DANIEL	Revise and edit State Street memo [REDACTED] email R. Heimann, S. Fineman and J.A. Kruse re same.	3.2
8/6/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street memo.	0.2
8/8/2008	CHIPLOCK, DANIEL	Emails to J.A. Kruse re State Street [REDACTED]	0.2
8/11/2008	CHIPLOCK, DANIEL	Conference with S. Fineman and R. Heimann re [REDACTED] do edits to same.	1.8
8/11/2008	CHIPLOCK, DANIEL	Follow-up emails to D. Clevenger and J.A. Kruse re State Street memo and materials.	0.3
8/12/2008	CHIPLOCK, DANIEL	Edit State Street [REDACTED] confer with R. Heimann re same.	1.2
8/12/2008	CHIPLOCK, DANIEL	Emails to team re State Street [REDACTED]	0.2
8/13/2008	CHIPLOCK, DANIEL	Confer with R. Heimann re State Street [REDACTED]	2.9
8/13/2008	CHIPLOCK, DANIEL	Emails to G. Balko re [REDACTED]	0.2
8/14/2008	CHIPLOCK, DANIEL	Edit [REDACTED] re State Street and emails with R. Heimann, J.A. Kruse and S. Fineman re same.	2.5
8/15/2008	CHIPLOCK, DANIEL	Emails with R. Heimann, et al., re State Street [REDACTED]; revise and redistribute same.	1.1
8/18/2008	CHIPLOCK, DANIEL	Do additional research [REDACTED] and edit [REDACTED] re same; emails to team re same.	3.4
8/18/2008	CHIPLOCK, DANIEL	Telephone conference with R. Heimann and emails to Word Processing re edits to [REDACTED]	0.8
8/19/2008	CHIPLOCK, DANIEL	Additional edits to [REDACTED]	0.9
8/19/2008	CHIPLOCK, DANIEL	Conference and email re State Street memo with M. Miami.	0.2
8/19/2008	CHIPLOCK, DANIEL	Emails to R. Heimann re State Street memo and [REDACTED] edit same.	0.3
8/19/2008	CHIPLOCK, DANIEL	Finish revising [REDACTED]; research [REDACTED]	1.6
8/20/2008	CHIPLOCK, DANIEL	Prepare for [REDACTED] re State Street.	1.1
8/21/2008	CHIPLOCK, DANIEL	[REDACTED]	19
9/9/2008	CHIPLOCK, DANIEL	Email R. Heimann re [REDACTED]	0.1
9/10/2008	CHIPLOCK, DANIEL	Prepare for and attend meeting with possible co-counsel on State Street case; conference and emails with S. Fineman and K. Dugar re same.	3.5
9/11/2008	CHIPLOCK, DANIEL	Conference with co-counsel re potential State Street matter; emails with L. Hazam and S. Fineman re same.	1
9/16/2008	CHIPLOCK, DANIEL	Telephone conference with K. Dugar re State Street [REDACTED]	0.1
9/26/2008	CHIPLOCK, DANIEL	Email State Street memo and PowerPoint to J.A. Kruse [REDACTED]	0.2
10/7/2008	CHIPLOCK, DANIEL	Conference with co-counsel re State Street potential case; prepare for same.	2.2
10/8/2008	CHIPLOCK, DANIEL	Telephone conference with co-counsel re potential State Street case; conference and email with S. Fineman and K. Dugar re same.	1.8
10/9/2008	CHIPLOCK, DANIEL	Review email from K. Dugar re State Street and evidence necessary to prove fraud; telephone conference re same.	0.6
10/10/2008	CHIPLOCK, DANIEL	Email L. Hazam re [REDACTED] on State Street.	0.2
10/10/2008	CHIPLOCK, DANIEL	Emails to team re State Street research [REDACTED]	0.6
10/16/2008	CHIPLOCK, DANIEL	Email K. Dugar re State Street case and [REDACTED] attend call with S. Fineman, R. Heimann and L. Hazam re status of California Attorney General investigation.	1.2
11/21/2008	CHIPLOCK, DANIEL	Emails to L. Hazam and R. Heimann, S. Fineman re [REDACTED]	0.2
11/25/2008	CHIPLOCK, DANIEL	Review past research [REDACTED] and prepare for co-counsel call; attend same to discuss status; follow-up telephone conferences and emails with K. Dugar re State Street contacts with [REDACTED]	1.4
12/4/2008	CHIPLOCK, DANIEL	Emails to S. Fineman and K. Dugar re custodial contracts with [REDACTED]	0.2
12/5/2008	CHIPLOCK, DANIEL	Email J.A. Kruse re State Street custodial contracts.	0.1
12/8/2008	CHIPLOCK, DANIEL	Emails to L. Hazam, et al., re [REDACTED] custodial contracts.	0.2

12/10/2008	CHIPLOCK, DANIEL	Review State Street custodial contracts with ██████████ and email team re same; telephone conference with K. Dugar re same.	2.8
12/12/2008	CHIPLOCK, DANIEL	Review 2002 custodial contract with ██████████ and email team re same.	2
10/13/2009	CHIPLOCK, DANIEL	Email Help Desk re creating email list.	0.1
10/13/2009	CHIPLOCK, DANIEL	Email team re email distribution list.	0.1
10/21/2009	CHIPLOCK, DANIEL	Emails and conference with S. Fineman, R. Heimann and J.A. Kruse re client outreach; ██████████	1.1
10/22/2009	CHIPLOCK, DANIEL	Conference calls and emails with S. Fineman and co-counsel re client outreach; emails to J.A. Kruse and K. Dugar re same.	1.1
10/22/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re client outreach; draft email to Equity Partners re same.	0.3
10/22/2009	CHIPLOCK, DANIEL	Emails with ██████████ and K. Dugar; telephone conferences with K. Dugar re chart of ██████████ and custodial banks.	0.6
10/22/2009	CHIPLOCK, DANIEL	Email team re edits to memo to clients.	0.1
10/22/2009	CHIPLOCK, DANIEL	Follow-up emails to ██████████ re ██████████ exposure; emails to K. Dugar re same.	0.2
10/26/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re drafting complaint.	0.1
10/26/2009	CHIPLOCK, DANIEL	Email S. Fineman re ██████████ trip to meet with ██████████	0.1
10/26/2009	CHIPLOCK, DANIEL	Emails to Lydia Lee re ██████████ meeting.	0.1
10/27/2009	CHIPLOCK, DANIEL	Conference call with team re ██████████	0.3
10/27/2009	CHIPLOCK, DANIEL	Draft potential class complaint; research re same.	6.1
10/27/2009	CHIPLOCK, DANIEL	Email Lydia Lee re ██████████	0.1
10/27/2009	CHIPLOCK, DANIEL	Emails to M. Macatee re travel plans to ██████████ meeting; telephone conference with S. Fineman re same.	0.3
10/27/2009	CHIPLOCK, DANIEL	Print materials for ██████████	0.2
10/28/2009	CHIPLOCK, DANIEL	Emails and conference with G. Balko re travel to ██████████ for client meeting.	0.2
10/28/2009	CHIPLOCK, DANIEL	Email S. Fineman, R. Heimann re Boston venue and plaintiff.	0.1
10/28/2009	CHIPLOCK, DANIEL	██████████ meeting in ██████████ with S. Fineman.	1.5
10/28/2009	CHIPLOCK, DANIEL	Travel to and from ██████████ meeting with S. Fineman.	6.5
10/29/2009	CHIPLOCK, DANIEL	Email D. Stellings re B. Leppla's email on potential contact.	0.1
11/2/2009	CHIPLOCK, DANIEL	Email Forex article to ██████████	0.1
11/2/2009	CHIPLOCK, DANIEL	Email G. Balko re ██████████ travel.	0.1
11/2/2009	CHIPLOCK, DANIEL	Email to Lydia Lee re ██████████ by meeting.	0.2
12/3/2009	CHIPLOCK, DANIEL	Confer with S. Fineman re investigation.	0.2
12/11/2009	CHIPLOCK, DANIEL	Conference call with co-counsel re status of investigation and data review.	0.5
12/16/2009	CHIPLOCK, DANIEL	Forward ██████████ to team.	0.2
12/21/2009	CHIPLOCK, DANIEL	Review Glancy Binkow complaint for PSLRA violations and email to team.	0.4
1/5/2010	CHIPLOCK, DANIEL	Update call with K. Dugar, Lydia Lee, R. Heimann and S. Fineman re ██████████	0.4
1/6/2010	CHIPLOCK, DANIEL	Emails to K. Dugar re State Street and ██████████	0.2
1/8/2010	CHIPLOCK, DANIEL	Email Lydia Lee re status of data from ██████████	0.1
1/12/2010	CHIPLOCK, DANIEL	Telephone conference with ██████████ office re getting data from ██████████; email team re same.	0.5
1/19/2010	CHIPLOCK, DANIEL	Email L. Hazam re ██████████	0.1
1/25/2010	CHIPLOCK, DANIEL	Email re status call.	0.1
1/27/2010	CHIPLOCK, DANIEL	Conference with S. Fineman and L. Hazam re draft complaint; review Supreme Court RICO decision and email team re same; research venue.	1.6
1/28/2010	CHIPLOCK, DANIEL	Conference call with team and co-counsel re status of case; draft complaint.	0.8
1/28/2010	CHIPLOCK, DANIEL	Review and edit draft class complaint; search for past research on RICO in First Circuit.	0.8
2/1/2010	CHIPLOCK, DANIEL	Email S. Fineman re team status call.	0.1
2/2/2010	CHIPLOCK, DANIEL	Telephone conference with ██████████ re State Street case and email team re same.	0.4
2/8/2010	CHIPLOCK, DANIEL	Emails to attorneys re sample RICO allegations.	0.2
2/11/2010	CHIPLOCK, DANIEL	Emails to team re ERISA action and Shapiro Haber firm.	0.3
2/16/2010	CHIPLOCK, DANIEL	Email M. Macatee re State Street call.	0.1
2/18/2010	CHIPLOCK, DANIEL	Review lead plaintiff chart and conference with S. Fineman, R. Heimann re same; email Lydia Lee re same.	0.3
2/23/2010	CHIPLOCK, DANIEL	Email with team re status call.	0.1
2/25/2010	CHIPLOCK, DANIEL	Telephone conference with team re status of case, strategy; email to team re same.	0.6
3/4/2010	CHIPLOCK, DANIEL	Conference and emails with S. Fineman re ██████████ and State Street; forward K. Dugar chart to S. Fineman and R. Heimann.	0.2
3/24/2010	CHIPLOCK, DANIEL	Email team re status call.	0.1
3/25/2010	CHIPLOCK, DANIEL	Prepare for, and attend status call with team and co-counsel; emails to team thereafter re legal research and memoranda; do additional research on RICO and revise memo.	3.8
3/26/2010	CHIPLOCK, DANIEL	Research re jurisdictional issues and update memo to ██████████ same.	0.6
3/26/2010	CHIPLOCK, DANIEL	Review and respond to emails from L. Hazam and K. Dugar re statute of limitations and RICO.	0.4
3/29/2010	CHIPLOCK, DANIEL	Research re RICO and statute of limitations issues; emails to L. Hazam and K. Dugar re same; review chart prepared for ██████████	3.9
4/5/2010	CHIPLOCK, DANIEL	Research re RICO and Massachusetts law for complaint.	4
4/5/2010	CHIPLOCK, DANIEL	Review PowerPoint to ██████████ and emails to team re same.	0.7
4/6/2010	CHIPLOCK, DANIEL	Emails with team re forum selection choice, ██████████ and Massachusetts law re same; do research re same and RICO, other causes of action; emails to team re breach of contract claims.	4.6
4/7/2010	CHIPLOCK, DANIEL	Emails to team re ██████████ presentation and conference call; do legal research re potential claims; review contract language.	4.4
4/7/2010	CHIPLOCK, DANIEL	Memo to team re potential claims and follow-up emails to L. Hazam re same.	1.6
4/8/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser re Ch. 93A research.	0.2
4/8/2010	CHIPLOCK, DANIEL	Review ██████████ contract and do research re potential claims; telephone conferences and emails with team re same memo to team re same.	6.8
4/12/2010	CHIPLOCK, DANIEL	Research re potential claims and statutes of limitations; emails with team re same; attend call with ██████████ office.	4.3
4/13/2010	CHIPLOCK, DANIEL	Email to Mike Lesser re Ch. 93A research.	0.1
4/13/2010	CHIPLOCK, DANIEL	Research re potential claims.	4.1
4/14/2010	CHIPLOCK, DANIEL	Continue searching for other Ch. 93A cases certifying national class.	2.2
4/14/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser and team re Ch. 93A claims; research re same.	1.6
4/14/2010	CHIPLOCK, DANIEL	Review dockets from other State Street litigation and report to team.	1.9
4/15/2010	CHIPLOCK, DANIEL	Emails to co-counsel and team re Ch. 93A claim; research re class treatment of same.	0.8
4/15/2010	CHIPLOCK, DANIEL	Research breach of contract, statutes of limitations, and email memo to team re same; confer with S. Fineman re same.	3.1
4/16/2010	CHIPLOCK, DANIEL	Draft memo to ██████████ re potential claims and venue; research re same; emails to team re same.	2.8
4/18/2010	CHIPLOCK, DANIEL	Email K. Dugar re ██████████ contract terms.	0.1
4/19/2010	CHIPLOCK, DANIEL	Draft memo to ██████████ re potential claims; do research re same.	4.4
4/19/2010	CHIPLOCK, DANIEL	Review addenda to 2002 ██████████ contract.	0.6
4/20/2010	CHIPLOCK, DANIEL	Research and draft memo to ██████████ re claims and venue; emails to team re same.	4.6
4/21/2010	CHIPLOCK, DANIEL	Email Lydia Lee re ██████████ memo.	0.1
4/21/2010	CHIPLOCK, DANIEL	Research and draft memo to ██████████ re claims and venue; emails to team re same.	1.6
4/23/2010	CHIPLOCK, DANIEL	Research and draft memo to ██████████	2.8
4/27/2010	CHIPLOCK, DANIEL	Research breach of contract statute of limitations and emails with Lydia Lee re same; update memo on ██████████	1.8
4/28/2010	CHIPLOCK, DANIEL	Emails to team re memo to ██████████	0.3
4/29/2010	CHIPLOCK, DANIEL	Research re exceptions to statute of limitations provision for state actions; update memo and send to team for review.	3.4
4/30/2010	CHIPLOCK, DANIEL	Additional research re potential claims; edit memo to ██████████; emails to team re follow-up questions.	6.9

5/3/2010	CHIPLOCK, DANIEL	Conference and emails with S. Fineman, R. Heimann, L. Hazam and Lydia Lee re memo to [REDACTED] re legal options; finalize same and forward to Lydia Lee.	1.1
5/3/2010	CHIPLOCK, DANIEL	Research re contractual forum selection clauses and "waiver"; email to team re same.	0.7
5/10/2010	CHIPLOCK, DANIEL	Email Lydia Lee re status of [REDACTED]	0.1
5/25/2010	CHIPLOCK, DANIEL	Emails re team call on client outreach.	0.2
5/26/2010	CHIPLOCK, DANIEL	Conference with team re client outreach; update memo re same.	1.2
5/26/2010	CHIPLOCK, DANIEL	Emails to S. Fineman re team meeting.	0.2
5/27/2010	CHIPLOCK, DANIEL	Emails to Lydia Lee re client outreach contact memo.	0.2
5/27/2010	CHIPLOCK, DANIEL	Revise and resend memo to Lydia Lee re client contact.	0.4
6/1/2010	CHIPLOCK, DANIEL	Email Lydia Lee and update memo re potential client contact; email team re same.	0.8
6/7/2010	CHIPLOCK, DANIEL	Telephone conference with R. Heimann re potential client contacts chart; update same and email to team; review State Street docket in District of Massachusetts and email order approving lead plaintiff to R. Heimann.	0.9
6/8/2010	CHIPLOCK, DANIEL	Check State Street docket in District of Massachusetts for Bernstein Litowitz Berger & Grossman lawyers' names and email S. Fineman re same.	0.2
6/12/2010	CHIPLOCK, DANIEL	Email S. Fineman re meeting with [REDACTED]	0.1
6/21/2010	CHIPLOCK, DANIEL	Emails to Lydia Lee re [REDACTED] meeting and [REDACTED]	0.2
6/23/2010	CHIPLOCK, DANIEL	Research re res judicata and breach of contract claims in Massachusetts.	3.1
6/28/2010	CHIPLOCK, DANIEL	Research re contract law and forum selection clauses in [REDACTED]	2
6/29/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Heimann and L. Hazam re contracts and forum selection clause research.	0.8
6/29/2010	CHIPLOCK, DANIEL	Research re Blue Sky laws and forward to L. Hazam.	0.9
6/29/2010	CHIPLOCK, DANIEL	Review research re contract claim and forward to team.	1
6/30/2010	CHIPLOCK, DANIEL	Emails to Mike Lesser re Bernstein, Litowitz slide show; email Lydia Lee re same and review same.	0.4
7/2/2010	CHIPLOCK, DANIEL	Research re breach of covenant and class claims; draft memo re same.	5.3
7/6/2010	CHIPLOCK, DANIEL	Email L. Hazam re research on contract and class claims.	0.2
7/19/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with L. Hazam re State Street research.	0.4
7/20/2010	CHIPLOCK, DANIEL	Email S. Fineman State Street memo for Bernstein, Litowitz.	0.1
7/21/2010	CHIPLOCK, DANIEL	Email L. Hazam re research on res judicata.	0.2
8/10/2010	CHIPLOCK, DANIEL	Emails with Lydia Lee and L. Hazam re State Street memo to [REDACTED] edit same.	0.6
9/14/2010	CHIPLOCK, DANIEL	Meet with team members and potential co-counsel re State Street client retention efforts; emails with team re same.	3.2
9/15/2010	CHIPLOCK, DANIEL	Emails to J.A. Kruse re State Street client update; emails to co-counsel re same.	0.3
9/20/2010	CHIPLOCK, DANIEL	Revise client contact memo and send to team.	0.6
9/21/2010	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel and LCHB team re plans for complaint and strategy.	1.4
9/30/2010	CHIPLOCK, DANIEL	Emails to S. Fineman and Labaton firm re marketing to potential clients; email [REDACTED]	0.3
10/1/2010	CHIPLOCK, DANIEL	Email Eric Belfi re [REDACTED] status.	0.1
10/4/2010	CHIPLOCK, DANIEL	Email S. Fineman re conference call with Labaton firm.	0.1
10/6/2010	CHIPLOCK, DANIEL	Emails with Labaton re strategy call.	0.2
10/11/2010	CHIPLOCK, DANIEL	Emails to L. Hazam re conference call with co-counsel.	0.1
10/14/2010	CHIPLOCK, DANIEL	Conference with co-counsel and L. Hazam re research issues and potential claims; emails re same.	0.7
10/15/2010	CHIPLOCK, DANIEL	Emails with L. Hazam re prior research on fiduciary duty.	0.3
10/21/2010	CHIPLOCK, DANIEL	Emails with team and co-counsel re status of [REDACTED] as potential plaintiff.	0.2
10/25/2010	CHIPLOCK, DANIEL	Email Labaton re Chapter 93A; review memo re causes of action.	0.2
10/26/2010	CHIPLOCK, DANIEL	Research on 93A class cases; emails to co-counsel re same.	2.2
10/27/2010	CHIPLOCK, DANIEL	Emails to S. Fineman and L. Hazam re [REDACTED]	0.2
12/1/2010	CHIPLOCK, DANIEL	Review and forward press on State Street layoffs to team.	0.2
12/2/2010	CHIPLOCK, DANIEL	Email R. De Maria re employee interviews.	0.2
12/3/2010	CHIPLOCK, DANIEL	Emails to L. Hazam re complaint drafting and exemplars.	0.3
1/28/2011	CHIPLOCK, DANIEL	Email S. Fineman re status of case.	0.1
2/3/2011	CHIPLOCK, DANIEL	Conference with S. Fineman and L. Hazam re case status; emails re same.	0.5
2/3/2011	CHIPLOCK, DANIEL	Email S. Fineman re status call.	0.1
2/7/2011	CHIPLOCK, DANIEL	Emails to L. Hazam re draft complaint; review same and prepare for team call on strategy.	2.5
2/7/2011	CHIPLOCK, DANIEL	Research re equitable claims and emails with Labaton and team re same.	3
2/8/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with team and co-counsel re draft complaint; review and edit same; research Massachusetts law re same.	3.9
2/10/2011	CHIPLOCK, DANIEL	Conference calls and emails with co-counsel re filing of Arkansas complaint and next steps; review demand letter.	2.4
2/10/2011	CHIPLOCK, DANIEL	Review and edit draft Arkansas complaint; email co-counsel re same.	2.8
2/11/2011	CHIPLOCK, DANIEL	Conference and emails with D. Leathers re drafting discovery requests and case background.	0.7
2/11/2011	CHIPLOCK, DANIEL	Edit 93(A) demand letter and email co-counsel re same.	0.3
2/11/2011	CHIPLOCK, DANIEL	Emails re draft discovery and associate assignments.	0.2
2/11/2011	CHIPLOCK, DANIEL	Telephone conferences with co-counsel re media issues; emails with S. Fineman re same.	0.6
2/12/2011	CHIPLOCK, DANIEL	Email L. Hazam re sample discovery from California qui tam case.	0.2
2/13/2011	CHIPLOCK, DANIEL	Email L. Hazam re draft discovery requests.	0.1
2/14/2011	CHIPLOCK, DANIEL	Emails to D. Leathers re draft discovery.	0.2
2/14/2011	CHIPLOCK, DANIEL	Emails to team re draft discovery requests.	0.2
2/15/2011	CHIPLOCK, DANIEL	Emails to D. Leathers and L. Hazam re draft discovery to State Street.	0.3
2/15/2011	CHIPLOCK, DANIEL	Emails to team re employee interviews.	0.3
2/15/2011	CHIPLOCK, DANIEL	Review demand letter and email John Gardiner re same.	0.4
2/16/2011	CHIPLOCK, DANIEL	Edit demand letter and send to Labaton.	1.1
2/16/2011	CHIPLOCK, DANIEL	Email L. Hazam re draft discovery.	0.2
2/16/2011	CHIPLOCK, DANIEL	Emails to co-counsel re employee interviews.	0.2
2/16/2011	CHIPLOCK, DANIEL	Emails to L. Hazam re matter status.	0.1
2/16/2011	CHIPLOCK, DANIEL	Emails with co-counsel re demand letter and telephone conference with defense; emails re draft discovery demands.	0.3
2/17/2011	CHIPLOCK, DANIEL	Conferences and emails with co-counsel re case status and next steps.	1.1
2/18/2011	CHIPLOCK, DANIEL	Emails to Labaton re strategy meeting on March 4, 2011.	0.2
2/18/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and team re marketing and press inquiries.	0.3
2/22/2011	CHIPLOCK, DANIEL	Review and edit draft discovery requests; emails to team re same.	2.8
2/24/2011	CHIPLOCK, DANIEL	Edit and revise draft discovery request and send to co-counsel.	1
2/24/2011	CHIPLOCK, DANIEL	Emails re matter number assignment.	0.1
2/25/2011	CHIPLOCK, DANIEL	Review letter to Professor Rubinstein from Mike Thornton and forward to team.	0.3
3/3/2011	CHIPLOCK, DANIEL	Emails to Paul Scarlato re 3/4 status and strategy meeting.	0.2
3/3/2011	CHIPLOCK, DANIEL	Emails to S. Fineman re Labaton meeting on 3/4.	0.2
3/3/2011	CHIPLOCK, DANIEL	Review State Street email to [REDACTED]; emails to team re same and possibly amending complaint; do research re declaratory relief claim.	2.2
3/4/2011	CHIPLOCK, DANIEL	Conference with Labaton attorneys and S. Fineman re amending complaint; follow-up emails re investigating work; research re legal issues and emails to team re same.	4.1
3/7/2011	CHIPLOCK, DANIEL	Email Mike Lesser re class representative issues.	0.1
3/9/2011	CHIPLOCK, DANIEL	Confer with S. Fineman and emails with D. Leathers, David Goldsmith re Friday meeting with Forex Transparency.	0.5
3/9/2011	CHIPLOCK, DANIEL	Email K. Dugar re voicemail from [REDACTED] re State Street data.	0.1
3/9/2011	CHIPLOCK, DANIEL	Email R. De Maria re State Street employee interviews.	0.2
3/9/2011	CHIPLOCK, DANIEL	Emails with K. Dugar; telephone conferences and emails with [REDACTED] re State Street data.	0.5
3/10/2011	CHIPLOCK, DANIEL	Review and modify draft discovery.	1
3/11/2011	CHIPLOCK, DANIEL	Forward Forex Transparency presentation to team.	0.1
3/11/2011	CHIPLOCK, DANIEL	Meet at Labaton with expert re Arkansas Teacher Retirement System (ATRS) data analysis; conference and emails with co-counsel and S. Fineman re same; follow-up research re same.	4.2

3/14/2011	CHIPLOCK, DANIEL	Emails with Mike Lesser re employee interview memos; review same and forward to R. De Maria; email R. De Maria with other background information.	1.1	
3/14/2011	CHIPLOCK, DANIEL	Review docket from Securities Class Action and review amended complaint from same re factual investigation and confidential witnesses.	2.4	
3/15/2011	CHIPLOCK, DANIEL	Emails to co-counsel re Chapter 93A; research re same; emails re discovery and amending complaint; research re motion for lead counsel appointment and emails re same; modify discovery requests and send to co-counsel.	3.9	
3/15/2011	CHIPLOCK, DANIEL	Emails to M. Miarni and D. Leathers re motion for lead counsel appointment; do research re same and draft same; send to Paul Scarlato.	1.2	
3/15/2011	CHIPLOCK, DANIEL	Follow-up emails to Paul Scarlato and M. Miarni re lead counsel motion.	0.5	
3/15/2011	CHIPLOCK, DANIEL	Review list of interview targets prepared by R. De Maria; forward same to S. Fineman and to Massachusetts counsel; emails re same.	0.6	
3/16/2011	CHIPLOCK, DANIEL	Conference call with Labaton re complaint and discovery.	0.6	
3/16/2011	CHIPLOCK, DANIEL	Email Paul Scarlato re firm resume.	0.1	
3/16/2011	CHIPLOCK, DANIEL	Research re local rules on discovery and email co-counsel re timing of same.	1.2	
3/16/2011	CHIPLOCK, DANIEL	Review draft lead counsel motion and email Paul Scarlato re same.	0.6	
3/17/2011	CHIPLOCK, DANIEL	Emails with team re custody fee agreement for Arkansas Teacher Retirement System (ATRS).	0.4	
3/17/2011	CHIPLOCK, DANIEL	Review correspondence between Forex Transparency re Arkansas Teacher Retirement System (ATRS) fee schedules; emails to co-counsel re discovery plan.	0.5	
3/18/2011	CHIPLOCK, DANIEL	Research re Chapter 93A.	2.4	
3/18/2011	CHIPLOCK, DANIEL	Review letter from William Paine and email team re same; edit proposed response and send to team.	1.2	
3/21/2011	CHIPLOCK, DANIEL	Do Chapter 93A research.	1.6	
3/21/2011	CHIPLOCK, DANIEL	Review Michael Rogers' correspondence with Forex Transparency.	0.4	
3/22/2011	CHIPLOCK, DANIEL	Review Labaton's revised lead counsel papers and emails and conference with team re same; emails with B. Leppia and S. Lee re same.	1.8	
3/23/2011	CHIPLOCK, DANIEL	Conference call with team and co-counsel re lead counsel papers; telephone conferences with Mike Thornton re same.	1	
3/23/2011	CHIPLOCK, DANIEL	Emails and conference with Lydia Lee and S. Fineman re Arkansas Teacher Retirement System (ATRS) contacts.	0.3	
3/24/2011	CHIPLOCK, DANIEL	Review and edit draft papers in support of lead counsel structure; forward to S. Fineman for approval and then email co-counsel re same.	1	
3/24/2011	CHIPLOCK, DANIEL	Telephone conferences and emails with Labaton (Paul Scarlato) re legal claims and research; do additional research on Chapter 93A claims.	3.2	
3/25/2011	CHIPLOCK, DANIEL	Chapter 93A research; re-review William Paine letter [REDACTED] and do research re sufficiency of demand; email team re same; emails with co-counsel re discovery stay proposal and emails and telephone conferences with L. Hazam re same; do research on breach of contract claim and interaction with Chapter 93A; emails to team re same.	4.2	
3/25/2011	CHIPLOCK, DANIEL	Emails to D. Leathers and M. Miarni re declaratory relief research.	0.3	
3/28/2011	CHIPLOCK, DANIEL	Continue Chapter 93A research for complaint.	4.2	
3/28/2011	CHIPLOCK, DANIEL	Email Labaton Sucharow re State Street counsel.	0.1	
3/28/2011	CHIPLOCK, DANIEL	Review California discovery and email team re same.	1.5	
3/28/2011	CHIPLOCK, DANIEL	Review co-counsel discovery proposal and emails to team re same.	0.3	
3/30/2011	CHIPLOCK, DANIEL	Email M. Miarni re status of research on declaratory relief.	0.1	
3/31/2011	CHIPLOCK, DANIEL	Email Paul Scarlato re draft complaint.	0.1	
3/31/2011	CHIPLOCK, DANIEL	Review emails from defense counsel and Joel Bernstein re discovery agreement; respond to same.	0.2	
3/31/2011	CHIPLOCK, DANIEL	Review M. Miarni's research on declaratory relief claim; email co-counsel re same.	0.6	
4/1/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and co-counsel re schedule on discovery and motions to dismiss.	1.1	
4/5/2011	CHIPLOCK, DANIEL	Emails re pretrial scheduling.	0.3	
4/5/2011	CHIPLOCK, DANIEL	Emails to team re foreign exchange expert review of client data.	0.2	
4/5/2011	CHIPLOCK, DANIEL	Telephone conferences and emails with Paul Scarlato re Chapter 93A claims.	0.5	
4/11/2011	CHIPLOCK, DANIEL	Review Chapter 93A decision from Judge Saris and email to team; emails with Paul Scarlato re Chapter 93A claims; emails with R. De Maria re factual investigation.	1.1	
4/12/2011	CHIPLOCK, DANIEL	Emails to R. De Maria re employee interviews.	0.2	
4/12/2011	CHIPLOCK, DANIEL	Emails to team re draft amended complaint; review same and draft claims re 93A; research re same.	2.4	
4/13/2011	CHIPLOCK, DANIEL	Revise and edit draft amended complaint; research re same; emails and telephone conferences with co-counsel re same; confer with S. Fineman re same.	5.8	
4/14/2011	CHIPLOCK, DANIEL	Review and edit amended complaint; emails and telephone conferences with co-counsel re same; research re same.	4.9	
4/15/2011	CHIPLOCK, DANIEL	Review and edit amended complaint; emails with co-counsel re same.	4.8	
4/19/2011	CHIPLOCK, DANIEL	Email R. De Maria re confidential witnesses.	0.1	
4/20/2011	CHIPLOCK, DANIEL	Emails with E. Cabraser and M. Miarni re complaint and jurisdictional allegations; research re same.	1	
5/11/2011	CHIPLOCK, DANIEL	Email team re press on SEC investigation of State Street.	0.2	
5/26/2011	CHIPLOCK, DANIEL	Emails to co-counsel re briefing stipulation.	0.2	
6/2/2011	CHIPLOCK, DANIEL	Emails to team re motion to dismiss briefing.	0.3	
6/3/2011	CHIPLOCK, DANIEL	Email team re briefing on motion to dismiss.	0.2	
6/3/2011	CHIPLOCK, DANIEL	Prepare pro hac forms and email to Garrett Bradley; review District of Massachusetts docket for updates.	1	
6/6/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re pro hac motion.	0.1	
6/6/2011	CHIPLOCK, DANIEL	Emails to team re motion to dismiss briefing; emails to M. Miarni re same; review same.	2	
6/6/2011	CHIPLOCK, DANIEL	Emails with co-counsel re argument assignments.	0.2	
6/6/2011	CHIPLOCK, DANIEL	Emails with team re press inquiries on motions to dismiss; telephone conferences with S. Fineman re same.	0.5	
6/7/2011	CHIPLOCK, DANIEL	Emails with team re ethics opinions.	0.2	
6/8/2011	CHIPLOCK, DANIEL	Meet with co-counsel re argument on motions to dismiss; conference with S. Fineman and M. Miarni re same; research re same.	2	
6/10/2011	CHIPLOCK, DANIEL	Emails to L. Hazam and co-counsel re California briefing on demurrers.	0.2	
6/10/2011	CHIPLOCK, DANIEL	Emails to M. Miarni re briefing assignment; review cases re same.	2.4	
6/16/2011	CHIPLOCK, DANIEL	Emails to K. Dugar re [REDACTED]	0.2	
6/17/2011	CHIPLOCK, DANIEL	Emails to K. Dugar re [REDACTED]	0.2	
6/20/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re [REDACTED] State Street losses.	0.5	
6/20/2011	CHIPLOCK, DANIEL	Emails with [REDACTED] loss estimates on State Street.	0.4	
6/21/2011	CHIPLOCK, DANIEL	Emails with co-counsel re conference call with foreign exchange expert re motion to dismiss.	0.5	
6/22/2011	CHIPLOCK, DANIEL	Review letter from Mike Lesser to Relators re class case; email comments to L. Hazam.	0.8	
6/23/2011	CHIPLOCK, DANIEL	Emails re consulting experts and discovery in California case.	0.4	
6/23/2011	CHIPLOCK, DANIEL	Emails with team re draft complaint.	0.2	
6/24/2011	CHIPLOCK, DANIEL	Telephone conference with foreign exchange expert and co-counsel re motion to dismiss arguments; emails re same.	1.1	
6/27/2011	CHIPLOCK, DANIEL	Telephone conference with co-counsel re motion to dismiss opposition arguments; emails re same.	1	
6/30/2011	CHIPLOCK, DANIEL	Conference with M. Miarni re status of motion to dismiss opposition briefing.	0.2	
6/30/2011	CHIPLOCK, DANIEL	Research and draft opposition to 93(A) motion to dismiss arguments.	5	
7/1/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition.	2	
7/2/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition; emails with M. Miarni re same.	7	
7/3/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition.	8.5	
7/5/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition; emails re same.	8.5	
7/6/2011	CHIPLOCK, DANIEL	Research re motion to dismiss opposition and draft same; telephone conference and emails with co-counsel re same.	8.8	
7/7/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; email and telephone conferences re same.	9	
7/8/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails re same.	9	
7/9/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss.	7.5	

7/10/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails re same.	8
7/11/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails with team re same.	8.5
7/12/2011	CHIPLOCK, DANIEL	Research and draft opposition to motion to dismiss; emails and telephone conferences with co-counsel re same.	8.8
7/13/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; send edits to Labaton.	3.1
7/14/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; emails to team re same.	4.7
7/15/2011	CHIPLOCK, DANIEL	Edit opposition to motion to dismiss and emails to team re same.	4.3
7/18/2011	CHIPLOCK, DANIEL	Edits to whole opposition to motion to dismiss; emails to co-counsel re same.	4.8
7/19/2011	CHIPLOCK, DANIEL	Edit and revise opposition to motion to dismiss; emails to S. Fineman and M. Miami and co-counsel re same.	3.9
7/20/2011	CHIPLOCK, DANIEL	Edit opposition to motion to dismiss and emails with David Goldsmith re same.	2.9
7/21/2011	CHIPLOCK, DANIEL	Email M. Miami re pro hac application.	0.1
7/21/2011	CHIPLOCK, DANIEL	Obtain and distribute motion to dismiss opposition papers to team.	0.2
7/22/2011	CHIPLOCK, DANIEL	Email S. Fineman and co-counsel re costs request.	0.2
8/5/2011	CHIPLOCK, DANIEL	Emails to team re notice of supplemental authority on Judge Gertner's decision.	0.3
8/8/2011	CHIPLOCK, DANIEL	Confer with S. Fineman re cost accounts with co-counsel.	0.2
8/8/2011	CHIPLOCK, DANIEL	Review M. Miami's proposed edits to notice of supplemental authority; email David Goldsmith at Labaton re same.	1
8/9/2011	CHIPLOCK, DANIEL	Review notice of supplemental authority and email team re same.	0.4
8/18/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re team meeting on 8/29	0.1
8/22/2011	CHIPLOCK, DANIEL	Emails with S. Fineman re status meeting at Labaton.	0.2
8/22/2011	CHIPLOCK, DANIEL	Review State Street reply brief on motion to dismiss.	1.1
8/27/2011	CHIPLOCK, DANIEL	Email Mike Lesser re status meeting at Labaton.	0.1
8/29/2011	CHIPLOCK, DANIEL	Emails re case status meeting.	0.2
9/2/2011	CHIPLOCK, DANIEL	Emails to team re Judge Wolf and case status; check docket.	0.4
9/15/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re co-counsel meeting on case status.	0.2
9/16/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re case strategy meeting.	0.4
9/16/2011	CHIPLOCK, DANIEL	Emails with Labaton re Monday strategy session; emails to team re same.	0.3
9/19/2011	CHIPLOCK, DANIEL	Prepare for and attend strategy meeting with co-counsel and S. Fineman; emails to team re same.	2.6
9/27/2011	CHIPLOCK, DANIEL	Email Garrett Bradley re pro hac status.	0.1
10/14/2011	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re ERISA complaint filed in Maryland or Virginia; review complaint and send memo re same.	2.2
10/17/2011	CHIPLOCK, DANIEL	Prepare for and attend call with co-counsel to discuss potential MDL strategy; email with S. Fineman re same.	0.8
10/18/2011	CHIPLOCK, DANIEL	Emails to Mike Lesser re client information in District of Maryland case; comparisons of fact patterns and ERISA ramifications.	0.5
10/18/2011	CHIPLOCK, DANIEL	Emails with team re Eastern District of Virginia/District of Maryland action.	0.2
12/16/2011	CHIPLOCK, DANIEL	Emails to S. Fineman and M. Miami re new court orders.	0.2
1/5/2012	CHIPLOCK, DANIEL	Conference with D. Seltz and email re background of case.	0.2
1/12/2012	CHIPLOCK, DANIEL	Email R. Lief with update on case.	0.1
1/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re oral argument date set and strategy; review court orders re same.	1
1/24/2012	CHIPLOCK, DANIEL	Email to Garrett Bradley re oral argument preparation.	0.1
2/15/2012	CHIPLOCK, DANIEL	Review draft notice of supplemental authority and emails to team re same.	1
2/18/2012	CHIPLOCK, DANIEL	Emails to team re 2/24/2012 hearing cancellation.	0.4
2/17/2012	CHIPLOCK, DANIEL	Emails to team re status of motion to dismiss hearing.	0.2
2/28/2012	CHIPLOCK, DANIEL	Emails to team re State Street press.	0.1
2/29/2012	CHIPLOCK, DANIEL	Email S. Fineman re hearing date.	0.1
2/29/2012	CHIPLOCK, DANIEL	Review and forward defense's response to plaintiff's notice of supplemental authorities.	0.4
4/13/2012	CHIPLOCK, DANIEL	Email team re new hearing date.	0.1
4/23/2012	CHIPLOCK, DANIEL	Email team re 5/8/2012 hearing.	0.1
4/24/2012	CHIPLOCK, DANIEL	Email co-counsel re 5/8/2012 argument.	0.1
4/24/2012	CHIPLOCK, DANIEL	Emails to R. Lief and L. Simms re pro hac admission.	0.2
4/24/2012	CHIPLOCK, DANIEL	Emails with L. Simms re pro hac for R. Lief.	0.2
4/25/2012	CHIPLOCK, DANIEL	Email co-counsel re call for 5/8/2012 argument.	0.1
4/27/2012	CHIPLOCK, DANIEL	Email co-counsel re pro hac for R. Lief.	0.1
4/30/2012	CHIPLOCK, DANIEL	Emails to G. Balko re Boston travel.	0.1
4/30/2012	CHIPLOCK, DANIEL	Review reply brief and read cases cited therein for oral argument.	1.2
5/1/2012	CHIPLOCK, DANIEL	Emails with team re 5/8/2012 hearing; conference call re same.	0.7
5/4/2012	CHIPLOCK, DANIEL	Email L. Simms re counsel list.	0.1
5/8/2012	CHIPLOCK, DANIEL	Attend motion to dismiss hearing; conference and emails with team re same.	5.5
5/8/2012	CHIPLOCK, DANIEL	Emails to team re hearing; emails to colleagues re settlement issue and case law on same.	0.8
5/8/2012	CHIPLOCK, DANIEL	Return travel from Boston for motion to dismiss hearing.	3
5/8/2012	CHIPLOCK, DANIEL	Travel to Boston for motion to dismiss hearing.	3
5/9/2012	CHIPLOCK, DANIEL	Email R. Lief re meeting to discuss hearing.	0.1
5/9/2012	CHIPLOCK, DANIEL	Emails to co-counsel re plan of action following hearing.	0.8
5/10/2012	CHIPLOCK, DANIEL	Emails and conference with R. Lief and E. Cabraser re State Street hearing and plans for discussions with defense and other plaintiffs' counsel.	1
5/10/2012	CHIPLOCK, DANIEL	Emails to team re discovery schedule.	0.3
5/10/2012	CHIPLOCK, DANIEL	Research re Chapter 93A and email to team re same.	1.1
5/11/2012	CHIPLOCK, DANIEL	Email S. Fineman re [REDACTED] and possibly as class representative.	0.2
5/11/2012	CHIPLOCK, DANIEL	Emails to team re 5/15/2012 call to discuss mediation.	0.2
5/15/2012	CHIPLOCK, DANIEL	Calendar response date for complaint.	0.1
5/15/2012	CHIPLOCK, DANIEL	Email local counsel re transcript of hearing.	0.1
5/15/2012	CHIPLOCK, DANIEL	Emails and conference with co-counsel re next steps after hearing; proposed mediation; email [REDACTED]	1.4
5/15/2012	CHIPLOCK, DANIEL	Emails to K. Dugar and Eric Belfi re [REDACTED]; telephone conference with Eric Belfi re same.	0.9
5/16/2012	CHIPLOCK, DANIEL	Email [REDACTED] re State Street investigation.	0.4
5/17/2012	CHIPLOCK, DANIEL	Emails to S. Fineman re [REDACTED] contact.	0.2
5/17/2012	CHIPLOCK, DANIEL	Emails to team re mediation and Arkansas Teacher Retirement System (ATRS) issue.	0.4
5/18/2012	CHIPLOCK, DANIEL	Email [REDACTED] re hearing transcript and other questions from IAM.	0.7
5/18/2012	CHIPLOCK, DANIEL	Email R. Lief re mediation plan.	0.1
5/18/2012	CHIPLOCK, DANIEL	Email team re SEC presence at hearing.	0.1
5/21/2012	CHIPLOCK, DANIEL	Emails to K. Dugar and co-counsel re [REDACTED]; emails to Lydia Lee re same.	0.6
5/22/2012	CHIPLOCK, DANIEL	Email Eric Belfi re [REDACTED] hters call.	0.1
5/23/2012	CHIPLOCK, DANIEL	Email Lou Malone re IAM National Pension Fund and question concerning class case.	0.3
5/23/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar and Lydia Lee re [REDACTED] data; review correspondence re same.	1
5/24/2012	CHIPLOCK, DANIEL	Emails to team re mediation meeting.	0.3
5/24/2012	CHIPLOCK, DANIEL	Prepare for and attend call with [REDACTED] and Labaton re class case; emails re same.	1.8
5/24/2012	CHIPLOCK, DANIEL	Telephone conference with R. Lief re mediation; email team re same.	0.2
5/25/2012	CHIPLOCK, DANIEL	Emails to G. Balko re [REDACTED] contracts.	0.2
5/25/2012	CHIPLOCK, DANIEL	Review [REDACTED] contracts.	1
5/29/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Lief and team re mediation meeting.	0.5
5/30/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re [REDACTED] losses.	0.3
5/31/2012	CHIPLOCK, DANIEL	Email Lydia Lee re [REDACTED] status.	0.1
5/31/2012	CHIPLOCK, DANIEL	Emails with [REDACTED] re State Street class case.	0.2
5/31/2012	CHIPLOCK, DANIEL	Review email from Sucharow re mediation and forward to team.	0.1
6/4/2012	CHIPLOCK, DANIEL	Email [REDACTED] re client search.	0.1
6/6/2012	CHIPLOCK, DANIEL	Emails to team re mediation and media reports.	0.2

6/8/2012	CHIPLOCK, DANIEL	Email co-counsel re [REDACTED] data; emails with K. Dugar re same; emails re mediation date.	0.4
6/11/2012	CHIPLOCK, DANIEL	Emails re mediation.	0.2
6/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re [REDACTED] data with K. Dugar and team; review [REDACTED] contract and email team re same.	1.6
6/13/2012	CHIPLOCK, DANIEL	Emails with team and [REDACTED] re data analysis and comparison with other custodians/brokers.	0.8
6/15/2012	CHIPLOCK, DANIEL	Emails to team re [REDACTED] meeting.	0.1
6/18/2012	CHIPLOCK, DANIEL	Email Eric Belfi re [REDACTED] inquiry.	0.1
6/21/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel re mediation meeting with defense; telephone conferences with R. Loeff re same.	1.9
6/22/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with team re mediation meeting and follow-up.	1.7
6/24/2012	CHIPLOCK, DANIEL	Email team re conference call to discuss mediation.	0.1
6/27/2012	CHIPLOCK, DANIEL	Email [REDACTED] re [REDACTED] und client.	0.1
7/2/2012	CHIPLOCK, DANIEL	Emails to team re mediation and hearing statements.	0.8
7/2/2012	CHIPLOCK, DANIEL	Telephone conference with [REDACTED]; emails re same; draft confidentiality letter; emails re same.	1.3
7/3/2012	CHIPLOCK, DANIEL	Print and review new clients for Arkansas Teacher Retirement System (ATRS) transactions.	0.7
7/5/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re new damages chart for Arkansas Teacher Retirement System (ATRS)	1
7/9/2012	CHIPLOCK, DANIEL	Edit letter to defense and proposed mediation statement; email team re same.	0.6
7/9/2012	CHIPLOCK, DANIEL	Email [REDACTED] contact.	0.2
7/10/2012	CHIPLOCK, DANIEL	Emails to team re request for more information from defendants.	0.2
7/11/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with team re requests for follow-up information from State Street.	1
7/13/2012	CHIPLOCK, DANIEL	Emails to team re status reports to court.	0.1
7/16/2012	CHIPLOCK, DANIEL	Emails to team re potential mediators.	0.6
7/17/2012	CHIPLOCK, DANIEL	Email [REDACTED] re case; email [REDACTED] re same.	0.3
7/23/2012	CHIPLOCK, DANIEL	Emails to team and co-counsel re mediation dates.	0.4
7/24/2012	CHIPLOCK, DANIEL	Emails to team re mediators.	0.2
7/27/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.3
7/31/2012	CHIPLOCK, DANIEL	Email team re order on motion to seal status report.	0.1
8/7/2012	CHIPLOCK, DANIEL	Conference call with co-counsel, mediator and defense re plan for mediation; follow-up emails re same.	1.4
8/8/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re data requests in advance of mediation; review and edit proposal re same.	1.8
8/9/2012	CHIPLOCK, DANIEL	Telephone conference with team and defense counsel re data requests in advance of mediation; emails re same.	1.5
8/10/2012	CHIPLOCK, DANIEL	Voicemail and email for [REDACTED] re class case.	0.1
8/13/2012	CHIPLOCK, DANIEL	Email team re mediation and status report to Court.	0.2
8/13/2012	CHIPLOCK, DANIEL	Email to team re status report to Court.	0.1
8/13/2012	CHIPLOCK, DANIEL	Review State Street documents from Mike Thornton.	0.4
8/14/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with R. Loeff re mediation meeting on 9/13/2012.	0.6
8/15/2012	CHIPLOCK, DANIEL	Email [REDACTED] contact.	0.1
8/15/2012	CHIPLOCK, DANIEL	Emails re calls with defense re data exchange.	0.3
8/16/2012	CHIPLOCK, DANIEL	Telephone conference and emails with K. Dugar and [REDACTED] re data requests.	0.6
8/20/2012	CHIPLOCK, DANIEL	Review press on Forex investigation and forward to co-counsel.	0.2
8/21/2012	CHIPLOCK, DANIEL	Change calendar for status conference.	0.1
8/21/2012	CHIPLOCK, DANIEL	Email R. Geman re Jonathan Marks.	0.1
8/22/2012	CHIPLOCK, DANIEL	Emails to co-counsel re mediation.	0.1
8/22/2012	CHIPLOCK, DANIEL	Telephone conference with Mike Thornton and email S. Fineman re case status.	0.2
8/23/2012	CHIPLOCK, DANIEL	Conference with S. Fineman and Mike Thornton re case status and mediation; emails re same.	1
8/23/2012	CHIPLOCK, DANIEL	Email team re case status and ERISA case; review complaint.	1.8
8/24/2012	CHIPLOCK, DANIEL	Email R. Loeff re pre-mediation.	0.2
8/24/2012	CHIPLOCK, DANIEL	Emails to team re California documents produced in 10(b) case; review 10(b) docket re same.	1.1
8/27/2012	CHIPLOCK, DANIEL	Telephone conference with R. Geman re State Street ERISA case.	0.2
8/29/2012	CHIPLOCK, DANIEL	Emails with co-counsel re extension of time for defendants to respond to complaint; mediation logistics and Henriquez case.	0.8
8/30/2012	CHIPLOCK, DANIEL	Email team re document review in California.	0.1
8/31/2012	CHIPLOCK, DANIEL	Email team re call to discuss mediation logistics and ERISA plaintiffs.	0.1
9/4/2012	CHIPLOCK, DANIEL	Emails to team re mediation logistics; telephone conference re same.	1
9/5/2012	CHIPLOCK, DANIEL	Emails re conference call with Henriquez plaintiff; telephone conference re same.	1
9/6/2012	CHIPLOCK, DANIEL	Emails to S. Fineman re ERISA case.	0.2
9/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Loeff and S. Fineman re mediation.	0.4
9/11/2012	CHIPLOCK, DANIEL	Emails to team re The Wall Street Journal press on Forex litigation.	0.2
9/12/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with Keller Rohrbach re ERISA claims and motion to dismiss class case.	0.4
9/14/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Loeff re State Street mediations.	0.4
9/18/2012	CHIPLOCK, DANIEL	Emails re mediation and ERISA litigation.	0.2
9/20/2012	CHIPLOCK, DANIEL	Review correspondence re McTigue and motion to intervene.	0.3
9/26/2012	CHIPLOCK, DANIEL	Emails to team re Alternative Dispute Resolution bills.	0.3
9/27/2012	CHIPLOCK, DANIEL	Emails re mediation invoice.	0.2
9/28/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation and ERISA case.	0.6
10/1/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.3
10/2/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation.	0.5
10/10/2012	CHIPLOCK, DANIEL	Emails to K. Dugar re Forex trading data from State Street.	0.3
10/11/2012	CHIPLOCK, DANIEL	Emails to Mike Lesser re [REDACTED] status.	0.3
10/11/2012	CHIPLOCK, DANIEL	Review Forex data from State Street; conference and emails with team re same.	1.3
10/12/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re State Street Forex data.	0.4
10/12/2012	CHIPLOCK, DANIEL	Emails to team re [REDACTED] contracts.	0.6
10/15/2012	CHIPLOCK, DANIEL	Emails to team re public records request to [REDACTED] re 2012 contract.	0.5
10/15/2012	CHIPLOCK, DANIEL	Sort and file documents.	0.4
10/15/2012	CHIPLOCK, DANIEL	Telephone conferences with Laura Gerber re mediation; emails to team re same.	0.9
10/16/2012	CHIPLOCK, DANIEL	Conference call with team re mediation; telephone conference with defense re same; prepare for same and follow-up re same.	1.5
10/16/2012	CHIPLOCK, DANIEL	Email re Judge Wolf status.	0.1
10/16/2012	CHIPLOCK, DANIEL	Emails to co-counsel re mediation.	0.3
10/16/2012	CHIPLOCK, DANIEL	Emails to Lydia Lee re [REDACTED] contract status.	0.3
10/17/2012	CHIPLOCK, DANIEL	Email re mediation and data exchange.	0.1
10/17/2012	CHIPLOCK, DANIEL	Emails to G. Balko re travel to Boston for mediation.	0.4
10/17/2012	CHIPLOCK, DANIEL	Emails with co-counsel re mediation.	0.2
10/18/2012	CHIPLOCK, DANIEL	Emails re public records request to [REDACTED] re State Street contracts; submit same.	1.2
10/19/2012	CHIPLOCK, DANIEL	Emails to team re mediation.	0.3
10/19/2012	CHIPLOCK, DANIEL	Emails to team re [REDACTED] response to public records request; review documents received.	2
10/22/2012	CHIPLOCK, DANIEL	Emails to team re mediation; review documents and prepare for same.	2.5
10/23/2012	CHIPLOCK, DANIEL	Emails to [REDACTED] re case status.	0.2
10/23/2012	CHIPLOCK, DANIEL	Emails to [REDACTED] re public records request.	0.1
10/23/2012	CHIPLOCK, DANIEL	Travel to and attend mediation; conference with co-counsel re same; emails re same and review documents re same.	12
10/24/2012	CHIPLOCK, DANIEL	Attend mediation sessions; conference and emails with team re same; email mediator re same; return travel from Boston.	11
10/25/2012	CHIPLOCK, DANIEL	Draft stipulated protective order; emails to team re same.	2.8

10/25/2012	CHIPLOCK, DANIEL	Review data request to State Street and email to co-counsel re same.	0.4
10/25/2012	CHIPLOCK, DANIEL	Review draft motion to extend time for answer; email team re same.	0.2
10/25/2012	CHIPLOCK, DANIEL	Telephone conference and email with [REDACTED] re case; email S. Fineman and R. Liefre same.	0.4
10/25/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Liefre re mediation and follow-up with Lynn Sarko.	0.5
10/25/2012	CHIPLOCK, DANIEL	Telephone conference with L. Hazam re mediation and document review project.	0.6
10/26/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re information exchange with State Street; edit re same; draft requests re same; edit protective order and send to defense.	5.2
10/29/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Liefre re agreed upon points with defense counsel and discovery process.	0.5
10/30/2012	CHIPLOCK, DANIEL	Emails to all counsel re call to Judge Wolf clerk; emails re information exchange.	0.8
10/30/2012	CHIPLOCK, DANIEL	Emails to J. Dragicevic and R. Liefre re timekeeping and administration.	0.2
11/1/2012	CHIPLOCK, DANIEL	Review draft status report and emails to team re same; comments to defendant's draft; emails re draft protective order; emails to [REDACTED] re class case.	1.8
11/2/2012	CHIPLOCK, DANIEL	Emails to team re draft status report to Court; edit same.	1.6
11/2/2012	CHIPLOCK, DANIEL	Review defendant's comments to draft protective order and email team re same.	0.7
11/5/2012	CHIPLOCK, DANIEL	Emails to G. Balko re non-disclosure agreement with [REDACTED]	0.2
11/6/2012	CHIPLOCK, DANIEL	Edit non-disclosure agreement with [REDACTED] and email to S. Fineman and [REDACTED]	0.6
11/6/2012	CHIPLOCK, DANIEL	Emails to team re draft protective order.	0.5
11/7/2012	CHIPLOCK, DANIEL	Edit draft non-disclosure agreement for [REDACTED] and email [REDACTED] re same.	1
11/7/2012	CHIPLOCK, DANIEL	Emails re document requests from defendants.	0.3
11/8/2012	CHIPLOCK, DANIEL	Emails and telephone conferences re draft protective order; edit same.	1
11/8/2012	CHIPLOCK, DANIEL	Emails to team and telephone conference with R. Liefre re status conference.	0.2
11/8/2012	CHIPLOCK, DANIEL	Prepare for and attend call re discovery and schedule; emails re same; review defendant's discovery requests.	1
11/8/2012	CHIPLOCK, DANIEL	Research re attorney fees and lodestar in class cases; conference and emails with M. Miami re same.	2.2
11/9/2012	CHIPLOCK, DANIEL	Email Dan Halston re protective order.	0.2
11/12/2012	CHIPLOCK, DANIEL	Email [REDACTED] non-disclosure agreement.	0.2
11/12/2012	CHIPLOCK, DANIEL	Emails re edits to draft joint status report.	1.2
11/12/2012	CHIPLOCK, DANIEL	Emails to R. Liefre and Mike Thornton re 11/14/2012 hearing; telephone conferences re same.	0.3
11/13/2012	CHIPLOCK, DANIEL	Emails with team re draft status report; emails to defense re same.	1.4
11/13/2012	CHIPLOCK, DANIEL	Telephone conference and email with R. Liefre re status conference and status statement.	0.3
11/15/2012	CHIPLOCK, DANIEL	Email S. Fineman re document review.	0.1
11/16/2012	CHIPLOCK, DANIEL	Email M. Miami re research on settlement approvals.	0.2
11/16/2012	CHIPLOCK, DANIEL	Emails re [REDACTED] public records request.	0.2
11/16/2012	CHIPLOCK, DANIEL	Emails to E. Cabraser re background materials for status call.	0.6
11/16/2012	CHIPLOCK, DANIEL	Emails to other counsel re order and stay; edits re same.	0.9
11/16/2012	CHIPLOCK, DANIEL	Emails to team re status call and discovery.	0.6
11/19/2012	CHIPLOCK, DANIEL	Emails re meeting amongst plaintiffs' counsel and logistics.	0.5
11/20/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re document review platform.	0.5
11/20/2012	CHIPLOCK, DANIEL	Meeting with other plaintiffs' counsel and conferences with David Goldsmith and Michael Rogers and Mike Thornton re same; prepare for same; emails re discovery to other plaintiffs' counsel.	3.8
11/21/2012	CHIPLOCK, DANIEL	Emails to other plaintiffs' counsel re discovery and schedule.	0.2
11/21/2012	CHIPLOCK, DANIEL	Review M. Miami's analysis re fee awards and settlement approval and respond to same.	0.4
11/26/2012	CHIPLOCK, DANIEL	Email Joe Shelton re [REDACTED]	0.1
11/26/2012	CHIPLOCK, DANIEL	Emails with other plaintiffs' counsel re meeting with mediator and defense in January 2013.	0.6
11/27/2012	CHIPLOCK, DANIEL	Emails to team re document review platforms and document review; settlement laws and fee awards; research re same.	0.8
11/27/2012	CHIPLOCK, DANIEL	Email to all counsel re January 2013 mediation.	0.5
11/27/2012	CHIPLOCK, DANIEL	Research re ERISA preemption and Chapter 93A.	1
11/27/2012	CHIPLOCK, DANIEL	Review defendant's template request for third parties and email to team re same.	0.9
11/28/2012	CHIPLOCK, DANIEL	Emails to [REDACTED]	0.2
11/28/2012	CHIPLOCK, DANIEL	Emails to other counsel and mediator re mediation dates; emails to team re document review.	1.4
11/28/2012	CHIPLOCK, DANIEL	Research re ERISA preemption and Chapter 93A.	3
11/29/2012	CHIPLOCK, DANIEL	Email co-counsel re Court transcript.	0.1
11/29/2012	CHIPLOCK, DANIEL	Emails and conference with team re document review and mediation schedule and logistics.	1.1
11/29/2012	CHIPLOCK, DANIEL	Emails to defense counsel and team re identifying class members.	0.2
11/29/2012	CHIPLOCK, DANIEL	Emails to team re ERISA plaintiffs' discovery requests; research re ERISA preemption issue and emails to team re same.	4.8
11/30/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team, ERISA counsel re discovery coordination; email to team re strategy.	1.7
11/30/2012	CHIPLOCK, DANIEL	Emails with team and mediator re January 2013 session.	0.6
12/4/2012	CHIPLOCK, DANIEL	Review lodestar reports and shift appropriate time from 3344-0001.	1.4
12/4/2012	CHIPLOCK, DANIEL	Telephone conference with R. Liefre; email defense re mediation in Washington, D.C.	0.5
12/5/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re document review and mediation.	0.8
12/5/2012	CHIPLOCK, DANIEL	Emails to team re Arkansas Teacher Retirement System document production and strategy.	0.6
12/6/2012	CHIPLOCK, DANIEL	Email Laura Gerber re Forex mediation discovery.	0.2
12/6/2012	CHIPLOCK, DANIEL	Emails to defense and team re class and margin information.	0.4
12/6/2012	CHIPLOCK, DANIEL	Email to team re calls to discuss document review and ERISA concerns.	0.9
12/6/2012	CHIPLOCK, DANIEL	Review defendant's discovery request 'templates' for non-parties and email team re same.	0.8
12/7/2012	CHIPLOCK, DANIEL	Email with K. Dugar re mediation and discovery.	0.1
12/7/2012	CHIPLOCK, DANIEL	Prepare defendant's correspondence re profit/spread and class identification issue and forward to team.	0.2
12/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re document review platforms.	0.4
12/10/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with team re document review procedure and mediation discovery; emails re CD production.	2.2
12/11/2012	CHIPLOCK, DANIEL	Draft "cheat sheet" for document review issue coding; emails to team re same.	1.5
12/11/2012	CHIPLOCK, DANIEL	Prepare for and attend call with co-counsel re ERISA claims and document review protocols; emails re same; telephone conferences and emails with K. Dugar re same.	2.8
12/12/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re document review platform.	0.4
12/13/2012	CHIPLOCK, DANIEL	Review document platform format and issue codes; email K. Dugar re same.	0.2
12/17/2012	CHIPLOCK, DANIEL	Emails with team re mediation strategy and deadlines; do research re same; review and sign Catalyst contract.	2.8
12/18/2012	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar, co-counsel, defense counsel re California document production; send documents to Catalyst re same.	1.4
12/20/2012	CHIPLOCK, DANIEL	Emails to team re third party discovery strategy and responses to subpoena, meet and confers.	1.6
12/20/2012	CHIPLOCK, DANIEL	Review draft email to defense re meet and confers and respond to same.	0.1
12/21/2012	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re [REDACTED] inquiry and data collection.	0.6
12/23/2012	CHIPLOCK, DANIEL	Emails with co-counsel and Catalyst re document production from defendants.	0.3
12/26/2012	CHIPLOCK, DANIEL	Emails to Catalyst re document production and database for review.	0.2
12/27/2012	CHIPLOCK, DANIEL	Emails re meet and confers with defense on document review.	0.2
12/27/2012	CHIPLOCK, DANIEL	Emails with team re document review.	0.2
1/3/2013	CHIPLOCK, DANIEL	Calendar mediation date.	0.1
1/4/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.2
1/4/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with defense and co-counsel re damage data requests and third party discovery.	1.3
1/4/2013	CHIPLOCK, DANIEL	Telephone conference with K. Dugar and email team re status of document review.	0.4
1/7/2013	CHIPLOCK, DANIEL	Emails with K. Dugar re document review platform and issues.	0.4
1/8/2013	CHIPLOCK, DANIEL	Telephone conference with Dwight Bostwick and email team re 1/24/2013 mediation strategy; follow-up emails re same.	1

1/9/2013	CHIPLOCK, DANIEL	Emails to team re 1/24/2013 mediation preparation.	0.4
1/10/2013	CHIPLOCK, DANIEL	Emails to K. Dugar and defense re document production problems and issues; review same.	0.7
1/11/2013	CHIPLOCK, DANIEL	Email S. Fineman re case status.	0.2
1/11/2013	CHIPLOCK, DANIEL	Emails to team and defense re mediation; emails to team re damages discovery and review same.	1.4
1/11/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with K. Dugar re document production by State Street; emails to defense re problems with same.	1
1/14/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team and defense re mediation and damages questions; review materials provided by State Street.	1.6
1/15/2013	CHIPLOCK, DANIEL	Conference with S. Fineman re case status.	0.2
1/15/2013	CHIPLOCK, DANIEL	Emails to G. Balko re travel to Washington, DC for mediation.	0.2
1/15/2013	CHIPLOCK, DANIEL	Emails with K. Dugar re document review status.	0.4
1/15/2013	CHIPLOCK, DANIEL	Review Forex volume reports for ERISA funds.	0.5
1/16/2013	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation and discovery.	1.6
1/17/2013	CHIPLOCK, DANIEL	Emails with K. Dugar and defense re document review and status of same.	0.6
1/18/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with ERISA counsel and co-counsel re mediation strategy.	1.3
1/18/2013	CHIPLOCK, DANIEL	Review and comment on follow-up questions for State Street re damages; emails to team re same.	0.8
1/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with mediator and co-counsel re mediation issues; conference with defense re document production issues; conference and emails with ERISA counsel re mediation issues; research re same.	4
1/23/2013	CHIPLOCK, DANIEL	Emails to team re agenda for mediation and preparation for same.	2.6
1/24/2013	CHIPLOCK, DANIEL	Attend mediation in Washington, DC; emails and conferences re same.	4.5
1/24/2013	CHIPLOCK, DANIEL	Return travel from Washington, DC; emails with K. Dugar and team re document review; organize logistics for same.	4
1/24/2013	CHIPLOCK, DANIEL	Travel to, and prepare for mediation session with defendants and Jonathan Mark; emails re same.	4
1/25/2013	CHIPLOCK, DANIEL	Conference with S. Fineman re mediation; emails with team re spread calculations.	1.4
1/28/2013	CHIPLOCK, DANIEL	Document review administration and emails to K. Dugar and team re same.	1.6
1/28/2013	CHIPLOCK, DANIEL	Review David Goldsmith's comment to agenda and email re same.	0.2
1/29/2013	CHIPLOCK, DANIEL	Emails to defense re document review questions; emails to team re same.	0.6
1/29/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re document review training.	0.2
1/29/2013	CHIPLOCK, DANIEL	Telephone conference with Dwight Bostwick re mediation.	0.3
1/30/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re document review training; emails to team re same.	0.6
1/30/2013	CHIPLOCK, DANIEL	Emails to team re document review platform.	0.3
1/31/2013	CHIPLOCK, DANIEL	Emails to team re document review and training; telephone conferences with K. Dugar re same and follow-up emails re same.	1.8
2/1/2013	CHIPLOCK, DANIEL	Conference and emails re document review; attend training for same.	2.4
2/5/2013	CHIPLOCK, DANIEL	Emails and confer with D. Stellings re document review staffing.	0.6
2/5/2013	CHIPLOCK, DANIEL	Emails re conference with ERISA lawyers.	0.2
2/6/2013	CHIPLOCK, DANIEL	Emails to co-counsel re damages estimates; review charts.	0.8
2/6/2013	CHIPLOCK, DANIEL	Emails to D. Stellings and K. Dugar re document review staffing.	0.3
2/6/2013	CHIPLOCK, DANIEL	Emails to Dwight Bostwick re lunch.	0.2
2/7/2013	CHIPLOCK, DANIEL	Conference and lunch with Dwight Bostwick re State Street claims and strategy; review loss calculations re same and email team.	2.5
2/7/2013	CHIPLOCK, DANIEL	Emails re contract attorney hires and document review.	0.3
2/7/2013	CHIPLOCK, DANIEL	Emails with K. Dugar and team re document review training.	0.6
2/8/2013	CHIPLOCK, DANIEL	Emails to team re document review training; telephone conferences re same and logistics; emails to Mike Lesser re Executive Summary on damages.	0.9
2/11/2013	CHIPLOCK, DANIEL	Emails to team re document review training and video conference.	0.8
2/12/2013	CHIPLOCK, DANIEL	Emails re document review training.	0.2
2/12/2013	CHIPLOCK, DANIEL	Emails with co-counsel re document review and mediation.	0.3
2/12/2013	CHIPLOCK, DANIEL	Review and edit Executive Summary on loss calculations; emails to Mike Lesser re same.	0.5
2/13/2013	CHIPLOCK, DANIEL	Attend Catalyst document review training; emails to team re same.	1.6
2/14/2013	CHIPLOCK, DANIEL	Document review and administration; emails re same.	1.2
2/14/2013	CHIPLOCK, DANIEL	Edit Mike Lesser's memo re damages summary and emails re same; emails to ERISA counsel re same.	1.8
2/15/2013	CHIPLOCK, DANIEL	Document review and administration; conflicts check for contract attorneys re same.	1.6
2/15/2013	CHIPLOCK, DANIEL	Review damages summary prepared by Mike Lesser and emails re same.	0.5
2/19/2013	CHIPLOCK, DANIEL	Document review administration; emails re search terms.	0.7
2/19/2013	CHIPLOCK, DANIEL	Telephone conferences with document reviewers and emails re training of same.	1.4
2/20/2013	CHIPLOCK, DANIEL	Document review and administration; emails and telephone conferences with reviewers re same.	1.2
2/20/2013	CHIPLOCK, DANIEL	Emails with defense and co-counsel re 3/13/2013 video conference.	0.3
2/20/2013	CHIPLOCK, DANIEL	Telephone conference with ERISA counsel and email team re [REDACTED] data.	0.3
2/21/2013	CHIPLOCK, DANIEL	Email and conference with team re document review and administration; training re same.	1.7
2/21/2013	CHIPLOCK, DANIEL	Emails to team and defense re 3/13/2013 video conference.	0.8
2/22/2013	CHIPLOCK, DANIEL	Document review and administration; emails to team re same.	0.5
2/22/2013	CHIPLOCK, DANIEL	Email K. Dugar re [REDACTED] data transmission.	0.1
2/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with document reviewers re training.	0.5
2/25/2013	CHIPLOCK, DANIEL	Document review and administration.	0.3
2/25/2013	CHIPLOCK, DANIEL	Emails to defense re 3/13/2013 video conference.	0.2
2/26/2013	CHIPLOCK, DANIEL	Emails re California data production.	0.3
2/27/2013	CHIPLOCK, DANIEL	Document review and administration.	1.5
2/27/2013	CHIPLOCK, DANIEL	Emails to defense and team re trading data.	0.2
2/28/2013	CHIPLOCK, DANIEL	Document review and administration; emails re same.	0.4
3/1/2013	CHIPLOCK, DANIEL	Answer questions from document reviewers about process; administration re same; email co-counsel re same.	1.5
3/4/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with counsel and ERISA counsel re data analysis and document review.	0.6
3/4/2013	CHIPLOCK, DANIEL	Emails to team re document review administration.	0.8
3/5/2013	CHIPLOCK, DANIEL	Document review and administration; emails re same; Excel issues.	1.7
3/5/2013	CHIPLOCK, DANIEL	Emails to team re defendant's data production.	0.3
3/5/2013	CHIPLOCK, DANIEL	Emails to team re plaintiffs' document production.	0.3
3/6/2013	CHIPLOCK, DANIEL	Conferences and emails with team re Catalyst document review issues and troubleshooting.	0.4
3/7/2013	CHIPLOCK, DANIEL	Confer with M. Miami re 3/13/2013 conference; emails to Mike Lesser and K. Dugar re California data.	0.4
3/8/2013	CHIPLOCK, DANIEL	Document review and administration.	0.4
3/8/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel and ERISA counsel re California data and upcoming mediation; review documents for same.	2.5
3/11/2013	CHIPLOCK, DANIEL	Document review and administration; emails re same.	0.5
3/11/2013	CHIPLOCK, DANIEL	Emails to co-counsel and ERISA counsel re damages calculations.	0.4
3/12/2013	CHIPLOCK, DANIEL	Review damages chart; telephone conference with ERISA counsel and confer with D. Seltz re background on same; emails to co-counsel re same.	1.6
3/13/2013	CHIPLOCK, DANIEL	Prepare for and attend video conference on margin calculations by State Street; conferences with team re same and emails re same.	2.8
3/15/2013	CHIPLOCK, DANIEL	Emails re damages estimates for different custodial populations.	0.4
3/15/2013	CHIPLOCK, DANIEL	Emails to team re plaintiffs' document production.	0.2
3/18/2013	CHIPLOCK, DANIEL	Review damages chart from Mike Lesser; email re same.	0.2
3/20/2013	CHIPLOCK, DANIEL	Emails re document review and administration and allocation issues.	0.6
3/21/2013	CHIPLOCK, DANIEL	Emails to team re document review questions.	0.3
3/22/2013	CHIPLOCK, DANIEL	Emails to team re plan of allocation ideas; research re same.	2.2
3/26/2013	CHIPLOCK, DANIEL	Emails to Mike Lesser re fee agreement.	0.2
3/27/2013	CHIPLOCK, DANIEL	Email team re Carver complaint.	0.1
3/28/2013	CHIPLOCK, DANIEL	Emails to team re mediation statements and possible plans of allocation.	0.4
4/1/2013	CHIPLOCK, DANIEL	Email co-counsel re litigation fund.	0.1

4/1/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re Chapter 93A and suggestions for plan of allocation in any settlement.	1
4/1/2013	CHIPLOCK, DANIEL	Emails to team re mediation issues.	0.2
4/2/2013	CHIPLOCK, DANIEL	Email and telephone conferences with team re mediation issues to raise with Jonathan Marks; email and conference re document review.	1.6
4/3/2013	CHIPLOCK, DANIEL	Emails to team re document review issues and concerns.	0.3
4/4/2013	CHIPLOCK, DANIEL	Edit case description for firm website and resume.	0.4
4/4/2013	CHIPLOCK, DANIEL	Review and comment on suggested parameters for mediation and plan of allocation.	0.5
4/8/2013	CHIPLOCK, DANIEL	Emails to team re mediation document for Jonathan Marks.	0.3
4/9/2013	CHIPLOCK, DANIEL	Email team re ERISA and mediation statement; emails to R. Lief re same.	0.9
4/10/2013	CHIPLOCK, DANIEL	Review bullet point list for mediator and emails to team and R. Lief re same.	0.9
4/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation submission and ERISA concerns.	0.6
4/15/2013	CHIPLOCK, DANIEL	Emails to team re communications with ERISA attorneys on mediation issues.	0.2
4/16/2013	CHIPLOCK, DANIEL	Emails and conference with N. Diamond and team re document review status.	0.9
4/16/2013	CHIPLOCK, DANIEL	Emails to Catalyst re document review status.	0.4
4/17/2013	CHIPLOCK, DANIEL	Email Mike Lesser re mediation.	0.1
4/18/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel and team re document review status and issues.	1.8
4/19/2013	CHIPLOCK, DANIEL	Email K. Dugar re [REDACTED]	0.1
4/19/2013	CHIPLOCK, DANIEL	Emails to co-counsel re document review.	0.2
4/22/2013	CHIPLOCK, DANIEL	Emails to Mike Lesser re document review.	0.2
4/23/2013	CHIPLOCK, DANIEL	Emails to plaintiffs with team re update on mediation.	0.5
4/24/2013	CHIPLOCK, DANIEL	Emails re contract attorney document review status.	0.3
4/24/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re [REDACTED]	0.2
4/24/2013	CHIPLOCK, DANIEL	Emails to team re Department of Justice opinion in Bank of New York Mellon and mediation status.	0.5
4/24/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re mediation and clients; potential additional clients.	0.4
4/25/2013	CHIPLOCK, DANIEL	Emails to team re case submissions to mediator.	0.6
4/26/2013	CHIPLOCK, DANIEL	Email [REDACTED] re [REDACTED] loss analysis.	0.2
4/26/2013	CHIPLOCK, DANIEL	Emails to K. Dugar re [REDACTED] data analysis.	0.8
4/29/2013	CHIPLOCK, DANIEL	Telephone conference with K. Dugar re [REDACTED] loss calculations and emails to client re same; review same.	0.7
4/30/2013	CHIPLOCK, DANIEL	Emails to team re Catalyst invoice.	0.2
5/1/2013	CHIPLOCK, DANIEL	Emails to team re document review administration.	0.4
5/2/2013	CHIPLOCK, DANIEL	Emails to [REDACTED] re data analysis.	0.2
5/8/2013	CHIPLOCK, DANIEL	Email team re ERISA action and motion to dismiss.	0.4
5/13/2013	CHIPLOCK, DANIEL	Emails to team re document review and status.	0.2
5/22/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re document review.	0.4
5/28/2013	CHIPLOCK, DANIEL	Review memo from E. Brehm re document review and email re same.	0.2
5/29/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with R. Lief and Mike Lesser re mediation status.	0.4
5/30/2013	CHIPLOCK, DANIEL	Emails to R. Lief re mediation status and dates.	0.2
5/31/2013	CHIPLOCK, DANIEL	Emails to team re mediation status and summary from Jonathan Marks.	0.3
6/3/2013	CHIPLOCK, DANIEL	Emails re Catalyst document review; conference with M. Miami re research on ERISA claims and preemption; research re same.	1.7
6/3/2013	CHIPLOCK, DANIEL	Emails to R. Lief and co-counsel re mediation; review proposal.	1.8
6/4/2013	CHIPLOCK, DANIEL	Emails to R. Lief re ERISA and mediation.	0.2
6/4/2013	CHIPLOCK, DANIEL	Research re ERISA preemption.	3
6/5/2013	CHIPLOCK, DANIEL	Emails to team re document review status; telephone conference with K. Dugar re same.	0.4
6/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel re mediation document and counter-proposals; research re same.	3.5
6/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with S. Miloro re document review.	0.3
6/7/2013	CHIPLOCK, DANIEL	Emails to team re estimated ERISA damages.	0.3
6/10/2013	CHIPLOCK, DANIEL	Review draft summary of mediation issues for Lawrence Sucharow, et al., and comment on same; emails re ERISA preemption and research re same; emails and telephone conferences with State Street counsel re unredacted motion dismiss ERISA case.	4.2
6/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation submissions and comments to same.	0.5
6/11/2013	CHIPLOCK, DANIEL	Research re ERISA preemption question.	4.1
6/12/2013	CHIPLOCK, DANIEL	Conference and emails with M. Miami re ERISA research.	0.5
6/12/2013	CHIPLOCK, DANIEL	Emails to State Street counsel re motion to dismiss ERISA case.	0.2
6/12/2013	CHIPLOCK, DANIEL	Research re ERISA preemption of state law claims; emails to team re same; emails re mediation strategy and draft memo re same.	3
6/13/2013	CHIPLOCK, DANIEL	Prepare for and attend conference at Labaton re mediation proposals and plan for next steps; emails with team re same and telephone conference with mediator re same.	3.2
6/13/2013	CHIPLOCK, DANIEL	Revise unredacted motion to dismiss ERISA case and emails to team re same.	1
6/18/2013	CHIPLOCK, DANIEL	Emails to R. Lief and Mike Lesser re mediation status and discovery.	0.3
6/19/2013	CHIPLOCK, DANIEL	Emails re mediation status.	0.4
6/21/2013	CHIPLOCK, DANIEL	Emails re document review and missing documents; emails re mediation.	0.9
6/24/2013	CHIPLOCK, DANIEL	Emails to L. Nutting and K. Dugar re document review status.	0.2
6/25/2013	CHIPLOCK, DANIEL	Emails to team re mediation session preparation.	0.4
6/26/2013	CHIPLOCK, DANIEL	Emails to team re document review.	0.4
7/2/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.3
7/3/2013	CHIPLOCK, DANIEL	Conference and emails with M. Miami re ERISA question.	0.3
7/3/2013	CHIPLOCK, DANIEL	Emails to L. Nutting re document review.	0.2
7/8/2013	CHIPLOCK, DANIEL	Review JP Morgan decision and attend pre-mediation meeting at Labaton; emails to co-counsel re same.	4.4
7/9/2013	CHIPLOCK, DANIEL	Emails with Lynn Sarko and team re draft settlement papers.	0.3
7/9/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation at Labaton; emails with team and report to S. Fineman re same.	6.8
7/10/2013	CHIPLOCK, DANIEL	Emails to team re mediator invoices.	0.2
7/10/2013	CHIPLOCK, DANIEL	Emails to team re status of document review and requests for further information.	0.9
7/11/2013	CHIPLOCK, DANIEL	Emails to team re mediation invoices and logistics.	0.3
7/12/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team and Lynn Sarko re mediation and sample class notice and plans of allocation; review same.	1.2
7/12/2013	CHIPLOCK, DANIEL	Emails to team re mediation logistics.	0.3
7/15/2013	CHIPLOCK, DANIEL	Collect sample settlement documents and email to co-counsel; review same.	0.4
7/15/2013	CHIPLOCK, DANIEL	Email E. Brehm re document review.	0.2
7/16/2013	CHIPLOCK, DANIEL	Emails to team re document review progress and status.	0.4
7/16/2013	CHIPLOCK, DANIEL	Emails to team re mediator invoices.	0.2
7/23/2013	CHIPLOCK, DANIEL	Emails to co-counsel re notice and plan of allocation.	0.6
7/30/2013	CHIPLOCK, DANIEL	Emails to co-counsel re draft settlement agreement.	0.2
8/1/2013	CHIPLOCK, DANIEL	Email Michael Rogers re Catalyst invoice.	0.1
8/8/2013	CHIPLOCK, DANIEL	Work on draft proposed settlement papers.	1
8/9/2013	CHIPLOCK, DANIEL	Email Michael Rogers re Catalyst invoice.	0.1
8/12/2013	CHIPLOCK, DANIEL	Draft settlement agreement.	2
8/13/2013	CHIPLOCK, DANIEL	Draft settlement stipulation.	2.6
8/13/2013	CHIPLOCK, DANIEL	Email co-counsel re settlement stipulation status.	0.2
8/14/2013	CHIPLOCK, DANIEL	Draft proposed settlement papers and emails to team re same.	4
8/15/2013	CHIPLOCK, DANIEL	Emails to team re document review status; review and edit draft settlement notice; draft settlement agreement.	4.2
8/16/2013	CHIPLOCK, DANIEL	Edit and revise class notice and draft settlement agreement; email to co-counsel.	4.8
8/17/2013	CHIPLOCK, DANIEL	Revise draft settlement agreement and email to co-counsel.	1.1
8/18/2013	CHIPLOCK, DANIEL	Emails to R. Lief and Lynn Sarko and team re draft settlement papers.	0.6
8/20/2013	CHIPLOCK, DANIEL	Emails to team re draft settlement papers.	0.4
8/26/2013	CHIPLOCK, DANIEL	Emails to team re draft settlement papers.	0.3
8/27/2013	CHIPLOCK, DANIEL	Emails and conference with team re draft settlement papers; edit same.	3.4

8/28/2013	CHIPLOCK, DANIEL	Emails to R. Loeff re ERISA counsel agreement; emails with team re same.	0.4
8/29/2013	CHIPLOCK, DANIEL	Emails to team re proposed settlement papers for ERISA review; edit same.	1.9
8/30/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with co-counsel re draft settlement papers and ERISA issues; research re same; telephone conference with R. Loeff re fee split agreement with ERISA counsel and forward to co-counsel.	2.2
8/31/2013	CHIPLOCK, DANIEL	Emails to team re comments to draft settlement agreement and Lynn Sarko's letter; review same.	1
9/3/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re draft settlement papers and mediation strategies; revise papers.	3.6
9/3/2013	CHIPLOCK, DANIEL	Review and edit agreement with ERISA counsel; emails to team re same.	0.5
9/4/2013	CHIPLOCK, DANIEL	Telephone conferences and emails re mediation and draft settlement papers; revise same; emails re Catalyst invoices	2
9/6/2013	CHIPLOCK, DANIEL	Emails re fee split agreement and mediation.	0.2
9/6/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with team re draft settlement agreement and mediation; revise same.	1.8
9/9/2013	CHIPLOCK, DANIEL	Telephone conferences with Lynn Sarko and emails to team re draft settlement papers; review and edit same.	2.8
9/10/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with ERISA and co-counsel re edits to draft settlement papers; edit same.	2.8
9/10/2013	CHIPLOCK, DANIEL	Emails re Catalyst invoices and document review.	0.3
9/11/2013	CHIPLOCK, DANIEL	Emails to team re edits to draft class notice; edit same and distribute to team and to State Street; edit settlement documents and send; edit fee agreement.	4.8
9/12/2013	CHIPLOCK, DANIEL	Emails re draft document requests.	0.4
9/12/2013	CHIPLOCK, DANIEL	Emails to State Street counsel re ERISA papers; print and review same; research re same.	3.5
9/12/2013	CHIPLOCK, DANIEL	Telephone conference with Lynn Sarko and email team re mediation.	0.4
9/13/2013	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation status; review ERISA pleadings.	1.4
9/17/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation session at Wilmer Hale; emails and conference with colleagues re same; research re ERISA.	6.4
9/18/2013	CHIPLOCK, DANIEL	Emails to team re mediation debriefing.	0.2
9/19/2013	CHIPLOCK, DANIEL	Emails to team re mediation debriefing.	0.2
9/20/2013	CHIPLOCK, DANIEL	Conference and emails with team re mediation debriefing and Hill case updates; research re same.	2.3
9/23/2013	CHIPLOCK, DANIEL	Research re Hill case orders and transcripts.	1.1
9/24/2013	CHIPLOCK, DANIEL	Emails with team re California Attorney General material; review documents and transcripts from California Attorney General case and Hill case; review discovery demands in both cases.	3.5
9/25/2013	CHIPLOCK, DANIEL	Review discovery order and hearing transcript from Hill litigation; research for letter to Jonathan Marks on discovery issues.	3.4
9/26/2013	CHIPLOCK, DANIEL	Review case transcripts and orders from Hill and California Attorney General actions; emails to team re same.	2.8
9/27/2013	CHIPLOCK, DANIEL	Review discovery transcripts and orders from Hill case; emails to team re same.	3.5
9/30/2013	CHIPLOCK, DANIEL	Draft letter to Jonathan Marks re document production; emails to team re same; revise same; review transcripts re same.	2.8
10/1/2013	CHIPLOCK, DANIEL	Revise letter to mediator on document demands; emails to team re same.	2.6
10/14/2013	CHIPLOCK, DANIEL	Emails re document review staffing.	0.1
10/16/2013	CHIPLOCK, DANIEL	Emails and conference with team re mediation status; review Hill docket and report on same; research re same.	2.8
10/16/2013	CHIPLOCK, DANIEL	Research re class certification issues and Chapter 93A.	1
10/17/2013	CHIPLOCK, DANIEL	Research re class certification under Chapter 93A; telephone conference with Mike Lesser re same.	3.6
10/21/2013	CHIPLOCK, DANIEL	Emails to team re document production status.	0.4
10/22/2013	CHIPLOCK, DANIEL	Emails and telephone conferences re mediation status and document production; do research on class certification issues.	3.5
10/24/2013	CHIPLOCK, DANIEL	Emails to team re negotiations over document productions.	0.4
10/28/2013	CHIPLOCK, DANIEL	Emails to team re Site Street document production.	0.3
10/29/2013	CHIPLOCK, DANIEL	Emails to team re impact of Judge Cotti's order in Bank of New York Mellon.	0.6
10/30/2013	CHIPLOCK, DANIEL	Conference with R. Loeff re research on class certification and mediation status.	0.3
11/4/2013	CHIPLOCK, DANIEL	Emails to team re additional document review.	0.2
11/7/2013	CHIPLOCK, DANIEL	Email team re Hill decision on motion to compel.	0.2
11/12/2013	CHIPLOCK, DANIEL	Emails re mediation session.	0.2
11/13/2013	CHIPLOCK, DANIEL	Prepare for and attend mediation session with State Street; emails with co-counsel re same.	5.5
11/14/2013	CHIPLOCK, DANIEL	Emails to team re 12/18/2013 meeting.	0.2
11/15/2013	CHIPLOCK, DANIEL	Email team re draft motion to extend stay; review same.	0.2
11/19/2013	CHIPLOCK, DANIEL	Emails to team re document review; email K. Dugar re same.	0.8
11/20/2013	CHIPLOCK, DANIEL	Emails re 12/18/2013 meeting.	0.3
11/27/2013	CHIPLOCK, DANIEL	Emails to G. Balko and L. Simms re travel to Santa Barbara for plaintiffs' meeting.	0.3
12/2/2013	CHIPLOCK, DANIEL	Emails re C. Dunev re time reports.	0.2
12/3/2013	CHIPLOCK, DANIEL	Review and designate qui tam time from class time; emails to David Goldsmith re same.	1.4
12/4/2013	CHIPLOCK, DANIEL	Research re class certification issues; emails re same.	3.1
12/9/2013	CHIPLOCK, DANIEL	Emails to C. Dunev re lodestar reports; review same and send to co-counsel; same for cost reports.	1.8
12/9/2013	CHIPLOCK, DANIEL	Emails to team re fee split agreement with ERISA counsel.	0.6
12/11/2013	CHIPLOCK, DANIEL	Emails to team and ERISA counsel re fee agreement.	0.8
12/12/2013	CHIPLOCK, DANIEL	Emails to team re fee split agreement with ERISA.	0.2
12/13/2013	CHIPLOCK, DANIEL	Emails to team and ERISA counsel re fee split agreement.	0.3
12/13/2013	CHIPLOCK, DANIEL	Research re class certification issues.	1.4
12/13/2013	CHIPLOCK, DANIEL	Telephone conferences and emails with co-counsel re strategy session and document review.	0.6
12/16/2013	CHIPLOCK, DANIEL	Emails to team re mediation strategy session; prepare for same.	1.8
12/17/2013	CHIPLOCK, DANIEL	Emails re litigation strategy meeting; travel to same; research re same.	8.5
12/18/2013	CHIPLOCK, DANIEL	Litigation/mediation strategy session with co-counsel and ERISA counsel; emails and conferences re same; review materials re same.	7
12/18/2013	CHIPLOCK, DANIEL	Return travel from Santa Barbara, CA to New York.	7.5
12/20/2013	CHIPLOCK, DANIEL	Emails to team re damages production.	0.2
12/26/2013	CHIPLOCK, DANIEL	Emails to other plaintiffs' counsel re mediation expenses.	0.2
12/30/2013	CHIPLOCK, DANIEL	Emails re mediation follow-up; review order in Hill case re attorney-client privilege.	0.8
12/31/2013	CHIPLOCK, DANIEL	Email Mike Lesser re Hill order on attorney-client privilege.	0.1
1/2/2014	CHIPLOCK, DANIEL	Emails re Catalyst repository and invoices.	0.2
1/2/2014	CHIPLOCK, DANIEL	Review and edit draft letter to Jonathan Marks re mediation information exchange; emails to team re same.	0.8
1/8/2014	CHIPLOCK, DANIEL	Emails re letter to Jonathan Marks.	0.2
1/10/2014	CHIPLOCK, DANIEL	Emails to Labaton re lodestar report.	0.1
1/16/2014	CHIPLOCK, DANIEL	Review and comment on draft letter to Wilmer Hale re document production; email Michael Rogers re same.	0.2
1/21/2014	CHIPLOCK, DANIEL	Review discovery filing in Hill action for identification of State Street witnesses; email team re same.	0.3
1/23/2014	CHIPLOCK, DANIEL	Emails re lodestar checks with co-counsel.	0.1
1/23/2014	CHIPLOCK, DANIEL	Telephone conferences and emails with R. Loeff and team re status of California action and potential impact on settlement of class case; research re same.	1.2
2/3/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re potential California settlement and implications for class case.	1
2/5/2014	CHIPLOCK, DANIEL	Telephone conferences with team re status of California settlement talks and impact on class case; emails re same.	1
2/6/2014	CHIPLOCK, DANIEL	Emails with team re mediation preparation.	0.4
2/11/2014	CHIPLOCK, DANIEL	Emails to team re State Street response on data request.	0.2
2/13/2014	CHIPLOCK, DANIEL	Emails to team re damages charts.	0.2
2/20/2014	CHIPLOCK, DANIEL	Emails to team re damages reports for mediation.	0.8
2/25/2014	CHIPLOCK, DANIEL	Emails to team re California State Street status.	0.2
2/26/2014	CHIPLOCK, DANIEL	Emails with team re preparation for mediation; damage calculations re same.	0.8

2/28/2014	CHIPLOCK, DANIEL	Research re class certification issues and Chapter 93A.	4
3/1/2014	CHIPLOCK, DANIEL	Research re Chapter 93A class certification issues.	1.4
3/2/2014	CHIPLOCK, DANIEL	Research re Chapter 93A class certification issues and draft memo re same.	4
3/3/2014	CHIPLOCK, DANIEL	Research and draft memo on Chapter 93A and class certification issues for team; emails re same and follow-up with Larry Sucharow and prepare for mediation session.	6.2
3/4/2014	CHIPLOCK, DANIEL	Prepare for and attend mediation session; emails and conference with team re same; confer with M. Miami re research.	5.7
3/6/2014	CHIPLOCK, DANIEL	Emails to team re document review assignments.	0.3
3/7/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation preparation; confer with M. Miami re same and Chapter 93A research.	0.8
3/13/2014	CHIPLOCK, DANIEL	Emails to K. Dugar re status of review.	0.2
3/18/2014	CHIPLOCK, DANIEL	Confer and emails with M. Miami re Chapter 93A research on class certification issues.	0.4
3/18/2014	CHIPLOCK, DANIEL	Email K. Dugar re document review status.	0.1
4/3/2014	CHIPLOCK, DANIEL	Emails to team re mediation session planning and research.	0.7
4/7/2014	CHIPLOCK, DANIEL	Conference and emails with M. Miami re class certification and Chapter 93A research.	0.5
4/7/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re preparation for mediation session on 5/9/2014 and presentation for same.	0.8
4/14/2014	CHIPLOCK, DANIEL	Email M. Miami re mediation/class certification research.	0.2
4/15/2014	CHIPLOCK, DANIEL	Emails to M. Miami re mediation research status.	0.3
4/15/2014	CHIPLOCK, DANIEL	Print and review State Street memo from M. Miami.	0.5
4/16/2014	CHIPLOCK, DANIEL	Review research and conference and emails with M. Miami and Mike Lesser re State Street and Chapter 93A.	1.8
4/17/2014	CHIPLOCK, DANIEL	Review 93A research for mediation and emails with team re same; edit memo re same; confer with M. Miami re same emails to team re custody contract.	1.4
4/21/2014	CHIPLOCK, DANIEL	Emails re Catalyst invoice for document repository.	0.2
4/23/2014	CHIPLOCK, DANIEL	Emails to team re document review status.	0.2
4/24/2014	CHIPLOCK, DANIEL	Emails with team re past document requests and customer contracts.	0.4
4/24/2014	CHIPLOCK, DANIEL	Email team re mediation and Hill case status.	0.6
4/25/2014	CHIPLOCK, DANIEL	Email D. Stellings and S. Fineman re case status and securities settlement.	0.2
4/25/2014	CHIPLOCK, DANIEL	Review expanded memo re Chapter 93A class issues; forward to team.	0.4
4/29/2014	CHIPLOCK, DANIEL	Emails re Catalyst invoices.	0.2
4/30/2014	CHIPLOCK, DANIEL	Emails re mediation slides and Chapter 93A.	0.2
5/2/2014	CHIPLOCK, DANIEL	Emails to M. Miami re mediation slides.	0.1
5/3/2014	CHIPLOCK, DANIEL	Review mediation PowerPoint on Chapter 93A and class certification issues; emails to M. Miami re same; emails to team re liability presentation.	1.6
5/4/2014	CHIPLOCK, DANIEL	Email team re mediation presentation and class issues.	0.2
5/4/2014	CHIPLOCK, DANIEL	Review updated Chapter 93A slides and email M. Miami re same; forward same to team.	1
5/5/2014	CHIPLOCK, DANIEL	Emails to R. Loeff re liability slides for mediation.	0.1
5/5/2014	CHIPLOCK, DANIEL	Emails with team re Chapter 93A slides for mediation.	0.2
5/7/2014	CHIPLOCK, DANIEL	Email R. Loeff re mediation; emails to team re presentation.	0.7
5/8/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation session; prepare for same and review Chapter 93A research.	3.8
5/9/2014	CHIPLOCK, DANIEL	Research and prepare for mediation session; revise Chapter 93A presentation for same; emails and follow-up re same; attend session with mediator.	10
5/12/2014	CHIPLOCK, DANIEL	Email to Michael Rogers re Jonathan Marks status.	0.1
5/15/2014	CHIPLOCK, DANIEL	Emails to team and C. Dunev re Iodestar and expense reports; review same.	0.7
5/16/2014	CHIPLOCK, DANIEL	Emails to team re mediation and State Street response.	0.2
5/20/2014	CHIPLOCK, DANIEL	Emails to Mike Rogers re Iodestar reports.	0.1
5/22/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with [REDACTED] counsel re subpoena from Department of Labor; review past correspondence with [REDACTED] and forward spread study on Forex.	0.6
5/22/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation status; confer with S. Fineman re same.	1
5/28/2014	CHIPLOCK, DANIEL	Emails re mediation and due diligence on client trades.	0.2
5/30/2014	CHIPLOCK, DANIEL	Email S. Fineman re stay continuation.	0.2
6/23/2014	CHIPLOCK, DANIEL	Review court order on schedule and emails to S. Fineman and team re same.	0.3
7/1/2014	CHIPLOCK, DANIEL	Emails with Mike Lesser re status of California action.	0.2
7/8/2014	CHIPLOCK, DANIEL	Emails to team re Timothy Hill settlement.	0.2
7/10/2014	CHIPLOCK, DANIEL	Emails to co-counsel re Catalyst invoices and payment; wire funds.	0.2
8/28/2014	CHIPLOCK, DANIEL	Email M. Chalos re case status and Tennessee files.	0.1
9/23/2014	CHIPLOCK, DANIEL	Emails to Michael Rogers and Mike Lesser re discovery status and plaintiff document gathering.	0.2
9/24/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with Michael Rogers and Mike Lesser re current discovery status and defendant's document requests.	0.4
10/26/2014	CHIPLOCK, DANIEL	Email R. Loeff re mediation status.	0.1
10/27/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re discovery status and mediation.	0.7
11/5/2014	CHIPLOCK, DANIEL	Email R. Loeff and Mike Lesser re status of California case.	0.1
12/11/2014	CHIPLOCK, DANIEL	Emails to S. Fineman re staff attorney assignments and status of document review.	0.2
12/12/2014	CHIPLOCK, DANIEL	Conference with Mike Lesser and email R. Loeff re conference call to discuss mediation.	0.2
12/12/2014	CHIPLOCK, DANIEL	Email D. Seltz re staff attorney assignments and document review.	0.1
12/14/2014	CHIPLOCK, DANIEL	Conference with team re mediation issues; emails with R. Loeff, S. Fineman and E. Cabraser re same.	1.5
12/15/2014	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation schedule and logistics.	0.9
12/15/2014	CHIPLOCK, DANIEL	Emails with Mike Lesser and Michael Rogers re damages calculations.	0.3
12/23/2014	CHIPLOCK, DANIEL	Emails to team re mediation.	0.1
12/24/2014	CHIPLOCK, DANIEL	Emails to team re foreign damages numbers.	0.3
12/29/2014	CHIPLOCK, DANIEL	Emails to team re mediation schedule.	0.1
12/31/2014	CHIPLOCK, DANIEL	Email R. Loeff re mediation; telephone conferences and emails with team re same.	1
12/31/2014	CHIPLOCK, DANIEL	Emails to M. Miami re Chapter 93A research and mediation; review same.	1
1/2/2015	CHIPLOCK, DANIEL	Review damages email from Mike Lesser and respond; emails to team re Chapter 93A and prior presentations to State Street; review same.	1.2
1/4/2015	CHIPLOCK, DANIEL	Review prior presentations to prepare for mediation; emails with team re same; research re Chapter 93A and class certification.	3.2
1/5/2015	CHIPLOCK, DANIEL	Prepare for and attend mediation at Wilmer Hale; emails and conference with team re same; research re Chapter 93A; emails re same.	7.5
1/6/2015	CHIPLOCK, DANIEL	Email Mike Lesser re claims process for settlement.	0.1
1/7/2015	CHIPLOCK, DANIEL	Emails re 2/4/2015 mediation and status of document review.	0.3
1/8/2015	CHIPLOCK, DANIEL	Email co-counsel re document review status.	0.3
1/13/2015	CHIPLOCK, DANIEL	Emails to team re document review status.	0.2
1/14/2015	CHIPLOCK, DANIEL	Emails to N. Diamond and K. Dugar re staffing on document review.	0.3
1/15/2015	CHIPLOCK, DANIEL	Emails to D. Stellings re document review and staffing.	0.2
1/15/2015	CHIPLOCK, DANIEL	Telephone conference with Garrett Bradley re document review; conferences with S. Fineman and N. Diamond re same.	0.5
1/16/2015	CHIPLOCK, DANIEL	Emails and conference with co-counsel, S. Fineman and N. Diamond re document review and staffing for same.	1
1/20/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation scheduling.	0.6
1/21/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar and N. Diamond re document review assignments.	0.5
1/21/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re 2/4/2015 mediation date.	0.3
1/21/2015	CHIPLOCK, DANIEL	Review motion to extend discovery stay and email team re same; email R. Loeff re 2/4/2015 mediation date.	0.2
1/22/2015	CHIPLOCK, DANIEL	Emails to K. Dugar re staffing and document review assignments; email to Thornton & Naumes re same.	1.2
1/22/2015	CHIPLOCK, DANIEL	Email to M. Lewis re document reviewers.	0.1
1/23/2015	CHIPLOCK, DANIEL	Conference and emails with R. Loeff re State Street mediation.	0.6

1/23/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar re staffing issues; emails to E. Fastiff re same; conference with J.A. Kruse re same; email M. Lewis re same.	1.9	
1/26/2015	CHIPLOCK, DANIEL	Emails with R. Liefre re 2/4/2015 mediation session.	0.1	
1/27/2015	CHIPLOCK, DANIEL	Emails with K. Dugar and M. Lewis re document review staffing.	0.2	
1/28/2015	CHIPLOCK, DANIEL	Emails to M. Lewis and K. Dugar re document review staffing.	0.2	
1/29/2015	CHIPLOCK, DANIEL	Email N. Diamond re document review status.	0.1	
1/29/2015	CHIPLOCK, DANIEL	Emails to M. Miami re agenda for 2/4/2015 meeting; conference re same.	0.6	
1/30/2015	CHIPLOCK, DANIEL	Emails to L. Simms and M. Miami re 2/4/2015 meeting logistics; emails to C. Dunev re administration.	0.8	
1/30/2015	CHIPLOCK, DANIEL	Emails to M. Miami re damages and class certification issues for 2/4/2015 meeting.	0.7	
1/31/2015	CHIPLOCK, DANIEL	Emails to M. Miami re 2/4/2015 mediation.	0.1	
2/2/2015	CHIPLOCK, DANIEL	Emails to M. Miami re State Street mediation background; follow-up re same.	0.9	
2/4/2015	CHIPLOCK, DANIEL	Emails to team re State Street mediation.	0.5	
2/5/2015	CHIPLOCK, DANIEL	Emails re Department of Labor issues and ERISA damages.	0.5	
2/9/2015	CHIPLOCK, DANIEL	Emails and conferences with K. Dugar and team re document review status and assignments.	1.1	
2/10/2015	CHIPLOCK, DANIEL	G-mails to Lynn Sarko and Michael Lesser re ERISA damages.	0.3	
2/13/2015	CHIPLOCK, DANIEL	E-mails to S. Fineman and R. Liefre re settlement mediation status.	0.2	
2/22/2015	CHIPLOCK, DANIEL	Email R. Liefre re mediation pre-meeting and calendar same.	0.1	
2/24/2015	CHIPLOCK, DANIEL	E-mails E. Fastiff re status of document reviewers.	0.2	
2/24/2015	CHIPLOCK, DANIEL	Review "hot docs" from State Street review; prepare for mediation session.	1.4	
2/24/2015	CHIPLOCK, DANIEL	Telephone conferences and e-mails with K. Dugar re status of document review efforts.	0.8	
2/25/2015	CHIPLOCK, DANIEL	Conference and e-mails with team re mediation preparation; review documents and memorandums for same.	3.3	
2/25/2015	CHIPLOCK, DANIEL	Conference with R. Liefre re mediation; e-mail M. Miami re same.	0.7	
2/25/2015	CHIPLOCK, DANIEL	E-mails to M. Lesser and K. Dugar re document review.	0.2	
2/25/2015	CHIPLOCK, DANIEL	Review margin data and e-mails team re same for mediation; prepare for mediation by looking at prior presentations and compare to Bank of New York Mellon terms.	1.6	
2/26/2015	CHIPLOCK, DANIEL	Prepare for and attend mediation with State Street and team; e-mails re same.	9.6	
3/2/2015	CHIPLOCK, DANIEL	Emails and conference with M. Miami re mediation and class certification session with defendants.	0.8	
3/2/2015	CHIPLOCK, DANIEL	Emails with N. Diamond re overseas clientele.	0.2	
3/3/2015	CHIPLOCK, DANIEL	Emails with N. Diamond re foreign clientele of State Street.	0.4	
3/4/2015	CHIPLOCK, DANIEL	Emails to Marks and team re next mediation date.	0.3	
3/4/2015	CHIPLOCK, DANIEL	Emails to M. Rogers and team re Marks ADR invoice.	0.6	
3/6/2015	CHIPLOCK, DANIEL	E-mails to team and K. Dugar re second tier document review; telephone conferences re same.	0.8	
3/7/2015	CHIPLOCK, DANIEL	E-mail K. Dugar re document review status.	0.2	
3/7/2015	CHIPLOCK, DANIEL	E-mails re staffing and document review administration for us and Thornton Law Firm.	1.4	
3/8/2015	CHIPLOCK, DANIEL	E-mail N. Diamond re document review and work assignments.	0.1	
3/9/2015	CHIPLOCK, DANIEL	E-mails to D. Harvey and team re document review status and staffing; e-mails to HR re same.	0.8	
3/9/2015	CHIPLOCK, DANIEL	Review Department of Labor letter and e-mails to team re same.	1	
3/10/2015	CHIPLOCK, DANIEL	Emails to E. Hoffman and Team re Document review staffing and status.	0.4	
3/10/2015	CHIPLOCK, DANIEL	Emails to team re next mediation date and secondary document review.	0.8	
3/13/2015	CHIPLOCK, DANIEL	Emails to team re next mediation date; telephone conference re same.	0.8	
3/16/2015	CHIPLOCK, DANIEL	Emails re document review status.	0.2	
3/17/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re document review status and progress.	0.3	
3/23/2015	CHIPLOCK, DANIEL	E-mail team re 4/9 mediation.	0.1	
3/23/2015	CHIPLOCK, DANIEL	E-mail to M. Miami re 4/9 mediation.	2	
3/24/2015	CHIPLOCK, DANIEL	E-mails re document review status and staffing.	0.3	
3/27/2015	CHIPLOCK, DANIEL	Emails with team re next mediation date and pre-call re class certification issues.	0.4	
3/28/2015	CHIPLOCK, DANIEL	Emails to team and defense and mediator re settlement documents in BNYM; preparation for April 3 call.	1.6	
3/30/2015	CHIPLOCK, DANIEL	Emails with team and State Street and mediator re 4/9 mediation; emails to G. Balko re travel for same.	1	
3/31/2015	CHIPLOCK, DANIEL	Emails re 4/9 mediation session; conference with M. Miami re class certification call.	0.6	
4/1/2015	CHIPLOCK, DANIEL	Review research on class certification issues and emails to J. Miami re same for mediation session.	1	
4/2/2015	CHIPLOCK, DANIEL	Emails with M. Miami re class certification arguments; conference re same.	0.8	
4/6/2015	CHIPLOCK, DANIEL	Edits and conference with team re mediation status.	1.2	
4/6/2015	CHIPLOCK, DANIEL	Email G. Balko re Boston travel.	0.1	
4/6/2015	CHIPLOCK, DANIEL	Email team re Department of Justice contacts.	0.1	
4/6/2015	CHIPLOCK, DANIEL	Email team re status of document review.	0.2	
4/7/2015	CHIPLOCK, DANIEL	Conference and emails with team re [REDACTED] settlement talks.	1	
4/7/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team and mediator re mediation status; conference re same; review class certification research.	1.8	
4/7/2015	CHIPLOCK, DANIEL	Emails to team re additional document requests and mediation.	0.2	
4/7/2015	CHIPLOCK, DANIEL	Emails with team re class certification arguments and mediation.	0.4	
4/8/2015	CHIPLOCK, DANIEL	Administration re document review and staffing.	0.4	
4/8/2015	CHIPLOCK, DANIEL	Emails with BLBG re SSG on deposition.	0.2	
4/8/2015	CHIPLOCK, DANIEL	Telephone conferences with team re mediation and conversations with SEC; telephone conference Department of Justice and emails re same; telephone conferences re additional document requests and tasks for reviewers; conference with M. Miami re class certification research; review "hot documents" memorandum from team and disseminate same.	2.8	
4/9/2015	CHIPLOCK, DANIEL	Attend mediation call with Steve Street and team; follow up emails re same; telephone conference Department of Justice and emails with team re same; draft document requests.	3.5	
4/9/2015	CHIPLOCK, DANIEL	Telephone conference Dan Halston re [REDACTED].	0.2	
4/10/2015	CHIPLOCK, DANIEL	Draft document requests and emails with co-counsel re same; email to Wilmer Hale and telephone conferences re same.	1.8	
4/10/2015	CHIPLOCK, DANIEL	Emails to N. Diamond and K. Dugar re document reviewer workloads.	0.3	
4/13/2015	CHIPLOCK, DANIEL	Emails with team and telephone conferences with K. Dugar re document review work flows.	1	
4/14/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with K. Dugar and co-counsel re staffing and document review projects.	1.6	
4/15/2015	CHIPLOCK, DANIEL	Emails to team re U.S. Department of Justice contacts.	0.5	
4/20/2015	CHIPLOCK, DANIEL	Emails and conferences with N. Diamond and K. Dugar re document review and staffing.	0.4	
4/21/2015	CHIPLOCK, DANIEL	Emails with K. Dugar and co-counsel re document review assignments and staffing issues.	1.5	
4/23/2015	CHIPLOCK, DANIEL	Email Christine Wichers at U.S. Department of Justice re mediation.	0.1	
4/23/2015	CHIPLOCK, DANIEL	Emails with team re April 30, 2015 mediation and April 29, 2015 preparation session.	0.8	
4/27/2015	CHIPLOCK, DANIEL	Emails with team re discovery requests outstanding and whether to alert mediator; telephone conference with Michael Rogers re same; email Daniel Halston [REDACTED].	2.2	
4/28/2015	CHIPLOCK, DANIEL	Draft term sheet for settlement and send to team.	1	
4/28/2015	CHIPLOCK, DANIEL	Email M. Miami re class certification research.	0.1	
4/29/2015	CHIPLOCK, DANIEL	Attend mediation planning session with co-counsel.	2.6	
4/29/2015	CHIPLOCK, DANIEL	Travel to Boston and prepare for mediation session on airplane and after.	2.8	
4/30/2015	CHIPLOCK, DANIEL	Attend mediation session in Boston; emails re same.	3.5	
5/1/2015	CHIPLOCK, DANIEL	Email M. Miami re mediation run down.	0.2	
5/5/2015	CHIPLOCK, DANIEL	Conference with S. Fineman re mediation update.	0.2	
5/6/2015	CHIPLOCK, DANIEL	Emails and telephone calls with co-counsel re [REDACTED]; emails with Marks.	1	
5/7/2015	CHIPLOCK, DANIEL	Emails with N. Diamond re Coder administration; emails with co-counsel re assignments.	0.8	
5/12/2015	CHIPLOCK, DANIEL	Emails and telephone calls with K. Dugar re coder assignments.	0.4	
5/12/2015	CHIPLOCK, DANIEL	Emails with Lynn Sarko and R. Liefre re joint [REDACTED].	0.3	
5/13/2015	CHIPLOCK, DANIEL	Conferences and emails with team re mediation and Department of Justice status.	1.5	
5/13/2015	CHIPLOCK, DANIEL	Draft joint [REDACTED] and emails to team re same; edit same.	1.8	
5/13/2015	CHIPLOCK, DANIEL	Telephone calls and emails with K. Dugar and team re document review status.	0.6	
5/14/2015	CHIPLOCK, DANIEL	Emails and conferences with R. Liefre and L. Sarko re mediation status, BNYM settlement.	1	
5/14/2015	CHIPLOCK, DANIEL	Emails with team re document review status and projects.	0.6	
5/14/2015	CHIPLOCK, DANIEL	Research re SEC public statements on FX settlement in BNYM; emails to R. Liefre and team re same.	1.5	

5/15/2015	CHIPLOCK, DANIEL	Emails to team re SEC settlement and BNY context; telephone calls and follow up emails re same.	2.9	
5/18/2015	CHIPLOCK, DANIEL	Emails with team re document review assignments and mediation issues.	0.5	
5/19/2015	CHIPLOCK, DANIEL	Emails and conferences with R. Loeff, Lynn Sarko, Michael Thornton re mediation and Department of Justice status; conferences and emails with Bill Paine re [REDACTED] follow up emails with team re same and Friday meeting.	2.5	
5/20/2015	CHIPLOCK, DANIEL	Conference with K. Dugar and emails to M. Lesser and M. Rogers re tasks for document review to be assigned.	0.5	
5/20/2015	CHIPLOCK, DANIEL	Emails to RLL and SEF re meeting with M. Thornton to discuss case status.	0.3	
5/20/2015	CHIPLOCK, DANIEL	Emails with K. Dugar work product from document review.	0.2	
5/20/2015	CHIPLOCK, DANIEL	Emails with team re document review assignments; telephone call with K. Dugar re same.	0.5	
5/21/2015	CHIPLOCK, DANIEL	Emails and conferences with team re topics for further analysis by reviewing attorneys; gather lodestar and send to Thornton.	0.9	
5/22/2015	CHIPLOCK, DANIEL	Conferences with team, mediator and State Street re [REDACTED] follow up emails and calls re setting up meeting with Department of Justice.	2	
5/22/2015	CHIPLOCK, DANIEL	Emails with N. Diamand and K. Dugar re coder administration.	0.4	
5/26/2015	CHIPLOCK, DANIEL	Emails and telephone calls with R. Loeff and team re Department of Justice status and next mediation date; review damages scenarios circulated by co-counsel and research re same.	2	
5/26/2015	CHIPLOCK, DANIEL	Emails with N. Diamand re coder administration.	0.1	
5/27/2015	CHIPLOCK, DANIEL	Emails with team and State Street counsel re [REDACTED]; telephone calls with K. Dugar re document review projects; emails with M. Lesser re damages scenarios.	1.1	
5/28/2015	CHIPLOCK, DANIEL	Emails to team re document review work product; review same.	0.5	
6/1/2015	CHIPLOCK, DANIEL	Emails to co-counsel re reviewer work product and memoranda.	0.4	
6/2/2015	CHIPLOCK, DANIEL	Attend meetings with co-counsel, Department of Justice and State Street [REDACTED] conferences with team before and after; emails re same.	9	
6/2/2015	CHIPLOCK, DANIEL	Fly to Boston for meetings with Department of Justice and State Street.	1.5	
6/2/2015	CHIPLOCK, DANIEL	Return travel from Boston.	1.5	
6/3/2015	CHIPLOCK, DANIEL	Emails with co-counsel re research on final approval.	0.3	
6/3/2015	CHIPLOCK, DANIEL	Emails with team re next mediation date and coordination with Department of Justice; telephone conferences with R. Loeff and Lynn Sarko re same.	1.2	
6/4/2015	CHIPLOCK, DANIEL	Telephone calls and emails with R. Loeff re [REDACTED]; emails to team.	0.9	
6/8/2015	CHIPLOCK, DANIEL	Attend mediation at Labaton and preparation for same; emails with team re same; conference with S. Fineman re same.	3.8	
6/8/2015	CHIPLOCK, DANIEL	Emails and telephone calls with team re mediation progress and status; plan for 6/9 session at Labaton.	2	
6/8/2015	CHIPLOCK, DANIEL	Emails to K. Dugar and N. Diamand re staff attorney review and projects.	0.4	
6/8/2015	CHIPLOCK, DANIEL	Emails to team re document review memos.	0.2	
6/9/2015	CHIPLOCK, DANIEL	Emails to San Francisco Human Resources re document review staffing.	0.2	
6/11/2015	CHIPLOCK, DANIEL	Emails to team re next mediation session; telephone conferences with Carl Kravitz re same; email to B. Balko re travel for same.	0.9	0.4
6/12/2015	CHIPLOCK, DANIEL	Emails to team re statute of Department of Labor case and calls with Bank re [REDACTED]	0.4	
6/15/2015	CHIPLOCK, DANIEL	Emails to counsel re upcoming mediation.	0.1	
6/16/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re mediation status and Department of Justice development.	0.5	
6/17/2015	CHIPLOCK, DANIEL	Conference with co-counsel and Bank re mediation, follow up emails re same; research re ERISA volumes and run calculation.	2.8	
6/22/2015	CHIPLOCK, DANIEL	Email R. Loeff re mediation.	0.1	
6/23/2015	CHIPLOCK, DANIEL	Emails to co-counsel re document review memoranda.	0.2	
6/23/2015	CHIPLOCK, DANIEL	Emails to counsel re next mediation.	0.2	
6/23/2015	CHIPLOCK, DANIEL	Emails with D. Seltz and K. Dugar re document review status and allocation; telephone conferences with K. Dugar re same.	0.5	
6/24/2015	CHIPLOCK, DANIEL	Email S. Fineman re mediation.	0.1	
6/25/2015	CHIPLOCK, DANIEL	Conference with S. Fineman and R. Loeff re mediation.	0.6	
6/26/2015	CHIPLOCK, DANIEL	Prepare for and attend mediation at Wilmer Hale New York City; conferences and emails with team re same.	9	
6/29/2015	CHIPLOCK, DANIEL	Email team re mediation and preparation for same.	1.8	
6/30/2015	CHIPLOCK, DANIEL	Travel to and attend mediation at Wilmer Hale Boston; emails and conferences with team re same; return travel to New York City; draft and circulate term sheet; emails with team re wrapping up document review.	15.8	
7/1/2015	CHIPLOCK, DANIEL	Emails with team re discovery status and wrapping up.	0.3	
7/1/2015	CHIPLOCK, DANIEL	Emails with team re draft term sheet, edit same and recirculate to team; emails to Labaton and Sarko re same; telephone calls with State Street.	6	
7/1/2015	CHIPLOCK, DANIEL	Emails with WP and co-counsel re settlement documentation.	0.6	
7/2/2015	CHIPLOCK, DANIEL	Emails to team and telephone calls re plan of allocation; edits to term sheet.	1.4	
7/6/2015	CHIPLOCK, DANIEL	Emails to team re term sheet and document review memoranda.	0.5	
7/6/2015	CHIPLOCK, DANIEL	Emails to Wilmer Hale and team re [REDACTED]	0.8	
7/7/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with State Street re [REDACTED]	1	
7/8/2015	CHIPLOCK, DANIEL	Emails with team re modifications to term sheet; do same and recirculate.	2.7	
7/8/2015	CHIPLOCK, DANIEL	Follow up emails to team and Wilmer Hale re [REDACTED]	0.5	
7/9/2015	CHIPLOCK, DANIEL	Emails to team re revised term sheet and edit same.	1.7	
7/10/2015	CHIPLOCK, DANIEL	Emails with team re edits to term sheet and revise same; telephone conferences re same and follow up emails to ERISA lead counsel re same.	2.8	
7/13/2015	CHIPLOCK, DANIEL	Follow up emails to team re ERISA comments to term sheet.	0.6	
7/13/2015	CHIPLOCK, DANIEL	Revise term sheet and send to Wilmer Hale; emails with team re same; review McTigue edits and comment on same.	1.9	
7/14/2015	CHIPLOCK, DANIEL	Edit draft term sheet along lines suggested by Brian McTigue; emails to team re same; telephone calls with Bill Paine re [REDACTED]; emails with Brian McTigue re same.	2.5	
7/14/2015	CHIPLOCK, DANIEL	Follow up emails to team re sending draft term sheet to Wilmer Hale [REDACTED] telephone call with Lynn Sarko re same.	0.8	
7/16/2015	CHIPLOCK, DANIEL	Emails to team and Wilmer Hale re [REDACTED]	1	
7/17/2015	CHIPLOCK, DANIEL	Telephone calls and emails with Bill Paine re [REDACTED]; telephone calls with Lynn Sarko re same.	0.6	
7/20/2015	CHIPLOCK, DANIEL	Emails to team re Department of Labor and plan of allocation issues.	0.2	
7/20/2015	CHIPLOCK, DANIEL	Emails to team re team call and cost fund for mediation invoice.	0.2	
7/21/2015	CHIPLOCK, DANIEL	Emails and telephone calls with team and Wilmer Hale re [REDACTED]	1.6	
7/21/2015	CHIPLOCK, DANIEL	Emails to team re Catalyst issues.	0.2	
7/22/2015	CHIPLOCK, DANIEL	Emails to Mike Lesser and team re plan of allocation; telephone calls with team re same.	0.9	
7/23/2015	CHIPLOCK, DANIEL	Emails with co-counsel re edits to term sheet; email and telephone calls with Paine re [REDACTED]	2	
7/24/2015	CHIPLOCK, DANIEL	Emails and telephone calls with Department of Labor and team re Plan of Allocation and fee issues; follow-up emails re same.	1.8	
7/27/2015	CHIPLOCK, DANIEL	Emails and telephone calls with team re Department of Labor and term sheet status.	0.3	
7/29/2015	CHIPLOCK, DANIEL	Email Department of Labor re Group Trust issue; telephone calls and emails with team re term sheet status and Department of Labor issues; edit and send new term sheet; emails to team re same.	2.4	
7/29/2015	CHIPLOCK, DANIEL	Emails to team re current costs.	0.2	
7/30/2015	CHIPLOCK, DANIEL	Emails and telephone calls with team and Department of Labor re [REDACTED] emails re State Street [REDACTED] review draft term sheet edits and emails to team re same.	1.7	
7/31/2015	CHIPLOCK, DANIEL	Review additional changes to term sheet and email R. Loeff re same; email team re [REDACTED]	0.6	
8/4/2015	CHIPLOCK, DANIEL	Conferences and emails with R. Loeff and S. Fineman re settlement documentation and status.	0.5	
8/5/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team and Department of Labor re [REDACTED]	1.9	
8/6/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re plan of allocation and settlement agreement; Department of Labor position on same; review and comment on draft term sheet.	1.8	
8/6/2015	CHIPLOCK, DANIEL	Emails to team re Department of Labor fee stance and settlement status.	0.2	

8/7/2015	CHIPLOCK, DANIEL	Emails to team re term sheet status and Department of Labor.	0.2	
8/11/2015	CHIPLOCK, DANIEL	Conference and emails with team and Department of Labor re settlement stipulation and negotiations.	1.2	
8/13/2015	CHIPLOCK, DANIEL	Emails to team re call with Department of Labor.	0.1	
8/19/2015	CHIPLOCK, DANIEL	Email team re Department of Labor call.	0.1	
8/24/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re Department of Labor negotiations, review historical emails and communications re same.	2.2	
8/25/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with team re draft settlement documents and term sheet issues.	1.4	
8/26/2015	CHIPLOCK, DANIEL	Review and comment on draft plan of allocation.	0.2	
8/28/2015	CHIPLOCK, DANIEL	Review and edit draft term sheet and settlement documents; emails to team re same and telephone conferences with R. Liefre re same; emails and telephone conferences re continuing settlement approval process and timing.	4.2	
8/29/2015	CHIPLOCK, DANIEL	Email M. Rogers and M. Lesser re settlement approval issues.	0.1	
8/30/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Liefre and team re settlement approval issues.	1.8	
8/31/2015	CHIPLOCK, DANIEL	Emails with team and R. Liefre re expense reports and final approval issues; emails with Thornton law firm re reviewer status and search prior correspondence re same.	1.4	
9/1/2015	CHIPLOCK, DANIEL	Emails to Thornton Law Firm re document review staffing.	0.1	
9/2/2015	CHIPLOCK, DANIEL	Prepare for and attend call with Department of Labor and team; emails re same to discuss Plan of Allocation; emails with team re draft term sheet and counsel organization; edits to same.	2.8	
9/2/2015	CHIPLOCK, DANIEL	Research re settlement.	1	
9/2/2015	CHIPLOCK, DANIEL	Run updated Lodestar reports and email L. Wong re same.	0.8	
9/4/2015	CHIPLOCK, DANIEL	Emails to team re Lodestar reports.	0.2	
9/9/2015	CHIPLOCK, DANIEL	Sign term sheet and email to Labaton; emails re Marks as mediator for fees.	0.4	
9/10/2015	CHIPLOCK, DANIEL	Email team re status of term sheet.	0.2	
9/11/2015	CHIPLOCK, DANIEL	Email S. Fineman re term sheet.	0.1	
9/11/2015	CHIPLOCK, DANIEL	Prepare for and attend call with Department of Labor and team re Plan of Allocation; emails re same.	0.8	
9/14/2015	CHIPLOCK, DANIEL	Review Department of Labor proposal on Plan of Allocation and emails with team re same; telephone calls with team and Carl Kravitz re same.	2.8	
9/15/2015	CHIPLOCK, DANIEL	Emails to team re revised language for Plan of Allocation and blow provision; emails to counsel re edits to final judgment.	1.5	
9/16/2015	CHIPLOCK, DANIEL	Review draft settlement agreement and orders; emails and telephone conferences with R. Liefre and co-counsel re edits to same.	1.3	
9/17/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with M. Lesser re final approval issues.	0.4	
9/17/2015	CHIPLOCK, DANIEL	Emails and telephone conferences with R. Liefre and S. Fineman re final approval issues; research re same.	1.4	
9/17/2015	CHIPLOCK, DANIEL	Emails with team and Nicole Zeiss re draft orders and final judgment.	0.3	
9/18/2015	CHIPLOCK, DANIEL	Emails with N. Zeiss re settlement documentation.	0.2	
9/21/2015	CHIPLOCK, DANIEL	Emails with team re next Department of Labor call.	0.3	
9/22/2015	CHIPLOCK, DANIEL	Telephone conference with Department of Labor and emails to team re plan of allocation.	1.2	
9/25/2015	CHIPLOCK, DANIEL	Emails and telephone calls with team and Wilmer Hale re [REDACTED]	0.6	
10/7/2015	CHIPLOCK, DANIEL	Emails with R. Liefre and S. Fineman re State Street status.	0.2	
10/12/2015	CHIPLOCK, DANIEL	Emails with R. Liefre and S. Fineman re settlement status.	0.2	
10/14/2015	CHIPLOCK, DANIEL	Conference and emails with R. Liefre and S. Fineman re settlement status.	0.5	
10/16/2015	CHIPLOCK, DANIEL	Review revised plan of allocation and email Nicole Zeiss re same.	0.4	
12/1/2015	CHIPLOCK, DANIEL	Email Nicole Zeiss re: current draft settlement papers; review same.	0.5	
12/10/2015	CHIPLOCK, DANIEL	Emails to team re status report.	0.2	
12/21/2015	CHIPLOCK, DANIEL	Review and email re: [REDACTED] in settlement agreement and class notice.	0.3	
1/4/2016	CHIPLOCK, DANIEL	Emails and conferences with M. Miami re: case status.	0.2	
1/27/2016	CHIPLOCK, DANIEL	Emails to S. Fineman re case status and Department of Justice discussions.	0.2	
1/28/2016	CHIPLOCK, DANIEL	Email team re revised plan of allocation.	0.1	
1/29/2016	CHIPLOCK, DANIEL	Emails to team re revised plan of allocation.	0.2	
2/1/2016	CHIPLOCK, DANIEL	Email S. Fineman re case status.	0.1	
2/3/2016	CHIPLOCK, DANIEL	Email S. Fineman re case status.	0.1	
2/3/2016	CHIPLOCK, DANIEL	Emails to Nicole Zeiss and team re draft plan of allocation edits and response to questions by Department of Labor.	0.8	
2/4/2016	CHIPLOCK, DANIEL	Email S. Fineman re Department of Justice status.	0.1	
2/17/2016	CHIPLOCK, DANIEL	Review update from L. Sucharow and forward to S. Fineman.	0.1	
2/29/2016	CHIPLOCK, DANIEL	Email S. Fineman re status.	0.1	
3/7/2016	CHIPLOCK, DANIEL	Review status email from L. Sucharow and forward to S. Fineman.	0.1	
3/14/2016	CHIPLOCK, DANIEL	Email S. Fineman re case status.	0.1	
3/22/2016	CHIPLOCK, DANIEL	Conference and emails with partners re mediation/case status.	0.5	
4/1/2016	CHIPLOCK, DANIEL	Emails to S. Fineman re status update.	0.1	
4/4/2016	CHIPLOCK, DANIEL	Emails with S. Fineman re case status.	0.2	
4/8/2016	CHIPLOCK, DANIEL	Review status update from co-counsel and email to S. Fineman.	0.2	
4/11/2016	CHIPLOCK, DANIEL	Email N. Zeiss re web call with Wilmer Hale; get cost reports and send to Labaton.	0.4	
4/12/2016	CHIPLOCK, DANIEL	Emails with team re [REDACTED] from Wilmer Hale; attend call with Wilmer Hale and AB Data re [REDACTED]; review mark-up to Final and Preliminary Approval Order, compare to September 2015 draft.	1.1	
4/13/2016	CHIPLOCK, DANIEL	Emails with team re Settlement Stipulation language and Wilmer Hale edits.	0.4	
4/13/2016	CHIPLOCK, DANIEL	Review edits to Settlement documents from defense counsel; review prior correspondence on Plan of Allocation; emails to team re same.	1.5	
4/14/2016	CHIPLOCK, DANIEL	Review and sign NDA rider for settlement materials; email Labaton re same.	0.2	
4/15/2016	CHIPLOCK, DANIEL	Review co-counsel comments to settlement documents and emails and telephone calls with co-counsel re same; conference with team re SEC provisions and settlement allocation scenarios; follow-up emails re same.	2.6	
4/20/2016	CHIPLOCK, DANIEL	Email G. Balko re settlement documents.	0.1	
4/21/2016	CHIPLOCK, DANIEL	Review redlined stipulation of settlement and send comments to N. Zeiss at Labaton; follow up emails to N. Zeiss re same.	1.8	
4/21/2016	CHIPLOCK, DANIEL	Telephone calls and emails with K. Dugar and team re document totals and statistics for preliminary approval papers.	0.3	
4/22/2016	CHIPLOCK, DANIEL	Email N. Zeiss re call with State Street to review settlement papers.	0.1	
4/22/2016	CHIPLOCK, DANIEL	Emails to K. Dugar and team re Catalyst review stats for settlement papers.	0.3	
4/22/2016	CHIPLOCK, DANIEL	Review McTigue edits to settlement stipulation and emails with team re same; review plan of allocation edits and emails to N. Zeiss re same.	1.6	
4/25/2016	CHIPLOCK, DANIEL	Emails with team re de minimis distributions.	0.4	
4/26/2016	CHIPLOCK, DANIEL	Telephone call with team and Wilmer Hale re [REDACTED] emails re same; review same.	1	
4/29/2016	CHIPLOCK, DANIEL	Review client State Street comments to Plan of Allocation and email team re same.	0.3	
5/2/2016	CHIPLOCK, DANIEL	Follow-up emails re State Street proposed edits to settlement agreement.	0.6	
5/2/2016	CHIPLOCK, DANIEL	Review and comment on State Street edits to settlement stipulation; emails to team re same; review associated documents from Bank of New York Mellon.	2.2	
5/4/2016	CHIPLOCK, DANIEL	Emails and telephone calls with Labaton and R. Liefre re edits to Marks as mediator.	1.2	
5/4/2016	CHIPLOCK, DANIEL	Emails with co-counsel re Settlement Stipulation edits.	0.5	
5/5/2016	CHIPLOCK, DANIEL	Emails with Labaton and R. Liefre re settlement status and negotiations.	0.6	
5/9/2016	CHIPLOCK, DANIEL	Email S. Fineman re Stipulation status.	0.1	
5/10/2016	CHIPLOCK, DANIEL	Review draft settlement stipulation language and emails/telephone calls with R. Liefre and Labaton re same.	1	
5/11/2016	CHIPLOCK, DANIEL	Emails and telephone calls with Labaton re settlement stipulation language; emails R. Liefre re same; review documentation.	1	
5/12/2016	CHIPLOCK, DANIEL	Email David Copley re settlement stipulation query.	0.1	
5/22/2016	CHIPLOCK, DANIEL	Review revised language to settlement stipulation and email Labaton re same.	0.2	
5/23/2016	CHIPLOCK, DANIEL	Emails to team re Blow provisions.	0.1	

5/24/2016	CHIPLOCK, DANIEL	Email G. Bradley re settlement status report.	0.1
5/24/2016	CHIPLOCK, DANIEL	Emails to S. Fineman re Settlement documentation.	0.1
5/24/2016	CHIPLOCK, DANIEL	Review updated draft of all settlement documents and emails to team re same.	2.6
5/28/2016	CHIPLOCK, DANIEL	Emails to team re settlement stipulation language.	0.4
5/31/2016	CHIPLOCK, DANIEL	Email R. Loeff re fee agreement.	0.1
5/31/2016	CHIPLOCK, DANIEL	Emails with Labaton re settlement stipulation and escrow agreement language; review.	0.5
6/1/2016	CHIPLOCK, DANIEL	Emails re revisions to settlement documents.	0.3
6/2/2016	CHIPLOCK, DANIEL	Email R. Loeff re settlement papers; conference with S. Fineman re same.	0.2
6/2/2016	CHIPLOCK, DANIEL	Emails with N. Zeiss re settlement papers and status; emails to other team members re same.	1
6/3/2016	CHIPLOCK, DANIEL	Review revised long form notice and send comments to N. Zeiss.	0.8
6/6/2016	CHIPLOCK, DANIEL	Emails with N. Zeiss re settlement papers and status.	0.3
6/8/2016	CHIPLOCK, DANIEL	Review status letter filed with court and email to team.	0.1
6/8/2016	CHIPLOCK, DANIEL	Review and edit draft preliminary approval brief, emails to team re same.	1
6/10/2016	CHIPLOCK, DANIEL	Emails with team re draft settlement documents and Department of Labor status; review same.	0.6
6/11/2016	CHIPLOCK, DANIEL	Emails with team re Status Report to Court; review same.	0.3
6/13/2016	CHIPLOCK, DANIEL	Emails to Labaton re Settlement Stipulation.	0.3
6/13/2016	CHIPLOCK, DANIEL	Review Department of Labor letter on fees and email team re same.	0.3
6/14/2016	CHIPLOCK, DANIEL	Emails and telephone calls with R. Loeff re settlement status; review prior correspondence re same.	0.9
6/14/2016	CHIPLOCK, DANIEL	Emails with R. Loeff and S. Fineman re class settlement approval status; telephone calls re same.	0.7
6/14/2016	CHIPLOCK, DANIEL	Review Department of Labor letter and emails with team re same.	0.3
6/15/2016	CHIPLOCK, DANIEL	Edit R. Loeff's proposal presentation to Labaton on fee application; emails and telephone calls re same.	1
6/15/2016	CHIPLOCK, DANIEL	Review docket entry and email R. Loeff re status report; review Labaton report and email R. Loeff re same.	1.7
6/16/2016	CHIPLOCK, DANIEL	Conference with D. Seltz re Status Conference.	0.1
6/16/2016	CHIPLOCK, DANIEL	Emails to team re Department of Labor's letter.	0.2
6/16/2016	CHIPLOCK, DANIEL	Emails to team re Status Conference.	0.1
6/16/2016	CHIPLOCK, DANIEL	Emails with G. Balko re Boston travel for status conference.	0.2
6/20/2016	CHIPLOCK, DANIEL	Conference and emails with R. Loeff, Labaton re settlement and fee approval.	4.6
6/20/2016	CHIPLOCK, DANIEL	Emails to team re status of settlement approval.	0.2
6/21/2016	CHIPLOCK, DANIEL	Emails and telephone calls with team re case status.	0.9
6/21/2016	CHIPLOCK, DANIEL	Emails with G. Balko re travel for hearing.	0.1
6/21/2016	CHIPLOCK, DANIEL	Review draft Joint Status Report and email David Goldsmith re same; emails re potential scheduling of final approval hearing.	0.8
6/21/2016	CHIPLOCK, DANIEL	Review draft scheduling order and email team re same; more emails on case scheduling, status and strategy.	0.8
6/22/2016	CHIPLOCK, DANIEL	Emails with team re status conference program.	0.9
6/23/2016	CHIPLOCK, DANIEL	Attend Status Conference with co-counsel; emails to team with report.	1.6
6/23/2016	CHIPLOCK, DANIEL	Fly to and from Boston for Status Conference; prepare with team for same.	8
6/24/2016	CHIPLOCK, DANIEL	Emails to team re follow-up to Status Conference and planning for final approval.	0.8
6/24/2016	CHIPLOCK, DANIEL	Email team re Status Conference.	0.2
6/29/2016	CHIPLOCK, DANIEL	Emails and telephone calls with R. Loeff fee application and settlement status; emails with Labaton re same; review Settlement Agreement Draft.	1.1
6/30/2016	CHIPLOCK, DANIEL	Telephone calls and emails with R. Loeff re settlement status and fee application.	0.3
7/1/2016	CHIPLOCK, DANIEL	Emails with David Goldsmith re hearing transcript; review transcript and email team re same.	0.4
7/8/2016	CHIPLOCK, DANIEL	Emails with R. Loeff re fee discussions with Labaton; review emails from Garrett Bradley.	0.3
7/11/2016	CHIPLOCK, DANIEL	Conference and email with S. Fineman re Settlement status.	0.3
7/11/2016	CHIPLOCK, DANIEL	Emails to ERISA Counsel re Settlement language and get out in prior cases.	0.4
7/14/2016	CHIPLOCK, DANIEL	Email M. Macatee re Status.	0.1
7/15/2016	CHIPLOCK, DANIEL	Emails with R. Loeff re Settlement status.	0.3
7/20/2016	CHIPLOCK, DANIEL	Emails with co-counsel and R. Loeff re status of preliminary approval papers; telephone conferences re same.	0.8
7/21/2016	CHIPLOCK, DANIEL	Emails to team re Department of Labor queries and ERISA numbers.	0.5
7/21/2016	CHIPLOCK, DANIEL	Telephone conference with R. Loeff re settlement status and Department of Labor concerns.	0.2
7/25/2016	CHIPLOCK, DANIEL	Review revision to settlement papers and emails with team re same.	1.6
7/26/2016	CHIPLOCK, DANIEL	Email team and co-counsel re filing of preliminary approval papers.	0.1
7/26/2016	CHIPLOCK, DANIEL	Review and edit language on settlement documents and plan of allocation; emails to co-counsel re same.	0.8
7/26/2016	CHIPLOCK, DANIEL	Review preliminary approval brief draft and email co-counsel re same.	0.6
7/27/2016	CHIPLOCK, DANIEL	Email S. Fineman re settlement update.	0.1
7/27/2016	CHIPLOCK, DANIEL	Emails with G. Balko re travel for preliminary approval hearing; review papers.	0.3
8/2/2016	CHIPLOCK, DANIEL	Emails to G. Balko re travel to hearing.	0.1
8/2/2016	CHIPLOCK, DANIEL	Emails with Garrett Bradley and R. Loeff re preliminary approval hearing.	0.1
8/5/2016	CHIPLOCK, DANIEL	Emails to G. Balko re materials to print for hearing preparation.	0.2
8/8/2016	CHIPLOCK, DANIEL	Travel to Boston and meet with co-counsel re preliminary approval hearing; attend preliminary approval hearing and return travel from same; emails and conferences with team re same.	12
8/9/2016	CHIPLOCK, DANIEL	Emails and conferences with team re follow-up to preliminary approval hearing; conferences and emails with S. Fineman and R. Loeff re same.	2.9
8/9/2016	CHIPLOCK, DANIEL	Emails re proposed revisions to class settlement notice; edits to same.	1
8/10/2016	CHIPLOCK, DANIEL	Emails with team re revisions to class notice and do edits to same.	1.2
8/10/2016	CHIPLOCK, DANIEL	More emails re revisions to settlement notice and State Street's edits to same; tweak language further and email team re same.	1
8/11/2016	CHIPLOCK, DANIEL	Emails to R. Texier re status of class notice and class member inquiries.	0.2
8/11/2016	CHIPLOCK, DANIEL	Emails with David Goldsmith re final approval briefing.	0.3
8/11/2016	CHIPLOCK, DANIEL	Review and have preliminary approval order entered into calendar.	0.2
8/12/2016	CHIPLOCK, DANIEL	Emails to R. Loeff re final approval briefing.	0.2
8/16/2016	CHIPLOCK, DANIEL	Emails and telephone calls with co-counsel re final approval briefing; emails to R. Loeff re same.	0.5
8/17/2016	CHIPLOCK, DANIEL	Emails and telephone calls with R. Loeff re final approval status.	0.2
8/17/2016	CHIPLOCK, DANIEL	Emails with David Goldsmith and team re final approval briefing.	0.5
8/19/2016	CHIPLOCK, DANIEL	Emails with Garrett Bradley re fee application.	0.2
8/19/2016	CHIPLOCK, DANIEL	Emails with M. Miarni re final approval brief.	0.5
8/22/2016	CHIPLOCK, DANIEL	Conference and emails with M. Miarni and team re final approval briefing and declarations in support thereof.	1.6
8/24/2016	CHIPLOCK, DANIEL	Emails with M. Miarni re final approval brief questions; emails with team re same.	0.8
8/24/2016	CHIPLOCK, DANIEL	Emails with team re final approval and fee application papers.	0.4
8/25/2016	CHIPLOCK, DANIEL	Email with M. Miarni re final approval brief.	0.1
8/26/2016	CHIPLOCK, DANIEL	Review draft final approval brief and send to co-counsel with comments.	1.4
8/29/2016	CHIPLOCK, DANIEL	Conference call with Jonathan Marks and David Goldsmith re Final Approval emails re proposed Declaration in Support of same.	1
8/30/2016	CHIPLOCK, DANIEL	Emails to M. Miarni and David Goldsmith re final approval brief comments.	0.2
8/30/2016	CHIPLOCK, DANIEL	Emails to S. Fineman re final approval status.	0.1
8/30/2016	CHIPLOCK, DANIEL	Review edits to draft final approval brief and email reactions to M. Miarni.	1.2
10/21/2009	CHUNG, NANCY	Work on memorandum to send to others funds regarding State Street.	1.5
10/22/2009	CHUNG, NANCY	Work on State Street memorandum.	1.8
1/26/2011	DE MARIA, ROBERT	Begin investigation and research to identify former employees, especially foreign exchange traders.	1.9
1/28/2011	DE MARIA, ROBERT	Read complaint and first amended complaint.	0.5
1/28/2011	DE MARIA, ROBERT	Begin research to identify former employees.	1.5
2/3/2011	DE MARIA, ROBERT	Continue to locate former employees.	1.5
2/15/2011	DE MARIA, ROBERT	Identify [REDACTED]	1.9
2/16/2011	DE MARIA, ROBERT	Continue to research former employees.	2
2/24/2011	DE MARIA, ROBERT	Continue to locate former employees.	1.3
3/9/2011	DE MARIA, ROBERT	Continue research to locate and identify former State Street employees.	3
3/9/2011	DE MARIA, ROBERT	Develop spreadsheet for information on former State Street employees.	1.5

3/10/2011	DE MARIA, ROBERT	Develop list of potential interviewees and witnesses.	3.5
3/11/2011	DE MARIA, ROBERT	Continue to develop list of high volume targets for interview from former State Street employees.	3
3/14/2011	DE MARIA, ROBERT	Advise co-counsel (Labaton) of findings thus far (spreadsheet of names of former employees).	0.5
3/14/2011	DE MARIA, ROBERT	Continue to research former State Street bank employees.	1.5
3/14/2011	DE MARIA, ROBERT	Discussion with L. Hazam.	0.3
3/14/2011	DE MARIA, ROBERT	Read qui tam complaint and other documents.	1.1
3/16/2011	DE MARIA, ROBERT	Finish research for former State Street employees.	1.3
3/17/2011	DE MARIA, ROBERT	Continue research for other former employees.	0.5
3/17/2011	DE MARIA, ROBERT	Review qui tam and class complaints.	1
3/17/2011	DE MARIA, ROBERT	Telephone call to [REDACTED]; telephone call to [REDACTED]	0.5
3/18/2011	DE MARIA, ROBERT	Continue to develop sources.	1
3/21/2011	DE MARIA, ROBERT	Continue to research for former employees.	0.4
3/21/2011	DE MARIA, ROBERT	Telephone call to [REDACTED].	0.1
3/21/2011	DE MARIA, ROBERT	Telephone call to [REDACTED].	0.2
1/31/2013	DIAMAND, NICHOLAS	Send background materials to L. Nutting pre-document review training per D. Chiplock.	0.2
2/12/2013	DIAMAND, NICHOLAS	Catalyst document review training.	1
2/20/2013	DIAMAND, NICHOLAS	Email D. Chiplock and K. Dugar re Catalyst issues.	0.3
3/22/2013	DIAMAND, NICHOLAS	Logistics reviewing coders' time.	0.2
3/25/2013	DIAMAND, NICHOLAS	Review coders' time.	0.1
3/26/2013	DIAMAND, NICHOLAS	Work with S. Miloro re coding issues.	0.5
4/4/2013	DIAMAND, NICHOLAS	Email with K. Dugar and coding team re hot documents folder.	0.2
4/10/2013	DIAMAND, NICHOLAS	Coding logistics.	0.3
4/15/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
4/17/2013	DIAMAND, NICHOLAS	Coder logistics.	0.2
4/18/2013	DIAMAND, NICHOLAS	Team call.	0.8
5/9/2013	DIAMAND, NICHOLAS	Review coders' timesheets.	0.2
6/4/2013	DIAMAND, NICHOLAS	Email with K. Gralowski and E. Brehm briefly.	0.2
6/5/2013	DIAMAND, NICHOLAS	Email with K. Gralowski re her technical issues.	0.1
6/17/2013	DIAMAND, NICHOLAS	Email E. Brehm re coding/technical issues.	0.1
6/18/2013	DIAMAND, NICHOLAS	Timesheet administration re J. Bloomfield.	0.1
6/19/2013	DIAMAND, NICHOLAS	Administration re timesheets of coders.	0.1
6/21/2013	DIAMAND, NICHOLAS	Administration re coder.	0.1
6/24/2013	DIAMAND, NICHOLAS	Review materials circulated by E. Brehm.	0.1
6/26/2013	DIAMAND, NICHOLAS	Review timesheet of J. Bloomfield.	0.1
7/2/2013	DIAMAND, NICHOLAS	Review J. Bloomfield timesheet.	0.1
7/9/2013	DIAMAND, NICHOLAS	Coder administration re K. Gralowski, E. Brehm and J. Bloomfield.	0.1
7/16/2013	DIAMAND, NICHOLAS	Administration re J. Bloomfield (coder).	0.1
7/24/2013	DIAMAND, NICHOLAS	Administration re coders.	0.2
7/29/2013	DIAMAND, NICHOLAS	Administration re coders.	0.2
7/29/2013	DIAMAND, NICHOLAS	Review coder hours re E. Brehm for D. Chiplock; email with E. Brehm re technical issues.	0.5
7/30/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
8/13/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
8/20/2013	DIAMAND, NICHOLAS	Review E. Brehm's email of reviewed hot documents; review J. Bloomfield's timesheet.	0.2
8/27/2013	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
9/6/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
9/8/2013	DIAMAND, NICHOLAS	Coder administration.	0.1
9/9/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
9/10/2013	DIAMAND, NICHOLAS	Coder administration.	0.1
9/23/2013	DIAMAND, NICHOLAS	Coder administration and logistics.	0.2
9/24/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
10/2/2013	DIAMAND, NICHOLAS	Coder administration logistics.	0.2
10/11/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
10/18/2013	DIAMAND, NICHOLAS	Coder logistics/administration.	0.2
10/22/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
10/23/2013	DIAMAND, NICHOLAS	Coder administration logistics.	0.2
10/25/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
11/1/2013	DIAMAND, NICHOLAS	Coder administration.	0.4
11/19/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
11/21/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
12/3/2013	DIAMAND, NICHOLAS	Coder administration.	0.2
12/7/2013	DIAMAND, NICHOLAS	Coder logistics/administration.	0.3
12/9/2013	DIAMAND, NICHOLAS	Coder logistics/administration.	0.3
12/10/2013	DIAMAND, NICHOLAS	Coder logistics/administration.	0.1
12/17/2013	DIAMAND, NICHOLAS	Coder administration re L. Nutting, E. Brehm.	0.2
12/23/2013	DIAMAND, NICHOLAS	Coder administration.	0.3
1/10/2014	DIAMAND, NICHOLAS	Email with E. Brehm re her work assignments.	0.1
1/13/2014	DIAMAND, NICHOLAS	Review E. Brehm's timesheet.	0.1
1/14/2014	DIAMAND, NICHOLAS	Coder administration.	0.2
1/22/2014	DIAMAND, NICHOLAS	Coder administration/logistics.	0.2
1/27/2014	DIAMAND, NICHOLAS	Coder logistics.	0.2
1/28/2014	DIAMAND, NICHOLAS	Coder time administration.	0.1
1/29/2014	DIAMAND, NICHOLAS	Email with L. Nutting re administration issue and speak briefly to her.	0.3
2/10/2014	DIAMAND, NICHOLAS	Coder timesheet approval administration.	0.1
2/24/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
3/5/2014	DIAMAND, NICHOLAS	Email E. Brehm re her latest hot document report.	0.2
3/10/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
3/25/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
4/8/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.2
4/9/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
4/24/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
5/1/2014	DIAMAND, NICHOLAS	Coder administration.	0.1
5/12/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
5/14/2014	DIAMAND, NICHOLAS	Review E. Brehm's weekly hot document report.	0.1
5/23/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
5/28/2014	DIAMAND, NICHOLAS	Email internally re technical issue with Catalyst (document review platform).	0.2
5/30/2014	DIAMAND, NICHOLAS	Review very briefly motion to stay filed on electronic court filing.	0.1
6/9/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
6/24/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
7/9/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
8/13/2014	DIAMAND, NICHOLAS	Email with K. Gralowski re her hours in the next fee weeks.	0.1
9/9/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
9/24/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
10/6/2014	DIAMAND, NICHOLAS	Speak briefly with D. Chiplock re document review work done by LCHB contract attorneys; email with E. Brehm and K. Gralowski re same; follow-up with D. Chiplock.	0.5
10/8/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
10/27/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
10/28/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
11/20/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
12/4/2014	DIAMAND, NICHOLAS	Coder administration.	0.1
12/22/2014	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1
1/15/2015	DIAMAND, NICHOLAS	Email with K. Dugar and D. Chiplock re forthcoming document review assignments.	0.3

1/16/2015	DIAMAND, NICHOLAS	Discuss revised coding projects with D. Chiplock and K. Dugar.	0.2	
1/17/2015	DIAMAND, NICHOLAS	Email internally re timing of start of additional coding project.	0.2	
1/21/2015	DIAMAND, NICHOLAS	Email internally re upcoming discovery review project.	0.2	
1/29/2015	DIAMAND, NICHOLAS	Coder administration.	0.1	
1/30/2015	DIAMAND, NICHOLAS	Coder timesheet administration.	0.1	
2/3/2015	DIAMAND, NICHOLAS	Coder timesheet administration.	0.2	
2/22/2015	DIAMAND, NICHOLAS	Coder timesheet administration.	0.2	
2/23/2015	DIAMAND, NICHOLAS	Coder timesheet administration.	0.4	
2/26/2015	DIAMAND, NICHOLAS	Emailing internally with D. Chiplock re seeking an additional client	0.1	
2/27/2015	DIAMAND, NICHOLAS	Talking to D. Chiplock re locating foreign plaintiff. Follow-up with Kirti Dugar re same. Preparation and sending email to [REDACTED] re same	1	
3/2/2015	DIAMAND, NICHOLAS	Emailing internally with Kirti Dugar and Daniel Chiplock re business development.	0.3	
3/7/2015	DIAMAND, NICHOLAS	Email internally re assignments of Jon Zaul.	0.2	
3/8/2015	DIAMAND, NICHOLAS	Emailing internally re assignments of Jon Zaul with D. Harvey, K. Dugar, D. Chiplock, M. Lewis and Jon Zaul. Coder timesheet admin.	0.8	
3/9/2015	DIAMAND, NICHOLAS	Coder timesheet administration.	0.5	
3/16/2015	DIAMAND, NICHOLAS	Emailing with Evan Hoffman (@ Thornton & Naumes) and with coders re admin.	0.5	
3/17/2015	DIAMAND, NICHOLAS	Handling logistics re additional lawyer for Thornton & Naumes.	0.3	
3/24/2015	DIAMAND, NICHOLAS	Timesheet administration.	0.3	
3/26/2015	DIAMAND, NICHOLAS	Emailing re: doc review assignments.	0.1	
3/30/2015	DIAMAND, NICHOLAS	Timesheet administration.	0.1	
4/1/2015	DIAMAND, NICHOLAS	Internal emails re document review assignments.	0.1	
4/2/2015	DIAMAND, NICHOLAS	Emailing team re document review assignments.	0.1	
4/6/2015	DIAMAND, NICHOLAS	Reviewing time of attorneys reviewing discovery.	0.1	
4/9/2015	DIAMAND, NICHOLAS	Timesheet administration, including emails with Michele Lewis re: tracking time entry.	0.5	
4/10/2015	DIAMAND, NICHOLAS	Time sheet administration; emailing internally re invoicing Thornton & Naumes for attorney work.	0.3	
4/13/2015	DIAMAND, NICHOLAS	Emailing internally with Jon Zaul re day off; and with D. Chiplock re employment status of Elizabeth Brehm.	0.2	
4/14/2015	DIAMAND, NICHOLAS	Admin re invoicing Thornton & Naumes for reviewers' time.	0.2	
4/16/2015	DIAMAND, NICHOLAS	Internal emails re billing for Thornton & Naumes attorneys' work.	0.2	
4/17/2015	DIAMAND, NICHOLAS	Call with Michele Lewis re billing attorney time for Thornton & Naumes and several follow-up emails.	0.6	
4/20/2015	DIAMAND, NICHOLAS	Working with Lief Cabraser Heimann & Bernstein accounts re invoices for lawyers for Thornton & Naumes, internal calls/emails re releasing Elizabeth Brehm.	0.7	
4/21/2015	DIAMAND, NICHOLAS	Emailing internally and with Elizabeth Brehm re her departure; timesheet administration.	0.3	
4/22/2015	DIAMAND, NICHOLAS	Internal emails and speaking briefly with D. Chiplock re invoices for Thornton & Naumes.	0.4	
4/23/2015	DIAMAND, NICHOLAS	Emailing with Scott Miloro, Marissa Lackey and Jason Kim re admin and timesheets; emailing internally re invoices for Thornton & Naumes.	0.5	
4/24/2015	DIAMAND, NICHOLAS	Emailing internally and leaving voicemail for Evan Hoffman (@ Thornton) re invoices for his coders' time. Follow-up extensively with LCHB Accounting department, reviewing and sending out invoices to Thornton. Timesheet admin.	1	
5/1/2015	DIAMAND, NICHOLAS	Emailing internally re request from Jon Zaul for time off.	0.1	
5/4/2015	DIAMAND, NICHOLAS	Emailing very briefly with Jon Zaul re upcoming leave.	0.1	
5/5/2015	DIAMAND, NICHOLAS	Emailing with Jon Zaul, staff attorney, re requested upcoming time-off; emailing with Evan Hoffman (@ Thornton & Naumes) re invoices for staff attorney work.	0.2	
5/6/2015	DIAMAND, NICHOLAS	Timesheet admin for Jonathan Zaul.	0.1	
5/7/2015	DIAMAND, NICHOLAS	Emailing internally re fee repayment from Thornton & Naumes.	0.1	
5/11/2015	DIAMAND, NICHOLAS	Review attorney time-sheets.	0.3	
5/12/2015	DIAMAND, NICHOLAS	Approving timesheet of Jason Kim.	0.1	
5/14/2015	DIAMAND, NICHOLAS	Discussing discovery review assignments with Scott Miloro and reviewing emails re same.	0.2	
5/20/2015	DIAMAND, NICHOLAS	Document review; attorney timesheet administration.	0.2	
5/21/2015	DIAMAND, NICHOLAS	Discussions with LCHB Accounting Department re invoicing and billing status. Reviewing timesheets for reviewing attorneys.	0.8	
5/22/2015	DIAMAND, NICHOLAS	Reviewing attorney timesheets.	0.2	
5/26/2015	DIAMAND, NICHOLAS	Reviewing time records for attorneys.	0.3	
6/8/2015	DIAMAND, NICHOLAS	Reviewing time records for attorneys.	0.2	
6/9/2015	DIAMAND, NICHOLAS	Reviewing time sheets of reviewing attorneys.	0.3	
6/10/2015	DIAMAND, NICHOLAS	Reviewing attorney time records.	0.2	
6/11/2015	DIAMAND, NICHOLAS	Review of reviewing attorney time records.	0.1	
6/12/2015	DIAMAND, NICHOLAS	Review of attorney timesheets.	0.1	
6/17/2015	DIAMAND, NICHOLAS	Admin re scheduling of Leah Nutting (reviewing attorney).	0.2	
6/24/2015	DIAMAND, NICHOLAS	Reviewing timesheets of reviewing attorneys.	0.2	
6/25/2015	DIAMAND, NICHOLAS	Examine time records for reviewing attorneys.	0.3	
7/1/2015	DIAMAND, NICHOLAS	Reviewing timesheets of reviewing attorneys.	0.2	
7/2/2015	DIAMAND, NICHOLAS	Review attorney timesheets, including Josh Bloomfield final timesheet.	0.3	
7/9/2015	DIAMAND, NICHOLAS	Reviewing time of staff attorneys.	0.2	
4/29/2008	DUGAR, KIRTI	Review documents re foreign exchange case against State Street; meetings with J.A. Kruse and R. Heimann re same.	3.5	
7/16/2008	DUGAR, KIRTI	Research re State Street foreign exchange case. Emails from D. Chiplock and J.A. Kruse re same.	2	
9/9/2008	DUGAR, KIRTI	State Street currency fraud case. Review [REDACTED] Meeting with A. Khararjian re same.	1	
9/11/2008	DUGAR, KIRTI	Further calls to and from Standard and Poors re queries to be done for currency fraud case against State Street.	1	
9/11/2008	DUGAR, KIRTI	Review State Street currency transactions for [REDACTED] meeting with A. Khararjian re same.	2	
9/25/2008	DUGAR, KIRTI	Review [REDACTED] funds' spreadsheets; revise same.; review State Street spreadsheets.	1	
11/2/2009	DUGAR, KIRTI	Review complaint and transactions from portfolio monitoring clients; attend conference call with S. Fineman re case.	2.5	
12/24/2009	DUGAR, KIRTI	Review and analyze [REDACTED] Forex transactions.	3	
1/4/2010	DUGAR, KIRTI	Further review and checking of [REDACTED] Forex transactions.	2.5	
2/26/2010	DUGAR, KIRTI	Review [REDACTED] data; organize work flow for data entry.	2	
3/1/2010	DUGAR, KIRTI	Review data entered for [REDACTED] re State Street Forex transactions.	1.5	
3/3/2010	DUGAR, KIRTI	Conference calls with database expert re creation of SQL database with daily Forex rates and matching of transactions	3.5	
3/4/2010	DUGAR, KIRTI	Review Forex transactions for [REDACTED] organize data for analysis.	3.5	
3/8/2010	DUGAR, KIRTI	Review and revise [REDACTED] Forex data sheets for analysis. Compare SQL database results with hard copy entries.	2	
3/10/2010	DUGAR, KIRTI	[REDACTED] re Forex transactions review; test damages results with 24 hour market opening and New York opening.	2	
3/11/2010	DUGAR, KIRTI	Review [REDACTED] Forex transactions data.	1	
3/11/2010	DUGAR, KIRTI	Review [REDACTED] Forex transactions for damages analysis.	3	
3/17/2010	DUGAR, KIRTI	Review [REDACTED] Forex data for State Street; revise damages for analysis by the year.	3.5	
3/19/2010	DUGAR, KIRTI	Recalculate [REDACTED] Forex transactions by broker; review data and calculations spreadsheets; conference call with Lydia Lee re same. Conference with L. Hazam re same.	1	
3/22/2010	DUGAR, KIRTI	Review [REDACTED] data and calculations; prepare for conference call with [REDACTED]	1.5	
3/23/2010	DUGAR, KIRTI	Conference call with [REDACTED], R. Heimann and Lydia Lee re [REDACTED] Forex data review and conclusions.	0.5	
3/25/2010	DUGAR, KIRTI	Team conference call with R. Heimann re [REDACTED]; follow up re same and preparation of same.	3.5	
3/30/2010	DUGAR, KIRTI	Prepare for and attend conference call with [REDACTED] staff re Forex data; follow up re same	1.5	
4/1/2010	DUGAR, KIRTI	Work on PowerPoint slides for [REDACTED] presentation.	2	

4/2/2010	DUGAR, KIRTI	Emails to and from team counsel re [REDACTED] PowerPoint presentation; conference call with L. Hazam re same.	2	
4/8/2010	DUGAR, KIRTI	Follow up on [REDACTED] potential case.	1.5	
4/12/2010	DUGAR, KIRTI	Prepare for and attend conference call with R. Heimann and [REDACTED] office re potential class case. Follow up re same. Revise PowerPoint presentation; revise graphics and review damages analysis; conference call with L. Hazam re same.	5.5	
4/14/2010	DUGAR, KIRTI	Travel to Seattle for meeting with [REDACTED]; prepare for same; meetings with R. Heimann and Lydia Lee re same; conference calls with L. Hazam re case.	7.5	
4/15/2010	DUGAR, KIRTI	Prepare for and attend presentation before [REDACTED] with R. Heimann; data analysis presentation before [REDACTED] travel back to San Francisco from Seattle.	7.5	
9/10/2010	DUGAR, KIRTI	Review [REDACTED] damages estimates and compare results from State Street v. other brokers; meeting with R. Heimann re same; call from S. Fineman; conference call with Lydia Lee re results.	3.5	
9/13/2010	DUGAR, KIRTI	Finalize damages estimates and broker comparisons for [REDACTED]	1.5	
6/14/2011	DUGAR, KIRTI	Review Forex data from [REDACTED]	1.5	
6/17/2011	DUGAR, KIRTI	Continue analysis of [REDACTED] State Street Forex data for damages analysis	5	
5/23/2012	DUGAR, KIRTI	Review data and analysis history of [REDACTED] transactions per D. Chiplock.	1.5	
5/24/2012	DUGAR, KIRTI	Emails to and from D. Chiplock re [REDACTED] data and previous analysis.	1	
5/31/2012	DUGAR, KIRTI	Reorganize [REDACTED] data for revised damages analysis.	4.5	
6/1/2012	DUGAR, KIRTI	Re-analyze [REDACTED] data and compute potential damages.	4.5	
6/1/2012	DUGAR, KIRTI	Review non-U.S. cross trades for [REDACTED]	2.5	
6/4/2012	DUGAR, KIRTI	Follow up on State Street production drive received from California Attorney General's office; further review of [REDACTED] data.	3	
6/7/2012	DUGAR, KIRTI	Conference call with D. Chiplock re calculations for losses for [REDACTED]; prepare summary.	1.5	
6/7/2012	DUGAR, KIRTI	Review non-U.S. cross trades for [REDACTED]	1.5	
6/11/2012	DUGAR, KIRTI	Review damages estimates from Michael Lesser. Review State Street SEC filings for same.	1.5	
6/12/2012	DUGAR, KIRTI	Finalize [REDACTED]'s estimated losses based on new midpoint damages formula; communications with D. Chiplock re same.	2	
6/13/2012	DUGAR, KIRTI	Estimate spread costs for all other brokers (non-State Street brokers) for [REDACTED]	1.5	
10/12/2012	DUGAR, KIRTI	Conference call with D. Chiplock re [REDACTED] agreements; search for same and transmit copies; review damages estimates by Mike Lesser.	1.5	
12/7/2012	DUGAR, KIRTI	Review spread/margin document.	2	
12/11/2012	DUGAR, KIRTI	Conference call with [REDACTED] re document review platform; follow up with D. Chiplock and Catalyst re fields and check boxes.	2	
12/12/2012	DUGAR, KIRTI	Review hosting contracts from Catalyst; create database fields; conference call with D. Chiplock.	3	
12/14/2012	DUGAR, KIRTI	Follow up on database creation with Catalyst.	1	
12/18/2012	DUGAR, KIRTI	Emails and conference call with D. Chiplock re incoming production from State Street and issues related thereto; test database.	1.5	
12/21/2012	DUGAR, KIRTI	Emails and call from [REDACTED] re data collection; call to D. Chiplock re same.	0.5	
1/3/2013	DUGAR, KIRTI	Travel to Denver for meeting with Catalyst re State Street production and setup of database.	3.5	
1/4/2013	DUGAR, KIRTI	Review production from State Street and discuss loadfile and other problems with loading documents into database; resolve issues to move forward.	2.5	
1/5/2013	DUGAR, KIRTI	Travel back to San Francisco from Denver following database problems meeting with Catalyst.	3.5	
1/8/2013	DUGAR, KIRTI	Follow up on State Street Forex production issues and creation of review database; calls to Catalyst.	2	
1/10/2013	DUGAR, KIRTI	Follow up on document production problems from State Street productions; emails to and from D. Chiplock re same.	1.5	
1/11/2013	DUGAR, KIRTI	Follow up on problems with document production disks from defense; calls with D. Chiplock re same; follow up with Catalyst re same.	1	
1/14/2013	DUGAR, KIRTI	Review loading progress; follow up with Catalyst on issues.	2	
1/15/2013	DUGAR, KIRTI	Further follow up with Catalyst re database issues.	0.5	
1/21/2013	DUGAR, KIRTI	Call from Catalyst re loading update; review same and follow up re same.	1.5	
1/22/2013	DUGAR, KIRTI	Conference call with defense team re production issues.	0.5	
1/28/2013	DUGAR, KIRTI	Emails and follow up re production data problems.	1	
1/28/2013	DUGAR, KIRTI	Review documents in database; follow up with Catalyst re issues to be resolved.	1	
1/31/2013	DUGAR, KIRTI	Organize Catalyst training and agenda for training for users.	1	
2/5/2013	DUGAR, KIRTI	Follow up on data loading issues with Catalyst; conference call re same; review current loads.	1	
2/7/2013	DUGAR, KIRTI	Review document loads in database; conference calls with Catalyst project manager and processing head regarding loading issues and allocation of work assignments between counsel firms.	1.5	
2/8/2013	DUGAR, KIRTI	Follow up on documents loading issues; review special transactions disks; check data loads in Catalyst; organize new training sessions for group.	2	
2/11/2013	DUGAR, KIRTI	Review documents loaded and prepare for live training.	2	
2/12/2013	DUGAR, KIRTI	Follow up with reviewers and Catalyst re bulk tagging issues.	1	
2/14/2013	DUGAR, KIRTI	Follow up on database and creation of review folders; emails to and from group.	2	
2/15/2013	DUGAR, KIRTI	Review family and other overlay problems in database; conference calls with Catalyst re same; plan for fixing same; review transactions data disks.	3.5	
2/18/2013	DUGAR, KIRTI	Follow up with Catalyst on database matters; train E. Brehm on using review system and coding.	2	
2/19/2013	DUGAR, KIRTI	Emails to and from D. Chiplock and co-counsel team re document review process and issue fields; review field description memo.	1.5	
2/19/2013	DUGAR, KIRTI	Train contract attorney on Catalyst system for document review.	1	
2/20/2013	DUGAR, KIRTI	Numerous emails from users re database and family documents issues; troubleshoot same and follow up with Catalyst to apply fixes.	3	
2/20/2013	DUGAR, KIRTI	Train contract attorneys on use of Catalyst for document review.	1	
2/21/2013	DUGAR, KIRTI	Follow up with contract attorneys on document review and training; test database for errors; review transactions data disks.	1.5	
2/21/2013	DUGAR, KIRTI	Review transactions data disks received from State Street.	2.5	
2/22/2013	DUGAR, KIRTI	Review questions and issues; follow up with team; train J. Bloomfield on Catalyst review and coding.	2.5	
2/25/2013	DUGAR, KIRTI	Follow up with Catalyst on revised creation of review batches with family members; check database for same.	1.5	
2/26/2013	DUGAR, KIRTI	Further review of transactions data disks; conference call with D. Chiplock re same.	2.5	
3/1/2013	DUGAR, KIRTI	Review document review progress; monitor database issues.	1.5	
3/5/2013	DUGAR, KIRTI	Database and coding review; follow up with users.	1	
3/5/2013	DUGAR, KIRTI	Review document loading issues; follow up with Catalyst re same.	1	
3/14/2013	DUGAR, KIRTI	Follow up with Catalyst technical team re image viewing problems.	1	
3/21/2013	DUGAR, KIRTI	Prepare for and attend conference call with D. Chiplock and vendor re defendants' reproduction and issues related thereto.	1	
3/29/2013	DUGAR, KIRTI	Organize [REDACTED] data for loss analysis; review spreadsheet.	4.5	
4/16/2013	DUGAR, KIRTI	Follow up on document review.	1.5	
4/18/2013	DUGAR, KIRTI	Review database; attend team conference call re document review progress.	1.5	
4/19/2013	DUGAR, KIRTI	Follow up with reviewers re coding progress.	1.5	
4/25/2013	DUGAR, KIRTI	Damages analysis for [REDACTED]	7	
4/26/2013	DUGAR, KIRTI	Continue analysis and review of I.A.M National Pension funds transactions; prepare initial damages spreadsheet; communications with D. Chiplock re same; meetings and joint data and results verifications of results with A. Nambiar re same.	6	
4/28/2013	DUGAR, KIRTI	Cross check damages analysis for [REDACTED]; correct for possible data errors.	2	
4/29/2013	DUGAR, KIRTI	Review transactions from [REDACTED] from 2000-2002; revise initial estimates by the Fund and by the currency; conference call with D. Chiplock re damages results.	4.5	
5/21/2013	DUGAR, KIRTI	Follow up on database issues raised by reviewers.	2	
6/7/2013	DUGAR, KIRTI	Review Excel files; follow up on data extraction on same for searching; review database.	2.5	

6/21/2013	DUGAR, KIRTI	Review database; track email attachments of documents; review documents identified by Mike Lesser.	6.5	
7/10/2013	DUGAR, KIRTI	Check databases for review progress by assigned firm and reviewer.	1	
7/16/2013	DUGAR, KIRTI	Review coding; review document count coded by each reviewer.	1	
7/25/2013	DUGAR, KIRTI	Follow up with Catalyst re image viewing problems.	1	
9/26/2013	DUGAR, KIRTI	Review emails from Mike Lesser and D. Chiplock.	0.5	
11/8/2013	DUGAR, KIRTI	Follow up on new production loads.	0.5	
11/14/2013	DUGAR, KIRTI	Follow up on loading of additional data and allocation for review.	2.5	
11/20/2013	DUGAR, KIRTI	Review new production; conference call with Catalyst re allocation for review; conference call with D. Chiplock re same and revise allocation procedure for review.	1	
11/21/2013	DUGAR, KIRTI	Follow up on batching new documents for review.	1	
11/26/2013	DUGAR, KIRTI	Review database and follow up on issues reported by E. Brehm.	1	
3/18/2014	DUGAR, KIRTI	Follow up on request from D. Chiplock re. review status in case.	1	
12/17/2014	DUGAR, KIRTI	Meeting with R. Liefre. damages and settlement issues and strategy.	1	
1/7/2015	DUGAR, KIRTI	Review reports re coding status by all firms.	0.5	
1/17/2015	DUGAR, KIRTI	E-mails to and fro D. Chiplock, N. Diamond and J.A. Kruse re. contract attorney staffing	0.5	
1/21/2015	DUGAR, KIRTI	Prepare for and train reviewers for document review.	3.5	
1/22/2015	DUGAR, KIRTI	Call from D. Chiplock re. document review; meeting with N. Diamond re. same.	1	
1/25/2015	DUGAR, KIRTI	Database review and create new allocations for Thornton Naumes	1	
1/26/2015	DUGAR, KIRTI	Work on transfer of reviewers to State Street document review; create and assign work folders	1	
1/30/2015	DUGAR, KIRTI	Follow up on reviewers assigned to Thornton Naumes and billing issues with agency.	0.5	
2/9/2015	DUGAR, KIRTI	Review coding progress; e-mails from D. Chiplock; review available coder lists; assign additional contract reviewers for Thornton Naumes folders; communications with coders re. project.	2.5	
2/13/2015	DUGAR, KIRTI	Conference call with Catalyst re. database and images issue; follow up on review pace and process and review time sheets.	1	
2/20/2015	DUGAR, KIRTI	Searches and create folder for hot and highly relevant documents.	1	
2/25/2015	DUGAR, KIRTI	Monitor review progress per D. Chiplock; review coder's lists and assignments; review coding in database.	1	
2/26/2015	DUGAR, KIRTI	Review documents; review coders' progress; search excel files for SI transaction volumes by client; review same; e-mails to and from D. Chiplock.	3	
3/6/2015	DUGAR, KIRTI	Round up contract attorney time sheets; review database for possible foreign entities with damages.	1	
3/13/2015	DUGAR, KIRTI	Query database and set up structure for Senior Review; modify files; set up folders by production type.	2.5	
3/30/2015	DUGAR, KIRTI	Review status of coding by reviewers; conference call with D. Chiplock re. key liability documents needed for mediation; meeting and call to reviewers re. same.	1	
4/1/2015	DUGAR, KIRTI	E-mails from reviewers re. status of review re. topic memos.	1	
4/8/2015	DUGAR, KIRTI	Memo assignments tracking with reviewers.	1.5	
4/15/2015	DUGAR, KIRTI	Review status check. Searches for hot and highly relevant documents.	1	
4/20/2015	DUGAR, KIRTI	Prepare for and attend conference call with reviewer team re. new detailed memo project by topic; conference call with M. Lewis re. contract attorneys and billing issues; review time sheets.	2.5	
5/11/2015	DUGAR, KIRTI	Follow up with reviewers re. detailed memo on topics assigned; meeting with Ryan Sturtevant re. same	1	
5/12/2015	DUGAR, KIRTI	Follow up with reviewers re. work status on topic memos; review responses and allocate additional tasks	1.5	
5/13/2015	DUGAR, KIRTI	Conference call with D. Chiplock re detailed memo . project status; review updates from reviewers.	1.5	
5/20/2015	DUGAR, KIRTI	Follow up with reviewers re. status of memos per D. Chiplock; review and allocate additional topics to reviewers	2	
5/20/2015	DUGAR, KIRTI	Review selected exhibits by reviewers for topic memos; set up process for completing binders with downloaded exhibits.	2.5	
5/21/2015	DUGAR, KIRTI	Follow up on topic memo projects; review draft memos; additional topics from Mike Lesser.	3	
5/21/2015	DUGAR, KIRTI	Review draft memos and revise format for exhibits and linking of same to memo' develop uniform process for circulation to counsel team; test searches in Catalyst; e-mails with counsel team re. allocation of additional review topics	2	
5/22/2015	DUGAR, KIRTI	Follow up on e-mail form D. Chiplock re. reviewers list and billing for Thornton Naumes	1	
5/28/2015	DUGAR, KIRTI	Review draft topic memos.	2.5	
5/29/2015	DUGAR, KIRTI	Review additional topic memos.	3	
6/1/2015	DUGAR, KIRTI	Meetings with W. Ashlynn re. organization of work done by reviewers re. topic memos; system for downloading exhibits and attaching to memos; review and revise draft spreadsheet.	2	
6/1/2015	DUGAR, KIRTI	Review Lean Nutting memo and exhibits	1	
6/9/2015	DUGAR, KIRTI	Review historical allocation of reviewers for Thornton Naumes; review hours done for reviewers and reconciliation of same.	2.5	
6/11/2015	DUGAR, KIRTI	Follow up on memo topics completed and partial release of reviewers	0.5	
6/22/2015	DUGAR, KIRTI	Conference call with D. Chiplock re. review status and time of release of reviewer in case of settlement.	0.5	
6/23/2015	DUGAR, KIRTI	E-mails to and from D. Chiplock re. release of additional reviewers; status check on completion of memos.	1	
6/30/2015	DUGAR, KIRTI	Meeting with W. Ashlynn re. project status and completion of memos by reviewers; e-mails to and from D. Chiplock re. settlement.	1	
7/1/2015	DUGAR, KIRTI	E-mails to reviewers re. memos and last day of work.	1	
7/2/2015	DUGAR, KIRTI	Follow up on work completion by reviewers	1.5	
8/11/2008	FINEMAN, STEVEN	Review background material re potential litigation; discuss potential case with R. Heimann; telephone conference with Mike Lesser and R. Heimann; telephone conference with Robert Liefre re potential case; [REDACTED] discuss with D. Chiplock.	3.5	
8/13/2008	FINEMAN, STEVEN	Email exchanges with R. Heimann and Lydia Lee re scheduling meetings with [REDACTED] and others; [REDACTED] discuss with R. Heimann and D. Chiplock.	1.6	
8/14/2008	FINEMAN, STEVEN	[REDACTED]	0.6	
8/17/2008	FINEMAN, STEVEN	[REDACTED]	5	
8/18/2008	FINEMAN, STEVEN	email exchange with D. Chiplock [REDACTED]	6.3	
8/21/2008	FINEMAN, STEVEN	Review memorandum prepared by N. Chung concerning public record exceptions for attorney-client privilege/work product, and forward to State Street team; email exchange with R. Heimann re [REDACTED]	0.6	
9/4/2008	FINEMAN, STEVEN	Meeting with Robert Liefre and L. Hazam re status and strategy; telephone conference with R. Heimann re same.	1.5	
9/9/2008	FINEMAN, STEVEN	Review materials in preparation for September 10 meeting with co-counsel.	1.3	
9/18/2008	FINEMAN, STEVEN	Review additional spreadsheets for entities for which State Street was investment manager or custodian and forward to potential co-counsel.	0.5	
10/7/2008	FINEMAN, STEVEN	Meeting with R. Liefre and potential co-counsel re foreign exchange litigation (at LCHB).	1.5	
10/8/2008	FINEMAN, STEVEN	Revise and edit memorandum from K. Dugar re foreign exchange data [REDACTED]; forward to prospective co-counsel.	0.7	
10/16/2008	FINEMAN, STEVEN	Telephone conference with R. Heimann, D. Chiplock and L. Hazam re status and strategy.	0.5	
10/20/2008	FINEMAN, STEVEN	Telephone conference with co-counsel re status and strategy.	0.7	
7/16/2009	FINEMAN, STEVEN	Review list of union funds associated with target custodian banks; email to Mike Thornton re [REDACTED]	0.5	
10/2/2009	FINEMAN, STEVEN	Email exchange with Mike Lesser re strategic approach to filing class cases.	0.3	
10/6/2009	FINEMAN, STEVEN	Complete and circulate to litigation team LCHB client contacts information; telephone conference with LCHB team and co-counsel re status and strategy for communicating with potential clients.	1	
10/13/2009	FINEMAN, STEVEN	Read ERISA preemption memorandum prepared by Mike Lesser and forward to LCHB team.	0.5	

10/23/2009	FINEMAN, STEVEN	Telephone conference with [REDACTED]; telephone conference with [REDACTED]; telephone conference with [REDACTED]	1.3	
10/27/2009	FINEMAN, STEVEN	Email to LCHB team and co-counsel re status of client retention; email exchange with LCHB team and co-counsel re scheduling a status call; telephone conference with LCHB team and co-counsel re [REDACTED]	1.5	
10/28/2009	FINEMAN, STEVEN	[REDACTED]	7.6	
12/2/2009	FINEMAN, STEVEN	Email to co-counsel and LCHB team re summary of LCHB's review of the Forex trading data for [REDACTED], and suggestion of conference call; read K. Dugar's analysis of [REDACTED]	0.4	
12/3/2009	FINEMAN, STEVEN	Email exchanges with K. Dugar and Mike Lesser re LCHB data analysis methodology.	0.3	
12/11/2009	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of litigation and LCHB's review of client data.	0.7	
1/22/2010	FINEMAN, STEVEN	Email exchange with co-counsel and LCHB team re scheduling group call.	0.2	
1/27/2010	FINEMAN, STEVEN	Email exchanges with LCHB team re possible involvement of [REDACTED]; email exchange with [REDACTED] re seeking trading data from [REDACTED]	0.5	
1/28/2010	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of client retention and complaint drafting for class litigation; discuss same with D. Chiplock.	0.5	
1/29/2010	FINEMAN, STEVEN	Read memorandum on ERISA requirements for Forex trading.	0.7	
2/25/2010	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re status of potential non-qui tam litigation.	0.5	
3/4/2010	FINEMAN, STEVEN	Email exchange with LCHB team and co-counsel re [REDACTED] investment forum speaker invitation to Harry Markopolous.	0.3	
3/17/2010	FINEMAN, STEVEN	Review email exchanges re [REDACTED] losses in Forex trades; email exchange with K. Dugar and R. Heimann re same; email exchange with Mike Thornton re same.	0.4	
4/6/2010	FINEMAN, STEVEN	Review PowerPoint presentation for [REDACTED]; discuss legal claims with D. Chiplock.	0.7	
4/28/2010	FINEMAN, STEVEN	Review revised memorandum prepared by D. Chiplock re evaluation of claims and venue; discuss same with D. Chiplock.	1.8	
6/2/2010	FINEMAN, STEVEN	Email exchange with Mike Thornton and Chris Keller re status of efforts to identify appropriate clients.	0.3	
6/3/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of efforts to obtain clients.	0.3	
6/8/2010	FINEMAN, STEVEN	Telephone conference with Mike Lesser, Phil Michael and Philadelphia lawyers re potential action on behalf of [REDACTED]	0.5	
6/11/2010	FINEMAN, STEVEN	Email exchanges with R. Lief, R. Heimann and L. Hazam and telephone conference with L. Hazam, re scheduling meeting with [REDACTED]; telephone conference with Mike Thornton re status.	0.5	
6/23/2010	FINEMAN, STEVEN	Email exchange with Mike Thornton re request for information from Bernstein Litowitz and strategy re the firm's involvement.	0.3	
6/24/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton, Mike Lesser, R. Heimann and R. Lief re status and strategy, including reaching out to Bernstein Litowitz; voicemail message for Max Berger.	0.6	
6/30/2010	FINEMAN, STEVEN	Email to Max Berger and Jerry Silk re follow-up re cooperation on litigation.	0.2	
7/6/2010	FINEMAN, STEVEN	Telephone conference with R. Heimann re status; leave voicemail message for Mike Thornton; email exchange with Jerry Silk re continuing discussion on working cooperatively.	0.5	
7/7/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of client development; telephone conference with Jerry Silk re working arrangement with Bernstein, Litowitz.	0.8	
7/9/2010	FINEMAN, STEVEN	Email exchanges with co-counsel and LCHB team re status of client duration-retention, and class case analytic memo.	0.4	
7/15/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton, Mike Lesser, [REDACTED] in class case; email to R. Heimann and L. Hazam re same.	0.8	
7/20/2010	FINEMAN, STEVEN	Review memorandum re possible class legal theories; forward memorandum to Jerry Silk at Bernstein, Litowitz; discuss same with D. Chiplock.	0.5	
7/30/2010	FINEMAN, STEVEN	Telephone conference with Mike Thornton re status of client generation efforts.	0.4	
8/4/2010	FINEMAN, STEVEN	Email exchange with Jerry Silk re Bernstein, Litowitz's non-interest in participating in the potential litigation; email to R. Heimann, D. Chiplock and L. Hazam re same.	0.3	
8/11/2010	FINEMAN, STEVEN	Email exchange with Mike Lesser re client retention; telephone conference with Mike Thornton re same.	0.4	
9/10/2010	FINEMAN, STEVEN	Email exchange with R. Heimann re status of client retention.	0.3	
9/14/2010	FINEMAN, STEVEN	Prepare for and participate in meeting with co-counsel re potential class litigation against State Street and other custodial banks; follow-up internal emails re client generation.	2.5	
9/20/2010	FINEMAN, STEVEN	Review email from Mike Lesser re composition of drafting team for class complaint; email exchange with D. Chiplock and L. Hazam re same; email response to Mike Lesser re same.	0.3	
1/28/2011	FINEMAN, STEVEN	Email exchange with L. Hazam and D. Chiplock re status of efforts to get class action complaint on file.	0.3	
2/3/2011	FINEMAN, STEVEN	Telephone conference with D. Chiplock and L. Hazam re status of litigation.	0.3	
2/10/2011	FINEMAN, STEVEN	Discussion with D. Chiplock re filing of complaint against State Street on behalf of Arkansas Teacher Retirement System, with the Labaton firm; brief review of complaint.	0.8	
2/11/2011	FINEMAN, STEVEN	Email exchange with D. Chiplock re assignment of case to Judge Wolf, Chief Judge of the District of Massachusetts.	0.2	
2/14/2011	FINEMAN, STEVEN	Email to Executive Committee seeking approval for filing Arkansas Teacher Retirement System complaint.	0.5	
2/17/2011	FINEMAN, STEVEN	Meeting with Mike Thornton, D. Chiplock and Robert Lief re status and strategy.	0.3	
3/4/2011	FINEMAN, STEVEN	Meeting with Labaton lawyers and D. Chiplock re status and strategy for proceeding with litigation.	1.5	
3/11/2011	FINEMAN, STEVEN	Read email from D. Chiplock re meeting with Labaton lawyers [REDACTED]; telephone conference with Mike Thornton re same.	0.5	
3/22/2011	FINEMAN, STEVEN	Review draft interim lead counsel motion prepared by the Labaton firm; discuss same with D. Chiplock; email to Joel Bernstein and co-counsel re same.	0.8	
3/23/2011	FINEMAN, STEVEN	Telephone conference with co-counsel and D. Chiplock re motion for appointment of lead counsel and co-counsel and role of LCHB; follow-up telephone conference with Chris Keller re same; follow-up discussion with D. Chiplock.	1	
4/1/2011	FINEMAN, STEVEN	Email exchange with D. Chiplock re our proposal to defendants' preliminary pleading and discovery schedule.	0.3	
4/13/2011	FINEMAN, STEVEN	Read draft amended complaint, provide comments to D. Chiplock.	1.5	
6/6/2011	FINEMAN, STEVEN	Review proposed press statements re State Street's motions to dismiss; telephone conference with D. Chiplock re same.	0.5	
6/8/2011	FINEMAN, STEVEN	Discussion with D. Chiplock re briefing on State Street motions to dismiss; participate in telephone conference with Labaton attorneys and D. Chiplock re same.	0.5	
7/19/2011	FINEMAN, STEVEN	Read draft opposition to motion to dismiss; provide comments to D. Chiplock and M. Miami.	2.5	
9/19/2011	FINEMAN, STEVEN	Meeting with Thornton and Labaton firm attorneys, and D. Chiplock, re status and strategy.	0.5	
9/22/2011	FINEMAN, STEVEN	Telephone conference with Robert Lief, R. Heimann and D. Chiplock re status and strategy.	0.3	
9/28/2011	FINEMAN, STEVEN	Review email from Garrett Bradley re status of schedule docket; discuss same with D. Chiplock.	0.4	
2/27/2012	FINEMAN, STEVEN	Read news articles concerning investigations and lawsuits against State Street re Forex.	0.3	
5/8/2012	FINEMAN, STEVEN	Email exchange and telephone conference with D. Chiplock re outcome of hearing on motion to dismiss.	0.4	
5/15/2012	FINEMAN, STEVEN	Telephone conference with LCHB team and co-counsel re strategy in light of denial of motion to dismiss and direction that lead plaintiff and State Street hold settlement talks; email exchange with [REDACTED] re developing Taft Hartley clients for State Street litigation; discuss same with D. Chiplock.	1	
5/17/2012	FINEMAN, STEVEN	Telephone conference with [REDACTED] re potential clients; email exchange with D. Chiplock re forward information about the litigation to [REDACTED]	0.5	
5/25/2012	FINEMAN, STEVEN	Email exchange with R. Lief re potential mediators.	0.2	
7/2/2012	FINEMAN, STEVEN	Email exchange with [REDACTED] re review of [REDACTED]; email exchange with D. Chiplock re same.	0.3	

7/23/2012	FINEMAN, STEVEN	Email exchange with D. Chiplock re mediation and mediator.	0.2	
8/24/2012	FINEMAN, STEVEN	Email exchange with R. Loeff re my participation in meetings of September 11 and 13, 2012 re fee arrangements and mediation.	0.3	
9/11/2012	FINEMAN, STEVEN	Discussion with R. Loeff, E. Cabraser and Mike Thornton re status and strategy of case and settlement discussions, including addition of ERISA claims.	0.5	
10/1/2012	FINEMAN, STEVEN	Read email from Larry Sucharow re mediation procedure; email exchange with D. Chiplock re same.	0.3	
10/25/2012	FINEMAN, STEVEN	Email exchange with [REDACTED] and D. Chiplock re identifying potential Canadian clients.	0.3	
1/15/2013	FINEMAN, STEVEN	Read memorandum from D. Chiplock re status; discuss same with D. Chiplock.	0.3	
4/7/2015	FINEMAN, STEVEN	Meeting with R. Loeff and D. Chiplock re status of settlement negotiations.	0.2	
6/14/2016	FINEMAN, STEVEN	Read presentation regarding fee allocation. Provide comments to D. Chiplock.	0.5	
6/27/2016	FINEMAN, STEVEN	Review court order on settlement approval and e-mail exchange with D. Chiplock re same.	0.3	
4/22/2008	GEMAN, RACHEL	Conference with J. Gross re State Street investigation, banking preemption.	0.3	
8/30/2013	GEMAN, RACHEL	Telephone conference with D. Chiplock re settlement of ERISA claims and related ERISA law issues, e.g., remedies and standing; assist in pulling materials showing suitability of treating ERISA and non-ERISA plans similarly in an approved plan of allocation.	0.4	
1/21/2015	GILYARD, JAMES	Catalyst training; review complaint and Catalyst guide.	2	
1/22/2015	GILYARD, JAMES	Review of documents previously coded as "hot" to get better acquainted with project expectations; begin coding assigned batch of 9700 documents.	8	
1/23/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 documents.	8	
1/26/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 documents.	8	
1/27/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 documents.	8	
1/28/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 documents.	8	
1/29/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 documents.	8	
1/30/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 750) documents.	8	
2/2/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 900) documents.	8	
2/3/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 1100) documents.	8	
2/4/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 1300) documents.	8	
2/5/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 1500) documents.	8	
2/6/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 1700) documents.	8	
2/9/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 1900) documents.	8	
2/10/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 2100) documents.	8	
2/11/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 2300) documents.	8	
2/12/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 2500) documents.	8	
2/13/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 2700) documents.	8	
2/17/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 2900) documents.	8	
2/18/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to 3100) documents.	8	
2/19/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 3300) documents.	8	
2/20/2015	GILYARD, JAMES	Continue coding assigned batch of 9700 (up to document 3500) documents.	8	
2/23/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to document 3600), batch 0002 (up to 3100) documents.	8	
2/24/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to document 3700); batch 0002 (up to 3200) documents.	8	
2/25/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to document 3700); batch 0002 (up to 3300) documents.	8	
3/3/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4050); batch 002 (up to 3700) documents.	8	
3/4/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4250) documents.	8	8
3/5/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4450) documents.	8	8
3/6/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4600) documents.	8	8
3/9/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4800) documents.	8	8
3/10/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 4900) documents.	8	8
3/11/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5100) documents.	8	8
3/12/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5250) documents.	8	8
3/13/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5400) documents.	8	8
3/16/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5550) documents.	8	8
3/17/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5750) documents.	8	8
3/18/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 5950) documents.	8	8
3/19/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 6150) documents.	8	8
3/20/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 6300) documents.	8	8
3/23/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 6400) documents.	8	8
3/24/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 6600) documents.	8	8
3/25/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 6800) documents.	8	8
3/26/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7000) documents.	8	8
3/27/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7200) documents.	8	8
3/30/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7400) documents.	8	8
3/31/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7500) documents.	8	8
4/1/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7600); 0002 (up to doc 7100) documents.	8	8
4/2/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 7800); 0002 (up to doc 7100) documents.	8	8
4/3/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8000).	8	8
4/6/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8200).	8	8
4/7/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8300).	8	8
4/8/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8500).	8	8
4/9/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8700).	8	8
4/10/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 8900).	8	8
4/13/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 9100).	8	8
4/14/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 9500).	8	8
4/15/2015	GILYARD, JAMES	Continue coding assigned batch 0007 (up to doc 9700).	8	8
4/16/2015	GILYARD, JAMES	Continue coding assigned batch 0007 re-review documents previously listed as having viewing problems; begin reading material in preparation for next phase of review.	8	8
4/17/2015	GILYARD, JAMES	Review State Street batch 0002 (8600-8800).	8	8
4/20/2015	GILYARD, JAMES	Review State Street batch 0002 (8600-9000).	8	8
4/21/2015	GILYARD, JAMES	Review State Street batch 0002 (8600-9050); begin second level review of ERISA PTE 98-54 related documents.	8	8
4/22/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (constructing target search queries; memo to follow).	8	8
4/23/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (constructing target search queries; memo to follow).	8	8
4/24/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
4/27/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
4/28/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
4/29/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
4/30/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
5/1/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results; memo to follow).	8	8
5/4/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1000 docs reviewed); memo to follow).	8	8

5/5/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1200 docs reviewed); memo to follow).	8	8
5/6/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1500 docs reviewed); memo to follow).	8	8
5/7/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1700 docs reviewed); memo to follow).	8	8
5/8/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1850 docs reviewed); memo to follow).	8	8
5/11/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (1950 docs reviewed); memo to follow).	8	8
5/12/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2100 docs reviewed)); memo to follow.	8	8
5/13/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2200 docs reviewed); memo to follow).	8	8
5/14/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2300 docs reviewed); memo to follow).	8	
5/15/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2400 docs reviewed); memo to follow).	8	8
5/18/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2500 docs reviewed); memorandum to follow).	8	8
5/19/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2700 docs reviewed); memo to follow).	8	8
5/20/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (2900 docs reviewed); memo to follow).	8	8
5/21/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (3000 docs reviewed); memo to follow).	8	8
5/22/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (3200 docs reviewed); memo to follow).	8	8
5/26/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (3800 docs reviewed); memo to follow).	8	8
5/27/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (4000 docs reviewed).	8	
5/28/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (4200 docs reviewed).	8	8
5/29/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (4500 docs reviewed); memo to follow).	8	8
6/1/2015	GILYARD, JAMES	Continue second level review of ERISA PTE 98-54 related documents (Constructing target search queries and research re: "fiduciary" and "custodian" 6,406 results (4700 docs reviewed); memorandum to follow).	8	8
6/2/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP responses stating that [REDACTED] (first search: "request for proposal" and "response"/2,179 results (350 docs reviewed).	8	8
6/3/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP responses stating that [REDACTED] (First Search: "Request for Proposal" AND "Response"/2,179 results (450 docs reviewed); memorandum to follow).	8	8
6/4/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP Responses stating [REDACTED] (First Search: "request for proposal" and "response"/2,179 results (560 docs reviewed).	8	8
6/5/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP Responses stating that [REDACTED] (first search: "Request for Proposal" and "Response"/2,179 results (700 docs reviewed); memorandum to follow).	8	8
6/8/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP responses stating that [REDACTED] (First Search: "Request for Proposal" AND "Response"/2,179 results (900 docs reviewed); memo to follow).	8	8
6/9/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP responses stating that [REDACTED] (First search for "Request for Proposal" AND "Response" produced 2,179 results and 1000 docs reviewed; began preparation of summary memo.)	8	8
6/10/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/RFP Responses stating that [REDACTED] (First Search: "Response to Request for Proposal" AND "Complaints"/282 results (100 docs reviewed); memorandum to follow).	8	8
6/11/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660); RFP Responses stating that [REDACTED] (Search: "Complaints"/1700 results (200 docs reviewed); memo to follow).	8	8
6/12/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/RFP Responses stating that [REDACTED] (Search: "Complaints"/1741 results (400 docs reviewed); memo to follow).	8	8
6/15/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ request for production responses stating that [REDACTED] (search: "Complaints"/ 1741 results (500 docs reviewed); memo to follow).	8	8
6/16/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660) and RFP Responses stating that [REDACTED] (Search of term "Complaints" returned 1741 results and 600 docs were reviewed).	8	8

6/17/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ request for production responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (700 docs reviewed); memorandum to follow).	8	8
6/18/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ RFP Responses stating that [REDACTED]	8	8
6/19/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660) and RFP Responses stating that [REDACTED] (Search on "Complaints" yielded 1741 results with 950 docs reviewed); memo to follow.	8	
6/22/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ RFP Responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1100 docs reviewed); memo to follow).	8	
6/23/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ request for production responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1200 docs reviewed); memorandum to follow).	8	
6/24/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ request for production responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1350 docs reviewed); memorandum to follow).	8	
6/25/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ RFP Responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1450 docs reviewed); memo to follow).	8	
6/26/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ Request for Production Responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1550 documents reviewed); memo to follow).	8	
6/29/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ request for production responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1650 docs reviewed); memorandum to follow).	8	
6/30/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660) and RFP Responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (1700 docs reviewed); memo to follow).	8	
7/1/2015	GILYARD, JAMES	Continue second level review of category Complaints II: (StateSt_CA_LIT05079660)/ RFP Responses stating that [REDACTED] (Search: "Complaints"/ 1741 results (complete to end); complete and submit follow-up memo).	8	
2/1/2013	GRALEWSKI, KELLY	Install document review software in preparation of reviewing defendants' documents.	0.5	
2/12/2013	GRALEWSKI, KELLY	Attend Catalyst Insight training with K. Dugar and LCHB review team for defendant's production of documents.	1.3	
2/13/2013	GRALEWSKI, KELLY	Attend Catalyst Insight training session for defendant's production of documents.	1	
2/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2.3	
2/19/2013	GRALEWSKI, KELLY	Review pleadings in preparation for document review of defendants' documents.	1.3	
2/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.5	
2/21/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.5	
2/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.5	
2/25/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
2/26/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2	
2/27/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
2/28/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3	
3/1/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.5	
3/3/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2.5	
3/4/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/5/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	45	
3/6/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/7/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.5	
3/8/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/9/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/10/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2	
3/11/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.3	
3/12/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.8	
3/13/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.8	
3/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.3	
3/21/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	8	
3/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2	
3/25/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.8	
3/26/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3	
3/27/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.5	
3/28/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
3/29/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3	
3/30/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3	
4/2/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/3/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/4/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.3	
4/5/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/7/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/8/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.5	
4/9/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/11/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/12/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2	
4/15/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/16/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/17/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.5	
4/18/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	2	
4/19/2013	GRALEWSKI, KELLY	Prepare and review email to and from technical support of document review software.	0.3	
4/19/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3.3	
4/19/2013	GRALEWSKI, KELLY	Telephone call with K. Dugar regarding issues with document software.	0.3	
4/19/2013	GRALEWSKI, KELLY	Telephone conference with review team regarding review of defendants' documents.	0.8	
4/20/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	5.5	
4/22/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4	
4/23/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	4.5	
4/30/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	3	
5/1/2013	GRALEWSKI, KELLY	Review of defendants' documents for relevance and issue coding.	1.5	





4/9/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents.	7	
4/10/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	3	
4/15/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	6	
4/16/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5	
4/17/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5	
4/18/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5.5	
4/21/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4	
4/22/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4	
4/23/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	4	
4/29/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000023986 - SST_KHR_SSGM_E000067490.	6	
4/30/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents bates numbers SST_KHR_SSGM_E000067550 - E000036274.	4	
5/1/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents bates numbers SST_KHR_SSGM_E000072088 - E000036240.	4	
5/2/2014	GRALEWSKI, KELLY	Review and code defendants' documents, bates numbers SST_KHR_SSGM_E000025338 - E000045725.	4	
5/5/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000045545 - E000010347.	4.3	
5/8/2014	GRALEWSKI, KELLY	Review and code defendants' documents, bates numbers SST_KHR_SSGM_E000045754 - 000017021.	5.8	
5/7/2014	GRALEWSKI, KELLY	Review and code defendants' documents, bates numbers SST_KHR_SSGM_E00003120 - 000035772.	6	
5/8/2014	GRALEWSKI, KELLY	Review and code documents, bates numbers SST_KHR_SSGM_E000054562 - 000017267.	6	
5/12/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000032733 - 000035692.	4	
5/13/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000035693 - SST-KHR-SSGM_E000017115.	5	
5/14/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000017117 - SST_KHR_SSGM_E000017203.	5.5	
5/15/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000018610 - SST_KHR_SSGM_E000061471.	6	
5/17/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000063828 - SST_KHR_SSGM_E000056612.	2	
5/19/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates number SST_KHR_SSGM_E000055100 - SST_KHR_SSGM_E000049084.	6	
5/20/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000059007 - SST_KHR_SSGM_E000067864.	6	
5/21/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E00005334 - SST_KHR_SSGM_E000056169.	6	
5/22/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000056173 - SST_KHR_SSGM_E00007607.	6	
5/23/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000044635 - SST_KHR_SSGM_E000025327.	5	
5/28/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST-KHR-SSGM-E000037305 - SST-KHR-SSGM-E000007795.	4.5	
5/28/2014	GRALEWSKI, KELLY	Telephone conference with Catalyst technical support regarding system errors.	0.5	
5/29/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST-KHR-SSGM-E000114218 - SST_KHR_SSGM_E000063702.	6	
5/30/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000060101 - SST_KHR_SSGM_E000115008.	3	
6/2/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000001500 - SST_KHR_SSGM_E000120201.	6	
6/3/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers ST_KHR_SSGM_E000078059 - SST_KHR_SSGM_E000012880.	6	
6/4/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000010942 - SST_KHR_SSGM_E000026514.	4.8	
6/5/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000026515 - SST_KHR_SSGM_E000075350.	4	
6/6/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000110347 - SST_KHR_SSGM_E000127029.	5	
6/7/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000062458 - SST_KHR_SSGM_E000037041.	5.3	
6/9/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000059806 - SST_KHR_SSGM_E000068378.	4.5	
6/10/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates number SST_KHR_SSGM_E000011965 - SST_KHR_SSGM_E000059842.	5	
6/11/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000005092 - SST_KHR_SSGM_E000004389.	5	
6/12/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000041640 - SST_KHR_SSGM_E00001405.	4.5	
6/13/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000064055 - SST_KHR_SSGM_E000026986.	2	
6/16/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000023019 - SST_KHR_SSGM_E000074939.	3	
6/17/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E00004411 - SST_KHR_SSGM_E000016857.	4	
6/18/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000005279 - SST_KHR_SSGM_E0000031892.	3.8	
6/19/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E9999931901 - SST_KHR_SSGM_E0000039106.	3.3	
6/19/2014	GRALEWSKI, KELLY	Talk to Catalyst technician about glitch in the system.	0.5	
6/20/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000012006	3	
6/22/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000012007 - SST_KHR_SSGM_E00005640.	2.5	
6/24/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents, bates numbers SST_KHR_SSGM_E000046024 - SST_KHR_SSGM_E0000128741.	4.3	
6/25/2014	GRALEWSKI, KELLY	Review and issue code defendants' documents.	5	
6/26/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000008168 - SST_KHR_SSGM_E000006714.	2.5	
6/27/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E0000048959 - SST_KHR_SSGM_E0000022214.	2	
6/29/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000053196 - SST_KHR_SSGM_E000011065.	6	
7/1/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000002226 - SST_KHR_SSGM_E000019532.	3	
7/2/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000107971 - SSFXDOL-E000053106.	1.3	
7/3/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000028586.	6	
7/7/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000008755 - SST_KHR_SSGM_E000111538.	4.3	

7/8/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000031454 - SSFXDOL-E00002910.	4.5	
7/9/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000056406 - SST_KHR_SSGM_E000102084.	4	
7/10/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents bates numbers SST_KHR_SSGM_E000102111 - SST_KHR_SSGM_E000106746.	4.5	
7/11/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000077430 - SST_KHR_SSGM_E000021958.	5.3	
7/15/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000022016 - SSFXDOL-E000063335.	4.5	
7/17/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000003059 - SSFXDOL-E000088928.	6	
7/21/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000010927 - SST_KHR_SSGM_E000007976.	2.5	
7/22/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000060149 - SST_KHR_SSGM_E000060641.	0.8	
7/23/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000059254 - SST_KHR_SSGM_E000005260.	5.5	
7/24/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000075967 - SSFXDOL-E000006859.	3.5	
7/30/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000047387 - SST_KHR_SSGM_E000005876.	5.8	
7/31/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000005923 - SSFXDOL-E000074446.	5	
8/1/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000046224 - SSFXDOL-E000076270.	4	
8/4/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000027676 - SSFXDOL-E000128083.	3	
8/5/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000024493 - SSFXDOL-E000026736.	4	
8/6/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000070870 - SST_KHR_SSGM_E000124678.	4	
8/7/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000042931 - SST_KHR_SSGM_E000053475.	4	
8/8/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000063764 - SST_KHR_SSGM_E000063894.	2.8	
8/11/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000053482 - SST_KHR_SSGM_E0000053498.	1	
8/12/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E0000037835 - SST_KHR_SSGM_E0000046217.	3.5	
8/13/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E0000037860 - SST_KHR_SSGM_E0000053536.	0.8	
8/25/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000053537 - SST_KHR_SSGM_E000067589.	3	
8/26/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000058159 - SST_KHR_SSGM_E000058602.	2.3	
8/27/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000067585 - SST_KHR_SSGM_E000058509.	1	
8/29/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000058519 - SST_KHR_SSGM_E000101512.	3.5	
9/2/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000062861 - SST_KHR_SSGM_E000062930.	0.3	
9/5/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000062936 - SST_KHR_SSGM_E000101671.	3.8	
9/8/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000101645 - SST_KHR_SSGM_000050151.	1	
9/10/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000050167 - SST_KHR_SSGM_E000051107.	1	
9/11/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000051324 - SST_KHR_SSGM_E000073667.	1	
9/12/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000002019 - SST_KHR_SSGM_E000106820.	1.3	
9/15/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents bates numbers SST_KHR_SSGM_E000107253 - SST_KHR_SSGM_E000107416.	1	
9/16/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents bates numbers SST_KHR_SSGM_E000107421 - SST_KHR_SSGM_E000111284.	2	
9/17/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000111293 - SSFXDOL_E000042279.	1.3	
9/19/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL_E000042589 - SSFXDOL_E000046550.	3.5	
9/26/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000046545 - SSFXDOL-E000005564.	2.5	
9/30/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SSFXDOL-E000004571 - SST_KHR_SSGM_E000008741.	2.5	
10/1/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000000032 - SST_KHR_SSGM_E000008883.	1	
10/6/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000022725 - SST_KHR_SSGM_E0000172740.	3.8	
10/10/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000022893 - SST_KHR_SSGM_E000017288.	1.5	
10/13/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000003823 - SST_KHR_SSGM_E000025363.	0.8	
10/14/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000025768 - SST_KHR_SSGM_E000021314.	1.5	
10/15/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000007312 - SST_KHR_SSGM_E000012958.	4	
10/16/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000021326 - SST_KHR_SSGM_E000013041.	1.8	
10/21/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000013618 - SSST_KHR_SSGM_E000029049.	4	
10/24/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000029115 - SST_KHR_SSGM_E000082813.	4	
10/25/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000082820 - SST_KHR_SSGM_E000082834.	1	
10/28/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000082740 - SST_KHR_SSGM_E000082921.	2.8	
10/29/2014	GRALEWSKI, KELLY	Review and issue code defendants documents, bates numbers SST_KHR_SSGM_E000077133 - SST_KHR_SSGM_E000077162.	1	
10/31/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bastes numbers SST_KHR_SSGM_E000077194 - SST_KHR_SSGM_E000077209.	2.5	

11/1/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000101682 - SST_KHR_SSGM_E000072157.	3.5	
11/3/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000072171 - SST_KHR_SSGM_E000123471.	1.5	
11/5/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000123503 - SST_KHR_SSGM_E000092061.	2	
11/6/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000123580 - SST_KHR_SSGM_E000123801.	2.3	
11/7/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000123652 - SST_KHR_SSGM_E000092206.	1.5	
11/8/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000072283 - SST_KHR_SSGM_E000092379.	2	
11/9/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000092380 - SST_KHR_SSGM_E000079915.	2	
11/12/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST-KHR-SSGM_E000079919 - SST_KHR_SSGM_E000080025.	3.5	
11/13/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000080026 - SST_KHR_SSGM_E000080916.	2	
11/15/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000080949 - SST_KHR_SSGM_E000098333.	3.5	
11/19/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000081114 - SST_KHR_SSGM_E000098479.	8.3	
12/8/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000075403- SST_KHR_SSGM_E00009855 9.	2.5	
12/9/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E00130885 - SST_KHR_SSGM_E000075449.	4.5	
12/11/2014	GRALEWSKI, KELLY	Review and issue code defendant's documents, bates numbers SST_KHR_SSGM_E000098592.	3.5	
6/4/2012	GRANT, ANTHONY	Duplication of electronic discovery materials.	6	
6/11/2012	GRANT, ANTHONY	Duplicate electronic discovery production.	4	
1/8/2013	GRANT, ANTHONY	Encrypt electronic discovery production.	5	
1/10/2013	GRANT, ANTHONY	Duplicate and encrypt documents.	6	
5/13/2015	GRANT, ANTHONY	Collecting documents per request of contract attorney.	2	
5/26/2015	GRANT, ANTHONY	Assistance with collection of electronic discovery documents.	1	
6/15/2016	GRANT, ANTHONY	Update of index. Quality control of Index. Quality control of electronic discovery documents within electronic discovery database. Administration of database.	1	
4/17/2008	GROSS, JENNIFER	State Street research	3	
4/28/2008	GROSS, JENNIFER	Research and draft memo.	2.5	
7/11/2008	GROSS, JENNIFER	Research for client memo.	2.4	
7/31/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	1.5	
8/1/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3	
8/2/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3	
8/5/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3.5	
8/6/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3.5	
8/7/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3.5	
8/8/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	0.5	
8/9/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	3.5	
8/13/2013	GUPTA, NEHA	Research re ERISA preemption for M. Miami.	4	
8/15/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	2.5	
8/16/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	2	
8/19/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	3.5	
8/20/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	3	
8/21/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption for M. Miami.	0.6	
8/22/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption, for M. Miami.	2.5	
8/27/2013	GUPTA, NEHA	Research and draft memo re ERISA preemption, for M. Miami.	4	
11/24/2008	HAZAM, LEXI	Call with Mike Lesser re status of approaches to funds to obtain foreign exchange data.	0.3	
1/20/2010	HAZAM, LEXI	Email Robert Liefre re status of [REDACTED] decision re intervention.	0.2	
1/20/2010	HAZAM, LEXI	Review State Street contract with [REDACTED]; review emails re same; review findings re fund's data.	0.8	
1/28/2010	HAZAM, LEXI	Call with team, including co-counsel re status of efforts to file class action complaint.	0.4	
3/25/2010	HAZAM, LEXI	Call with team and co-counsel re movement towards [REDACTED] serving as class representative in class action.	0.7	
3/26/2010	HAZAM, LEXI	Preliminary review of K. Dugar's data findings; ask him questions re same.	0.2	
4/6/2010	HAZAM, LEXI	Emails with D. Chiplock and further research on Class Action Fairness Act and potential class case.	1	
4/6/2010	HAZAM, LEXI	Review questions/comments from [REDACTED] and research; draft report to team in response.	3	
4/7/2010	HAZAM, LEXI	Review various pension fund contracts for forum selection clauses; emails with D. Chiplock re same; call him.	1.3	
4/8/2010	HAZAM, LEXI	Emails with Mike Lesser re forum selection clauses in other pension fund contracts; email to team re same; emails with Mike Lesser re [REDACTED].	0.8	
4/8/2010	HAZAM, LEXI	Report to team on findings re forum selection clauses for various pension fund contracts.	1	
4/8/2010	HAZAM, LEXI	Research First Circuit law on forum selection clauses and non-contract claims; send team report re same; call with team re issues above, possible claims by [REDACTED].	1.8	
4/12/2010	HAZAM, LEXI	Call with [REDACTED] to answer their legal and factual questions re possible class claim; prepare for above call; review memo, complaints, disclosure statement.	1.7	
4/12/2010	HAZAM, LEXI	Pull and review cases from First Circuit re forum selection clauses in contracts.	1.5	
4/12/2010	HAZAM, LEXI	Review and edit PowerPoint presentation for possible meeting with [REDACTED] in light of research above; emails re same.	1.8	
4/13/2010	HAZAM, LEXI	Further emails with team re assumptions in PowerPoint and revisions to same.	0.4	
4/22/2010	HAZAM, LEXI	Emails with D. Chiplock and others re strategy and legal rules in various possible venues for class action.	0.9	
5/4/2010	HAZAM, LEXI	Review memo by D. Chiplock re potential claims by [REDACTED]; give comments on same; review cases for above and forward to D. Chiplock; emails with D. Chiplock, Lydia Lee and R. Heimann debating arguments in memo above; call with S. Fineman and D. Chiplock re above.	2.1	
6/9/2010	HAZAM, LEXI	Emails with Mike Lesser re netting issue in foreign exchange data analysis.	0.3	
6/9/2010	HAZAM, LEXI	Review experts' report re [REDACTED] send comments to team.	0.4	
6/21/2010	HAZAM, LEXI	Draft report to team re meeting held with [REDACTED] in Seattle.	1.2	
6/22/2010	HAZAM, LEXI	Answer follow-up questions from team re report on meeting with [REDACTED] in Seattle.	0.5	
6/24/2010	HAZAM, LEXI	Call with team re status of case, [REDACTED] meeting.	0.5	
7/8/2010	HAZAM, LEXI	Initial research on collateral estoppel, res judicata re class claim and contract claim.	0.6	
7/13/2010	HAZAM, LEXI	Call with team and co-counsel re possibility of [REDACTED] serving as class representative.	0.4	
7/14/2010	HAZAM, LEXI	Review expert report of [REDACTED]; write Mike Lesser re same.	0.4	
7/14/2010	HAZAM, LEXI	Review website of firm that may have connection to [REDACTED]; send same to R. Heimann.	0.3	
7/23/2010	HAZAM, LEXI	Research claim by [REDACTED] against defendant re securities lending; send team article with notes re same.	0.4	
7/23/2010	HAZAM, LEXI	Research issue of collateral estoppel, res judicata between contract and consumer protection claim under First Circuit law; write D. Chiplock with finding and cases re same; call with D. Chiplock re above.	2.3	
8/9/2010	HAZAM, LEXI	Emails with D. Chiplock, Lydia Lee re letter describing case that can be sent to [REDACTED].	0.4	
9/21/2010	HAZAM, LEXI	Call with Mike Lesser, D. Chiplock, Labaton firm re class complaint drafting; email with S. Fineman and D. Chiplock re above; review LCHB memo with legal theories as preparation for above.	1.1	
9/22/2010	HAZAM, LEXI	Email and call with S. Fineman re hearings in Sacramento; email Mike Lesser re clauses to look for in [REDACTED] contract in re legal claims in class action.	0.5	

10/5/2010	HAZAM, LEXI	Emails with co-counsel re breach of fiduciary duty in class claim.	0.2
10/14/2010	HAZAM, LEXI	Prepare for call with Labaton re legal theories to be used in class complaint; review past research; telephone conferen with Labaton and D. Chiplock re above.	0.8
10/28/2010	HAZAM, LEXI	Call with R. Loeff re status of class case, [REDACTED] settlement.	0.3
10/28/2010	HAZAM, LEXI	Emails with team re damages for [REDACTED] (class cases).	0.2
12/3/2010	HAZAM, LEXI	Review statement from State Street explaining its foreign exchange procedures; emails with Mike Lesser re same.	0.4
12/6/2010	HAZAM, LEXI	Call with Mike Lesser re status of drafting of class complaint; then review and edit his email to team re same; write D. Chiplock re issues arising with above.	0.7
12/13/2010	HAZAM, LEXI	Draft various sections of class complaint for Arkansas Teachers: legal counts, class allegations, substantially revise re-st; research legal counts in above: required elements to recite; circulate draft complaint above, with comments, to co-counsel.	7.3
12/22/2010	HAZAM, LEXI	Emails with Mike Lesser re reactions to draft complaint.	0.2
1/4/2011	HAZAM, LEXI	Emails with Mike Lesser re status of potential class representatives for class action.	0.3
1/21/2011	HAZAM, LEXI	Review memo re potential class claims to be brought under 93(a) in Massachusetts; send comments to co-counsel.	0.3
1/24/2011	HAZAM, LEXI	Review State Street IM guide changes from before and after 2009; write Michael Lesser re same.	0.3
2/1/2011	HAZAM, LEXI	Meet with R. Loeff and Michael Thornton re status of Forex cases; potential new filings; prepare for same by reading Canada case.	1.5
2/3/2011	HAZAM, LEXI	Call with S. Fineman and D. Chiplock re status of Forex cases.	0.1
2/4/2011	HAZAM, LEXI	Resend draft class complaint with [REDACTED] to team with note; write D. Chiplock re inclusion of certain causes of action in complaint above.	0.4
2/7/2011	HAZAM, LEXI	Call with Robert Loeff, Mike Thornton re Arkansas Teacher Retirement System (ATRS) complaint.	0.3
2/7/2011	HAZAM, LEXI	Conference call with Labaton, D. Chiplock re complaint.	0.9
2/7/2011	HAZAM, LEXI	Emails with Robert Loeff, Mike Lesser re possible plaintiff [REDACTED] for class action.	0.2
2/7/2011	HAZAM, LEXI	Follow up emails with Paul Scarlato and D. Chiplock re viability of 93(A) claim, research into other claims for Arkansas Teacher Retirement System (ATRS) complaint.	0.6
2/7/2011	HAZAM, LEXI	Review draft Arkansas Teacher Retirement System (ATRS) complaint, send comments to D. Chiplock; emails after re same.	0.6
2/7/2011	HAZAM, LEXI	Send comments on complaint above to Labaton, Thornton firms.	0.4
2/7/2011	HAZAM, LEXI	Write and call K. Barnett re [REDACTED] of upcoming filing of Arkansas Teacher Retirement System (ATRS) class complaint.	0.2
2/8/2011	HAZAM, LEXI	Additional call with Labaton re status of complaint, claims therein.	0.5
2/8/2011	HAZAM, LEXI	Call with Robert Loeff, call with D. Chiplock re above.	0.4
2/8/2011	HAZAM, LEXI	Call with team working on complaint above.	0.5
2/8/2011	HAZAM, LEXI	Emails with complaint team re class definition: whether to include qui tam states. Suggest new one.	0.4
2/8/2011	HAZAM, LEXI	Review Labaton memo re claims to raise in Arkansas Teacher Retirement System (ATRS) class complaint, review cases cited in same.	0.8
2/8/2011	HAZAM, LEXI	Review new draft of Arkansas Teacher Retirement System (ATRS) complaint, send comments to D. Chiplock, send lin edits to team.	0.7
2/8/2011	HAZAM, LEXI	Send my comments and records re above to Paul Scarlato, D. Chiplock.	0.5
2/8/2011	HAZAM, LEXI	Send update on where things stand with complaint to E. Cabraser, Robert Loeff.	0.5
2/10/2011	HAZAM, LEXI	Emails with D. Chiplock filling him in on status of qui tam.	0.2
2/10/2011	HAZAM, LEXI	Emails with D. Chiplock, Michael Lesser re getting ethics opinion on doing class and qui tam cases.	0.2
2/11/2011	HAZAM, LEXI	Emails with D. Chiplock re edits to 93(A) letters.	0.2
2/11/2011	HAZAM, LEXI	Email with Labaton, D. Chiplock re handling press calls in response to filing, take call from Dan Levine at Reuters.	0.3
2/15/2011	HAZAM, LEXI	Emails with Mike Lesser re discovery models, status of calls re class cases.	0.3
2/15/2011	HAZAM, LEXI	Review past discovery with eye to class discovery; ask [REDACTED] for additional discovery documents; write D. Chiplock re same.	1
2/16/2011	HAZAM, LEXI	Exchange messages, emails with D. Chiplock re timing and content of disk in qui tam cases, for reference in class cases; send him examples of former.	0.2
6/10/2011	HAZAM, LEXI	Emails and calls with Michael Lesser re plan for supplementing interrogatory responses; review past responses and defendants' letter re same.	0.9
10/19/2012	HAZAM, LEXI	Respond to D. Chiplock's email with information on [REDACTED] contract language after looking up old emails re same.	0.2
2/4/2013	HAZAM, LEXI	Call with R. Loeff re case status.	0.1
7/10/2008	HEIMANN, RICHARD	State Street - Telephone conference with J.A. Kruse.	0.2
7/10/2008	HEIMANN, RICHARD	Telephone conference with Mike Thornton.	0.3
7/10/2008	HEIMANN, RICHARD	Telephone conference with S. Fineman.	0.2
7/16/2008	HEIMANN, RICHARD	Review cases.	1.6
10/16/2008	HEIMANN, RICHARD	Telephone conference with S. Fineman, D. Chiplock and L. Hazam.	0.7
10/6/2009	HEIMANN, RICHARD	Telephone conference with Mike Thornton, et al.	0.6
12/11/2009	HEIMANN, RICHARD	Telephone conference with S. Fineman re conference call; telephone conference with State Street team.	0.4
1/4/2010	HEIMANN, RICHARD	Telephone conference with Mike Thornton and S. Fineman.	0.3
1/27/2010	HEIMANN, RICHARD	Review ERISA memorandum.	0.8
1/28/2010	HEIMANN, RICHARD	Team telephone conference.	0.4
2/10/2010	HEIMANN, RICHARD	Review ERISA complaint.	0.8
2/24/2010	HEIMANN, RICHARD	Team telephone conference.	0.4
3/25/2010	HEIMANN, RICHARD	Telephone conference with team.	0.4
4/6/2010	HEIMANN, RICHARD	Review memorandum; team telephone conference.	0.8
4/12/2010	HEIMANN, RICHARD	Telephone conference with [REDACTED]	0.6
4/14/2010	HEIMANN, RICHARD	Travel to [REDACTED]; travel to San Francisco.	3.5
4/15/2010	HEIMANN, RICHARD	Meeting with [REDACTED]; travel to San Francisco.	8
4/21/2010	HEIMANN, RICHARD	Telephone conference with [REDACTED]	0.3
5/26/2010	HEIMANN, RICHARD	Lieff, Cabraser, et al. conference call.	0.3
6/28/2010	HEIMANN, RICHARD	Review legal memorandum re [REDACTED]; research re same.	0.7
7/13/2010	HEIMANN, RICHARD	Team conference call.	0.4
7/13/2011	HEIMANN, RICHARD	Review draft brief.	0.9
3/3/2014	HELLER, ROGER	Correspondence re deposition.	0.1
1/21/2015	JORDAN, CHRISTOPHER	Conference call re Catalyst training with K. Dugar.	1
1/21/2015	JORDAN, CHRISTOPHER	Review amended class action complaint and coding guide.	1
1/22/2015	JORDAN, CHRISTOPHER	Forex document review.	5
1/22/2015	JORDAN, CHRISTOPHER	Review case materials and previously coded documents.	3
1/23/2015	JORDAN, CHRISTOPHER	Forex document review.	8
1/26/2015	JORDAN, CHRISTOPHER	Document review.	8
1/27/2015	JORDAN, CHRISTOPHER	Document review.	8
1/28/2015	JORDAN, CHRISTOPHER	Document review.	8
1/29/2015	JORDAN, CHRISTOPHER	Document review.	8
1/30/2015	JORDAN, CHRISTOPHER	Document review.	8
2/2/2015	JORDAN, CHRISTOPHER	Document review.	8
2/3/2015	JORDAN, CHRISTOPHER	Document review.	8
2/4/2015	JORDAN, CHRISTOPHER	Document review.	8
2/5/2015	JORDAN, CHRISTOPHER	Document review.	8
2/6/2015	JORDAN, CHRISTOPHER	Document review.	8
4/15/2015	JORDAN, CHRISTOPHER	Document review.	2
4/15/2015	JORDAN, CHRISTOPHER	Review case materials e.g. Complaint, Transcript, etc.	6
4/16/2015	JORDAN, CHRISTOPHER	Document review.	5
4/16/2015	JORDAN, CHRISTOPHER	Perform test searches for schematic categorization project.	1
4/16/2015	JORDAN, CHRISTOPHER	Review Case Materials e.g. Complaint, Transcript, etc.	2

4/17/2015	JORDAN, CHRISTOPHER	Document review.	8	
4/18/2015	JORDAN, CHRISTOPHER	Document review.	4	
4/19/2015	JORDAN, CHRISTOPHER	Document review.	4	
4/20/2015	JORDAN, CHRISTOPHER	Conference call regarding schematic categorization project.	0.5	
4/20/2015	JORDAN, CHRISTOPHER	Document review.	7.5	
4/21/2015	JORDAN, CHRISTOPHER	Research markets in Financial Instruments Directive (MIFID).	2	
4/21/2015	JORDAN, CHRISTOPHER	Review case filings: complaints, transcripts, etc.	2	
4/21/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	4	
4/22/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	
4/23/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	
4/24/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	8
4/27/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	
4/28/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	
4/29/2015	JORDAN, CHRISTOPHER	Review MIFID documents.	8	
5/1/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	7.9	
5/4/2015	JORDAN, CHRISTOPHER	Review Markets in Financial Instruments Directive documents.	8	
5/5/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/6/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/7/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/10/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	5	
5/11/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/12/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/13/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/14/2015	JORDAN, CHRISTOPHER	Review Markets in Financial Instruments Directive Documents.	7	
5/15/2015	JORDAN, CHRISTOPHER	Review Markets in financial instruments directive documents.	8	
5/18/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/19/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/20/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents.	8	
5/21/2015	JORDAN, CHRISTOPHER	Review Markets in Financial Instruments Directive Documents.	8	
5/22/2015	JORDAN, CHRISTOPHER	Review Markets in Financial Instruments Directive Documents.	8	
5/26/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents to begin preparing memorandum.	8	
5/27/2015	JORDAN, CHRISTOPHER	Review markets in financial instruments directive documents for memorandum.	8	
5/28/2015	JORDAN, CHRISTOPHER	Prepare Markets in Financial Instruments Directive memorandum.	8	
5/29/2015	JORDAN, CHRISTOPHER	Prepare markets in financial instruments directive memo.	8	
6/1/2015	JORDAN, CHRISTOPHER	Finish Markets in Financial Instruments Directive memorandum.	8	
6/2/2015	JORDAN, CHRISTOPHER	Researching FX Connect market segment analysis.	6	
6/3/2015	JORDAN, CHRISTOPHER	Memorandum research.	8	
6/4/2015	JORDAN, CHRISTOPHER	Memorandum research.	8	
6/5/2015	JORDAN, CHRISTOPHER	Memo Research.	8	
6/8/2015	JORDAN, CHRISTOPHER	Memo research.	8	8
6/9/2015	JORDAN, CHRISTOPHER	Review FX Connect Market Segment Analysis documents.	8	
6/10/2015	JORDAN, CHRISTOPHER	Review FX connect market segment analysis documents.	8	
6/11/2015	JORDAN, CHRISTOPHER	Review FX Connect Market Segment Analysis documents.	8	
6/12/2015	JORDAN, CHRISTOPHER	Review FX connect market segment analysis documents.	8	
6/15/2015	JORDAN, CHRISTOPHER	Review FX connect market segment analysis documents.	8	
6/18/2015	JORDAN, CHRISTOPHER	Review FX connect market segment analysis documents.	8	
6/17/2015	JORDAN, CHRISTOPHER	Review FX Connect standing instructions documents.	8	
6/18/2015	JORDAN, CHRISTOPHER	Review FX connect standing instructions documents.	8	
6/19/2015	JORDAN, CHRISTOPHER	Review FX Connect Standing Instructions documents.	8	
6/22/2015	JORDAN, CHRISTOPHER	Review FX Connect standing instructions documents.	8	
6/23/2015	JORDAN, CHRISTOPHER	Review FX Connect standing instructions documents.	8	
6/24/2015	JORDAN, CHRISTOPHER	Review FX Connect standing instructions documents.	8	
6/25/2015	JORDAN, CHRISTOPHER	Review FX Connect Standing Instructions documents.	8	
6/28/2015	JORDAN, CHRISTOPHER	Review FX Connect Standing Instructions.	8	
6/29/2015	JORDAN, CHRISTOPHER	Review FX Connect standing instructions documents.	8	
6/30/2015	JORDAN, CHRISTOPHER	Review FX Connect Standing Instructions document.	8	
7/1/2015	JORDAN, CHRISTOPHER	Review FX connect standing instructions documents.	8	
7/2/2015	JORDAN, CHRISTOPHER	Review FX Connect Standing Instructions document.	8	
7/22/2008	KHALSA, SAT KRIYA	Work on State Street spreadsheets of contact information and investment profiles.	2.4	
8/26/2008	KHARARJIAN, ARRA	State Street Forex analysis per J.A. Kruse.	1.5	
9/17/2008	KHARARJIAN, ARRA	European pension chart information research per K. Dugar; State Street analysis per K. Dugar.	1.5	
10/29/2009	KHARARJIAN, ARRA	State street and general securities news research per K. Dugar.	1	
11/25/2009	KHARARJIAN, ARRA	Forex data analysis and chart creation per K. Dugar.	4.5	
12/24/2009	KHARARJIAN, ARRA	Forex analysis per K. Dugar.	2.5	
12/29/2009	KHARARJIAN, ARRA	foreign exchange analysis per K. Dugar.	3.1	
12/30/2009	KHARARJIAN, ARRA	Forex analysis per K. Dugar.	3	
1/4/2010	KHARARJIAN, ARRA	Forex analysis per K. Dugar.	1.5	
1/5/2010	KHARARJIAN, ARRA	Forex analysis per K. Dugar.	1.5	
1/6/2010	KHARARJIAN, ARRA	analysis per K. Dugar.	1	
2/24/2010	KHARARJIAN, ARRA	data entry per K. Dugar.	2.5	
2/24/2010	KHARARJIAN, ARRA	data organization per K. Dugar.	0.5	
2/25/2010	KHARARJIAN, ARRA	Forex templates and data entry per K. Dugar.	5	
2/26/2010	KHARARJIAN, ARRA	data entry per K. Dugar.	2.7	
3/2/2010	KHARARJIAN, ARRA	data entry and quality control per K. Dugar.	4	
3/8/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	2.5	
3/10/2010	KHARARJIAN, ARRA	data sort and organization per K. Dugar.	2	
3/11/2010	KHARARJIAN, ARRA	data organization per K. Dugar.	1.5	
3/11/2010	KHARARJIAN, ARRA	data analysis per K. Dugar.	2	
3/12/2010	KHARARJIAN, ARRA	data organization from SQL database per K. Dugar.	1	
3/15/2010	KHARARJIAN, ARRA	Forex transactions analysis per K. Dugar.	2	
3/15/2010	KHARARJIAN, ARRA	Forex transactions data analysis per K. Dugar.	3	
3/16/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	2.9	
3/16/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	2.3	
3/17/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	1.5	
3/17/2010	KHARARJIAN, ARRA	Forex damages summary and analysis per K. Dugar.	3	
3/18/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	3	
3/18/2010	KHARARJIAN, ARRA	data subtotals per K. Dugar.	2	
3/18/2010	KHARARJIAN, ARRA	data verification per K. Dugar.	0.5	
3/19/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	3	
3/22/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	1.2	
3/23/2010	KHARARJIAN, ARRA	Forex data analysis per K. Dugar.	1.7	
3/23/2010	KHARARJIAN, ARRA	Forex data analysis and print sheets per K. Dugar.	2	
3/24/2010	KHARARJIAN, ARRA	Forex summary by broker per K. Dugar.	2.5	
3/24/2010	KHARARJIAN, ARRA	Forex data alternative analysis per K. Dugar.	3	
3/25/2010	KHARARJIAN, ARRA	alternative method loss calculations per K. Dugar.	2.8	
3/25/2010	KHARARJIAN, ARRA	data summary per K. Dugar.	0.5	
3/25/2010	KHARARJIAN, ARRA	PowerPoint slides per K. Dugar.	0.7	
3/26/2010	KHARARJIAN, ARRA	data analysis per K. Dugar.	2	
3/26/2010	KHARARJIAN, ARRA	preparation per K. Dugar.	1.2	
3/26/2010	KHARARJIAN, ARRA	per K. Dugar.	1.5	
3/31/2010	KHARARJIAN, ARRA	PowerPoint creation and edits per K. Dugar.	4.5	





6/10/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6,8
6/11/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6
6/12/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	8
6/15/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6,8
6/16/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6, 8
6/17/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6, 8
6/18/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6, 8
6/19/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6, 8
6/22/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6,8
6/23/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6,8
6/24/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6,8
6/25/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution); draft memorandum in support of findings.	8	6, 8
6/26/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	6, 8
6/29/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	
6/30/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	
7/1/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	
7/2/2015	KIM, JASON	Continue to review and issue code State Street's (defendant's) documents (best execution) and draft memorandum in support of findings.	8	
4/15/2008	KRUSE, JOY	Legal research re potential case against State Street	1.8	
4/15/2008	KRUSE, JOY	Securities Practice Group meeting and State Street	1.5	
4/16/2008	KRUSE, JOY	Conference call with J. Gross and D. Chiplock re State Street	0.8	
4/16/2008	KRUSE, JOY	Research re possible State Street claims	4	
4/21/2008	KRUSE, JOY	Research re State Street	2	
4/23/2008	KRUSE, JOY	Research for State Street	2	
4/29/2008	KRUSE, JOY	Legal research re claims against State Street	2.3	
4/29/2008	KRUSE, JOY	Review J. Gross' email re presumption	0.3	
4/29/2008	KRUSE, JOY	Review State Street disclosure statement (77 pages)	2	
4/30/2008	KRUSE, JOY	List of states doing business with State Street but notice having qui tam statements and list of states serviced by same	0.2	
5/1/2008	KRUSE, JOY	Legal research re claims against State Street	2.5	
7/7/2008	KRUSE, JOY	State Street research.	10	
7/8/2008	KRUSE, JOY	State Street - legal research.	10	
7/9/2008	KRUSE, JOY	State Street legal research.	10	
7/10/2008	KRUSE, JOY	State Street legal research.	12	
7/11/2008	KRUSE, JOY	State Street legal research.	12	
7/15/2008	KRUSE, JOY	State Street legal research.	8	
7/16/2008	KRUSE, JOY	Legal research	9	
7/17/2008	KRUSE, JOY	Legal research	10	
7/18/2008	KRUSE, JOY	Legal research.	9	
7/22/2008	KRUSE, JOY	Research statements on foreign currency exchange in SEC filing	2	
8/6/2008	KRUSE, JOY	Review memorandum	1	
8/7/2008	KRUSE, JOY	Research	5	
8/8/2008	KRUSE, JOY	PowerPoint	3	
8/12/2008	KRUSE, JOY	Review PowerPoint and evaluation memorandum	0.5	
8/15/2008	KRUSE, JOY	Memos; Prepare for meeting	4	
8/16/2008	KRUSE, JOY	Prepare for meeting in [REDACTED] Organize materials and PowerPoint projection and laptop	3	
8/17/2008	KRUSE, JOY	Travel to [REDACTED]	10.5	
8/18/2008	KRUSE, JOY	Attend meeting with [REDACTED]; Travel from [REDACTED] to San Francisco	12	
8/19/2008	KRUSE, JOY	Memorandum	1	
8/20/2008	KRUSE, JOY	State Street memorandum; Review emails re funds to contact.	2	
8/26/2008	KRUSE, JOY	Review [REDACTED] Instruct re initial analysis	1.8	
9/2/2008	KRUSE, JOY	Review [REDACTED] to Lydia Lee	0.2	
9/22/2008	KRUSE, JOY	State Street and [REDACTED] Review Lydia Lee's emails	0.1	
9/26/2008	KRUSE, JOY	Prepare for meeting; provide R. Heimann with materials	0.2	
10/21/2009	KRUSE, JOY	Review State Street memorandum regarding [REDACTED]	0.3	
10/22/2009	KRUSE, JOY	Revise memo and email to funds re State Street Forex; emails with Lydia Lee, B. Leppla.	2.8	
10/23/2009	KRUSE, JOY	Review State Street complaints; contact funds; send memoranda.	7	
10/26/2009	KRUSE, JOY	Contact funds regarding State Street class case.	3	
10/27/2009	KRUSE, JOY	Discuss State Street with B. Leppla and K. Dugar; contacts of clients; data gathering.	0.6	
10/28/2009	KRUSE, JOY	Prepare memo for [REDACTED]	0.2	
10/28/2009	KRUSE, JOY	Review email response from [REDACTED] regarding State Street.	0.2	
10/29/2009	KRUSE, JOY	Review B. Leppla email re State Street contacts.	0.2	
5/26/2010	KRUSE, JOY	Conference call.	0.5	
8/25/2010	KRUSE, JOY	Prepare letter for [REDACTED]	3	
9/8/2010	KRUSE, JOY	Pitch case to [REDACTED]	0.3	
9/14/2010	KRUSE, JOY	Update State Street contacts memorandum; exchange emails re [REDACTED] with S. Fineman and R. Heimann.	0.2	
9/15/2010	KRUSE, JOY	Contact [REDACTED] fund re State Street; get information from Secretary of board's office.	0.3	
9/20/2010	KRUSE, JOY	Update Forex client contact memorandum.	0.1	
6/10/2011	KUPERSMITH, ROBIN	Print Westlaw cases and prepare binder of cases for D. Chiplock.	2.3	
2/11/2011	LEATHERS, DANIEL	Case introduction and first assignment information from D. Chiplock; begin to review case introduction materials D. Chiplock forwarded.	0.7	
2/13/2011	LEATHERS, DANIEL	Brainstorm possible discovery requests/refer to requests in other materials.	0.9	
2/13/2011	LEATHERS, DANIEL	Finish reviewing materials D. Chiplock sent to me re introduction to case.	1.6	
2/14/2011	LEATHERS, DANIEL	Review request for production of documents forwarded by D. Chiplock to re-tool for us; prepare request for production of documents as to each defendant.	4.3	
2/16/2011	LEATHERS, DANIEL	Emails with L. Hazam and D. Chiplock re draft interrogatories and document requests.	0.1	
2/16/2011	LEATHERS, DANIEL	Review our demand letter.	0.3	
2/17/2011	LEATHERS, DANIEL	Edit our requests for production of documents based on California action second set.	1.4	
2/17/2011	LEATHERS, DANIEL	Review California qui tam action interrogatories and corresponding responses and objections.	0.3	
2/17/2011	LEATHERS, DANIEL	Review California qui tam action second set of requests for production of documents and corresponding responses and objections.	0.7	
2/18/2011	LEATHERS, DANIEL	Create interrogatories in our case based off of California action interrogatories.	2.8	
2/18/2011	LEATHERS, DANIEL	Go back and edit requests for documents.	0.8	
2/25/2011	LEATHERS, DANIEL	Review letter forwarded by D. Chiplock.	0.1	

3/3/2011	LEATHERS, DANIEL	Review exchanged emails with D. Chiplock and co-counsel re information sent to Pension Funds; review email sent to Pension Funds.	0.6	
3/4/2011	LEATHERS, DANIEL	Review investigations emails.	0.2	
3/9/2011	LEATHERS, DANIEL	Emails with D. Chiplock re meeting with case experts Friday.	0.1	
3/15/2011	LEATHERS, DANIEL	Research re appointment of interim co-lead counsel for D. Chiplock.	2	
3/15/2011	LEATHERS, DANIEL	Review expert's analysis; review D. Chiplock's forwarded emails.	0.5	
3/16/2011	LEATHERS, DANIEL	Research re case management sequencing.	0.8	
3/16/2011	LEATHERS, DANIEL	Research re discovery sequencing.	0.3	
3/16/2011	LEATHERS, DANIEL	Telephone conference with co-counsel, also with D. Chiplock, M. Miami.	0.8	
3/17/2011	LEATHERS, DANIEL	Review D. Chiplock/team emails.	0.2	
3/18/2011	LEATHERS, DANIEL	Review response to our demand letter.	0.4	
3/27/2011	LEATHERS, DANIEL	Read through Friday's emails on case between co-counsel.	0.7	
4/1/2011	LEATHERS, DANIEL	Review case emails from prior two days.	0.3	
10/20/2009	LEE, LYDIA	Emails [REDACTED]; telephone calls with [REDACTED] on State Street; telephone call to former [REDACTED] re attendees [REDACTED]; telephone calls with [REDACTED] and follow-up emails.	2.4	
10/21/2009	LEE, LYDIA	Review State Street memo for [REDACTED] meeting.	0.8	
10/22/2009	LEE, LYDIA	Emails re State Street memos and upcoming [REDACTED] meeting; research and identify additional State Street clients - [REDACTED]; telephone call to arrange lunch meeting with [REDACTED]	2.3	
10/23/2009	LEE, LYDIA	Lunch meeting with [REDACTED]; emails re [REDACTED]; report on lunch meeting.	2.2	
10/26/2009	LEE, LYDIA	Emails re arrangements for meeting in [REDACTED]	0.8	
10/28/2009	LEE, LYDIA	Emails re upcoming meeting in [REDACTED]	0.3	
6/1/2010	LEE, LYDIA	Emails discussing State Street memo; meeting with [REDACTED]; arrangements for conference calls in preparation of meeting; edit State Street contact memo.	3.4	
6/2/2010	LEE, LYDIA	Emails re State Street meeting with [REDACTED]; call to Attorney General in preparation of meeting.	0.6	
6/3/2010	LEE, LYDIA	Emails re State Street meeting with [REDACTED]	0.3	
6/4/2010	LEE, LYDIA	Emails re State Street meeting with [REDACTED] lodging, travel arrangements.	0.4	
6/7/2010	LEE, LYDIA	Emails discussing State Street meeting with [REDACTED]; final edit for State Street contact memo; make and coordinate travel arrangements.	1.4	
6/15/2010	LEE, LYDIA	Emails re travel arrangements and final preparation for [REDACTED] meeting.	0.5	
6/17/2010	LEE, LYDIA	Travel to [REDACTED] re State Street; meet with [REDACTED]	9	
6/18/2010	LEE, LYDIA	Meeting with [REDACTED], Attorney General, Treasurer and staff; return travel to [REDACTED]	11	
6/28/2010	LEE, LYDIA	Emails re [REDACTED] legal memo.	0.2	
6/29/2010	LEE, LYDIA	Emails re [REDACTED] legal memo.	0.3	
6/30/2010	LEE, LYDIA	Locate, scan and emails re Bernstein, Litowitz PowerPoint presentation on State Street; emails re [REDACTED] interview.	0.6	
12/21/2009	LEE, SHARON	Review newly filed complaint and email to securities group.	0.4	
2/4/2011	LEE, SHARON	Research possible case against State Street re foreign currency trades.	0.2	
5/11/2011	LEE, SHARON	Review article on SEC probe and forward to securities group.	0.2	
1/21/2015	LEGGETT, JAMES	Review of complaint and coding sheet.	2	
1/21/2015	LEGGETT, JAMES	Training with K. Dugar on Catalyst analysis.	1	
1/22/2015	LEGGETT, JAMES	Review Arkansas Teachers hot documents.	5	
1/22/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	3	
1/23/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	7	
1/26/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
1/27/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
1/28/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
1/29/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
1/30/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/2/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/3/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/4/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/5/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/9/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/10/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/11/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
2/12/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/13/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/17/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/18/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/19/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
2/21/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	4	
2/22/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	4	
2/23/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	4	
2/24/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
2/25/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
2/26/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
2/27/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/2/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
3/3/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/4/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/5/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/6/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	16	
3/10/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/11/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/12/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/13/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/16/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/17/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/18/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
3/19/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
3/20/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
3/21/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	3	
3/22/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	3	
3/23/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/24/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/25/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
3/26/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
3/27/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	6	
3/29/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	4	
3/30/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	9	
3/31/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	10	
4/1/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	12	
4/2/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	8	
4/6/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	8	
4/7/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	8	

4/8/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents.	7	
4/9/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/12/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/13/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/14/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/15/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	9	
4/16/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/17/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	8	
4/20/2015	LEGGETT, JAMES	Conference Call with K. Dugar re new project to search global database of documents pertaining to specific topics that will be useful in a memorandum.	0.5	
4/20/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded documents.	7.5	
4/21/2015	LEGGETT, JAMES	Review of LCHB_0011 uncoded Documents; review of opposition to motion to dismiss and topic list in preparation for memorandum preparation; review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/22/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/23/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/24/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	6	
4/27/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/28/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/29/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
4/30/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/1/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/4/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	10	
5/5/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/6/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	10	
5/8/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	6	
5/9/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	6	
5/11/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/12/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/13/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/14/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/15/2015	LEGGETT, JAMES	Review documents pertaining to Washington State settlement in preparation for memorandum.	8	
5/18/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/19/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/20/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/21/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
5/25/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	4	
5/26/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	9	
5/27/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	9	
5/28/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	9	
5/29/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
6/1/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
6/2/2015	LEGGETT, JAMES	Review documents pertaining to Washington State Settlement in preparation for memorandum.	8	
6/3/2015	LEGGETT, JAMES	Review documents pertaining to Washington State settlement in preparation for memorandum.	8	
6/4/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/5/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/8/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] y request for production in preparation for memorandum.	8	
6/9/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	8	
6/10/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	8	
6/11/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	8	
6/12/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	4	
6/15/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	10	
6/16/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/17/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	8	
6/18/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	7	
6/19/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	4	
6/21/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	8	
6/22/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/23/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/24/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for production in preparation for memorandum.	8	
6/25/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	8	
6/26/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	8	
6/29/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] request for proposal in preparation for memorandum.	8	
6/30/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	8	
7/1/2015	LEGGETT, JAMES	Review documents pertaining to 2009 [REDACTED] RFP in preparation for memorandum.	8	
12/2/2009	LEPPLA, BRUCE	Outreach to potential clients including [REDACTED]	1	
6/29/2010	LEPPLA, BRUCE	Emails to [REDACTED] and others to discuss being a class lead plaintiff.	0.8	
5/22/2012	LEPPLA, BRUCE	Prepare emails seeking additional class lead plaintiffs; telephone calls to potential plaintiffs' counsel.	1	
1/29/2015	LIEBMAN, COLEEN	Document review; review complaint and relevant protocol.	8	
1/30/2015	LIEBMAN, COLEEN	document review; review complaint and relevant protocol.	8	
2/2/2015	LIEBMAN, COLEEN	Document review.	8	
11/8/2010	LIEFF, ROBERT	Travel to New York for meetings re case status.	8	
11/9/2010	LIEFF, ROBERT	Meetings with Mike Thornton and Lawrence Sucharow to discuss the case.	4	
11/10/2010	LIEFF, ROBERT	Conference with E. Cabraser and conference with E. Cabraser and S. Fineman re status and strategy, Boston filing.	1.5	
11/11/2010	LIEFF, ROBERT	Conference with E. Cabraser, et al., re joint agreement.	0.3	
11/11/2010	LIEFF, ROBERT	Travel from New York to Los Angeles.	8	
12/1/2010	LIEFF, ROBERT	Review email from D. Chiplock re press on State Street layoffs.	0.1	
12/13/2010	LIEFF, ROBERT	Review draft complaint from L. Hazam.	0.5	
2/1/2011	LIEFF, ROBERT	Meeting with Mike Thornton in LCHB San Francisco office to discuss case status.	2	
2/4/2011	LIEFF, ROBERT	Review revised draft complaint from L. Hazam.	0.5	
2/7/2011	LIEFF, ROBERT	Call with Mike Thornton and L. Hazam re Arkansas Teacher Retirement System (ATRS) complaint.	0.3	
2/7/2011	LIEFF, ROBERT	Conference call with E. Cabraser and L. Hazam re status and strategy.	0.5	
2/7/2011	LIEFF, ROBERT	Review email from D. Chiplock on research re equitable claims.	0.2	
2/7/2011	LIEFF, ROBERT	Review email from L. Hazam re possible plaintiff [REDACTED] for class action.	0.1	
2/8/2011	LIEFF, ROBERT	Conference call with team and co-counsel re draft complaint.	1.3	
2/10/2011	LIEFF, ROBERT	Conference call with team and co-counsel re filing of complaint and next steps.	1	
2/15/2011	LIEFF, ROBERT	Review email from D. Chiplock re employee interviews.	0.1	
2/17/2011	LIEFF, ROBERT	Conference call with Mike Thornton, S. Fineman and D. Chiplock re status and strategy.	0.3	
2/18/2011	LIEFF, ROBERT	Review emails from D. Chiplock re marketing and press inquiries.	0.1	
2/22/2011	LIEFF, ROBERT	Review emails from D. Chiplock re edit draft discovery.	1	
2/25/2011	LIEFF, ROBERT	Review email from D. Chiplock re letter to Professor Rubinstein from Mike Thornton.	0.1	
2/28/2011	LIEFF, ROBERT	Conference call with E. Cabraser, L. Hazam and co-counsel re class issues and strategy.	0.5	

3/4/2011	LIEFF, ROBERT	Review emails from D. Chiplock re amended complaint, investigative work and research on legal issues.	0.5
3/17/2011	LIEFF, ROBERT	Review emails from team re custody fee agreement for Arkansas Teacher Retirement System.	0.4
3/18/2011	LIEFF, ROBERT	Review emails re letter from William Paine and proposed response.	0.3
3/22/2011	LIEFF, ROBERT	Read emails and conference calls with team re Labaton Sucharow's revised lead counsel papers.	0.5
3/23/2011	LIEFF, ROBERT	Conference with team and co-counsel re lead counsel papers.	0.5
3/28/2011	LIEFF, ROBERT	Review email re co-counsel discovery proposal.	0.1
4/1/2011	LIEFF, ROBERT	Review emails from D. Chiplock re schedule on discovery and motions to dismiss.	0.2
4/5/2011	LIEFF, ROBERT	Review emails re foreign exchange expert review of client data.	0.1
4/5/2011	LIEFF, ROBERT	Review emails re pretrial scheduling.	0.1
4/12/2011	LIEFF, ROBERT	Review emails re draft amended complaint.	0.2
4/13/2011	LIEFF, ROBERT	Review edited draft amended complaint from D. Chiplock.	0.5
5/11/2011	LIEFF, ROBERT	Review email from D. Chiplock re press on SEC investigation of State Street.	0.1
6/2/2011	LIEFF, ROBERT	Review emails from D. Chiplock re motion to dismiss briefing.	0.2
6/3/2011	LIEFF, ROBERT	Review emails from D. Chiplock re briefing on motion to dismiss.	0.1
6/6/2011	LIEFF, ROBERT	Review emails from D. Chiplock re press inquiries on motions to dismiss.	0.2
6/6/2011	LIEFF, ROBERT	Review emails re motion to dismiss briefing.	0.3
6/7/2011	LIEFF, ROBERT	Review emails from D. Chiplock re ethics opinions.	0.1
6/21/2011	LIEFF, ROBERT	Review emails from D. Chiplock re conference call with foreign exchange expert re motion to dismiss.	0.5
6/24/2011	LIEFF, ROBERT	Telephone conference with foreign exchange expert and co-counsel re motion to dismiss arguments.	0.5
6/27/2011	LIEFF, ROBERT	Telephone conference with co-counsel re motion to dismiss opposition arguments.	0.5
7/6/2011	LIEFF, ROBERT	Review emails from D. Chiplock re research on motion to dismiss opposition; telephone conference with co-counsel re same.	1.5
7/11/2011	LIEFF, ROBERT	Review emails from D. Chiplock re draft opposition to motion to dismiss.	0.5
7/12/2011	LIEFF, ROBERT	Review emails from D. Chiplock re reach and draft opposition to motion to dismiss; conference call with co-counsel re same.	1
7/14/2011	LIEFF, ROBERT	Review revised opposition to motion to dismiss from D. Chiplock.	0.2
7/15/2011	LIEFF, ROBERT	Review emails from D. Chiplock re opposition to motion to dismiss.	0.2
7/21/2011	LIEFF, ROBERT	Review motion to dismiss opposition papers.	0.5
8/5/2011	LIEFF, ROBERT	Review emails from D. Chiplock re notice of supplemental authority on Judge Gertner's decision.	0.2
8/9/2011	LIEFF, ROBERT	Review email from D. Chiplock re notice of supplemental authority.	0.2
9/2/2011	LIEFF, ROBERT	Review emails from D. Chiplock re Judge Wolf and case status.	0.1
9/16/2011	LIEFF, ROBERT	Review emails re strategy session.	0.3
9/16/2011	LIEFF, ROBERT	Telephone conference with D. Chiplock and co-counsel re case strategy meeting.	0.4
9/19/2011	LIEFF, ROBERT	Review emails from D. Chiplock re strategy meeting with co-counsel.	0.2
9/22/2011	LIEFF, ROBERT	Telephone conference with S. Fineman, R. Heimann and D. Chiplock re status and strategy.	0.3
10/14/2011	LIEFF, ROBERT	Conference calls with co-counsel re ERISA complaint filed in Maryland or Virginia.	1
10/18/2011	LIEFF, ROBERT	Review emails from D. Chiplock re Eastern District of Virginia, District of Maryland action.	0.1
1/12/2012	LIEFF, ROBERT	Review email from D. Chiplock re update on case.	0.1
2/15/2012	LIEFF, ROBERT	Review emails from D. Chiplock re draft notice of supplemental authority.	0.2
2/16/2012	LIEFF, ROBERT	Review emails re 2/24/2012 hearing cancellation.	0.2
2/17/2012	LIEFF, ROBERT	Review email from D. Chiplock re status of motion to dismiss hearing.	0.1
2/28/2012	LIEFF, ROBERT	Review emails from D. Chiplock re State Street press.	0.1
2/29/2012	LIEFF, ROBERT	Review email re defense's response to plaintiff's notice of supplemental authorities.	0.4
4/13/2012	LIEFF, ROBERT	Review email re new hearing date.	0.1
4/23/2012	LIEFF, ROBERT	Review email re 5/8/2012 hearing.	0.1
4/24/2012	LIEFF, ROBERT	Emails from D. Chiplock re pro hac admission.	0.1
4/24/2012	LIEFF, ROBERT	Review email from D. Chiplock to L. Sims re pro hac.	0.1
5/1/2012	LIEFF, ROBERT	Conference call with co-counsel re 5/8/2012 hearing.	0.5
5/7/2012	LIEFF, ROBERT	Travel to Boston for hearing.	8
5/8/2012	LIEFF, ROBERT	Hearing before Judge Wolf.	5
5/8/2012	LIEFF, ROBERT	Telephone conference with E. Cabraser re hearing, motion to dismiss, chambers conference and strategy.	1
5/8/2012	LIEFF, ROBERT	Travel from Boston to Los Angeles.	8
5/9/2012	LIEFF, ROBERT	Call with Mike Thornton re strategy.	0.5
5/9/2012	LIEFF, ROBERT	Conference with E. Cabraser and D. Chiplock re strategy.	0.5
5/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re meeting to discuss hearing.	0.1
5/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re plan of action following hearing.	0.2
5/10/2012	LIEFF, ROBERT	Conference call with E. Cabraser and D. Chiplock re State Street hearing and plans for discussions with defense and other plaintiffs' counsel.	0.5
5/10/2012	LIEFF, ROBERT	Review emails re discovery schedule.	0.2
5/11/2012	LIEFF, ROBERT	Review emails re 5/15/2012 call to discuss mediation.	0.2
5/15/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and co-counsel re next steps after hearing.	0.3
5/18/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation plan.	0.5
5/18/2012	LIEFF, ROBERT	Review email from D. Chiplock re SEC presence at hearing.	0.1
5/22/2012	LIEFF, ROBERT	Meeting with Larry Sucharow re case status.	1
5/24/2012	LIEFF, ROBERT	Call with D. Chiplock re mediation.	0.2
5/24/2012	LIEFF, ROBERT	Email exchange with S. Fineman re potential mediators.	0.2
5/24/2012	LIEFF, ROBERT	Review email re mediation meeting.	0.1
5/29/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re mediation meeting.	0.5
5/31/2012	LIEFF, ROBERT	Review email from Larry Sucharow re mediation.	0.1
6/6/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation and media reports.	0.1
6/11/2012	LIEFF, ROBERT	Travel to New York for meeting at Labaton Sucharow.	8
6/13/2012	LIEFF, ROBERT	Meetings with Mike Thornton and D. Chiplock re meeting with Labaton Sucharow.	3
6/13/2012	LIEFF, ROBERT	Meeting with Larry Sucharow.	1
6/13/2012	LIEFF, ROBERT	Review emails re data analysis and comparison with other custodians/brokers.	0.5
6/13/2012	LIEFF, ROBERT	Travel from New York to Los Angeles.	8
6/15/2012	LIEFF, ROBERT	Review email from Dan Chiplock re [REDACTED]	0.1
6/21/2012	LIEFF, ROBERT	Call with Dan Chiplock and co-counsel re mediation meeting with defense.	1
6/22/2012	LIEFF, ROBERT	Telephone conference and email with D. Chiplock and team re mediation meeting and follow-up.	1.3
6/24/2012	LIEFF, ROBERT	Review email re conference call with team to discuss mediation.	0.1
7/2/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediation and hearing statements.	0.2
7/5/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re new damages chart for Arkansas Teacher Retirement System.	1
7/9/2012	LIEFF, ROBERT	Review email from D. Chiplock re letter to defense and proposed mediation statement.	0.2
7/10/2012	LIEFF, ROBERT	Meeting with Mike Thornton re case status.	2
7/10/2012	LIEFF, ROBERT	Review email from D. Chiplock re request for more information from defendants.	0.1
7/11/2012	LIEFF, ROBERT	Telephone conferences with D. Chiplock and team re requests for follow-up information from State Street.	0.3
7/13/2012	LIEFF, ROBERT	Review emails from D. Chiplock re status reports to Court.	0.1
7/16/2012	LIEFF, ROBERT	Review emails from D. Chiplock re potential mediators.	0.5
7/23/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation dates.	0.2
7/24/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediators.	0.2
7/27/2012	LIEFF, ROBERT	Review emails from D. Chiplock re mediation.	0.2
7/31/2012	LIEFF, ROBERT	Review email re order on motion to seal status report.	0.2
8/7/2012	LIEFF, ROBERT	Conference call with D. Chiplock and co-counsel, mediator and defense re plan for mediation.	1
8/9/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team and defense counsel re data requests in advance of mediation.	1
8/13/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation and status report to Court.	0.2
8/14/2012	LIEFF, ROBERT	Calls with D. Chiplock re mediation meeting on 9/13/2012.	0.4
8/15/2012	LIEFF, ROBERT	Review emails re calls with defense re data exchange.	0.1
8/23/2012	LIEFF, ROBERT	Review email from D. Chiplock re case status and ERISA case.	0.5

8/24/2012	LIEFF, ROBERT	Email exchange with S. Fineman re his participation in meetings on September 11 and 13 re fee arrangements and mediation.	0.3	
8/24/2012	LIEFF, ROBERT	Review email from D. Chiplock re pre-mediation.	0.1	
8/24/2012	LIEFF, ROBERT	Review emails re California documents produced at 10(b) case.	0.5	
8/29/2012	LIEFF, ROBERT	Review emails re extension of time for defendants to respond to complaint, mediation logistics and Henriquez case.	0.5	
8/30/2012	LIEFF, ROBERT	Review email re document review in California.	0.1	
8/31/2012	LIEFF, ROBERT	Review email re call to discuss mediation logistics and ERISA plaintiffs.	0.1	
9/4/2012	LIEFF, ROBERT	Review email re mediation logistics and telephone conference.	0.5	
9/5/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re conference call with Henriquez plaintiff.	0.3	
9/9/2012	LIEFF, ROBERT	Travel from Los Angeles to New York for meeting re mediation.	8	
9/10/2012	LIEFF, ROBERT	Call with D. Chiplock and S. Fineman re mediation.	0.4	
9/11/2012	LIEFF, ROBERT	Discussion with S. Fineman, E. Cabraser and Mike Thornton re status and strategy of case and settlement discussions, including addition of ERISA claims.	0.5	
9/11/2012	LIEFF, ROBERT	Meetings with Labaton Sucharow and Thornton & Naumes re mediation.	4	
9/11/2012	LIEFF, ROBERT	Review emails from D. Chiplock re The Wall Street Journal press on Forex litigation.	0.1	
9/13/2012	LIEFF, ROBERT	Pre-mediation meeting with mediator Jonathan Marks at Labaton Sucharow.	3	
9/13/2012	LIEFF, ROBERT	Travel from New York to Los Angeles.	8	
9/14/2012	LIEFF, ROBERT	Calls with D. Chiplock re State Street mediations.	0.4	
9/26/2012	LIEFF, ROBERT	Review emails re Alternative Dispute Resolution bills.	0.1	
9/27/2012	LIEFF, ROBERT	Review emails re mediation invoice.	0.1	
9/28/2012	LIEFF, ROBERT	Telephone conference re mediation and ERISA case.	0.6	
10/1/2012	LIEFF, ROBERT	Review emails re mediation.	0.2	
10/2/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock and team re mediation.	0.4	
10/11/2012	LIEFF, ROBERT	Conference with D. Chiplock and team re Forex data from State Street.	0.5	
10/12/2012	LIEFF, ROBERT	Review emails from D. Chiplock re [REDACTED] contracts.	0.3	
10/15/2012	LIEFF, ROBERT	Review email from D. Chiplock re conferences with Laura Gerber re mediation.	0.2	
10/15/2012	LIEFF, ROBERT	Review emails re public records request to [REDACTED] re 2012 contract.	0.3	
10/16/2012	LIEFF, ROBERT	Conference call with D. Chiplock and team re mediation.	0.3	
10/16/2012	LIEFF, ROBERT	Review email from D. Chiplock re Judge Wolf status.	0.1	
10/19/2012	LIEFF, ROBERT	Review emails re mediation.	0.2	
10/20/2012	LIEFF, ROBERT	Travel to Boston for mediation.	8	
10/22/2012	LIEFF, ROBERT	Meeting with Lynn Sarko re ERISA.	2	
10/22/2012	LIEFF, ROBERT	Review email from D. Chiplock re mediation.	0.1	
10/23/2012	LIEFF, ROBERT	Attend mediation sessions.	5	
10/23/2012	LIEFF, ROBERT	Meeting at Thornton & Naumes re pre-mediation.	1	
10/24/2012	LIEFF, ROBERT	Attend mediation sessions.	3	
10/24/2012	LIEFF, ROBERT	Return travel from Boston to Los Angeles.	8	
10/25/2012	LIEFF, ROBERT	Review email from D. Chiplock re telephone conference and email with [REDACTED] re case.	0.1	
10/25/2012	LIEFF, ROBERT	Review email re draft stipulated protective order.	0.5	
10/25/2012	LIEFF, ROBERT	Telephone call and review email from D. Chiplock re mediation, and follow-up with Lynn Sarko.	0.5	
10/29/2012	LIEFF, ROBERT	Telephone call and review email from D. Chiplock re agreed upon points with defense counsel and discovery process.	0.5	
10/30/2012	LIEFF, ROBERT	Review emails from D. Chiplock re timekeeping and administration.	0.2	
10/30/2012	LIEFF, ROBERT	Review emails to all counsel re call to Judge Wolf's clerk.	0.4	
10/31/2012	LIEFF, ROBERT	Call to Judge Wolf's clerk.	0.5	
11/1/2012	LIEFF, ROBERT	Call to Judge Wolf's clerk.	0.5	
11/1/2012	LIEFF, ROBERT	Review letter to Judge Wolf requesting status conference.	1	
11/2/2012	LIEFF, ROBERT	Review email from D. Chiplock re draft status report to Court.	0.2	
11/2/2012	LIEFF, ROBERT	Review email re defendant's comments to draft protective order.	0.2	
11/8/2012	LIEFF, ROBERT	Telephone conference re draft protective order.	0.5	
11/8/2012	LIEFF, ROBERT	Telephone conference with D. Chiplock re status conference.	0.2	
11/12/2012	LIEFF, ROBERT	Conference call to discuss the scope of discussions with Judge Wolf on 11/15/2012 in Boston.	1	
11/12/2012	LIEFF, ROBERT	Review emails from D. Chiplock re 11/14/2012 hearing.	0.2	
11/13/2012	LIEFF, ROBERT	Telephone conference and email from D. Chiplock re status conference and status statement.	0.3	
11/14/2012	LIEFF, ROBERT	Travel to Boston for meeting with Judge Wolf on 11/15/2012.	8	
11/15/2012	LIEFF, ROBERT	Meeting with Judge Wolf.	1	
11/15/2012	LIEFF, ROBERT	Preparation meeting for meeting with Judge Wolf at Thornton & Naumes.	1	
11/16/2012	LIEFF, ROBERT	Return travel from Boston to Los Angeles from meeting with Judge Wolf.	8	
11/16/2012	LIEFF, ROBERT	Review emails from D. Chiplock re status call and discovery.	0.2	
11/19/2012	LIEFF, ROBERT	Review emails re meeting amongst plaintiffs' counsel and logistics.	0.3	
11/20/2012	LIEFF, ROBERT	Conference call to discuss class certification and upcoming discovery issues in New York.	0.5	
11/21/2012	LIEFF, ROBERT	Review email from E. Cabraser re discovery.	0.2	
11/25/2012	LIEFF, ROBERT	Review emails from other plaintiffs' counsel re meeting with mediator and defense in January 2013.	0.2	
11/27/2012	LIEFF, ROBERT	Review email from D. Chiplock re document review platforms and document review, settlement laws and fee awards.	0.5	
11/27/2012	LIEFF, ROBERT	Review email to all counsel re January 2013 mediation.	0.1	
11/28/2012	LIEFF, ROBERT	Review emails re mediation date.	0.1	
11/29/2012	LIEFF, ROBERT	Review emails and conference with team re document review and mediation schedule and logistics.	0.5	
11/29/2012	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA plaintiffs' discovery requests and research re ERISA preemption issue.	0.2	
11/29/2012	LIEFF, ROBERT	Review emails re identifying class members.	0.1	
11/30/2012	LIEFF, ROBERT	Review emails and telephone conferences with team, ERISA counsel re discovery coordination and strategy.	0.2	
11/30/2012	LIEFF, ROBERT	Review emails re January 2013 session with mediator.	0.1	
12/4/2012	LIEFF, ROBERT	Call with D. Chiplock confirming the meeting with Jonathan Marks on January 24, 2013.	0.5	
12/4/2012	LIEFF, ROBERT	Call with Lynn Sarko to discuss meeting with Jonathan Marks on January 24, 2013.	1	
12/14/2012	LIEFF, ROBERT	Review emails re Arkansas and related cases; send email re same.	0.2	
12/17/2012	LIEFF, ROBERT	Review emails re discovery production to California Attorney General on 12/14/2012.	0.3	
12/17/2012	LIEFF, ROBERT	Review emails re mediation strategy and deadlines.	0.2	
12/20/2012	LIEFF, ROBERT	Review emails re third party, discovery strategy and responses to subpoena.	0.1	
12/27/2012	LIEFF, ROBERT	Review emails re document review.	0.1	
1/4/2013	LIEFF, ROBERT	Review emails re mediation logistics; email team re same.	0.2	
1/8/2013	LIEFF, ROBERT	Review email from D. Chiplock re 1/24/2013 mediation strategy.	0.2	
1/9/2013	LIEFF, ROBERT	Review emails re 1/24/2013 mediation preparation.	0.2	
1/11/2013	LIEFF, ROBERT	Review emails re mediation and damages discovery.	0.2	
1/14/2013	LIEFF, ROBERT	Review emails re mediation and damages questions; telephone conference re same.	1	
1/18/2013	LIEFF, ROBERT	Review emails re comments on follow-up questions for State Street re damages.	0.2	
1/22/2013	LIEFF, ROBERT	Telephone conference with mediator and co-counsel re preparation for 1/24/2013 mediation.	1	
1/23/2013	LIEFF, ROBERT	Review emails and agenda for mediation.	0.2	
1/23/2013	LIEFF, ROBERT	Travel to Washington, DC for mediation on 1/24/2013.	8	
1/24/2013	LIEFF, ROBERT	Attend mediation in Washington, DC.	4	
1/24/2013	LIEFF, ROBERT	Return travel from Washington, DC.	8	
1/25/2013	LIEFF, ROBERT	Review emails re spread calculations.	0.3	
1/28/2013	LIEFF, ROBERT	Review emails re document review administration.	0.2	
1/29/2013	LIEFF, ROBERT	Review emails to defense re document review questions.	0.3	
1/30/2013	LIEFF, ROBERT	Review emails re document review platform.	0.1	
1/31/2013	LIEFF, ROBERT	Review emails re document review and training.	0.1	
2/5/2013	LIEFF, ROBERT	Call with Larry Sucharow re Steering Committee.	0.3	
2/5/2013	LIEFF, ROBERT	Call with Michael Thornton re Steering Committee.	0.3	

2/5/2013	LIEFF, ROBERT	Conference call with ERISA lawyers.	0.5	
2/6/2013	LIEFF, ROBERT	Call with William Paine re mediator's suggestion re [REDACTED]	0.2	
2/7/2013	LIEFF, ROBERT	Review emails re document review training.	0.1	
2/8/2013	LIEFF, ROBERT	Review emails re document review training.	0.1	
2/11/2013	LIEFF, ROBERT	Review emails re document review training and video conference on March 13, 2013.	0.3	
2/12/2013	LIEFF, ROBERT	Review emails re document review training.	0.1	
2/13/2013	LIEFF, ROBERT	Review emails re document review training.	0.1	
2/14/2013	LIEFF, ROBERT	Review email from Jonathan Marks re [REDACTED]	0.3	
2/14/2013	LIEFF, ROBERT	Review emails re ERISA arguments.	0.2	
2/14/2013	LIEFF, ROBERT	Review emails re memo re damages summary.	0.3	
2/14/2013	LIEFF, ROBERT	Send email re meeting with mediator.	0.3	
2/15/2013	LIEFF, ROBERT	Review email re data breach.	0.1	
2/15/2013	LIEFF, ROBERT	Review revised damages charts.	0.2	
3/4/2013	LIEFF, ROBERT	Review email and document re trade statistics and margin analysis.	0.2	
3/4/2013	LIEFF, ROBERT	Review email re call re data production.	0.1	
3/5/2013	LIEFF, ROBERT	Review letter re data exchange.	0.2	
3/11/2013	LIEFF, ROBERT	Review email from Jonathan Marks re status conference call.	0.2	
3/11/2013	LIEFF, ROBERT	Review emails re damages calculations.	0.3	
3/11/2013	LIEFF, ROBERT	Travel to New York for meetings.	4	
3/12/2013	LIEFF, ROBERT	Meeting at Labaton, Sucharow re case status.	1	
3/12/2013	LIEFF, ROBERT	Review email re State Street 10-K from 2/22/2013.	0.1	
3/13/2013	LIEFF, ROBERT	Conference call with Jonathan Marks and co-counsel re update on where matters stand.	0.5	
3/13/2013	LIEFF, ROBERT	Email to Lynn Sarko re scheduling a call to discuss video conference.	0.2	
3/13/2013	LIEFF, ROBERT	Review email from Jonathan Marks re status conference call times.	0.1	
3/13/2013	LIEFF, ROBERT	Review email re managed expectation on the ERISA side.	0.2	
3/13/2013	LIEFF, ROBERT	Video conference with State Street to go over their spreadsheet data methodologies.	1	
3/14/2013	LIEFF, ROBERT	Travel from New York to Los Angeles.	4	
3/18/2013	LIEFF, ROBERT	Review damages chart from Mike Lesser.	0.3	
3/19/2013	LIEFF, ROBERT	Email to Michael Thornton re proposed meeting with Larry Sucharow.	0.2	
3/20/2013	LIEFF, ROBERT	Review emails re document review, administration and allocation issues.	0.2	
3/21/2013	LIEFF, ROBERT	Review emails re document review questions.	0.1	
3/22/2013	LIEFF, ROBERT	Review emails re plan of allocation ideas.	0.2	
3/28/2013	LIEFF, ROBERT	Review emails re confidential mediation communication.	0.3	
4/1/2013	LIEFF, ROBERT	Review memo containing excerpts for briefing on the motion to dismiss.	0.3	
4/2/2013	LIEFF, ROBERT	Review points for possible plans of allocation to be submitted to Jonathan Marks.	0.5	
4/2/2013	LIEFF, ROBERT	Review possible plans of allocation to be sent to Jonathan Marks.	0.4	
4/2/2013	LIEFF, ROBERT	Send email re deadline for submitting suggestions for initial framework to Jonathan Marks.	0.2	
4/8/2013	LIEFF, ROBERT	Review draft bullet point memo to be submitted to Jonathan Marks re settlement class/plan of allocation.	0.3	
4/9/2013	LIEFF, ROBERT	Review edited draft bullet point memo to Jonathan Marks re settlement class/plan of allocation.	0.2	
4/10/2013	LIEFF, ROBERT	Review final bullet point memo to Jonathan Marks re settlement class/plan of allocation.	0.2	
4/11/2013	LIEFF, ROBERT	Review emails re mediation submission and ERISA concerns.	0.3	
4/15/2013	LIEFF, ROBERT	Review emails re communications with ERISA attorneys on mediation issues.	0.2	
4/16/2013	LIEFF, ROBERT	Review emails re document review status.	0.1	
4/18/2013	LIEFF, ROBERT	Telephone conference with co-counsel and team re document review status and issues; review emails re same.	1	
4/19/2013	LIEFF, ROBERT	Review emails re document review.	0.1	
4/23/2013	LIEFF, ROBERT	Review emails to plaintiffs re update on mediations.	0.1	
4/24/2013	LIEFF, ROBERT	Review emails re Department of Justice opinion in Bank of New York Mellon and mediation status.	0.2	
4/24/2013	LIEFF, ROBERT	Telephone conference with team re mediation and clients; potential additional clients; review emails re same.	0.2	
4/25/2013	LIEFF, ROBERT	Review emails re case submissions to mediator.	0.3	
4/30/2013	LIEFF, ROBERT	Review emails re Catalyst invoice.	0.2	
5/1/2013	LIEFF, ROBERT	Review emails re document review administration.	0.1	
5/8/2013	LIEFF, ROBERT	Review email re ERISA action and motion to dismiss.	0.2	
5/22/2013	LIEFF, ROBERT	Review emails re document review.	0.1	
5/29/2013	LIEFF, ROBERT	Telephone conferences and emails with D. Chiplock and Mike Lesser re mediation status.	0.3	
5/30/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation status and dates.	0.2	
5/31/2013	LIEFF, ROBERT	Review emails re mediation status and summary from Jonathan Marks.	0.3	
6/3/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation.	0.5	
6/4/2013	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA and mediation.	0.2	
6/5/2013	LIEFF, ROBERT	Review emails re document review status.	0.1	
6/8/2013	LIEFF, ROBERT	Review emails re mediation document and counter-proposals.	0.2	
6/7/2013	LIEFF, ROBERT	Review emails re estimated ERISA damages.	0.1	
6/10/2013	LIEFF, ROBERT	Travel to New York for mediation at Labaton.	8	
6/11/2013	LIEFF, ROBERT	Review emails re mediation submissions.	0.3	
6/12/2013	LIEFF, ROBERT	Meeting with D. Chiplock to discuss mediation on 6/13/2013.	1	
6/12/2013	LIEFF, ROBERT	Meeting with Mike Thornton to discuss case status.	2	
6/12/2013	LIEFF, ROBERT	Review emails re research re ERISA preemption of state law claims.	0.3	
6/13/2013	LIEFF, ROBERT	Attend conference at Labaton re mediation proposals.	2	
6/13/2013	LIEFF, ROBERT	Review emails re unredacted motion to dismiss ERISA case.	0.2	
6/13/2013	LIEFF, ROBERT	Travel back to Los Angeles.	8	
6/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation status and discovery.	0.3	
6/19/2013	LIEFF, ROBERT	Review emails re mediation status.	0.2	
6/21/2013	LIEFF, ROBERT	Review emails re document review and missing documents.	0.2	
6/25/2013	LIEFF, ROBERT	Review emails re mediation session preparation.	0.3	
7/7/2013	LIEFF, ROBERT	Travel to New York for mediation.	8	
7/8/2013	LIEFF, ROBERT	Meeting at Labaton re mediation preparation.	2	
7/9/2013	LIEFF, ROBERT	Mediation at Labaton	2	
7/10/2013	LIEFF, ROBERT	Review emails re status of document review and requests for further information.	0.2	
7/10/2013	LIEFF, ROBERT	Travel back to Los Angeles.	8	
7/11/2013	LIEFF, ROBERT	Review emails re mediation invoices and logistics.	0.2	
7/12/2013	LIEFF, ROBERT	Review emails re mediation and sample class notice and plans of allocation; telephone conference with team and Lynn Sarko re same.	1	
7/12/2013	LIEFF, ROBERT	Review emails re mediation logistics.	0.1	
7/16/2013	LIEFF, ROBERT	Review emails re document review progress and status.	0.3	
7/16/2013	LIEFF, ROBERT	Review emails re mediation invoices.	0.1	
7/23/2013	LIEFF, ROBERT	Review emails to co-counsel re notice and plan of allocation.	0.2	
7/30/2013	LIEFF, ROBERT	Review emails to co-counsel re draft settlement agreement.	0.1	
8/1/2013	LIEFF, ROBERT	Review email to Mike Rogers re Catalyst invoice.	0.1	
8/9/2013	LIEFF, ROBERT	Review email to Michael Rogers re Catalyst invoice.	0.1	
8/13/2013	LIEFF, ROBERT	Review email to co-counsel re settlement stipulation status.	0.1	
8/14/2013	LIEFF, ROBERT	Review D. Chiplock's proposed settlement papers.	1	
8/15/2013	LIEFF, ROBERT	Review emails re document review status.	0.2	
8/16/2013	LIEFF, ROBERT	Review revised class notice and draft settlement agreement to co-counsel.	0.3	
8/17/2013	LIEFF, ROBERT	Review revised draft settlement agreement to co-counsel.	0.2	
8/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re draft settlement papers.	0.2	
8/20/2013	LIEFF, ROBERT	Review emails re draft settlement papers.	0.2	
8/26/2013	LIEFF, ROBERT	Review emails re draft settlement papers.	0.2	
8/27/2013	LIEFF, ROBERT	Review emails re draft settlement papers; telephone conference re same.	1	
8/28/2013	LIEFF, ROBERT	Review emails from D. Chiplock re ERISA counsel agreement.	0.3	
8/29/2013	LIEFF, ROBERT	Review emails re proposed settlement papers for ERISA review.	0.3	

8/30/2013	LIEFF, ROBERT	Review emails re draft settlement papers and ERISA issues; telephone conference with D. Chiplock re fee split agreement with ERISA counsel.	1
8/31/2013	LIEFF, ROBERT	Review emails re comments to draft settlement agreement and Lynn Sarko's letter.	0.5
9/3/2013	LIEFF, ROBERT	Review emails re draft settlement papers and mediation strategies; telephone conference with team re same.	1.5
9/3/2013	LIEFF, ROBERT	Review revised agreement with ERISA counsel.	0.3
9/4/2013	LIEFF, ROBERT	Telephone conference re mediation and draft settlement papers; review emails re same and Catalyst invoices.	1
9/6/2013	LIEFF, ROBERT	Review emails re fee split agreement and mediation.	0.2
9/6/2013	LIEFF, ROBERT	Telephone conference re draft settlement agreement and mediation; review emails re same.	1
9/9/2013	LIEFF, ROBERT	Telephone conferences with Lynn Sarko re draft settlement papers; review emails re same.	1
9/10/2013	LIEFF, ROBERT	Review emails re Catalyst invoices and document review.	0.2
9/10/2013	LIEFF, ROBERT	Review emails re edits to draft settlement papers.	0.5
9/11/2013	LIEFF, ROBERT	Review emails re edits to draft class notice.	0.3
9/12/2013	LIEFF, ROBERT	Review emails re draft document requests.	0.1
9/12/2013	LIEFF, ROBERT	Review emails to State Street counsel re ERISA papers.	0.3
9/12/2013	LIEFF, ROBERT	Telephone conference with Lynn Sarko re mediation; review emails re same.	0.4
9/13/2013	LIEFF, ROBERT	Meet with Lynn Sarko re fee agreement.	0.5
9/13/2013	LIEFF, ROBERT	Review emails re mediation status; telephone conference with team re same.	1
9/15/2013	LIEFF, ROBERT	Travel to New York for mediation.	8
9/16/2013	LIEFF, ROBERT	Meet with S. Fineman and D. Chiplock re case update and mediation.	0.5
9/17/2013	LIEFF, ROBERT	Mediation with mediator Jonathan Marks at Wilmer Hale.	2
9/17/2013	LIEFF, ROBERT	Return travel to San Francisco.	8
9/17/2013	LIEFF, ROBERT	Review emails re mediation session at Wilmer Hale.	0.2
9/18/2013	LIEFF, ROBERT	Review emails from D. Chiplock re mediation debriefing.	0.1
9/19/2013	LIEFF, ROBERT	Review emails re mediation debriefing.	0.1
9/20/2013	LIEFF, ROBERT	Conference call re mediation debrief.	0.5
9/24/2013	LIEFF, ROBERT	Review emails re California Attorney General's material.	0.2
9/26/2013	LIEFF, ROBERT	Review emails re case transcripts and orders from Timothy Hill and California Attorney General's actions.	0.3
9/27/2013	LIEFF, ROBERT	Review email from D. Chiplock re discovery transcripts and orders from Timothy Hill case.	0.3
9/30/2013	LIEFF, ROBERT	Review draft letter to Jonathan Marks re document production.	0.3
10/1/2013	LIEFF, ROBERT	Review letter to mediator on document demands.	0.3
10/1/2013	LIEFF, ROBERT	Review revised draft to mediator on document demands.	0.2
10/14/2013	LIEFF, ROBERT	Review emails and conference with team re mediation status.	0.5
10/14/2013	LIEFF, ROBERT	Review emails re document review staffing.	0.1
10/16/2013	LIEFF, ROBERT	Review emails re mediation status; conference with team re same.	1
10/21/2013	LIEFF, ROBERT	Review emails re document production status.	0.1
10/22/2013	LIEFF, ROBERT	Review emails re mediation status and document production; telephone conference re same.	0.5
10/24/2013	LIEFF, ROBERT	Review emails re negotiations over document productions.	0.1
10/28/2013	LIEFF, ROBERT	Review emails re State Street document production.	0.1
10/29/2013	LIEFF, ROBERT	Review emails re impact of Magistrate Judge Cott's order in Bank of New York Mellon.	0.3
10/30/2013	LIEFF, ROBERT	Call with D. Chiplock re research on class certification and mediation status.	0.3
11/4/2013	LIEFF, ROBERT	Review emails re additional document review.	0.1
11/7/2013	LIEFF, ROBERT	Review email re Timothy Hill decision on motion to compel.	0.1
11/11/2013	LIEFF, ROBERT	Travel to New York for 11/13/2013 mediation.	4
11/12/2013	LIEFF, ROBERT	Review emails re mediation session.	0.1
11/13/2013	LIEFF, ROBERT	Attend mediation session with State Street.	2
11/14/2013	LIEFF, ROBERT	Return travel to Los Angeles.	4
11/14/2013	LIEFF, ROBERT	Review emails re 12/18/2013 meeting.	0.1
11/15/2013	LIEFF, ROBERT	Review emails re draft motion to extend stay.	0.1
11/19/2013	LIEFF, ROBERT	Review emails re document review.	0.1
11/20/2013	LIEFF, ROBERT	Review emails re 12/18/2013 meeting.	0.2
12/4/2013	LIEFF, ROBERT	Review emails re class certification issues.	0.2
12/9/2013	LIEFF, ROBERT	Review emails re fee split agreement with ERISA counsel.	0.4
12/12/2013	LIEFF, ROBERT	Review emails re fee split agreement with ERISA counsel.	0.1
12/13/2013	LIEFF, ROBERT	Review emails re ERISA counsel re fee split agreement.	0.1
12/13/2013	LIEFF, ROBERT	Review emails to co-counsel re strategy session and document review.	0.3
12/16/2013	LIEFF, ROBERT	Review emails re mediation strategy session.	0.5
12/17/2013	LIEFF, ROBERT	Review emails re litigation strategy meeting.	0.2
12/18/2013	LIEFF, ROBERT	Attend litigation/mediation strategy session with co-counsel and ERISA counsel; review emails and materials re same.	7
12/20/2013	LIEFF, ROBERT	Review emails re damages production.	0.1
12/26/2013	LIEFF, ROBERT	Review emails to other plaintiffs' counsel re mediation expenses.	0.1
12/30/2013	LIEFF, ROBERT	Review emails re mediation follow-up.	0.3
1/2/2014	LIEFF, ROBERT	Review draft letter to Jonathan Marks re mediation information exchange.	0.3
1/2/2014	LIEFF, ROBERT	Review emails re Catalyst repository and invoices.	0.1
1/8/2014	LIEFF, ROBERT	Review emails re letter to Jonathan Marks.	0.1
1/16/2014	LIEFF, ROBERT	Review emails re letter to Wilmer Hale re document production.	0.1
1/21/2014	LIEFF, ROBERT	Review emails re discovery filing in Timothy Hill action for identification of State witnesses.	0.1
1/23/2014	LIEFF, ROBERT	Telephone conferences with D. Chiplock and team re status of California action and potential impact on settlement of class case; review emails re same.	1
2/3/2014	LIEFF, ROBERT	Emails and telephone conference with team re potential California settlement and implications for class case.	1
2/5/2014	LIEFF, ROBERT	Telephone conferences with team re status of California settlement talks and impact on class case; review emails re same.	1
2/8/2014	LIEFF, ROBERT	Review emails re mediation preparation.	0.2
2/11/2014	LIEFF, ROBERT	Review emails re State Street response on data request.	0.1
2/13/2014	LIEFF, ROBERT	Review emails re damages charts.	0.1
2/20/2014	LIEFF, ROBERT	Review emails re damages reports for mediation.	0.3
2/25/2014	LIEFF, ROBERT	Review emails re California State Street status.	0.1
2/26/2014	LIEFF, ROBERT	Review emails re preparation for mediation.	0.2
3/2/2014	LIEFF, ROBERT	Travel to New York for mediation.	8
3/3/2014	LIEFF, ROBERT	Review emails re research on Chapter 93A class certification issues.	0.3
3/4/2014	LIEFF, ROBERT	Attend mediation sessions: conference and review emails re same.	2
3/5/2014	LIEFF, ROBERT	Return travel to Los Angeles.	8
3/6/2014	LIEFF, ROBERT	Review emails re document review assignments.	0.1
3/7/2014	LIEFF, ROBERT	Review emails re mediation preparation; telephone conference re same.	0.4
4/3/2014	LIEFF, ROBERT	Review emails re mediation session planning and research.	0.2
4/7/2014	LIEFF, ROBERT	Review emails re preparation for mediation session on 5/9/2014; telephone conferences re same.	0.5
4/17/2014	LIEFF, ROBERT	Review emails re Chapter 93A research for mediation; review emails re custody contract.	0.2
4/21/2014	LIEFF, ROBERT	Review emails re Catalyst invoice for document repository.	0.1
4/23/2014	LIEFF, ROBERT	Review emails re document review status.	0.1
4/24/2014	LIEFF, ROBERT	Review emails re mediation and Hill case status.	0.2
4/24/2014	LIEFF, ROBERT	Review emails re past document requests and customer contracts.	0.1
4/25/2014	LIEFF, ROBERT	Review email from D. Chiplock re his review of expanded memo re Chapter 93A class issues.	0.3
4/29/2014	LIEFF, ROBERT	Review emails re Catalyst invoices.	0.1
4/30/2014	LIEFF, ROBERT	Review emails re mediation slides and Chapter 93A.	0.2
5/3/2014	LIEFF, ROBERT	Review emails re liability presentation.	0.2
5/4/2014	LIEFF, ROBERT	Review emails re mediation presentation and class issues.	0.2
5/4/2014	LIEFF, ROBERT	Review updated Chapter 93A slides.	0.2

12/14/2014	LIEFF, ROBERT	Conference call with team re mediation issues; emails with D. Chiplock, E. Cabraser and S. Fineman re same.	1.5
12/15/2014	LIEFF, ROBERT	All hands telephone call with mediator Jonathan Marks and co-counsel.	1
12/15/2014	LIEFF, ROBERT	Review emails re mediation schedule and logistics; conference call with team re same.	0.9
12/23/2014	LIEFF, ROBERT	Review emails re mediation.	0.1
12/24/2014	LIEFF, ROBERT	Review emails re foreign damages numbers.	0.2
12/29/2014	LIEFF, ROBERT	Review emails re mediation schedules.	0.1
12/31/2014	LIEFF, ROBERT	Conference with co-counsel re damages analyses.	1
12/31/2014	LIEFF, ROBERT	Email to D. Chiplock re mediation; telephone conferences and emails with team re same.	1
1/4/2015	LIEFF, ROBERT	Review emails re mediation.	0.2
1/4/2015	LIEFF, ROBERT	Travel to New York for Mediation on January 5, 2015	4
1/5/2015	LIEFF, ROBERT	Attend mediation of Wilmer Hale; conference with team.	5
1/6/2015	LIEFF, ROBERT	Travel back to Los Angeles following mediation.	4
1/7/2015	LIEFF, ROBERT	Review emails re February 4, 2015.	0.2
1/13/2015	LIEFF, ROBERT	Review emails re document review status.	0.1
1/15/2015	LIEFF, ROBERT	Review emails re damages; review emails re Chapter 93A and prior presentations to State Street.	0.3
1/20/2015	LIEFF, ROBERT	Review emails and telephone conference with team re mediation scheduling.	0.6
1/21/2015	LIEFF, ROBERT	Emails and telephone conference calls with team re 2/4/2015 mediation.	0.3
1/21/2015	LIEFF, ROBERT	Review emails re motion to extend discovery stay; review email from D. Chiplock re 2/4/2015 mediation date.	0.2
1/23/2015	LIEFF, ROBERT	Emails and Conference with D. Chiplock re State Street mediation on 2/4/15.	0.6
1/26/2015	LIEFF, ROBERT	Emails with D. Chiplock re 2/4/2015 mediation.	0.1
1/30/2015	LIEFF, ROBERT	Email to M. Miami re 2/4/2015 meeting and mediation.	0.1
2/2/2015	LIEFF, ROBERT	Call with Michael Thornton and Lynn Sarko re mediation on 2/4/15.	0.5
2/3/2015	LIEFF, ROBERT	Travel to Boston for 2/4/2015 mediation.	8
2/4/2015	LIEFF, ROBERT	Attend mediation at WilmerHale.	4
2/4/2015	LIEFF, ROBERT	Review emails re mediation.	0.3
2/4/2015	LIEFF, ROBERT	Travel from Boston to San Francisco.	7
2/5/2015	LIEFF, ROBERT	Emails re Department of Labor issues and ERISA damages.	0.4
2/9/2015	LIEFF, ROBERT	Review emails re document review status and assignments.	0.3
2/18/2015	LIEFF, ROBERT	Call with Jonathan Marks re mediation schedule.	0.3
2/18/2015	LIEFF, ROBERT	Call with Larry Sucharow re mediation schedule.	0.3
2/18/2015	LIEFF, ROBERT	Call with Michael Thornton re mediation schedule.	0.4
2/18/2015	LIEFF, ROBERT	Emails to team re mediation and meeting on 2/25/15 at Labaton.	0.2
2/19/2015	LIEFF, ROBERT	Conference call with mediator and all parties re mediation on 2/26/2015.	0.8
2/22/2015	LIEFF, ROBERT	Review email from D. Chiplock re mediation pre-meeting and calendar same.	0.1
2/24/2015	LIEFF, ROBERT	Fly to New York for 2/26 mediation.	8
2/25/2015	LIEFF, ROBERT	Conference and emails with team re mediation preparation	2
2/25/2015	LIEFF, ROBERT	Conference with D. Chiplock re mediation	0.5
2/25/2015	LIEFF, ROBERT	Meeting with Larry Sucharow and Michael Thornton re 2/26/2015 mediation.	2
2/25/2015	LIEFF, ROBERT	Review emails re margin data for mediation	0.3
2/26/2015	LIEFF, ROBERT	Attend mediation at WilmerHale.	3
2/27/2015	LIEFF, ROBERT	Travel back from New York to Los Angeles.	8
3/4/2015	LIEFF, ROBERT	Emails to Marks and team re next mediation date.	0.3
3/4/2015	LIEFF, ROBERT	Review emails re Marks' ADR invoice.	0.1
3/6/2015	LIEFF, ROBERT	Review emails re second tier document review.	0.1
3/7/2015	LIEFF, ROBERT	Review emails re staffing and document review administration for us and Thornton Law Firm.	0.5
3/9/2015	LIEFF, ROBERT	Calls with Lynn Sarko re mediation schedule.	0.4
3/10/2015	LIEFF, ROBERT	Emails to team re next mediation date; review emails re staffing and status.	0.4
3/10/2015	LIEFF, ROBERT	Review emails re document review staffing and status.	0.3
3/16/2015	LIEFF, ROBERT	Review emails re document review status.	0.1
3/17/2015	LIEFF, ROBERT	Emails and telephone conferences with team re document review status and progress.	0.3
3/23/2015	LIEFF, ROBERT	Emails to team re 4/9 mediation.	0.1
3/23/2015	LIEFF, ROBERT	Email to team re April 9 mediation in Boston.	0.1
3/24/2015	LIEFF, ROBERT	Review emails re document review status and staffing.	0.3
3/26/2015	LIEFF, ROBERT	Call with Lynn Sarko and Carl Kravitz re upcoming mediation on 4/9 in Boston.	0.5
3/27/2015	LIEFF, ROBERT	Emails with team re next mediation date and pre-call re class certification issues.	0.4
3/27/2015	LIEFF, ROBERT	Emails with team re next mediation date and pre-call re class certification issues.	0.4
3/28/2015	LIEFF, ROBERT	Emails to team re settlement documents in BNYM; preparation for April 3 call.	1
3/28/2015	LIEFF, ROBERT	Review emails to team, defense and Marks re settlement documents in BNYM.	0.3
3/30/2015	LIEFF, ROBERT	Emails with team re 4/9 mediation.	0.5
3/31/2015	LIEFF, ROBERT	Emails re 4/9 mediation session.	0.3
4/6/2015	LIEFF, ROBERT	Conference with team re mediation status.	0.5
4/6/2015	LIEFF, ROBERT	Review emails re Department of Justice contacts.	0.1
4/6/2015	LIEFF, ROBERT	Review emails re status of document review.	0.1
4/7/2015	LIEFF, ROBERT	Conference and emails with team re SEC and Department of Justice settlement talks.	1
4/7/2015	LIEFF, ROBERT	Emails and telephone conferences with team and mediator re mediation status.	1
4/7/2015	LIEFF, ROBERT	Emails with team re class certification arguments and mediation.	0.3
4/7/2015	LIEFF, ROBERT	Review emails with team re additional document requests and mediation.	0.1
4/8/2015	LIEFF, ROBERT	Telephone conferences with team re mediation and conversation with SEC.	1
4/9/2015	LIEFF, ROBERT	Attend mediation call with Jonathan Marks and team; emails re same.	1.5
4/9/2015	LIEFF, ROBERT	Review emails re telephone conference with Department of Justice.	0.3
4/13/2015	LIEFF, ROBERT	Review emails re document review work flows.	0.2
4/15/2015	LIEFF, ROBERT	Emails with team re Department of Justice contacts.	0.3
4/20/2015	LIEFF, ROBERT	Telephone call with Lynn Sarko re 4/29 mediation session.	0.2
4/21/2015	LIEFF, ROBERT	Review emails to co-counsel re document review assignments and staffing issues.	0.5
4/28/2015	LIEFF, ROBERT	Travel to Boston for mediation on 4/30/15.	8
4/29/2015	LIEFF, ROBERT	Attend preparation meeting for mediation on 4/30/15.	1.5
4/30/2015	LIEFF, ROBERT	Attend mediation at Wilmer Hale.	4
4/30/2015	LIEFF, ROBERT	Fly back to Los Angeles.	8
5/6/2015	LIEFF, ROBERT	Review emails re additional discovery requests to State Street.	0.1
5/12/2015	LIEFF, ROBERT	Emails with Lynn Sarko and D. Chiplock re joint [REDACTED]	0.3
5/12/2015	LIEFF, ROBERT	Telephone call with Lynn Sarko re joint [REDACTED]	0.3
5/13/2015	LIEFF, ROBERT	Conferences and emails with team re mediation and Department of Justice status.	1.5
5/13/2015	LIEFF, ROBERT	Review draft joint [REDACTED]	0.2
5/14/2015	LIEFF, ROBERT	Emails and conferences with Lynn Sarko and D. Chiplock re mediation status, BNYM settlement.	1
5/14/2015	LIEFF, ROBERT	Review emails from D. Chiplock re SEC public statements on FX settlement in BNYM.	0.5
5/14/2015	LIEFF, ROBERT	Review emails re document review status and projects.	0.3
5/15/2015	LIEFF, ROBERT	Emails and conferences with team re SEC settlement and BNY context.	1
5/15/2015	LIEFF, ROBERT	Emails with team re Department of Justice contacts.	0.3
5/18/2015	LIEFF, ROBERT	Emails with team re mediation issues.	0.2
5/19/2015	LIEFF, ROBERT	Emails and conferences with Lynn Sarko, Michael Thornton and D. Chiplock re mediation and Department of Justice status; conferences and emails with Bill Pain re [REDACTED]; follow up emails with team re same.	2
5/20/2015	LIEFF, ROBERT	Review emails from D. Chiplock re meeting with Mike Thornton to discuss case status.	0.3
5/20/2015	LIEFF, ROBERT	Review emails re document review assignments.	0.1
5/21/2015	LIEFF, ROBERT	Review emails re topics for further analysis by reviewing attorneys.	0.1
5/22/2015	LIEFF, ROBERT	Conferences with team, mediator and State Street re mediation status and discussions with Department of Justice; emails re setting up meeting with Department of Justice.	1.5
5/26/2015	LIEFF, ROBERT	Emails and telephone calls with D. Chiplock and team re Department of Justice status and next mediation date.	1

5/26/2015	LIEFF, ROBERT	Telephone call with Garrett Bradley re settlement scenarios.	0.3	
5/27/2015	LIEFF, ROBERT	Emails with team and State Street counsel re mediation and Department of Justice meetings on June 2, 2015.	0.5	
6/1/2015	LIEFF, ROBERT	Fly to Boston for meetings with Department of Justice and State Street on June 2nd.	8	
6/2/2015	LIEFF, ROBERT	Attend meetings with co-counsel, Department of Justice and State Street re possible settlement of all claims; conferences with team before and after meetings.	8	
6/3/2015	LIEFF, ROBERT	Emails with team re next mediation date and coordination with Department of Justice; telephone conferences with Lynn Sarko and D. Chiplock re same.	1.2	
6/3/2015	LIEFF, ROBERT	Fly back to Los Angeles.	8	
6/4/2015	LIEFF, ROBERT	Telephone calls and emails with D. Chiplock re mediation status and conference with Bill Paine re same.	0.8	
6/4/2015	LIEFF, ROBERT	Telephone call with Lynn Sarko re mediation status.	0.3	
6/4/2015	LIEFF, ROBERT	Telephone call with Michael Thornton re mediation status.	0.3	
6/7/2015	LIEFF, ROBERT	Fly to New York for mediation at Labaton on 6/9.	8	
6/8/2015	LIEFF, ROBERT	Emails and telephone calls with team re mediation progress and status.	1.5	
6/8/2015	LIEFF, ROBERT	Mediation preparation meeting at Labaton; emails with team re same.	1	
6/9/2015	LIEFF, ROBERT	Attend mediation at Labaton.	2	
6/10/2015	LIEFF, ROBERT	Fly back to Los Angeles.	8	
6/11/2015	LIEFF, ROBERT	Emails to team re next mediation session.	0.4	
6/12/2015	LIEFF, ROBERT	Review emails from D. Chiplock re [REDACTED]	0.2	
6/16/2015	LIEFF, ROBERT	Emails and telephone conferences with team re mediation status and Department of Justice development.	1	
6/17/2015	LIEFF, ROBERT	Emails and conferences with co-counsel re mediation.	0.4	
6/22/2015	LIEFF, ROBERT	Emails with D. Chiplock re mediation.	0.1	
6/23/2015	LIEFF, ROBERT	Emails to counsel re next mediation.	0.2	
6/23/2015	LIEFF, ROBERT	Review emails re document review memoranda.	0.1	
6/25/2015	LIEFF, ROBERT	Conference with S. Fineman and D. Chiplock re mediation on 6/26.	0.6	
6/26/2015	LIEFF, ROBERT	Attend mediation at WilmerHale New York; conference and emails re same.	0.7	
6/27/2015	LIEFF, ROBERT	Fly back to Los Angeles.	8	
6/29/2015	LIEFF, ROBERT	Fly to Boston for mediation at WilmerHale on 6/30.	8	
6/29/2015	LIEFF, ROBERT	Review emails re mediation on 6/30.	0.4	
6/30/2015	LIEFF, ROBERT	Attend mediation at WilmerHale Boston.	5	
6/30/2015	LIEFF, ROBERT	Emails and conferences with team re mediation.	2	
7/1/2015	LIEFF, ROBERT	Emails with team re draft term sheet; telephone calls with Lynn Sarko re same.	1.5	
7/1/2015	LIEFF, ROBERT	Travel back to Los Angeles.	8	
7/2/2015	LIEFF, ROBERT	Emails with team and telephone calls re plan of allocation.	0.5	
7/6/2015	LIEFF, ROBERT	Review emails re plan of allocation call.	0.2	
7/6/2015	LIEFF, ROBERT	Review emails re term sheet and document review memoranda.	0.3	
7/7/2015	LIEFF, ROBERT	Emails and telephone conferences with State Street re [REDACTED]	1	
7/8/2015	LIEFF, ROBERT	Emails with team re modifications to term sheet.	0.4	
7/8/2015	LIEFF, ROBERT	Review follow-up emails re settlement documentation.	0.2	
7/9/2015	LIEFF, ROBERT	Emails with team re revised term sheet.	0.3	
7/10/2015	LIEFF, ROBERT	Emails with team re edits to term sheet; telephone conferences re same.	1.5	
7/13/2015	LIEFF, ROBERT	Review emails re ERISA comments to term sheet.	0.3	
7/13/2015	LIEFF, ROBERT	Review emails re term sheet.	0.4	
7/20/2015	LIEFF, ROBERT	Review emails re Department of Labor and plan of allocation issues.	0.2	
7/20/2015	LIEFF, ROBERT	Review emails re team call and cost fund for mediation invoice.	0.1	
7/21/2015	LIEFF, ROBERT	Review emails re Catalyst issues.	0.1	
7/21/2015	LIEFF, ROBERT	Telephone calls and emails with team and Wilmer Hale re [REDACTED]	1.6	
7/22/2015	LIEFF, ROBERT	Emails and telephone calls with Mike Lesser and team re plan of allocation.	0.9	
7/23/2015	LIEFF, ROBERT	Emails with co-counsel re [REDACTED]; telephone calls with Bill Paine re [REDACTED]	2	
7/24/2015	LIEFF, ROBERT	Review emails re plan of allocation and fee issues.	0.4	
7/27/2015	LIEFF, ROBERT	Emails and telephone calls with team re Department of Labor and term sheet status.	0.3	
7/29/2015	LIEFF, ROBERT	Review emails from D. Chiplock re current costs.	0.1	
7/29/2015	LIEFF, ROBERT	Review new term sheet and emails to team re same.	0.3	
7/29/2015	LIEFF, ROBERT	Telephone calls and emails with team re term sheet status and Department of Labor issues.	1	
7/30/2015	LIEFF, ROBERT	Emails and telephone calls with team re plan of allocation issues.	0.6	
7/31/2015	LIEFF, ROBERT	Review additional changes to term sheet from D. Chiplock.	0.3	
7/31/2015	LIEFF, ROBERT	Review emails re group trust issue.	0.1	
8/4/2015	LIEFF, ROBERT	Emails and conference calls with S. Fineman and D. Chiplock re settlement documentation and status.	0.5	
8/5/2015	LIEFF, ROBERT	Conference Call with Garrett Bradley re Thornton fee issue.	1	
8/5/2015	LIEFF, ROBERT	Emails and telephone conferences with team re plan of allocation structure.	0.5	
8/6/2015	LIEFF, ROBERT	Emails and telephone conferences with team re Department of Labor position on plan allocation and settlement agreement.	0.4	
8/6/2015	LIEFF, ROBERT	Follow-up call with Garrett Bradley re fee issue.	0.3	
8/6/2015	LIEFF, ROBERT	Telephone conferences with team re plan of allocation and settlement agreement.	0.4	
8/7/2015	LIEFF, ROBERT	Review emails re term sheet status and Department of Labor.	0.2	
8/11/2015	LIEFF, ROBERT	Emails and conference call with team and Department of Labor re settlement stipulation and negotiations.	1.2	
8/17/2015	LIEFF, ROBERT	Telephone call with Lynn Sarko re fee division; Telephone call with Mike Thornton re fee division.	0.6	
8/19/2015	LIEFF, ROBERT	Conference call with Garrett Bradley, Lynn Sarko and Larry Sucharow re division of fees.	1	
8/20/2015	LIEFF, ROBERT	Conference call with Carl Kravitz, Lynn Sarko, Larry Sucharow and Mike Thornton re Department of Labor issues.	1	
8/21/2015	LIEFF, ROBERT	Conference call with Lynn Sarko and the Department of Labor re fee negotiations.	1	
8/22/2015	LIEFF, ROBERT	Email to the team regarding the call with the Department of Labor re fee negotiations.	0.2	
8/24/2015	LIEFF, ROBERT	Telephone conferences and emails with team re Department of Labor negotiations.	1.5	
8/25/2015	LIEFF, ROBERT	Emails and telephone conferences with team re draft term sheet and settlement documents issues.	1.4	
8/26/2015	LIEFF, ROBERT	Review and comment on draft plan of allocation.	0.2	
8/28/2015	LIEFF, ROBERT	Review emails to the team re draft term sheet and settlement documents; Telephone conferences with D. Chiplock re term sheet and settlement documents; Email to Garrett Bradley re fee division.	1.6	
8/30/2015	LIEFF, ROBERT	Telephone conferences and emails with D. Chiplock and team re settlement approval issues.	1.8	
9/2/2015	LIEFF, ROBERT	Review emails re call with Department of Labor; review emails re plan of allocation; emails with team re draft term sheet and counsel organization.	1	
9/4/2015	LIEFF, ROBERT	Review Iodestar report.	0.2	
9/10/2015	LIEFF, ROBERT	Review emails re status of term sheet.	0.1	
9/14/2015	LIEFF, ROBERT	Telephone call with team and Carl Kravitz re Department of Labor proposal on plan of allocation.	1	
9/15/2015	LIEFF, ROBERT	Review emails from D. Chiplock re revised language for plan of allocation.	0.2	
9/16/2015	LIEFF, ROBERT	Emails and telephone conferences with D. Chiplock re draft settlement agreement and orders.	1	
9/17/2015	LIEFF, ROBERT	Emails and telephone conferences with D. Chiplock re final approval issues.	0.5	
9/17/2015	LIEFF, ROBERT	Emails with team and Nicole Zeiss re draft orders and final judgment.	0.2	
9/21/2015	LIEFF, ROBERT	Emails with team re next Department of Labor call.	0.1	
9/22/2015	LIEFF, ROBERT	Email with team re plan of allocation.	0.1	
9/25/2015	LIEFF, ROBERT	Emails and telephone calls with team and WilmerHale re [REDACTED]	0.6	
10/7/2015	LIEFF, ROBERT	Emails with D. Chiplock and S. Fineman re State Street status.	0.2	
10/12/2015	LIEFF, ROBERT	Emails with D. Chiplock and S. Fineman re settlement status.	0.2	
10/14/2015	LIEFF, ROBERT	Conference and emails with D. Chiplock and S. Fineman re settlement status.	0.5	
12/10/2015	LIEFF, ROBERT	Review emails from D. Chiplock re status report.	0.1	
12/21/2015	LIEFF, ROBERT	Review email re Group Trust language in settlement agreement and class notice.	0.1	
1/28/2016	LIEFF, ROBERT	Review revised plan of allocation.	0.1	
1/29/2016	LIEFF, ROBERT	Review revised plan of allocation.	0.1	
2/3/2016	LIEFF, ROBERT	Review emails re [REDACTED] by Department of Labor.	0.4	
3/22/2016	LIEFF, ROBERT	Conference and emails with D. Chiplock re mediation/case status.	0.5	
4/12/2016	LIEFF, ROBERT	Emails with team re Protective Order issue and NDA from Wilmer Hale.	0.1	

4/13/2016	LIEFF, ROBERT	Emails with team re Settlement Stipulation language and Wilmer Hale edits.	0.4
4/13/2016	LIEFF, ROBERT	Review emails re settlement documents from defense counsel and prior correspondence on Plan of Allocation.	0.3
4/15/2016	LIEFF, ROBERT	Conference with team re SEC provisions and settlement allocation scenarios.	0.5
4/21/2016	LIEFF, ROBERT	Telephone calls and emails with team re document totals and statistics for preliminary approval papers.	0.2
4/22/2016	LIEFF, ROBERT	Review emails re Catalyst review stats for settlement papers.	0.3
4/22/2016	LIEFF, ROBERT	Review emails re McTigue edits to settlement stipulation.	0.3
4/25/2016	LIEFF, ROBERT	Emails with team re de minimis distributions.	0.4
4/26/2016	LIEFF, ROBERT	Telephone conference with team and Wilmer Hale re [REDACTED]	1
4/29/2016	LIEFF, ROBERT	Review emails re [REDACTED]	0.3
5/2/2016	LIEFF, ROBERT	Emails with team re [REDACTED]	0.4
5/4/2016	LIEFF, ROBERT	Emails and telephone calls with Labaton and D. Chiplock re edits to Marks as mediator.	1.2
5/5/2016	LIEFF, ROBERT	Emails with Labaton and D. Chiplock re settlement status and negotiations.	0.6
5/10/2016	LIEFF, ROBERT	Emails and calls with Labaton and D. Chiplock re draft settlement stipulation language.	1
5/11/2016	LIEFF, ROBERT	Emails with D. Chiplock re settlement stipulation.	0.4
5/23/2016	LIEFF, ROBERT	Review emails re Blow provision.	0.1
5/24/2016	LIEFF, ROBERT	Review updated draft of all settlement documents.	0.5
5/26/2016	LIEFF, ROBERT	Review emails re settlement stipulation language.	0.2
5/31/2016	LIEFF, ROBERT	Review fee agreement.	0.2
6/1/2016	LIEFF, ROBERT	Review emails re revisions to settlement documents.	0.2
6/2/2016	LIEFF, ROBERT	Emails with D. Chiplock re settlement papers and status.	0.2
6/6/2016	LIEFF, ROBERT	Review status letter filed with court.	0.1
6/8/2016	LIEFF, ROBERT	Review draft preliminary approval brief.	0.4
6/10/2016	LIEFF, ROBERT	Emails with team re draft settlement documents and Department of Labor status.	0.3
6/11/2016	LIEFF, ROBERT	Emails with team re status report to court.	0.1
6/13/2016	LIEFF, ROBERT	Review Department of Labor letter on fees.	0.1
6/14/2016	LIEFF, ROBERT	Emails and telephone calls with D. Chiplock re settlement status.	0.5
6/14/2016	LIEFF, ROBERT	Emails with D. Chiplock re class settlement approval status.	0.4
6/15/2016	LIEFF, ROBERT	Prepare proposal presentation to Labaton on fee application; emails and telephone calls with D. Chiplock re same.	1
6/15/2016	LIEFF, ROBERT	Review docket entry re status report from D. Chiplock; review Labaton report from D. Chiplock.	0.5
6/16/2016	LIEFF, ROBERT	Review emails with team re status conference.	0.1
6/19/2016	LIEFF, ROBERT	Fly to New York for meeting at Labaton re settlement and fee approval.	8
6/20/2016	LIEFF, ROBERT	Conference with D. Chiplock; attend meeting at Labaton re settlement and fee approval.	4.6
6/21/2016	LIEFF, ROBERT	Emails and telephone calls with team re case status.	0.3
6/22/2016	LIEFF, ROBERT	Emails with team re status conference program.	0.6
6/22/2016	LIEFF, ROBERT	Fly to Boston for status conference.	3
6/23/2016	LIEFF, ROBERT	Attend status conference with co-counsel.	1
6/23/2016	LIEFF, ROBERT	Fly to Los Angeles.	8
6/29/2016	LIEFF, ROBERT	Telephone calls and emails with D. Chiplock re settlement status and fee application.	0.5
6/30/2016	LIEFF, ROBERT	Telephone calls with D. Chiplock re settlement status and fee application.	0.3
7/8/2016	LIEFF, ROBERT	Emails with D. Chiplock re fee discussions with Labaton; review emails from Garrett Bradley.	0.3
7/15/2016	LIEFF, ROBERT	Emails with D. Chiplock re settlement status.	0.3
7/20/2016	LIEFF, ROBERT	Emails with co-counsel and D. Chiplock re status of preliminary approval papers; telephone conferences re same.	0.8
7/21/2016	LIEFF, ROBERT	Review emails re Department of Labor queries and ERISA numbers.	0.5
7/21/2016	LIEFF, ROBERT	Telephone conference with D. Chiplock re settlement status and Department of Labor concerns.	0.2
7/25/2016	LIEFF, ROBERT	Review revision to settlement papers.	0.2
7/26/2016	LIEFF, ROBERT	Review emails re filing of preliminary approval papers.	0.3
7/26/2016	LIEFF, ROBERT	Review preliminary approval brief draft.	0.3
8/2/2016	LIEFF, ROBERT	Emails with Garrett Bradley and D. Chiplock re preliminary approval hearing.	0.1
8/7/2016	LIEFF, ROBERT	Travel to Boston for preliminary approval hearing on 8/8/16.	8
8/8/2016	LIEFF, ROBERT	Attend preliminary approval hearing before Judge Wolf.	2
8/8/2016	LIEFF, ROBERT	Preliminary approval hearing preparation meeting at Thornton.	2
8/8/2016	LIEFF, ROBERT	Travel back to San Francisco.	8
8/9/2016	LIEFF, ROBERT	Conferences and emails with team re follow-up to preliminary approval hearing; email with D. Chiplock re same.	1.5
8/9/2016	LIEFF, ROBERT	Review proposed revisions to class settlement notice.	0.3
8/10/2016	LIEFF, ROBERT	Emails with team re revisions to class notice.	0.2
8/12/2016	LIEFF, ROBERT	Emails with D. Chiplock re final approval briefing.	0.2
8/12/2016	LIEFF, ROBERT	Emails with Garrett Bradley re fee application.	0.2
8/17/2016	LIEFF, ROBERT	Emails with Garrett Bradley re fee application.	0.2
7/14/2008	MATHENY, MELISSA	Research State Street Bank and Trust for J.A. Kruse.	0.5
7/28/2008	MATHENY, MELISSA	Search for investigation of State Street fund (SSGA).	1.5
10/20/2009	MATHENY, MELISSA	Draft memos and cover letters to [REDACTED] gton. Attached amended complaint. FedEx.	2
10/21/2009	MATHENY, MELISSA	Call Lydia Lee with J.A. Kruse and revise memo for [REDACTED]	0.5
10/28/2009	MATHENY, MELISSA	Prepare memo to be sent to [REDACTED]	0.2
1/5/2010	MATHENY, MELISSA	Pull Coughlin's derivative State Street complaint for S. Lee.	0.5
2/17/2010	MATHENY, MELISSA	Create competing movant chart for State Street case.	1.5
2/18/2010	MATHENY, MELISSA	Check docket for further lead plaintiff movant filings then circulate chart for State Street case. Answer follow-up question for S. Fineman.	0.8
3/25/2010	MATHENY, MELISSA	Look up and pull document from docket.	0.4
4/13/2010	MATHENY, MELISSA	Per L. Hazam, put binder together for R. Heimann to take to meeting with [REDACTED]	1.5
4/14/2010	MATHENY, MELISSA	Update lead plaintiff movant chart for State Street securities class case.	1
6/16/2010	MATHENY, MELISSA	Make binder with materials for L. Hazam to take to meeting with [REDACTED]	1.3
8/24/2010	MATHENY, MELISSA	Search for and pull sample memos on case for J.A. Kruse to send to [REDACTED]	0.2
8/25/2010	MATHENY, MELISSA	Pull and send operative complaint to J.A. Kruse. Proofread letter. Discuss with J.A. Kruse.	0.4
9/8/2010	MATHENY, MELISSA	Search for number for [REDACTED] for J.A. Kruse.	0.3
9/14/2010	MATHENY, MELISSA	Look up information on memo to [REDACTED]	0.2
1/22/2015	MCCLLELLAND, ANDREW	Begin review of documents produced by State Street in order to assess for relevance to specified case issues.	2
1/23/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	4
1/24/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	8
1/25/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	4
1/26/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	8
1/27/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	8
1/28/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	8
1/29/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	8
1/30/2015	MCCLLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	5.5

1/31/2015	MCLELLAND, ANDREW	Continue review of documents produced by State Street in order to assess for relevance to specified case issues.	2.5	
8/19/2008	MIARMI, MICHAEL	Speak with D. Chiplock and S. Fineman; research to search for provision in Funds/Citibank custodial agreement re foreign currency.	1.1	
8/22/2008	MIARMI, MICHAEL	Research to search for provision in Funds/Citibank custodial agreement re foreign currency; speak with D. Chiplock re same.	0.3	
2/10/2011	MIARMI, MICHAEL	Email with D. Chiplock (others included) re research assistance: research re proper time to file motion to establish counsel leadership structure; email to D. Chiplock, providing analysis; read email among team members re same.	2.5	
3/15/2011	MIARMI, MICHAEL	Issues re brief in support of motion for appointment as lead counsel, including research re LCHB firm description.	1.5	
3/16/2011	MIARMI, MICHAEL	Email with D. Chiplock re call with co-counsel re case status; participate in call with co-counsel; email with D. Chiplock and D. Leathers re timing of discovery; read email among co-counsel and D. Chiplock re timing of discovery and other issues.	0.9	
3/18/2011	MIARMI, MICHAEL	Read email among team members re letter from State Street's counsel re plaintiff's demand under Massachusetts consumer law.	0.1	
3/25/2011	MIARMI, MICHAEL	Read email exchange among team members re case issues; email with D. Chiplock (D. Leathers included) re research re claim for declaratory judgment in complaint; begin research re same.	0.7	
3/28/2011	MIARMI, MICHAEL	Research re declaratory judgment claim, in connection with amended complaint to be filed.	5	
3/30/2011	MIARMI, MICHAEL	Research re declaratory judgment claim, in connection with amended complaint to be filed; email with D. Chiplock re same.	3.4	
3/31/2011	MIARMI, MICHAEL	Research re declaratory judgment claim; email to D. Chiplock containing analysis and conclusions; read response email from D. Chiplock re same; read email exchange among team members re case issues.	4.8	
4/18/2011	MIARMI, MICHAEL	Look at amended complaint.	0.1	
4/20/2011	MIARMI, MICHAEL	Email with E. Cabraser and other team members re jurisdictional and class allegations in amended complaint; confer with D. Chiplock re same.	0.3	
5/4/2011	MIARMI, MICHAEL	Read email from D. Chiplock re forthcoming motion to dismiss.	0.1	
6/6/2011	MIARMI, MICHAEL	Issues re opposition to defendants' motion to dismiss.	0.3	
6/8/2011	MIARMI, MICHAEL	Issues re opposition to defendants' motion to dismiss.	0.5	
6/10/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss.	0.1	
6/21/2011	MIARMI, MICHAEL	Email with D. Chiplock re team calls scheduled for 6/22/11.	0.1	
7/2/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss.	0.1	
7/5/2011	MIARMI, MICHAEL	Email with D. Chiplock re opposition to defendants' motion to dismiss.	0.1	
7/5/2011	MIARMI, MICHAEL	Research re statute of limitations section of opposition to defendants' motion to dismiss.	5.1	
7/6/2011	MIARMI, MICHAEL	Research re statute of limitations section of opposition to defendants' motion to dismiss.	3.1	
7/7/2011	MIARMI, MICHAEL	Work on statute of limitations section of opposition to defendants' motion to dismiss.	8.5	
7/8/2011	MIARMI, MICHAEL	Work on statute of limitations section of opposition to defendants' motion to dismiss.	6.7	
7/10/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	13.4	
7/11/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	5	
7/13/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	0.3	
7/15/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	3.2	
7/16/2011	MIARMI, MICHAEL	Look at opposition to defendants' motion to dismiss.	0.1	
7/18/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	2.1	
7/19/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	2.5	
7/20/2011	MIARMI, MICHAEL	Work on opposition to defendants' motion to dismiss.	1	
7/22/2011	MIARMI, MICHAEL	Look at as-filed opposition to defendants' motion to dismiss.	0.1	
8/5/2011	MIARMI, MICHAEL	Read motion to dismiss decision in Hill v. State Street.	0.5	
8/8/2011	MIARMI, MICHAEL	Edits to draft notice of supplemental authority re motion to dismiss decision in Hill v. State Street.	1.8	
12/16/2011	MIARMI, MICHAEL	Issues re status of motion to dismiss ruling.	0.1	
1/12/2012	MIARMI, MICHAEL	Emails to S. Fineman and D. Chiplock re Court's order granting motion for appointment of interim lead counsel and setting hearing on motion to dismiss; participate in team conference call re same.	0.4	
11/8/2012	MIARMI, MICHAEL	Speak with D. Chiplock about research project re method of determining fees with respect to Chapter 93A claims; begin research.	1.4	
11/12/2012	MIARMI, MICHAEL	Research re method of determining fees with respect to Chapter 93A claims.	0.9	
11/16/2012	MIARMI, MICHAEL	Email with D. Chiplock re research re method of determining fees with respect to Chapter 93A claims.	0.1	
11/21/2012	MIARMI, MICHAEL	Research on applying percentage of fund or lodestar method to determine attorneys' fees in cases involving Chapter 93A claims; email to D. Chiplock providing analysis.	5.4	
11/22/2012	MIARMI, MICHAEL	Email with D. Chiplock re research on applying percentage of fund or lodestar method to determine attorneys' fees in cases involving Chapter 93A claims.	0.1	
6/10/2013	MIARMI, MICHAEL	Email with D. Chiplock re case work.	0.1	
7/3/2013	MIARMI, MICHAEL	Email with D. Chiplock re research concerning ERISA preemption.	0.1	
7/29/2013	MIARMI, MICHAEL	Email K. Sagafi re research concerning ERISA preemption.	0.1	
8/20/2013	MIARMI, MICHAEL	Email with Summer Associate N. Gupta re research concerning ERISA preemption.	0.1	
8/21/2013	MIARMI, MICHAEL	Email with J.A. Kruse re article on American Pipe/WorldCom; read article.	0.2	
8/21/2013	MIARMI, MICHAEL	Email with Summer Associate N. Gupta re research concerning ERISA preemption; preparation for call; have call.	0.5	
8/26/2013	MIARMI, MICHAEL	Email with Summer Associate N. Gupta re research concerning ERISA preemption.	0.1	
3/4/2014	MIARMI, MICHAEL	Speak with D. Chiplock re memo on class certification with respect to Chapter 93A claims.	0.2	
3/11/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims.	2.2	
3/12/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims.	1.5	
3/13/2014	MIARMI, MICHAEL	Research for memos on class certification with respect to Chapter 93A claims.	3.1	
3/14/2014	MIARMI, MICHAEL	Email with D. Chiplock re memo on class certification with respect to Chapter 93A claims; speak with D. Chiplock re same.	0.1	
3/17/2014	MIARMI, MICHAEL	Coordinate for upcoming meeting with other plaintiffs' attorneys to discuss Supreme Court case.	0.3	
3/17/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims.	5.7	
3/18/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims; meet with D. Chiplock re same.	2	
3/24/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims.	0.4	
4/3/2014	MIARMI, MICHAEL	Email with D. Chiplock re speaking on 4/7/2014 about my research concerning class certification with respect to Chapter 93A claims.	0.1	
4/5/2014	MIARMI, MICHAEL	Research re class certification with respect to Chapter 93A claims.	2.8	
4/6/2014	MIARMI, MICHAEL	Research re class certification with respect to Chapter 93A claims.	4	
4/7/2014	MIARMI, MICHAEL	Research for memo re class certification with respect to Chapter 93A claims; meet with D. Chiplock re same.	1.3	
4/9/2014	MIARMI, MICHAEL	Research for memo on class certification with respect to Chapter 93A claims.	5.2	
4/10/2014	MIARMI, MICHAEL	Research for memo re class certification.	0.5	
4/11/2014	MIARMI, MICHAEL	Research for memo re class certification issues.	0.5	
4/14/2014	MIARMI, MICHAEL	Work on memo re class certification with respect to Chapter 93A claims.	11.4	
4/24/2014	MIARMI, MICHAEL	Email with D. Chiplock re memo on class certification with respect to Chapter 93A claims; research for memo.	2.4	
4/25/2014	MIARMI, MICHAEL	Finalize memo on class certification with respect to Chapter 93A claims; email with D. Chiplock re same (attaching memo); organize papers for files and discard unneeded documents.	3.1	
4/29/2014	MIARMI, MICHAEL	Speak with D. Chiplock re preparing PowerPoint slides for presentation to State Street on 5/9/2014.	0.1	
5/1/2014	MIARMI, MICHAEL	Work on PowerPoint slides re class certification and Chapter 93A claims in preparation for 5/9/2014 mediation with State Street.	0.5	
5/2/2014	MIARMI, MICHAEL	Work on PowerPoint slides re class certification and Chapter 93A claims in preparation for 5/9/2014 mediation with State Street.	2.5	
5/5/2014	MIARMI, MICHAEL	Email with David Goldsmith of Labaton (others included) re PowerPoint slides for 5/19/2014 mediation with State Street.	0.2	
5/8/2014	MIARMI, MICHAEL	Preparation for 5/9/2014 mediation with State Street; call with R. Lief, D. Chiplock and co-counsel (joined call after it began).	0.6	

5/9/2014	MIARMI, MICHAEL	Participate in mediation, including travel to and from Labaton's offices and Wilmer Hale's offices; speak with D. Seltz re mediation; email with D. Chiplock re mediation and memo concerning Chapter 93A claims and class certification issues; email with D. Chiplock (others included) re Chapter 93A claims.	9.1
5/13/2014	MIARMI, MICHAEL	Speak with S. Fineman re mediation on 5/9/2014.	0.1
5/22/2014	MIARMI, MICHAEL	Email with D. Chiplock re mediation/settlement prospects (with email from mediator Jonathan Marks forwarded by D. Chiplock).	0.1
7/30/2014	MIARMI, MICHAEL	Research for [REDACTED] reply brief to U.S. Supreme Court.	0.3
12/31/2014	MIARMI, MICHAEL	Email with D. Chiplock re research in preparation for mediation session scheduled for 1/5/2015.	0.1
1/4/2015	MIARMI, MICHAEL	Research on class certification decisions with respect to Chapter 93A claims; research re whether foreign class members can assert Chapter 93A claims.	5.6
1/5/2015	MIARMI, MICHAEL	Email with D. Chiplock re research in preparation for mediation.	0.1
1/21/2015	MIARMI, MICHAEL	Issues re attending mediation in Boston on 2/4/2015.	0.1
1/26/2015	MIARMI, MICHAEL	Issues re upcoming mediation, including concerning travel to and from Boston and hotel accommodations in Boston.	0.2
1/29/2015	MIARMI, MICHAEL	Issues re mediation scheduled for 2/4/2015; speak with D. Chiplock and call with R. Lief.	0.4
1/30/2015	MIARMI, MICHAEL	Issues re upcoming mediation.	0.1
1/31/2015	MIARMI, MICHAEL	Issues re hotel accommodations for upcoming trip to Boston for mediation.	0.1
2/2/2015	MIARMI, MICHAEL	Issues re upcoming mediation on 2/4/15 in Boston, including call with R. Lief.	0.3
2/3/2015	MIARMI, MICHAEL	Issues re mediation on 2/4/15 in Boston, including traveling to Boston and meeting with co-counsel.	10.1
2/4/2015	MIARMI, MICHAEL	Issues re mediation in Boston, including participating in mediation and traveling back from Boston.	10.5
2/12/2015	MIARMI, MICHAEL	Speak with D. Chiplock re prior mediation and upcoming mediation.	0.2
2/19/2015	MIARMI, MICHAEL	E-mail to D. Chiplock re upcoming mediation session (forwarding e-mail from mediator Jonathan Marks).	0.1
2/20/2015	MIARMI, MICHAEL	Email to D. Chiplock re upcoming mediation on 2/26/2015.	0.1
2/25/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re attending upcoming mediation session on 2/26/15.	0.1
2/26/2015	MIARMI, MICHAEL	Participated in mediation at Wilmer Hale's New York office, including travel to and from Wilmer Hale.	7.6
3/2/2015	MIARMI, MICHAEL	Email correspondence with Daniel Chiplock re scheduling a call with State Street's counsel to discuss class-certification issues, in connection with mediation.	0.2
3/10/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re upcoming mediation session on 4/9/15.	0.1
3/23/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re upcoming mediation session on 4/9/15 and call in connection with the mediation to discuss class-certification issues.	0.1
3/27/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re participating in upcoming call with State Street's counsel concerning class-certification issues.	0.1
3/30/2015	MIARMI, MICHAEL	Issues re upcoming mediation on 4/9/15 in Boston.	0.1
3/31/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re upcoming mediation on 4/9/15 in Boston.	0.1
4/1/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re research concerning class certification, worked on research.	5.7
4/2/2015	MIARMI, MICHAEL	Continued research on class-certification issues, e-mail correspondence with D. Chiplock re same.	2.6
4/6/2015	MIARMI, MICHAEL	Email correspondence with D. Chiplock re cancellation of mediation on 4/9/15 and related issues, participated in conference call with D. Chiplock and other plaintiffs' counsel re mediation issues.	0.6
4/7/2015	MIARMI, MICHAEL	Issues re mediation, including conference call with R. Lief, D. Chiplock, other counsel for plaintiffs, and mediator Jonathan Marks.	1.5
4/8/2015	MIARMI, MICHAEL	Issues re upcoming mediation session, including memo on class-certification issues in preparation for anticipated call on 4/9/15.	4.5
4/9/2015	MIARMI, MICHAEL	Issues re upcoming mediation session, including conference call with co-counsel and State Street's counsel.	0.7
4/10/2015	MIARMI, MICHAEL	Issues re requesting additional documents from State Street, in connection with mediation.	0.1
4/27/2015	MIARMI, MICHAEL	Issues re upcoming mediation session in Boston.	0.1
4/28/2015	MIARMI, MICHAEL	Issues re travel for upcoming mediation session in Boston.	0.3
4/29/2015	MIARMI, MICHAEL	Issues re upcoming mediation session in Boston, including cancelling travel plans.	0.2
4/30/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re mediation.	0.1
5/1/2015	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re mediation.	0.1
5/13/2015	MIARMI, MICHAEL	Conference call with D. Chiplock, R. Lief, and co-counsel re mediation, follow-up e-mail correspondence with D. Chiplock re same.	1.2
5/15/2015	MIARMI, MICHAEL	Issues re mediation.	0.1
5/21/2015	MIARMI, MICHAEL	Issues re mediation.	0.2
1/4/2016	MIARMI, MICHAEL	Issues re settlement.	0.1
6/24/2016	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re 6/23/16 hearing before Judge Wolf.	0.1
6/27/2016	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock (D. Seltz included) re attorneys' fees and costs in BNYM FX settlement, including research.	0.1
7/26/2016	MIARMI, MICHAEL	Read e-mails re preliminary-approval papers.	0.1
8/19/2016	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re brief in support of Plaintiffs' motion for final approval of settlement.	0.1
8/22/2016	MIARMI, MICHAEL	Issues re Plaintiffs' motion for final approval of settlement, including research for final-approval brief.	2.6
8/22/2016	MIARMI, MICHAEL	Read decisions in Bezdek v. Vibram USA, Inc., which partly address attorneys' fees, e-mail correspondence with D. Chiplock re same (attaching copies of decisions).	0.3
8/23/2016	MIARMI, MICHAEL	E-mail to David Goldsmith of Labaton (cc'ing D. Chiplock) re decisions in Bezdek v. Vibram USA, Inc., which partly address attorneys' fees (attaching copies of decisions), follow-up e-mail correspondence with David Goldsmith (D. Chiplock included) re same as well as Plaintiffs' motion for final approval of settlement.	0.2
8/23/2016	MIARMI, MICHAEL	Worked on brief in support of Plaintiffs' motion for final approval of settlement.	4.8
8/24/2016	MIARMI, MICHAEL	Worked on brief in support of final approval of settlement.	8.8
8/25/2016	MIARMI, MICHAEL	Worked on brief in support of final approval of settlement.	11
8/26/2016	MIARMI, MICHAEL	Worked on brief in support of final approval of settlement.	5
8/29/2016	MIARMI, MICHAEL	Read draft brief in support of attorneys' fees, reimbursement of litigation expenses, and service awards to plaintiffs (drafted by Labaton).	0.1
8/29/2016	MIARMI, MICHAEL	Read edits and comments by David Goldsmith of Labaton to draft final-approval brief.	0.1
8/30/2016	MIARMI, MICHAEL	E-mail correspondence with D. Chiplock re draft brief in support of final approval of settlement, edits to draft, including research.	0.7
8/30/2016	MIARMI, MICHAEL	E-mail correspondence with L. Simms re e-mailing co-counsel concerning edits to draft brief in support of attorneys' fees, reimbursement of litigation expenses, and service awards to plaintiffs, e-mail correspondence with D. Chiplock re same, e-mail to co-counsel re edits to draft brief.	0.1
8/31/2016	MIARMI, MICHAEL	Edits to draft brief in support of final approval of settlement.	1.6
1/24/2013	MILORO, SCOTT	Review of complaint.	0.5
2/1/2013	MILORO, SCOTT	Conference call re production.	1
2/4/2013	MILORO, SCOTT	Review of complaint and pertinent law.	0.5
2/12/2013	MILORO, SCOTT	Telephone conference re Catalyst.	1.3
2/14/2013	MILORO, SCOTT	Review of State Street documents.	3.3
2/15/2013	MILORO, SCOTT	Review of State Street documents.	7.8
2/19/2013	MILORO, SCOTT	Review of State Street documents.	8
2/20/2013	MILORO, SCOTT	Review of State Street documents.	8
2/21/2013	MILORO, SCOTT	Review of State Street documents.	8
2/22/2013	MILORO, SCOTT	Review of State Street documents.	8
2/25/2013	MILORO, SCOTT	Review of State Street documents.	5.3
2/26/2013	MILORO, SCOTT	Review of State Street documents.	8
2/28/2013	MILORO, SCOTT	Review of State Street documents.	6
3/1/2013	MILORO, SCOTT	Review of State Street documents.	8
3/4/2013	MILORO, SCOTT	Review of State Street documents.	8
3/5/2013	MILORO, SCOTT	Review of State Street documents.	8
3/6/2013	MILORO, SCOTT	Review of State Street documents.	3.5
3/7/2013	MILORO, SCOTT	Review of State Street documents.	8
3/8/2013	MILORO, SCOTT	Review of State Street documents.	6.3

3/11/2013	MILORO, SCOTT	Review of State Street documents.	8	
3/13/2013	MILORO, SCOTT	Review of State Street documents.	3.5	
3/14/2013	MILORO, SCOTT	Review of State Street documents.	4.3	
3/25/2013	MILORO, SCOTT	Review of State Street documents.	8	
3/26/2013	MILORO, SCOTT	Review of State Street documents.	8	
3/27/2013	MILORO, SCOTT	Review of State Street documents.	6	
3/28/2013	MILORO, SCOTT	Review of State Street documents.	2	
1/21/2015	MILORO, SCOTT	Training on Catalyst platform.	0.8	
1/22/2015	MILORO, SCOTT	Review of State Street complaint; review of State Street documents.	8	
1/23/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
1/26/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
1/27/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
1/28/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
1/29/2015	MILORO, SCOTT	Review of State Street documents.	2	
2/5/2015	MILORO, SCOTT	Review of State Street documents.	7.3	
2/6/2015	MILORO, SCOTT	Review of State Street documents.	6.8	
2/9/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/10/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/11/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/12/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/13/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/17/2015	MILORO, SCOTT	Review of State Street documents.	8	
2/18/2015	MILORO, SCOTT	Review of State Street documents.	8.4	
2/19/2015	MILORO, SCOTT	Review of State Street documents.	7.6	
2/20/2015	MILORO, SCOTT	Review of State Street documents.	7	
3/2/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/3/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/4/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/5/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/6/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/9/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/10/2015	MILORO, SCOTT	Review of State Street documents.	7	
3/11/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/12/2015	MILORO, SCOTT	Review of State Street documents.	7	
3/13/2015	MILORO, SCOTT	Review of State Street documents.	4.1	
3/20/2015	MILORO, SCOTT	Review of State Street documents.	4.8	
3/23/2015	MILORO, SCOTT	Review of State Street documents.	1	
3/24/2015	MILORO, SCOTT	Review of State Street documents.	8.2	
3/25/2015	MILORO, SCOTT	Review of State Street documents.	8	
3/26/2015	MILORO, SCOTT	Review of State Street documents.	6.8	
4/6/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/7/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/8/2015	MILORO, SCOTT	Review of State Street documents.	8.1	
4/9/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
4/10/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/13/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/14/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/15/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/16/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/17/2015	MILORO, SCOTT	Review of State Street documents.	7.1	
4/20/2015	MILORO, SCOTT	Review of State Street documents.	7.8	
4/20/2015	MILORO, SCOTT	Teleconference with San Francisco office re: State Street documents.	0.4	
4/21/2015	MILORO, SCOTT	Review of state street documents.	8	
4/22/2015	MILORO, SCOTT	Review of state street documents.	7.8	
4/23/2015	MILORO, SCOTT	Review of State Street documents.	7	
4/24/2015	MILORO, SCOTT	Review of State Street documents.	8	8
4/27/2015	MILORO, SCOTT	Review of State Street documents.	8	
4/28/2015	MILORO, SCOTT	Document review of State Street documents.	8	8
4/29/2015	MILORO, SCOTT	Document review of State Street documents.	8	8
4/30/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/1/2015	MILORO, SCOTT	Review of State Street documents.	8	8
5/4/2015	MILORO, SCOTT	Review of State Street documents.	7	7
5/5/2015	MILORO, SCOTT	Review of State Street documents.	8	8
5/6/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/7/2015	MILORO, SCOTT	Review of State Street Documents.	8	
5/8/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/11/2015	MILORO, SCOTT	Review state street documents.	8	8
5/12/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/13/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/14/2015	MILORO, SCOTT	Review of State Street Documents.	8	
5/15/2015	MILORO, SCOTT	Review of State Street documents.	7.5	
5/18/2015	MILORO, SCOTT	Review of State Street documents.	6.3	
5/19/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/20/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/21/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/22/2015	MILORO, SCOTT	Review of State Street documents.	8	
5/26/2015	MILORO, SCOTT	Review of State Street Documents.	6.1	
5/28/2015	MILORO, SCOTT	Telephone conference with Peter Roos re: handoff of State Street memo; correspondence to Peter Roos.	0.6	
5/2/2008	MUGRAGE, MAJOR	Research regarding State Street Investors.	1.9	
7/10/2008	MUGRAGE, MAJOR	Research States Street Global and Golden West Financial's SEC filings.	1.4	
7/28/2008	MUGRAGE, MAJOR	Designate which states have qui tam legislation in spreadsheet of State Street clients.	0.4	
7/31/2008	MUGRAGE, MAJOR	Edit client investment chart and summary for State Street Global Advisors.	2.5	
9/26/2008	MUGRAGE, MAJOR	Prepare and send State Street memoranda to R. Heimann at home.	0.5	
10/9/2008	MUGRAGE, MAJOR	Research clients of State Street Global Advisors.	0.8	
2/26/2010	MUGRAGE, MAJOR	Initiate data entry project and prepare transaction information for review.	2.3	
12/11/2012	MUGRAGE, MAJOR	Unencrypt document production, deliver to database administrators and create production binder.	1.3	
12/13/2012	MUGRAGE, MAJOR	Create production index and disk binder for new case.	0.8	
1/31/2013	MUGRAGE, MAJOR	Review a sampling from two boxes of compact discs and analyze contents.	1.7	
2/8/2013	MUGRAGE, MAJOR	Continue review of two boxes of compact discs and analyze contents.	1.2	
2/8/2013	MUGRAGE, MAJOR	Make arrangements for web-based reviewer training session.	1.2	
2/12/2013	MUGRAGE, MAJOR	Attend web-based training for Catalyst database users.	1.4	
4/21/2008	MUKHERJI, RENEE	Research corporate status of State Street Bank and its foreign exchange operations, for J.A. Kruse.	1	
4/29/2008	MUKHERJI, RENEE	Research state pension funds managed by State Street Global Advisors, for K. Dugar.	2.5	
7/14/2008	MUKHERJI, RENEE	Research existing litigation involving State Street Bank entities, for J.A. Kruse.	1	
7/14/2008	MUKHERJI, RENEE	Research foreign currency exchange rate cases for J.A. Kruse.	0.6	
7/22/2008	MUKHERJI, RENEE	Research State Street annual reports for specific language, for J.A. Kruse.	1.5	
2/15/2011	MUKHERJI, RENEE	Research job histories of three former State Street employees for R. De Maria.	0.3	
9/2/2015	MUKHERJI, RENEE	Research background of attorney Brian McTigue, for D. Chiplock.	0.7	
9/17/2015	MUKHERJI, RENEE	Research employment history of Garrett Bradley, for D. Chiplock.	0.8	
6/14/2011	NAMBIAR, ANIL	Prepare Forex spreadsheet for [REDACTED] per K. Dugar.	2	









1/28/2015	ROOS, PETER	Review Catalyst database.	8	
1/29/2015	ROOS, PETER	Review Catalyst database.	3	
1/30/2015	ROOS, PETER	Review Catalyst database.	5	
1/31/2015	ROOS, PETER	Review Catalyst database.	8	
2/2/2015	ROOS, PETER	Review Catalyst database.	8	
2/3/2015	ROOS, PETER	Review Catalyst database.	8	
2/4/2015	ROOS, PETER	Review Catalyst database.	8	
2/5/2015	ROOS, PETER	Review Catalyst database.	8	
2/8/2015	ROOS, PETER	Review Catalyst database.	8	
2/9/2015	ROOS, PETER	Review Catalyst database.	8	
2/10/2015	ROOS, PETER	Review Catalyst database.	8	
2/11/2015	ROOS, PETER	Review Catalyst database.	8	
2/12/2015	ROOS, PETER	Review Catalyst database.	8	
2/13/2015	ROOS, PETER	Review Catalyst database.	8	
2/17/2015	ROOS, PETER	Review Catalyst database.	8	
2/18/2015	ROOS, PETER	Review Catalyst database.	8	
2/19/2015	ROOS, PETER	Review Catalyst database.	8	
2/20/2015	ROOS, PETER	Review Catalyst database.	8	
2/23/2015	ROOS, PETER	Review Catalyst database.	8	
2/24/2015	ROOS, PETER	Review Catalyst database.	8	
2/25/2015	ROOS, PETER	Review Catalyst database.	8	
3/2/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/3/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/4/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/5/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/6/2015	ROOS, PETER	Reviewing Catalyst database and searching for EU based customers.	8	
3/9/2015	ROOS, PETER	Reviewing Catalyst database and searching for EU based customers.	8	
3/10/2015	ROOS, PETER	Reviewing Catalyst database and searching for EU based customers.	8	
3/11/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/12/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/13/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/16/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
3/18/2015	ROOS, PETER	Reviewing database and coding documents.	8	
3/23/2015	ROOS, PETER	Review Catalyst database: code documents.	8	
3/24/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
3/25/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	6	
3/26/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	6	
3/27/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	6	
3/30/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
3/31/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
4/1/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
4/2/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	5	8
4/3/2015	ROOS, PETER	Reviewing Catalyst database: coding documents.	2	
4/6/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	5	
4/7/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	2	
4/8/2015	ROOS, PETER	Reviewing Catalyst database and coding documents.	8	
4/9/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	6	
4/10/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
4/15/2015	ROOS, PETER	Reviewing materials (opposition to motion to dismiss, hearing, memo of issues).	1	
4/16/2015	ROOS, PETER	Reviewing materials (opposition to motion to dismiss, hearing, memo of issues); reviewing Catalyst database, and coding documents.	8	
4/17/2015	ROOS, PETER	Reviewing Catalyst database, and coding documents.	8	
4/20/2015	ROOS, PETER	Reviewing Catalyst database: conference call with K. Dugar regarding new assignment.	2	
4/21/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
4/22/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
4/23/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
4/24/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	4	
4/27/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
4/28/2015	ROOS, PETER	State Street, reviewing Catalyst database, doing targeted searches.	8	
4/29/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
4/30/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/1/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/4/2015	ROOS, PETER	State Street, reviewing Catalyst database, doing targeted searches.	8	
5/5/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/6/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/7/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/8/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/11/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/12/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/13/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/14/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	7	
5/15/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	6	
5/18/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	4	
5/19/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, writing memorandum.	8	
5/20/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches.	8	
5/21/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, drafting memorandum.	8	
5/22/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, redrafting memorandum.	8	
5/25/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, redrafting memorandum.	8	
5/28/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, redrafting memorandum.	8	
5/29/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, finalizing revenue attribution memorandum.	8	
5/29/2015	ROOS, PETER	Review Catalyst database: perform targeted searches; prepare memorandum regarding Street FX.	8	
6/1/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/2/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/3/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/4/2015	ROOS, PETER	State Street: reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/5/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/8/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/9/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/10/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/11/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum regarding Street FX.	8	
6/17/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/18/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/19/2015	ROOS, PETER	reviewing Catalyst database which includes doing targeted searches; preparing memorandum on Street FX.	8	
6/22/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/23/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/24/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/25/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	
6/29/2015	ROOS, PETER	Reviewing Catalyst database, doing targeted searches, preparing memorandum on Street FX.	8	



5/19/2015	STURTEVANT, RYAN	Coded documents for production, responsiveness, and privilege; memorandum preparation.	8	8
5/20/2015	STURTEVANT, RYAN	Coded documents for production, responsiveness, and privilege; memorandum preparation.	8	8
5/21/2015	STURTEVANT, RYAN	Document review- Coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
5/22/2015	STURTEVANT, RYAN	Document review- Coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
5/26/2015	STURTEVANT, RYAN	Document review: coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
5/27/2015	STURTEVANT, RYAN	Document review- Coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
5/28/2015	STURTEVANT, RYAN	Coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
5/29/2015	STURTEVANT, RYAN	Document review. Coded documents for production, responsiveness, and privilege. Memorandum preparation.	8	8
6/1/2015	STURTEVANT, RYAN	Document review; Coded documents for production, responsiveness, and privilege; Memorandum preparation.	8	8
6/2/2015	STURTEVANT, RYAN	Document review; Coded documents for production, responsiveness, and privilege; Memorandum preparation.	8	8
6/3/2015	STURTEVANT, RYAN	Document review; Coded documents for production, responsiveness, and privilege; Memorandum preparation.	8	8
6/4/2015	STURTEVANT, RYAN	Document review - Coded documents for production, responsiveness, and privilege; Memorandum preparation.	8	8
6/5/2015	STURTEVANT, RYAN	Document review - Coded documents for production, responsiveness, and privilege; Memorandum preparation.	8	8
6/8/2015	STURTEVANT, RYAN	Document review: coded documents for production, responsiveness, and privilege; memorandum preparation.	8	8
6/9/2015	STURTEVANT, RYAN	Document review: coded documents for production, responsiveness, and privilege; memorandum preparation.	8	8
6/10/2015	STURTEVANT, RYAN	Document review: coded documents for production, responsiveness, and privilege; memorandum preparation.	8	8
1/21/2015	TARPEH, JLE	Training session on Catalyst by K Dugar.	0.6	
8/11/2016	TEXIER, RICHARD	Emails to and from D. Chiplock re inquiry from potential class member. Research dockets for notices. Email with preliminary approval order, file and calculate deadlines for final approval, objections and notice and email to calendar.	1.1	
1/21/2015	WEISS, VIRGINIA	Train with K. Dugar and rest of review team on using Catalyst and introduction to State Street Forex case; read through coding memo and amended complaint for background information.	1.5	
1/22/2015	WEISS, VIRGINIA	Begin review of documents for case.	2	
1/22/2015	WEISS, VIRGINIA	Introduction to State Street Forex case; read through coding memo and amended complaint for background information begin use in Catalyst and look through hot documents for background.	6	
1/23/2015	WEISS, VIRGINIA	Review of documents for case.	8	
1/26/2015	WEISS, VIRGINIA	Review of documents for case.	8	
1/27/2015	WEISS, VIRGINIA	Review of documents for case.	8	
1/28/2015	WEISS, VIRGINIA	Review of documents for case.	8	
1/29/2015	WEISS, VIRGINIA	Review of documents for case.	8	
1/30/2015	WEISS, VIRGINIA	Review of documents for case.	8	
4/21/2015	WEISS, VIRGINIA	Searching documents for topic ERISA PTE 94-20.	8	8
4/22/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/23/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/24/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/27/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/28/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/29/2015	WEISS, VIRGINIA	Search documents on topic ERISA PTE 94-20 for categorization project.	8	8
4/30/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
5/1/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
5/4/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
5/5/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
5/6/2015	WEISS, VIRGINIA	Searching documents on topic ERISA PTE 94-20 for categorization project.	8	8
5/7/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/8/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/11/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/12/2015	WEISS, VIRGINIA	Search documents and composing memorandum on topic ERISA PTE 94-20 for categorization project.	8	8
5/13/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/14/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/15/2015	WEISS, VIRGINIA	Searching documents and composing memorandum on topic ERISA PTE 94-20 for categorization project.	8	8
5/18/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/19/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/20/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/21/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/22/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/26/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/27/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic ERISA PTE 94-20 for categorization project.	8	8
5/28/2015	WEISS, VIRGINIA	Searching documents and composing memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
5/29/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/1/2015	WEISS, VIRGINIA	Search documents and compose memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/2/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/3/2015	WEISS, VIRGINIA	Searching documents and composing memoranda on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/4/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/5/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/8/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/9/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/10/2015	WEISS, VIRGINIA	Searching documents and composing memoranda on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/11/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/12/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/15/2015	WEISS, VIRGINIA	Searching documents and composing memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/16/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/17/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8

6/18/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/19/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/22/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	
6/23/2015	WEISS, VIRGINIA	Searching documents and composing memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/24/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/25/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/26/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
6/29/2015	WEISS, VIRGINIA	Searching documents and composing memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	
6/30/2015	WEISS, VIRGINIA	Searching documents and composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
7/1/2015	WEISS, VIRGINIA	Composing memo on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
7/2/2015	WEISS, VIRGINIA	Composing memorandum on topic "Clients Questioned FX Pricing and Never Told Full Truth" for categorization project.	8	8
2/8/2013	YAMAT, CYRUS	Attended training session for Catalyst database program.	1	
2/21/2013	YAMAT, CYRUS	Created training conference to outside counsel on Catalyst software.	2	
6/14/2011	ZANE, ALEXANDER	Email Records re plaintiffs' supplemental interrogatory responses.	0.1	
1/21/2015	ZAUL, JONATHAN	Catalyst training.	1	
1/22/2015	ZAUL, JONATHAN	Document review; class action complaint; coding guide; Catalyst system.	6.7	
1/23/2015	ZAUL, JONATHAN	Document review of folder LCHB new 2015 > LCHB_0010.	8	
1/26/2015	ZAUL, JONATHAN	Document review of folder LCHB new 2015 > LCHB_0010.	8	
1/27/2015	ZAUL, JONATHAN	Document review of folder LCHB new 2015 > LCHB_0010.	8	
1/28/2015	ZAUL, JONATHAN	Document review of folder LCHB new 2015 > LCHB_0010.	8	
1/29/2015	ZAUL, JONATHAN	Document review of folder LCHB new 2015 > LCHB_0010.	8	
1/30/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	4.5	
1/31/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	3.5	
2/2/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015>LCHB_0010.	8	
2/3/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	8	
2/4/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	8	
2/5/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	8	
2/6/2015	ZAUL, JONATHAN	Document review, folder LCHB NEW 2015 > LCHB_0010.	8	
4/15/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/16/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/17/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/20/2015	ZAUL, JONATHAN	Conference call with K. Dugar about search project.	0.3	
4/20/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	7.7	
4/21/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/22/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/23/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/24/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/27/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/28/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/29/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
4/30/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/1/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/4/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/5/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/6/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/7/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/8/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/11/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/12/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/13/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/14/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/15/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/18/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/19/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/20/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/21/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/22/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/25/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/26/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
5/27/2015	ZAUL, JONATHAN	Document review: LCHB folders and search project.	8	
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## Preface

This fourth edition of the *Manual for Complex Litigation* stands on the shoulders of the three previous editions and in the debt of the following: Judge William W Schwarzer, director of the Federal Judicial Center from 1990 to 1995, and primarily responsible for the third edition (1995); Judge Sam C. Pointer, who chaired the Board of Editors for the second edition (1985); Judge Alfred P. Murrah, the Center director who was the driving force behind the inaugural edition; Judge Thomas J. Clary, the chair of the initial Board of Editors; and the members of that Board.

The fourth edition of the *Manual* is adapted to new conditions and demands of federal litigation and reflects the work, experience, and insight of its Board of Editors. The Chief Justice, as chairman of the Board of the Federal Judicial Center, appointed the Board of Editors in 1999. He asked Judge Stanley Marcus, then a member of the Center's Board, to chair the Board of Editors. Judge Marcus has continued to oversee the *Manual's* completion even though his term as a Center Board member ended in 2002. His insight and experience as a federal district judge and now as a member of the court of appeals are reflected on every page of the *Manual*. So, too, does this edition reflect the many hours dedicated to the project by individual members of the Board of Editors. A complete list of individuals who worked on the *Manual* can be found at Acknowledgments, page xix.

This *Manual* is one of the flagship services of the Federal Judicial Center. It has been my pleasure, as director of the Center, to have worked with Judge Marcus and the Board of Editors, and with the staff of the Center and others, to bring this fourth edition into being.

A handwritten signature in black ink, appearing to read "Fern M. Smith". The signature is fluid and cursive, with a large initial "F" and "M".

Fern M. Smith  
*Director, Federal Judicial Center 1999–2003*

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## Introduction

The impetus for this fourth edition of the *Manual for Complex Litigation* was, as with the previous editions, significant change in the landscape of federal litigation and the increasing responsibilities of federal trial judges. A recommendation of the Mass Tort Working Group, appointed by the Chief Justice, served as a catalyst for this project.<sup>1</sup> Major changes include, but are hardly limited to, the growth in class action and mass tort litigation, and the trial judge's heightened role imposed by *Daubert v. Merrell Dow Pharmaceuticals*<sup>2</sup> and cases following it, and by *Markman v. Westview Instruments, Inc.*<sup>3</sup> The *Manual's* orientation, however, differs little from the first incarnation. It “contains neither a simplified outline for the easy disposition of complex litigation nor an inflexible formula or mold into which all trial or pretrial procedure must be cast.”<sup>4</sup>

Users should keep in mind several things about this edition. First, it is not, and should not be cited as, authoritative legal or administrative policy. As noted at page iii, it contains analyses and recommendations of the Board of Editors, but each member of the Board does not necessarily subscribe to all parts of the *Manual*. It was produced under the auspices of the Federal Judicial Center, but the Center has no authority to prescribe practices for federal judges. The *Manual's* recommendations and suggestions are merely that. As always, the management of any matter is within the discretion of the trial judge.

Second, although federal trial judges are the *Manual's* primary audience, the techniques and procedures discussed may be useful in state courts as well, particularly in view of the convergence that is occurring in related litigation pending in both state and federal court systems. Reference to the *Manual* may assist in the coordination of such litigation. The *Manual* will also assist lawyers, who share with judges the responsibility for managing complex litigation in which they are involved.

Third, as with the previous editions, this edition's “organization . . . belies the fact that its subject matter is not neatly divisible into distinct topics.”<sup>5</sup> Nor is the term “complex litigation” susceptible to any bright-line definition. Part I

1. Mass Tort Working Group, Report on Mass Tort Litigation, 187 F.R.D. 293, 324 (1999).
2. 509 U.S. 579 (1993).
3. 517 U.S. 370 (1996).
4. Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 F.R.D. 351, 355 (1960) (quoted in *Manual for Complex Litigation*, Second, § 10 (1985)).
5. *Manual for Complex Litigation*, Third, § 10.2 (1995).

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treats generic topics in complex (and other) litigation, such as pretrial and trial procedures and attorney fees. Part II analyzes special problems in complex litigation, such as class actions and expert scientific evidence. Part III has separate sections on complex litigation in various subject areas, such as antitrust and intellectual property. Part IV includes sample orders and forms. As the *Manual for Complex Litigation, Third* said, however, “[a] topic, such as settlement or class actions, will be relevant to the discussion at different points.”<sup>6</sup> Thus, this edition too contains extensive cross-references. This fourth edition contains much new and revised material and has a somewhat different format and numbering system than that of the *MCL 3d*. However, because civil and criminal case management differ significantly, and in order to keep this volume to a manageable size, this edition deals only with civil litigation.

Finally, it could go without saying that changes in statutes, case law, regulations, and technology will quickly date some specific references in the *Manual*, and users need to exercise standard research practices when using the *Manual*. For example, prospective legislative changes in class action rules remained pending as the *Manual* went to press, and the precise changes could not be forecast. Before this edition went to press, significant changes in Federal Rules of Civil Procedure 23 and 53 were approved by the Supreme Court<sup>7</sup> and were before Congress pursuant to the Rules Enabling Act.<sup>8</sup> Because congressional acceptance of the amendments seemed likely, and the amended rules differed significantly from those in effect prior to December 1, 2003, the *Manual*, when treating class actions, uses the amended rules and the committee notes about those amendments.

In offering an array of litigation management techniques and procedures, the *Manual* does not recommend that every complex litigation necessarily employ any such procedures or follow a standard pattern. Choices will depend on the needs of the litigation and many other considerations. What the *Manual* does urge is that choices be made, and that they be made starting early in the litigation. While those decisions are largely the responsibility of the court, the judge should not take the case from the lawyers, but rather provide guidance and direction, setting limits and applying controls as needed. Additional Center publications on litigation management can be found at <http://www.fjc.gov>.

Complex litigation should not be viewed as monolithic. In some areas of law, such as antitrust and securities litigation, substantive and procedural rules

6. *Id.*

7. See letters of the Chief Justice to the Speaker of the House and the President of the Senate, March 27, 2003, and amendments adopted by the Supreme Court, in “2002 Term Court Orders,” at <http://www.supremecourtus.gov> (last visited Nov. 10, 2003).

8. 28 U.S.C. § 2074 (2000).

*Introduction*

are relatively well settled, as are management techniques. In others, such as environmental, civil rights, and mass tort litigation, rules are still emerging or undergoing change. While all complex litigation challenges courts, the unsettled areas present the greatest challenges.

Much complex litigation, therefore, will take the judge and counsel into sparsely charted terrain with little guidance on how to respond to pressing needs for effective management. Practices and principles that served in the past may not be adequate, their adaptation may be difficult and controversial, and novel and innovative ways may have to be found. While this *Manual for Complex Litigation, Fourth* should be helpful within the limits of its mission, it should be viewed as open-ended, and judges are encouraged to be innovative and creative to meet the needs of their cases while remaining mindful of the bounds of existing law and any variations within their own circuits.

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## *Part I*

### *Overview*

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## 10. General Principles

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Fair and efficient resolution of complex litigation requires at least that (1) the court exercise early and effective supervision (and, where necessary, control); (2) counsel act cooperatively and professionally; and (3) the judge and counsel collaborate to develop and carry out a comprehensive plan for the conduct of pretrial and trial proceedings. The generic principles of pretrial and trial management are covered in sections 11 and 12 and are applied to specific types of litigation in Part III. Section 10 discusses matters that cut across all phases of complex litigation.

## 10.1 Judicial Supervision

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Although not without limits, the court’s express and inherent powers enable the judge to exercise extensive supervision and control of litigation. The Federal Rules of Civil Procedure, particularly Rules 16, 26, 37, 42, and 83, contain numerous grants of authority that supplement the court’s inherent power<sup>9</sup> to manage litigation. Federal Rule of Civil Procedure 16(c)(12) specifically addresses complex litigation, authorizing the judge to adopt “special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems.”

In planning and implementing case management, the court should keep in mind the goal of bringing about a just resolution as speedily, inexpensively, and fairly as possible. Judges should tailor case-management procedures to the needs of the particular litigation and to the resources available from the parties and the judicial system. Judicial time is the scarcest resource of all: Judges should use their time wisely and efficiently and make use of all available help. Time pressures may lead some judges to believe that they should not devote time to civil case management. Investing time in the early stages of the litigation, however, will lead to earlier dispositions, less wasteful activity, shorter trials, and, in the long run, economies of judicial time and fewer judicial burdens.

9. See, e.g., *Chambers v. NASCO, Inc.*, 501 U.S. 32, 42–51 (1991); *Pedroza v. Cintas Corp.*, No. 6-013247-CV, 2003 WL 828237, at \*1 (W.D. Mo. Jan. 9, 2003). References to “Rule(s)” refer to the Federal Rules of Civil Procedure.

## 10.11 Early Identification and Control

Judicial supervision is most needed and productive early in the litigation. To this end, courts should have a method of advising the assigned judge immediately that a case is likely to be complex; courts should also instruct lawyers to alert the judge in such a case. A case that needs increased supervision may not be apparent from the docket sheet.

The judge should hold an initial pretrial conference under Rule 16<sup>10</sup> as soon as practical (many judges hold the conference within thirty to sixty days of filing), even if some parties have not yet appeared or even been served. Special procedures sometimes are needed even before the initial conference (for example, it may be necessary to take immediate action to preserve evidence).

Rule 16(b) requires the judge, usually after holding a scheduling conference, to issue a scheduling order<sup>11</sup> “as soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant” (local rules may establish different deadlines). The initial pretrial conference may be used for this purpose unless a separate scheduling conference is needed. Many judges use standing case orders—sometimes tailored to specific types of litigation—to elicit specific information before the conference and to inform counsel of the matters they must be prepared to discuss.<sup>12</sup>

## 10.12 Assignment Plan

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Each multijudge court should determine for itself how assignment of complex litigation should be made: according to the court’s regular case-assignment plan, under a special rotation for complex cases, or to judges particularly qualified by reason of prior experience. Courts that do not assign actions automatically to a specific judge upon filing should nevertheless make an individual assignment as soon as a case is identified as complex or a part of

10. For discussion of the matters that should or may be covered in this and subsequent conferences, see *infra* section 11.2 (pretrial conferences). Special procedures may be needed even before the initial conference; for example, it may be necessary to take immediate action to preserve evidence. See *infra* section 11.442 (documents preservation).

11. For a sample scheduling order, see *infra* section 40.24.

12. For a sample order, see *infra* section 40.54 (civil RICO case-statement order); see also Civil Litigation Management Manual app. A, at 213–15 (Federal Judicial Center 2001) [hereinafter Litigation Manual] (Sample Form 12).

complex litigation. In unusual situations, the demands of complex litigation may be great enough to justify relieving the assigned judge from some or all other case assignments for a period of time or giving the judge assistance on aspects of the litigation from other judges.

#### 10.121 Recusal/Disqualification

Title 28, section 455(c) of the U.S. Code directs judges to inform themselves about their personal and fiduciary financial interests and to make a “reasonable effort” to inform themselves about the personal financial interests of their spouse and any minor children residing in their household. Sections 455(b) and (f) designate when the judge must recuse and when parties may waive recusal. Upon assignment or reassignment of a complex case, the court should promptly review the pleadings and other papers in the case, the identities of parties and attorneys, and the nature of interests affected by the litigation for possible conflicts that may require recusal or disqualification. Counsel should submit a list, for review by the judge, of all entities affiliated with the parties and all attorneys and firms associated in the litigation. This review must be conducted at the outset, but the judge needs to consider both present and potential conflicts that may arise as a result of the joinder of additional parties, the identification of class members, or the assignment of related cases with the resultant involvement of additional litigants and counsel.<sup>13</sup> As the case progresses, conflicts may continue to arise as additional persons and interests enter the litigation or as the judge’s staff changes.<sup>14</sup> It is important that law clerks avoid having a relationship (including a pending offer) with any party or counsel.

Reassignment, when warranted, should be effected as promptly as possible, and the judge to whom the litigation is to be reassigned should make a similar inquiry into potential grounds for recusal before accepting the reassignment and notifying the parties.

13. See, e.g., *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859–62 (1988) (holding that “scienter is not an element of a violation of § 455(a); advancement of the purpose of the provision—to promote public confidence in the integrity of the judicial process—does not depend upon whether or not the judge actually knew” of the conflict, but rather what the public might reasonably expect the judge to know); *In re Cement Antitrust Litig.*, 688 F.2d 1297 (9th Cir. 1982), *aff’d under 28 U.S.C. § 2109 sub nom. Ariz. v. United States Dist. Court*, 459 U.S. 1191 (1983) (disqualification of judge, five years after suit instituted, upon discovery that spouse owned stock in a few of the more than 200,000 class members).

14. See, e.g., Linda S. Mullenix, *Beyond Consolidation*, 32 Wm. & Mary L. Rev. 475, 539–40 (1991) (discussing complex case in which magistrate judge recused when law clerk was offered employment with firm of counsel representing party).

### 10.122 Other Judges

Although one judge should supervise the litigation, he or she may request other judges to perform special duties, such as conducting settlement discussions (see section 13.11). Moreover, in the course of consolidated or coordinated pretrial proceedings, severable claims or cases may appear that could be assigned to other judges.

### 10.123 Related Litigation

Complex litigation frequently involves two or more separate but related cases. All pending related cases or cases that may later be filed in the same court, whether or not in the same division, should be assigned at least initially to the same judge. Pretrial proceedings in these cases should be coordinated or consolidated under Federal Rule of Civil Procedure 42(a), even if the cases are filed in more than one division of the court.<sup>15</sup> It may be necessary to transfer to the district judge related adversary proceedings in bankruptcy court, including proceedings to determine the dischargeability of debts.<sup>16</sup> Counsel should be directed to inform the assigned judge of any pending related cases (as many local rules require). Sometimes related cases are identified on the face of the complaint. The judge to whom the complex litigation has been assigned should also ask whether related cases are pending in that district.

Assignment of related criminal and civil cases to a single judge will improve efficiency and coordination, especially when the cases are pending at the same time. Other factors, however, may suggest that the cases be handled by different judges—for example, extensive judicial supervision of pretrial proceedings in the civil litigation may be needed while the criminal trial is being conducted. See generally section 20.2.

Consolidation may be possible even when related cases are filed in different courts. Other courts can transfer cases under 28 U.S.C. § 1404(a) or § 1406 to the consolidation court, but only if personal jurisdiction and venue lie in the transferee forum.<sup>17</sup> Pretrial proceedings in related cases may also be consolidated in a single district by the Judicial Panel on Multidistrict Litigation under 28 U.S.C. § 1407. See section 20.13. State court cases may be removed to fed-

15. Under 28 U.S.C. § 1404(b) the court may, upon motion, transfer cases, motions, or hearings pending in the same district to a single division.

16. See, e.g., *In re Flight Trans. Corp. Sec. Litig.*, 730 F.2d 1128 (8th Cir. 1984).

17. See, e.g., *Nat'l Union Fire Ins. Co. v. Turtur*, 743 F. Supp. 260, 263 (S.D.N.Y. 1990); *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 24 (3d Cir. 1970) (citing 28 U.S.C. § 1404(a)); *Cote v. Wadel*, 796 F.2d 981, 984 (7th Cir. 1986); *Dubin v. United States*, 380 F.2d 813 (5th Cir. 1967) (citing 28 U.S.C. § 1406). If personal jurisdiction and venue do not lie in the transferee forum, transfer is improper even if plaintiffs consent. *Hoffman v. Blaski*, 363 U.S. 335 (1960).

eral court.<sup>18</sup> They may also be transferred to or refiled in the consolidating district court following voluntary dismissal or dismissal based on *forum non conveniens*.

When transfer of all cases to a single court for centralized management is not possible the affected courts can still use informal means to coordinate proceedings to the extent practicable. Coordination methods include arrangements made by counsel, communications between judges, joint pretrial conferences and hearings at which all involved judges preside, and parallel orders. Another coordination method is to designate a “lead” case in the litigation; rulings in the lead case would presumptively apply to the other coordinated cases, and the judges in those cases may stay pretrial proceedings in those cases pending resolution of the lead case. Section 20.14 (cases in different federal courts) and section 20.31 (cases in federal and state courts) discuss coordination of related litigation more fully.

### 10.13 Effective Management

Effective judicial management generally has the following characteristics:

- *It is active.* The judge anticipates problems before they arise rather than waiting passively for counsel to present them. Because the attorneys may become immersed in the details of the case, innovation and creativity in formulating a litigation plan frequently will depend on the judge.
- *It is substantive.* The judge becomes familiar at an early stage with the substantive issues in order to make informed rulings on issue definition and narrowing, and on related matters, such as scheduling, bifurcation and consolidation, and discovery control.
- *It is timely.* The judge decides disputes promptly, particularly those that may substantially affect the course or scope of further proceedings. Delayed rulings may be costly and burdensome for litigants and will often delay other litigation events. The parties may prefer that a ruling be timely rather than perfect.
- *It is continuing.* The judge periodically monitors the progress of the litigation to see that schedules are being followed and to consider necessary modifications of the litigation plan. Interim reports may be ordered between scheduled conferences.
- *It is firm, but fair.* Time limits and other controls and requirements are not imposed arbitrarily or without considering the views of counsel,

18. See 28 U.S.C. §§ 1441–1452 (2000).

and they are revised when warranted. Once established, however, schedules are met, and, when necessary, appropriate sanctions are imposed (see section 10.15) for derelictions and dilatory tactics.

- *It is careful.* An early display of careful preparation sets the proper tone and enhances the court's credibility and effectiveness with counsel.

The judge's role is crucial in developing and monitoring an effective plan for the orderly conduct of pretrial and trial proceedings. Although elements and details of the plan will vary with the circumstances of the particular case, each plan must include an appropriate schedule for bringing the case to resolution. Case-management plans ordinarily prescribe a series of procedural steps with firm dates to give direction and order to the case as it progresses through pretrial proceedings to summary disposition or trial. In some cases, the court can establish an overall plan for the conduct of the litigation at the outset; in others, the plan must be developed and refined in successive stages. It is better to err on the side of overinclusiveness initially and subsequently modify plan components that prove impractical than to omit critical elements. Nevertheless, in litigation involving experienced attorneys working cooperatively, a firm but realistic trial date may suffice if coupled with immediate access to the court for disputes that counsel cannot resolve.

The attorneys—who will be more familiar than the judge with the facts and issues in the case—should play a significant part in developing the litigation plan and should have primary responsibility for its execution. Court supervision and control should recognize the burdens placed on counsel by complex litigation and should foster mutual respect and cooperation between the court and the attorneys and among the attorneys.

## 10.14 Supervisory Referrals to Magistrate Judges and Special Masters

The judge should decide early in the litigation whether to refer all or any part of pretrial supervision and control to a magistrate judge. The judge should consider a number of factors:

- the law of the circuit (see section 11.53);
- the experience and qualifications of the available magistrate judges;
- the relationship among and attitude of the attorneys;
- the extent to which a district judge's authority may be required;
- the time the judge has to devote to the litigation;
- the novelty of the issues and the need for innovation; and
- the judge's personal preferences.

Some judges prefer to supervise complex litigation personally, even in courts that routinely refer discovery or other pretrial procedures to magistrate judges. Referrals in complex cases may cause additional costs and delays when the parties seek judicial review, diminish supervisory consistency and coherence as the case proceeds to trial, create greater reluctance to try innovative procedures that might aid in resolution of the case, and cause the judge to be unfamiliar with the case at the time of trial. Other judges believe that such referrals provide effective case management during the pretrial stage, enabling the judge to devote time to more urgent matters.

Even without general referral to a magistrate judge, referral of particular matters may be helpful. Such matters include supervision of all discovery matters or supervision of particular discovery issues or disputes, particularly those that may be time-consuming or require an immediate ruling (including resolving deposition disputes by telephone; ruling on claims of privilege and motions for protective orders; and conducting hearings on procedural matters, such as personal jurisdiction). Magistrate judges may also help counsel formulate stipulations and statements of contentions, and may facilitate settlement discussions. See generally section 11.53.

Referral of pretrial management to a special master (not a magistrate judge) is not advisable for several reasons. Rule 53(a)(1) permits referrals for trial proceedings only in nonjury cases involving “some exceptional conditions” or in an accounting or difficult computation of damages. Because pretrial management calls for the exercise of judicial authority, its exercise by someone other than a district or magistrate judge is particularly inappropriate.<sup>19</sup> The additional expense imposed on parties also militates strongly against such appointment.<sup>20</sup> Appointment of a special master (or of an expert under Federal Rule of Evidence 706) for limited purposes requiring special expertise may sometimes be appropriate (e.g., when a complex program for settlement needs to be devised).<sup>21</sup> See sections 11.51–11.52.

Orders of referral should follow the guidance offered in Rule 53(b) and specifically describe what is being referred, the authority being delegated to the

19. See *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957) (the length and complexity of a case and the congestion of the court’s docket do not alone justify a comprehensive reference to a special master). See also *Maldonado v. Administracion de Correccion del Estado Libre Asociado*, No. 90-2186, 1992 U.S. Dist. LEXIS 16393 (D.P.R. Sept. 30, 1992); *infra* section 11.52. Cf. *McLee v. Chrysler Corp.*, 38 F.3d 67 (2d Cir. 1994).

20. *Prudential Ins. Co. of Am. v. United States Gypsum Co.*, 991 F.2d 1080 (3d Cir. 1993) (writ of mandamus issued overturning appointment of master to hear merits of a claim for cost of testing, monitoring, and removing asbestos-containing products at thirty-nine sites).

21. See *Litigation Manual*, *supra* note 12, at 123–24. See generally Wayne D. Brazil et al., *Managing Complex Litigation: A Practical Guide to the Use of Special Masters* (1983).

magistrate judge or special master, and the procedure for review by the judge. Regular progress reports from the magistrate judge or special master are advisable.

## 10.15 Sanctions

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### 10.151 General Principles

The rules and principles governing the imposition of sanctions in complex litigation require special care because misconduct may have more severe consequences. Sanctions proceedings can be disruptive, costly, and may create personal antagonism inimical to an atmosphere of cooperation. Moreover, a resort to sanctions may reflect a breakdown of case management. Close judicial oversight and a clear, specific, and reasonable management program, developed with the participation of counsel, will reduce the potential for sanctionable conduct because the parties will know what the judge expects of them. On the other hand, the stakes involved in and the pressures generated by complex litigation may lead some parties to violate the rules. Although sanctions should not generally be a management tool, a willingness to resort to sanctions, *sua sponte* if necessary, may ensure compliance with the management program.<sup>22</sup>

In designing the case-management program, the judge should anticipate compliance problems and include prophylactic procedures, such as requiring parties to meet and confer promptly in the event of disputes and providing ready access to the judge if the parties cannot resolve their differences. In addition, it helps if the court informs counsel at the outset of the court's expectations about cooperation and professionalism. Perceptions of the limits of legitimate advocacy differ, and advance guidance can reduce the need for sanctions later.

Although sanctions should be a last resort, they are sometimes unavoidable and may be imposed for general or specific deterrence, to punish, or to remedy the consequences of misconduct. If sanctions are imposed, the court should explain on the record or in an order the basis and purpose of its action.

22. See Fed. R. Civ. P. 11(c)(1)(B); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 42 n.8 (1991).

### 10.152 Sources of Authority

A number of federal statutes allow the court, in its discretion, to award costs, including attorneys' and sometimes experts' fees to prevailing parties.<sup>23</sup> The primary codified sources of authority to impose sanctions in civil litigation are 28 U.S.C. § 1927 and Federal Rules of Civil Procedure 11, 16, 41, and 56(g). Sanctions relating to discovery are authorized by Rules 26, 30, 32(d), 33(b)(3)–(4), 34(b), 35(b)(1), 36(a), and, most prominently, 37. Note that Rule 11 is expressly made inapplicable to discovery.<sup>24</sup> Under limited circumstances sanctions may also be imposed under local rules.<sup>25</sup>

Sanctions may also be imposed under the court's inherent power,<sup>26</sup> even where the conduct at issue could be sanctioned under a statute or rule. Use of inherent power, however, should be avoided if the statute or rule is directly applicable and adequate to support the intended sanction.<sup>27</sup> The court may assess attorneys' fees pursuant to its inherent power, but when sitting in diversity should not do so in contravention of applicable state law embodying a substantive policy, such as a statute permitting prevailing parties to recover fees in certain classes of litigation.<sup>28</sup>

Choice of authority for sanctions should be clear in the order, because the applicable standards and procedures and the available sanctions will vary depending on the authority under which the court proceeds. For example, 28 U.S.C. § 1927 authorizes the assessment of costs and fees against an attorney only—it provides no authority to sanction a party.

23. *See, e.g.*, 42 U.S.C.A. §§ 1988(b), 1988(c), 2000e-5(k) (West 1994 & Supp. 2002); 15 U.S.C. §§ 78i(e), 78r(a) (2000). Such statutes may expressly predicate such an award on a finding that the action (or defense) was meritless, *see, e.g.*, 15 U.S.C. § 77k(e), and common law may impose the same requirement when awards under such statutes are sought by defendants. *See Christansburg Garment Co. v. EEOC*, 434 U.S. 412, 416 (1978) (prevailing plaintiff qualifies for fee award absent "special circumstances," but prevailing defendant qualifies for fee award only if plaintiff's suit is "frivolous, unreasonable, or without foundation"). *But see Fogerty v. Fantasy Inc.*, 510 U.S. 517, 525 n.12 (1994) (same standard applies to plaintiffs and defendants seeking fees in copyright, patent, and trademark cases). Such awards may therefore be considered a sanction for meritless litigation.

24. Fed. R. Civ. P. 11(d).

25. *See, e.g.*, E.D. Mich. Civ. R. 11.1; *Miranda v. S. Pac. Transp. Co.*, 710 F.2d 516 (9th Cir. 1983).

26. *See Chambers*, 501 U.S. at 43–45, and cases cited therein; *Pedroza v. Cinatas Corp.* No. 6-01-3247-CV, 2003 WL 828237, at \*1 (W.D. Mo. Jan. 9, 2003).

27. *Id.* at 49–50 & n.14 (distinguishing *Societe Internationale v. Rogers*, 357 U.S. 197 (1958) (Rule 37)); *United States v. One 1987 BMW 325*, 985 F.2d 655, 661 (1st Cir. 1993) (where civil rule limits sanction that may be imposed, court may not circumvent by resorting to inherent power).

28. *Chambers*, 501 U.S. at 50–53.

### 10.153 Considerations in Imposing

Factors to consider as to imposing sanctions include the following:

- the nature and consequences of the dereliction or misconduct;
- the person(s) responsible;
- the court's discretion under the applicable source of authority to impose sanctions and to choose which sanctions to impose;
- the purposes to be served by imposing sanctions, and the least severe sanction that will achieve those purposes; and
- the appropriate time for conducting sanctions proceedings.

Factors to consider as to the nature and consequences of the dereliction or misconduct include the following:

- whether the act or omission was willful or negligent;
- whether it directly violated a court order or a federal or local rule;
- its effect on the litigation and the trial participants;
- whether it was isolated or part of a course of misconduct or dereliction;<sup>29</sup> and
- any extenuating circumstances.

Rule 11 substantially limits the authority to impose monetary sanctions, but they may still be available in unusual cases or under other rules or powers. Generally, they are imposed only on the person(s) responsible for the misconduct; if assessed against counsel, they should be accompanied by a direction not to pass the cost on to the client. It may sometimes be appropriate for the court to sanction the client or the client and attorney jointly. Pitting attorney against client, however, can create a conflict of interest<sup>30</sup> and may require inquiry into potentially privileged communications. Though it may be ethically permissible for an attorney to reveal client confidences to the extent necessary in this context,<sup>31</sup> this does not resolve the privilege issue. The least disruptive alternative may be for the court to impose joint and several liability on both

29. See Fed. R. Civ. P. 11(b) & (c) committee note (listing these and other considerations).

30. See *Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 623 (2d Cir. 1991); *White v. Gen. Motors Corp.*, 908 F.2d 675, 685 (10th Cir.), *cert. denied*, 498 U.S. 1069 (1991).

31. See Model Rules of Prof'l Conduct R. 1.6(b)(2) (2002); Model Code of Prof'l Responsibility DR 4-101(c) (1981).

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counsel and client<sup>32</sup> or to defer the matter of sanctions until the end of the litigation.<sup>33</sup>

Some types of nonmonetary sanctions may affect the litigation's outcome. A judge should impose dismissal, default, or preclusion of a claim or evidence only in egregious circumstances and only after consideration of the following factors:

- the policy favoring trial on the merits;
- whether the sanction will further the just, speedy, and inexpensive determination of the action;
- the degree to which the sanctioned party acted deliberately and knew or should have known of the possible consequences;
- the degree of responsibility of the affected client;
- the merits and importance of the claim(s) affected;
- the impact on other parties or the public interest; and
- the availability of less severe sanctions.

#### 10.154 Types

In imposing the least severe sanction adequate to accomplish the intended purpose, the court can select from a broad range of options:<sup>34</sup>

- *Reprimand*. An oral reprimand will suffice for most minor violations, particularly a first infraction. A written reprimand may be appropriate in more serious cases.
- *Cost shifting*. The purpose of Federal Rule of Civil Procedure 11 sanctions is deterrence rather than compensation; the rule therefore permits cost shifting only in “unusual circumstances.”<sup>35</sup> In contrast, many of the discovery rules (primarily Rules 26(g) and 37) and Rule 16(f) (dealing with pretrial conferences) require or permit cost shifting in specified situations. See generally section 11.433. Under 28 U.S.C. § 1927, and Federal Rule of Civil Procedure 56(g) and its inherent

32. See *Martin v. Am. Kennel Club, Inc.*, No. 87C2151, 1989 U.S. Dist. LEXIS 201, at \*22–23 (N.D. Ill. Jan. 6, 1989) (“[a]bsent a clear indication of sole responsibility,” liability should be joint and several).

33. See, e.g., *O’Neil v. Ret. Plan for Salaried Employees of RKO Gen. Inc.*, No. 88 Civ. 8498, 1992 U.S. Dist. LEXIS 237, at \*12–13 (S.D.N.Y. Jan. 10, 1992); Fed. R. Civ. P. 11 committee note.

34. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991) (“A primary aspect” of the court’s discretion to invoke its inherent sanction power “is the ability to fashion an appropriate sanction” for abuse of judicial process.).

35. See Fed. R. Civ. P. 11 committee note (monetary sanctions ordinarily paid into court, but may be directed to those injured if deterrence would otherwise be ineffective).

power, the court may order cost-shifting sanctions for actions taken in bad faith.

- *Denial of fees or expenses.* When attorneys' fees and expenses are incurred through dilatory or otherwise improper conduct or in proceedings brought on by such conduct, the court may decline to award such fees and expenses or may order counsel not to charge them to their clients.
- *Remedial action.* Counsel and parties may be required to remedy a negligent or wrongful act at their own expense, as by reconstructing materials improperly destroyed or erased.
- *Grant/denial of time.* Improper delay may justify awarding opposing parties additional time for discovery or other matters,<sup>36</sup> or denying otherwise proper requests for extension of time.

More serious sanctions, reserved for egregious circumstances, include the following:

- *Demotion/removal of counsel.* An attorney may be removed from a position as lead, liaison, or class counsel, or (in an extreme case) from further participation in the case entirely. Such a sanction, however, may disrupt the litigation, may cause significant harm to the client's case and the reputation of the attorney or law firm, and can conflict with a party's right to counsel of its choosing.
- *Removal of party as class representative.* Before imposing this sanction, the court should consider ordering that notice be given to the class under Rule 23(d)(2) to enable class members to express their views concerning their representation or to intervene in the action.<sup>37</sup>
- *Enjoining party from commencing other litigation.* While there is a strong policy against denying access to the courts, a party may be enjoined from commencing other actions until it has complied with all orders in the current action, or from bringing, without court approval, other actions involving the same or similar facts or claims.
- *Preclusion/waiver/striking.* Failure to timely make required disclosures or production, raise objections, or file motions may constitute sufficient grounds for the court to preclude the introduction of related evidence, deem certain facts admitted and objections waived, strike

36. See, e.g., Fed. R. Civ. P. 30(d)(2).

37. See Fed. R. Civ. P. 23(d)(2) & committee note.

claims or defenses, or deny the motions, including those seeking to amend pleadings or join parties.<sup>38</sup>

- *Dismissal*. This severe sanction should generally not be imposed until the affected party has been warned and given a chance to take remedial action, and then only when lesser sanctions, such as dismissal without prejudice and assessment of costs, would be ineffective.
- *Vacation of judgment*. The court may vacate a judgment it has rendered if procured by fraud.<sup>39</sup>
- *Suspension/disbarment*. The court has inherent power to suspend or disbar attorneys, but should follow applicable local rules.<sup>40</sup>
- *Fine*. Even without a finding of contempt, the court may assess monetary sanctions apart from or in addition to cost shifting. The amount should be the minimum necessary to achieve the deterrent or punitive goal, considering the resources of the person or entity fined.<sup>41</sup>
- *Contempt*. The court may issue a contempt order under its inherent authority,<sup>42</sup> statute,<sup>43</sup> or rule,<sup>44</sup> and should indicate clearly whether the contempt is civil or criminal. The procedure and possible penalties will depend on that determination and the nature and timing of the contemptuous act.<sup>45</sup>
- *Referral for possible criminal prosecution*. Where the misconduct rises to the level of a criminal offense,<sup>46</sup> the matter may be referred to the U.S. Attorney's Office.

38. See, e.g., Fed. R. Civ. P. 37(b)(2), (c)(1).

39. *Chambers*, 501 U.S. at 44 (inherent power); Fed. R. Civ. P. 60(b).

40. See *In re Snyder*, 472 U.S. 634, 643 & n.4 (1985). For discussion of the standard for taking such action, see *id.* at 643–47 (refusal to supplement fee petition or accept Civil Justice Act assignment coupled with single instance of discourtesy insufficient to support suspension).

41. See, e.g., Fed. R. Civ. P. 11(c)(2).

42. See *Chambers*, 501 U.S. at 44; *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980).

43. See, e.g., 18 U.S.C. §§ 401–403 (2000); 28 U.S.C. § 1784 (West 2002); Fed. R. Crim. P. 42 committee note (statutes cited therein).

44. See, e.g., Fed. R. Civ. P. 37(b)(2)(D), 45(e); Fed. R. Crim. P. 17(g).

45. See *Benchbook for U.S. District Court Judges* §§ 7.01–7.02 (Federal Judicial Center, 4th ed. 2000) (criminal and civil contempt) [hereinafter *Benchbook*]; 18 U.S.C. § 3691 (2000) (jury trial of criminal contempts), § 3692 (jury trial for contempt in labor dispute cases), § 3693 (summary disposition or jury trial; notice); Fed. R. Crim. P. 42 (criminal contempt). Since there is no federal rule establishing a procedure for civil contempt, the court should follow the procedures of Fed. R. Crim. P. 42 to the extent applicable.

46. See 18 U.S.C. §§ 1501–1518 (2000) (obstruction of justice).

## 10.155 Procedure

The appropriate timing for imposing sanctions depends on the basis for the sanctions; the timing can be more problematic in complex litigation. Sanctions are often most effective when imposed promptly after the improper conduct has occurred<sup>47</sup> because this may maximize their deterrent effect in the litigation.

Sometimes, the frivolous nature of a paper may not be immediately apparent. Moreover, some misconduct or the extent of its consequences may not become apparent until the litigation has developed further. Some sanctions are, therefore, expressly conditioned on later developments.<sup>48</sup> Certain facts may have to be established before the court can decide the sanctions issue, which could delay the litigation unless sanctions are deferred until its conclusion. Similarly, sanctions should be deferred where the decision may require inquiry into potentially privileged communications and create a conflict of interest between counsel and client. Delaying rulings on sanctions also may allow the court more dispassionate consideration; however, applying the wisdom of hindsight should be avoided.

The assessment of sanctions should be preceded by notice and an opportunity to be heard.<sup>49</sup> The extent of the process afforded depends on the circumstances, primarily the type and severity of sanction under consideration.<sup>50</sup> An oral or evidentiary hearing may not be necessary for relatively minor sanctions.<sup>51</sup> To provide notice when acting *sua sponte*, the court should issue an order for counsel or parties to show cause why sanctions should not be imposed, specifying the alleged misconduct.<sup>52</sup> To avoid disrupting a settlement,

47. See *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 881 (5th Cir. 1988). Cf. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991) (explaining exception to imposing prompt sanctions).

48. See, e.g., Fed. R. Civ. P. 37(c)(2) (recovery of expenses for failure to admit depends on later proof of matter not admitted); Fed. R. Civ. P. 68 (assessment of costs incurred after settlement offer refused depends on failure to obtain more favorable judgment).

49. *United States v. 4003–4005 5th Ave.*, 55 F.3d 85 (2d Cir. 1995); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980). Some rules expressly require this. See, e.g., Fed. R. Civ. P. 11(c).

50. See, e.g., *United States v. Kouri-Perez*, 187 F.3d 1, 10 & n.4 (1st Cir. 1999); *Media Duplication Servs. v. HDG Software, Inc.*, 928 F.2d 1228, 1238 (1st Cir. 1991) (citing *Roadway*, 447 U.S. at 767 n.14 (due process concerns raised by dismissal are greater than those presented by assessment of attorneys' fees)); *G.J.B. & Assocs., Inc. v. Singleton*, 913 F.2d 824, 830 (10th Cir. 1990) (same); Fed. R. Civ. P. 11 committee note.

51. See, e.g., *In re Edmond*, 934 F.2d 1304, 1313 (4th Cir. 1991); *Hudson v. Moore Bus. Forms, Inc.*, 898 F.2d 684, 686 (9th Cir. 1990); Fed. R. Civ. P. 11 committee note.

52. *El Paso v. Socorro*, 917 F.2d 7 (5th Cir. 1990); *Maisonville v. F2 Am., Inc.*, 902 F.2d 746 (9th Cir. 1990); Fed. R. Civ. P. 11(c)(1)(B) & committee note.

avoid assessing monetary sanctions sua sponte once the parties have reached agreement.<sup>53</sup>

Unless the sanction is minor and the misconduct obvious, it is advisable to put findings and reasons on the record or issue a written order.<sup>54</sup> The findings should clearly identify the objectionable conduct, state the factual and legal reasons for the action (including the need for the particular sanction imposed and the inadequacy of less severe measures), and cite the authority relied on. If the sanctions are appealed, such a record will facilitate appellate review and help the appellate court understand the basis for the court's exercise of its discretion.<sup>55</sup> There is normally no need to explain a denial of sanctions.<sup>56</sup>

## 10.2 Role of Counsel

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### 10.21 Responsibilities in Complex Litigation

Judicial involvement in managing complex litigation does not lessen the duties and responsibilities of the attorneys. To the contrary, complex litigation places greater demands on counsel in their dual roles as advocates and officers of the court. The complexity of legal and factual issues makes judges especially dependent on the assistance of counsel.

Greater demands on counsel also arise from the following:

- the amounts of money or importance of the interests at stake;
- the length and complexity of the proceedings;

53. See Fed. R. Civ. P. 11(c)(2)(B) & committee note.

54. See Fed. R. Civ. P. 11(c)(3).

55. The standard of review is abuse of discretion. *Buford v. United States*, 532 U.S. 59, 64 (2001); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991) (inherent power); *Cooter & Gel v. Hartmax Corp.*, 496 U.S. 384, 405 (1990) (Rule 11); *Blue v. United States Dep't of the Army*, 914 F.2d 525, 539 (4th Cir. 1990) (28 U.S.C. § 1927).

56. Fed. R. Civ. P. 11 committee note. Only the First Circuit has held to the contrary. See *Metrocorps, Inc. v. E. Mass. Junior Drum & Bugle Corps Ass'n*, 912 F.2d 1, 3 (1st Cir. 1990); *Morgan v. Mass. Gen. Hosp.*, 901 F.2d 186, 195 (1st Cir. 1990).

- the difficulties of having to communicate and establish effective working relationships with numerous attorneys (many of whom may be strangers to each other);
- the need to accommodate professional and personal schedules;
- the problems of having to appear in courts with which counsel are unfamiliar;
- the burdens of extensive travel often required; and
- the complexities of having to act as designated representative of parties who are not their clients (see section 10.22).

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court. By presenting a paper to the court, an attorney certifies in essence that he or she, based on reasonable inquiry, has not filed the paper to delay, harass, or increase costs.<sup>57</sup> A signature on a discovery request, response, or objection certifies that the filing is not "unreasonable or unduly burdensome or expensive" under the circumstances of the case.<sup>58</sup> These provisions encourage attorneys to "stop and think" before taking action.

Counsel need to fulfill their obligations as advocates in a manner that will foster and sustain good working relations among fellow counsel and with the court. They need to communicate constructively and civilly with one another and attempt to resolve disputes informally as often as possible. Even where the stakes are high, counsel should avoid unnecessary contentiousness and limit the controversy to material issues genuinely in dispute. Model Rule of Professional Conduct 3.2 requires lawyers to make "reasonable efforts to expedite litigation consistent with the interests of the client."<sup>59</sup>

57. Fed. R. Civ. P. 11(b)(1). Fed. R. Civ. P. 26(g) contains substantially similar language. Case law in the circuit interpreting these provisions should be considered.

58. Fed. R. Civ. P. 26(g)(C).

59. *See also* Model Rules of Professional Conduct R. 3.1 (2002) (meritorious claims and contentions); Model Code of Professional Responsibility DR 7-102(A)(1) (1981) (action taken merely to harass).

## 10.22 Coordination in Multiparty Litigation—Lead/Liaison Counsel and Committees

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Complex litigation often involves numerous parties with common or similar interests but separate counsel. Traditional procedures in which all papers and documents are served on all attorneys, and each attorney files motions, presents arguments, and examines witnesses, may waste time and money, confuse and misdirect the litigation, and burden the court unnecessarily. Instituting special procedures for coordination of counsel early in the litigation will help to avoid these problems.

In some cases the attorneys coordinate their activities without the court’s assistance, and such efforts should be encouraged. More often, however, the court will need to institute procedures under which one or more attorneys are selected and authorized to act on behalf of other counsel and their clients with respect to specified aspects of the litigation. To do so, invite submissions and suggestions from all counsel and conduct an independent review (usually a hearing is advisable) to ensure that counsel appointed to leading roles are qualified and responsible, that they will fairly and adequately represent all of the parties on their side, and that their charges will be reasonable. Counsel designated by the court also assume a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties’ counsel.

### 10.221 Organizational Structures

Attorneys designated by the court to act on behalf of other counsel and parties in addition to their own clients (referred to collectively as “designated counsel”) generally fall into one of the following categories:

- *Liaison counsel*. Charged with essentially administrative matters, such as communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group), convening meetings of counsel, advising parties of developments, and otherwise assisting in the coordination of activities and positions. Such counsel may act for the group in managing document depositories and in resolving scheduling conflicts. Liaison counsel will usually have offices in the same locality as the court. The court may appoint (or the parties may select) a liaison for each side,

and if their functions are strictly limited to administrative matters, they need not be attorneys.<sup>60</sup>

- *Lead counsel.* Charged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation. Typically they act for the group—either personally or by coordinating the efforts of others—in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.
- *Trial counsel.* Serve as principal attorneys at trial for the group and organize and coordinate the work of the other attorneys on the trial team.
- *Committees of counsel.* Often called steering committees, coordinating committees, management committees, executive committees, discovery committees, or trial teams. Committees are most commonly needed when group members' interests and positions are sufficiently dissimilar to justify giving them representation in decision making. The court or lead counsel may task committees with preparing briefs or conducting portions of the discovery program if one lawyer cannot do so adequately. Committees of counsel can sometimes lead to substantially increased costs, and they should try to avoid unnecessary duplication of efforts and control fees and expenses. See section 14.21 on controlling attorneys' fees.

The types of appointments and assignments of responsibilities will depend on many factors. The most important is achieving efficiency and economy without jeopardizing fairness to the parties. Depending on the number and complexity of different interests represented, both lead and liaison counsel may be appointed for one side, with only liaison counsel appointed for the other. One attorney or several may serve as liaison, lead, and trial counsel. The functions of lead counsel may be divided among several attorneys, but the number should not be so large as to defeat the purpose of making such appointments.

60. See *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1989 WL 168401, at \*19–20 (D.P.R. Dec. 2, 1988) (defining duties of “liaison persons” for plaintiffs and defendants).

### 10.222 Powers and Responsibilities

The functions of lead, liaison, and trial counsel, and of each committee, should be stated in either a court order or a separate document drafted by counsel for judicial review and approval.<sup>61</sup> This document will inform other counsel and parties of the scope of designated counsel's authority and define responsibilities within the group. However, it is usually impractical and unwise for the court to spell out in detail the functions assigned or to specify the particular decisions that designated counsel may make unilaterally and those that require an affected party's concurrence. To avoid controversy over the interpretation of the terms of the court's appointment order, designated counsel should seek consensus among the attorneys (and any unrepresented parties) when making decisions that may have a critical impact on the litigation.

Counsel in leadership positions should keep the other attorneys in the group advised of the progress of the litigation and consult them about decisions significantly affecting their clients. Counsel must use their judgment about limits on this communication; too much communication may defeat the objectives of efficiency and economy, while too little may prejudice the interests of the parties. Communication among the various allied counsel and their respective clients should not be treated as waiving work-product protection or the attorney–client privilege, and a specific court order on this point may be helpful.<sup>62</sup>

### 10.223 Compensation

See section 14.215 for guidance on determining compensation and establishing terms and procedures for it early in the litigation.

### 10.224 Court's Responsibilities

Few decisions by the court in complex litigation are as difficult and sensitive as the appointment of designated counsel. There is often intense competition for appointment by the court as designated counsel, an appointment that may implicitly promise large fees and a prominent role in the litigation. Side agreements among attorneys also may have a significant effect on positions taken in the proceedings. At the same time, because appointment of designated counsel will alter the usual dynamics of client representation in important ways, attorneys will have legitimate concerns that their clients' interests be adequately represented.

61. See Sample Order *infra* section 40.22.

62. See *id.* ¶ 5.

For these reasons, the judge is advised to take an active part in the decision on the appointment of counsel. Deferring to proposals by counsel without independent examination, even those that seem to have the concurrence of a majority of those affected, invites problems down the road if designated counsel turn out to be unwilling or unable to discharge their responsibilities satisfactorily or if they incur excessive costs. It is important to assess the following factors:

- qualifications, functions, organization, and compensation of designated counsel;
- whether there has been full disclosure of all agreements and understandings among counsel;
- would-be designated attorneys' competence for assignments;
- whether there are clear and satisfactory guidelines for compensation and reimbursement, and whether the arrangements for coordination among counsel are fair, reasonable, and efficient;
- whether designated counsel fairly represent the various interests in the litigation—where diverse interests exist among the parties, the court may designate a committee of counsel representing different interests;
- the attorneys' resources, commitment, and qualifications to accomplish the assigned tasks; and
- the attorneys' ability to command the respect of their colleagues and work cooperatively with opposing counsel and the court—experience in similar roles in other litigation may be useful, but an attorney may have generated personal antagonisms during prior proceedings that will undermine his or her effectiveness in the present case.

Although the court should move expeditiously and avoid unnecessary delay, an evidentiary hearing may be needed to bring all relevant facts to light or to allow counsel to state their case for appointment and answer questions from the court about their qualifications (the court may call for the submission of résumés and other relevant information). Such a hearing is particularly appropriate when the court is unfamiliar with the attorneys seeking appointment. The court should inquire as to normal or anticipated billing rates, define record-keeping requirements, and establish guidelines, methods, or limitations to govern the award of fees.<sup>63</sup> While it may be appropriate and possibly even beneficial for several firms to divide work among themselves,<sup>64</sup> such an ar-

63. See *infra* section 14.21.

64. See *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 77 (S.D.N.Y. 2000); *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 584 (3d Cir. 1984).

rangement should be necessary, not simply the result of a bargain among the attorneys.<sup>65</sup>

The court's responsibilities are heightened in class action litigation, where the judge must approve counsel for the class (see section 21.27). In litigation involving both class and individual claims, class and individual counsel will need to coordinate.

### 10.225 Related Litigation

If related litigation is pending in other federal or state courts, consider the feasibility of coordination among counsel in the various cases. See sections 20.14, 20.31. Consultation with other judges may bring about the designation of common committees or of counsel and joint or parallel orders governing their function and compensation.<sup>66</sup> Where that is not feasible, the judge may direct counsel to coordinate with the attorneys in the other cases to reduce duplication and potential conflicts and to coordinate and share resources. In any event, the judges involved should exchange information and copies of orders that might affect proceedings in their courts. See generally section 20, multiple jurisdiction litigation.

In approaching these matters, consider also the status of the respective actions (some may be close to trial while others are in their early stages). Counsel seeking a more prominent and lucrative role may have filed actions in other courts.

## 10.23 Withdrawal and Disqualification

In view of the number and dispersion of parties and interests in complex litigation, the court should remind counsel to be alert to present or potential conflicts of interest.<sup>67</sup>

It is advisable to deny motions for disqualification that claim the attorney may be called as a witness if such testimony probably will not be necessary and prejudice to the client will probably be minor. Disqualification on the ground that an attorney is also a witness may sometimes be denied where it would cause "substantial hardship" to the client. This exception is generally invoked

65. See, e.g., *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71 (S.D.N.Y. 2000); *Smiley v. Sincoff*, 958 F.2d 498 (2d Cir. 1992); *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48 (E.D. Pa. 1983), *aff'd in part and rev'd in part*, 751 F.2d 562 (3d Cir. 1984).

66. See *infra* section 40.51.

67. See Model Rules of Prof'l Conduct R. 1.7–1.9 (2002); Model Code of Prof'l Responsibility DR 5-101(A), 5-104(A), 5-105(A) (1981); see also Model Rules of Prof'l Conduct R. 3.7 (2002); Model Code of Prof'l Responsibility DR 5-102 (1981) (lawyer as witness).

when disqualification is sought late in the litigation, and it requires the court to balance the interests of the client and the opposing party. The motion may also be denied when the likelihood that the attorney would have to testify should have been anticipated earlier in the case.<sup>68</sup> Motions for disqualification should be reviewed carefully to ensure that they are not being used merely to harass,<sup>69</sup> and disqualification should be ordered only when the motion demonstrates a reasonable likelihood of a prohibited conflict.<sup>70</sup>

The court should promptly resolve ancillary legal issues requiring research into applicable circuit law, because uncertainty as to the status of counsel hampers the progress of the litigation. Additional delays may result if counsel seeks appellate review<sup>71</sup> or if replacement counsel are precluded from using the work product of the disqualified firm. While disqualified counsel usually must turn over their work product to new counsel upon request, it is possible that counsel will deny the request when there is a danger that confidential information will be disclosed.<sup>72</sup> Issues raised by disqualification motions include whether disqualification of counsel extends to the entire firm,<sup>73</sup> whether co-

68. Model Rules of Prof'l Conduct R. 3.7(a)(3) (2002); Model Code of Prof'l Responsibility DR 5-10(B)(4) (1981). See *General Mill Supply Co. v. SCA Servs., Inc.*, 697 F.2d 704 (6th Cir. 1982).

69. *Harker v. Comm'r*, 82 F.3d 806, 808 (8th Cir. 1996); *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 433–36 (1985); *Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1050–51 (9th Cir. 1985); *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1577–80 (Fed. Cir. 1984).

70. Though often premised on violations of state disciplinary rules, disqualification in federal court is a question of federal law. *In re Am. Airlines, Inc.*, 972 F.2d 605, 615 (5th Cir. 1992); *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir. 1992).

71. The denial of a motion to disqualify counsel in a civil case is not immediately appealable as a matter of right. *Cunningham v. Hamilton County*, 527 U.S. 198, 207 (1999); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981). Nor is an order granting such a motion in a criminal case, *Flanagan v. United States*, 465 U.S. 259 (1984), or in a civil case, *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424 (1985). A petition for a writ of mandamus may be filed even if there is no right of appeal, see Fed. R. App. P. 21, but the standard of review may be more stringent. See *In re Dresser*, 972 F.2d at 542–43.

72. See *First Wis. Mortgage Trust v. First Wis. Corp.*, 584 F.2d 201, 207–11 (7th Cir. 1978) (en banc), and *Int'l Bus. Machs. Corp. v. Levin*, 579 F.2d 271, 283 (3d Cir. 1978) (the request to turn over work product may be denied when there is a danger that confidential information will be disclosed (*EZ Paints Corp. v. Padco, Inc.*, 746 F.2d 1459, 1463–64 (Fed. Cir. 1984))).

73. See Model Rules of Prof'l Conduct R. 1.10 (2002) (imputation of conflicts of interest); Model Code of Prof'l Responsibility DR 5-105(D) (1981). Compare *Panduit*, 744 F.2d at 1577–80, with *United States v. Moscony*, 927 F.2d 742, 747–48 (3d Cir. 1991), and *Atasi Corp. v. Seagate Tech.*, 847 F.2d 826, 830–32 (Fed. Cir. 1988). Timely erection of a “Chinese wall” to screen other firm members from the attorney(s) possessing confidential information may avoid imputed disqualification. See, e.g., *Blair v. Armontrout*, 916 F.2d 1310, 1333 (8th Cir. 1990);

counsel will also be disqualified,<sup>74</sup> and whether counsel may avoid disqualification based on consent,<sup>75</sup> substantial hardship,<sup>76</sup> or express or implied waiver.<sup>77</sup> If a disqualification motion is filed in order to harass, delay, or deprive a party of chosen counsel, sanctions may be appropriate under 28 U.S.C. § 1927 or Federal Rule of Civil Procedure 11 (see section 10.15).

Kennecott Corp. v. Kyocera Int'l, Inc., 899 F.2d 1228 (Fed. Cir. 1990) (per curiam) (unpublished table decision); United States v. Goot, 894 F.2d 231, 235 (7th Cir. 1990); Manning v. Waring, James, Sklar & Allen, 849 F.2d 222 (6th Cir. 1988); *Atasi*, 847 F.2d at 831 & n.5; *Panduit*, 744 F.2d at 1580–82; *LaSalle Nat'l Bank v. County of Lake*, 703 F.2d 252, 257–59 (7th Cir. 1983) (screening not timely). Disqualification of an attorney on the ground that he or she will be called as a witness generally does not require disqualification of the attorney's firm. *See Optyl Eyewear*, 760 F.2d at 1048–50; *Bottaro v. Hatton Assocs.*, 680 F.2d 895, 898 (2d Cir. 1982).

74. Disqualification of counsel generally does not extend to cocounsel. *See, e.g., Brennan's, Inc. v. Brennan's Rests., Inc.*, 590 F.2d 168, 174 (5th Cir. 1979); *Fred Weber, Inc. v. Shell Oil Co.*, 566 F.2d 602, 607–10 (8th Cir. 1977); *Akerly v. Red Barn Sys., Inc.*, 551 F.2d 539, 543–44 (3d Cir. 1977); *Am. Can Co. v. Citrus Feed Co.*, 436 F.2d 1125, 1129 (5th Cir. 1971). But disqualification is proper when information has been disclosed to cocounsel with an expectation of confidentiality. *See Fund of Funds, Ltd. v. Arthur Andersen & Co.*, 567 F.2d 225, 235 (2d Cir. 1977); *cf. Arkansas v. Dean Food Prods. Co.*, 605 F.2d 380, 387–88 (8th Cir. 1979); *Brennan's*, 590 F.2d at 174.

75. *See, e.g., Unified Sewerage Agency v. Jelco, Inc.*, 646 F.2d 1339, 1345–46 (9th Cir. 1981); *Interstate Props. v. Pyramid Co.*, 547 F. Supp. 178 (S.D.N.Y. 1982); *cf. Westinghouse Elec. Corp. v. Gulf Oil Corp.*, 588 F.2d 221 (7th Cir. 1978).

76. Disqualification on the ground that an attorney is also a witness may be denied where it would cause “substantial hardship” to the client. Model Rules of Prof'l Conduct R. 3.7(a)(3) (2002); Model Code of Prof'l Responsibility DR 5-101(B)(4) (1981). This exception is generally invoked when disqualification is sought late in the litigation, and it requires the court to balance the interests of the client and those of the opposing party. Model Rules of Prof'l Conduct R. 3.7 cmt. ¶ 4 (2002). It may be rejected when the likelihood that the attorney would have to testify should have been anticipated earlier in the case. *See Gen. Mill Supply Co. v. SCA Servs., Inc.*, 697 F.2d 704 (6th Cir. 1982).

77. *See, e.g., United States v. Wheat*, 486 U.S. 153, 162–64 (1988) (court in criminal case may decline waiver of conflict); *Melamed v. ITT Cont'l Baking Co.*, 592 F.2d 290, 292–94 (6th Cir. 1979) (waiver found); *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 440 F. Supp. 193, 205 (N.D. Ohio), *aff'd*, 573 F.2d 1310 (6th Cir. 1977) (same); *cf. In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83, 88–90 (5th Cir. 1976) (waiver and consent).

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## 11.1 Preliminary Matters

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### 11.11 Scheduling the Initial Conference

The court's first step in establishing control of the litigation is promptly scheduling the initial conference with counsel, generally within 30 to 60 days of filing, but with sufficient time for counsel to become familiar with the litigation and prepare for the conference. The judge should hold the conference before any adversary activity begins, such as filing of motions or discovery requests, and the order setting the conference may require that all such activity be deferred. Although Federal Rule of Civil Procedure 4(m) allows 120 days from filing to effect service, earlier service or appearance should be encouraged in order to give notice of the conference and of any interim administrative

measures even before responsive pleadings are filed. The court need not wait for service to be made on every party, once the primary parties have been notified.

The order scheduling the conference<sup>78</sup> generally refers to Federal Rule of Civil Procedure 16(c), which lists subjects for consideration at such a conference. Also worth considering are the following:

- requiring counsel in advance to discuss claims and defenses, a plan for disclosure and discovery, and possible settlement;<sup>79</sup>
- listing specific topics that the court intends to address at the conference;
- inviting suggestions from counsel for additional topics;
- directing counsel to submit a tentative statement, joint if possible, identifying disputed issues as specifically as possible;
- directing counsel to submit a proposed schedule for the conduct of the litigation, including a discovery plan (see section 11.421);
- calling on counsel to submit brief factual statements to assist the court in understanding the background, setting, and likely dimensions of the litigation;
- suspending all discovery and motion activity pending further order;
- specifying that responses to the order will not be treated as admissions or otherwise bind the parties; and
- directing counsel to provide information about all related litigation pending in other courts.

See also section 22.6 (mass torts, case-management orders).

## 11.12 Interim Measures

At the outset of the case, pending the initial conference, the judge can *sua sponte* initiate special procedures, including the following:<sup>80</sup>

- ordering joint briefs and limits on briefs' length and appendices;
- suspending some local rules, such as those requiring the appearance or association of local counsel or limiting the time for joining new parties;<sup>81</sup>

78. See sample order *infra* section 40.1.

79. Such a conference of counsel prior to discovery and the Rule 16 conference is required by Federal Rule of Civil Procedure 26(f).

80. See *infra* sections 22.6 (case-management orders in mass tort litigation) and 40.2 (sample orders).

- creating a single master file for the litigation, eliminating the need for multiple filings of similar documents when related cases have common parties;
- extending time for filing responses to the complaint until after the initial conference, making unnecessary individual requests for extensions;
- reducing under Federal Rule of Civil Procedure 5 the number of parties upon whom service of documents must be made—liaison counsel may be appointed to receive service of all papers and distribute copies to cocounsel (see section 10.221);
- modifying the timing of the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1) (see section 11.13);
- permitting limited discovery, prior to Rule 26(a)(1) initial disclosure, of information helpful or necessary in formulating a discovery plan, such as Rule 30(b)(6) depositions of records keepers and computer personnel knowledgeable of the parties' data holdings and systems;
- ordering that paper and electronic records, files, and documents, and other potential evidence, not be destroyed without leave of court—preservation orders may impose undue burdens on parties and be difficult to implement; therefore, holding an early conference or hearing to work out appropriate terms for such orders should be encouraged (see section 11.442); and
- appointing interim liaison counsel or committees of plaintiffs' or defense counsel.

### 11.13 Prediscovery Disclosure

Federal Rule of Civil Procedure 26(a)(1) requires parties to exchange certain core information within fourteen days after their initial discovery planning conference<sup>82</sup> without awaiting a discovery request.

Prediscovery disclosure avoids the cost of unnecessary formal discovery and accelerates the exchange of basic information to plan and conduct discovery and settlement negotiations. The judge should administer Rule 26(a)(1) to

81. Rule 1.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation provides that parties in actions transferred under 28 U.S.C. § 1407 may continue to be represented in the transferee district by existing counsel, without being required to obtain local counsel.

82. For discussion of the discovery planning conference see *infra* section 11.421. See Fed. R. Civ. P. 26(f) (discovery planning conference). Rule 26(g)(3) and Rule 37 provide for the imposition of sanctions for violation of Rule 26(a)(1).

serve those purposes; disclosure should not place unreasonable or unnecessary burdens on the parties (and should not require disclosure of any information that would not have to be disclosed in response to formal discovery requests). In complex litigation, this rule may need modification or suspension.

The scope of disputed issues and relevant facts in a complex case may not be sufficiently clear from the pleadings to enable parties to make the requisite disclosure. One purpose of Rule 26(f)'s requirement that counsel confer is to identify issues and reach agreement on the content and timing of the initial disclosures. To the extent the parties cannot agree during their conference, it sometimes helps to defer disclosure and fashion an order at the Rule 16 conference, defining and narrowing the factual and legal issues in dispute and establishing the scope of disclosure. This will require suspending, by stipulation or order, Rule 26(f)'s presumptive ten-day deadline for making disclosure.

Although Rule 26(a)(1) defines certain information that must be disclosed, it does not limit the scope of prediscovery disclosure and exchange of information. The parties have a duty to conduct a reasonable investigation pursuant to disclosure, particularly when a party possesses extensive computerized data, which may be subject to disclosure or later discovery.<sup>83</sup> The rule does not require actual production (except for damage computations and insurance agreements), but only identification of relevant information and materials. The judge may nevertheless direct the parties to produce and exchange materials in advance of discovery, subject to appropriate objections. Effective use of this device without excessive and unnecessary burdens on the parties can streamline the litigation.

Rule 26(e)(1) requires parties to correct or supplement disclosures at appropriate intervals if they learn that the information (even if correct when supplied) is materially incomplete or incorrect, unless they have already informed the other party of the corrective or additional information during discovery or in writing. The court should set a schedule for such supplementation and qualify or clarify the scope of the obligation to supplement in order to fit the particular litigation.

83. *See, e.g.,* Danis v. USN Communications, Inc., No. 98 C 7482, 2000 WL 1694325, at \*25 (N.D. Ill. Oct. 23, 2000) (noting that litigation of the discovery issues could have been avoided if the defendants had not “failed to conduct a sufficiently thorough search” pursuant to court-ordered mandatory disclosure under Federal Rule of Civil Procedure 26(a)(1)).

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Federal Rule of Civil Procedure 16 authorizes the court to hold pretrial conferences in civil cases. These conferences are the principal means of implementing judicial management of litigation. Rules 16(a) and (c) suggest appropriate purposes for these conferences and subjects to discuss, but they are not exhaustive.

### 11.21 Initial Conference and Orders

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The initial conference launches the process of managing the litigation. It generally provides the first opportunity to meet counsel, hear their views of the factual and legal issues, and begin to structure the litigation and establish a management plan. It is therefore crucial that the judge be prepared to address the range of topics that the conference should cover. The principal topics include

- the nature and potential dimensions of the litigation;
- the major procedural and substantive problems likely to be encountered; and
- the procedures for efficient management.

The conference is not a perfunctory exercise, and its success depends on establishing effective communication and coordination among counsel and between counsel and the court (see section 11.22).

#### 11.211 Case-Management Plan

The primary objective of the conference is to develop an initial plan for the “just, speedy, and inexpensive determination” of the litigation. This plan should include procedures for identifying and resolving disputed issues of law, identifying and narrowing disputed issues of fact, carrying out disclosure and

conducting discovery efficiently and economically, and preparing for trial in the absence of settlement or summary disposition. The agenda should be shaped by the needs of the particular litigation. The following checklist of procedures could help in the development of case-management plans (see also section 22.6):

- identifying and narrowing issues of fact and law (see section 11.33);
- establishing deadlines and limits on joinder of parties and amended or additional pleadings (see section 11.32);
- coordinating with related litigation in federal and state courts, including later filings, removals, or transfers (see section 20);
- effecting early resolution of jurisdictional issues;
- severing issues for trial (see section 11.632);
- consolidating trials (see section 11.631);
- referring, if possible, some matters to magistrate judges, special masters, or other judges (see sections 10.122, 10.14, and 11.5);
- appointing liaison, lead, and trial counsel and special committees, and maintaining time and expense records by counsel (see sections 10.22 and 14.21);
- reducing filing and service requirements through a master file and orders under Federal Rule of Civil Procedure 5 (see sections 11.12 and 20);
- exempting parties from or modifying local rules or standing orders (see section 11.12);
- applying and enforcing arbitration clauses;<sup>84</sup>
- planning for prompt determination of class action questions, including a schedule for discovery and briefing on class issues (see sections 11.213, 21.11);
- managing disclosure and discovery, including establishing
  - a process for preserving evidence (see section 11.442);
  - document depositories and computerized storage (see section 11.444);
  - a uniform numbering system for documents (see section 11.441);

84. *See, e.g.*, *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Volt Info. Scis., Inc. v. Bd. of Trs.*, 489 U.S. 468 (1989); *Perry v. Thomas*, 482 U.S. 483 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614 (1985); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983).

- procedures for the exchange of documents, photographs, videos, and other materials in digital format;<sup>85</sup>
- procedures for the exchange of digital-format materials, such as databases, fax server files, PDA (personal digital assistant) files, E-mail, and digital voicemail;<sup>86</sup>
- informal discovery and other cost-reduction measures (see sections 11.13 (precovery disclosure) and 11.423);
- procedures for resolving discovery disputes (see sections 11.424, 11.456);
- protective orders and procedures for handling claims of confidentiality and privilege (see section 11.43); and
- sequencing and limitations, including specific scheduling and deadlines (see sections 11.212, 11.421–11.422, 11.451, 11.462);
- planning for the presentation of electronic or computer-based evidence at trial, including the use of any audiovisual or digital technology in the courtroom;
- setting guidelines and schedules for the disclosure and exchange of digital evidentiary exhibits and illustrative aids (see section 11.643);
- establishing procedures for managing expert testimony (see sections 11.48, 11.51 (court-appointed experts and technical advisors), and 23.34 (expert scientific evidence, discovery control and management));
- creating schedules and deadlines for various pretrial phases of the case and setting a tentative or firm trial date (see section 11.212);
- discussing any unresolved issues of recusal or disqualification (see section 10.121);
- evaluating prospects for settlement (see section 13.1) or possible referral to mediation or other procedures (see section 13.15); and
- instituting any other special procedures to facilitate management of the litigation.

Federal Rule of Civil Procedure 16(e) directs the court to enter an order reciting any action taken at the conference. The order should address the various matters on the agenda and other matters conducive to the effective management of the litigation (section 22.6 has an illustrative list of items). The order should memorialize all rulings, agreements, or other actions taken, and set

85. See *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* 61–97 (Federal Judicial Center 2d prtg. 2002) [hereinafter *Effective Use of Courtroom Technology*].

86. *Id.* at 93–97.

a date for the next conference or other event in the litigation. Counsel should promptly submit a proposed order.

### 11.212 Scheduling Order

Scheduling orders are a critical element of case management. They help ensure that counsel will timely complete the work called for by the management plan. Rule 16(b) requires that a scheduling order issue early in every case, setting deadlines for joinder of parties, amendment of pleadings, filing of motions, and completion of discovery. Scheduling orders in complex cases should also cover other important steps in the litigation, in particular discovery activities and motion practice. Scheduling orders should be informed by the parties' discovery plan submitted pursuant to Rule 26(f) (see section 11.421).<sup>87</sup> The order may also

- modify the time set by Rule 26(a)(1) for initial disclosure and set dates for its supplementation under Rule 26(e)(1) (see section 11.13);<sup>88</sup>
- establish a schedule for amending discovery responses as required by Rule 26(e)(2), which requires parties to amend most discovery responses “seasonably” if they learn that the response is materially “incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing”; to maintain order and clarify counsel’s responsibilities, the scheduling order may specify a series of dates on which the parties must provide any amendment required;
- set dates for future conferences (see section 11.22), the final pretrial conference (see section 11.6), and trial; and
- provide for any other matters appropriate in the circumstances of the case.<sup>89</sup>

To allow additional information to be gathered, some judges defer the scheduling conference until after the initial conference. The scheduling conference is best held soon after the initial conference, however, both to maintain momentum and to comply with the rule requiring the scheduling order to issue “as soon as practicable” and within 90 days of a defendant’s appearance and within 120 days of service. In any event, the judge should base the scheduling order on information and recommendations from the parties, rather

87. Fed. R. Civ. P. 16(d).

88. Fed. R. Civ. P. 16(b)(4).

89. Fed. R. Civ. P. 16(b)(6).

than on a standard form. Developments in the litigation may call for subsequent modification of a scheduling order entered early in the litigation.

### 11.213 Class Actions

Claims by or against a class require a procedure for dealing with the certification issues. A schedule for an early ruling on class certification typically should be set at the initial conference. Class certification or its denial will have a substantial impact on further proceedings, including the scope of discovery, the definition of issues, the length and complexity of trial, and the opportunities for settlement. Denial of class certification may effectively end the litigation. The court should ascertain what discovery on class questions is needed for a certification ruling and how to conduct it efficiently and economically. Consider also staying other discovery if resolution of the certification issue may obviate some or all further proceedings. Discovery may proceed concurrently if bifurcating class discovery from merits discovery would result in significant duplication of effort and expense to the parties.

See section 21 regarding principles and procedures involved in the management of class actions. For discussion of discovery in class actions, see section 21.14.

### 11.214 Settlement

At each conference, the judge should explore the settlement posture of the parties and the techniques, methods, and mechanisms that may help resolve the litigation short of trial. While settlement is most advantageous early in the litigation, meaningful negotiations may require specific critical discovery so that the parties have a fuller understanding of the strengths and weaknesses of their respective cases. Discovery may be targeted for this purpose, but settlement discussions should not delay or sidetrack the pretrial process. See section 13.11 for a general discussion of the judge's role in settlement. Judges should remind counsel to advise the court promptly when an agreement is imminent or has been reached.

## 11.22 Subsequent Conferences

Conferences following the initial conference help the judge to monitor the progress of the case and to address problems as they arise. Scheduling the conferences well in advance helps ensure maximum attendance. Some judges schedule conferences only as the need arises, and others schedule them at regular and frequent intervals, with agendas composed of items suggested by the parties or designated by the court. Directing parties to confer and submit

written reports before each conference helps avoid unnecessary conferences. Conferences may also be held in conjunction with motion hearings.

It is best not to adjourn a conference without setting the date for the next conference or the next report from counsel. Written status reports or conference calls can keep the court advised of the progress of the case between conferences. When a conference is scheduled, the court should distribute to counsel an agenda of items to be addressed, perhaps after calling for suggestions from counsel.

On-the-record conferences will minimize later disagreements, particularly if the judge anticipates issuing oral directions or rulings. Many judges hold all conferences on the record, particularly where numerous attorneys are in the courtroom. Nevertheless, an informal off-the-record conference held in chambers or by telephone can sometimes be more productive; a reporter can later be brought in to record the results of the conference. (28 U.S.C. § 753(b) sets forth the requirements for recording various proceedings.) Rule 16 requires (and sound practice dictates) that all matters decided at pretrial conferences be memorialized on the record or in a written order. Counsel may be directed to submit proposed orders incorporating the court's oral rulings.

The Federal Rules of Civil Procedure require a final pretrial conference when discovery and other pretrial matters are substantially complete<sup>90</sup> and a firm trial date has been set, usually about thirty to sixty days before the trial. More than one such conference may be needed, particularly if there will be more than one trial. See section 11.6.

### 11.23 Attendance

All attorneys and unrepresented parties should attend the initial pretrial conference. Requirements for attendance at subsequent conferences depend on the purposes of each conference. Costs can be reduced by relieving counsel from attending if their clients have no substantial interest in the matters to be discussed or if their interests will be fully represented by designated counsel, or by allowing them to attend by video or telephone conference, particularly if they have only a peripheral interest in the matters to be discussed. The judge should generally not bar any attorney's attendance, but might consider excluding attorneys who appear unnecessarily in order to claim court-awarded fees for that time. Authorizing compensation for one attorney per party only at routine conferences will also minimize attorneys' fees. Rule 16(c) requires that each party participating in a conference be represented by an attorney with

90. See Fed. R. Civ. P. 16(d).

authority to enter into stipulations and make admissions as to all matters the participants may reasonably anticipate will be discussed at that conference. Lead trial counsel should always attend the final pretrial conference. Rule 16(f) allows the court to impose sanctions for unexcused nonattendance at any conference. See section 40.1, ¶ 2.

Rule 16 also authorizes the court to require attendance or telephone availability of persons with authority to settle, including insurance carriers or their representatives when their interests are implicated and their presence will facilitate settlement. It may also be beneficial to invite counsel involved in related litigation and the magistrate judge or special master to whom matters to be discussed at the conference have been or may be referred. Judges should always consider the cost versus the benefits of such invitations.

## 11.3 Management of Issues

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### 11.31 Relationship to Discovery

The *sine qua non* of managing complex litigation is defining the issues in the litigation. The materiality of facts and the scope of discovery (and the trial) cannot be determined without identification and definition of the controverted issues. The pleadings, however, will often fail to define the issues clearly, and the parties may lack sufficient information at the outset of the case to arrive at definitions with certainty. Probably the judge's most important function in the early stages of litigation management is to press the parties to identify, define, and narrow the issues. The initial conference should start this process.

Plaintiffs may assert that substantial discovery must precede issue definition, and defendants may contend that plaintiffs must first refine their claims. Nonetheless, the judge must start the process of defining and structuring the issues, albeit tentatively, to establish the appropriate sequence and limits for discovery.

The controlling factual and legal issues can almost always be identified by a thorough and candid discussion with counsel at the initial conference, prior to discovery. The judge should construct the discovery plan after identifying the primary issues, at least preliminarily, based on the pleadings and the parties' positions at the initial conference. Discovery may then provide information for further defining and narrowing issues, which may in turn lead to revision and refinement of the discovery plan.

## 11.32 Pleading and Motion Practice

Finalizing pleadings and resolving emergency legal issues will help to define and narrow issues.

The judge should consider establishing a schedule for filing all pleadings, including counterclaims, cross-claims, third-party complaints, and amendments to pleadings that add parties, claims, or defenses. This avoids later enlargement of issues and expansion or duplication of discovery. The judge should also consider suspending filing of certain pleadings if statutes of limitations present no problems and should consider ordering that specified pleadings, motions, and other court orders (unless specifically disavowed by a party) are “deemed” filed in cases later brought, transferred, or removed, without actually filing the documents (see Sample Order, section 40.42).

The pleadings may disclose issues of law that can be resolved by a motion to dismiss, to strike, or for judgment on the pleadings. Challenges to the court’s personal or subject-matter jurisdiction should take priority. The legal insufficiency of a claim or defense may be raised by motion for failure to state a claim or for partial judgment on the pleadings. If the court considers evidence in connection with such a motion, the motion must be treated as one for summary judgment.<sup>91</sup> Insufficient defenses and irrelevant or duplicative matter can be stricken under Federal Rule of Civil Procedure 12(f). If a motion concerns a pivotal issue that may materially advance the termination of the litigation, the ruling may be certified for interlocutory appeal under 28 U.S.C. § 1292(b) if there is “substantial ground for difference of opinion.” The judge may also provide for appellate review by entering final judgment as to a particular claim or party under Rule 54(b). See section 15.1.

Motion practice can be a source of substantial cost and delay. Following are some points the judge might consider:

- A Rule 12 motion can cause unnecessary expense if the asserted defect can be cured by amendment; therefore, instruct counsel to notify the opposing party and the court before filing such a motion in order to ascertain whether it will serve to narrow the issues in the case.
- Some motions can be decided based on oral presentations and reference to controlling authority, without briefs.
- Limiting the length of briefs and of appendices, affidavits, declarations, and other supporting materials, and requiring joint briefs whenever feasible, will expedite the litigation.

91. Fed. R. Civ. P. 12(b), (c). For discussion of summary judgment, see *infra* section 11.34.

- Prefiling conferences and requiring leave of court for filing of reply or supplemental briefs, or motions for reconsideration, will help avoid useless or unnecessary briefing.
- Prompt rulings from the bench will often help avoid unnecessary litigation activity.
- Some judges issue tentative rulings on motions in advance of the motion hearing. If the parties reject the rulings, they can direct their arguments at the hearing to specific issues.
- Multiparty litigation requires particular attention to scheduling. Counsel should inform the court as soon as possible of any motion to be filed, with sufficient time for opposing counsel to respond and the court to review submissions in advance. Discourage expedited motions unless they concern matters that will delay further proceedings if not resolved. It is sometimes best to specially set multiparty motions rather than schedule them as part of a regular motion docket or calendar call of the court; such motions also may be combined with other status conferences in the litigation.

### 11.33 Identifying, Defining, and Resolving Issues

The process of identifying, defining, and resolving issues begins at the initial conference. The attorneys should confer and submit a tentative statement of disputed issues in advance, agreed on to the extent possible (see section 11.11). The conference is an opportunity for the judge to learn about the material facts and legal issues and for counsel to learn about the opponent's case and gain a better perspective on their own. The judge should be willing to admit ignorance and ask even basic questions. Questions should probe into the parties' claims and defenses and seek *specific* information. Rather than accept a statement that defendant "was negligent" or "breached the contract," the judge should require the attorneys to describe the material facts they intend to prove and how they intend to prove them.

The judge should also inquire into the amount of damages claimed and the proposed proof and manner of computation, including the evidence of causation and the specific nature of any other relief sought (data that may also be subject to mandatory prediscovery disclosure, see section 11.13). The defense should identify the specific allegations and claims it disputes, the specific defenses it will raise, and the proof it will offer. This process helps identify the genuine disputes and may facilitate admissions and stipulations between the parties. The parties may, for example, be able to stipulate to the authenticity of documents or the accuracy of underlying statistical or technical data while reserving the right to dispute assumptions, interpretations, or inferences drawn

from the evidence. The judge may take judicial notice of facts after the opposing party has had an opportunity to proffer contradictory evidence.<sup>92</sup>

A variety of actions can help to identify, define, and resolve issues in complex litigation, including the following:

- requiring nonbinding statements of counsel, such as those that may be required at the initial conference (see section 11.11)—such statements can be updated periodically by written reports or oral statements at later conferences;
- encouraging voluntary abandonment of tenuous claims or defenses by the parties, often after the court’s probing into the likelihood of success and the potential disadvantages of pursuing them;
- requiring counsel to list the essential elements of the cause of action—this exercise, designed to clarify the claims, may help identify elements in dispute and result in abandonment of essentially duplicative theories of recovery;
- incorporating formal amendments to the pleadings, including those resulting from an order under Federal Rule of Civil Procedure 12 striking allegations or requiring a more definite statement;
- using the authority in Rule 16(c)(1) to eliminate insubstantial claims or defenses;<sup>93</sup>
- allowing contention interrogatories (see section 11.461) and requests for admission (see section 11.472), especially when served after adequate opportunity for relevant discovery;

92. See Fed. R. Evid. 201; *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 332 (1949); William J. Flittie, *Judicial Notice in the Trial of Complex Cases*, 31 Sw. L.J. 819, 829–39 (1978).

93. See, e.g., Fed. R. Civ. P. 16(c) committee note; *McLean Contracting Co. v. Waterman S.S. Corp.*, 277 F.3d 477 (4th Cir. 2002) (citing the interest of efficient judicial administration as a basis for 16(c)(1)); *Huey v. United Parcel Serv., Inc.*, 165 F.3d 1084, 1085 (7th Cir. 1999) (holding that a local rule requiring the party to identify disputed issues of material fact or waive arguments related to those issues “contributes to the efficient management of judicial business”); *Morro v. City of Birmingham*, 117 F.3d 508, 515 (11th Cir. 1997) (noting the importance of narrowing and defining the issues before trial); *Lexington Ins. Co. v. Cooke’s Seafood*, 835 F.2d 1364, 1368 (11th Cir. 1988) (“Given the vast number of details competing for the attention of a federal district judge, reducing all issues to writing before the pretrial conference substantially assists the trial court in its ability to understand the issues and to prepare for trial.”); *Diaz v. Schwerman Trucking Co.*, 709 F.2d 1371, 1375 n.6 (11th Cir. 1983) (noting trial court’s power under Rule 16 to summarily decide matters where no issue of fact exists); *Holcomb v. Aetna Life Ins. Co.*, 255 F.2d 577, 580–81 (10th Cir. 1958) (trial court may enter judgment at Rule 16 pretrial conference if no issue of fact); cf. *Fox v. Taylor Diving & Salvage Co.*, 694 F.2d 1349, 1356–57 (5th Cir. 1983) (judge may summarily dispose of unsupportable claim after Rule 16 conference held during recess in trial).

- ruling promptly on motions for full or partial summary judgment (see section 11.34);
- issuing sanctions for violations of Rules 16, 26, and 37 in the form of orders precluding certain contentions or proof (see section 10.15);
- requiring, with respect to one or more issues, that the parties present a detailed statement of their contentions, with supporting facts and evidence (see section 11.641)—the statements may be exchanged, with each party marking those parts it disputes; the order directing this procedure should provide that other issues or contentions are then precluded and no additional evidence may be offered absent good cause;
- requiring the parties to present, in advance of trial, proposed instructions in jury cases (see sections 11.65, 12.43) or proposed findings of fact and conclusions of law in nonjury cases (see section 12.52);
- conducting preliminary hearings under Federal Rule of Evidence 104 on objections to evidence (see section 11.642); and
- conducting a separate trial under Federal Rule of Civil Procedure 42(b) of issues that may render unnecessary or substantially alter the scope of further discovery or trial (see section 11.632)—special verdicts and interrogatories (see section 11.633) may be helpful, and on some issues the parties may waive jury trial (see section 11.62).

## 11.34 Summary Judgment

Summary judgment motions can help identify, define, and resolve issues. As the Supreme Court has stated, summary judgment is “not . . . a disfavored procedural shortcut, but rather . . . an integral part of the Federal Rules.”<sup>94</sup> Summary judgment may eliminate the need for further proceedings or at least reduce the scope of discovery or trial. Even if denied, the parties’ formulations of their positions may help clarify and define issues and the scope of further discovery. In addition, under Federal Rule of Civil Procedure 56(d), the court may issue an order specifying those facts that “appear without substantial controversy” and shall be “deemed established” for trial purposes.

Despite their benefits, summary-judgment proceedings can be costly and time-consuming. To avoid the filing of unproductive motions, the court may require a prefiling conference to ascertain whether issues are appropriate for summary judgment, whether there are disputed issues of fact, and whether the motion, even if granted, would expedite the termination of the litigation. A

94. *Celotex v. Catrett*, 477 U.S. 317, 329 (1986).

separate trial of an issue bifurcated under Rule 42(b) may sometimes be a preferable alternative.

Summary judgment is as appropriate in complex litigation as in routine cases<sup>95</sup>—and, as a general proposition, the standard for deciding a summary judgment motion is the same in all cases.<sup>96</sup> Complex litigation, however, may present complicated issues not as susceptible to resolution as issues in more familiar settings. More extensive discovery may be necessary to create an adequate record for decision.<sup>97</sup> However, the party opposing summary judgment should make the necessary showing under Rule 56(f) in support of its request.<sup>98</sup>

To avoid pretrial activities that may be unnecessary if the summary-judgment motion is granted, the schedule should call for filing the motion as early in the litigation as possible. This will maximize the potential benefits from its disposition while affording the parties an adequate opportunity to conduct discovery relevant to the issues raised, obtain needed evidence, and develop a sufficient record for decision.<sup>99</sup> Allowing adequate time for preparation before the motion is filed should reduce the opposing party's need for granting a continuance under Rule 56(f) to obtain affidavits or conduct further discovery to oppose the motion. Under Rule 56(f), the party requesting a continuance must specify (1) the discovery it proposes to take, (2) the evidence

95. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (approving grant of summary judgment in complex antitrust case).

96. See William W Schwarzer et al., *The Analysis and Decision of Summary Judgment Motions* (Federal Judicial Center 1991), reprinted in 139 F.R.D. 441 (1992) [hereinafter *Summary Judgment*]. For U.S. Supreme Court cases discussing the standard and the parties' respective burdens, see *Eastman Kodak Co. v. Image Technical Servs. Inc.*, 504 U.S. 451 (1992); *Celotex*, 477 U.S. at 317; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita*, 475 U.S. at 574.

97. See William W Schwarzer & Alan Hirsch, *Summary Judgment After Eastman Kodak*, 45 *Hastings L.J.* 1 (1993).

98. See, e.g., *Harrods Ltd. v. Sixty Internet Domain Names*, No. 00-2414, 2002 U.S. App. LEXIS 17530, at \*77 (4th Cir. Aug. 23, 2002); *Fennell v. First Step Designs, Ltd.*, 83 F.3d 526 (1st Cir. 1996); *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d 1386, 1388–90 (Fed. Cir. 1989); *Dowling v. City of Philadelphia*, 855 F.2d 136, 139–40 (3d Cir. 1988); *VISA Int'l Serv. Ass'n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir. 1986); *Madrid v. Chronicle Books*, 209 F. Supp. 2d 1227, 1232–33 (D. Wyo. 2002); *Nicholson v. Doe*, 185 F.R.D. 134, 136–37 (N.D.N.Y. 1999).

99. See *Celotex*, 477 U.S. at 327 (court must allow “adequate time” for discovery); *Anderson*, 477 U.S. at 250 n.5 (nonmoving party must have opportunity to discover information “essential to [its] opposition”). The court must use its discretion to determine what constitutes “adequate time” and what information is “essential” in opposition; requiring all discovery to be completed before entertaining the motion defeats the purpose of summary judgment.

likely to be uncovered, and (3) the material fact issues that evidence will support.

Rule 56(c) directs the court to rule on a summary-judgment motion on the basis of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits.”<sup>100</sup> The affidavits “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.”<sup>101</sup> Because of the volume of discovery materials in complex litigation and the potential for disputes over admissibility, these provisions can be a particular source of problems. The court may either direct the moving party to specify the material facts claimed to be undisputed or direct the opposing party to specify the evidence upon which a claimed factual dispute is based.<sup>102</sup> Objections to evidence may be resolved by a hearing under Federal Rule of Evidence 104.<sup>103</sup> Each party should also submit a clear and unambiguous statement of the theories of its case. Such statements in the motion and the opposition will minimize the risk of error, as will a tentative ruling before hearing the motion.

The ruling on the motion should be in writing or read into the record, and it should lay out the court’s reasoning. It is important to decide such motions promptly; deferring rulings on summary judgment motions until the final pretrial conference defeats their purpose of expediting the disposition of issues.

100. Fed. R. Civ. P. 56(c). The court may also hold an evidentiary hearing under Rule 43(e), but when the motion cannot be decided because the parties’ submissions are unclear, the court may instead simply require additional, clarifying submissions.

101. Fed. R. Civ. P. 56(e). The requirements of personal knowledge and admissibility in evidence presumably apply also to the use of depositions and interrogatory answers. See 10A Charles A. Wright et al., *Federal Practice and Procedure: Civil 3d* § 2722 (3d ed. 1998).

102. For example, the parties should identify relevant deposition evidence by deponent, date, place of deposition, and page numbers; similarly detailed information should be provided for all other evidence submitted. Copies of relevant materials should be included with the moving and opposing papers. See Summary Judgment, *supra* note 96, at 480–81 & n.221; *Schneider v. TRW, Inc.*, 938 F.2d 986, 990 n.2 (9th Cir. 1991).

103. See *In re Japanese Elec. Prods. Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir. 1983), *rev’d on other grounds sub. nom. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

## 11.4 Discovery

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The Federal Rules of Civil Procedure, along with the court's inherent power, provide ample authority<sup>104</sup> for early and ongoing control of discovery in complex litigation.

### 11.41 Relationship to Issues

Fundamental to controlling discovery is directing it at the material issues in controversy. The general principle governing the scope of discovery stated in Rule 26(b)(1) permits discovery of matters, not privileged, “relevant to the claim or defense of any party.” The court has discretion to expand that to “any matter relevant to the subject matter involved in the action.”<sup>105</sup> But Rule 26(b)(2) directs the court to limit the frequency and extent of use of the discovery methods permitted by the rules in order to prevent “unreasonably cumulative or duplicative” discovery and discovery for which “the burden or expense . . . outweighs its likely benefit, taking into account the needs of the case . . . the importance of the issues at stake . . . and the importance of the proposed discovery in resolving the issues.” This underlying principle of proportionality means that even in complex litigation, discovery does not require leaving no stone unturned.

Early identification and clarification of issues (see section 11.3) is essential to discovery control. It enables the court to assess the materiality and relevance of proposed discovery and provides the basis for a fair and effective discovery plan. A plan established early in the litigation needs to take into account the possibility of revisions based on information gained through discovery. Alternative approaches to the sequencing of discovery have different costs and benefits. For example, deferring discovery on damages until liability has been decided may result in savings, but may also lead to duplicative discovery if resumed. Conversely, conducting discovery on damages before discovery on liability will sometimes facilitate early settlement by informing the parties of their potential exposure, but may be rendered unnecessary if the defendant is found not liable.

104. See *Herbert v. Lando*, 441 U.S. 153, 177 (1979); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350–54 (1978).

105. Fed. R. Civ. P. 26(b)(1).

## 11.42 Planning and Control

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A discovery plan should facilitate the orderly and cost-effective acquisition of relevant information and materials and the prompt resolution of discovery disputes. The plan should reflect the circumstances of the litigation, and its development and implementation must be a collaborative effort with counsel. The judge should ask the lawyers initially to propose a plan, but should not accept joint recommendations uncritically. Limits may be necessary even regarding discovery on which counsel agree. The judge's role is to oversee the plan and provide guidance and control. In performing that role, even with limited familiarity with the case, the judge must retain responsibility for control of discovery. The judge should not hesitate to ask why particular discovery is needed and whether information can be obtained more efficiently and economically by other means. Regular contact with counsel through periodic conferences will enable the judge to monitor the progress of the plan, ensure that it is operating fairly and effectively, and adjust it as needed.

### 11.421 Discovery Plan/Scheduling Conference

Adoption of a discovery plan is a principal purpose of the initial conference.<sup>106</sup> The initial conference should be preceded by a conference of counsel to develop a discovery plan for submission to the court.<sup>107</sup> Rule 26(f) requires such conferring and places joint responsibility on the attorneys of record and all unrepresented parties to arrange, attend (or be represented at), and participate in good faith in the conference. Rule 26(d) bars discovery, absent stipulation or court order, before that conference. An exception is found in Rule 30(a)(2)(C), which allows a deposition to be taken before the discovery conference if the notice contains a certification, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country unless deposed before that time. Such a deposition may

106. See Fed. R. Civ. P. 16(c)(6). See also *supra* sections 11.11, 11.33.

107. For a discussion of the factors to be considered in formulating a discovery plan, see William W Schwarzer et al., *Civil Discovery and Mandatory Disclosure: A Guide to Efficient Practice* (2d ed. 1994).

not be used against a party who demonstrates that it was unable through diligence to obtain counsel to represent it at the deposition.<sup>108</sup>

Within fourteen days after conferring the parties must submit to the court a written report outlining their discovery plan.<sup>109</sup> The plan should address

- the form and timing of disclosure;
- the subjects of and completion date for discovery; and
- the possibility of phasing, limiting, or focusing discovery in light of the issues.

The parties' submission will be the starting point for developing the plan. If necessary, the court should direct the parties to resume discussion to prepare a more useful and reasonable plan. Rule 37(g) allows the court, after opportunity for hearing, to assess reasonable costs, including attorneys' fees, against a party or attorney failing to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 26(f). It is ordinarily best to defer commencement of discovery until after a plan has been adopted.

Actions taken at the conference bearing on the discovery plan may include the following:

- examining the specifics of proposed discovery in light of Rule 26(b)(2), which calls for
  - limiting discovery that is cumulative or duplicative, or that is more convenient, less burdensome, or less expensive to obtain from another source, or that seeks information the party has had ample opportunity to obtain; and
  - balancing the burden and expense of any discovery sought against its benefit, after considering the need for the discovery, the importance of the amount or issues at stake, and the parties' resources;
- directing disclosure of core information where appropriate to avoid the cost and delay of formal discovery (see section 11.13);
- discussing issues related to the format, compression, resolution, and alteration of documents, photographs, videotapes, and other materials to be exchanged in digital form;<sup>110</sup>
- reminding counsel of their professional obligations in conducting discovery and the implications of the certification under Rule 26(g) that

108. Fed. R. Civ. P. 32(a)(3).

109. For a sample report, see Federal Rule of Civil Procedure appendix of forms (form 35).

110. See Effective Use of Courtroom Technology, *supra* note 85, at 61–97. Also see the material regarding form of production in *infra* section 11.446.

all disclosures and discovery responses are complete and correct when made, and that requests, objections, and responses conform to the requirements of the Federal Rules;

- providing for compliance with the supplementation requirements of Rules 26(e)(1) and (2)<sup>111</sup> by setting periodic dates for additional reports;
- requiring periodic status reports to monitor the progress of discovery (which can be informal, by letter or telephone); and
- issuing an order, which may be a part of the scheduling order required by Rule 16(b) (see section 11.212), which incorporates the discovery plan (for a sample order, see section 40.24).

### 11.422 Limitations

Discovery control in complex litigation may take a variety of forms, including time limits, restrictions on scope and quantity, and sequencing. The Federal Rules and the court's inherent power provide the court with broad authority. Among other provisions, Federal Rule of Civil Procedure 16(b) directs the court to limit the time for discovery, and Rule 26(b) empowers the court to limit the "frequency or extent of use of the discovery methods" under the rules, including the length of depositions. Rule 30(a) imposes a presumptive limit of ten depositions per side. Rule 30(d) has a presumptive durational limit of one 7-hour day for any deposition. Rule 33 establishes a presumptive limit of twenty-five interrogatories per party (see sections 11.451, 11.462). Rule 26(f)(3) requires the parties to address discovery limits in their proposed discovery plan.

Presumptive limits should be set early in the litigation, before discovery has begun. Information about the litigation will be limited at that time, so limits may need to be revised in the light of later developments. But they should be imposed on the basis of the best information available at the time, after full consultation with counsel, and with the understanding that they will remain binding until further order. In determining appropriate limits, the court will need to balance efficiency and economy against the parties' need to develop an adequate record for summary judgment or trial. This task further underlines the importance of clarifying and understanding the issues in the case before

111. Rule 26(e)(2) does not apply to deposition testimony, but when the deposition of an expert from whom a report was required under Rule 26(a)(2)(B) reveals changes in the expert's opinion, it triggers the duty of supplementation imposed by Rule 26(e)(1). See Fed. R. Civ. P. 26 committee note; Fed. R. Civ. P. 26(a)(2)(C).

imposing limits.<sup>112</sup> The following are examples of discovery limits that a judge might consider:

- *Time limits and schedules.* The discovery plan should include a schedule for the completion of specified discovery, affording a basis for judicial monitoring of progress. Setting a discovery cutoff date<sup>113</sup> is an important objective, but may not be feasible at the initial conference in complex litigation. The discovery cutoff should not be so far in advance of the anticipated trial date that the product of discovery becomes stale and the parties' preparation outdated. Time limits impose valuable discipline on attorneys, forcing them to be selective and helping to move the case expeditiously, but standing alone they may be insufficient to control discovery costs. Unless time limits are complemented by other limitations, attorneys may simply conduct multi-track discovery, thereby increasing expense and prejudicing parties with limited resources. To prevent time limits from being frustrated, the judge should rule promptly on disputes so that further discovery is not delayed or hampered while a ruling is pending. Although attorneys will sometimes argue over "priorities," the rules provide for no such presumptive standing.
- *Limits on quantity.* Time limits may be complemented by limits on the number and length of depositions, on the number of interrogatories, and on the volume of requests for production. Imposing such limitations only after hearing from the attorneys makes possible a reasonably informed judgment about the needs of the case. Limitations are best applied sequentially to particular phases of the litigation, rather than as aggregate limitations. When limits are placed on discovery of voluminous transactions or other events, consider using statistical sampling techniques to measure whether the results of the discovery fairly represent what unrestricted discovery would have been expected to produce (section 11.493 discusses statistical sampling).
- *Phased, sequenced, or targeted discovery.* Counsel and the judge will rarely be able to determine conclusively early in the litigation what discovery will be necessary; some discovery of potential relevance at the outset may be rendered irrelevant as the litigation proceeds, and the need for other discovery may become known only through later developments. For effective discovery control, initial discovery should focus on matters—witnesses, documents, information—that appear

112. See Schwarzer & Hirsch, *supra* note 97.

113. See *In re Fine Paper Antitrust Litig.*, 685 F.2d 810 (3d Cir. 1982).

pivotal. As the litigation proceeds, this initial discovery may render other discovery unnecessary or provide leads for further necessary discovery. Initial discovery may also be targeted at information that might facilitate settlement negotiations or provide the foundation for a dispositive motion; a discovery plan may call for limited discovery to lay the foundation for early settlement discussions. Targeted discovery may be nonexhaustive, conducted to produce critical information rapidly on one or more specific issues. In permitting this kind of discovery, it is important to balance the potential savings against the risk of later duplicative discovery should it be necessary to resume the deposition of a witness or the production of documents. Targeted discovery may in some cases be appropriate in connection with a motion for class certification; however, matters relevant to such a motion may be so intertwined with the merits that targeting discovery would be inefficient. See sections 11.41 and 21.2.

- *Subject-matter priorities.* Where the scope of the litigation is in doubt at the outset—as, for example, in antitrust litigation—the court should consider limiting discovery to particular time periods or geographical areas, until the relevance of expanded discovery has been established. See section 11.41.
- *Sequencing by parties.* Although discovery by all parties ordinarily proceeds concurrently, sometimes one or more parties should be allowed to proceed first. For example, if a party needs discovery to respond to an early summary judgment motion, that party may be given priority. Some judges establish periods in which particular parties have exclusive or preferential rights to take depositions, and in multiple litigation, those judges direct that discovery be conducted in some cases before others. Sometimes judges order “common” discovery to proceed in a specified sequence, without similarly limiting “individual” discovery in the various cases.
- *Forms of discovery.* Some judges prescribe a sequence for particular types of discovery—for example, interrogatories may be used to identify needed discovery and documents, followed by requests for production of documents, depositions, and finally requests for admission.

If the court directs that discovery be conducted in a specified sequence, it should grant leave to vary the order for good cause, as when emergency depositions are needed for witnesses in ill health or about to leave the country.

### 11.423 Other Practices to Save Time and Expense

Various other practices can help minimize the cost, delay, and burden associated with discovery. Consider reminding counsel of the following:

- *Stipulations under Federal Rule of Civil Procedure 29.* The rule gives parties authority to alter procedures, limitations, and time limits on discovery so long as they do not interfere with times set by court order. Thus, the parties can facilitate discovery by stipulating with respect to notice and manner of taking depositions and adopting various informal procedures. The court may, however, require that it be kept advised of such agreements to ensure compliance with the discovery plan and may by order preclude stipulations on particular matters.
- *Informal discovery.* The court should encourage counsel to exchange information, particularly relevant documents, without resort to formal discovery (see section 11.13). Early exchanges can make later depositions more efficient. Informal interviews with potential witnesses can help determine whether a deposition is needed, inform later discovery, and provide the basis for requests for admissions through which the results of informal discovery are made admissible at trial.
- *Automatic disclosure.* Rule 26(a)(1) and many local rules and standing orders require the parties to identify relevant witnesses and categories of documents early in the litigation, without waiting for discovery requests. By stipulation or court order, the timing and content of this disclosure may be tailored to the needs of the particular case. See section 11.13.
- *Reduction of deposition costs.* Depositions taken by telephone, videoconference, electronic recording devices, or having deponents come to central locations sometimes save money. Likewise, parties may forgo attending a deposition in which they have only a minor interest if a procedure is established for supplemental questions—by telephone, videoconference, written questions, or resumption of examination in person—in the event that, after a review of the transcript, they find further inquiry necessary. Section 11.45 has additional discussion of deposition practices.
- *Information from other litigation and sources.* When information is available from public records (such as government studies or reports),

from other litigation,<sup>114</sup> or from discovery conducted by others in the same litigation, consider requiring the parties to review those materials before undertaking additional discovery. The court may limit the parties to supplemental discovery if those materials will be usable as evidence in the present litigation. Interrogatory answers, depositions, and testimony given in another action ordinarily are admissible if made by and offered against a party in the current action. Similarly, they may be admissible for certain purposes if made by a witness in the current action.<sup>115</sup> Coordination of “common” discovery in related litigation may also save costs, even if the litigation is pending in other courts. If related cases are pending in more than one court, coordinated common discovery can prevent duplication and conflicts. A joint discovery plan can be formulated for all cases, with agreement among parties that one of the cases will be treated as the lead case (with its discovery plan serving as the starting point for development of supplemental plans in the other courts), or with the use of joint deposition notices. See section 20. Counsel may also agree that discovery taken in one proceeding can be used in related proceedings as though taken there.

- *Joint discovery requests and responses.* In multiparty cases with no designated lead counsel, judges sometimes require parties with similar positions to submit a combined set of interrogatories, requests for production, or requests for admission. If voluminous materials are to be produced in response, the responding party may be relieved of the requirement of furnishing copies to each discovering party. Section 11.44 has further discussion of document discovery, including use of document depositories.
- *Modified discovery responses.* When a response to a discovery request can be provided in a form somewhat different from that requested, but with substantially the same information and with less time and expense, the responding party should make that fact known and seek agreement from the requesting party. For example, information sought on a calendar year basis may be readily and inexpensively available on a fiscal year basis. Similarly, if some requested information can be produced promptly but additional time will be needed for other items, the responding party should produce the information presently

114. Access to materials and testimony given in other cases may be impeded because of confidentiality orders, restrictions on release of grand jury materials, and other limitations. See *infra* sections 11.43 and 20.

115. See Fed. R. Evid. 801(d). The parties may stipulate to the admissibility of other information.

available and indicate when the remainder will be produced. Preferably, formal discovery requests should be prepared only after counsel have informally discussed what information is needed and how it can be produced most efficiently.

- *Phased or sequenced discovery of computerized data.* Sections 11.41 and 11.422 have discussed phasing discovery by issue. Computerized data, however, are often not accessible by date, author, addressee, or subject matter without costly review and indexing. Therefore, it may be appropriate for the court to phase or sequence discovery of computerized data by accessibility. At the outset, allowing discovery of relevant, nonprivileged data available to the respondent in the routine course of business is appropriate and should be treated as a conventional document request. If the requesting party requests more computerized data, consider additional sources in ascending order of cost and burden to the responding party, e.g., metadata or system data, archived data, backup data, and legacy data.<sup>116</sup> The judge should encourage the parties to agree to phased discovery of computerized data as part of the discovery plan. But with or without a prior agreement, the judge may engage in benefit-and-burden analysis under Rule 26(b)(2)(iii) at each stage and enter an appropriate order under Rule 26(c), which may include cost sharing between the parties or cost shifting to the requesting party.<sup>117</sup> See section 11.433.
- *Computerized data produced in agreed-on formats.* Information subject to discovery increasingly exists in digital or computer-readable form. The judge should encourage counsel to produce requested data in formats and on media that reduce transport and conversion costs, maximize the ability of all parties to organize and analyze the data during pretrial preparation, and ensure usability at trial. Wholesale conversion of computerized data to paper form for production, only to be reconverted into computerized data by the receiving party, is costly and wasteful. Particularly in multiparty cases, data production on CD-ROM or by Internet-based data transfer can increase efficiency. Section 11.444 discusses “virtual” document depositories.

116. For explanations of these terms, see Kenneth J. Withers, *Computer-Based Discovery in Federal Civil Litigation*, 2000 Fed. Cts. L. Rev. 2, at <http://www.fclr.org/2000fedctslrev2.htm> (last visited Nov. 3, 2003); see also *infra* section 11.446.

117. See *Zubulake v. UBS Warburg LLC*, 2003 U.S. Dist. LEXIS 7939 (S.D.N.Y.) (defining five common categories of data accessibility, proposing sampling of backup data, and applying a seven-factor test in considering cost sharing or cost shifting).

- *Sampling of computer data.* Parties may have vast collections of computerized data, such as stored E-mail messages or backup files containing routine business information kept for disaster recovery purposes. Unlike collections of paper documents, these data are not normally organized for retrieval by date, author, addressee, or subject matter, and may be very costly and time-consuming to investigate thoroughly. Under such circumstances, judges have ordered that random samples of data storage media be restored and analyzed to determine if further discovery is warranted under the benefit versus burden considerations of Rule 26(b)(2)(iii).<sup>118</sup>
- *Combined discovery requests.* Several forms of discovery can be combined into a single request. Ordinarily, more time should be allowed for parties responding to a combined discovery request, even though such responses sometimes consume less overall time than do responses to traditional separate discovery requests. Because the rules impose no limits on requests for admission as they do on interrogatories, an order enlarging the number of permissible interrogatories may be necessary.
- *Conference depositions.* If knowledge of a subject is divided among several people and credibility is not an issue, a “conference deposition” may be feasible (see, e.g., Rule 26(b)(6)). Each witness is sworn, and the questions are then directed to the group or those having the information sought. Persons in other locations who may also be needed to provide information may be scheduled to be “on call” during the conference deposition. This procedure may be useful in obtaining background information, identifying and explaining documents, and examining reports compiled by several persons.
- *Subpoenas.* Under Rule 45, an attorney may subpoena documents or other tangibles from nonparties, avoiding unnecessary depositions. The rule also provides for subpoenas to permit inspection of premises possessed by nonparties, rendering unnecessary the commencement of an independent proceeding. See section 11.447.

#### 11.424 Resolution of Discovery Disputes

Discovery disputes, with their potential for breeding satellite litigation, are a major source of cost and delay. Few aspects of litigation management are more important than the prompt and inexpensive resolution of such controversies. Procedures such as those described here take little judicial time but

118. *Id.*

result in substantial improvements in the conduct of discovery by deterring counsel from obstructive conduct. Such procedures are equally effective when a magistrate judge manages discovery.

A discovery plan should include specific provisions, such as the following, for the fair and efficient resolution of discovery disputes.

*Presubmission conference of counsel.* Submission of a dispute or a request for relief should be disallowed until the parties have met and attempted to resolve it. Rules 37(a) and 26(c) condition the right to make a motion to compel or for a protective order upon certification that the movant has in good faith conferred or attempted to confer with the opponent to resolve the matter without court action. Most local rules require such a conference before counsel may bring a discovery dispute to the court (some judges require the participation of local counsel in this conference).<sup>119</sup> The discovery plan or scheduling order, however, should specify the ground rules for such conferences, such as requiring that the party requesting the conference send the opponent a clear and concise statement of the asserted deficiencies or objections and the requested action. Having to narrow and define the dispute and the requested relief should cause counsel to prepare for the conference, consult with clients, and seek a resolution that will avoid the need for judicial intervention. Any resulting resolution should be put in writing.

*Submission to the court.* Many judges believe that making themselves available to resolve discovery disputes informally discourages disputes and encourages quick resolution of those that are submitted. Some judges direct counsel to present disputes by conference call. Others direct submission by letter. A brief excerpt of the transcript containing relevant proceedings, either in writing or read by the reporter over the phone, will help the decision maker. The availability of a speedy resolution process, particularly during the course of a deposition, tends to deter unreasonable and obstructive conduct. The incentive for unreasonable behavior is reduced when the judge (or magistrate judge) is readily available by telephone and the opponent can obtain prompt relief (see section 11.456).

Avoiding formal motions in discovery disputes also forces attorneys to narrow and simplify the dispute rather than to elaborate on it as they would in a brief. Questions from the judge will further narrow and clarify the dispute. Often, the appropriate resolution becomes self-evident during the course of the conference. Even if informal presentation does not resolve a dispute, it can help to define and narrow it for further proceedings.

119. See, e.g., William W Schwarzer, *Guidelines for Discovery, Motion Practice and Trial*, 117 F.R.D. 273 (1987).

If informal procedures fail or are rejected, it helps to adopt procedures that minimize the activity needed to resolve the dispute. These procedures include restricting the length of motions, memoranda, and supporting materials, barring replies generally, and setting time limits for submission. Discovery disputes involving issues having a significant impact on the litigation—such as rulings on privilege—may require substantial proceedings. The judge should avoid discovery with respect to the discovery dispute itself except in extraordinary circumstances.

Special masters can successfully oversee discovery, particularly where there are numerous issues—such as claims of privilege—to resolve or where the parties are extraordinarily contentious. Appointing special masters, however, can increase substantially the cost of litigation, although the resulting efficiencies could result in offsetting savings. In any event, the court should avoid such appointments where the parties object with good cause or cannot afford the cost.<sup>120</sup>

Counsel sometimes may submit certain discovery disputes to a judge outside of the district. Lawyers sometimes submit a motion, for example, to compel or terminate a deposition held outside the district where the action is pending, or a motion for a protective order, either to the judge before whom it is pending or to a judge in the district where the deposition is being held.<sup>121</sup> In complex litigation, however, particularly if procedures have already been established for expedited consideration, consider requiring all such matters to be presented to the assigned judge. Federal Rule of Civil Procedure 37(a)(1) requires counsel to present a motion to compel to the court in which the action is pending if directed at a party; only if directed at a nonparty must it be presented to a court in the district where the discovery is taken. When a dispute is presented to a deposition-district court, however, the assigned judge may have or be able to obtain authority to act also as deposition judge in that district, and may be able to exercise those powers by telephone.<sup>122</sup> In multidistrict litigation under 28 U.S.C. § 1407(b), “the judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conduct-

120. See *infra* section 11.52; Brazil et al., *supra* note 21 (based on experience in United States v. Am. Tel. & Tel. Co., 461 F. Supp. 1314 (D.D.C. 1978), 552 F. Supp. 131 (D.D.C. 1982), *aff’d mem. sub nom.* Md. v. United States, 460 U.S. 1001 (1983)).

121. Fed. R. Civ. P. 26(c), 30(d).

122. See *In re Corrugated Container Antitrust Litig.*, 662 F.2d 875, 877, 879 (D.C. Cir. 1981); *In re Corrugated Container Antitrust Litig.*, 644 F.2d 70 (2d Cir. 1981) (tacitly assuming power); *In re Corrugated Container Antitrust Litig.*, 620 F.2d 1086, 1089 (5th Cir. 1980).

ing pretrial depositions.” In other cases, an interdistrict or intercircuit assignment may enable the judge to whom the case is assigned to act as deposition judge in another district. In such cases, the deposition-district judge can always confer with the forum-district judge by telephone and thereby expedite a ruling.

*Rulings.* The judge should try to expedite the resolution of discovery disputes by whatever procedure is adopted. Pending disputes disrupt the discovery program and result in additional cost and delay. It is generally more important to the parties that the dispute be decided promptly than that it be decided perfectly, and it is best to memorialize the resolution on the record or by written order. Thus, consider directing prevailing counsel to prepare a proposed order and submit it to the opponent for review and then to the court. If the order is made at a conference during a deposition, the conference and order can be transcribed as part of the deposition transcript.

## 11.43 Privilege Claims and Protective Orders

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Attention should be given at an early conference, preferably before discovery begins, to any need for procedures to accommodate claims of privilege or for protection of materials from discovery as trial preparation materials,<sup>123</sup> as trade secrets, or on privacy grounds.<sup>124</sup> If not addressed early, these matters may later disrupt the discovery schedule. The court should consider not only the rights and needs of the parties but also the existing or potential interests of those not involved in the litigation.<sup>125</sup>

123. “Trial preparation materials” include, but are not limited to, traditional “work product.” See Fed. R. Civ. P. 26(b)(3) & committee note.

124. Although there is no privacy privilege, maintenance of privacy can be the ground for a protective order. See *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 30, 35 n.21 (1984).

125. For a thorough discussion of the issues raised by protective orders, see *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866 (E.D. Pa. 1981). See also *Seattle Times*, 467 U.S. 20; Richard L. Marcus, *The Discovery Confidentiality Controversy*, 1991 U. Ill. L. Rev. 457 (1991).

### 11.431 Claims of Privilege/Full Protection

Certain materials may qualify for full protection against disclosure or discovery as privileged,<sup>126</sup> as trial preparation material,<sup>127</sup> or as incriminating under the Fifth Amendment.<sup>128</sup> It helps to minimize their potentially disruptive effects on discovery, by addressing the possibility of such claims at an early conference and establishing a procedure for their resolution or for avoidance through appropriate sequencing of discovery. Parties sometimes try to facilitate discovery by agreeing that the disclosure of a privileged document will not be deemed a waiver with respect to that document or other documents involving the same subject matter. Some courts, however, have refused to enforce such agreements.<sup>129</sup>

A claim for protection against disclosure based on privilege or protection of trial preparation materials must be made “expressly” and describe the nature of the allegedly protected information sufficiently to enable opposing parties to assess the merits of the claim.<sup>130</sup> This is usually accomplished by counsel submitting a log (frequently called a “*Vaughn Index*”<sup>131</sup>) identifying documents or other communications by date and by the names of the author(s) and recipient(s), and describing their general subject matter (without revealing the privileged or protected material).<sup>132</sup> Unresolved claims of privilege should be presented directly to the judge for a ruling; if necessary, the judge can review the disputed information *in camera*.

Parties seeking protection, however, sometimes request that the trial judge not see the document, especially in a nonjury case. In such circumstances, the judge should consider referring the matter to another judge, a magistrate

126. Rulings on claims of privilege in diversity cases are governed by Federal Rule of Evidence 501, which provides that privilege is determined by state law where state law supplies the rule of decision.

127. See Fed. R. Civ. P. 26(b)(3), which extends qualified protection to such materials.

128. Potential Fifth Amendment claims are one reason why discovery in civil litigation may be stayed, in whole or in part, until termination of related criminal proceedings. See *infra* section 20.2. Conclusion of the criminal case, however, will not necessarily avoid further assertions of the privilege against self-incrimination.

129. See *In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 860 F.2d 844, 846–47 (8th Cir. 1988); *Khandji v. Keystone Resorts Mgmt., Inc.*, 140 F.R.D. 697, 700 (D. Colo. 1992); *Chubb Integrated Sys. v. Nat’l Bank*, 103 F.R.D. 52, 67–68 (D.D.C. 1984).

130. Fed. R. Civ. P. 26(b)(5), 45(d)(2). Withholding materials otherwise subject to disclosure without such notice may subject a party to Rule 37 sanctions and waive the privilege or protection. See Fed. R. Civ. P. 26 committee note.

131. See *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973).

132. Rule 26(b)(5) does not specify the information that must be provided, which may depend on the nature and amount of material withheld. See Fed. R. Civ. P. 26 committee note.

judge, or a special master. Judges, however, are accustomed to reviewing matters that may not be admissible; therefore, counsel should restrict such requests to the most sensitive, potentially prejudicial materials and be prepared to indicate, at least in general terms, the basis for the request.

In complex litigation involving voluminous documents, privileged materials are occasionally produced inadvertently. The parties may stipulate, or an order may provide, that such production shall not be considered a waiver of privilege and that the party receiving such a document shall return it promptly without making a copy.<sup>133</sup>

### 11.432 Limited Disclosure/Protective Orders

Complex litigation will frequently involve information or documents that a party considers sensitive. There are two approaches to seeking protection for such material: (1) one or more parties may seek “umbrella” protective orders, usually by stipulation, or (2) the claim to protection may be litigated document by document.

*Umbrella orders.* When the volume of potentially protected materials is large, an umbrella order will expedite production, reduce costs, and avoid the burden on the court of document-by-document adjudication. Umbrella orders provide that all assertedly confidential material disclosed (and appropriately identified, usually by stamp) is presumptively protected unless challenged. Such orders typically are made without a particularized showing to support the claim for protection, but such a showing must be made whenever a claim under an order is challenged. Some courts have therefore found that umbrella orders simply postpone, rather than eliminate, the need for close scrutiny of discovery material to determine whether protection is justified, thereby delaying rather than expediting the litigation.<sup>134</sup>

133. See *In re Bridgestone/Firestone, Inc.*, 129 F. Supp. 2d 1207, 1219 (S.D. Ind. 2001) (Case Management Order dated Jan. 30, 2001).

134. See *John Does I–VI v. Yogi*, 110 F.R.D. 629, 632 (D.D.C. 1986). The problems of preserving protection for documents produced under umbrella orders are aggravated by the understandable tendency of counsel to err on the side of caution by designating any possibly sensitive documents as confidential under the order. The time saved by excessive designations, however, may be more than offset by the difficulties of later opposing some request for access or disclosure. Although the judge, in the interest of reducing the time and expense of the discovery process, should be somewhat tolerant of this practice, counsel should not mark documents as protected under the order without a good-faith belief that they are entitled to protection. Counsel should also be cautioned against objecting to document requests without first ascertaining that the requested documents exist. The designation of a document as confidential should be viewed as equivalent to a motion for a protective order and subject to the sanctions of Federal Rule of Civil Procedure 37(a)(4), as provided by Rule 26(c).

Applications for umbrella orders, usually presented to the court by stipulation of the parties, should specify the following matters:<sup>135</sup>

- the categories of information subject to the order;
- the procedure for determining which particular documents are within protected categories;<sup>136</sup>
- the procedure for designating and identifying material subject to the confidentiality order;<sup>137</sup>
- the persons who may have access to protected materials;
- the litigation support providers' access to protected materials (support providers include consulting experts, document indexers, and technicians who prepare courtroom exhibits and demonstrative aids);
- the extent to which protected materials may be used in related litigation;<sup>138</sup>
- the procedures for maintaining security; for example, information may be sealed or exempted from filing with the court under Federal Rule of Civil Procedure 5(d) or 26(a)(4), and copying or computerization of particularly sensitive documents may be prohibited or tightly controlled;<sup>139</sup>
- the procedures for challenging particular claims of confidentiality—a common procedure is for the producing party to mark all assertedly protected material “confidential”; the opposing party then has a specified period, usually about two weeks, within which to contest the designation;<sup>140</sup>

135. See sample orders *infra* section 40.27.

136. Umbrella orders do not eliminate the burden on the person seeking protection of justifying the relief sought as to every item, but simply facilitate rulings on disputed claims of confidentiality. See *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1122 (3d Cir. 1986).

137. Items produced under a claim of confidentiality should be identified with some special marking at the time of production to ensure that all persons know exactly what materials have been designated as confidential throughout the litigation. Specific portions of deposition transcripts may be marked as confidential through a written designation procedure; see sample order *infra* section 40.27, ¶ (g). If numerous documents are involved, a log may be maintained describing the documents and identifying the persons having access to them.

138. Restrictions on use in other litigation may not provide complete protection. See, e.g., *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693 (9th Cir. 1993) (reversing contempt order where party used confidential information but did not reveal trade secrets).

139. See sample order *infra* section 40.27.

140. See *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 529 (1st Cir. 1993). The burden remains on the party seeking protection; the opposing party need not offer affidavits to support a challenge. See *id.* at 531.

- the exceptions, if any, to the general prohibitions on disclosure; for example, the order may allow otherwise protected information to be shown to a witness at or in preparation for a deposition; the order usually provides that if a party desires to make a disclosure not clearly permitted, advance notice will be given to the other parties and the dispute, if not resolved by agreement, may be presented to the court for a ruling before disclosure;
- the termination of the order after the litigation or at another time;
- the return or destruction of materials received; and
- the court’s authority to modify the order, both during and after conclusion of the litigation.

*Particularized protective orders.* A person from whom discovery is sought may move under Rule 26(c) for a protective order limiting disclosure or providing for the confidentiality of information produced. As with other discovery motions, the movant must first make a good-faith attempt to resolve the dispute without court action;<sup>141</sup> the parties should address the subject of protective orders in their proposed discovery plan.<sup>142</sup> Rule 26(c) allows the court to “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” The court should enter a protective order only when the movant makes a particularized showing of “good cause,” by affidavit or testimony of a witness with personal knowledge, of the specific harm that would result from disclosure or loss of confidentiality—generalities and unsupported contentions do not suffice.<sup>143</sup> When directed solely at discovery materials, protective orders are not subject to the high level of scrutiny required by the Constitution to justify prior restraints; rather, courts have broad discretion at the discovery stage to decide when a protective order is appropriate and what degree of protection is required.<sup>144</sup>

In fashioning the order, it is important to balance the movants’ legitimate concerns about confidentiality against the legitimate needs of the litigation, individual privacy, or the commercial value of information.<sup>145</sup> Protecting only material for which a clear and significant need for confidentiality has been

141. Fed. R. Civ. P. 26(c).

142. Fed. R. Civ. P. 26(f)(4).

143. See *Cipollone v. Liggett Group Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986), and cases cited therein; see also *Smith v. BIC Corp.*, 869 F.2d 194 (3d Cir. 1989).

144. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36–37 (1984).

145. See Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 428, 476 (1991).

shown<sup>146</sup> will reduce the burdensomeness of the order and render it less vulnerable to later challenge.

*Modification and release.* A protective order is always subject to modification or termination for good cause.<sup>147</sup> Even where the parties have consented to entry of a protective order, they may later seek its modification to allow dissemination of information received. Nonparties, including the media, government investigators, public interest groups, and parties in other litigation, may seek modification to allow access to protected information. In assessing such requests, courts balance the potential harm to the party seeking protection against the requesting party's need for the information and the public interest served by its release. Also relevant may be the disclosing party's degree of reliance on the protective order when disclosure was made. If a party freely disclosed information without contest based on the premise that it would remain confidential, subsequent dissemination may be unfair and may, in the long run, reduce other litigants' confidence in protective orders, rendering them less useful as a tool for preventing discovery abuse and encouraging more strenuous objections to discovery requests.<sup>148</sup> Courts of appeals apply different standards in balancing the continuing need for protection against the gains in efficiency and judicial economy that may result from release.<sup>149</sup> If the latter factors support release of otherwise confidential material, the court might consider redacting the material, allowing access only to that information necessary to serve the purpose for which release was granted. In addition, it is helpful to define the terms of the release, including precisely who may have access to the information and for what purpose.

A common basis for nonparty requests for release is the need for the information in related litigation. Conversely, the parties may seek discovery of information subject to a protective order in other litigation. Generally, the

146. See *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532 (1st Cir. 1993) (citing Francis H. Hare Jr. et al., *Confidentiality Orders* § 4.10 (1988)).

147. See *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 782–83 (1st Cir. 1988), and cases cited therein; see also *In re "Agent Orange" Prod. Liab. Litig.*, 821 F.2d 139, 145 (2d Cir. 1987). Even without modification, a protective order may fail to prevent disclosure of information as required by law. See, e.g., 15 U.S.C. § 1312(c)(2) (2000) (requiring access to discovery materials pursuant to a civil investigative demand despite protective order).

148. See *Miller*, *supra* note 145, at 499–500; cf. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 778 (3d Cir. 1994); *Meyer Goldberg, Inc. v. Fisher Foods, Inc.*, 823 F.2d 159, 163 (6th Cir. 1987); *Palmieri v. New York*, 779 F.2d 861, 863 (2d Cir. 1985).

149. See *SEC v. TheStreet.com*, 273 F.3d 222, 231 (2d Cir. 2001); *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428 (10th Cir. 1990) (citing cases). If the party seeking information would be entitled to obtain it in the other litigation, there is little need to require redundant discovery proceedings. See *id.* (citing *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1299 (7th Cir. 1980)).

party seeking discovery should first establish its right to discovery in the court in which it will be used. If that court permits discovery, it should normally determine the effect this will have given the earlier protective order issued by the other court. Section 11.423 discusses the use of documents from other litigation. Even where the protective order contains a provision prohibiting such use, the court that entered the order is permitted to require such disclosure, subject to appropriate restrictions on further use and disclosure.<sup>150</sup> In making this determination, the court should balance the continuing need for protection against the efficiency and judicial economy that may result from release. The court should consider the following questions:

- Was the disclosing party under an unqualified obligation to produce the material sought?
- Will the material be discoverable in subsequent litigation involving other parties?
- Does the other litigation appear to have merit?
- Would granting release save significant time and expense?
- Can the material be released in redacted form so as to aid legitimate discovery while minimizing the loss of confidentiality?
- Will modification of the protective order disrupt settlement of the case in which it was entered?
- Did the person providing discovery do so in reliance on the protective order?
- Would informal communication between the two judges be productive in arriving at an accommodation that gives appropriate consideration to the interests of all involved?

Even if designated as confidential under a protective order, discovery materials will lose confidential status (absent a showing of “most compelling” reasons) if introduced at trial or filed in connection with a motion for summary judgment.<sup>151</sup> Confidential materials filed solely in connection with pre-

150. See *United Nuclear Corp.*, 905 F.2d at 1427–28; *Wilk*, 635 F.2d at 1299–1301 (protective orders should ordinarily be modified on request from other litigants, subject to appropriate conditions as to further use and cost); *Am. Tel. & Tel. Co. v. Grady*, 594 F.2d 594, 597 (7th Cir. 1978) (confidentiality order modified to permit nonparty U.S. government to obtain discovery); *but see Palmieri*, 779 F.2d at 865–66 (denying modification to allow state to gain access to settlement agreement).

151. See, e.g., *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532–33 (1st Cir. 1993); *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677–78, 684 (3d Cir. 1988); *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987); *Meyer Goldberg, Inc. v. Fisher Foods, Inc.*, 823 F.2d 159, 163 (6th Cir. 1987); *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983); *Joy v. North*,

trial discovery, however, remain protected as long as the “good cause” requirement of Rule 26(c) is satisfied.<sup>152</sup> The general rule announced by the Supreme Court is that a public right of access to material produced in connection with a particular pretrial or trial proceeding arises when (1) the proceeding has historically been open and (2) public access plays a significant role in the proper functioning of the process.<sup>153</sup> To ensure continued protection, counsel sometimes stipulate to material nonconfidential facts to avoid the need to introduce confidential material into evidence. Counsel may also move to have confidential material excluded from evidence as prejudicial and of low probative value under Federal Rule of Evidence 403.<sup>154</sup>

The administration of protective orders does not necessarily end with the disposition of the case. While it is common for protective orders to include provisions for posttrial protection, an order remains subject to modification after judgment or settlement, even if it was entered by consent of the parties.<sup>155</sup>

#### 11.433 Allocation of Costs

The cost of seeking and responding to discovery is a part of the cost of litigation that each party normally must bear, subject only to specific provisions for cost-shifting contained in statutes or rules. But Federal Rule of Civil Procedure 26(b)(2) directs the judge to take into account the cost of particular discovery in exercising the authority to control discovery. Among other things to consider are whether the information sought “is obtainable from some other source that is more convenient, less burdensome, or less expensive,” and whether to limit discovery if, in the circumstances of the case, the discovery’s “expense . . . outweighs its likely benefits.” Protective orders are a means of implementing the proportionality principle underlying the discovery rules. Rule 26(c) permits the court to issue orders “to protect a party or person from . . . undue burden or expense,” including an order “that the discovery . . . may be had only on specified terms or conditions . . . [or] only by a method of discovery other than that selected by the party seeking discovery.”

692 F.2d 880, 893 (2d Cir. 1982). *See also* *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161–65 (3d Cir. 1993) (protection lost if material filed with any nondiscovery motion).

152. *See* *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 37 (1984); *Leucadia*, 998 F.2d at 161–65; *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 5–7, 10–13 (1st Cir. 1986).

153. *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 8 (1986); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605–06 (1982).

154. *See Poliquin*, 989 F.2d at 535.

155. *See id.*; *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 781–82 (1st Cir. 1988); *Meyer Goldberg*, 823 F.2d at 161–62.

Taken together, these provisions confer broad authority to control the cost of discovery by imposing limits and conditions. The judge can implement the cost–benefit rationale of the rule by conditioning particular discovery on payment of its costs by the party seeking it. Short of barring a party from conducting certain costly or marginally necessary discovery, the judge can require the party to pay all or part of the cost as a condition to permitting it to proceed. Similarly, where a party insists on certain discovery to elicit information that may be available through less expensive methods, that discovery may be conditioned on the payment of the costs incurred by other parties. Such a cost-shifting order may require payment at the time or may simply designate certain costs as taxable costs to be awarded after final judgment.<sup>156</sup>

Reference to the court’s authority to shift costs will give the parties an incentive to use cost-effective means of obtaining information and a disincentive to engage in wasteful and costly discovery activity. For example, where production is to be made of data maintained on computers, and the producing party is able to search for and produce the data more efficiently and economically than the discovering party, they may agree to use the former’s capabilities subject to appropriate reimbursement for costs. Where it is less expensive for a witness to travel to a deposition site than for several attorneys to travel to the witness’s residence, the party seeking discovery may agree to pay the witness’s travel expenses.

Cost allocation may also be an appropriate means to limit unduly burdensome or expensive discovery. Rule 26’s purpose is not to equalize the burdens on the parties, but Rule 26(b)(2)(iii) expressly requires the court to take the parties’ resources into account in balancing the burden or expense of particular discovery against its benefit. Thus, where the parties’ resources are grossly disproportionate, the judge can condition discovery that would be unduly burdensome on one of them upon a fair allocation of costs.

Considerations of cost allocation are not based on relative resources alone. Rule 26(b)(2)(iii) allows the court to allocate costs based on considerations of benefits, burdens, and overall case efficiency. Courts have articulated as many as eight factors relevant to cost allocation:

- the specificity of the discovery requests;
- the likelihood of discovering critical information;
- the availability of such information from other sources;
- the purposes for which the responding party maintains the requested data;
- the relative benefit to the parties of obtaining the information;

156. See 28 U.S.C. § 1920 (West 2002); Fed. R. Civ. P. 54(d).

- the total cost associated with the production;
- the relative ability of each party to control costs and its incentive to do so; and
- the resources available to each party.<sup>157</sup>

## 11.44 Documents

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Complex litigation usually involves the production and handling of voluminous documents. Efficient management during discovery and trial requires planning and attention to the documentary phase of the litigation by the attorneys and the judge from the outset.

### 11.441 Identification System

Document production under the rules may occur in a variety of ways. Production may be voluntary and informal. It may occur under Federal Rule of Civil Procedure 34 (see section 11.443) or under Rule 33(d) by making documents available for inspection.<sup>158</sup> Alternatively, deponents may be required to produce documents by a subpoena *duces tecum*,<sup>159</sup> and nonparties may be commanded to produce documents by a subpoena issued under Rule 45.<sup>160</sup> Before any documents are produced or used in depositions, the judge should direct counsel to establish a single system for identifying all documents

157. *Rowe Entm't, Inc. v. William Morris Agencies, Inc.*, 205 F.R.D. 421, 429 (S.D.N.Y. 2002) (discussing factors to consider in shifting discovery costs), *appeal denied*, No. 98 CIV. 8272, 2002 WL 975713 (S.D.N.Y. May 9, 2002); *see also* *Murphy Oil U.S.A., Inc. v. Fluor Daniel, Inc.*, 52 Fed. R. Serv. 3d (Callaghan) 168 (E.D. La. 2002). *Cf.* *Zubulake v. UBS Warburg LLC*, 2003 U.S. Dist. LEXIS 7939 (S.D.N.Y. May 13, 2002) (questioning the eight factors considered in *Rowe* and proposing seven weighted factors).

158. Under Rule 33(d) the party may “specify the records from which the answer may be derived or ascertained . . . in sufficient detail to permit the interrogating party to locate and identify, as readily as can the party served, the records from which the answer may be ascertained.” If the information sought exists in the form of compilations, abstracts, or summaries, these should be made available to the interrogating party. Fed. R. Civ. P. 33 committee note.

159. *See* Fed. R. Civ. P. 30(b)(1).

160. Fed. R. Civ. P. 34(c).

produced (by any procedure) or used in the litigation. To reduce the risk of confusion, each document should be assigned a single identifying designation for use by all parties for all purposes throughout the case, including depositions and trial.

Counsel should be informed that consecutive numbering is usually the most practicable; blocks of numbers are assigned to each party in advance to make the source of each document immediately apparent. Every page of every document is Bates-stamped consecutively. The document's number may be later used to designate it; if the document is identified differently in the course of a deposition or on an exhibit list, the stamped number should be included as a cross-reference. If other means of designation are used, no designation should be assigned to more than one document, and the same document should not receive more than one designation unless counsel have reason to refer to different copies of the same document. In multitrack depositions, a block of numbers should be assigned to each deposition in advance. To avoid later disputes, a log should record each document produced and should indicate by, to whom, and on what date production was made. A record of the documents produced by a party and copied by an opposing party may also be useful.

The court can also order an identification system for computerized data that complements or integrates into the system adopted for paper documents. At a minimum, computer tapes, disks, or files containing numerous E-mail messages or word-processed documents should be broken down into their component documents for identification. However, databases containing millions of data elements, none of which are meaningful alone, can be difficult or impossible to break down and organize in a way directly analogous to conventional document collections. Special consideration should be given to their identification and handling.

Courts have traditionally given new designations to documents marked as exhibits for trial, often by assigning sequential numbers to one side and sequential letters to the other. Duplicate designations of documents, however, can be confusing; exhibits can readily be marked for trial by their discovery designations. If desired, a supplemental designation can be used to identify the offering party.

#### 11.442 Preservation

Before discovery starts, and perhaps before the initial conference, the court should consider whether to enter an order requiring the parties to preserve and retain documents, files, data, and records that may be relevant to the litiga-

tion.<sup>161</sup> Because such an order may interfere with the normal operations of the parties and impose unforeseen burdens, it is advisable to discuss with counsel at the first opportunity the need for a preservation order and, if one is needed, the scope, duration, method of data preservation, and other terms that will best preserve relevant matter without imposing undue burdens.

A blanket preservation order may be prohibitively expensive and unduly burdensome for parties dependent on computer systems for their day-to-day operations. In addition, a preservation order will likely be ineffective if it is formulated without reliable information from the responding party regarding what data-management systems are already in place, the volume of data affected, and the costs and technical feasibility of implementation. The following are among the points to consider in formulating an effective data-preservation order:

- Continued operation of computers and computer networks in the routine course of business may alter or destroy existing data, but a data preservation order prohibiting operation of the computers absolutely would effectively shut down the responding party's business operations. Such an order requires the parties to define the scope of contemplated discovery as narrowly as possible, identify the particular computers or network servers affected, and agree on a method for data preservation, such as creating an image of the hard drive or duplicating particular data on removable media, thereby minimizing cost and intrusiveness and the downtime of the computers involved.
- Routine system backups for disaster recovery purposes may incidentally preserve data subject to discovery, but recovery of relevant data from nonarchival backups is costly and inefficient, and a data-preservation order that requires the accumulation of such backups beyond their usual short retention period may needlessly increase the scope and cost of discovery. An order for the preservation of backup data obliges the parties to define the scope of contemplated discovery narrowly to minimize the number of backups that need to be retained and eventually restored for discovery purposes.

161. See *infra* section 40.25 (order for preservation of records). For examples from recent complex multidistrict litigation, see *In re Propulsid Prods. Liab. Litig.*, MDL No. 1355 (E.D. La. Apr. 19, 2001) (Pretrial Order No. 10: Production and Preservation of Defendants' Electronic Data), at <http://propulsid.laed.uscourts.gov/Orders/order10.pdf> (last visited Nov. 10, 2003). See also *In re Bridgestone/Firestone, Inc. ATX, ATX II & Wilderness Tires Prods. Liab. Litig.*, MDL No. 1373 (S.D. Ind. Mar. 15, 2001) (Order Regarding Ford's Preservation of Electronic Data), at [http://www.insd.uscourts.gov/Firestone/bf\\_docs/93730738.pdf](http://www.insd.uscourts.gov/Firestone/bf_docs/93730738.pdf) (last visited Nov. 10, 2003).

- A preservation order may be difficult to implement perfectly and may cause hardship when the records are stored in data-processing systems that automatically control the period of retention. Revision of existing computer programs to provide for longer retention, even if possible, may be prohibitively expensive. Consider alternatives, such as having parties duplicate relevant data on removable media or retaining periodic backups.

Any preservation order should ordinarily permit destruction after reasonable notice to opposing counsel; if opposing counsel objects, the party seeking destruction should be required to show good cause before destruction is permitted. The order may also exclude specified categories of documents or data whose cost of preservation outweighs substantially their relevance in the litigation, particularly if copies of the documents or data are filed in a document depository (see section 11.444) or if there are alternative sources for the information. The court can defer destruction if relevance cannot be fairly evaluated until the litigation progresses. As issues in the case are narrowed, the court may reduce the scope of the order. The same considerations apply to the alteration or destruction of physical evidence.

#### 11.443 Rule 34 Requests/Procedures for Responding

In litigation with voluminous documents, requests for production and the required responses can become mired in confusion. The discovery plan should anticipate the possibility of overlooked requests, costly responses, obscured failures to respond, and uncertainty about the specifics of requests and production.

The discovery plan should call for strict observance of Rule 34's requirements that requests to produce documents for inspection and copying specify the items sought individually or by category and describe each with "reasonable particularity."<sup>162</sup> Each request must specify a reasonable time, place, and manner for inspection and copying.<sup>163</sup> A party served with a request must respond in writing within thirty days, stating for each item or category either that inspection and copying will be permitted as requested or that the party objects to the request; in the latter case, the reasons for the objection must be stated. If the responding party objects to only part of an item or category, it must permit inspection of the remaining parts. Documents must be produced for inspection "as they are kept in the usual course of business" or organized and labeled "to correspond with the categories in the request." In many cases, the volume

162. Fed. R. Civ. P. 34(b).

163. *Id.*

of computer data produced will far exceed the volume of paper documentation, and conventional procedures for “inspection and copying” are not applicable. Section 11.446 describes practices for the production of computer data in complex litigation.

The discovery plan should establish a schedule for submitting requests and responses and for subsequent supplementation of responses under Rule 26(e). In developing the plan, the court should consider counsel’s proposals for document discovery and imposing limits based on Rule 26(b)(2). The court may initially limit production to the most relevant files or may require a preliminary exchange of lists identifying files and documents from which the requesting party may then make selections. The court may also require, even if lead counsel or committees of counsel have not been appointed, that similarly situated parties confer and present joint Rule 34 requests and conduct their examinations at the same time and place. Parties can also be required to share extensive copies to save money.

In overseeing document production, the court should

- ensure that the burdens are fairly allocated between the parties;
- prevent indiscriminate, overly broad, or unduly burdensome demands—in general, forbid sweeping requests, such as those for “all documents relating or referring to” an issue, party, or claim, and direct counsel to frame requests for production of the fewest documents possible (this may be facilitated by pre-discovery conferences or discovery devices to identify relevant files before the request is made);
- prevent the parties from filing overwhelming or confusing responses; and
- guard against the parties tampering with files and other abusive practices.

#### 11.444 Document Depositories

Central document depositories can promote efficient and economical management of voluminous documents in multiparty litigation.<sup>164</sup> Requiring the production of all discovery materials in common, computer-readable formats and insisting that these materials be made available on centrally generated computer-readable media (such as CD-ROM or DVD) or through a secure Internet Web site or a dial-in computer network may reduce substantially the expense and burden of document production and inspection. A depository

<sup>164</sup>. See *In re Bridgestone/Firestone, Inc.*, 129 F. Supp. 2d 1207, 1213 (S.D. Ind. 2001) (Case Management Order dated Jan. 30, 2001).

also facilitates determination of which documents have been produced and what information is in them, minimizing the risk of later disputes.

On the other hand, the cost of establishing and maintaining either a paper or computerized central document depository may be substantial; before ordering or approving one, the court must be sure that the cost is justified by the anticipated savings and other benefits. In consultation with counsel, the court should allocate costs fairly among the parties, considering their resources, the extent of their use of the depository, and the benefit derived from it. The cost of establishing and maintaining a central document depository is not a “taxable cost” under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d).<sup>165</sup> One way of allocating costs is to charge parties for each use of the depository. The charge should be set no higher than what is necessary to cover costs; a depository should not be a profit-making enterprise. The judge may consider special arrangements for less affluent or less technologically sophisticated parties to ensure fair access.

It may be necessary to appoint an administrator to operate the depository, with the cost allocated among the parties.<sup>166</sup> If document depositories have been established in related cases in other courts, counsel may be able to arrange for the depositories’ joint use, sharing the expense; likewise, the judge should consider the requests of litigants in other cases, wherever pending, to use a depository established in the case before the court. Where significant costs are involved, periodic assessments to fund operations might be necessary, usually beginning with the order establishing the depository.

To create and operate a depository, counsel and the judge should collaborate in establishing procedures for acquiring, formatting, numbering, indexing, and maintaining discovery materials, and they should establish rules governing when and by whom documents may be accessed for examination or copying. If a party objects to placing documents in a central depository or to making them available on-line, the judge can issue an order under Rule 26(c)(2) directing production at the depository (or the place designated by the requesting parties) or permit the producing party at its expense to furnish copies to all parties.

165. *In re Two Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 994 F.2d 956, 964 (1st Cir. 1993). Counsel should also be aware that expenses incurred during discovery, which would ordinarily be taxable costs, may not be recoverable if the party could have avoided them by using the depository. See *In re San Juan Dupont Plaza Hotel Fire Litig.*, 142 F.R.D. 41, 46–47 (D.P.R. 1992).

166. For a list of possible duties for the administrator, see the amended case-management order in *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1989 WL 168401, at \*21 (D.P.R. Dec. 2, 1988).

Counsel and the judge must agree on a computer service provider to administer the depository, although technologies such as CD-ROM and the Internet reduce the need for physical storage facilities, inspection, and copying. Most discovery material can be produced by the parties to the depository in computer-readable form. For the remaining paper documents, the court may direct that some or all be “imaged” or scanned and made available either on disks or on-line (special provision for the retention of originals, if they carry independent legal significance, may be necessary).<sup>167</sup>

#### 11.445 Evidentiary Foundation for Documents

The production of documents, either in the traditional manner or in a document depository, will not necessarily provide the foundation for admission of those documents into evidence at trial or for use in a motion for summary judgment. In managing documents, the court should therefore also take into account the need for effective and efficient procedures to establish the foundation for admission, which can be accomplished by stipulation, requests for admission, interrogatories, or depositions (particularly Rule 31 depositions on written questions).<sup>168</sup> While admissions are only binding on the party making them, authenticity (as opposed to admissibility) may be established by the testimony of any person having personal knowledge that the proffered item is what the proponent claims it to be.<sup>169</sup> This is particularly true when discovery involves computerized data (see section 11.446) that must be retrieved from computer systems or storage media, imaged, converted to a common format, or handled by a third-party expert or court-appointed neutral in the process of production. The judge should advise parties to agree on handling because admissibility will depend on the efficacy of these procedures.

#### 11.446 Discovery of Computerized Data

Computerized data have become commonplace in litigation. The sheer volume of such data, when compared with conventional paper documentation, can be staggering. A floppy disk, with 1.44 megabytes, is the equivalent of 720 typewritten pages of plain text. A CD-ROM, with 650 megabytes, can hold up to 325,000 typewritten pages. One gigabyte is the equivalent of 500,000 typewritten pages. Large corporate computer networks create backup data meas-

<sup>167</sup>. For more on this technology, see *Effective Use of Courtroom Technology*, *supra* note 85 at 97–98.

<sup>168</sup>. See Fed. R. Civ. P. 36.

<sup>169</sup>. See *In re Japanese Elec. Prods. Antitrust Litig.*, 723 F.2d 238, 285 (3d Cir. 1983), *rev'd on other grounds sub. nom. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

ured in terabytes, or 1,000,000 megabytes; each terabyte represents the equivalent of 500 billion typewritten pages of plain text.

Digital or electronic information can be stored in any of the following: mainframe computers, network servers, personal computers, hand-held devices, automobiles, or household appliances; or it can be accessible via the Internet, from private networks, or from third parties. Any discovery plan must address issues relating to such information, including the search for it and its location, retrieval, form of production, inspection, preservation, and use at trial.

For the most part, such data will reflect information generated and maintained in the ordinary course of business. As such, discovery of relevant and nonprivileged data is routine and within the commonly understood scope of Rules 26 and 34. Other data are generated and stored as a byproduct of the various information technologies commonly employed by parties in the ordinary course of business, but not routinely retrieved and used for business purposes. Such data include the following:

- *Metadata, or “information about information.”* This includes the information embedded in a routine computer file reflecting the file creation date, when it was last accessed or edited, by whom, and sometimes previous versions or editorial changes. This information is not apparent on a screen or in a normal printout of the file, and it is often generated and maintained without the knowledge of the file user.
- *System data, or information generated and maintained by the computer itself.* The computer records a variety of routine transactions and functions, including password access requests, the creation or deletion of files and directories, maintenance functions, and access to and from other computers, printers, or communication devices.
- *Backup data, generally stored off-line on tapes or disks.* Backup data are created and maintained for short-term disaster recovery, not for retrieving particular files, databases, or programs. These tapes or disks must be restored to the system from which they were recorded, or to a similar hardware and software environment, before any data can be accessed.
- *Files purposely deleted by a computer user.* Deleted files are seldom actually deleted from the computer hard drive. The operating system renames and marks them for eventual overwriting, should that particular space on the computer hard drive be needed. The files are recoverable only with expert intervention.
- *Residual data that exist in bits and pieces throughout a computer hard drive.* Analogous to the data on crumpled newspapers used to pack

shipping boxes, these data are also recoverable with expert intervention.

Each of these categories of computer data may contain information within the scope of discovery. The above categories are listed by order of potential relevance and in ascending order of cost and burden to recover and produce. The judge should encourage the parties to discuss the scope of proposed computer-based discovery early in the case, particularly any discovery of data beyond that available to the responding parties in the ordinary course of business. The requesting parties should identify the information they require as narrowly and precisely as possible, and the responding parties should be forthcoming and explicit in identifying what data are available from what sources, to allow formulation of a realistic computer-based discovery plan. Rule 26(b)(2)(iii) allows the court to limit or modify the extent of otherwise allowable discovery if the burdens outweigh the likely benefit—the rule should be used to discourage costly, speculative, duplicative, or unduly burdensome discovery of computer data and systems. Additionally, some computerized data may have been compiled in anticipation of or for use in the litigation and may therefore be entitled to protection as trial preparation materials.

There are several reasons to encourage parties to produce and exchange data in electronic form:

- discovery requests may themselves be transmitted in computer-accessible form—interrogatories served on computer disks, for example, could then be answered using the same disk, avoiding the need to retype them;
- production of computer data on disks, CD-ROMs, or by file transfers significantly reduces the costs of copying, transport, storage, and management—protocols may be established by the parties to facilitate the handling of documents from initial production to use in depositions and pretrial procedures to presentation at trial;
- computerized data are far more easily searched, located, and organized than paper data; and
- computerized data may form the contents for a common document depository (see section 11.444).

The goal is to maximize these potential advantages while minimizing the potential problems of incompatibility among various computer systems, programs, and data, and minimizing problems with intrusiveness, data integrity, and information overload.

Below are some of the relevant issues to be considered in reaching an optimal balance.

*Form of production.* Rule 34 provides for the production, inspection, and copying of computerized data, i.e., “data compilations from which informa-

tion can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.” Rule 33(d) permits parties to answer interrogatories by making business records available for inspection and copying, including “compilations,” where “the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.”

Conventional “warehouse” productions of paper documents often were costly and time-consuming, but the burdens and expense were kept in check by the time and resources available to the requesting parties to review and photocopy the documents. In a computerized environment, the relative burdens and expense shift dramatically to the responding party. The cost of searching and copying electronic data is insignificant. Meanwhile, the tremendously increased volume of computer data and a lack of fully developed electronic records-management procedures have driven up the cost of locating, organizing, and screening data for relevance and privilege prior to production. Allowing requesting parties access to the responding parties’ computer systems to conduct their own searches, which is in one sense analogous to the conventional warehouse paper production, would compromise legally recognized privileges, trade secrets, and often the personal privacy of employees and customers.

Evolving procedures use document-management technologies to minimize cost and exposure and, with time, parties and technology will likely continue to become more and more sophisticated. The judge should encourage the parties to discuss the issues of production forms early in litigation, preferably prior to any production, to avoid the waste and duplication of producing the same data in different formats. The relatively inexpensive production of computer-readable images may suffice for the vast majority of requested data. Dynamic data may need to be produced in native format, or in a modified format in which the integrity of the data can be maintained while the data can be manipulated for analysis. If raw data are produced, appropriate applications, file structures, manuals, and other tools necessary for the proper translation and use of the data must be provided. Files (such as E-mail) for which metadata is essential to the understanding of the primary data should be identified and produced in an appropriate format. There may even be rare instances in which paper printouts (hard copy) are appropriate. No one form of production will be appropriate for all types of data in all cases.<sup>170</sup>

The court should consider how to minimize and allocate the costs of production. Narrowing the overall scope of electronic discovery is the most effec-

170. See Effective Use of Courtroom Technology, *supra* note 85, at 61–97; see also *supra* section 11.421.

tive method of reducing costs. Early agreement between the parties regarding the forms of production will help eliminate waste and duplication. More expensive forms of production, such as production of word-processing files with all associated metadata or production of data in a specified nonstandard format, should be conditioned upon a showing of need or sharing of expenses.<sup>171</sup>

*Search and retrieval.* Computer-stored data and other information responsive to a production request will not necessarily be in an appropriately labeled file. Broad database searches may be necessary, requiring safeguards against exposing confidential or irrelevant data to the opponent's scrutiny. A responding party's screening of vast quantities of unorganized computer data for privilege prior to production can be particularly onerous in those jurisdictions in which inadvertent production of privileged data may constitute a waiver of privilege as to a particular item of information, items related to the relevant issue, or the entire data collection. Fear of the consequences of inadvertent waiver may add cost and delay to the discovery process for all parties. Thus, judges often encourage counsel to stipulate at the outset of discovery to a "nonwaiver" agreement, which they can adopt as a case-management order. Such agreements protect responding parties from the most dire consequences of inadvertent waiver by allowing them to "take back" inadvertently produced privileged materials if discovered within a reasonable period, perhaps thirty days from production.

Some data may be maintained in compilations that are themselves entitled to trade-secret protection or that reflect attorney work product (e.g., data compiled for studies and tabulations) for use at trial or as a basis for expert opinions. Generally, claims of trade-secret or work-product privilege for computer data should be treated the same as similar claims for conventional data. The difference is that discovery respondents may be able to produce computer-data compilations containing confidential or privileged data, structures, or relationships in such a fashion as to suppress or eliminate the confidential or privileged data. For example, a computerized litigation support database containing the thoughts and impressions of counsel may be modified to reveal only "ordinary" attorney work product. Production of such ordinary work product would still be subject to the showings of substantial need and undue hardship under Rule 26(b)(3), as well as possible sharing of costs. If both parties plan to use litigation support databases to prepare their cases, encourage them to share the expense of preparing "ordinary" work product, such as document indexes, to which each party can add privileged data for their own

171. See *Sattar v. Motorola, Inc.*, 138 F.3d 1164, 1171 (7th Cir. 1998) (affirming a trial court order that the parties bear half the cost of copying 210,000 pages of E-mails as a "reasonable resolution of [the] problem" and "far from an abuse of discretion").

trial preparation use. Such arrangements often facilitate the production of large databases of imaged documents and are necessary for the establishment of a document depository.

*Use at trial.* In general, the Federal Rules of Evidence apply to computerized data as they do to other types of evidence.<sup>172</sup> Computerized data, however, raise unique issues concerning accuracy and authenticity. Accuracy may be impaired by incomplete data entry, mistakes in output instructions, programming errors, damage and contamination of storage media, power outages, and equipment malfunctions. The integrity of data may also be compromised in the course of discovery by improper search and retrieval techniques, data conversion, or mishandling. The proponent of computerized evidence has the burden of laying a proper foundation by establishing its accuracy.

The judge should therefore consider the accuracy and reliability of computerized evidence, including any necessary discovery during pretrial proceedings, so that challenges to the evidence are not made for the first time at trial. When the data are voluminous, verification and correction of all items may not be feasible. In such cases, verification may be made of a sample of the data. Instead of correcting the errors detected in the sample—which might lead to the erroneous representation that the compilation is free from error—evidence may be offered (or stipulations made), by way of extrapolation from the sample, of the effect of the observed errors on the entire compilation. Alternatively, it may be feasible to use statistical methods to determine the probability and range of error.

*Computer experts.* The complexity and rapidly changing character of technology for the management of computerized materials may make it appropriate for the judge to seek the assistance of a special master or neutral expert, or call on the parties to provide the judge with expert assistance, in the form of briefings on the relevant technological issues.

#### 11.447 Discovery from Nonparties

Under Federal Rule of Civil Procedure 34(c), a nonparty may be compelled to produce and allow copying of documents and other tangibles or submit to an inspection by service of a subpoena under Rule 45; the producing person need not be deposed or even appear personally.<sup>173</sup> A party seeking such production has a duty to take reasonable steps to avoid imposing undue bur-

172. See Gregory P. Joseph, *A Simplified Approach to Computer-Generated Evidence and Animations*, 43 N.Y.L. Sch. L. Rev. 875 (1999–2000).

173. Fed. R. Civ. P. 45(c)(2)(A). Despite the absence of a deposition, notice must be given to other parties. Fed. R. Civ. P. 45(b)(1).

den or expense on the person subpoenaed.<sup>174</sup> Objections to production must be made in writing by the subpoenaed person; the requesting party must then move for an order to compel production.<sup>175</sup> If granted, the order must protect the nonparty from significant expense resulting from the inspection or copying<sup>176</sup>—the order may also protect against disclosure of privileged, confidential, or otherwise protected material and undue burden.<sup>177</sup>

## 11.45 Depositions

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Depositions are often overused and conducted inefficiently, and thus tend to be the most costly and time-consuming activity in complex litigation. The judge should manage the litigation so as to avoid unnecessary depositions, limit the number and length of those that are taken, and ensure that the process of taking depositions is as fair and efficient as possible.

### 11.451 Limitations and Controls

The court has broad authority to limit depositions. Federal Rules of Civil Procedure 30(a)(2)(A) and 31(a)(2)(A) impose a presumptive limit of ten depositions each for plaintiffs, defendants, and third-party defendants (local rules may also restrict the number of depositions). Rule 30(d)(2) presumptively limits a deposition to one 7-hour day. While the parties may stipulate around the presumptive limit (unless prohibited to do so by the court), the court always has final authority under Rule 26(b)(2) to limit the number and length of depositions. Limits on depositions may also be imposed indirectly by the setting of the trial date or a discovery cutoff date. In large-stake cases, such limits can be evaded by multitrack discovery (concurrent depositions) in the absence of a further order by the court. Despite their cost and the potential for unfairness, such multitrack depositions may be a practical necessity to expedite cases in which time is of the essence. See section 11.454.

174. Fed. R. Civ. P. 45(c)(1).

175. Fed. R. Civ. P. 45(c)(2)(B).

176. *Id.*

177. Fed. R. Civ. P. 45(c)(3).

In exercising its authority to limit depositions, the court should use the information provided by the parties about the need for the proposed depositions, the subject matter to be covered, and the available alternatives. The extent to which the judge considers each particular deposition, categories of depositions, or only the deposition program as a whole will depend on the circumstances of the litigation. The judge may, for example, condition the taking of certain depositions, such as those of putative class members, on prior court approval. The judge's involvement in the development of this phase of the discovery plan should be sufficient to establish meaningful control over the time and resources to be expended. Aside from setting appropriate limits, the judge should also be concerned with the time and place of the depositions, including proposed travel and the recording methods.<sup>178</sup>

To ensure that abusive practices do not frustrate the limits placed on depositions in the discovery plan, the judge should insist on observance of rules for the fair and efficient conduct of depositions. Rule 30(d)(1) requires that objections be stated “concisely and in a non-argumentative and non-suggestive manner”; local rules or standing orders may also establish guidelines for objections.<sup>179</sup> Under Rule 30(d)(1), counsel may instruct a deponent to not answer only for the purpose of enforcing a court-imposed limitation on evidence, or if preparing a motion under Rule 30(d)(3) to limit or terminate the examination for bad faith or harassment or to preserve a privilege (to the extent possible, disputed claims of privilege should be resolved in advance of the deposition). More stringent limitations may be imposed by local rule or by court order when necessary.<sup>180</sup> In addition, some judges issue guidelines covering the following matters:

- who may attend depositions;
- where the depositions are to be taken;
- who may question the witness;

178. Authority for judicial management of deposition discovery can be found in the federal rules. *E.g.*, Fed. R. Civ. P. 30(d) committee note (2000 amendment); Fed. R. Civ. P. 30(b), 30(d) committee notes (1993 amendment). For an example of comprehensive guidelines for deposition discovery not having the force of local rules or orders, but strongly encouraged by the court, see Civil Practice Fed. Court Comm., *Introduction to Civil Discovery Practice in the Southern District of Alabama* 11–16 (S.D. Ala. 1998), at <http://www.als.uscourts.gov/district-court/forms/discprat.pdf> (last visited Jan. 7, 2004).

179. *See, e.g.*, D.S.C. Civ. R. 30.04; N.D. Ohio Civ. R. 30.1. For a discussion of attorney conduct in depositions and citations to a number of cases construing local rules and standing orders, see *Hall v. Clifton Precision*, 150 F.R.D. 525, 527 (E.D. Pa. 1993). *But see In re Stratosphere Corp. Sec. Litig.*, 182 F.R.D. 614, 621 (D. Nev. 1998) (noting that deposition conduct orders should be narrowly drawn to avoid interfering with the deponent's right to counsel).

180. *See Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993).

- how the parties are to allocate the costs; and
- how the attorneys are to conduct themselves.<sup>181</sup>

Rule 30(d)(3) expressly authorizes sanctions for “impediment, delay or other conduct that has frustrated the fair examination of the deponent.”

Inefficient management of documents at a deposition can interfere with the deposition’s proper conduct. The discovery plan should establish procedures for marking deposition exhibits, handling copies and originals, and exchanging in advance all papers about which the examining party intends to question the witness (except those to be used for genuine impeachment).<sup>182</sup>

### 11.452 Cost-Saving Measures

In addition to the general discovery practices discussed in section 11.42, there are numerous techniques used to streamline deposition discovery:

- *Informal interviews.* Informal interviews of potential witnesses may be arranged with the agreement of counsel. However, an attorney may not communicate with a represented party without the consent of that party’s counsel. If the represented party is an organization, the prohibition extends to persons with managerial responsibility and any other person whose act or omission may be imputed to the organization or whose statement may constitute an admission on the part of the organization.<sup>183</sup> The prohibition does not extend to former corporate employees.<sup>184</sup> Informal interviews may be useful for persons who have only limited knowledge or involvement and who are unlikely to be called as witnesses at trial. The witness may be sworn and the interview recorded electronically for possible use later in the case; by agreement or court order, the interview may also be converted into a nonstenographic deposition.
- *Nonstenographic depositions.* The party taking a deposition may record it on audio or videotape instead of stenographically without having it transcribed. With prior notice to the deponent and other parties, any other party may make its own recording of the deposition.<sup>185</sup> Videotaped depositions offer a number of advantages: They help deter mis-

181. See sample order *infra* section 40.22.

182. See, e.g., *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1989 WL 168401, at \*43–44 (D.P.R. Dec. 2, 1988) (five days’ advance notice).

183. Model Rules of Prof’l Conduct R. 4.2 & cmt. (2002).

184. ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 91-359 (1991). The law of the circuit should be consulted for recent developments in this area of the law.

185. Fed. R. Civ. P. 30(b)(3).

conduct by counsel at the deposition; they can preserve the testimony of witnesses who may be unavailable to testify at trial (such as experts with scheduling conflicts or persons suffering from an infirmity) and in dispersed litigation can avoid multiple live appearances by the same witness; they tend to hold a jury's attention better than reading a deposition transcript; they help the jury assess the witness's demeanor and credibility; and they are more effective in helping clients considering settlement to evaluate the quality of the opposition's case. Moreover, if the video recording is digital, it can be edited easily and exactly to eliminate objectionable and irrelevant material.

Measures to safeguard the accuracy of the recording may be necessary, such as having (1) the videotape operator, after being sworn, certify the correctness and completeness of the recording; (2) the deponent sworn on tape; (3) the recording device run continuously throughout the deposition; and (4) counsel agree to (or having the court order) standard technical procedures to avoid distortion. These procedures might cover such matters as the use of a zoom lens, lighting, background, and camera angle.<sup>186</sup> Both sides may record a deposition, each bearing its own expense.

- *Telephonic and videoconference depositions.* Telephonic or videoconferenced depositions can reduce travel costs. Federal Rule of Civil Procedure 30(b)(7) allows the court to order or the parties to stipulate to taking a deposition "by telephone or other remote electronic means." Supplemental examination by parties not present when a person was first deposed may be conducted effectively by telephone or videoconference. Through use of speaker phones, conference calls, or videoconference, distant witnesses may be examined by counsel from counsel's offices, with the court reporter located with the witness or, by stipulation, at one of the attorneys' offices (see section 11.494, extraterritorial discovery). A remote deposition may also be recorded nonstenographically. Remote depositions are most often used for relatively brief examinations that do not involve numerous documents, but may also be used to reduce travel costs or to avoid last-minute continuances or trial interruptions when deposition testimony becomes unexpectedly necessary. To ensure that deponents are not

186. See Michael J. Henke, *The Taking and Use of Videotaped Depositions*, 16 Am. J. Trial Advoc., 151, 158 (1992). Rule 30(b)(4) requires that "[t]he appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques."

- coached, ground rules should specify who may be present with the deponent during the examination.
- *Conference depositions.* In special situations, such as a Rule 30(b)(6) deposition of an organization, several persons may be deposed simultaneously (in person, by telephone, or by videoconference) in a conference setting.<sup>187</sup>
  - *Representative depositions.* Where there are many potential nonparty witnesses, typically in the case of eyewitnesses, counsel may agree on a few representative depositions and stipulate that the testimony of other named witnesses would be the same.
  - *Written questions.* In some circumstances, the rarely used procedures of Federal Rule of Civil Procedure 31 for depositions on written questions may be a cost-effective means of obtaining trial evidence. For example, Rule 31 deposition questions—unlike interrogatories—may be directed to nonparties and the answers used at trial to provide evidentiary foundation for documents. Rule 31 questions may also be useful in follow-up examinations by absent or later-added parties of persons whose depositions have been taken earlier.
  - *Reduction in copies.* Costs can be controlled by (1) limiting the number of copies of deposition transcripts ordered, particularly if a document depository is established; (2) waiving filing of the original with the court; and (3) not having transcripts prepared of depositions that turn out to be of no value.
  - *Limited attendance.* Limits may be set on the number of attorneys for each party or each side who may attend depositions, particularly in cases in which fees may be awarded or approved by the court.

### 11.453 Deferred Supplemental Depositions

In multiparty cases, the court should consider issuing an order relieving parties of the risks in not attending a deposition in which they have only a peripheral interest.<sup>188</sup> Such an order may direct that a copy of the deposition transcript be made available promptly to nonattending parties, who within a specified period thereafter may conduct supplemental examination of the deponent, either by appearing in person at a designated time and place for resumption of the deposition or by presenting questions in written form under Rule 31 or in a telephonic deposition under Rule 30(b)(7). A stipulation or

187. See *supra* section 11.423.

188. See *infra* section 40.29.

court order will be required to depose a person who already has been deposed in the case.<sup>189</sup> The order should specify whether the absent party has the right to require resumption of the adjourned deposition or—as is usually preferable—whether it must show cause why resumption is necessary. The order should also state whether the initial examination is admissible at trial if the deponent later becomes unavailable for supplemental examination.

These procedures can relieve parties, particularly those with limited financial resources, from the expense of attending depositions in which their interest is minimal or will likely be adequately protected by others in attendance. Such procedures should not be used as a tactical device to harass witnesses or to inconvenience other parties. Counsel for litigants with a substantial interest in a deposition should attend or be represented by other counsel.

The judge should provide for the use of depositions against persons who may become parties to the litigation by later amendment of the pleadings or the filing, removal, or transfer of related cases. The pretrial order may state that all previously taken depositions will be deemed binding on new parties unless, within a specified period after their appearance in the litigation, the new parties show cause to the contrary. Even in the absence of such an order, it is best for the court to limit the resumption of earlier depositions to questioning relevant to the new parties. Like other parties who have not attended a deposition, the new parties should have a specified period of time to conduct supplemental examination of the deponents, although the court may require a showing of some need for additional questioning. Permitting repetition of earlier examinations is rarely advisable.

### 11.454 Scheduling

Scheduling depositions involves sequencing them in relation to other discovery, fixing the order in which witnesses are to be deposed, and setting times and places that are feasible for all of the attorneys and witnesses. Absent stipulation or court order, depositions may not be taken before the Rule 26(f) discovery conference unless the notice is accompanied by “a certification, with supporting facts, that the person to be examined is expected to leave the country and be unavailable for examination in this country unless deposed before that time.”<sup>190</sup>

Ordinarily, discovery by all parties proceeds concurrently. The rules do not give priority to any party or side. One purpose of a discovery plan is to establish an orderly procedure and to avoid indiscriminate noticing of depositions,

189. Fed. R. Civ. P. 30(a)(2)(B).

190. Fed. R. Civ. P. 30(a)(2)(C), 26(d).

which may result in inconvenience, harassment, and inefficiency. Depositions should be scheduled to accomplish the objectives of the discovery plan while minimizing travel and other expense, and reasonably accommodating parties, counsel, and witnesses. A plan might set specific dates for specific witnesses or set aside specified time periods during which designated parties are given either exclusive or preferential rights to schedule depositions, subject to exceptions for emergencies.

When depositions cannot be scheduled at times or places convenient to all counsel, attorneys should try to arrange for participation by others from their offices or counsel representing litigants with similar interests. Moreover, to meet discovery deadlines it may be necessary to conduct depositions on a multitrack basis, with depositions of several different witnesses being taken at the same time in one or more locations. Parties should be expected to work out these arrangements with little involvement by the court.

#### 11.455 Coordination with Related Litigation

In related cases pending before the same judge, it is best to coordinate discovery plans to avoid conflicts and duplication. If the cases are pending before different judges, the judges should attempt to coordinate the depositions of common witnesses and other common discovery. Examination regarding subjects of interest only to a particular case may be deferred until the conclusion of direct and cross-examination on matters of common interest. Parties in related cases may also stipulate to the use of depositions taken in one particular case.

It may also be economical for the judges to afford parties in the present litigation access to depositions previously taken in other litigation (see section 11.423)—the judges can deem depositions of opposing parties and their employees admissible against parties involved in related litigation under Federal Rule of Evidence 801(d)(2). Depositions of other witnesses may be usable for impeachment under Federal Rule of Evidence 801(d)(1)(A). In other situations, such as those involving nonparties or a party's own witnesses, a new deposition may be necessary, but (with advance notice) the answers given at the earlier deposition may be adopted as the current testimony of the witness, subject to supplementation; telephonic nonstenographic depositions may be used for this purpose at little cost to either side.

See section 20 on coordination with related litigation.

#### 11.456 Control of Abusive Conduct

To prevent frustration of the discovery plan, counsel must observe the rules for the fair and efficient conduct of depositions. See section 11.451. Those rules include Federal Rules of Civil Procedure 30(d)(1) and (4), local rules, and

the judge's standing orders. The court can inform counsel at the outset of the litigation, preferably by written guidelines, of the court's expectations with respect to the conduct of depositions, thereby reducing the likelihood of problematic conduct such as speaking and argumentative objections, instructions not to answer, coaching of witnesses (including restrictions during recesses in the deposition),<sup>191</sup> and evasive or obstructive conduct by witnesses (see sections 11.451, 40.29). A speedy and efficient procedure to resolve discovery disputes also helps (see section 11.424).

Where abuses are rampant, the court might require that depositions be videotaped for judicial review or require counsel expeditiously to deliver a copy of the transcript of each deposition for judicial review. Alternatively, the court could direct that one or more depositions be supervised in person by a judicial officer or special master. The judge or special master may need to be present only briefly, setting the tone and making a few early rulings, and then remain on call. Even where a special master exercises continuous oversight, avoiding disputes and satellite litigation may justify the cost. Some judges have required that depositions be taken in court to allow periodic monitoring.

In rare cases, sanctions may be needed. Although sanctions may have a prophylactic effect for later depositions, they will do little to cure the damage that has already occurred and may further poison relations between counsel and should therefore be a last resort. See section 10.15.

## 11.46 Interrogatories

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Because interrogatories are often poorly drafted, misused, or employed to burden and harass an opponent, courts generally restrict the number permitted, forcing counsel to make the best use of the limited number of interrogatories through skillful and thoughtful drafting designed to accomplish a legitimate purpose.

### 11.461 Purposes

Primarily, interrogatories help determine the existence, identity, and location of witnesses, documents, and other tangible evidence as a prerequisite to planning further discovery. Much of this information is subject to pre-discovery

191. See *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993).

disclosure under the national or local rules. If not, the court's discovery order can require it. See sections 11.13, 11.423. Interrogatories may help fill gaps, ensure full compliance with informal requests, and obtain information dispersed among a number of persons under the opponent's control. They may also help to gather technical information when the requesting party may need an expert's assistance in formulating precise questions and the answering party may need time and special assistance to respond (e.g., when discovery is sought concerning systems and programs for the storage and retrieval of computerized data).

Contention interrogatories may sometimes help define issues, though the procedures discussed in section 11.33 are usually more productive in clarifying and narrowing issues and the contentions of the parties. Rule 33(c) permits interrogatories that call for "an opinion or contention that relates to fact or the application of law to fact," but permits the court to defer an answer "until after designated discovery has been completed or until a pretrial conference or other later time." Before allowing contention interrogatories, consider whether they are likely to be useful at that stage of the proceeding and ensure that they will not be argumentative.

Interrogatories may also be used, either alone or in conjunction with requests for admission under Federal Rule of Civil Procedure 36 (see section 11.47), to provide the foundation for a summary judgment motion. Whether certain facts are genuinely in dispute may be difficult to ascertain from depositions and affidavits, and even in response to Rule 36 requests, the opposing party may state that although reasonable inquiry has been made, it can neither admit nor deny the truth of particular matters that depend on the credibility of third persons. Interrogatories are a means of requiring a party to disclose any facts that it believes raise a triable issue with respect to particular elements of a claim or defense.

#### 11.462 Limitations

Rule 33(a) imposes a presumptive limit of twenty-five interrogatories (including subparts) per party, and many local rules also restrict the number of interrogatories that may be propounded without stipulation or a court order. In complex litigation, with a great number of potentially relevant facts, a large amount of noncontroversial background information may be counterproductive. Nevertheless, it is best to retain some control over the use of interrogatories and, in considering requests to file additional interrogatories, to be guided

by the principles of Rule 26(b)(2). A basic question is whether the resulting benefits will outweigh the burdens.<sup>192</sup>

### 11.463 Responses

Federal Rule of Civil Procedure 33(b)(3) requires that answers and objections be served within thirty days of the interrogatory unless the parties stipulate otherwise. The court may establish a different period by order and should consider doing so after determining, in consultation with counsel, how much time is truly needed to respond to specific interrogatories. Fed. R. Civ. P. 33(b)(1), (4). Any ground not stated in a timely objection will be deemed waived in the absence of good cause. Fed. R. Civ. P. 33(b)(4). Rule 26(e)(2) requires parties to reasonably amend interrogatory responses if, as new information comes to light, the responding party learns that a response—even if complete and correct when made—has become incomplete or incorrect (unless this information has otherwise been made known to opposing parties during discovery or in writing). The discovery plan should schedule periodic dates for review and amendment of interrogatory responses (see section 11.421). If an answer is withheld on privilege grounds, the claim must be accompanied by a description of the information withheld sufficient to enable other parties to assess the applicability of the privilege.<sup>193</sup> Answers must be signed by the person making them, and objections must be signed by counsel, subject to the certification required by Rule 26(g) when propounding and responding to interrogatories.<sup>194</sup> Some judges require that responses to contention interrogatories be signed by counsel; others permit a party to sign, stating in substance, “I have been advised by my attorneys that . . . .” Such a statement, however, may waive attorney–client privilege.

### 11.464 Other Practices to Save Time and Expense

Use of the following techniques may increase the effectiveness and efficiency of interrogatories:

- *Master interrogatories; precluding duplicate requests.* The court should consider requiring similarly situated parties to confer and develop a single or master set of interrogatories to be served on an opposing party. If interrogatories have already been served by one party, other parties should be prohibited from asking the same questions, because

192. See Fed. R. Civ. P. 33(a).

193. Fed. R. Civ. P. 26(b)(5). See *supra* section 11.431.

194. The requirements of Rule 26(g) are described in *supra* section 11.421.

- any party may use the answers to interrogatories served by another regardless of who propounded the interrogatory.<sup>195</sup>
- *Use of interrogatories from other litigation.* Parties may also be barred from propounding interrogatories that an adversary has already answered in other litigation, when such answers are available or may be made available by the adversary.<sup>196</sup>
  - *Successive responses.* If some questions will require substantially more investigation than others, counsel may stipulate that the responding party will provide answers in stages as the information is obtained, rather than seek additional time for the first response. Federal Rule of Civil Procedure 29(2) requires court approval of stipulations extending the time to respond to interrogatories only if such stipulations would interfere with court-ordered time limits (see section 11.423).
  - *Modified responses.* When interrogatories seek information that the responding party lacks or can obtain only with significant expenditure of time and money, and the information can be provided in a different form, that party should not object but rather advise the opponent and attempt to reach agreement on an acceptable form of response. For example, information requested on a calendar-year basis may be readily available on a fiscal-year basis, or information on overtime hours may be derived from records of compensation rates and overtime paid.
  - *Early resolution of disputes.* The judge may require parties to object to interrogatories before expiration of the time for filing answers, particularly in cases where more than the standard thirty-day period is allowed for filing answers. If the parties cannot resolve the objections by modifying or clarifying the troublesome interrogatories, they should present their dispute to the court in a clear and concise manner, avoiding lengthy motions and briefs, and the court should rule promptly to avoid disruption of the progress of the litigation (see section 11.424).
  - *Rule 30(b)(6) depositions.* When a party seeks discovery from an organization but does not know the identity of the individuals with relevant knowledge, the party may name the organization as the deponent, requiring it to designate persons to testify in response. This avoids the need for the two-step process of using an interrogatory to

195. See Fed. R. Evid. 801(d)(2).

196. See *id.*

discover the identity of knowledgeable individuals and then deposing them individually.

## 11.47 Stipulations of Fact/Requests for Admission

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### 11.471 Stipulations of Fact

Federal Rule of Civil Procedure 16(c)(1) provides that at any pretrial conference, the court “may take appropriate action, with respect to . . . the possibility of obtaining admissions of fact . . . which will avoid unnecessary proof . . . .” Although premature efforts to obtain stipulations may be counterproductive, judges might consider the early use of the combined discovery request described in section 11.423, in which a party may admit that particular facts are true in lieu of proceeding with other discovery regarding those matters. The judge can also encourage stipulations of facts that, after an appropriate opportunity for discovery has been afforded, should no longer be genuinely in doubt. Admission should be expected not only of facts of which each party has personal knowledge, but also of those that can be established by evidence from other sources. If the parties insist, facts of the latter type may be shown as “uncontested,” “uncontroverted,” or “conceded” rather than shown as “admitted,” but the legal effect is identical. Stipulations may be sought with respect both to the facts of the case and to matters that affect the admissibility of other evidence, such as the authenticity of records and the foundation requirements for exceptions to the hearsay rule under Federal Rule of Evidence 803(6) and similar provisions. Parties may be more willing to enter into stipulations for specified limited purposes, such as an injunction proceeding, motion for summary judgment, or bifurcated trial of an issue. They may be willing to enter early stipulations if there is provision analogous to that in Federal Rule of Civil Procedure 36(b) for timely withdrawal from an incorrect stipulation on the basis of newly discovered evidence when no substantial prejudice to other parties would result.

The court can assist the stipulation process by stressing the distinction between conceding the truth of some fact or agreeing not to contest it, and conceding its admissibility or weight. Counsel’s admission of the truth of an uncontroverted fact does not affect the right to object to its admissibility or to contest its probative value. Indeed, if a party contends that some fact is irrelevant or otherwise inadmissible, there is more reason to admit to its truth without the exhaustive investigation and discovery that might be warranted for an obviously critical fact. A party may stipulate to the accuracy of tabulations and

compilations, the significance of which it intends to dispute. The court should be cautious, however, of requiring a party to admit the accuracy of voluminous data or summaries of the same. As discussed in section 11.446, a response based on some limited study may be more appropriate even though this results in a summary with known errors.

The court should also remind parties of the tactical disadvantages of contesting at trial some matter on which their opponents will certainly prevail, or of being confronted at trial with an earlier denial of some matter that could not have been fairly disputed. Since an angry client, rather than the attorney, is often the person responsible for an “admit nothing” posture in the litigation, consider directing the clients themselves to attend a conference at which the desirability of early stipulations is discussed. Special masters can sometimes assist the parties in arriving at stipulations.

#### 11.472 Requests for Admission

When voluntary means of narrowing factual disputes have been exhausted, admissions may be obtained under Federal Rule of Civil Procedure 36. This rule has its limitations, however. As discussed in section 11.463, complementary or supplementary interrogatories may be needed if a party in apparent good faith declines to admit the truth of some fact that depends on the credibility of other witnesses. In addition, like interrogatories, Rule 36 admissions are usable only against the party who made them and only in the action in which they were made. In multiparty litigation, therefore, requests may have to be directed to each party in each related action. Rule 36 requests answered by a party in prior or related litigation should be renewed; a straightforward new request that asks the party to admit each matter previously admitted should suffice.

Because parties often deny a requested admission on the basis of a trivial disagreement with a statement or without indicating the portions of the stated fact that are true, the court can urge the parties to observe their obligation under the rule to respond in good faith and point out the availability of sanctions for failure to do so.<sup>197</sup>

197. “[W]hen good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder.” Fed. R. Civ. P. 36(a). Sanctions are available under Rule 37(c)(2). *Marchand v. Mercy Med. Ctr.*, 22 F.3d 933 (9th Cir. 1994) (affirming award of attorney fees incurred at trial based on failure to admit).

### 11.473 Statements of Contentions and Proof

The limitations of Rule 36 and the difficulties often encountered when attorneys attempt, even in good faith, to negotiate stipulations of fact have led to a third method for arriving at stipulations and admissions: the court orders counsel for one side, typically the plaintiff's, to draft a series of numbered, narrative statements of objective facts that they believe can be established, avoiding argumentative language, labels, and legal conclusions.<sup>198</sup> Opposing counsel must then indicate which of the proposed facts are admitted (or will not be contested) and which are disputed, specifying the nature of the disagreement by appropriate interlineation or deletion, as well as drafting narrative statements of additional facts that they believe can be established. The newly added statements are then returned to the first party for admission (or nondenial) or for specific disagreement. The parties then file a consolidated statement reflecting what is agreed and what remains in dispute as a stipulation of the parties. Judges sometimes incorporate the stipulation in a pretrial order, specifically providing that all (or only specified) objections to admissibility at trial are reserved.

This procedure for narrowing factual issues can be one of the final steps before trial, coupled with a provision precluding a party from offering at trial evidence of any fact not included in the narrative listing, except for good cause shown. It could also be used earlier in the litigation (after adequate opportunity for discovery) with respect to specified proceedings, such as a class certification hearing or a Rule 56 motion. The circumstances of the case will dictate whether all facts that the party proposes to prove must be listed—or only those that may possibly be admitted and, if admitted, would reduce the scope of evidence presented. The more extensive the required listing, the greater the opportunity to narrow the facts that remain for proof at trial; the judge should, however, weigh the potential for reduction in the length and cost of trial against the time and expense expended in identifying facts that will probably remain in dispute.

The degree to which stipulations can be obtained may depend not so much on the procedures used as on the attitude of the parties. Attorneys are sometimes reluctant to make any concessions on behalf of their clients. In such cases, the judge may be able to persuade counsel that, in addition to fulfilling their responsibilities as officers of the court, they will serve their clients' interests by streamlining the litigation through appropriate concessions and admissions. The refusal by counsel to stipulate to provable facts almost never results

198. See *Manual for Complex Litigation, Third*, 515 (Federal Judicial Center 1995).

in an advantage through a failure of proof and usually imposes additional costs on both sides in discovery, at trial, or both.

#### 11.474 Requests for Judicial Notice

The judicial notice procedure provided by Federal Rule of Evidence 201 may also be used to eliminate the need for some fact-finding at trial. With respect to matters “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” an appropriate request may be filed under Rule 201 requiring opposing counsel to justify their refusal to stipulate.

### 11.48 Disclosure and Discovery of Expert Opinions<sup>199</sup>

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Effective litigation management requires reasonable judicial control over the use of expert witnesses.<sup>200</sup> Some judges confer with counsel before testifying experts are retained, to determine whether the proposed testimony will be necessary and appropriate, and to establish limits on the number of expert witnesses and the subjects they will cover.

Management of the disclosure and discovery of expert opinions is also essential to ensure adequate preparation by the parties, avoid surprise at trial, and facilitate rulings on the admissibility of expert evidence.

#### 11.481 Trial Experts

Federal Rule of Civil Procedure 26(a)(2) requires the pre-discovery disclosure, by the parties, of the identity of expert witnesses to be called at trial and of extensive additional information, including the following:

- a signed written report stating all opinions to which the expert will testify;
- the bases for those opinions;
- the data or information *considered* in forming the opinions—according to the 1993 committee note on Rule 26, this requirement substan-

199. For more detailed discussion of the management of expert testimony, see generally William W. Schwarzer & Joe S. Cecil, *Management of Expert Evidence*, in Reference Manual on Scientific Evidence 39 (Federal Judicial Center 2d ed. 2000). See also *infra* section 23 (expert scientific evidence).

200. See *infra* sections 22.87, 23.22, 23.27, 23.35, 23.37.

tially eliminates work product protection from communications between counsel and the expert; the court may conduct an *in camera* inspection if necessary to redact irrelevant material;<sup>201</sup>

- exhibits to be introduced as a summary or in support of the opinions;
- the expert’s qualifications (including a list of all publications authored in the last ten years);
- the compensation the expert is to receive; and
- a list of other cases in which the expert has testified within the last four years.<sup>202</sup>

Local rules or standing orders may contain similar requirements, and the judge may enter an order adapting these requirements to meet the needs of the litigation. Rule 26(a)(2) applies only to experts “retained or specially employed” to give expert testimony or “whose duties as an employee of the party regularly involve giving expert testimony,” but the judge may extend the rule to other experts (e.g., treating physicians) or, conversely, waive it as to certain experts.<sup>203</sup>

At the initial conference, establish a timetable for expert disclosure and procedures to implement it. Absent stipulation or a court order, these disclosures must be made at least ninety days before trial or, if the evidence is intended solely for rebuttal, thirty days from the opposing party’s disclosure. Supplementation under Rule 26(e) is also required.<sup>204</sup>

Scheduling should take into account that the parties may lack sufficient information to select expert witnesses until the issues have been further defined and certain discovery is completed; a party’s decision may also await the disclosure of the opinions of experts selected by other parties. Rule 26’s committee note states that the party with the burden of proof on an issue should normally be required to disclose its expert testimony on that issue before the other parties.

Disclosure must be made sufficiently in advance of trial for the parties to take depositions if necessary and for the court to conduct appropriate pretrial proceedings, such as hearing motions under Federal Rule of Evidence 104(a) directed at expert evidence and motions for summary judgment.<sup>205</sup> Expert depositions are authorized by Rule 26(b)(4)(A); Rule 26(b)(4)(C) normally

201. See *Bogosian v. Gulf Oil Corp.*, 738 F.2d 587, 595–96 (3d Cir. 1984).

202. Fed. R. Civ. P. 26(a)(2)(A), (B).

203. Fed. R. Civ. P. 26 committee note.

204. See Fed. R. Civ. P. 26(a)(2)(C).

205. The court at that time may also want to consider appointment of an expert under Fed. R. Evid. 706. See *infra* section 11.51.

requires the discovering party to pay the expert's reasonable fees for responding. (The Rule 26 committee note advises that disclosure may reduce the need for expert discovery, however, and warrant substantial limitations on it.)

Experts may wish to modify or refine their disclosed opinions in the light of further studies, opinions expressed by other experts, or other developments in the litigation. Although Rule 26(e)(1) requires that opposing counsel be advised of these changes, the judge should set a final cutoff date by which all additions and revisions must be disclosed in order to be admissible at trial.<sup>206</sup>

Early and full disclosure of expert evidence can help define and narrow issues. Although experts often seem hopelessly at odds, revealing the assumptions and underlying data on which they have relied in reaching their opinions often makes the bases for their differences clearer and enables substantial simplification of the issues. In addition, disclosure can facilitate rulings well in advance of trial on objections to the qualifications of an expert, the relevance and reliability of opinions to be offered, and the reasonableness of reliance on particular data.<sup>207</sup> Judges use various procedures to identify and narrow the grounds for disagreement between opposing experts, such as asking them to explain the reasons for their disagreement.

#### 11.482 Consulting Experts

Discovery with respect to nontestifying experts is much more limited. Such experts are not covered by Rule 26(a)(2) and may be deposed only upon a showing of "exceptional circumstances under which it is impractical . . . to obtain facts or opinions on the same subject by other means."<sup>208</sup> If such a deposition is allowed, consider imposing time limits and requiring the party seeking discovery to pay an appropriate share of the cost reasonably incurred in obtaining the expert's testimony (cost shifting under Rule 26(b)(4)(C) is mandatory "unless manifest injustice would result").

The stringent disclosure requirements applicable to testifying experts may lead parties to rely on consulting experts, deferring a decision whether to designate them as trial experts. The judge should address this matter at the initial conference and establish a cutoff date for designation of trial experts and compliance with disclosure requirements.

206. See Fed. R. Civ. P. 37(c)(1) (failure to make Rule 26(a) disclosures "without substantial justification" precludes introduction of nondisclosed witnesses or information at trial).

207. See generally *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993) (rejecting "general acceptance" test of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)).

208. Fed. R. Civ. P. 26(b)(4)(B). When a physical or mental examination is made under Fed. R. Civ. P. 35, a party may obtain the examiner's report even if the examiner is not testifying.

### 11.483 Court-Appointed Experts<sup>209</sup>

Although Federal Rule of Evidence 706 provides that an expert appointed by the court may be deposed, judges should establish the terms on which an expert serves and the nature of the functions the expert is to perform. When such an appointment is made, the extent of discovery permitted should be determined at the outset. This may depend on whether the expert is to testify and on the issues the expert is to address.<sup>210</sup>

## 11.49 Special Problems

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### 11.491 Government Investigations/Grand Jury Materials

Early in the litigation, the court should inquire about relevant government reports and other materials. Access to such materials can reduce the need for discovery and assist in defining and narrowing issues. If not a matter of public record, these materials can sometimes be obtained by agreement with the agency, by subpoena, or by requests under the Freedom of Information Act.<sup>211</sup>

Factual findings of a government agency may be admissible under Federal Rule of Evidence 803(8)(C), but some discovery may be needed to determine whether the information meets the rule's "trustworthiness" standard. The rule provides a hearsay exception, in civil cases and against the government in criminal cases, for "[r]ecords, reports, statements, or data compilations . . . of public offices and agencies, setting forth . . . factual findings resulting from an investigation conducted pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." Objections to the admissibility of the findings may be addressed in a pretrial hearing under Federal Rule of Evidence 104, if necessary.<sup>212</sup>

Grand jury materials can sometimes be used to reduce discovery in related civil litigation. Federal Rules of Criminal Procedure 6(e)(3)(D) and (E) set out the procedures for seeking disclosure of grand jury materials. Grand jury pro-

209. See *infra* section 11.51.

210. See generally Reference Manual on Scientific Evidence, *supra* note 199.

211. 5 U.S.C. § 552 (2000).

212. See *In re Japanese Elec. Prods. Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir. 1983), *rev'd on other grounds sub nom. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

ceedings are presumptively secret, but the court may order disclosure upon a showing of a particularized need.<sup>213</sup> Although disclosure may be ordered of testimony given before the grand jury and of documents subpoenaed or otherwise obtained for its use,<sup>214</sup> a person may invoke the Fifth Amendment privilege against self-incrimination and refuse to answer questions about such testimony even if it was given under a grant of immunity.<sup>215</sup> The production to a grand jury of otherwise discoverable material does not, however, entitle it to Federal Rule of Civil Procedure 6 protection.<sup>216</sup> Copies of material produced to a grand jury are subject to discovery.

Requests for disclosure of grand jury materials are generally addressed to the judge who supervised the grand jury proceedings.<sup>217</sup> Nevertheless, because that court may not be able to assess the “particularized need” for the materials in the litigation for which the materials are sought, the court should consult with the trial judge assigned to the litigation.<sup>218</sup> If disclosure is ordered, the court may include in the order protective limitations on the materials’ use.<sup>219</sup>

#### 11.492 Summaries

Whenever possible, voluminous or complicated data at trial should be presented by counsel through summaries, including compilations, tabulations, charts, graphs, and extracts. Federal Rule of Evidence 1006 creates an exception to the “best evidence” rule, allowing writings, recordings, or photographs that cannot conveniently be examined in court to be presented in the form of “charts, summaries or calculations.” The rule does not affect the requirement that the originals be admissible. While counsel in jury cases usually recognize the need for summaries, they may overlook their utility in nonjury cases; the

213. See Fed. R. Crim. P. 6(e)(2), (3)(C)(i). The “particularized need” requirement derives from case law and is described in detail in *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222–23 (1979). See also *United States v. Sells Eng’g, Inc.*, 463 U.S. 418, 443 (1983); *Ill. v. Abbott & Assocs., Inc.*, 460 U.S. 557, 567 & n.14 (1983).

214. Some courts give greater protection to transcripts of testimony than to documentary evidence. See, e.g., *In re Grand Jury Proceedings (Miller Brewing Co.)*, 717 F.2d 1136 (7th Cir. 1983). Production under Fed. R. Civ. P. 33(d) or 34 of documents previously subpoenaed by a grand jury may be facilitated if the producing party has retained copies.

215. *United States v. Balsys*, 524 U.S. 666, 683 (1998); *Pillsbury Co. v. Conboy*, 459 U.S. 248 (1983).

216. See *Finn v. Schiller*, 72 F.3d 1182, 1187 (4th Cir. 1996); *Blalock v. United States*, 844 F.2d 1546, 1551 (11th Cir. 1988).

217. *Douglas Oil*, 441 U.S. at 226.

218. *Id.* at 226–31.

219. *Id.* at 223.

trial judge should not be expected to “wad[e] through a sea of uninterpreted raw evidence.”<sup>220</sup>

Summaries may be offered under Federal Rule of Evidence 611(a) solely as an aid to understanding, with the underlying evidence separately admitted into the record. Whenever possible, however, summaries should be received as substantive evidence under Rule 1006, in lieu of the underlying data. When summaries are so used, opposing parties must be given an adequate opportunity to examine the underlying data in advance of trial and raise objections in time to enable the proponent of the summary to make necessary corrections. As noted in section 11.446, the use of sampling techniques to verify summaries and quantify possible errors may be adequate and preferable to an item-by-item examination of the underlying data. When the summary is received as substantive evidence of the data it contains, the underlying data will not become part of the record, although receipt of a few examples of the source materials may be helpful in illustrating the nature of the underlying data summarized.

#### 11.493 Sampling/Opinion Surveys

Statistical methods can often estimate, to specified levels of accuracy, the characteristics of a “population” or “universe” of events, transactions, attitudes, or opinions by observing those characteristics in a relatively small segment, or sample, of the population. Acceptable sampling techniques, in lieu of discovery and presentation of voluminous data from the entire population, can save substantial time and expense, and in some cases provide the only practicable means to collect and present relevant data. In one case, for example, a statistical expert profiled the compensatory damage claims of the class members to assist the jury in fixing the amount of punitive damages.<sup>221</sup>

The choice of appropriate sampling methods will depend on the objective. There is a difference between sampling to generate data about a population so the data will be verified or declared true and sampling, like polling, to measure opinions, attitudes, and actions by a population. In the case of the former, the reliability and validity of estimates about the population derived from sampling are critical.

220. Crawford v. W. Elec. Co., 614 F.2d 1300, 1319 (5th Cir. 1980).

221. *In re Shell Oil Refinery*, 136 F.R.D. 588 (E.D. La. 1991), *affirmed sub nom.* Watson v. Shell Oil Co., 979 F.2d 1014 (5th Cir. 1992), *reh’g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh’g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing).

The sampling methods used must conform to generally recognized statistical standards. Relevant factors include whether

- the population was properly chosen and defined;
- the sample chosen was representative of that population;
- the data gathered were accurately reported; and
- the data were analyzed in accordance with accepted statistical principles.

Laying the foundation for such evidence will ordinarily involve expert testimony and, along with disclosure of the underlying data and documentation, should be taken up by the court well in advance of trial. Even if the court finds deficiencies in the proponent's showing, the court may receive the evidence subject to argument going to its weight and probative value.<sup>222</sup>

By contrast, questioning a sample of individuals by opinion polls or surveys about such matters as their observations, actions, attitudes, beliefs, or motivations provides evidence of public perceptions. The four factors listed above are relevant to assessing the admissibility of a survey, but need to be applied in light of the particular purpose for which the survey is offered. In addition, in assessing the validity of a survey, the judge should take into account the following factors:

- whether the questions asked were clear and not leading;
- whether the survey was conducted by qualified persons following proper interview procedures; and
- whether the process was conducted so as to ensure objectivity (e.g., determine if the survey was conducted in anticipation of litigation and by persons connected with the parties or counsel or by persons aware of its purpose in the litigation).

Parties who propose to offer sampling or survey evidence may want to consider whether to disclose details of the proposed sampling or survey methods to the opposing parties before the work is done (including the specific questions that will be asked, the introductory statements or instructions that will be given, and other controls to be used in the interrogation process). Objections can then be raised promptly and corrective measures taken before the survey is completed. A meeting of the parties' experts can expedite the resolution of problems affecting admissibility.

Parties sometimes object that an opinion survey, although conducted according to generally accepted statistical methods, involves impermissible

222. See *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1292 (9th Cir. 1992); *McNeilab, Inc. v. Am. Home Prods. Corp.*, 848 F.2d 34, 38 (2d Cir. 1988).

hearsay. When the purpose of a survey is to show what people believe—but not the truth of what they believe—the results are not hearsay.<sup>223</sup> In the rare situation where an opinion survey involves inadmissible hearsay, Federal Rule of Evidence 703 nevertheless allows experts to express opinions based on the results of the survey.<sup>224</sup>

### 11.494 Extraterritorial Discovery

Discovery directed at witnesses, documents, or other evidence located outside the United States will often create problems, since many countries view American pretrial discovery as inconsistent with or contrary to their laws, customs, and national interests. For example, in civil-law jurisdictions where courts control the gathering and presentation of evidence, taking a deposition may be viewed as a judicial act performed by another sovereign. In addition, many common-law jurisdictions disfavor discovery requests directed at obtaining material other than evidence to be presented at trial.<sup>225</sup> The need for evidence located outside the United States should be explored early in the proceedings to allow for the extra time that may be required to obtain it. Consider ways to minimize cost and delay, or to develop alternate methods of proof when the evidence cannot be obtained. For example, the parties may achieve substantial savings by paying a willing deponent to come to the United States or, if permitted by the laws of the host country, conducting short depositions telephonically.

The following factors may affect foreign discovery:

- *Laws of the United States.* The procedures for obtaining evidence from other countries are prescribed by
  - the Federal Rules of Civil Procedure, particularly Rule 28(b) (depositions in a foreign country);<sup>226</sup>
  - statutes, particularly 28 U.S.C. § 1781 (transmittal of letter rogatory or request), § 1783 (subpoena of person in a foreign country), and § 1784 (contempt); and

223. See Fed. R. Evid. 801(c), 803(3).

224. See Fed. R. Evid. 703.

225. See, e.g., *Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 480 (7th Cir. 2000); *Rio Tinto Zinc Corp. v. Westinghouse Elec. Corp.*, [1978] A.C. 547 (H.L.); S. Seidel, *Extraterritorial Discovery in International Litigation* 24 (PLI 1984).

226. See also Fed. R. Civ. P. 44(a)(2) (authentication of foreign official record). Rule 28(b) must be read in conjunction with the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, *done* Oct. 5, 1961, T.I.A.S. No. 10072, 527 U.N.T.S. 189 (entered into force for the United States on Oct. 15, 1981), *reprinted in* Fed. R. Civ. P. 44; see also 28 U.S.C. §§ 1740, 1741, 1745 (West 2002).

- international agreements, particularly the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Convention”);<sup>227</sup> attention must also be given to applicable decisional law<sup>228</sup> and the Federal Rules of Evidence.<sup>229</sup>
- *Laws and attitude of the foreign country.* The extent and form of pretrial discovery that other sovereigns will compel or even permit vary widely. Even within a particular country, the rules may differ depending on the nature and identity of the person or body from which the discovery is sought and on the type of information (e.g., the breadth of discovery may depend on whether the evidence is testimonial or documentary).<sup>230</sup> Some countries not only refuse to compel a witness to provide evidence, but also prohibit even the voluntary production of some items of evidence. The attitude of the other country may also be affected by its current diplomatic relations with the United States and by the nature of the litigation. This latter factor is particularly important if the American litigation involves claims (such as antitrust) that conflict with the law or policies of the foreign country.
- *Position of the person or body from which discovery is sought.* Foreign discovery rules may vary depending on whether discovery is sought from
  - a national of the United States, of the country in which the discovery is to be conducted, or of another country;
  - a person or entity party to the American litigation or otherwise subject to the jurisdiction of the American courts—where the entity or person from whom discovery is sought is subject to the court’s jurisdiction, it will often be faster and less costly to use the Federal Rules’ standard discovery methods;<sup>231</sup> and

227. *Opened for signature* Mar. 18, 1970, 23 U.S.T. 2555 (entered into force for the United States on Oct. 7, 1972), *reprinted in* 28 U.S.C. § 1781 (West 2002) [hereinafter Hague Convention]. As its title implies, the convention does not apply to criminal cases. *See* Obtaining Discovery Abroad 9 (ABA 1990).

228. *See, e.g.,* *Breard v. Greene*, 523 U.S. 371, 375 (1998); *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court*, 482 U.S. 522 (1987); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982); *Societe Internationale v. Rogers*, 357 U.S. 197 (1958); *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992 (10th Cir. 1977).

229. *See, e.g.,* Fed. R. Evid. 902(3) (self-authentication of foreign public documents).

230. For example, most countries party to the Hague Convention will not execute letters of request for the purpose of obtaining pretrial disclosure of documents. *See* Hague Convention, *supra* note 227, art. 23.

231. *See* Obtaining Discovery Abroad, *supra* note 227, at 2; *Societe Nationale*, 482 U.S. at 549.

- an instrumentality or arm of a foreign country, or a person or entity willing to provide the information.
- *Posture of the litigant.* Extraterritorial discovery will be expedited if the parties to the litigation cooperate by entering into stipulations under Federal Rule of Civil Procedure 29 as to the manner and location of discovery. Stipulations for nonstenographic and telephonic depositions under Rule 30(b)(2), (7) also may be valuable (the court may also order the use of these procedures; see section 11.452), but such procedures may violate foreign law. Stipulations as to admissibility are particularly important because the discovery may not be in the question-and-answer form traditional in American litigation. The refusal of a party with foreign connections or interests to enter into stipulations may not necessarily reflect an uncooperative attitude but may be compelled by the laws or customs of the foreign country. In this regard, the court should note that under Rule 28(b), “[e]vidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.”

Because procedures for obtaining foreign discovery vary from country to country and are often complex, it is generally advisable for the attorneys to associate with local counsel. The Department of State and the appropriate United States embassy or consulate can also provide assistance in planning discovery in foreign countries.<sup>232</sup> The Department of State’s Office of Citizens Consular Services can provide lists of local counsel and current information regarding such matters as reservations and declarations under the Hague Convention, practices in nonsignatory countries, the procedures to be followed in particular countries, and actual results of discovery efforts in specific countries.<sup>233</sup>

*Depositions.* Federal Rule of Civil Procedure 28(b) establishes four alternative procedures for taking depositions in other countries.<sup>234</sup> Under Rule 28(b)(1), when the country where discovery is sought is a signatory to the

232. For the U.S. State Department’s regulations on foreign discovery, see 22 C.F.R. § 92 (1993).

233. Inquiries should be directed to the Office of Citizens Consular Services, Dept. of State, 2201 C Street, N.W., Washington, DC 20520.

234. See also Restatement (Third) of the Foreign Relations Law of the United States § 474(2) (1987).

Hague Convention,<sup>235</sup> depositions may be taken in accordance with the convention, as described below, though resort to the Convention is not mandatory.<sup>236</sup> When the country is not a signatory, counsel may use one of the procedures in Rule 28(b)(2)–(4). Under Rule 28(b)(2), the American court may issue a “letter of request” (formerly called a “letter rogatory”) seeking the voluntary assistance of the court or other agency of the foreign country to compel the deponent to provide evidence.<sup>237</sup> There may be a long delay, perhaps as much as two years, between the issuance of a letter of request and receipt of the evidence. The Department of State’s Office of Citizens Consular Services often can provide information about recent experiences in particular countries.

The foreign country ultimately decides whether to honor and execute the letter of request. Many countries not party to the Convention, such as Canada, routinely execute letters of request from United States courts.<sup>238</sup> When the deponent is willing to give evidence, the parties may use the “notice” or “commission” methods of Rule 28(b)(3) and (4), respectively, if not prohibited by foreign law. For example, in Japan and Turkey a deposition on notice is permissible only of an American citizen, while Swiss law makes it a crime to take any deposition in that country without governmental authorization. The “notice” method is essentially the same used for a typical domestic deposition. Under the “commission” method, the American court appoints a per-

235. The rule refers to “any applicable treaty or convention,” but the intended reference is to the Hague Convention. *See* Fed. R. Civ. P. 28 committee note.

236. *See* *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court*, 482 U.S. 522, 529–40 (1987); *see also* Restatement (Third) of the Foreign Relations Law of the United States, *supra* note 234, § 473.

237. For a thorough discussion of the issues and procedures involved in obtaining judicial assistance from a foreign country, *see* Bruno Ristau, *International Judicial Assistance Part IV* (1990). For the form and substance of a letter of request, *see* Hague Convention, *supra* note 227, arts. 1–14.

238. Currently, the U.S. State Department’s Web site lists more than thirty nations in which the Hague Convention is in force. *See* Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, at [http://travel.state.gov/hague\\_evidence.html](http://travel.state.gov/hague_evidence.html) (last visited Nov. 10, 2003). The Hague Convention’s official Web site lists additional states in which the Hague Convention is in force by “accession,” but not all of these necessarily have reciprocal arrangements with the United States. *See* Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, <http://www.hcch.net/e/status/evidshte.html> (last visited Nov. 10, 2003). The situation is fluid, as former territories become independent nations and other nations experience fundamental political changes. For current information about a specific nation, consult the Department of Justice, Civil Division, Office of International Judicial Assistance, 1100 L Street, N.W., Room 11006, Washington, DC 20530; tel: (202) 307-0983; fax: (202) 514-6584.

son—typically an American consular officer<sup>239</sup>—to administer the oath and preside over the deposition.

Much foreign discovery will occur in the numerous countries that are contracting states to the Hague Convention.<sup>240</sup> The Convention generally allows evidence to be taken compulsorily pursuant to a letter of request or voluntarily before a diplomatic officer or consular agent or any person “commissioned” for the purpose.<sup>241</sup> (Issuance of both a commission and a letter of request, as authorized by Rule 28(b), may be a useful measure to guard against the risk that a deponent may not remain willing to testify voluntarily.) Although the judicial authority executing the request will apply its own procedures, Article 9 of the Convention states that special requests—for example, for a verbatim transcript or for answers in writing and under oath—are to be honored unless incompatible with the law of the executing state or otherwise impossible or impracticable. In practice, though, such requests are commonly not complied with. Under the Convention, letters of request must be sent to a “central authority” designated by the receiving country; the identities of the authorities designated are given in notifications appended to the treaty.<sup>242</sup> The Convention must, however, be read in light of the numerous reservations and declarations made by the contracting states, through which they have modified or declined to adopt various provisions. Many countries, for example, require that a judicial officer conduct depositions, and a majority will not execute letters of request issued for the purpose of obtaining documents related solely to pretrial discovery. Each country’s declarations and reservations are listed in the notifications at the end of the convention.<sup>243</sup> These create variances among the discovery rules applicable in the contracting countries and may be complex.

When “necessary in the interest of justice,” a United States national or resident in a foreign country may be subpoenaed to testify or produce documents.<sup>244</sup> Failure to comply may subject the person to punishment for contempt.<sup>245</sup>

*Blocking laws.* Efforts to obtain or compel production of documents located outside the United States may be impeded by one of the increasing num-

239. See 22 C.F.R. § 92.4(a) (2001).

240. For a list of contracting states, see Hague Convention, *supra* note 227.

241. Hague Convention, *supra* note 227, arts. 16–17.

242. See 28 U.S.C.A. § 1781 at 125–41 (West Supp. 1993). For discussion of the procedures and problems associated with letters of request, see Spencer W. Waller, International Trade and U.S. Antitrust Law § 7.08 (1992).

243. See 28 U.S.C.A. § 1781 at 125–41 (West Supp. 1993).

244. 28 U.S.C. § 1783 (West 2002).

245. *Id.* § 1784.

ber of foreign nondisclosure (or “blocking”) laws.<sup>246</sup> These laws take the form of general commercial and bank secrecy laws, as well as more specific and discretionary blocking statutes aimed at combating perceived excesses in American discovery.<sup>247</sup> The fact that certain discovery is prohibited under foreign law, however, does not prevent the court from requiring a party to comply with a demand for it,<sup>248</sup> though the prohibition may be relevant in determining the sanctions to be imposed for noncompliance.<sup>249</sup> Where a party fails to comply with a discovery order because of a blocking statute, the court may impose any of the sanctions set forth in Federal Rule of Civil Procedure 37(b), though it may also consider factors such as the party’s good faith efforts to comply in declining to impose them.<sup>250</sup>

*Judicial control.* The Supreme Court has cautioned federal courts to exercise special vigilance to protect foreign litigants from unnecessary or unduly burdensome discovery and to supervise pretrial proceedings particularly closely to prevent discovery abuses.<sup>251</sup> The additional cost of foreign discovery may increase the danger that it will be used for an improper purpose, such as to burden or harass; objections to abusive discovery advanced by foreign litigants should therefore receive the court’s “most careful consideration.”<sup>252</sup> In deciding whether to order production of information abroad, and in framing such an order, the following are worth considering:

- the importance to the litigation of the discovery requested;
- the degree of specificity of the request;
- whether the information sought originated in the United States;
- the availability of alternative means to secure the information;
- the extent to which noncompliance with the request would undermine important U.S. interests; and
- the extent to which compliance would undermine important interests of the country in which the information is located.<sup>253</sup>

246. See Obtaining Discovery Abroad, *supra* note 227, *passim*.

247. See Waller, *supra* note 242, § 7.09.

248. *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court*, 482 U.S. 522, 544 n.29 (1987).

249. *Societe Nationale v. Rogers*, 357 U.S. 197, 204–06 (1958).

250. See Obtaining Discovery Abroad, *supra* note 227, at 18–22.

251. *Societe Nationale*, 482 U.S. at 546.

252. *Id.*

253. Restatement (Third) of the Foreign Relations Law of the United States, *supra* note 234, § 442(1)(c); see also *Societe Nationale*, 482 U.S. at 544 n.28 (citing earlier draft of the restatement).

Comity also dictates that American courts take into account special problems confronted by the foreign litigant because of its nationality or location and any sovereign interests expressed by a foreign state.<sup>254</sup> An order requiring that *all* extraterritorial discovery be conducted using the procedures in the Hague Convention when available may serve this purpose.

Careful drafting can reduce the risk that a foreign country will refuse to execute a letter of request. In most cases, the request should be directed at evidence for use at trial and should be as specific as possible. Hague Convention countries that have executed a reservation under Article 23<sup>255</sup> will ordinarily not execute general requests for broad categories of documents for use in discovery.<sup>256</sup> The letter should include no unnecessary information, and the language should be simple and nontechnical.<sup>257</sup> The court should incorporate findings as to the extent of discovery to be permitted and the need therefore in a separate order that can be presented to foreign authorities, even if letters of request are not being issued.

Federal judges are not authorized to travel abroad to control the conduct of depositions, at least in the absence of specific approval by the Judicial Conference of the United States.<sup>258</sup> For this reason, it is best to adopt in advance appropriate guidelines to govern such depositions consistent with the laws of the other country.<sup>259</sup> Moreover, if permissible under the laws and customs of that country, the judge may be available by telephone to resolve disputes or may appoint a special master to supervise the deposition personally.<sup>260</sup> Before employing either of these procedures, the judge should seek advice from the Department of State's Office of Citizens Consular Services.

254. *Societe Nationale*, 482 U.S. at 546.

255. *See supra* note 227.

256. *See Waller, supra* note 242, § 7.08[3].

257. U.S. Dept. of State Circular, Preparation of Letters Rogatory (Mar. 1992).

258. Report of the Proceedings of the Judicial Conference of the United States 4–5 (March 1978).

259. For suggested deposition guidelines, see *supra* section 11.45.

260. *See supra* sections 11.424, 11.456.

## 11.5 Special Referrals

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Complex litigation often involves extensive fact-finding in preparation for trial, or in aid of settlement. Referrals to a neutral arbiter or special master may at times be helpful, either by relieving the judge of time-consuming proceedings or by bringing to bear special expertise. The authority to make such referrals is circumscribed and conditioned, and the costs and benefits must be balanced.

### 11.51 Court-Appointed Experts and Technical Advisors

Court-appointed experts serve a number of purposes: to advise the judge on technical issues, to provide the jury with background information to aid comprehension, or to offer a neutral opinion on disputed technical issues.<sup>261</sup> The court has broad discretion to appoint such an expert, *sua sponte* or on request of the parties, but should consider whether there are adequate alternatives to such an appointment, such as directing the parties to clarify, simplify, and narrow the differences between them.<sup>262</sup> Below are some of the problems and implications of appointing an expert:

- *Cost.* Court appointment of an expert increases the already high cost of complex litigation. Except in the rare cases where such funding is provided by statute, Federal Rule of Evidence 706(b) requires the parties to pay the expert's compensation. The judge allocates this expense among the parties and determines the time of payment (usually periodic deposits in court during the litigation, subject to reapportionment at the outcome). Courts often decline to appoint an expert when one party is indigent to avoid the unfairness of requiring the other side to pay all of the expert's compensation. The court has the authority, however, to order the nonindigent party to pay this expense in compelling circumstances (e.g., when the indigent party's claim has merit that cannot viably be presented absent such expert assistance). The

261. For an extensive discussion of the various aspects of using court-appointed experts, see Joe S. Cecil & Thomas E. Willging, *Court-Appointed Experts: Defining the Role of Experts Appointed Under Federal Rule of Evidence 706* (Federal Judicial Center 1993); see also Schwarzer & Cecil *supra* note 199, at 59–63.

262. See *supra* section 11.48; Cecil & Willging, *supra* note 261, at 67–78.

judge should provide for payment at the time of appointment to ensure that the expert will be compensated.<sup>263</sup>

- *Neutrality of the expert.* Truly neutral experts are difficult to find. Though they will have no commitment to any party, most experts do not come to the case free of experience and opinions that will predispose—or may be perceived to predispose—they in some fashion on disputed issues relevant to the case.
- *Undue influence.* Experts are typically appointed in cases that are extraordinarily difficult, and their independence relative to the parties' experts may cause the jury to give their opinions undue weight. For this reason, the testimony of the expert must be limited to those issues specified by the court. Disclosure to the jury of the expert's court-appointed status is discretionary.<sup>264</sup>
- *Delay.* The testimony of a court-appointed expert may lengthen the trial, although there may be offsetting savings by narrowing the issues, reducing the scope of the controversy, and perhaps promoting settlement.
- *Timing of the appointment.* The need for an appointment will not always be clear early in the litigation. By the time it becomes clear, the case may be at or about to go to trial, when introduction of a court-appointed expert would cause delay.

Nevertheless, in appropriate cases, appointment of a neutral expert, even at an advanced stage of the proceedings, can be beneficial:

- court-appointed experts can have “a great tranquilizing effect”<sup>265</sup> on the parties' experts, reducing adversariness and potentially clarifying and narrowing disputed issues;
- they can help the court and jury comprehend the issues and the evidence;
- they can suggest acceptable procedures and ground rules for preserving and exchanging digital-format materials relevant to the case, and assist in settling disputes regarding electronic evidence; and
- they may facilitate settlement or at least stipulations.

263. See *McKinney v. Anderson*, 924 F.2d 1500, 1510–11 (9th Cir. 1991); *United States Marshals Serv. v. Means*, 741 F.2d 1053, 1057–59 (8th Cir. 1984) (en banc); Cecil & Willging, *supra* note 261, at 62–65.

264. Fed. R. Evid. 706(c).

265. E. Barrett Prettyman, *Proceedings of the Seminar on Protracted Cases for United States Circuit and District Judges*, 21 F.R.D. 395, 469 (1957).

The order of appointment should clearly specify whether the expert is appointed under authority of Rule 706 or as a technical advisor under the inherent authority of the court, along with the assigned duties, functions, and compensation.<sup>266</sup> A court-appointed expert, when forming opinions, is not limited to information presented by the parties at a hearing. Furthermore, testifying experts are subject to discovery with respect to their opinions; therefore, the order should specify the ground rules for depositions and other discovery directed at the expert, including the extent to which materials used or considered by the expert will be subject to discovery. The order should also specify whether the expert is to provide a written report to the parties before trial, and whether *ex parte* communications with the judge will be permitted. The order may also state how the jury should be instructed. Generally the jury would be told that the opinions of a court-appointed expert should be treated the same as those of other expert witnesses—the opinions are entitled to only such weight as is warranted by the witness’s knowledge, expertise, and preparation.

Judges sometimes appoint an expert to render assistance other than testifying at trial, such as analyzing and evaluating reports prepared by the parties’ experts or attorneys.<sup>267</sup> In such situations, *ex parte* communications regarding matters of substance may be necessary but should be subjected to procedural safeguards. Such safeguards might include (1) giving the parties notice of the expert’s identity and precise function; (2) providing written instructions detailing the expert’s duties; and (3) requiring the expert to submit a written report or otherwise advising the parties of the substance of the advice given.<sup>268</sup> *Ex parte* communications are always suspect and should be allowed only in exceptional circumstances.

When the court is selecting an expert witness for appointment, the best candidate is one whose fairness and expertise in the field cannot reasonably be questioned and who can communicate effectively as a witness. The court should make every effort to select a person acceptable to the litigants. First, the parties should be asked to submit a list of proposed experts; they may be able, with the assistance of their own experts, to agree on one or more candidates. The court may also call on professional organizations and academic groups to provide lists of qualified and available persons (though not delegating the selection to any such organization), giving the parties an opportunity to com-

266. See Cecil & Willging, *supra* note 261, at 59, 63.

267. See, e.g., *Webster v. Sowders*, 846 F.2d 1032, 1035, 1039 (6th Cir. 1988) (asbestos).

268. See *Reilly v. United States*, 863 F.2d 149, 158–59 (1st Cir. 1988); Schwarzer & Cecil, *supra* note 199, at 62; Cecil & Willging, *supra* note 261, at 41 & nn.83–84.

ment. In making appointments, judges must avoid even the appearance of patronage or favoritism.<sup>269</sup>

## 11.52 Special Masters

Federal Rule of Civil Procedure 53 authorizes judges to appoint special masters to aid in handling pretrial and posttrial matters tried without a jury “that cannot be addressed effectively and timely by an available district court judge or magistrate judge of the district.”<sup>270</sup> Reference to a special master must be the exception and not the rule. The Supreme Court held in *La Buy v. Howes Leather Co., Inc.*<sup>271</sup> that the general complexity of the litigation, the projected length of trial, and the congestion of the court’s calendar do not constitute the exceptional circumstances that would justify appointment of a trial-level special master. These considerations, however, do not preclude more limited references, such as those regarding resolution of pretrial or nondispositive matters,<sup>272</sup> mediation of settlement negotiations (see section 13.13), or posttrial implementation of a decree.<sup>273</sup>

Whether to appoint a special master involves largely the same considerations discussed in section 11.51 with respect to court-appointed experts and technical advisors. Appointment of a magistrate judge makes it unnecessary to worry about imposing extra expense<sup>274</sup> on parties or about the question of neutrality. It may be particularly difficult to appoint a completely disinterested

269. See 28 U.S.C. § 458 (West 2002).

270. Rule 53(a)(1)(C). For an examination of the changes in practices that documented a basis for the rule change, see Thomas E. Willging, Loral L. Hooper, Marie Leary, Dean Miletich, Robert Timothy Reagan, & John Shapard, *Special Masters’ Incidence and Activity: Report to the Judicial Conference’s Advisory Committee on Civil Rules and Its Subcommittee on Special Masters* (Federal Judicial Center 2000).

271. 352 U.S. 249, 259 (1957).

272. See *In re Bituminous Coal Operators Ass’n, Inc.*, 949 F.2d 1165, 1168–69 (D.C. Cir. 1991) (improper to refer dispositive matters, but proper to refer pretrial preparation or calculation of damages); *In re United States*, 816 F.2d 1083, 1091 (6th Cir. 1987) (improper to refer dispositive matters, proper to refer nondispositive matters); *In re Armco*, 770 F.2d 103 (8th Cir. 1985) (per curiam) (improper to refer trial on merits, though proper to refer all pretrial matters, including dispositive motions). The court in *Stauble*, while making a similar distinction, noted that the reference would not have violated Article III if the judge had afforded de novo review of the special master’s determination. *Stauble v. Warrob, Inc.*, 977 F.2d 690, 698 n.13 (1st Cir. 1992).

273. See Fed. R. Civ. P. 53(a)(1)(C) & (b)(2)(A).

274. See Fed. R. Civ. P. 53(a); *Prudential Ins. Co. of Am. v. United States Gypsum Co.*, 991 F.2d 1080, 1085, 1087 (3d Cir. 1993) (disqualifying special master, in part because of availability of magistrate judges).

special master with no prior relationship to any of the parties, since special masters are often practicing attorneys and tend to have substantial experience with similar disputes. Rule 53(a)(2) requires that a master “not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under 28 U.S.C. § 445 unless the parties consent with the court’s approval to appointment of a particular person after disclosure of any potential grounds for disqualification.”

Also, appointment of a magistrate judge pursuant to statute may be appropriate where the purpose is to collect, assemble, and distill voluminous data presented by the parties and where the primary qualifications are objectivity and familiarity with evidentiary hearings rather than expertise in some technical field. Appointment of a special master to supervise discovery may be appropriate where the financial stakes justify imposing the expense on the parties and where the amount of activity required would impose undue burdens on a judge. It is generally preferable to appoint special masters with the parties’ consent, and either to permit the parties to agree on the selection or to make the appointment from a list submitted by the parties. The clerk and deputy clerks of court may not be appointed as special masters “unless there are special reasons requiring such appointment which are recited in the order of appointment.”<sup>275</sup>

Special masters have increasingly been appointed for their expertise in particular fields, such as accounting, finance, science, and technology.<sup>276</sup> Accordingly, the distinction between special masters under Federal Rule of Civil Procedure 53 and court-appointed experts under Federal Rule of Evidence 706 has become blurred in the context of appointments to serve in nonjury trial settings. The court may make an appointment under the latter rule without Rule 53’s restrictions. Although Rule 706 speaks of a “witness,” it also specifically permits the appointed expert to make “findings.” Thus, when the court is calling on a neutral for that person’s “scientific, technical, or other specialized knowledge,” as contemplated by Federal Rule of Evidence 702, it may consider making the appointment under Rule 706 even though the master will not testify. Presumptively, however, a person appointed under Rule 706 would be subject to discovery and cross-examination; Rule 53 makes no provision for discovery or cross-examination of special masters, but the parties have access to the special master’s report. Rule 53(g)(1), however, requires the court to allow the parties “an opportunity to be heard” and allows the court to

275. 28 U.S.C. § 957 (West 2002).

276. For discussion of the roles played by special masters and magistrate judges, see e.g., FJC Study, *Special Masters*, *supra* note 270; Linda Silberman, *Judicial Adjuncts Revisited: The Proliferation of Ad Hoc Procedure*, 137 U. Pa. L. Rev. 2131 (1989).

“receive evidence” before deciding whether to adopt, modify, reject, or resubmit a special master’s report.

In jury matters, amended Rule 53 eliminates any blurring of functions. Appointment of a Rule 706 expert becomes the only option for bringing in an independent expert to assist the jury. Any expert appointed under Rule 706 is, of course, subject to discovery and cross-examination.

An order of reference to a special master should specify the scope of the reference, the issues to be investigated, the circumstances under which ex parte communication with the court or a party will be appropriate, the time and format for delivering the master’s record of activities, the compensation, and the delegated powers.<sup>277</sup> Subject to the terms of that order, a special master may take all appropriate measures to perform the special master’s duties,<sup>278</sup> including requiring production of tangible evidence and examining witnesses under oath. The special master may call parties to testify (see Rule 53(d)), and other witnesses may be subpoenaed by the parties.<sup>279</sup> Under Rule 53(b), the order of reference may direct a special master to make findings of fact, but due process requires that the findings be based on evidence presented at an adversarial hearing. Unless otherwise directed by the order of reference, the special master may evaluate and rule on the admissibility of evidence. Unlike a court-appointed expert, however, a special master is not authorized to conduct a private investigation into the matter referred. The order should also provide arrangements to ensure that the special master’s fees will be paid.

Ordinarily, the special master must produce a report on the matters submitted by the order of reference, including any findings of fact or conclusions of law.<sup>280</sup> The parties may stipulate that the special master’s findings of fact are to be accepted as final, leaving only questions of law for review, which is on a de novo basis.<sup>281</sup> Otherwise, the court must decide de novo all objections to a special master’s findings of fact.<sup>282</sup> The judge should keep in mind that the special master’s findings may carry undue weight with the jury.

277. See Fed. R. Civ. P. 53(b).

278. Fed. R. Civ. P. 53(c).

279. Fed. R. Civ. P. 53(c) & (d).

280. Fed. R. Civ. P. 53(f).

281. Fed. R. Civ. P. 53(g)(4).

282. Fed. R. Civ. P. 53(g)(3).

### 11.53 Magistrate Judges Under 28 U.S.C. § 636(b)(1)

Referrals may also be made to magistrate judges, pursuant to 28 U.S.C. § 636(b)(1), Federal Rules of Civil Procedure 53(f) and 72, and local rules<sup>283</sup> (apart from referrals of supervision of pretrial proceedings as discussed in section 10.14). Like a special master, a magistrate judge acting under these provisions makes factual determinations based on evidence presented at an adversarial hearing and submits a disposition or recommended disposition, along with proposed findings of fact when appropriate, by written report filed with the court and served on the parties.<sup>284</sup> The parties have no right to engage in discovery from, or to cross-examine, the magistrate judge. Under Federal Rule of Civil Procedure 72, the magistrate judge's rulings on nondispositive matters may, if objected to within ten days of service, be modified or set aside only if "clearly erroneous or contrary to law."<sup>285</sup>

On matters dispositive of a claim or defense, the magistrate judge's recommended disposition is, on timely, specific, written objection by a party,<sup>286</sup> subject to de novo determination by the district judge, who may, but need not, take further evidence.<sup>287</sup> This distinction is clarified by 28 U.S.C. § 636(b)(1), which allows the designation of a magistrate judge only to provide proposed findings of fact and recommendations for disposition of motions for injunctive relief, judgment on the pleadings, summary judgment, dismissal of indictment, suppression of evidence in a criminal case, class certification, dismissal for failure to state a claim, or involuntary dismissal.<sup>288</sup> Section 636(b)(1)(A) allows determination of any other pretrial matter subject to reconsideration only if "clearly erroneous or contrary to law." There is no explicit authority (as there is in Rule 53(e)(4)) for the parties stipulating to be bound by the magistrate judge's findings. This situation must be distinguished from that in which a magistrate judge acts as a district judge under 28 U.S.C. § 636(c).

In considering whether to make a referral to a magistrate judge, the court must balance the advantages of obtaining the magistrate judge's assistance against the risk of delay from requests for review of the magistrate judge's order, proposed findings, or recommendations.

283. See also Mag. Judges Div., Admin. Office of the U.S. Courts, *A Constitutional Analysis of Magistrate Judge Authority*, 150 F.R.D. 247 (1993).

284. 28 U.S.C. § 636(b)(1)(C) (West 2002).

285. Fed. R. Civ. P. 72(a).

286. Even in the absence of an objection, the judge should review the report for "clear error." Fed. R. Civ. P. 72 committee note.

287. Fed. R. Civ. P. 72(b) and committee note.

288. 28 U.S.C. § 636(b)(1)(B) (West 2002).

## 11.54 Other Referrals

Other possible resources in complex litigation include referral to a private or public technical agency, use of an advisory jury of experts in a nonjury case, and consultation with a confidential advisor to the court.<sup>289</sup> Caution is recommended in experimenting with such procedures—absent statutory authorization or a party’s stipulation—in cases in which, if the court of appeals finds reversible error, a lengthy and costly retrial might be required. Referrals to court-appointed experts, special masters, and magistrate judges authorized by statute or rule are adequate in most cases to provide the needed assistance. The judge should consider innovative uses of recognized procedures to make the process more fair and efficient when complicated issues are involved, such as appointing a team of experts to serve under Rule 706, but not to the extent of displacing the parties’ right to a resolution of disputes through the adversary process.<sup>290</sup>

## 11.6 Final Pretrial Conference/Preparation for Trial

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The purposes of the final pretrial conference, explicated in Federal Rule of Civil Procedure 16(a), are to “improv[e] the quality of the trial through more thorough preparation” and to “facilitat[e] the settlement of the case.” These ends take on special importance in complex litigation and are embodied in Rule 16(d), which requires that

289. See Cecil & Willging, *supra* note 261, at 40–41.

290. For a discussion of the use of outside neutral persons in facilitating settlement, see *infra* section 13.13.

- the final pretrial conference be held as close to the time of trial as is reasonable under the circumstances;
- the parties formulate a plan for trial, including a program for facilitating the admission of evidence; and
- the attorneys who will conduct the trial attend the conference.

The order setting the conference should specify the items to be taken up. It should also maximize the utility of the conference by deciding summary judgment motions and (to the extent feasible) motions *in limine* well in advance (see section 11.34, summary judgment). The judge should tailor preparation for the final pretrial conference to accomplish the purposes of Rule 16. Essential agenda items include exchange and discussion of the following:<sup>291</sup>

- a final list identifying the witnesses to be called and the subject of their testimony, including a designation of deposition excerpts to be read;
- copies of all proposed exhibits and visual aids, including illustrative exhibits and computer-generated evidence;
- a list of all equipment and software to be used at trial, and suggestions as to possible shared use of equipment and operators;
- proposed questions for voir dire;
- concise memoranda on important unresolved legal issues;
- nonargumentative statements of facts believed to be undisputed;
- proposed jury instructions, including any special instructions needed regarding computerized evidence or equipment (see section 11.65);
- proposed verdict forms, including special verdicts or interrogatories;<sup>292</sup> and
- in nonjury cases, proposed findings of fact and conclusions of law.<sup>293</sup>

## 11.61 Date and Place of Trial

Although civil trial dates are problematic in many courts because of criminal dockets, a trial date for complex litigation should be firm, given the number of people involved and the expense incurred in preparation. The trial date needs to take into account the commitments of the court and counsel and should permit an uninterrupted trial. The judge should advise counsel in advance that once the date is set, there will be no continuances. Some judges set a

291. For a comprehensive list of potential agenda items, see *Litigation Manual*, *supra* note 12, at 79–85.

292. See Fed. R. Civ. P. 49. See also *infra* sections 11.633, 12.451.

293. See *Litigation Manual*, *supra* note 12, app. A, at 188, 206–07 (Sample Form 9).

deadline after which they will not permit partial settlements that might necessitate a continuance of the trial (see section 13.21).

Where litigation includes cases filed in other districts and transferred to the court for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407, those cases must be remanded at or before the conclusion of the pretrial proceedings to the districts from which they were transferred.<sup>294</sup> Consider whether to pursue alternatives that would allow a transferee judge to obtain authority (e.g., by action of the parties, the transferor court, or the committee on intercircuit assignments) to retain a role that is consistent with *Lexecon*. See section 20.132. Venue motions that may have been deferred should be decided. In referring cases back to the MDL Panel, it is helpful to indicate the nature and expected duration of remaining discovery, the estimated time before the case will be ready for trial, and the major rulings that, if not revised, will affect further proceedings. The court can also make appropriate recommendations for further proceedings. In most cases transferred under 28 U.S.C. § 1407, substantially all discovery will be completed before remand. In some cases, however, such as mass tort litigation, discovery regarding individual damages may have been deferred and must be conducted in the transferor district after remand. Section 20.133 has a fuller discussion of remand.

## 11.62 Reevaluation of Jury Demands

Although a general demand for a jury trial may have been made early in the litigation,<sup>295</sup> the final pretrial conference is an appropriate time to consider whether the parties are entitled to a jury trial on particular issues and, if not, whether those issues should be decided in a separate trial (which may be concurrent with the jury trial), decided by motion,<sup>296</sup> or submitted to an advisory jury.<sup>297</sup> If both jury and nonjury issues are to be tried, the judge should determine whether *Beacon Theatres, Inc. v. Westover*<sup>298</sup> requires that the jury issues be decided first. Even if so, it is possible to hear evidence during the jury trial on related nonjury issues, provided that the parties are later afforded opportunity to supplement the record with evidence relevant only to the nonjury issues and that a decision on the nonjury issues is deferred until after the verdict has been returned. In mass tort cases, some judges ask the parties to consider whether to try liability and lump sum damage issues to the jury, leaving the

294. See *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

295. See Fed. R. Civ. P. 38.

296. See Fed. R. Civ. P. 39(a).

297. See Fed. R. Civ. P. 39(c).

298. 359 U.S. 500 (1959).

resolution of individual damage claims to special agreed procedures (see section 22.93, mass tort litigation, trial).

## 11.63 Structure of Trial

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The judge should seek suggestions from counsel for approaches to structuring the trial that will improve the trial process. In addition to the devices discussed below, consider trying one or more test cases, with appropriate provision concerning the estoppel effect of a judgment. The interplay of these various devices can have a significant effect on the fair and efficient resolution of complex litigation.<sup>299</sup> In considering any of these devices, keep in mind the devices' potentially disparate impact on the parties (given the parties' respective trial burdens and possibly unequal resources), their effect on the right to trial by jury, the possibilities of settlement, and the interests of the court and the public.

### 11.631 Consolidation<sup>300</sup>

Federal Rule of Civil Procedure 42(a) authorizes the judge to consolidate, for trial or pretrial, actions pending in the same court involving common questions of law or fact if it will avoid unnecessary cost or delay. Consolidation may be for trial of the entire case or only for separable common issues. Moreover, it may be appropriate even if some issues or cases are to be tried before a jury and others before the court; the same evidence must be presented only once even though the judge may consider it in some of the cases and the jury may consider it in others. Class actions may be consolidated with cases brought by opt-outs or other individual plaintiffs. When this occurs, the judge must ensure that counsel for parties in the non-class actions have a fair opportunity to participate in the presentation of evidence and arguments at trial, particularly when their clients are primarily affected.

Whether consolidation is permissible or desirable depends largely on the amount of common evidence among the cases. Unless common evidence predominates, consolidated trials may confuse the jury rather than promote efficiency. To avoid this problem, the judge may consider severing for a joint trial those issues on which common evidence predominates, reserving noncommon

299. For an illustration, see *In re Plywood Antitrust Litig.*, 655 F.2d 627 (5th Cir. 1981).

300. See also *supra* section 10.123 and *infra* section 22.54.

issues for subsequent individual trials. For example, in mass tort litigation, liability issues could be consolidated for joint trial and damage issues reserved for later individual trials. If most of the proof will be common but some evidence admissible in one case should not be heard in others, consider a multiple-jury format. However, cases with major conflicts between the basic trial positions of parties should not be consolidated, at least not without ensuring that no prejudice results. Consolidation is also inappropriate where its principal effect will be to magnify unnecessarily the dimensions of the litigation.<sup>301</sup>

### 11.632 Separate Trials

Whether the litigation involves a single case or many cases, severance of certain issues for separate trial under Federal Rule of Civil Procedure 42(b) can reduce the length of trial, particularly if the severed issue is dispositive of the case, and can also improve comprehension of the issues and evidence. Severance may permit trial of an issue early in the litigation, which can affect settlement negotiations as well as the scope of discovery. The court should balance the advantages of separate trials, however, against the potential for increased cost, delay (including delay in reaching settlement), and inconvenience, particularly if the same witnesses may be needed to testify at both trials. There is also the potential for unfairness if the result is to prevent a litigant from presenting a coherent picture to the trier of fact.<sup>302</sup>

The court should take care when deciding which issues may and should be severed for separate trial and the order in which to try them. Under *Beacon Theatres*, the right to trial by jury on legal claims may not (except under “the most imperative circumstances”) be lost by a prior determination of equitable claims; this may require trial of legal claims before deciding related claims in equity, or trying them concurrently.<sup>303</sup> In addition, issues for trial should not be severed if they are so intertwined that they cannot fairly be adjudicated in isolation<sup>304</sup> or when severance would create a risk of inconsistent adjudication.

Generally, when issues are severed for separate trials, they should be tried before the same jury unless they are entirely unrelated. Severance may take the form of having evidence on discrete issues presented sequentially, with the jury returning a verdict on an issue before the trial moves on to the next issue (see section 12.34).

301. See *In re Repetitive Stress Injury Litig.*, 11 F.3d 368 (2d Cir. 1993).

302. See *In re Bendectin Litig.*, 857 F.2d 290 (6th Cir. 1988) (severed trial creates risk of “sterile or laboratory atmosphere”).

303. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510–11 (1959).

304. See *Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500 (1931) (antitrust).

### 11.633 Special Verdicts and Interrogatories

Special verdict forms or interrogatories accompanying a general verdict form may help the jury focus on the issues, reduce the length and complexity of the instructions, and minimize the need for, or scope of, retrial in the event of reversible error.<sup>305</sup> They can provide posttrial guidance in conducting additional discovery, ruling on nonjury issues (possibly with some issues presented to the jury while others are reserved for decision by the court) or motions for summary judgment,<sup>306</sup> trying remaining issues, or negotiating settlement. Having counsel submit proposed verdict forms along with jury instructions at the pretrial conference will help focus counsel's attention on the specific issues in dispute and will help inform the court.

Special verdict forms and interrogatories can help the jury understand and decide the issues while minimizing the risk of inconsistent verdicts. It is best for the court to arrange the questions on the form in a logical and comprehensible manner; for example, asking questions common to several causes of action or defenses only once and grouping related questions together. Where the legal standards applicable to similar claims or defenses differ (for example, where different laws may apply to different parties), careful drafting of questions on a special verdict form can ease problems that consolidation could otherwise cause. Issues not in dispute should be excluded.

Special verdict forms may also be used in connection with a procedure by which issues are submitted to the jury sequentially. The jury may be asked to consider a threshold or dispositive issue and return its verdict before submission of other issues, which may be rendered moot by the verdict.

Some judges and attorneys are reluctant to use these devices out of fear of inconsistent verdicts and jury confusion, but these problems can be avoided by good drafting. Parties' views on the desirability of special verdict forms or interrogatories will differ, however, if these devices are seen as advantageous to one side; the court will have to evaluate the arguments for and against them in the particular case.

The court may also suggest that the parties stipulate to accept a majority verdict if the jury is not unanimous<sup>307</sup> or to waive a verdict and accept a decision by the judge based on the trial evidence. Although such stipulations may be obtained after the case has gone to trial, the parties may be more amenable before trial begins.

305. Fed. R. Civ. P. 49. See *infra* section 12.451.

306. See *In re Plywood Antitrust Litig.*, 655 F.2d 627 (5th Cir. 1981) (special verdicts following a joint trial of all cases (including "opt-out" cases) on all issues except individual amounts of damages provided foundation for summary judgment motions regarding damages).

307. See Fed. R. Civ. P. 48.

## 11.64 Procedures to Expedite Presentation of Evidence

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The principal purpose of the final pretrial conference is the “formulat[ion of] a plan for trial, including a program for facilitating the admission of evidence.”<sup>308</sup> The plan should eliminate, to the extent possible, irrelevant, immaterial, cumulative, and redundant evidence, and should further the clear and efficient presentation of evidence. Essential to accomplishing this purpose is a final definition of the issues to be tried. The process of defining and narrowing issues begun at the initial conference and discussed in section 11.3 should reach completion at the final pretrial conference, which can then turn to the proof the parties expect to offer at trial. Fair, effective, and innovative ways of presenting that proof may include presenting voluminous data through summaries or sampling (see sections 11.492–11.493); presenting summaries of deposition testimony; and presenting expert testimony by reports on videotape or by videoconferencing.<sup>309</sup> Other techniques to expedite the presentation of evidence are discussed below and in section 12.3.

### 11.641 Statements of Facts and Evidence

One method used by judges to ensure adequate preparation, streamline the evidence, and prevent unfair surprise is to have each party prepare and submit a statement listing the facts it intends to establish at trial and the supporting evidence. The statement should be informative and complete, but free of argument and conclusions. If adopted, evidence not included in the statement should not be permitted at trial. Exchanging such statements may help narrow factual disputes and expedite the trial (also see generally section 11.47). Such statements should not be required routinely, however, because the substantial amount of work required for their preparation may outweigh the benefits.

### 11.642 Pretrial Rulings on Objections

Judges should strive to resolve objections to evidence and cure technical defects (such as lack of foundation) before trial. Where the admissibility of evidence turns on other facts, the facts should be established where possible

308. Fed. R. Civ. P. 16(d).

309. *Effective Use of Courtroom Technology*, *supra* note 85, at 168–74, discusses videoconferencing witness testimony.

before trial—by stipulation if there is no basis for serious dispute (see section 11.445). Parties should be required, to the extent feasible, to raise their objections to admissibility in advance of trial (usually by motions *in limine*), with all other objections (except those based on relevance or prejudice) deemed waived. Under Federal Rule of Civil Procedure 26(a)(3), objections (other than under Federal Rule of Evidence 402 or 403) to the admissibility of proposed exhibits disclosed as required by Rule 26(a)(3)(C) or to the use of depositions designated as required by Rule 26(a)(3)(B) are waived unless made within fourteen days of disclosure or excused by the court. Pretrial rulings on admissibility save time at trial and may enable parties to overcome technical objections by eliminating inadmissible material, obtaining alternative sources of proof, or presenting necessary foundation evidence. In addition, such rulings may narrow the issues and enable counsel to plan more effectively for trial. Receiving exhibits into the record during the final pretrial conference can also save time by avoiding the need for formal offers at trial.

Opposing counsel may indicate their objections to documentary evidence in a response to the pretrial listing of such evidence by opposing counsel. Objections to deposition testimony can be noted in the margin of the deposition where the objectionable matter appears, and the court's ruling can be indicated in the same place. Objections to other types of evidence can be made by means of a separate motion or other written requests describing the nature of the proposed evidence and the grounds of the objection.

The court should weigh the benefits of advance rulings on objections against the potential for wasteful pretrial efforts by the court and counsel. For example, ruling on objections in a deposition may require the judge to read it before trial, despite the fact that the deposition or the objections to it may be partially or entirely mooted or withdrawn because of developments during trial. Some judges prefer to make pretrial rulings only on those objections that counsel consider sufficiently important, either because of their significance to the outcome of the case or because of their effect on the scope or form of other evidence.

Pretrial rulings are also advisable with respect to proffered expert testimony that may be pivotal. The judge may rule on the basis of written submissions, but an evidentiary hearing under Federal Rule of Evidence 104(a) may be necessary to determine whether the evidence is admissible under Rules 702 and 703.<sup>310</sup>

310. The subject is discussed at length in Schwarzer & Cecil, *supra* note 199, at 53–54. See also *infra* sections 23.2, 23.35.

### 11.643 Disclosure of and Objections to Digital Evidence and Illustrative Aids

The court should consider requiring disclosure of all digital materials that will be shown to the jury. The timing of the disclosure may differ for evidentiary exhibits, illustrative aids, and expert materials. The timing may also vary according to the type of digital materials (e.g., digital photos versus animations) and whether they will be used in opening statements, direct examination, cross-examination, or closing arguments.<sup>311</sup> Such disclosure will help expedite the pretrial and trial processes, assist the court in making pretrial and otherwise timely rulings on admissibility, and minimize surprising the court and parties.

Disclosure should ordinarily be in the same format to be used at trial. For example, paper copies may not adequately represent documents and photos to be presented with a computer because the paper copies cannot reveal any sound, motion, or alteration that may be involved. Computer animations and simulations should be disclosed in the format to be used at trial, which is typically digital or analog videotape; in addition, however, the opposing party needs the computer files that constitute the actual animation or simulation in order to expose underlying assumptions and construct an effective cross-examination.<sup>312</sup> The disclosure of digital materials raises a number of issues that must be resolved during pretrial, or at least before the materials are shown to the jury.<sup>313</sup> For example, the phrase “digital alteration” means different things to different people, so some ground rules are needed about the alteration of photographs, documents, videotapes, and other materials at a fairly early point in the pretrial proceedings.<sup>314</sup> The planned use of an animation or simulation also raises issues for pretrial consideration, including the treatment of any narration (possibly including hearsay statements), the need for limiting instructions (such as to clarify the specific purpose for which the evidence is being offered), the authenticity and reliability of the underlying data, and the assumptions on which the exhibit is based.<sup>315</sup> It may be advisable for a party to obtain at least a preliminary ruling or guidance concerning the admissibility of an animation or simulation (or any other expensive and elaborate exhibit) be-

311. See Effective Use of Courtroom Technology, *supra* note 85, at 105–06, and the additional pages referenced therein.

312. *Id.* at 113–14.

313. For a discussion of possible objections to digital evidentiary exhibits and illustrative aids, see *id.* at 180–209.

314. See *id.* at 106–13.

315. See Joseph, *supra* note 172, at 890–93; Effective Use of Courtroom Technology, *supra* note 85, at 205–09.

fore substantial expense is incurred in its preparation (e.g., at the storyboard stage of a computer animation).

#### 11.644 Limits on Evidence

Some attorneys understand the advantages of selectively presenting evidence, but others leave no stone unturned, resulting in trials of excessive length unless limited by the judge. Where the parties' pretrial estimates suggest that trial will be excessively long, the judge should discuss the possibility of voluntary, self-imposed limits with the lawyers, perhaps suggesting exhibits or testimony that could be eliminated and inviting further suggestions.

If this approach is not productive, consider imposing limits in some form, using the authority under Federal Rule of Civil Procedure 16(c)(4) and Federal Rules of Evidence 403 and 611. Announcing an intention to impose such limits may suffice to motivate counsel to exercise the discipline necessary to expedite the case. Before imposing limits, the judge should be sufficiently familiar with the litigation to form a reasonable judgment about the time necessary for trial and the scope of the necessary evidence.

Limits may be imposed in a variety of ways:

- by limiting the number of witnesses or exhibits to be offered on a particular issue or in the aggregate;
- by controlling the length of examination and cross-examination of particular witnesses;
- by limiting the total time allowed to each side for all direct and cross-examination; and
- by narrowing issues, by order or stipulation.

Limits need not hamper counsel's ability to present their case; indeed, counsel often welcome them. At the same time, limits should not jeopardize the fairness of the trial. In designing limits, consider the respective evidentiary burdens of the parties. Generally, limits are best imposed before trial begins so that the parties can plan accordingly, but the need for limits may not become apparent until trial is underway. Limits must be firm so that one side cannot take advantage of the other, but it is sometimes necessary to extend the limits. If a party requests, the judge may advise the jury of any limits imposed in order to prevent unwarranted inferences from a party's failure to call all possible witnesses.

#### 11.645 Use of Courtroom Technology to Facilitate Evidence Presentation

Trials in a technologically advanced courtroom usually move faster and take less time than a traditional trial. This faster pace puts a premium on law-

yers' preparation and a clear and well-defined case theory. All exhibits must be identified and organized before trial so that digital files can be assembled and stored on a laptop computer to be taken to court. Most of the illustrative aids to be used with the opening statement and the direct examination of witnesses need to be prepared before trial so that they are consistent with and support the case theory. Judges may more confidently impose time limits on lawyers because technology assists in making presentations move along more quickly and predictably.

Each piece of equipment should contribute to efficiency. For example, presenting an exhibit with the help of an evidence camera or laptop computer eliminates the sometimes-lengthy pauses for approaching the bench, handing copies of exhibits to opposing counsel, and passing the exhibit hand-to-hand among the jurors. Documents on a CD or a laptop can be accessed and displayed almost instantly, resulting in time savings that can be quite significant in trials involving a significant number of documents. Computer presentations can also be accessed very quickly, as well as altered on the spot, if necessary, in case of an objection. Real-time transcription frees judges from detailed note taking and enables them to focus on what is taking place with the witnesses, lawyers, and jurors. In the event of a contested objection, it also allows the judge to look at the pending question or just-uttered answer to see exactly what was said. Videoconferencing gives judges the flexibility to conduct pre-trial hearings from remote locations or to schedule the testimony of witnesses at remote locations to fit the trial schedule.

## 11.65 Proposed Jury Instructions

The final pretrial conference should complete the pretrial process of identifying and narrowing issues. To that end, the parties should submit and exchange proposed substantive jury instructions (both preliminary and final) before the conference; some judges require counsel to confer and submit a single set of those instructions on which there is no disagreement.<sup>316</sup> This process compels counsel to analyze the elements of their claims and defenses and the supporting and opposing evidence. Many judges then use the parties' submissions as a starting point for preparing their own substantive instructions and find that they are generally accepted by counsel with little argument. Proposed instructions can be submitted electronically to enable the judge to make revisions on chambers computers. This also helps those judges who want to pre-

316. For more on jury instructions, see *infra* section 12.43.

sent preliminary and final jury instructions on monitors or a projection screen. Many judges provide their own standard instructions to counsel for comment.

## 11.66 Briefs and Final Pretrial Motions

If legal issues remain to be resolved, counsel should submit briefs before the final pretrial conference. Early submission will assist the court and counsel in preparing for the conference and make the conference more productive.

With discovery complete and critical evidentiary rulings made, some additional issues may be ready for summary judgment. Motions for summary judgment should be presented and decided no later than the final conference, absent special circumstances. Deferring such motions and their resolution to the eve of trial may cause unnecessary expense and inconvenience to counsel, witnesses, jurors, and the court, and may interfere with trial preparation.

## 11.67 Final Pretrial Order<sup>317</sup>

At the conclusion of the final pretrial conference, the judge should enter an order reciting all actions taken and rulings made, whether at the conference or earlier. The order should provide that it will govern the conduct of the trial and will not be modified except “to prevent manifest injustice.”<sup>318</sup>

Below are some of the things that should be stated in the order:

- the starting date of the trial and the schedule to be followed;
- the issues to be tried;
- if separate trials are to be held, the issues to be tried at the initial trial;
- the witnesses to be called and the exhibits to be offered by each side (other than for impeachment);
- whether additional undisclosed or other specified evidence is precluded;<sup>319</sup>
- which objections are to be deemed waived;<sup>320</sup>
- procedures for consolidation or severance or transfer of cases;
- procedures for the presentation of testimony and exhibits;
- procedures regarding the use of technology at trial; and
- other housekeeping matters to expedite the trial.

317. See *infra* section 40.6.

318. Fed. R. Civ. P. 16(e).

319. Fed. R. Civ. P. 26(a)(3).

320. *Id.*

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No single format can be prescribed for a final pretrial order that will be suitable for all complex litigation. The judge and attorneys must tailor the trial according to the circumstances of the specific litigation.

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Judicial management can reduce complexity, cost, and trial time, and can improve the quality of the trial. Its effectiveness depends on the design and

implementation of flexible and creative plans that take into account the specific needs of particular litigation and permit the attorneys to try their case in an orderly fashion.

Although judicial management is equally important in civil and criminal litigation, the two frequently pose different problems and considerations. This section deals with civil trials.

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### 12.11 Trial Schedule

A trial schedule is essential to the orderly conduct of a trial. The schedule may, but need not, limit the length of the trial itself or the time allotted to each side for examination and cross-examination (see section 12.35). Whether or not it imposes time limits, the schedule should specify the days of the week and the hours each day that the trial will be held, as well as holidays and other recess days (such as for a weekly motions day). It is appropriate to set the trial schedule only after consultation with counsel and after making appropriate accommodations for other time demands of the participants. The schedule ordinarily should be modified only in urgent situations. Very lengthy trials may require periodic review and adjustment of the schedule.

Adherence to the schedule requires all trial participants to make appropriate arrangements for their other activities. Jurors should be informed of the schedule at the time of voir dire; any who are unable to commit to it should be excused, if possible. The judge should inform them of any changes in the trial schedule and advise them of the trial's progress so that they can alter their own arrangements. If unforeseen events arise during a trial affecting a juror's availability, accepting minor delays is generally preferable to losing a juror who may later be needed for a verdict.

All trial participants should be punctual and prepared to proceed on schedule. To minimize interruptions, attorneys may be permitted to enter and leave the courtroom discretely during the proceedings. Informing the jury will avoid any perception of discourtesy.

To expedite the trial and avoid keeping the jury waiting, it is advisable to devote the trial day to the uninterrupted presentation of evidence. Objections, motions, and other matters that may interrupt generally should be raised at a time set aside for the purpose, before the jury arrives or after it leaves for the

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day. Any matter that must be raised during the presentation of evidence should be stated briefly without argument and ruled on promptly. If an objection is too complex for an immediate ruling, consider deferring the matter until it can be resolved without taking the jury's time, and proceeding with the presentation of evidence, possibly directing counsel to pursue a different line of questioning for the moment. In managing the trial, the judge should not hesitate to use the authority of Federal Rule of Evidence 611(a) to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence."

Judges employ different approaches to the scheduling of trial:

- *Six-day week.* An extended trial week can expedite a lengthy trial, but may take too great a toll on trial participants and leave insufficient time for other activities.
- *Four-and-a-half-day week.* With this commonly used schedule, one half day each week is reserved for administrative matters, hearings outside the presence of the jury, and other nontrial matters.
- *Short-day schedule.* Holding trial from 9 a.m. to noon for a short day or from 8 a.m. to 2 p.m. for a longer day permits jurors time for their personal commitments during the trial (which can reduce requests to be excused) and allows the court and counsel substantial time to keep up with other work.

## 12.12 Courthouse Facilities

A trial with a large number of attorneys, parties, witnesses, exhibits, and documents requires advance planning for appropriate accommodations. Such a trial may require the following:

- a larger courtroom, in the courthouse or elsewhere;
- a courtroom that is technologically equipped;
- installation of case-specific technology in the courtroom for the case at hand;
- physical modifications to the courtroom, such as additional space for counsel, parties, files, exhibits, or persons whose presence may be needed, such as experts or consultants;
- jury accommodations, particularly in a lengthy trial;
- witness and attorney conference rooms; and
- courtroom security and access during nontrial hours.

The judge should alert those responsible for courthouse facilities of the trial needs as far in advance as possible. Allowing the parties access before trial to the courtroom and other areas as necessary helps them to prepare and to

advise the court of potential problems. Preparation is particularly important (and may require more time and effort than usual) if attorneys plan to bring evidence presentation equipment into a courtroom that is not technologically advanced or to supplement the court-provided equipment.<sup>321</sup> Most courts designate court personnel with whom the parties may coordinate these activities.

### 12.13 Managing Exhibits

Trial efficiency increases if each document or other item to be offered in evidence or used at trial (other than for impeachment) is

- premarked with an identification number, preferably in advance of trial but at least one day before it is to be offered or referred to at trial (preferably a single identification designation should be used for pre-trial discovery and trial) (see section 11.441)—the numbering system should accommodate and differentiate between evidentiary exhibits and illustrative aids;<sup>322</sup>
- listed on the form used by the court to record such evidence—counsel should obtain in advance of trial copies of the court’s form or, subject to the judge’s approval, create a form for use in the particular case;
- made available to opposing counsel and the court before trial begins;
- copied, enlarged, or imaged<sup>323</sup> as necessary for use at trial; and
- redacted, if lengthy, to eliminate irrelevant matter.

As discussed in section 11.64, the judge should consider requiring pretrial disclosure of proposed exhibits and objections thereto, and ruling at that time on admissibility to the extent feasible. The following procedures expedite the trial and help avoid interruptions:

- admitting into evidence exhibits not objected to, or to which pretrial objections were overruled, without formal offer and ruling;
- issuing pretrial rulings on objections to evidence—this should preclude the parties from renewing the offer or objection at trial, absent a substantial basis for reconsideration;<sup>324</sup>

321. The use of technology at trial is discussed in *infra* section 12.3; see also *Effective Use of Courtroom Technology*, *supra* note 85, at 1–59, 137–216.

322. *Id.* at 123–28.

323. Imaging of documents for computerized storage and retrieval is discussed in *supra* section 11.444.

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- ruling on objections made at trial from the bench without argument, deferring any necessary argument to the next scheduled recess, and having counsel proceed with other matters (see section 12.15); and
- alternatively, permitting attorneys not needed in the courtroom to present objections and arguments to a magistrate judge while the trial is proceeding, and receiving unresolved objections, along with the magistrate judge's summary of the arguments, for resolution after the jury has been excused.<sup>325</sup>

## 12.14 Transcripts

The benefits of expedited, daily, or hourly transcripts should be balanced against the costs they add to the litigation. Ultimately, the decision whether to incur the extra costs of such transcripts is for counsel. Under 28 U.S.C. § 1920(2), the court may tax as costs “fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case.” Courts do not ordinarily include in taxable costs the additional fees for expedited or daily transcripts.<sup>326</sup>

Having a transcript available can speed readbacks requested by the jury during deliberations, but the transcript, if given to the jury, may overshadow the jurors' mental impression of witness demeanor and credibility. Many judges advise jurors at the outset of the trial to be prepared to rely on their recollection rather than a transcript.

Real-time court reporting permits transcription on a monitor as the verbal exchange takes place. The more common practice is to provide a monitor only for the judge, but monitors may be provided in other locations in the courtroom<sup>327</sup> (e.g., counsel tables).

## 12.15 Conferences During Trial

The court should consider scheduling a conference with counsel at the end of each trial day, after the jury has been excused. The conference may be brief,

324. Counsel should, however, consult local law to determine whether renewal of the objection is required to prevent waiver. See *United States v. Rutkowski*, 814 F.2d 594, 598 (11th Cir. 1987).

325. See Harry M. Reasoner & Betty R. Owens, *Innovative Judicial Techniques in Managing Complex Litigation*, 19 Fed. Litig. Guide 603, 605–06 (1989) (discussing ETSI Pipeline Project v. Burlington N., Inc., No. B-84-979-CA (E.D. Tex.)).

326. See 10 Wright et al., *supra* note 101, § 2677 and cases cited therein.

327. For further discussion of this technology, see *Effective Use of Courtroom Technology*, *supra* note 85, at 29–32 and 164–68.

but should generally be on the record to avoid later misunderstandings. Such a conference helps avoid bench conferences and other trial interruptions. It can be used to plan the next day's proceedings and to fix the order of witnesses and exhibits, avoiding surprises and ensuring that the parties will not run out of witnesses. Counsel can raise anticipated problems, and the judge may hear offers of proof and arguments. The judge may, in light of other evidence previously presented, determine that further evidence on a point would be cumulative. In large litigation, attorneys working on the case but not directly engaged in the courtroom can prepare motions for consideration at the conference. The judge can provide guidance to attorneys without the stigma of courtroom admonitions, remind them, when necessary, of appropriate standards of conduct, and cool antagonism generated in the heat of trial. A short conference before the jury arrives in the morning can address last-minute changes in the order of witnesses or exhibits or follow up on matters raised at the previous day's conference.

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### 12.21 Opening Statements

Opening statements are of particular importance in complex litigation. To maximize their utility, consider some of the following points:

- the effectiveness of opening statements is often enhanced if preceded by preliminary instructions from the judge outlining the principal issues in the case;
- opening statements should be brief—perhaps subject to a time limit;
- it may be beneficial to set ground rules in advance for dealing with sensitive issues, such as punitive damages and evidence that may yet be ruled inadmissible;
- in long trials, it may be useful to allow each side time to make supplementary opening statements during trial to help the jury understand evidence as it is presented;
- it is helpful to set rules for the use of charts and other demonstrative aids not then in evidence—the court should encourage the use of such aids at this stage to aid jury comprehension, but should give opposing counsel an opportunity to review and object to them in advance of trial;

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- it is best to review all computer-driven graphics (particularly those with motion or sound) to be used in opening statements;<sup>328</sup>
- in multiparty cases, a decision should be made whether to permit each party to present an opening statement to establish its separate identity with the jury and, if this is the case, how to minimize repetition and limit time; and
- opening statements in nonjury cases are still useful in informing the court of each party's contentions and proposed order of proof, but they may be brief.

## 12.22 Special Procedures for Multiparty Cases

Appropriate procedures to minimize delay and confusion from the proliferation of counsel in multiparty cases can include the following:

- assigning primary responsibility for the conduct of trial to a limited number of attorneys, either by formal designation of trial counsel (see section 10.22) or by encouraging informal arrangement among the attorneys, taking into account legitimate needs for individual representation of parties;
- in cases in which the court will award or apportion attorneys' fees, overseeing the arrangements for trial preparation, clarifying the extent to which attorneys in subsidiary roles will be entitled to compensation, and ensuring that attorneys will not claim compensation for time unnecessarily spent at trial (see section 14.213);
- providing that objections made by one party will be deemed made by all similarly situated parties unless expressly disclaimed;
- permitting other counsel to add further grounds of objection, again on behalf of all similarly situated parties unless disclaimed;
- minimizing repeated objections by ordering that objections to a particular line of examination will be deemed "continuing" until its completion, without the need for further objection unless new grounds arise as the examination proceeds; and
- in cases alleging collusion or conspiracy, allowing counsel reasonable leeway to demonstrate their independence from one another and, if requested, giving cautionary instructions.

328. *See id.* at 153–64.

## 12.23 Advance Notice of Evidence and Order of Proof/Preclusion Orders

Counsel should exchange lists (with copies if not previously supplied) for each trial day indicating the order in which expected witnesses and exhibits will be called or offered. The lists should identify those portions of depositions to be read. The court should specify the amount of advance notice required, balancing opposing counsel's need for time to prepare against the possibility that intervening developments will require changes. Some judges require a tentative listing of the order of witnesses and exhibits a week or more in advance, with instructions to communicate changes as soon as known, and give a final list at a conference at the close of the preceding day.

Absent unusual circumstances, counsel should also indicate in advance when adverse parties or their employees will be called to testify. Counsel should try to accommodate personal and business conflicts and, to avoid surprise and possible embarrassment, not call on the opponent to produce a person without warning. If numerous employees are called, the judge should require counsel to order them so as to avoid disrupting the adversary's affairs unnecessarily. When plaintiffs call significant defense witnesses, consider permitting defendants to offer their case on redirect examination. The court can encourage counsel for the adverse party, upon sufficient advance notice, to arrange for the presence of witnesses under the party's control at the agreed-on time without the need for a subpoena (and even if not subject to subpoena). Ordinarily, it is best when witnesses, whether or not subpoenaed, are allowed to report on timely request rather than remain in continuous attendance.

If a party will not make available an employee who is beyond the court's subpoena power, any party may offer that witness's deposition for any purpose "unless it appears that the absence of the witness was procured by the party offering the deposition."<sup>329</sup> Though the court probably lacks authority to compel the appearance, it may encourage cooperation by precluding the uncooperative party from later calling such a witness. The court may similarly preclude witnesses who have earlier successfully resisted testifying for the opposing side on privilege or other grounds; an effective procedure is to enter an order requiring witnesses to elect between testifying or asserting a privilege at least forty-five days prior to trial.

329. Fed. R. Civ. P. 32(a)(3)(B).

## 12.24 The Judge's Role

This section sets out general principles relating to the judge's role at trial; for specific actions the judge may take to control the presentation of evidence at trial, see section 12.35.

Judges can control the courtroom and proceedings without frustrating the adversary process, and still remain humane and considerate. Such control provides the parties, counsel, and jurors with prompt, firm, and fair rulings. It keeps the trial moving in an orderly and expeditious fashion, bars cumulative and unnecessary evidence, and holds all participants to high professional standards (see section 12.35 for discussion of judicial control of time and proof). It also helps reduce the stress and tension of a long trial.

Counsel appreciate a judge's sensitivity to counsel's rights in the adversarial process to employ accepted strategies and tactics that serve their clients' interests. Counsel should understand courtroom procedures, such as the location from which to examine witnesses and the mechanics for submitting exhibits to witnesses, the clerk, or the jury. Written guidelines may be helpful, particularly to attorneys unfamiliar with local customs.

In jury trials, judicial restraint in questioning witnesses minimizes both the appearance of partiality and the disruption of counsel's presentation. The court should generally refrain from asking questions until counsel have finished their examination and even then limit questions to matters requiring clarification. See section 12.35.

## 12.3 Presentation of Evidence

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Although presentation of evidence is normally controlled by counsel's strategies and tactics, complex litigation presents other concerns, primarily jury comprehension and the length of the trial. These are not unrelated: A shorter trial promotes jury comprehension, and effective presentation of evidence saves time. Moreover, many jurors expect information to be presented succinctly, even where it deals with complex matters.

The judge should encourage or even direct the use of techniques to facilitate comprehension and expedition—primarily simplification of facts and evidence, use of plain language, and use of visual and other aids. Some techniques are time-tested; others are more innovative, but can improve the trial process without risking error.

### 12.31 Glossaries/Indexes/Demonstrative Aids

Aids that organize massive quantities of evidence and familiarize jurors with the relevant vocabulary can significantly enhance jury comprehension. Such aids include glossaries of important terms, names, dates, and events; informative indexes of exhibits to assist in identification and retrieval; and time lines of important events in the case. To the extent feasible, the judge should encourage or direct the parties to develop glossaries, indexes, and time lines as joint exhibits. They may be prepared using the procedure suggested for developing statements of agreed and disputed facts (see section 11.471); if necessary, the court can refer disputes to a magistrate judge. Stipulated facts should be presented in the form of a logically organized statement.

Jurors understand better and remember more when information is presented both visually and verbally. Graphics, such as charts and diagrams, are common demonstrative aids.<sup>330</sup> Demonstrative evidence may be admitted, whatever its source, if it will help the trier of fact understand other evidence,<sup>331</sup> however, the court should prohibit misleading representations, such as physical representation of data (e.g., the area occupied on a chart) that is disproportionate to the ratio of the numbers represented, distorted representation of data (e.g., representing one-dimensional data by three-dimensional bars), showing amounts of money in nonconstant dollars, or graphs taking figures out of context or using different scales that may distort large or small differences in data.<sup>332</sup> The judge should try to rectify such problems pretrial.

330. See *supra* section 12.21 on the use of demonstrative aids during opening statements and *Effective Use of Courtroom Technology*, *supra* note 85, at 137, on computer-generated graphics.

331. See 2 McCormick on Evidence § 212, at 9–10 (John William Strong et al. eds., 4th ed. 1992).

332. See Edward R. Tufte, *Visual Explanations: Images and Quantities, Evidence and Narrative* (1997); *Envisioning Information* (1990); and *The Visual Display of Quantitative Information* (1983).

## 12.32 Use of Exhibits

Counsel should present exhibits in a manner that will communicate some significant fact (except when an exhibit is simply a link in a chain of proof). Thus, documentary proof should be redacted to eliminate irrelevant matter, and its contents offered, whenever possible, by way of summary or other streamlined procedure that will focus the jury's attention on the material portions. See section 11.492.

It is time-consuming when counsel circulate exhibits among the jurors, and it disrupts the examination of witnesses, except where the physical qualities of an object are themselves relevant. It is helpful, however, to display exhibits so that the jurors, the judge, and counsel can view them while hearing related testimony. Below are some options to consider:

- *Enlargements.* They may be posted, or projected on a screen easily visible to the witness, judge, and jurors; counsel can direct attention to particular portions of an exhibit during examination.
- *Evidence presentation systems.* Such systems display evidence electronically and simultaneously to everyone in the courtroom and may significantly assist jury involvement and comprehension and expedite trial. The most basic use is for the retrieval and display of documentary exhibits. Evidence presentation systems can also be used to create and display illustrative aids by combining an exhibit with enhancements that make the content of the exhibit easier to understand—for example, by highlighting and enlarging relevant portions of documents and photos, juxtaposing text from two or more pages, adding explanatory labels and text, displaying digitized videotaped transcripts of depositions, playing digitized audio files, and presenting complex animations and simulations. The following should be considered with respect to evidence presentation systems:
  - providing counsel with an orientation to the courtroom evidence presentation system;<sup>333</sup>
  - having counsel practice using the technology, overcoming the problem that some lawyers may have had little or no experience with these valuable resources;<sup>334</sup>
  - permitting attorneys to bring their own evidence presentation equipment into a courtroom that is not technologically advanced

333. See *Effective Use of Courtroom Technology*, *supra* note 85, at 49–50.

334. *Id.* at 51.

- and allowing them to practice on the equipment in the courtroom before trial (an increasing number of courts have evidence presentation systems installed in at least one courtroom, although attorneys typically must provide their own laptop computer, if one is to be used);<sup>335</sup>
- determining whether counsel, the court, or a combination of the two will control the equipment at trial;<sup>336</sup>
  - determining whether the use of the system will be optional or mandatory for attorneys;<sup>337</sup> and
  - requiring attorneys to state for the record the backup plan in case of equipment failures.<sup>338</sup>
- *Copies and exhibit books.* In some cases it may be cost-effective for counsel simply to provide jurors with individual binders containing indexed copies of selected exhibits central to the presentation at trial, updated as needed, with separate pages summarizing counsel's contentions concerning their significance. If juror note taking is allowed (see the discussion of juror notebooks in sections 12.421–12.422), there should be space for their notes about each exhibit. Other less important exhibits may be distributed and collected by the courtroom clerk on a daily basis, with jurors instructed not to make notes on their copies.

To avoid cumbersome and time-consuming handling of exhibits, exhibits should be premarked and received into evidence pretrial. Copies of exhibits to be used should be available to a witness on the stand and in the hands of counsel before an examination begins. If voluminous, relevant exhibits can be kept in tabbed notebooks stacked on a cart located within easy reach of the witness, counsel can direct the witness to the volume and tab number of exhibits as needed.

335. *Id.* at 44.

336. *Id.* at 45–46.

337. *Id.* at 44–45.

338. *Id.* at 141–42.

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## 12.33 Depositions

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The court should encourage counsel to avoid reading depositions at trial and to consider the techniques detailed in the following subsections.

### 12.331 Summaries

If the contents of a deposition are a necessary element of a party's proof, the preferred mode of presentation is a succinct stipulated statement or summary of the material facts that can be read to the jury. Most of the contents of pretrial depositions are irrelevant or at least unnecessary at trial; the material portions rarely exceed a few lines or pages. The judge should encourage the parties to agree on a fair statement of the substance of the testimony, possibly with the assistance of a magistrate judge. Video presentation may increase the effectiveness of summaries, as discussed below.

### 12.332 Editing, Designations, and Extracts

A fair presentation of the contents of a deposition may, however, also require presenting a colloquy with the witness. The portions read should be limited to the essential testimony of the witness, but may include not only the deponent's "final" answer but also testimony that reflects demeanor, attitude, recollection, and other matters affecting credibility. Rather than going through a deposition to eliminate unnecessary portions, the judge can direct counsel to select for designation only the genuinely material parts that cannot be presented by way of summary. Background information, such as that bearing on the qualifications of an expert, may be covered by a brief stipulation read to the jury in advance.

Before trial, each party should designate those portions of depositions it intends to read at trial. Using this information, other counsel can designate additional portions, if any, to be read. Under Federal Rule of Civil Procedure 32(a)(4), if only a part of a deposition is offered, "an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other part."<sup>339</sup> The parties should repeat this series of exchanges until they have designated

339. See also Fed. R. Evid. 106.

the portions to be offered. Those portions usually will be introduced at trial in the same sequence in which they appear in the deposition, although another sequence can be adopted to improve comprehension.

A common and convenient method for making designations is for the parties to bracket the portions to be offered on the pages of the deposition, each using a different color. Other parties may indicate objections in abbreviated language opposite the brackets (e.g., “D obj. hearsay, not best evidence”). The court’s rulings may be indicated in a similar fashion, enabling counsel to read only the admitted portions from the original deposition.

Developments during trial may change the parts of depositions that the parties want to offer. Ordinarily, the court should permit parties to change their designations as long as other parties are advised promptly of such changes and have sufficient notice to revise their counterdesignations.

### 12.333 Presentation/Videotaped Depositions

In nonjury cases, relevant excerpts of depositions or summaries can be prepared and offered as exhibits, usually without being read at trial and transcribed by the court reporter. The judge can later read these excerpts along with other exhibits in the record. The judge, however, should hear the testimony if a ruling from the bench is expected. The same procedure can be used in jury trials; it reduces the volume of deposition evidence but increases the number of exhibits.

In jury cases, attorneys or paralegals usually read deposition testimony. The court should discourage or prohibit using actors and ensure that the reader’s pauses, inflection, and tone do not unfairly distort the witness’s deposition testimony. If a tape recording (e.g., made by court reporters during depositions as a backup) is available, it may be played for the jury when necessary. Under Federal Rule of Civil Procedure 32(c), deposition testimony may be offered at trial in nonstenographic form if the offering party provides a transcript of the pertinent portions to the court and, under Rule 26(a)(3)(B), to other parties (indeed, in a jury trial, on a party’s request it must be so presented if available unless the court for good cause orders otherwise). Recordings may, however, be difficult to hear and understand.

Videotape is generally more effective for the presentation of deposition testimony, for impeachment and rebuttal, and for reference during argument.<sup>340</sup> Videotaped depositions may be used routinely or for key witnesses

340. For discussion of the use of videotaped depositions during argument, see Henke, *supra* note 186, at 165 (citing Gregory P. Joseph, Modern Visual Evidence § 3.03[2][f] (1984)). See also Effective Use of Courtroom Technology, *supra* note 85, at 187, 191–92 (discussing possible objections to the use of videotapes at trial).

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only; any party may videotape a deposition without court order.<sup>341</sup> To avoid an unfair difference in emphasis, however, testimony should not be presented by different means on direct and cross-examination.<sup>342</sup> As with all depositions, videotaped depositions should be purged of irrelevant and inadmissible matter.

Digitized video (made with a digital video camera) is easier to edit and use in the courtroom than analog video because specific portions can be identified more readily. When appropriate, consider requiring counsel to exchange analog video for a digitized version to minimize expense and to ensure that all copies of the recording to be used at trial are of the same quality.

As with written depositions, when edited versions of videotaped depositions are offered, other parties may request introduction of deleted portions.<sup>343</sup> Counsel should provide other parties access to recordings in their entirety before trial, allowing them to designate the portions they contend should be shown and to present unresolved disputes promptly to the court.

The process for determining the admissibility of videotape testimony should be addressed early in the litigation before the parties have made extensive investments. The persuasive power of visual presentation carries with it the potential for prejudice, a risk heightened by the opportunities for manipulation. Rulings on objections are critical. Unless the parties can reach substantial agreement on the form and content of the videotape to be shown to the jury, the process of passing on objections can be so burdensome and time-consuming as to be impractical for the court.

### 12.334 Alternative Means of Presenting Testimony

Videoconferencing<sup>344</sup> makes it possible to present the testimony of absent witnesses, including witnesses recalled for only brief testimony, without the

341. Fed. R. Civ. P. 30(b)(2), (3).

342. See *Traylor v. Husqvarna Motor*, 988 F.2d 729, 734 (7th Cir. 1993) (disapproving presentation of live direct testimony and videotaped cross).

343. See Fed. R. Civ. P. 32(a)(4); Fed. R. Evid. 106.

344. This technique was used in *San Juan Dupont Plaza Hotel Fire Litigation*, MDL 721, and in *In re Washington Public Power Supply System Securities Litigation*, MDL 551. In both cases, the court held that witnesses (at least if under a party's control) may be compelled to testify by such means despite being beyond the court's subpoena power, reasoning that the limits on that power are intended only to protect witnesses from undue inconvenience. See *San Juan*, 129 F.R.D. at 426 (approving Judge Browning's reasoning in *Washington Public*). For considerations related to the videoconferencing of witness testimony, see *Effective Use of Courtroom Technology*, *supra* note 85, at 168–74.

cost and other disadvantages of depositions.<sup>345</sup> In some instances, the cost and burden of obtaining the physical presence of a witness will be disproportionate to the importance of the expected testimony. For videoconferencing, the procedure for examination is similar to that in the courtroom—the witness is sworn and examined on direct and cross—though additional safeguards may be needed.<sup>346</sup> The cost should generally be borne by the party calling the witness, though a portion may be allocated to other parties who prolong examination by extensive cross-examination or objections.<sup>347</sup>

Federal Rule of Civil Procedure 43(a) permits presentation of witness testimony by videoconference “for good cause shown in compelling circumstances and upon appropriate safeguards.” The Rule 43(a) committee notes point out that the appearance of a witness by videoconference “cannot be justified by a showing that it is inconvenient for the witness to attend the trial.” More is required, unless both parties consent. Courts have found good cause shown in instances where it was necessary to obtain the testimony of witnesses who are incarcerated, medically incapacitated, or otherwise unable to travel to the courtroom, or who are located at a distance and are only peripherally involved in the trial. A peripheral fact witness or a witness who supplies a part of the foundation for an exhibit might be inconvenienced considerably by traveling a significant distance to participate in a trial for only a brief interval. Judges also have allowed child witnesses to appear by videoconference to avoid emotional distress the child might experience from a courtroom appearance.

## 12.34 Sequencing of Evidence and Arguments

Jury recollection and comprehension in lengthy and complex trials may be enhanced by altering the traditional order of trial. Sequencing techniques include the following:

- *Evidence presented by issues.* Organizing the trial in logical order, issue by issue, with both sides presenting their opening statements and evidence on a particular issue before moving to the next, can help the jury deal with complex issues and voluminous evidence, but may result in inefficiencies if witnesses must be recalled and evidence re-

345. See *In re San Juan Dupont Plaza Hotel Fire Litig.*, 129 F.R.D. 424, 425–26 (D.P.R. 1989).

346. For a sample protocol, see *id.*, 129 F.R.D. at 427–30 (adapted from protocol used in *Washington Public*). For example, it is necessary to control the presence of other persons in the room in which the witness is being interrogated by remote means.

347. See *id.* at 428.

peated. See section 12.21. This procedure is roughly equivalent to severance of issues for trials under Federal Rule of Civil Procedure 42(b).

- *Arguments presented by issues/sequential verdicts.* If it is impractical to arrange the entire trial in an issue-by-issue format, it may still be helpful to arrange closing arguments by issue, with both sides making their closings on an issue before moving to the next. The entire case may be submitted to the jury at the conclusion of all argument, or the issues may be submitted sequentially (see section 12.451 (special verdicts and general verdicts with interrogatories) and section 35.35 (civil RICO trials)). The latter procedure may be advantageous if a decision on one issue will render others moot or if the early resolution of pivotal issues will facilitate settlement; on the other hand, it can lengthen the total time for deliberations and requires recurrent recesses while the jury deliberates.
- *Interim statements and arguments.* In a lengthy trial, it can be helpful if counsel can intermittently summarize the evidence that has been presented or can outline forthcoming evidence. Such statements may be scheduled periodically (for example, at the start of each trial week) or as the judge and counsel think appropriate, with each side allotted a fixed amount of time. Some judges, in patent and other scientifically complex cases, have permitted counsel to explain to the jury how the testimony of an expert will assist them in deciding an issue. Although such procedures are often described as “interim arguments,” it may be more accurate to consider them “supplementary opening statements,” since the purpose is to aid the trier of fact in understanding and remembering the evidence and not to argue the case.<sup>348</sup> (Interim jury instructions, discussed in section 12.433, and reminders to the jury of the difference between evidence and counsel’s statements<sup>349</sup> may also be helpful.)

## 12.35 Judicial Control/Time Limits

Limits on time and evidence are ordinarily set at the pretrial conference so that counsel can plan accordingly before the trial begins. See section 11.644. Judicial intervention may become necessary, however, if evidence exceeds reasonable bounds and does not contribute to resolving the issues presented.

348. See, e.g., *In re Visa Check/Mastermoney Antitrust Litig.*, 96-CV-5238, 2003 WL 1712567 (E.D.N.Y. Apr. 1, 2003) (order addressing jury selection and conduct of upcoming trial).

349. See Robert M. Parker, *Streamlining Complex Cases*, 10 Rev. Litig. 547, 553–54 (1991).

One judicial alternative is to limit or bar the examination of witnesses whose testimony is unnecessary or cumulative and to call for stipulations where a number of witnesses would testify to the same facts. Judges can review the order in which witnesses are to be called to determine if it would interfere with an orderly trial. For example, counsel may try to call an adversary's expert witness before critical evidence has been presented and before the party's own expert has testified. When particular, clearly defined subject matter requiring the testimony of two or more persons is involved, it may be efficient to examine the witnesses simultaneously, allowing the more knowledgeable witness to answer. This may require consent of counsel, in view of the parties' right under Federal Rule of Evidence 615 to have witnesses excluded. Expert witnesses needed to advise counsel are not subject to exclusion.<sup>350</sup> Opposing expert witnesses may be examined seriatim in order to clearly frame their agreements and disagreements for the trier of fact.

The judge should ordinarily refrain from interfering with counsel's mode of questioning, except when ruling on objections. However, the judge should consider limiting the examination when the questioning is confusing, repetitive, or irrelevant and threatens to delay the trial. Federal Rules of Evidence 611(a) and 403 permit exclusion even of relevant testimony "if its probative value is substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

The judge may intervene, even without objection, in order to

- bar testimony on undisputed or clearly cumulative facts—testimony may be disallowed as cumulative if it relates to evidence to be covered in later testimony, or matters beyond the scope of the examination;
- clarify confusing questions or answers;
- prohibit repeated paraphrasing of answers into new, duplicative questions (e.g., "Do I understand you to mean that . . ."; "Is it your testimony then that . . ."; "Is it fair to say that . . ."; and the like); and
- encourage stipulations by opposing counsel to avoid routine testimony, such as the date of a document.

It is helpful for the court to issue guidelines providing, among other things, that it will

- not instruct witnesses to answer "yes or no" to questions that (1) are compound, (2) require a witness to make or accept a characterization rather than testify to a fact, or (3) are argumentative in form or substance;

350. Fed. R. Evid. 615(3) committee note.

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- bar questions framed as arguments rather than requests for testimony that the witness is competent to give;
- prohibit questions asking one witness to comment on the credibility of another, unless prior request is made outside of the jury's presence; and
- sustain objections that an answer is nonresponsive only when made by interrogating counsel.

As noted in section 11.644, time limits generally should be established before trial. The burdens of an unduly long trial on jurors and on the public's access to the court may, however, require setting limits during trial. Such limits should not prejudice either side, but the mere threat of such limits may cause counsel to expedite the trial. Limits may grant each party a specified number of hours for all direct and cross-examination, restrict the time for specific arguments, or limit the time for examination of particular witnesses. Once limits have been imposed, the court should grant extensions only for good cause, taking into account the requesting party's good-faith efforts to stay within the limits and the degree of prejudice that would result from the denial of an extension.

It occasionally may be appropriate for the judge to use Federal Rule of Evidence 614's authority to question parties' witnesses. However, such questions should avoid the appearance of partiality or interference with counsel's trial strategy and should be limited to clarifying matters on which the jury may be confused. Rule 614's committee note states that "the authority [to question witnesses] is . . . abused when the judge abandons his proper role and assumes that of advocate." Such abuse may be grounds for reversal.

Rule 614 also allows the court to call its own witnesses (subject to cross-examination by the parties); however, that authority is rarely used, other than with respect to an expert under Rule 706 (see section 11.51). An alternative approach is for the judge to suggest questions to counsel outside the hearing of the jury, or inquire whether the matter will be clarified or addressed by another witness.

## 12.4 Jury Trials

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Jury trials in complex cases place a heavy responsibility on the judge, who must ensure not only that the parties receive a fair trial but also that the jurors are treated with courtesy and consideration by counsel, staff, and the court itself. Although the jurors are the decision makers, they too often are in the dark about much of what is happening in court and are left to wait while the judge and counsel discuss matters outside their presence.

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#### 12.411 Size of the Venire and Panel

Federal Rule of Civil Procedure 48 requires between six and twelve jurors for a civil trial. Local rules may also address jury size. Rule 47(c) allows the judge to excuse jurors during trial for good cause, but federal courts no longer seat alternates in civil trials—all jurors not excused participate in deliberations. A verdict from a jury of less than six requires a stipulation. The committee note to Rule 48, however, suggests avoiding verdicts of fewer than six, even

351. See generally Benchbook, *supra* note 45, §§ 2.05–6.03.

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with a stipulation, because smaller juries may be less reliable. For similar reasons, many judges prefer seating twelve jurors, especially in complex cases.

The court should seat enough jurors to minimize the risk of a mistrial, considering the probability of incapacity, disqualification, or other developments requiring the excuse of jurors during trial. This is especially important in complex cases. The primary factor is the expected length of trial. One rule of thumb is to select eight jurors for a trial expected to last up to two months, ten jurors for a trial expected to last four months, and twelve jurors for a longer trial. In determining appropriate jury size, consider asking the parties if they will stipulate, in the event of a hung jury, to accept a verdict from a less-than-unanimous jury<sup>352</sup> or to allow the case to be decided on the record by the court.<sup>353</sup> The parties may be more amenable to entering such agreements before voir dire than after the jury has been selected.

#### 12.412 Voir Dire

The court may examine prospective jurors itself or allow the parties to do so.<sup>354</sup> The judge who conducts the examination must “permit the parties or their attorneys to supplement the examination by such further inquiry as it [the court] deems proper or . . . submit to the prospective jurors such additional questions of the parties or their attorneys as ‘it [the court] deems proper.’”<sup>355</sup> The judge should invite the attorneys to submit proposed questions in advance of trial and to conduct reasonable follow-up questioning of the jurors after the judge has finished.

In cases involving potentially large jury venires, judges often mail pre-voir dire jury questionnaires to prospective jurors for basic information and to identify prospective jurors unable to serve. This avoids unnecessary trips to court, but may lead to many requests by potential jurors to be excused and to inappropriate inquiries about the case. An alternative is to have prospective jurors complete a questionnaire in court before voir dire begins.<sup>356</sup>

During voir dire, the court should inform prospective jurors of the expected length of trial, the trial schedule, and other facts that may bear on a juror’s ability and qualifications to serve. The prospect of a long trial may produce many requests to be excused, and may generate the risk of a jury consisting solely of persons who are retired or otherwise not employed outside their

352. See Fed. R. Civ. P. 48.

353. See Fed. R. Civ. P. 39(a)(1).

354. Fed. R. Civ. P. 47(a); Fed. R. Crim. P. 24(a).

355. Fed. R. Civ. P. 47(a). Federal Rule of Criminal Procedure 24(a) is similar, but applies to the defendant, defense counsel, and the government’s attorney.

356. See *infra* section 40.7.

home. Introductory comments can reduce requests for excuses—these comments should emphasize the responsibilities of citizenship and the importance of representative juries, and describe the challenge of litigation and the opportunity to learn more about the judicial process.

Some judges permit counsel to deliver opening statements to the entire venire so that prospective jurors can respond to voir dire questions more intelligently.

### 12.413 Peremptory Challenges

In civil cases, each party is allowed three peremptory challenges.<sup>357</sup> Several plaintiffs or several defendants may be considered a single party for that purpose, but the court may allow additional challenges, depending on whether parties' interests conflict or diverge significantly. The court should grant additional challenges sparingly because they will increase the size of the venire and lengthen voir dire and the jury-selection process. Presumptively, each side should have the same number of challenges. Some judges have used unconventional methods of jury selection in complex cases to increase the participation of relatively more experienced and educated jurors. Such techniques are best used with the consent and cooperation of counsel.<sup>358</sup>

## 12.42 Juror Note Taking/Notebooks/Questions

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### 12.421 Note Taking

Arguments for juror note taking are particularly compelling in long and complicated trials.<sup>359</sup> Many jurors will not take notes, but denial of permission to do so may be inconsistent with the large measure of responsibility the system places on jurors, and it may hamper their performance. If note taking is permitted, the court should provide jurors with paper (or notebooks with space for notes, see section 12.422) and pens. Jurors should be told that notes are only for their individual use and not to be shown or read to others, that

357. 28 U.S.C. § 1870 (West 2002); Fed. R. Civ. P. 47(b). In felony cases, defendants are allowed ten challenges jointly and the government six (with additional challenges for alternates, if selected); the court may allow additional defense challenges if there are multiple defendants. Fed. R. Crim. P. 24(b).

358. See William W Schwarzer, *Reforming Jury Trials*, 132 F.R.D. 575, 580–81 (1991).

359. See *id.* at 590–91.

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note taking should not distract them from observing the witnesses, and to leave their notes in the jury room during recesses.

#### 12.422 Juror Notebooks

Individual notebooks can hold exhibits (see section 12.32) and provide assistance to help jurors organize and retain information (witness and exhibit lists, pictures of witnesses, chronologies and timelines, glossaries (see section 12.31), and excerpts from instructions).<sup>360</sup> The amount of material in the notebooks should be controlled to ensure that the notebooks remain clear and useful.

#### 12.423 Juror Questions

Some judges allow jurors to ask questions in open court in civil cases. Others require them to submit questions in writing for consideration by the judge and counsel. Still others disallow juror questions. Some judges say nothing on this subject; others inform jurors that questions are permitted at the conclusion of a witness's examination to help them understand the evidence. Jurors, however, should be cautioned that it is for the lawyers to try the case and that matters occurring to them during one witness's examination may later be covered by another's<sup>361</sup> or may be inadmissible under the Federal Rules of Evidence.

360. See Parker, *supra* note 349, at 550. Preliminary and interim instructions are discussed in *infra* sections 12.432–12.433.

361. The pros and cons of juror questioning, and the procedures to follow if it is allowed, are discussed in *United States v. Cassiere*, 4 F.3d 1006, 1016–18 (1st Cir. 1993); *United States v. Johnson*, 914 F.2d 136, 137–39 (8th Cir. 1990) (criminal); *DeBenedetto v. Goodyear Tire & Rubber Co.*, 754 F.2d 512, 513–17 (4th Cir. 1985); Schwarzer, *supra* note 358, at 591–93 (also providing sample instruction).

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### 12.431 General Principles

A complex and protracted trial makes understandable jury instructions particularly important. Instructions should use language that laypersons can understand—instructions should be concise, concrete, and simple, be in the active voice, avoid negatives and double-negatives, and be organized in logical sequence. Counsel should submit proposed instructions at the final pretrial conference to focus the judge's and lawyers' attention on the issues to be tried (see section 11.65).

Substantive instructions should be tailored to the particular case, and the judge should avoid a generalized pattern of instructions. The judge should explain propositions of law with reference to the facts and parties in the case; illustrations familiar to jurors may also help. Instructions using the language of appellate opinions are rarely meaningful to jurors. Most judges reword—or at least edit—counsel's proposed instructions, which are often argumentative and one-sided. Combining the proposals submitted by counsel for each side rarely produces sound and intelligible instructions. Instructions should be read to the jury in a manner that enhances comprehension and retention; rarely should the reading take more than thirty minutes. Some judges use the court's evidence presentation system to put the jury instructions on a screen or monitors in the courtroom so that jurors can read along as the instructions are given orally.<sup>363</sup> Jurors usually like to have one or more copies of the instructions in the jury room (see section 12.434). In complex cases with long verdict forms, it is helpful for each juror to have an individual copy of the verdict form.

### 12.432 Preliminary Instructions

Jurors can deal more effectively with the evidence in a lengthy trial if they are provided with a factual and legal framework to give structure to what they see and hear. Moreover, jurors should understand the trial process in which

362. See generally Benchbook, *supra* note 45, §§ 2.07–2.08, 6.05–6.06 (jury instructions in criminal and civil cases, respectively).

363. See *Effective Use of Courtroom Technology*, *supra* note 85, at 149–53, for related discussion and suggestions.

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they are about to participate and what they can expect. Preliminary instructions provide context and basic guidance for the jurors' conduct. These instructions typically contain or delineate the following:

- *Preliminary statement of legal principles and factual issues.* The instructions should summarize the key factual issues, including the undisputed facts and the parties' major contentions (which may be drafted jointly by the parties), and explain briefly the basic legal issues and principles, such as the elements of claims and defenses to be proved. The court should emphasize that these instructions are preliminary—they don't cover all the issues or principles—and that instructions given at the conclusion of the case will govern deliberations. Since one purpose of these instructions is to prepare jurors for opening statements, they are usually given first, permitting counsel to refer to them in opening statements. The judge may, however, defer instructions until after opening statements or give supplemental preliminary instructions at that time.
- *The conduct of the trial.* The judge should inform jurors of the anticipated course of the trial from opening statements to verdict, the methods for presenting evidence, and the procedure for raising and resolving objections. It is also useful to introduce court personnel—the clerks, bailiffs, and reporters—and to provide a short orientation to the equipment in the courtroom.<sup>364</sup>
- *Schedule.* Jurors should be informed of the hourly and daily trial schedule and any holidays or other recesses.
- *Precautions to prevent mistrial.*<sup>365</sup> The judge should direct jurors not to discuss the case or communicate with trial participants. It is also important that they be warned against exposure to publicity and attempts at independent fact-finding, such as viewing the scene of some occurrence or undertaking experiments or research.
- *Pretrial procedures.* The instructions should briefly describe the various discovery devices used during the pretrial stage of the litigation, such as depositions, document production, and interrogatories. This information will be helpful when the evidence is introduced, and it explains how the parties learned the facts of the case.
- *The functions and duties of the jury.* The judge should describe the jury's role as fact-finder; the burden of proof; assessing the credibility of witnesses; the nature of evidence, including circumstantial evidence

364. See *id.* at 146–49 (suggesting language for explaining courtroom technology to jurors).

365. See also *infra* section 12.44 (avoiding mistrial).

and the purpose of rules of evidence; and the jurors' need to rely on their recollection of testimony (including any special instructions about the use of juror notebooks, note taking, or questions). Most of these instructions should be repeated in the final jury charge, supplemented by any special explanations (such as use of convictions to impeach credibility) warranted by developments at trial, or the use of special verdicts or interrogatories.<sup>366</sup>

### 12.433 Interim and Limiting Instructions

Developments in the course of trial may require additional instructions. Under Federal Rule of Evidence 105, when evidence is admitted that is admissible as to some but not all parties or for a limited purpose only, the court must, upon request, instruct the jury accordingly. At counsel's request, the judge may repeat such limiting instructions at the close of trial. Counsel should be advised that when they contemplate offering such evidence, they should raise the issue promptly (if possible, before trial) and submit proposed instructions.

The judge may also give instructions at any point in the trial where they might be helpful to the jury. An explanation of applicable legal principles may be more helpful when the issue arises than if deferred until the close of trial, but counsel should be permitted to comment or object before an instruction is given. As with preliminary instructions, the judge should caution the jury that these are only interim explanations, and that the final, complete instructions on which they will base their verdict will come at the close of trial. If the parties are presenting their evidence according to a prescribed sequence of issues (see section 12.34), the instructions should be structured accordingly.

### 12.434 Final Instructions

Although proposed instructions should generally be submitted to the court in connection with the final pretrial conference, developments during the trial may require their revision or supplementation. Counsel are entitled to file written requests for instructions "at the close of the evidence or at such earlier time as the court reasonably directs," and are entitled to notice of the judge's proposed action before closing arguments.<sup>367</sup> Most judges, rather than responding to particular requests, provide counsel with the entire charge they propose to give and then hold a charge conference to consider counsel's objections and requests; generally there will be little controversy if the judge has

<sup>366</sup>. See *infra* sections 12.436, 12.45 (supplemental instructions and verdicts, respectively).

<sup>367</sup>. Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

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prepared instructions.<sup>368</sup> Having proposed instructions submitted electronically can expedite the editing process.

Final instructions may be given before or after closing arguments, or both.<sup>369</sup> Though traditionally instructions have been given after counsel's closings, there are advantages to giving the bulk of the instructions before argument.<sup>370</sup> Instructions on the law may make closing arguments easier to understand, and counsel can refer to instructions already given in arguing their application to the facts. At a minimum, counsel should know before closing arguments what final instructions will be given. This may help them structure their arguments. The judge should reserve the final closing instructions, however, until after arguments, reminding the jury of the instructions previously given and instructing them about the procedures to follow in deliberations.<sup>371</sup>

Most judges give jurors copies of the instructions to use during deliberations. Because jurors are unlikely to remember lengthy and complex legal terms, define these terms in advance so that they can listen to the charge for a general understanding rather than try to memorize it. Some judges keep the written charge from jurors while they deliver the instructions, to focus attention on the delivery. Others permit the jurors to follow the text in hard copy or on a monitor, or at least give them a brief topical outline to follow as the instructions are given. Jurors should have any special verdict forms or interrogatories for use during deliberations.

The oral charge, which the court reporter transcribes, should be complete within itself (i.e., not merely refer to writings that the jury may be given). The judge should instruct jurors that, in the event of any variations between the oral and written charges, the oral charge controls and governs their deliberations. Some judges have experimented with providing jurors with a tape recording of the charge for use during deliberations. Access to specific passages may be facilitated by recording designated portions on separate tapes, or maintaining a record of the counter number where different portions begin.<sup>372</sup> The charge should focus on helping the jurors understand the law and their responsibilities.

368. For a general discussion of procedures and options, see *Benchbook*, *supra* note 45, §§ 2.08, 6.06.

369. Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

370. See Fed. R. Civ. P. 51 committee note.

371. See *Stonehocker v. Gen. Motors Corp.*, 587 F.2d 151, 157 (4th Cir. 1978); *Babson v. United States*, 320 F.2d 662, 666 (9th Cir. 1964).

372. See Leonard B. Sand & Steven A. Reiss, *A Report on Seven Experiments Conducted by District Judges in the Second Circuit*, 60 N.Y.U. L. Rev. 423, 456–69 (1985).

In complex litigation, some judges comment on evidence in order to explain subject matter foreign to jurors and to keep them from being confused or misled by adversarial presentations. Such comments should be impartial and assist comprehension only. Before commenting on the evidence, however, consider submitting the proposed language to counsel for comment and objections. The judge's comments may be included with the written instructions given to the jury, but it may be preferable not to do so to avoid giving the comments undue weight. A judge's expression of a personal opinion on disputed facts can be problematic.<sup>373</sup>

After the judge has given all instructions, and before the jury retires, counsel are entitled to record any objections to the charge outside the presence of the jury.<sup>374</sup> It is helpful to remind counsel that objections and the grounds must be stated distinctly or be deemed waived.<sup>375</sup> The judge can then give corrective or supplemental instructions (see section 12.436) before deliberations begin.

#### 12.435 Jurors' Use of Exhibits During Deliberation

Some judges send all exhibits received in evidence (except items such as currency, narcotics, weapons, and explosive devices) directly to the jury room for reference during deliberations. Other judges await requests from the jury, or withhold some items—such as those received for impeachment or another limited purpose—until and unless requested by the jury, when they repeat the limiting instructions. If the exhibits are voluminous, jurors should be given an index or other aids to assist their examination (see section 12.31).

#### 12.436 Supplemental Instructions and Readbacks

Requests by the jury for supplemental instructions during deliberations are handled in much the same manner as final instructions, i.e., the appropriate response is determined after consulting with counsel and allowing them to object to the proposed response on the record. The instructions should be given orally in open court, with a reminder to the jury to consider the instructions as a part of those previously given, which remain binding.

The final instructions should advise the jurors that in deliberating on their verdict, they will not have a transcript available but will have to rely on the ex-

373. See *Quercia v. United States*, 289 U.S. 466, 469 (1933). *Quercia*, in which Chief Justice Hughes discusses judicial comments on evidence in detail, is still cited as the leading case on the issue. See, e.g., *United States v. Beard*, 960 F.2d 965, 970 (11th Cir. 1992).

374. Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

375. Fed. R. Civ. P. 51; Fed. R. Crim. P. 30.

hibits and their recollection of the testimony. Nevertheless, after long and complex trials, most juries will request readbacks of testimony. The court should instruct the jury to make requests as specific and narrow as possible to avoid excessively long readbacks, then should confer with the attorneys to seek agreement on the portions of the testimony to be read. Counsel should state any objections on the record.

Readbacks should not unduly emphasize any part of the evidence.<sup>376</sup> Some judges decline readback requests altogether, to save time and to avoid potentially unfair distortions of the record. This approach can sometimes make the jury's task more difficult. Some readbacks can be avoided, however, by an agreed-on statement of the parties' positions on the matter at issue. Readbacks should never be authorized absent counsel's consent or, at least, absent an opportunity to be heard.

## 12.44 Avoiding Mistrial

Complex trials increase the potential and consequences of mistrials. Accordingly, the judge might consider the following precautions to minimize the most obvious risk, the jury's failure to reach a verdict:

- *Evidence and instructions.* Trials and charges should present the facts and the law so as to maximize jury comprehension.
- *Stipulations on verdict.* In advance of trial, the judge should encourage the parties to stipulate under Federal Rule of Civil Procedure 48<sup>377</sup> to accept a nonunanimous verdict, or under Rule 39(a)(1) to accept a nonjury decision on the same evidence if a jury verdict cannot be obtained (see section 11.62). Such stipulations may be made during trial or deliberations—indeed, the parties may not seriously consider them until actually faced with the possibility of mistrial caused by the need to remove a juror—but are generally easier to obtain in advance.
- *Partial verdicts.* Permit juries to return a partial verdict on issues on which they can agree.
- *Cautionary instructions.* As discussed in section 12.432, the jurors, at the outset and periodically during the trial, should be given appropriate instructions regarding improper conduct. The final instructions may also include a brief explanation of the consequences of a mistrial.
- *Special verdicts and interrogatories.* These are discussed in section 12.451.

376. See *United States v. Hernandez*, 27 F.3d 1403, 1408–10 (9th Cir. 1994).

377. See section 12.411.

- *The jury room.* The jury deliberation room should be “sanitized” before the jury retires, and all counsel should review all material before it is sent into the room, to ensure that it includes nothing extraneous.
- *Sequestration.* The judge should consider sequestration only in extraordinary cases where public interest and media coverage are so intense as to jeopardize the fairness of the trial.
- *Seating a sufficient number of jurors.* If a juror is excused or disqualified during deliberations, it need have no effect as long as six jurors remain. If the loss of one or more jurors would reduce the jury to fewer than six members, however, the court cannot accept the resulting verdict (absent the stipulation described above). Seating a sufficient number of jurors helps to avoid this situation (see section 12.411).

## 12.45 Verdicts

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### 12.451 Special Verdicts and General Verdicts with Interrogatories

Special verdicts and interrogatories are common in complex trials. As discussed in section 11.633, they simplify instructions, help jurors organize their deliberations, facilitate partial verdicts, isolate issues for possible appellate review, and reduce the costs and burdens of a retrial. A general verdict form should at least require separate verdicts on each claim and on damages, but be drafted so as to prevent duplicate damage awards. Counsel and the court should consider the form of verdict during pretrial.

Special verdicts may require the jury to return findings on each issue of fact, leaving the court to apply the law to the jury’s findings. Some courts have held that the court may also amend special verdict responses to conform to the jury’s obvious intention or to correct a manifest error.<sup>378</sup> The preparation of special verdict forms can be complicated. Federal Rule of Civil Procedure 49(a) suggests the court submit “written questions susceptible of categorical or other brief answer,” or “written forms of the several special findings which might properly be made under the pleadings and evidence.” Alternatively, the rule

378. See *Aquachem Co. v. Olin Corp.*, 699 F.2d 516, 520 (11th Cir. 1983); *Shaffer v. Great Am. Indem. Co.*, 147 F.2d 981 (5th Cir. 1945), *but cf.* *Austin-Westshore Constr. Co. v. Federated Dep’t Stores, Inc.*, 934 F.2d 1217, 1224 (11th Cir. 1991) (*Aquachem* does not apply to general verdicts with interrogatories).

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permits any “method of submitting the issues and requiring the written findings thereon as [the judge] deems most appropriate.”

The verdict form should be concise, clear, and comprehensive. If any issue of fact raised by the pleadings is omitted, the parties must demand its submission before the jury retires or they will waive their right to a jury trial on that issue. The court may make its own findings on issues omitted without such demand.<sup>379</sup>

Inconsistent verdicts are a concern even with standard verdict forms, but careful structuring and instructions should minimize the risk of inconsistency. Rule 49 requires the court to instruct the jury on how to complete the verdict form properly, including both the procedure for rendering special verdicts and the specific substantive issues to be decided. Consider having the jury return partial verdicts seriatim, instructing on each issue individually before the jury deliberates on it.

Alternatively, the court could submit a general verdict form with interrogatories. The jury both determines the facts and applies the law; it also makes findings on “issues of fact the decision of which is necessary to a verdict.”<sup>380</sup> Some consider this procedure an attractive compromise between a simple general verdict and special verdicts. It maintains the traditional role of the jury while diminishing the need to relitigate factual issues if an error of law taints the general verdict. On the other hand, interrogatories increase the length and complexity of deliberations and are more likely to produce inconsistencies. When the interrogatory answers are consistent with each other but inconsistent with the general verdict, the court may simply enter judgment according to the *answers*, or may return the jury for further deliberation or order a new trial.<sup>381</sup> The court may not accept the verdict if the answers are inconsistent with each other and at least one is also inconsistent with the general verdict; it must first try to reconcile the answers, ordering further deliberations or a new trial if it cannot.<sup>382</sup> After the return of special verdicts or a general verdict with interrogatories, it is important to allow counsel to be heard before discharging the jury. That will allow further deliberations to cure inconsistencies following supplemental instructions, and, perhaps, amendment of the verdict form.<sup>383</sup>

379. Fed. R. Civ. P. 49(a).

380. Fed. R. Civ. P. 49(b).

381. *Id.*

382. *See id.*; *Atl. & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364 (1962).

383. Case law on the court’s authority to amend or supplement verdict forms after the jury has returned a verdict is scarce; for a case holding it permissible to amend interrogatories, see *United States v. 0.78 Acres of Land*, 81 F.R.D. 618, 622 (E.D. Pa.) (mem.), *aff’d*, 609 F.2d 504 (3d Cir. 1979).

### 12.452 Judgment as a Matter of Law

The court may grant judgment as a matter of law (formerly directed verdict) on a claim or defense during the trial. Federal Rule of Civil Procedure 50(a)(1) lets the judge, once a party has been fully heard on an issue, determine the issue against that party if “there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” The court may grant a motion for judgment as a matter of law on any “claim or defense that cannot . . . be maintained or defeated without a favorable finding on that issue.” The motion must “specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment,” in order to allow the opposing party an opportunity to correct any deficiencies in its proof. If meritorious, it will reduce costs to grant such motions as soon as a party has completed presentation on a fact essential to one or more of its claims or defenses. Such motions should not be granted, however, before the party has been apprised of the materiality of the fact and afforded an opportunity to supplement its evidence on that fact.<sup>384</sup>

Counsel must move for judgment as a matter of law before submission of the case to the jury. Judges sometimes deny or defer such motions initially, even those with merit, until the jury renders a verdict. In this way, if the jury “gets it right” the judge need not disturb the verdict; any question of invading the province of the jury is avoided, and the verdict will be more difficult to overturn on appeal than would a judgment rendered on motion. If the jury instead renders a verdict lacking sufficient evidentiary support, the judge may then grant the motion upon its renewal. Rule 50(b) permits the judge to order a new trial or enter judgment as a matter of law. If the latter, Rule 50(c)(1) still requires the judge to rule on the motion (if any) for a new trial, to assist the appellate court in determining the type of relief to grant if the judgment is reversed. Thus, there will be a jury verdict for the appellate court to reinstate if it chooses.

Motions for judgment as a matter of law may effectively be combined with the procedure discussed in section 12.34 for sequencing issues for trial. If issues likely to be dispositive are scheduled first, a ruling may reduce or obviate further proceedings. Thus, the judge may choose to deny a pivotal summary judgment motion during pretrial if its correct resolution is doubtful, while scheduling the trial to begin with presentation of the facts in issue (or scheduling a separate trial).<sup>385</sup> Even if not dispositive, early judicial resolution of issues unsubstantiated by facts or law may significantly reduce the scope of evi-

384. Fed. R. Civ. P. 50 committee note.

385. *Id.*

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dence, argument, and instructions. An order granting a motion for judgment as a matter of law should be in writing or read into the record, with stated reasons.

### 12.453 Return of Verdict<sup>386</sup>

When the jury has returned a special verdict or a general verdict with interrogatories, the judge and counsel should promptly review it for inconsistencies so as to permit appropriate steps before the jury is discharged. After consultation with counsel, the judge should promptly approve a form of judgment for entry by the clerk.<sup>387</sup> If the judgment does not resolve all aspects of the litigation, entering final judgments as to some claims or parties allows an appeal to be taken.<sup>388</sup>

Where issues have been bifurcated or submitted to the jury for seriatim verdicts, the jury may need to resume hearing evidence and receive further instructions or begin deliberations on other issues.<sup>389</sup> If a recess is called, the judge should instruct the jurors that they remain under the restrictions originally imposed; if the recess extends more than a few days, a supplementary examination of jurors may be necessary on their return to determine whether grounds for disqualification have arisen in the interim.

If the jury is deadlocked, the judge will need to consider appropriate inquiries and instructions. Although the large investment in a long trial makes a mistrial costly, there should not be undue pressure on jurors to reach agreement. The incorrect use of an *Allen* charge may trigger a reversal.<sup>390</sup>

386. For general procedures for receipt of civil verdicts, see *Benchbook*, *supra* note 45, § 6.07.

387. See Fed. R. Civ. P. 58.

388. See Fed. R. Civ. P. 54(b); see also 28 U.S.C. § 1291 (West 2002); *infra* section 15.1.

389. See *supra* sections 11.632 (separate trials), 12.34 (sequencing of evidence and arguments).

390. *Darks v. Mullin*, No. 01-6308, 2003 U.S. App. LEXIS 6977, at \*288 (10th Cir. Apr. 11, 2003) (prohibiting use of *Allen* charge if found to impermissibly coerce the jury); *United States v. Brennan*, No. 01-3148, 2003 U.S. App. LEXIS 6546, at \*37 (3d Cir. Apr. 7, 2003) (noting that the circuit has “developed a prophylactic rule prohibiting the use of such an *Allen* charge because of its power to coerce,” but allowing a modified *Allen* charge with noncoercive language); *but cf.* *Mason v. Mitchell*, 320 F.3d 604, 642 (6th Cir. 2003) (holding that *Allen* charge was not so coercive as to deny due process rights); *United States v. Walrath*, No. 02-2824, 2003 U.S. App. LEXIS 6359, at \*7–\*10 (8th Cir. Apr. 3, 2003) (reviewing challenged jury instruction for abuse of discretion); *United States v. Crispo*, 306 F.3d 71, 76–78 (2d Cir. 2002) (reviewing *Allen* charge under an abuse of discretion standard); *United States v. Weymouth*, 45 Fed. Appx. 311, 312 (4th Cir. 2002) (per curiam) (same).

## 12.5 Nonjury Trials

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Nonjury trials may take less trial time than jury trials do, but, unless well managed, may take longer to decide. Although nonjury trials require less formality, procedures to promote clarity and expedition are still important. In fact, the judge has greater freedom to control the conduct and shape of a bench trial than he or she does a jury trial. For example, rather than receive vast volumes of documents to be sorted out during the decision-making process following trial, the court can use redaction, summaries, sampling, and other helpful techniques.

### 12.51 Adopted Prepared Statements of Direct Testimony

Where credibility or recollection is not at issue, and particularly when the evidence is complicated or technical, a court may consider ordering witnesses under the parties' control to present their direct testimony in substantial part through written statements prepared and submitted in advance of trial.<sup>391</sup> At trial, the witness is sworn, adopts the statement, may supplement the written statement orally, and is then cross-examined by opposing counsel and perhaps questioned by the judge. The statement is received as an exhibit and is not read into the record. As with all exhibits, objections should be resolved before trial. Because the witness adopts the statement orally in open court, Rule 43 is not violated.<sup>392</sup>

This procedure—which may be particularly appropriate for expert witnesses, witnesses called to supply factual background, or those needing an interpreter—has several advantages. The proponent can ensure that it has made a clear and complete record; the judge and opposing counsel, having read the statement, are better able to understand and evaluate the witness's testimony; opposing counsel can prepare for more effective cross-examination; and the reduction in live testimony saves time.

391. See Charles. R. Richey, *Requiring Direct Testimony to be Submitted in Written Form Before Trial*, 72 Geo. L.J. 73 (1983). Circuit law should be consulted on whether the consent of parties is required.

392. See *In re Adair*, 965 F.2d 777 (9th Cir. 1992).

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## 12.52 Findings of Fact and Conclusions of Law<sup>393</sup>

The court might consider directing each party to submit proposed findings of fact and counterfindings responding to opposing counsel's submissions, unless the pretrial briefs and statements of agreed on and disputed facts serve this purpose. Some judges require counsel to exchange proposed findings and conclusions before submitting them to the court, marking for the court the portions disputed. Counsel should draft findings in neutral language, avoiding argument and conclusions, and identify the evidence expected to establish each finding. Proposed findings allow the judge to follow the evidence during trial, and to adopt, modify, or reject findings as trial proceeds. This process simplifies the court's final preparation of findings of fact, which along with its conclusions of law are required by Federal Rule of Civil Procedure 52 (also see section 12.452 and Rule 52(c), judgment on partial findings). Some judges require parties to submit proposed findings electronically for ease of adoption, but appellate courts frown on verbatim use of the parties' submissions.<sup>394</sup>

Under Rule 52(a), the court's findings of fact and conclusions may be filed as an opinion or memorandum of decision or read into the record in open court. The latter procedure produces a quick decision while enabling the court to refine its opinion later as needed. The court may defer the decision until after receiving posttrial briefs. However, adequate pretrial memoranda may make posttrial briefs unnecessary. Some judges call for closing arguments immediately after the close of evidence, as in jury trials, and render their decisions promptly following the arguments.

Whatever time savings may be realized by a bench trial can easily be lost if the case is not decided promptly. Decisions become more difficult as the record grows cold, and a long-delayed decision undermines public confidence in the justice system and must be included in the public reports required by 28 U.S.C. § 476. Many judges avoid this problem by ruling from the bench whenever possible (preparing their ruling as the trial progresses) or by setting a deadline for their decision (forcing themselves to arrange their calendar to allow sufficient time).

393. For general guidance, see *Benchbook*, *supra* note 45, §§ 2.04, 6.02.

394. See *Falcon Constr. Co. v. Econ. Forms Corp.*, 805 F.2d 1229, 1232 (5th Cir. 1986) (a court that adopts findings verbatim leaves doubt whether it has discharged its duty to review the evidence itself and reached its decision on the basis of its own evaluation of evidence). Verbatim adoption of proposed findings may lead to more searching review at the appellate level. See, e.g., *Andre v. Bendix Corp.*, 774 F.2d 786, 800 (7th Cir. 1985); *In re Las Colinas, Inc.*, 426 F.2d 1005, 1010 (1st Cir. 1970). Compare the Seventh Circuit's opinion in *Andre* with that in *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1429 (7th Cir. 1985) (despite verbatim adoption, no special scrutiny required where judge paid careful attention to evidence and wrote own opinion).

### 12.53 Procedures When Combined with Jury Trial

As discussed in section 11.63, some judges try jury and nonjury issues concurrently (occasionally with an advisory jury, whose verdict is not binding). Evidence admissible only on a nonjury issue may have to be presented without the jury present. The proper sequencing of the jury and nonjury decisions must comply with *Beacon Theatres, Inc. v. Westover*, under which the right to a jury trial on legal claims may not be lost by a prior determination of equitable claims, except under “the most imperative circumstances.”<sup>395</sup>

## 12.6 Inability of Judge to Proceed

Should the judge become unable to proceed after trial has begun, Rule 63 permits any other judge to proceed with the trial upon certifying familiarity with the record and determining that the parties will not be prejudiced. Of course, this will require the prompt availability of a transcript or other record of the prior trial proceedings and any associated video recordings; otherwise, it may be impossible to avoid prejudicing one or more parties.<sup>396</sup>

The rule requires the successor judge in a civil nonjury trial, upon request, to recall any witness whose testimony is material and disputed, and who is available to testify again without “undue burden.” The rule also permits the recall of any other witness.<sup>397</sup> It is unlikely that a successor judge will wish to decide a complex case without having heard all the direct and cross-examination of witnesses, unless the parties stipulate to a decision on the record.

Whether a judge unable to proceed in a complex jury trial should be replaced to avoid mistrial is a difficult question, and the answer depends in part on how close the trial is to completion. If the disability occurs near the start of the trial, declaring a mistrial may be the preferable course. On the other hand, if a large investment of resources (not only the parties’ but also the jurors’ time) has been made in the trial, a mistrial should be avoided if the replacement judge has confidence that the trial can go forward without sacrificing fairness. Note that one of the reasons for the 1991 amendment liberalizing Rule 63 was “the increasing length of federal trials.”<sup>398</sup>

395. 359 U.S. 500, 510–11 (1959).

396. Fed. R. Civ. P. 63 committee note.

397. Fed. R. Civ. P. 63 & committee note.

398. Fed. R. Civ. P. 63 committee note.

## 13. Settlement

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The high stakes in complex cases increase the incentive to avoid the risk of trial, and the burgeoning cost of pretrial activity places a premium on settling early in the litigation. At the same time, however, the large sums involved, the high number of parties and counsel, and the complexity of the issues magnify the difficulty of achieving settlement. This section discusses the role of the trial judge, general principles and techniques to promote settlement, and special problems that may arise. Settlement of specific types of litigation is covered in section 21.6 (class actions), section 22.9 (mass tort litigation), section 31.8 (securities litigation), and section 32.46 (employment discrimination).

### 13.1 Trial Judge's Role

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#### 13.11 General Principles

Some cases involve important questions of law or public policy that are best resolved by public, official adjudication. Other times, however, resistance to settlement arises from unreasonable or unrealistic attitudes of parties and counsel, in which case the judge can help them reexamine their premises and assess their cases realistically. The judge can encourage the settlement process by asking at the first pretrial conference whether settlement discussions have occurred or might be scheduled. As the case progresses, the judge occasionally can suggest that the parties reexamine their positions in light of current or anticipated developments.

The judge can then facilitate negotiations by removing obstacles to compromise and can help overcome the intransigence or militance of clients.

Without touching on the merits, the judge can focus the parties' attention on the likely cost of litigating the case to conclusion, in fees, expenses, time, and other resources. Other helpful measures include scheduling settlement conferences, directing or encouraging reluctant parties, insurers, and other potential contributors to participate, suggesting and arranging for a neutral person to assist negotiations, targeting discovery at information needed for settlement, and promptly deciding motions whose resolution will lay the groundwork for settlement.<sup>399</sup>

Judges may be particularly helpful in identifying and encouraging consideration of nonmonetary solutions. Where, for example, the parties contemplate a continuing relationship, the court can stimulate thought about innovative and mutually beneficial arrangements for the future that may pave the way for agreement on monetary terms. Drawing on experience and common sense, a judge may see opportunities for compromise not apparent to the parties and guide their negotiations toward solutions they might not otherwise discover.

Settlement efforts, however, should not delay or divert the pretrial process; both can and should operate effectively on parallel tracks. Nor should settlement efforts be permitted to impair the parties' perception of judicial fairness and impartiality. Some judges participate actively in settlement discussions of a case, as well as handling pretrial activity and trial if the case does not settle. Others are uncomfortable in what they view as a dual role. Occasionally, the parties request that the assigned judge participate in settlement discussions, waiving the right to seek recusal.<sup>400</sup> Such involvement, however, might affect the parties' confidence in the judge's ability to try the case impartially. Thus, many judges rarely engage in substantive settlement negotiations in cases they are expected to try, particularly by bench trial.<sup>401</sup> Instead, they bring in another judge or other neutral person for settlement purposes. In some large litigation, the parties are willing to pay for the services of a skilled mediator. See section 13.15.

Judicial participation in settlement negotiations demands patience and a willingness to listen. One obstacle may be removed only to reveal another. The judge should not become, or allow counsel and the parties to become, discouraged, but should seek openings and opportunities not readily apparent. Parties may signal their expectations and limits in subtle ways. Often their true objectives remain hidden from all but the most attentive listener. An observant judge can open channels for effective communication.

399. See *Litigation Manual*, *supra* note 12, at 58–64.

400. See *id.* at 58.

401. See D. Marie Provine, *Settlement Strategies for Federal District Judges* 28 (Federal Judicial Center 1986).

### 13.12 Timing/Relationship to Discovery

Many judges broach settlement at the initial scheduling conference.<sup>402</sup> Counsel should prepare by discussing the possibility of settlement during the Federal Rule of Civil Procedure 26(f) conference, as the rule requires, and becoming familiar with their clients' positions. Though the parties may lack sufficient information for serious discussions, the court can use the conference to explore the prospects for settlement, as well as the possibility of reference to extrajudicial procedures (see section 13.15). Consider scheduling negotiations and periodic progress reports and assisting counsel in developing a format for them.<sup>403</sup> Counsel should attend settlement conferences with full settlement authority or with immediate access to their client.<sup>404</sup> Any impending or finalized settlement should be disclosed to the court promptly (see also section 13.23).

Although settlement should be explored early in the case, the parties may be unwilling or unable to settle until they have conducted some discovery. The benefits of settlement are diminished, however, if it is postponed until discovery is completed. A better approach may be to target early discovery at information needed for settlement negotiations.<sup>405</sup> Most judges do not stay discovery or other pretrial proceedings based on the pendency of settlement discussions, because the momentum of the litigation and trial preparation can create a powerful impetus for settlement. A short, judicially monitored extension may be appropriate, however, if the parties are close to agreement, and if a particular activity or deadline could affect their positions. Avoiding the expense of imminent discovery can be an inducement to settle, but a possible settlement should not preclude or limit further discovery needed by other parties (see section 13.22).

### 13.13 Specific Techniques to Promote Settlement

A number of techniques have proven successful in promoting settlement. The list below is not exhaustive, and creativity in this aspect of the litigation has few risks. The following techniques may be productive:

- *Firm trial date.* Setting a firm trial date is generally the most effective means to motivate parties to settle. To keep the date credible, ensure

402. See Fed. R. Civ. P. 16(a)(5), (c)(9) (pretrial conferences may be used to consider settlement).

403. See Litigation Manual, *supra* note 12, at 21.

404. See Fed. R. Civ. P. 16(c).

405. Targeted discovery is discussed in *supra* section 11.422.

that the case proceeds on schedule through pretrial; early settlement discussions generally should not be allowed to delay pretrial proceedings.

- *Reference to another judge or magistrate judge.* One way to avoid the appearance of partiality is to refer the parties to another judge or magistrate judge for settlement negotiations. Many courts have reciprocal arrangements by which judges assist in settlement negotiations in cases assigned to other judges.
- *Participation by parties.* Requesting or requiring that the parties or representatives attend settlement conferences<sup>406</sup> may expedite negotiations and help avoid the delays involved in seeking authority. In any event, the attending parties will become better informed of the strengths and weaknesses of each side's case and the costs and risks of pursuing the litigation. The parties' presence can, however, inhibit frank discussion by counsel, who may feel obliged to keep up appearances for the benefit of their clients.
- *Confidential discussions with judge.* A judicial meeting with each party (or side) separately for confidential discussions, with their mutual consent, may help the parties find common ground. The parties may be more willing to speak candidly outside of the adversarial setting, and the judge can point out weaknesses without fear of compromising a party's position in the eyes of opposing counsel. The judge may also ask counsel to submit confidential memoranda outlining their settlement posture. After such discussions, the judge may be able to suggest areas of possible agreement, without revealing confidences.
- *Settlement counsel, special masters, or experts.* The litigating attorneys may not be suited to conduct settlement discussions and may be hampered by personal antagonisms developed in the course of the litigation. In such cases, consider suggesting that one or more of the parties engage or designate special settlement counsel separate from lead and liaison counsel (see section 10.222). Judges have also used special masters to assist in settlement of complex litigation and in post-settlement claims-resolution proceedings. The judge can arrange for the special master's compensation with the agreement of the parties and select an individual from a list provided by the parties (see section 11.52).

406. See Fed. R. Civ. P. 16(c) (court may require party or its representative to be present or available by telephone).

- *Contribution bar orders.* To facilitate partial settlements in multiparty cases, the court may (unless prohibited by the underlying statute) approve as a term of the settlement an order barring claims for contribution or indemnification by nonsettling defendants. To ensure binding effect, the affected parties or their representatives should be before the court, and their rights should be protected.<sup>407</sup> Such orders typically contain a formula for calculating a setoff for nonsettling defendants based on the settlement amount or the settlors' adjudged proportion of fault.<sup>408</sup>
- *Offer of judgment.* Federal Rule of Civil Procedure 68 allows a party defending against a claim to serve an offer of judgment on the adverse party at any time up to ten days before trial (or proceedings to determine damages if liability has already been adjudged). The party served has ten days to accept or be liable for all costs incurred after the offer is made, unless it obtains a more favorable judgment.<sup>409</sup> The court's invoking this procedure can create an added incentive to accept a reasonable offer in litigation (such as antitrust) where taxable costs may be high, particularly where the underlying statute defines costs to include attorneys' fees.<sup>410</sup> Local or state rules may include similar, possibly harsher provisions than Rule 68. In deciding whether such state rules or statutes apply in diversity cases, consider *Burlington Northern Railroad Co. v. Woods*,<sup>411</sup> which held inapplicable an Alabama statute imposing a mandatory penalty against appellants obtaining a stay pending an unsuccessful appeal, on the ground that it conflicted with Federal Rule of Appellate Procedure 39.
- *Representative case(s).* The results of a trial of one or a few representative lead cases can provide information and motivation helpful to settlement of related cases.
- *Severance.* The early resolution of one or more issues by separate trial may provide a basis for settlement of others. The resolution of liability,

407. See, e.g., *In re Masters Mates & Pilots Pension Plan & IRAP Litig.*, 957 F.2d 1020, 1031 (2d Cir. 1992); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 160 (4th Cir. 1991); *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989); *McDonald v. Union Carbide Corp.*, 734 F.2d 182, 184 (5th Cir. 1984) (per curiam).

408. See *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994) (admiralty).

409. See *Yohannon v. Keene Corp.*, 924 F.2d 1255, 1263–69 (3d Cir. 1991) (upholding application of Pennsylvania Rule of Civil Procedure 238, which predicates penalty, *inter alia*, on failure to obtain judgment of more than 125% of offer).

410. See *Marek v. Chesny*, 473 U.S. 1, 7–12 (1985).

411. 480 U.S. 1 (1987).

damages, or other pivotal issues can provide the parties with the information or incentive needed for a comprehensive settlement. A federal court, however, cannot enforce agreements settling claims lacking an independent basis for federal subject-matter jurisdiction unless the court embodies the settlement in the dismissal order at the request of the parties.<sup>412</sup>

### 13.14 Review and Approval

Ordinarily, settlement does not require judicial review and approval.<sup>413</sup> Many of the exceptions to this rule, however, are of particular relevance to complex litigation. The Federal Rules require court approval of settlements in class actions (including actions brought by or against an unincorporated association as a class),<sup>414</sup> shareholder derivative actions,<sup>415</sup> and actions in which a receiver has been appointed.<sup>416</sup> The antitrust laws require court approval of consent judgments proposed by the United States in actions it has instituted.<sup>417</sup> Common law may call for review and approval in a variety of contexts where the settlement requires court action, particularly if it affects the rights of non-parties or nonsettling parties,<sup>418</sup> or where the settlement is executed by a party acting in a representative capacity.<sup>419</sup>

Although the standards and procedures for review and approval of settlements vary, in general the judge is required to scrutinize the proposed settlement to ensure that it is fair to the persons whose interests the court is to protect. Those affected may be entitled to notice<sup>420</sup> and an opportunity to be

412. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

413. *In re Masters*, 957 F.2d at 1025–26; *see* Fed. R. Civ. P. 41(a)(1)(ii) (voluntary dismissal by stipulation signed by all parties).

414. Fed. R. Civ. P. 23, 23.2. Settlement in class actions is discussed in *infra* section 21.6.

415. Fed. R. Civ. P. 23.1.

416. Fed. R. Civ. P. 66.

417. 15 U.S.C. § 16(e) (2000) (review of proposed antitrust consent judgment to determine if in the public interest).

418. *See, e.g., In re Masters*, 957 F.2d at 1025–26 (parties unwilling to settle unless the court enforced the terms); *TBG Inc. v. Bendis*, 811 F. Supp. 596, 600 (D. Kan. 1992) (settlement required bar order affecting rights of nonsettling parties).

419. *See, e.g., Gaxiola v. Schmidt*, 508 F. Supp. 401 (E.D. Tenn. 1980) (action brought on behalf of minors). State law, when applicable in a diversity case, may require approval in similar contexts. *See, e.g., Owen v. United States*, 713 F.2d 1461, 1464–68 (9th Cir. 1983) (applying California law requiring approval of certain settlements in cases involving joint tortfeasors); *Soares v. McCloskey*, 466 F. Supp. 703 (E.D. Pa. 1979) (applying Pennsylvania estate statute).

420. *See, e.g., Fed. R. Civ. P. 23(c)(2)*.

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heard.<sup>421</sup> This usually involves a two-stage procedure. First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.

The judge must have information sufficient to consider the proposed settlement fully and fairly. All terms must be disclosed, so that the judge can understand the agreement's effect on those not party to the settlement and help prevent collusion and favoritism.<sup>422</sup> Because the parties or attorneys often have conflicts of interest, the proponents should explain why the proposed settlement is preferable, for those not a party to it, to continuation of the litigation. The proponents should respond to any objections raised. When settlement is proposed early in the litigation, the judge may need additional information necessary for a full review.

The judge must guard against the temptation to become an advocate—either in favor of the settlement because of a desire to conclude the litigation, or against the settlement because of the responsibility to protect the rights of those not party to it. Judges should be open to the views of those who may be affected by the settlement, whether or not they have legal standing to be heard. This may include providing notice to absent parties even if not required by governing law, and appointing an expert under Federal Rule of Evidence 706 to provide a neutral assessment, or special counsel to represent the interests of persons who are absent or under a legal disability.

The trial court may not rewrite a settlement agreement; if it is unacceptable the court must disapprove it,<sup>423</sup> but it may suggest changes.<sup>424</sup> An order rejecting a proposed settlement or consent decree is generally not immediately appealable, but may be appealed if the proposal includes injunctive relief.<sup>425</sup> The proponents may revise their agreement to overcome the court's objections and resubmit it; if the changes are substantial, it may be necessary for the court to begin the notice and review process anew. An order approving a settlement should be supported by a statement of the court's reasoning so as to create a record for appellate review.<sup>426</sup>

421. See, e.g., *Michaud v. Michaud*, 932 F.2d 77, 81 (1st Cir. 1991); *Garabedian v. Allstates Eng'g Co.*, 811 F.2d 802 (3d Cir. 1987).

422. See *In re Warner Communications. Sec. Litig.*, 798 F.2d 35, 37 (2d Cir. 1986).

423. See *Evans v. Jeff D.*, 475 U.S. 717, 727 (1986); *Jeff D. v. Andrus*, 899 F.2d 753, 758 (9th Cir. 1989); *In re Warner*, 798 F.2d at 37.

424. See *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (discussing process of reviewing proposed settlement).

425. See *Carson v. Am. Brands, Inc.*, 450 U.S. 79 (1981); see also 28 U.S.C. § 1292(a)(1) (West 2002).

426. See *Cotton*, 559 F.2d at 1331.

### 13.15 Alternative Processes to Encourage Settlement

A number of processes outside of the traditional litigation process have proved effective in helping parties reach settlement. The Federal Judicial Center's *Guide to Judicial Management of Cases in ADR* (2001) discusses such processes and how to use them.

## 13.2 Special Problems

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### 13.21 Partial Settlements

In litigation involving numerous claims and parties, litigants sometimes seek settlement limited to particular claims, defenses, or issues, or a settlement with less than all of the parties. Such partial settlements may provide funds needed to pursue the litigation, limit the extent of exposure, reduce the scope of discovery or trial, aid the parties in obtaining evidence, and facilitate later settlements on other issues and with other parties. On the other hand, the timing or terms of partial settlements can interfere with the ultimate resolution of the litigation. A partial settlement on terms that prove too generous, for example, may create resistance to later, more reasonable settlement offers. To avoid such problems, settling parties may adopt a general formula for all settlements; if adhered to, this may discourage adverse parties from prolonging litigation to get better terms.

Late partial settlements in multiparty cases present a number of potential problems.<sup>427</sup> Attorneys with assigned responsibilities at trial may drop out when their client's case has been settled, requiring reorganization of counsel and disrupting trial planning. Although it is a common and legitimate litigation strategy to settle with one adverse party to weaken another's position, doing so on the eve of trial may seriously disrupt the progress of the case. The power to shift costs for such conduct, and the desirability of doing so, are both unclear, but the judge can discourage belated and potentially disruptive settlements. If necessary to reduce the prejudice to nonsettling parties, the judge can grant a continuance. The judge can also remind lead counsel, members of a trial team, and other attorneys who have accepted responsibilities on behalf of

427. Partial settlements in class actions are discussed in *infra* section 21.651.

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other parties and attorneys that their fiduciary obligations may survive the dismissal of their own clients.

Partial settlements can affect the issues and parties not covered. A partial settlement may (by law) release certain nonsettling parties or entitle them to a setoff for amounts received in settlement from coparties; in some areas of law, this may depend on the settling parties' intention.<sup>428</sup> The agreement must therefore indicate clearly which parties and claims it covers, making plain the relationship between the damage items covered and those that may later be awarded by judgment. The court needs to consider whether and in what manner payments made under the settlement agreement will be treated as offsets against future awards,<sup>429</sup> and how the settlement will be treated at trial.

The parties may attempt to apportion the settlement among different claims, sometimes for tax purposes<sup>430</sup> and sometimes to enhance their position against nonsettling parties. When partial settlements are submitted for judicial approval, apportionment clauses should be reviewed for their effect on further proceedings and other parties. Agreements that do not permit appropriate modification of such clauses if justified by later developments should not be approved.

Evidence of the settlement of a claim is inadmissible at trial "to prove liability for or invalidity of the claim or its amount," though not for other purposes. Though federal law disfavors admission, in diversity cases the court may be obliged to apply state law to the contrary.<sup>431</sup> There is disagreement over whether Federal Rule of Evidence 408 prohibits the introduction of evidence of a partial settlement for the purpose of allowing the jury, in determining damages, to consider the amount already recovered from other sources.<sup>432</sup> An alternative approach is for the court to make an appropriate reduction in any

428. *See Zenith Radio Corp. v. Hazeltine Research*, 401 U.S. 321, 343–47 (1971) (discussing subject generally and adopting "intention of parties" rule for release of antitrust coconspirators).

429. *See McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994) (admiralty).

430. Several U.S. Tax Court decisions hold that agreements apportioning liability solely to create a tax deduction should not be approved. *See, e.g., Fed. Paper Bd. Co. v. Comm'r*, 90 T.C. 1011, 1024 n.33 (1988); *Metzger v. Comm'r*, 88 T.C. 834, 849–50 (1987); *Fisher Cos. v. Comm'r*, 84 T.C. 1319, 1340 (1985).

431. Fed. R. Evid. 408.

432. *See, e.g., Carota v. Johns Manville Corp.*, 893 F.2d 448 (1st Cir. 1990); *see also* *McHann v. Firestone Tire & Rubber Co.*, 713 F.2d 161, 166 n.10 (5th Cir. 1983). If such evidence is received, the court should give appropriate limiting instructions.

judgment recovered against nonsettling parties,<sup>433</sup> informing the jury of the fact (not the amount) of settlement where necessary to explain a party's absence.<sup>434</sup>

### 13.22 Agreements Affecting Discovery

One of the major incentives to settle is to avoid the cost and burden of further discovery. Settlement provisions that relieve a settling party from further discovery (at least in part) may be problematic if other parties need discovery from a settling party, particularly in light of the limits on nonparty discovery. Such provisions should therefore be drafted to take into account other parties' continuing need for discovery. Though nonsettling defendants usually lack standing to appeal orders approving partial settlements, they may appeal if they suffer formal legal prejudice.<sup>435</sup>

A settlement agreement may also purport to require a party not to disclose its terms, or to return, destroy, or keep confidential discovery materials previously obtained. The effect, if not the purpose, of such an agreement may be to forestall or frustrate other litigation, pending or anticipated. For this and other public policy reasons, including the protection of First Amendment interests (not to mention problems under state law), such agreements may be invalid, unenforceable, or simply not entitled to approval. Where such an agreement may be appropriate (e.g., to protect trade secrets), consider requiring that the materials be preserved for a reasonable period of time. The relevant analysis is similar to that employed when considering issuance of a protective order (see section 11.43).

### 13.23 Side Agreements

Agreements allocating financial responsibility among persons or entities are common—contracts of insurance and indemnification are prime examples. Occasionally, however, litigants try to apportion damages through side agreements that supplement their formal settlement agreements but are not intended to be disclosed to others. These agreements may not of themselves be unlawful or unethical, and on occasion there may be legitimate reasons for not

433. See, e.g., *Jackson v. Johns-Manville Sales Corp.*, 727 F.2d 506, 531–32 (5th Cir. 1984), modified on other grounds, 757 F.2d 614 (1985) (en banc); *McHann*, 713 F.2d at 166.

434. *Jackson*, 727 F.2d at 531.

435. See, e.g., *Zupnik v. Fogel*, 989 F.2d 93, 98 (2d Cir. 1993); *Mayfield v. Barr*, 985 F.2d 1090, 1092–93 (D.C. Cir. 1993); *Agretti v. ANR Freight Sys. Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (defining “formal legal prejudice”); *Alumax Mill Prods., Inc. v. Cong. Fin. Corp.*, 912 F.2d 996, 1002 (8th Cir. 1990), and cases cited therein.

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disclosing them to other parties. In presenting settlement agreements for judicial approval, however, the parties are obliged to make full disclosure of all terms and understandings, including any side agreements. The settling parties may request that certain terms not be disclosed to other parties, but must justify this to the court.<sup>436</sup>

Common types of side agreements include the following:

- “*Mary Carter*” agreements.<sup>437</sup> In return for a settlement payment, the plaintiff may agree to release a particular defendant from liability, even though the defendant remains party to the suit, with the further provision that the defendant will be reimbursed in some specified manner out of any recovery against other defendants.<sup>438</sup> Many varieties of such agreements have developed, including loan-receipt agreements and agreements to dismiss during the case or not to execute a judgment if the defendant does not take an aggressive posture against the plaintiff’s claims.<sup>439</sup> These agreements have been criticized as unfair to nonsettling defendants,<sup>440</sup> because they align the interests of the “settling” defendant, who remains in the litigation, with those of the plaintiff (usually covertly), eliminating their normal adversarial relationship.<sup>441</sup> Nevertheless, courts have rarely rejected a settlement on this basis,<sup>442</sup> although it is advisable for the court to give such agreements particular scrutiny.<sup>443</sup>

The primary problem raised by *Mary Carter* agreements is disclosure. Typically, parties enter them secretly or request that the court not disclose the terms of the agreement. Nondisclosure, however, mag-

436. See, e.g., *In re Braniff, Inc.*, No. 91-03325-BKC-6Cl, 1992 WL 261641, at \*5 (Bankr. M.D. Fla. Oct. 2, 1992) (parties must disclose to court and, unless good cause shown, other parties all agreements settling or limiting liability, whether “formal or informal, absolute or conditional”).

437. *Booth v. Mary Carter Paint Co.*, 202 So.2d 8 (Fla. Dist. Ct. App. 1967).

438. See *Robertson v. White*, 81 F.3d 752, 754 n.1 (8th Cir. 1996); *Marathon Oil Co. v. Mid-Continent Underwriters*, 786 F.2d 1301, 1303 n.1 (5th Cir. 1986); *Wilkins v. P.M.B. Sys. Eng’g, Inc.*, 741 F.2d 795, 798 n.2 (5th Cir. 1984); *Quad/Graphics, Inc. v. Fass*, 724 F.2d 1230, 1236 (7th Cir. 1983). For other definitions, see materials cited in *Hoops v. Watermelon City Trucking, Inc.*, 846 F.2d 637, 640 n.3 (10th Cir. 1988).

439. See Frank D. Wagner, Annotation, *Validity and Effect of Agreement with One Cotortfeasor Setting His Maximum Liability and Providing for Reduction or Extinguishment Thereof Relative to Recovery Against Nonagreeing Cotortfeasor*, 65 A.L.R.3d 602 (1975).

440. See *Bass v. Phoenix Seadrill/78, Ltd.*, 562 F. Supp. 790, 796 (E.D. Tex. 1983).

441. See *Hoops*, 846 F.2d at 640.

442. *Bass*, 562 F. Supp. at 796.

443. See *Wilkins v. P.M.B. Sys. Eng’g, Inc.*, 741 F.2d 795, 798 n.2 (5th Cir. 1984).

nifies the prejudice to other parties, since neither the jury nor the defense can take the agreement into account when considering the testimony of the settling defendant; the agreement may therefore be ground for a new trial.<sup>444</sup> For this reason, case law favors requiring disclosure of such agreements to the court, parties, and jury.<sup>445</sup> Thus, at the outset of the litigation, the court should impose a continuing duty on counsel to promptly disclose all such agreements without need for a motion or discovery request.

- *Sharing agreements.* Defendants sometimes agree in advance to allocate responsibility for damages among themselves according to an agreed formula (often based on market share). These agreements serve the legitimate purposes of controlling parties' exposure and preventing plaintiffs from forcing an unfair settlement by threats to show favoritism in the collection of any judgment that may be recovered. They may, however, expressly prohibit or indirectly discourage individual settlements. They also create a disincentive for defendants to make available evidence indicating liability on the part of codefendants. Therefore, although they are generally appropriate, the court may refuse to approve or enforce agreements that violate public policy or unfairly prejudice other parties.<sup>446</sup>

Sharing agreements should be discoverable. Once the agreement is made known, it may be possible to structure partial settlements to take its terms into account. It is less clear when and whether such agreements should be admissible in evidence. Since Federal Rule of Evidence 408 does not require exclusion of settlement agreements when offered for purposes such as proving bias, they may be admitted to attack a witness's credibility or demonstrate that formally opposing parties are not in fact adverse, accompanied by a limiting instruction that the agreement is not to be considered proof or disproof of liability or damages.<sup>447</sup> Settlement agreements should not be admitted, however, when they are of little relevance and may be prejudicial<sup>448</sup> (e.g., by suggesting a conspiracy to the jury).

444. See *Leger v. Drilling Well Control, Inc.*, 69 F.R.D. 358, 361 (W.D. La. 1976), *aff'd*, 592 F.2d 1246 (5th Cir. 1979); *cf.* *Reichenbach v. Smith*, 528 F.2d 1072 (5th Cir. 1976) (error found harmless).

445. See, e.g., *Hoops*, 846 F.2d at 640; *Reichenbach*, 528 F.2d at 1076 (dictum).

446. See *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1993 U.S. Dist. LEXIS 14191 (D.P.R. Sept. 14, 1993).

447. See *Brocklesby v. United States*, 767 F.2d 1288, 1292–93 (9th Cir. 1985).

448. See Fed. R. Evid. 403.

- “*Most-favored nation*” clauses. Settlement agreements proposed early in the litigation often contain a “most-favored nation” clause to encourage early settlement by protecting all parties against being prejudiced by later, more favorable settlements with others. Such clauses typically obligate a signatory plaintiff to give signatory defendants a proportionate refund if the former settles with other defendants for less, or a signatory defendant to make additional payments to signatory plaintiffs if the former settles with other plaintiffs for more.

Such clauses have several drawbacks: (1) the potential liability under them is indeterminate, making them risky; (2) the additional recovery they may produce for some plaintiffs without any effort by their attorneys makes it difficult to fix fees; and (3) the factors that induce parties to settle with different parties for different amounts, such as the time of settlement and the relative strength of claims, are nullified. Such clauses can provide an incentive for early settlement as well as an obstacle to later settlements. To limit their prejudicial impact, such clauses should terminate after a specified length of time (to prevent one or more holdouts from delaying final implementation), impose ceilings on payments, and allow flexibility to deal with changed circumstances or with parties financially unable to contribute proportionately.<sup>449</sup> The judge may have to consider voiding or limiting them if enforcement becomes inequitable. If this determination involves disputed questions of fact, an evidentiary hearing and possibly additional discovery may be necessary.<sup>450</sup>

- *Tolling agreements*. Parties may enter into agreements under which one side promises not to assert a statute-of-limitations defense in return for some consideration. Parties should disclose these agreements to the court and other parties to avoid disruption of the case-management plan and frustration of the goals of court-imposed deadlines.

449. See *In re Corrugated Container Antitrust Litig.*, 752 F.2d 137, 139 n.3 (5th Cir. 1985); *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 614 F. Supp. 377, 381–82 (E.D. Pa. 1985), *aff’d mem.* 791 F.2d 917 (3d Cir. 1986).

450. See *In re Corrugated Container*, 752 F.2d at 142–43; *Fisher Bros.*, 614 F. Supp. at 381 & n.8.

## 13.24 Ethical Considerations

A number of ethical issues can confound settlement agreements even if not kept secret:

- *Communications with represented parties.* State rules of professional responsibility bar attorneys from communicating directly with a party represented by counsel (absent that counsel's presence or consent).<sup>451</sup> These rules prohibit attorneys from directly negotiating settlement with adverse parties.<sup>452</sup> The parties themselves are free to engage in direct settlement discussions without their attorneys. It may be an ethical violation, however, for an attorney to use a client or a third party to violate the prohibition on direct communication with represented parties.<sup>453</sup>
- *Agreements foreclosing other representation.* Defendants have attempted to condition settlement on an agreement that plaintiff's counsel will not represent other persons with similar claims, but it is an ethical violation for an attorney to enter into or propose such an agreement.<sup>454</sup> "Futures deals" are an ethically dubious variation, in which the settling attorney agrees to process similar claims of future clients according to the settlement terms or to advise clients to accept those terms.
- *Negotiations regarding attorney fees.* In routine nonclass litigation, in which each party is responsible for its own attorneys' fees, settling defendants customarily pay a negotiated sum, leaving counsel and their clients to settle their fees. Problems may arise, however, in cases where the court must approve settlements containing provisions for attorneys' fees, as in class actions (see section 21.7) or in cases, such as civil

451. Model Rules of Prof'l Conduct R. 4.2 (2002); Model Code of Prof'l Responsibility DR 7-104(A)(1) (1981). For the purposes of this rule, class members are considered parties represented by class counsel. For further discussion and citations, see *infra* section 21.33.

452. See *Walker v. Kotzen*, 567 F. Supp. 424, 426–27 (E.D. Pa. 1983), *appeal dismissed*, 734 F.2d 9 (3d Cir. 1984). For settlement and related communications in class actions, see *infra* sections 21.3, 21.6.

453. Model Rules of Prof'l Conduct R. 8.4(a) & cmt. (2002) (it is professional misconduct for a lawyer to attempt to violate rule through another person).

454. Model Rules of Prof'l Conduct R. 5.6(b) & cmt. (2002); Model Code of Prof'l Responsibility DR 2-108(B) (1981); ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1039 (1968).

rights actions, in which the losing side is liable for the adversary's attorneys' fees.

It is problematic when settlement negotiations involving attorney fees are conducted simultaneously with negotiations on the merits. When a defendant offers to settle for a lump sum covering both damages and fees, negotiating the allocation may create a conflict of interest for the plaintiff's attorney.<sup>455</sup> The problem is acute when the plaintiffs are represented by legal aid or another nonprofit group that has agreed with the clients to seek fees only from the opposing parties.<sup>456</sup> The Supreme Court, while recognizing that "such situations may raise difficult ethical issues for a plaintiff's attorney," has declined to prohibit this practice, reasoning that "a defendant may have good reason to demand to know his total liability."<sup>457</sup> Indeed, the Court has stated that settlement of civil rights cases would be impeded by rules prohibiting simultaneous negotiations of fees.<sup>458</sup>

Proposed settlements arising out of such negotiations need not be rejected out of hand, but should be reviewed for fairness of the allocation between damages and attorneys' fees.<sup>459</sup> The ethical problem will be eased if the parties agree to have the court make the allocation.

A further problem is presented if a defendant conditions a settlement favorable to plaintiffs on an agreement to waive attorney fees, particularly if the relief sought is primarily or entirely nonmonetary. Plaintiffs' attorney has an ethical obligation to obtain the most favorable relief for the client without regard to the attorney's interest in a fee, and may thereby be coerced into giving up all fees.<sup>460</sup> This practice may discourage other attorneys from representing civil rights claimants.<sup>461</sup> Some bar associations have ruled it unethical for defendants to request fee waivers in exchange for relief on the merits.<sup>462</sup> The Supreme Court, however, has approved the practice, reasoning that a prohibition on fee waivers would discourage settlement. Because of the "potentially large and typically uncertain magnitude" of fee awards,

455. See *White v. N.H. Dep't of Employment Sec.*, 455 U.S. 445, 453 n.15 (1982).

456. See *Evans v. Jeff D.*, 475 U.S. 717, 721 (1986).

457. *White*, 455 U.S. at 453 n.15; see *Evans*, 475 U.S. at 732–34; *Marek v. Chesny*, 473 U.S. 1, 6–7 (1985).

458. *Evans*, 475 U.S. at 736–37 & nn.28–29.

459. See *id.* at 754, 765 (Brennan, J., dissenting); but see *id.* at 738 n.30.

460. See *id.* at 727–30 & nn.14, 16.

461. *Id.* at 754–59 (Brennan, J., dissenting).

462. *Id.* at 728 n.15.

defendants are unlikely to settle until the issue of fees has been resolved.<sup>463</sup> The judge is therefore free—but not required—to approve such settlements. The Supreme Court suggested that disapproval might be appropriate if the defendant had no realistic defense on the merits or if the waiver was a “vindictive” act designed to discourage counsel from bringing such cases.<sup>464</sup> Counsel, though, may be prohibited by state rules from proposing such settlements.

- *Failure to submit offers to client.* Attorneys have an obligation promptly to submit nonfrivolous offers of settlement to the client, unless prior discussions have made clear that the proposal will be unacceptable.<sup>465</sup> Breach of this duty is egregious if counsel will be compensated in whole or in part on the basis of the number of hours expended in the litigation, as in the case of defense counsel or when fees are awarded or approved by the court on a lodestar basis.

463. See *id.* at 732–38.

464. *Id.* at 739–40 & n.32.

465. See Model Rules of Prof'l Conduct R. 1.2(a) & cmt., 1.4 & cmt. (2002); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 326 (1970); *Deadwyler v. Volkswagen of Am. Inc.*, 134 F.R.D. 128, 140 (W.D.N.C. 1991), *aff'd*, 966 F.2d 1443 (4th Cir. 1992).

## 14. Attorney Fees<sup>466</sup>

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Regulating and awarding attorneys’ fees presents the court with an opportunity and a mechanism for managing class actions and other forms of complex litigation. Under the “American Rule,” parties generally bear their own costs of litigation,<sup>467</sup> and the attorneys and client ordinarily negotiate the rate at which attorneys are to be paid and the scope of their work. In complex litigation, however, there is often no traditional client with the authority to negotiate the terms of the representation or the rate for compensating counsel. In class actions involving monetary stakes, the natural conflict that arises between lawyers and class members necessarily draws the judge into the role of regulating and awarding attorney fees.<sup>468</sup> Unless the judge protects the interests of absentee class members, those interests may go unrepresented.

466. The subject is treated at length in Alan Hirsch & Diane Sheehey, *Awarding Attorneys’ Fees and Managing Fee Litigation* (Federal Judicial Center 1994). *See also supra* section 13.24 (negotiation of fees and settlement); *infra* section 21.27 (appointment of class counsel); *infra* section 21.7 (fee awards in class actions).

467. *See, e.g.,* *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 247 (1975).

468. *See, e.g.,* *Rawlings v. Prudential-Bache Props, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (“The interest of class counsel in obtaining fees is adverse to the interest of the class in obtaining recovery because the fees come out of the common fund set up for the benefit of the class.”).

Judicial involvement can have a major impact on the reasonableness of fee requests and on the management of the litigation. The court has considerable discretion to use fees as a tool in a class action or a multidistrict consolidation. Calibrating the amount of attorney fees to a reasonable share of the benefits of a class settlement or award is an appropriate and effective means of managing class action litigation and preventing abuses of the class action device.<sup>469</sup> For example, a fee award that is limited to a reasonable percentage of the coupons actually redeemed in a “coupon settlement” may eliminate the worst coupon settlement abuses.<sup>470</sup> An announcement at the outset by the judge of the intention to apply such a rule will motivate attorneys to ensure that class benefits have a real value to the class.

Because of the sums involved, the calculation of fee awards often is complex, burdensome, bitterly contested, and a precursor to satellite litigation. Establishing guidelines and ground rules—even establishing budgets or rates for payment—early in the litigation helps ease the judge’s burden and helps prevent later disputes. To facilitate the hearing and resolution of fee petitions, Rule 54(d)(2)(D) explicitly authorizes district courts to adopt local rules by which fees issues “may be resolved without extensive evidentiary hearings” and authorizes judges to refer fee matters to special masters or magistrate judges.

## 14.1 Eligibility for Court-Awarded Fees

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### 14.11 Types of Cases—Overview

An initial determination should be made by the court early in the case as to whether the prevailing party is entitled to court-awarded fees. The nature of an

469. Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 490 (2000) (“The single most important action that judges can take to support the public goals of class action litigation is to reward class action attorneys only for lawsuits that actually accomplish something of value to class members and society.”) (emphasis omitted); *see also* *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 524 (1st Cir. 1991).

470. *See* *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377–80 (D. Mass. 1997); *see also* *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801–02, 819–20 (3d Cir. 1995).

award depends on the type of case and fund as well as applicable local rules and circuit law.

Below are the principal types of cases and situations in which courts may award attorney fees:

- *Common-fund cases.* If attorneys' efforts create or preserve a fund or benefit for others in addition to their own clients, the court is empowered to award fees from the fund.<sup>471</sup> The award may be made from recoveries obtained by settlement or by trial. Common-fund cases are predominantly, but not exclusively, class actions; some class actions may also be brought under fee-shifting statutes. Federal Rule of Civil Procedure 23 limits attorney fees in class actions to those that are "reasonable."<sup>472</sup>

A variant on the traditional common-fund case occurs frequently in mass tort litigation—in both class actions and large consolidations—where a separate fund to pay attorney fees is created as a part of a settlement. The court must distribute the fund among the various plaintiffs' attorneys, which may include class counsel, court-designated lead and liaison counsel, and individual plaintiff's counsel.<sup>473</sup>

- *Statutory-fees cases.* Over 150 statutes, covering actions ranging from antitrust and civil rights to little known types of claims, authorize courts to depart from the American Rule and award attorney fees to a prevailing party.<sup>474</sup> Whether the award is mandatory or permissive depends on the particular statute and applicable case law and may depend on whether the prevailing party is the plaintiff or the defendant.<sup>475</sup>

471. See, e.g., *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885); *Trs. of the Internal Improvement Fund v. Greenough*, 105 U.S. 527 (1882).

472. Rule 23(h) restates the existing law in its provision that "the court may award reasonable attorney fees."

473. See *In re Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603 (1st Cir. 1992).

474. See *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 684 (1983); see also *Hirsch & Sheehey*, *supra* note 466, at 1–3.

475. *Hensley v. Eckerhart*, 461 U.S. 424, 429 n.2 (1983) ("A prevailing defendant may recover an attorney's fee only where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant."). See also *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978); *but cf. Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 522 (1994).

- *Designated counsel.* The court may award fees to lead counsel, liaison counsel, and other attorneys designated to perform tasks on behalf of a group of litigants (see section 10.22).<sup>476</sup>
- *Objectors.* The court may award fees to objectors who provided services that contributed to an increase in the common fund available to a class, that aided the court’s review of a class-action settlement, or that otherwise advanced the interests of the class or assisted the court.<sup>477</sup>
- *Special parties.* Under the common law and many state statutes, court approval is required for the payment of fees charged by counsel for minors, incompetents, and trusts.
- *Sanctions.* The court has inherent power to award fees against a litigant who conducts litigation in bad faith or vexatiously.<sup>478</sup> A statutory counterpart, 28 U.S.C. § 1927, provides for awards against an offending attorney. Various provisions of the Federal Rules of Civil Procedure authorize the award of fees against parties who have failed to comply with rules or orders with respect to discovery and other pre-trial proceedings. Section 10.15 has a detailed discussion of sanctions.

## 14.12 Common-Fund Cases

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### 14.121 Percentage-Fee Awards

The common-fund exception to the American Rule is grounded in the equitable powers of the courts under the doctrines of *quantum meruit* and unjust enrichment.<sup>479</sup> The exception applies where a common fund has been created by the efforts of a plaintiff’s attorney<sup>480</sup> and rests on the principle that “persons

476. *In re Air Crash Disaster*, 549 F.2d 1006, 1016 (5th Cir. 1977) (relying on “common-fund” principles and inherent management powers of court in complex litigation); *see also infra* section 20.312 and text accompanying notes 700–05 (discussing the relationship between fee allocations in multidistrict litigation and state–federal cooperation).

477. *See* Fed. R. Civ. P. 23(e)(4), 23(h) & committee notes; *infra* sections 21.723 (role of objectors), 21.71 (criteria for approval of fee requests).

478. *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *see also* *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 258–59 (1975); *Ellingson v. Burlington N., Inc.*, 653 F.2d 1327, 1332 (9th Cir. 1981).

479. *Trs. of the Internal Improvement Fund v. Greenough*, 105 U.S. 527, 536 (1882).

480. *Compare* *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984), *and* *Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), *and* *Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237 (1985) [hereinafter *Third Circuit 1985 Task Force Report*], *with*

who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense."<sup>481</sup> Historically, attorney fees were awarded from a common fund based on a percentage of that fund.<sup>482</sup> After a period of experimentation with the lodestar method (based on the number of hours reasonably expended multiplied by the applicable market rate for the lawyer's services), the vast majority of courts of appeals now permit<sup>483</sup> or direct<sup>484</sup> district courts to use the percentage-fee method in common-fund cases. The only court of appeals that has not explicitly adopted the percentage method seems to allow considerable flexibility in approving combined percentage and lodestar approaches.<sup>485</sup>

*Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), *appeal following remand*, 540 F.2d 102 (3d Cir. 1976).

481. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970).

482. *See, e.g., Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885). The rationale differs significantly from that on which statutory-fee awards rest. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) ("[S]tatutory fees are intended to further a legislative purpose by punishing the nonprevailing party and encouraging private parties to enforce substantive statutory rights."). *See also In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 532 (E.D. Pa. 1990).

483. For a circuit-by-circuit review, see Alba Conte, *Newburg on Class Actions* app. 14-1 (Supp. June 2002). The following seven courts of appeals permit awarding fees by either the percentage-fee or lodestar method or both (generally using the lodestar as a cross-check): *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *In re Thirteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (fee award simulating "what the market in fact pays not for the individual hours but for the ensemble of services rendered in a case of this character" would be appropriate); *Brown*, 838 F.2d at 454 (Tenth Circuit case).

484. The following three courts of appeals direct district courts to use the percentage-fee method, sometimes supplemented with a lodestar "check": *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821–22 (3d Cir. 1995); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I*, 946 F.2d at 774. *See also In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (directing the district court to apply a lodestar cross-check and to award fees with a multiplier no greater than three); *cf. In re Cendant Corp. Litig.*, 264 F.3d 201, 285 (3d Cir. 2001) (stating that the "lodestar cross-check . . . is very time consuming" but the district court may use it "if necessary").

485. *Longden v. Sunderman*, 979 F.2d 1095, 1099–1100 (5th Cir. 1992) (indicating that the circuit "has yet to adopt this [percentage of common-fund] method" and affirming a district judge's use of a combined lodestar and percentage-of-fund approach). *See also Strong v. Bell-South Telecomms., Inc.* 137 F.3d 844, 852–53 (5th Cir. 1998) (approving application of lodestar and stating that application of a percentage-of-fund approach could be restricted to a percentage of claims actually made by class members and not the total amount that might be claimed). The

In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended.<sup>486</sup> The percentage method also has been criticized as arbitrary, especially “when applied by courts in an automatic fashion.”<sup>487</sup> Attorney fees awarded under the percentage method are often between 25% and 30% of the fund.<sup>488</sup> Several courts have established benchmarks, either a specific figure or a range, subject to upward or downward adjustment depending on the circumstances of the case. Awarding attorneys 25% of a common fund represents a typical benchmark.<sup>489</sup> Any single rate, however, is arbitrary and cannot capture variations in class actions’ characteristics. A fixed benchmark will often yield fee awards that are excessive for certified class actions in which the risk of non-recovery is relatively small.<sup>490</sup>

Accordingly, in “mega-cases” in which large settlements or awards serve as the basis for calculating a percentage, courts have often found considerably lower percentages of recovery to be appropriate.<sup>491</sup> One court’s survey of fee

practice of many district judges in the Fifth Circuit appears to be to use either the percentage approach or both methods. *See, e.g., In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 500 (N.D. Miss. 1996), and cases cited therein (applying a percentage-of-fund method and discussing the *Johnson* factors that courts in the Fifth Circuit typically apply in lodestar analyses). For further discussion of the *Johnson* factors, see *infra* note 509.

486. *Third Circuit 1985 Task Force Report*, *supra* note 480, at 248 (finding that “there appears to be a conscious, or perhaps unconscious, desire to keep the litigation alive despite a reasonable prospect of settlement, to maximize the number of hours to be included in computing the lodestar”).

487. *Third Circuit 2001 Task Force Report on Selection of Class Counsel*, 74 Temp. L. Rev. 689, 707 (2001) [hereinafter *Third Circuit 2001 Task Force Report*].

488. Thomas E. Willging, Loral L. Hooper & Robert J. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 69, 146–47 figs.67 & 68 (Federal Judicial Center 1996) [hereinafter FJC Empirical Study of Class Actions]; *see also, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (25% with adjustments up to 33% for complexity, risk, and nonmonetary results).

489. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) (adopting 25% benchmark). Several other courts of appeals have endorsed variations of the 25% benchmark. *See, e.g., Swedish Hosp.*, 1 F.3d at 1272 (affirming that a 20% award is within the range of reasonable fees in common-fund cases, since the majority fall between 20% and 30%); *see also* cases cited *infra* note 498.

490. FJC Empirical Study of Class Actions, *supra* note 488, at 60 (finding settlement rates for certified class actions ranging from 62% to 100% in four federal district courts).

491. *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 339–40 (3d Cir. 1998), and cases cited therein (award constituting 6.7% of common fund remanded “for a more thorough examination and explication of the proper percentage to be awarded to class counsel . . . in light of the magnitude of the recovery”).

awards in class actions with recoveries exceeding \$100 million found fee percentages ranging from 4.1% to 17.92%.<sup>492</sup> Likewise, judges who have used competitive bidding to select counsel and establish the terms for attorney fee awards have produced percentage-of-recovery awards considerably lower than the 20%–30% average award reported above.<sup>493</sup>

Two courts of appeals have rejected benchmark percentages, preferring more qualitative standards.<sup>494</sup> Benchmarks are subject to considerable fluctuation and should be applied, if at all, with the caveat that “[t]he benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.”<sup>495</sup> The Third Circuit 2001 Task Force on Selection of Class Counsel recommended that courts “avoid rigid adherence to a ‘benchmark’” and concluded that “a percentage fee, tailored to the realities of the particular case, remains superior to any other means of determining a reasonable fee for class counsel.”<sup>496</sup>

The application of a benchmark percentage for unusually large funds may result in a windfall.<sup>497</sup> In that circumstance, some courts have used a sliding scale, with the percentage decreasing as the magnitude of the fund increases,<sup>498</sup>

492. *Id.* at 339.

493. See Lural L. Hooper & Marie Leary, Auctioning the Role of Class Counsel in Class Action Cases: A Descriptive Study pt. VII (Federal Judicial Center Aug. 29, 2001), *reprinted in* 209 F.R.D. 519, 595–97 tbl.4, 598 (2001) (finding in nine terminated bidding cases that the fee awards ranged from 5% to 22%, with 8% being the median award).

494. *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 736–37 (3d Cir. 2001) (district court may not rely on a formulaic application of the appropriate range in awarding attorney fees under the percentage-of-fund method in a class action, but must consider the relevant circumstances of the particular case, including the size of the settlement); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 51–52 (2d Cir. 2000) (“We are nonetheless disturbed by the essential notion of a benchmark. . . . [M]arket rates, where available, are the ideal proxy for [attorney] compensation.”).

495. *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

496. *Third Circuit 2001 Task Force Report*, *supra* note 487, at 705.

497. See *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1297–98 (9th Cir. 1994); see also *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 350–51 & nn.75, 76 (N.D. Ga. 1993), and cases cited therein (listing declining percentages based on case law).

498. See *In re First Fid. Bancorporation Sec. Litig.*, 750 F. Supp. 160 (D.N.J. 1990) (30% of first \$10 million, 20% of next \$10 million, 10% of any recovery greater than \$20 million); *Sala v. Nat’l R.R. Passenger Corp.*, 128 F.R.D. 210 (E.D. Pa. 1989) (33% of first \$1 million, 30% of amount between \$1 million and \$2 million); *Third Circuit 1985 Task Force Report*, *supra* note 480, at 256. *But see In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 79–81, 84 (S.D.N.Y. 2000) (discussing decreasing and increasing fee scales and choosing a fee scale with a single increment, from 0% below a certain recovery—the “X factor”—to 25% for all amounts above that

or they have used the lodestar method.<sup>499</sup> Where the fund is unusually small or where actual common benefits are difficult to determine and possibly illusory, a benchmark (or any award based on a percentage of recovery) may likewise be inapplicable. Particularly where the common benefits are in the form of discounts, coupons, options, or declaratory or injunctive relief, estimates of the value or even the existence of a common fund may be unreliable, rendering application of any percentage-of-recovery approach inappropriate.<sup>500</sup> Where there is no secondary market for coupon redemption, the judge can conclude that the stated value of the coupons is misleading and does not provide a sufficiently firm foundation to support a fee award. Awarding fees in the form of a percentage of the coupons themselves may give attorneys an incentive to ensure that a secondary market becomes available to convert the benefits into cash.<sup>501</sup> Alternatively, courts can award fees as a percentage of coupons actually redeemed by class members.<sup>502</sup> Where payment of a common benefit is scheduled to take place in the future, consider linking the attorney-fee award to that future payment.<sup>503</sup>

level); *In re Am. Cont'l Corp. Lincoln Sav. & Loan Sec. Litig.*, MDL No. 834 (D. Ariz. July 24, 1990) (25% of first \$150 million, 29% of any recovery greater than \$150 million plus additional incentives for prompt resolution of case); Milton I. Shadur, *Response: Task Force Report: "Against the Manifest Weight of the Evidence,"* 74 Temp. L. Rev. 799, 803 (2001) (discussing use of an absolute cap on fees). The Third Circuit 2001 Task Force identified adherents of both decreasing and increasing percentages and concluded that either approach might reasonably be used. *Third Circuit 2001 Task Force Report*, *supra* note 487, at 719.

499. *In re Wash. Pub. Power*, 19 F.3d 1291 (9th Cir. 1994).

500. *See, e.g., Strong v. BellSouth Telecomms., Inc.*, 137 F.3d 844, 851–52 (5th Cir. 1998) (upholding district court's use of lodestar based on finding "insignificant benefit" to class member in "phantom" common fund asserted to be worth \$64 million); *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (stating that "the lodestar rationale has appeal where as here, the nature of the [coupon] settlement evades the precise evaluation needed for the percentage of recovery method"); *Weinberger v. Great N. Ne-koosa Corp.* 925 F.2d 518, 526 n.10 (1st Cir. 1991) (upholding the "district court's implied premise that the lodestar is the soundest available alternative").

501. *See, e.g., In re Auction Houses Antitrust Litig.*, No. 00 Civ. 0648, 2001 WL 170792, at \*3–\*5, \*15–\*17 (S.D.N.Y. Feb. 22, 2001) (discussing initial agreement on coupons and changes made after court-appointed experts reported on value of coupons; counsel fees paid in same proportion of cash and coupons as class benefits paid).

502. *Third Circuit 2001 Task Force Report*, *supra* note 487, at 693 n.12 (quoting Brian Wolfman's testimony that "[b]y tying counsel's fate to that of their clients, the typical coupon settlement would become a thing of the past").

503. *See, e.g., Bowling v. Pfizer*, 132 F.3d 1147, 1152 (6th Cir. 1998) (portion of fees related to future funding to be determined and paid after the fund is created, over a ten-year period, using lodestar method).

A number of courts favor the lodestar as a backup or cross-check on the percentage method when fees might be excessive.<sup>504</sup> To use the lodestar method, the court should give the attorneys early notice that they should keep track of their time. (At least one court has discontinued using the lodestar as a check on the reasonableness of percentage awards because of the lodestar method's perceived faults.<sup>505</sup>)

In securities fraud and other types of cases in which a large fund is likely, some district judges have used competitive bidding to aid in selecting class counsel and determining a proposed percentage fee.<sup>506</sup> See section 21.27. Others, however, have concluded that competitive bidding is incompatible with the Private Securities Litigation Reform Act of 1995. See section 31.31. In addition, one court of appeals has minimized one advantage of competitive bidding by ruling that a fee percentage established at the outset of the case must be reviewed at the conclusion of the case, using traditional factors governing such awards. Section 14.211 further discusses bidding.

The decision of an award of attorney fees in a common-fund case is committed to the sound discretion of the trial court, which must consider the unique contours of the case.<sup>507</sup> Reasons for the selection of a given percentage must be sufficiently articulated for appellate review. The court should identify relevant factors and how these factors helped determine the percentage awarded.<sup>508</sup> The factors used in making the award will vary,<sup>509</sup> but may include one or more of the following:

504. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (“encourag[ing] the practice of requiring documentation of hours as a ‘cross check’ on the reasonableness of the requested percentage”); *United States v. 8.0 Acres of Land*, 197 F.3d 24, 33 (1st Cir. 1999) (holding that a lodestar-calculated fee amounted to a reasonable percentage of the common fund); *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996) (upholding a district court fee award based on a percentage of the common fund and then cross-checked against the class counsel’s lodestar); *In re Gen. Motors Corp.*, 55 F.3d at 820 (finding it “sensible for a court to use a second method of fee approval to cross check its conclusion under the first method”).

505. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266–67 & n.3 (D.C. Cir 1993) (citing *Third Circuit 1985 Task Force Report*, *supra* note 480, at 246–49).

506. For a description of the characteristics of the cases in which competitive bidding has been used to date, see Hooper & Leary, *supra* note 493, pt. III, *reprinted in* 209 F.R.D. at 529–38 & tbl.1.

507. *Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988). For an overview of factors to consider in determining the amount of attorney fees to award in class-action litigation, see Fed. R. Civ. P. 23(h) committee note; *see also infra* section 21.7.

508. *Camden I*, 946 F.2d at 775. *See also* *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272–73 (9th Cir. 1989).

- the size of the fund and the number of persons who actually receive monetary benefits;<sup>510</sup>
- any understandings reached with counsel at the time of appointment concerning the amount or rate for calculating fees; any budget set for the litigation; or other terms proposed by counsel or ordered by the court;
- any agreements or understandings, including side agreements, between attorneys and their clients or other counsel involved in the litigation;<sup>511</sup>
- any substantial objections to the settlement terms or fees requested by counsel for the class by class members (it is, however, a court’s duty to scrutinize applications for fees, independently of any objection<sup>512</sup>—in the appropriate case, a court has authority to award fees to an objector that assists the court in scrutinizing the settlement, the fee requests, or both;<sup>513</sup>
- the skill and efficiency of the attorneys;
- the complexity and duration of the litigation;
- the risks of nonrecovery and nonpayment;

509. In *Brown*, the Tenth Circuit endorsed the use of the *Johnson* factors in determining a reasonable percentage fee. 838 F.2d at 454–55 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)). Similarly, the Eleventh Circuit instructed the district courts within that circuit to apply the *Johnson* factors plus other pertinent factors. *Camden I*, 946 F.2d at 775. In contrast, the Ninth Circuit established a 25% benchmark for such awards, subject to upward or downward adjustment “to account for any unusual circumstances involved in [the] case.” *Grauly*, 886 F.2d at 272. See also *In re RJR Nabisco, Inc. Sec. Litig.*, MDL No. 818, 1992 WL 210138, at \*7 (S.D.N.Y. Aug. 24, 1992) (“What should govern such awards is . . . what the market pays in similar cases.”).

510. See cases cited *supra* notes 500, 503 (*Strong, General Motors, Weinberger, and Bowling*). In *Strong*, the district court examined the actual value of telephone usage credits requested under the settlement and found them to be \$1.7 million, far below the parties’ valuation of \$64 million. *Strong*, 137 F.3d at 851. For approaches to reviewing and determining the value of in-kind settlements, see generally Note, *In-Kind Class Action Settlements*, 109 Harv. L. Rev. 810, 823–26 (1996). See also the Private Securities Litigation Reform Act, 15 U.S.C. §§ 77z-1(a)(6), 78u-4(a)(6) (2000) (fee award should not exceed a “reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class”).

511. Rule 23(e)(2); see *infra* section 21.631; Fed. R. Civ. P. 54(d)(2)(B).

512. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir. 1999). See *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 743–44 (3d Cir. 2001) (directing district court to evaluate the objector’s contribution to the ultimate fee and to award compensation to that extent); *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1285 (S.D. Ohio 1996) (awarding \$105,037.46 to a public interest group that objected to the settlement and provided “extensive” and “invaluable” objections to the fee applications).

513. *In re Cendant Corp.*, 243 F.3d at 743–44.

- the amount of time reasonably devoted to the case by counsel; even where fees are to be awarded on a percentage-of-fund basis, some judges cross-check the percentage by conducting a modified lodestar analysis;<sup>514</sup> and
- the awards in similar cases.

Unlike a statutory-fee analysis, where the lodestar is generally determinative,<sup>515</sup> a percentage-fee award sometimes gives little weight to the amount of time expended. Attorneys' hours may be one of many factors to consider.<sup>516</sup> Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.<sup>517</sup> Generally, the factor given the greatest emphasis is the size of the fund created, because "a common fund is itself the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded."<sup>518</sup>

#### 14.122 Lodestar-Fee Awards

Judges award attorney fees in some common-fund cases based on the lodestar or a combination of the percentage-of-fund and other methods. The lodestar is at least useful as a cross-check on the percentage method by estimating the number of hours spent on the litigation and the hourly rate, using affidavits and other information provided by the fee applicant. The total lodestar estimate is then divided into the proposed fee calculated under the percentage method. The resulting figure represents the lodestar multiplier to compare to multipliers in other cases.<sup>519</sup>

514. *See id.* at 735.

515. *See Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *see also infra* section 14.122.

516. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988).

517. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338–39 (1980) (recognizing the importance of a financial incentive to entice qualified attorneys to devote their time to complex, time-consuming cases in which they risk nonpayment); *Third Circuit 1985 Task Force Report*, *supra* note 480, at 248.

518. 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 14:6, at 547, 550 (4th ed. 2002). *See also Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Brown*, 838 F.2d at 456.

519. *See, e.g., In re Cendant Corp.*, 243 F.3d at 724, 742 (finding multipliers ranging from 1.35 to 2.99 in past years compared with a multiplier of 7–10 in a common-fund case in which counsel was selected by bidding); *cf. In re Comdisco Sec. Litig.*, 150 F. Supp. 2d 943, 947 (N.D. Ill. 2001) (criticizing the use of lodestar for cross-checking to reduce the fee of counsel selected by bidding).

When the fund is unusually large, the lodestar may be more appropriate than the percentage method.<sup>520</sup> In these unique mega-cases, selection of percentage figures, even on a sliding scale, may be arbitrary because of the absence of comparable cases.<sup>521</sup> As with percentage fees, an award of attorney fees under the lodestar method should fairly compensate the attorney for the reasonable value of services rendered, given the circumstances of the particular case.<sup>522</sup>

The lodestar method may also be appropriate for distributing fees out of a common fund created to compensate attorneys, e.g., payment of lead counsel in a multidistrict consolidation or a nationwide settlement of mass tort litigation. Some cases may call for allocation of fees among different sets of plaintiffs' lawyers, such as those designated to serve on a steering committee (and entitled to compensation for that service) and those who represent individual plaintiffs. Because compensation directed to any group of attorneys will reduce the amount available to satisfy other contingent fee arrangements, the court should attempt to resolve conflicts between these groups in determining a fair allocation.<sup>523</sup>

The lodestar calculation begins with multiplying the number of hours reasonably expended by a reasonable hourly rate.<sup>524</sup> The number of hours reasonably expended and the reasonable hourly rate must be supported by adequate records and other appropriate evidence; therefore, counsel intending to seek a fee award should maintain specific and adequate time records.<sup>525</sup> Failure to keep contemporaneous time records may justify an appropriate reduction in

520. See *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1297 (9th Cir. 1994).

521. See, e.g., *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 340 (3d Cir. 1998) (indicating that hypothetical percentage-fee arrangements do not “provide much guidance in cases involving the aggregation of over 8 million plaintiffs and a potential recovery exceeding \$1 billion”).

522. See *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973).

523. See *In re Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603 (1st Cir. 1992).

524. *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983). A number of the additional factors set forth in *Johnson* will usually be subsumed in the determination of the reasonableness of the time spent and the hourly rate.

525. See, e.g., *In re Cont'l Ill. Sec. Litig.*, 572 F. Supp. 931, 934 (N.D. Ill. 1983) (requiring in a pretrial order that attorneys organize and report their time by activity, not by attorney), *rev'd on other grounds*, 962 F.2d 566 (7th Cir. 1992); see also *Hirsch & Sheehy*, *supra* note 466, at 103–04; Thomas E. Willging, *Judicial Regulation of Attorneys' Fees: Beginning the Process at Pretrial 30–32* (Federal Judicial Center 1984) [hereinafter *Judicial Regulation*] (reporting outside attorneys' enthusiastic support for this aspect of the district judge's order).

the award.<sup>526</sup> In especially large cases, consider seeking additional staff to review fee petitions and uncover duplicative, excessive, or unproductive efforts,<sup>527</sup> or appointing a special master under Rule 54(d)(2)(D).

What constitutes a reasonable hourly rate varies according to geographic area and the attorney's experience, reputation, practice, qualifications, and customary charge. The rate should reflect what the attorney would normally command in the relevant marketplace.<sup>528</sup> In exceptionally complex national litigation, the court should consider establishing a national rate for all the attorneys.<sup>529</sup> Federal Rule of Civil Procedure 54(d)(2)(D) allows establishment of "special procedures to resolve fee issues without extensive evidentiary hearings." Such procedures might include "a schedule reflecting customary fees or factors affecting fees within the community."<sup>530</sup>

The lodestar figure may be adjusted, either upward or downward,<sup>531</sup> to account for several factors including, *inter alia*, the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues pre-

526. *Hensley*, 461 U.S. at 433. Some circuits require contemporaneous time records as a condition to an award of fees. See 5th Cir. R. 47.8.1 (absent contemporaneous records, fee based on minimum time necessary); *N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136 (2d Cir. 1983); *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319 (D.C. Cir. 1982).

527. See, e.g., *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1296, 1319 (E.D.N.Y. 1985) (describing work of three temporary law clerks); *Hirsch & Sheehy*, *supra* note 466, at 114–15. For a study of the use of professional staff to review attorney fee vouchers and occasionally to negotiate budgets with attorneys, see Tim Reagan et al., *The CJA Supervising Attorney: A Possible Tool in Criminal Justice Act Administration* (Federal Judicial Center Apr. 2001) (unpublished report, on file with the Federal Judicial Center). See also Alan J. Tomkins & Thomas E. Willging, *Taxation of Attorneys' Fees: Practices in English, Alaskan, and Federal Courts* (Federal Judicial Center 1986).

528. *Blum*, 465 U.S. at 895 ("[R]easonable fees' . . . are to be calculated according to the prevailing market rates in the relevant community . . ."); *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973).

529. *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 226, 232 (2d Cir. 1987) (holding that "in an exceptional multiparty case . . . public policy and administrative concerns call for the district court to be given the necessary flexibility to impose a national hourly rate when an adequate factual basis for calculating the rate exists"); cf. *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 591 (3d Cir. 1984) (rejecting national rates as incompatible with a lodestar approach to fees). See also *Third Circuit 1985 Task Force Report*, *supra* note 480, at 261 (recommending use of national rates in exceptional cases).

530. Fed. R. Civ. P. 54(d)(2)(D) committee note (1993 amendments); see also *Third Circuit 1985 Task Force Report*, *supra* note 480, at 260–62 (advocating steps to create uniform district-wide fee schedules).

531. See *Conte & Newberg*, *supra* note 518, § 14:5, at 541–42.

sented, the risk of nonpayment,<sup>532</sup> and any delay in payment.<sup>533</sup> Accurate computation requires an adjustment for the loss of the use of the money up to the time of the award,<sup>534</sup> and perhaps an award of interest.<sup>535</sup> Historic interest rates generally are a more accurate starting point than current rates,<sup>536</sup> but it is permissible to use current rates as a rough approximation of the adjustment needed to compensate for delay in payment.<sup>537</sup> Whether enhancements for the risks assumed by plaintiffs' attorneys are permissible in common-fund cases was unresolved as of publication of this manual.<sup>538</sup>

### 14.13 Statutory-Fee Cases

The analysis of attorney fees in a statutory-fee (or fee-shifting) case differs from that in a common-fund case.<sup>539</sup> Shifting fees in a statutory-fee case serves the public policy of encouraging private enforcement of statutory or constitutional rights. Under most fee-shifting statutes, fees are available to a “prevailing party.” In *Buckhannon*, the Supreme Court said a prevailing party is a party that has altered its legal relationship with its adversary through a judgment or consent decree entered by the court.<sup>540</sup> (A litigant's status as the beneficiary of an out-of-court settlement, or as the beneficiary of an adversary's voluntary action mooting a case, does not by itself entitle that litigant to an award of at-

532. See *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291 (9th Cir. 1994).

533. See generally *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), *appeal following remand*, 540 F.2d 102 (3d Cir. 1976). But see *Burlington v. Dague*, 505 U.S. 557 (1992) (barring use of multiplier in statutory-fee case). Some courts have held this bar to be inapplicable in common-fund cases. *In re Wash. Pub. Power*, 19 F.3d at 1299–1300.

534. *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989). For a comprehensive study of the *Jenkins* case and a case-based formula for achieving an integrated approach to the issues of pre-judgment and postjudgment interest, see Russell E. Lovell II, *Court-Awarded Attorneys' Fees: Examining Issues of Delay, Payment, and Risk* (1999).

535. *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

536. Lovell, *supra* note 534, at 88–92.

537. *Jenkins*, 491 U.S. at 283–84.

538. See *Burlington*, 505 U.S. at 561, 567 (no enhancement in statutory-fee cases).

539. See *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

540. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Res.*, 532 U.S. 598, 604 (2001) (“enforceable judgments on the merits and court-ordered consent decrees create the ‘material alteration of the legal relationship of the parties’ necessary to permit an award of attorney's fees” (quoting *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989))).

torney fees as a prevailing party.<sup>541</sup>) If the *Buckhannon* test has been met, the lodestar is the appropriate method to use in calculating a fee award.<sup>542</sup>

The lodestar calculation—reasonable hours multiplied by a reasonable rate—usually provides an appropriate estimate of the value of a lawyer’s services.<sup>543</sup> Enhancements available in common-fund cases, such as for results obtained,<sup>544</sup> novelty and complexity of the issues presented,<sup>545</sup> and the contingent nature of the litigation, are not appropriate enhancements in a statutory-fee award case.<sup>546</sup> Only in the rare statutory-fee award case may exceptional results or quality of representation warrant an upward adjustment.<sup>547</sup> A delay in payment may be taken into account by applying current rates or factoring in an interest adjustment.<sup>548</sup>

A downward adjustment of the lodestar figure may be appropriate when the prevailing party achieves only “limited success.”<sup>549</sup> Where the plaintiff recovers only nominal damages and no other indicia of success, for example, the court can award “low fees or no fees.”<sup>550</sup> It is a good idea to examine not only the amount of recovery but also “the significance of the legal issue on which the plaintiff prevailed and the public purpose the litigation served.”<sup>551</sup> Courts

541. *Id.* at 605 (rejecting the claim that a plaintiff could be a prevailing party if its actions served as a catalyst for defendant to voluntarily change its allegedly illegal conduct).

542. *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989) (lodestar approach is the centerpiece of attorney fee awards).

543. *Pa. v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986); *Blum*, 465 U.S. at 897.

544. *Blum*, 465 U.S. at 900 (“Because acknowledgment of the results obtained generally will be subsumed within other factors used to calculate a reasonable fee, it normally should not provide an independent basis for increasing the fee award.”).

545. *Id.* at 898–99 (novelty and complexity will be reflected either in an increase in the number of hours or, for especially experienced attorneys who would thus expend fewer hours, in an increased hourly rate).

546. *Burlington v. Dague*, 505 U.S. 557, 561, 567 (1992).

547. *Blum*, 465 U.S. at 898 (the quality of representation is usually reflected in an attorney’s hourly rate).

548. *Mo. v. Jenkins*, 491 U.S. 274, 283–84 (1989). *See also* *Pa. v. Del. Valley Citizens’ Council for Clean Air*, 483 U.S. 711 (1987); *see also supra* notes 533–37 and accompanying text.

549. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

550. *Farrar v. Hobby*, 506 U.S. 103, 115 (1992). “[T]he relevant indicia of success [are] the extent of relief, the significance of the legal issue on which the plaintiff prevailed, and the public purpose served . . . .” *Id.* at 122 (O’Connor, J., concurring). *See also* *Phelps v. Hamilton*, 120 F.3d 1126, 1131–32 (10th Cir. 1997) (applying Justice O’Connor’s *Farrar* factors), and cases cited therein.

551. *Morales v. City of San Rafael*, 96 F.3d 359, 364–65 (9th Cir. 1996) (awarding fees because plaintiff’s nonmonetary success significantly advanced public purpose of deterring un-

have found public purposes in the deterrence arising from jury findings of liability,<sup>552</sup> in the broad applicability of nonmonetary relief,<sup>553</sup> and in the public significance of the issues on which plaintiffs prevailed.<sup>554</sup>

Awards should not be more than an amount “reasonable in relation to the results obtained.”<sup>555</sup> In public interest cases, however, the fact that the lodestar amount exceeded the damages awarded does not by itself justify adjusting the lodestar downward.<sup>556</sup> In applying the lodestar, therefore, the court must consider counsel’s level of effort given the issues at stake, its degree of success in the litigation, including the public ramifications of any success, and the efficiency and economy with which it handled the litigation.

lawful arrests), *amended on other grounds on denial of hearing and reh’g en banc* 108 F.3d 981 (9th Cir. 1997).

552. *Brandau v. Kan.*, 168 F.3d 1179, 1183 (10th Cir.) (concluding that “while Plaintiff’s litigation did not achieve significant monetary benefits, it served a larger public purpose” of deterring future sexual harassment and putting defendant on notice about the need to educate its employees about sexual harassment), *cert. denied*, 526 U.S. 1133 (1999).

553. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748 (2d Cir. 1998) (upholding fee award based on significance of injunction entered and jury finding of statutory civil rights violation).

554. *Phelps*, 120 F.3d at 1132 (examining “whether the judgment vindicates important rights and deters future lawless conduct”); *O’Connor v. Huard*, 117 F.3d 12, 18 (1st Cir. 1997) (basing fee award on vindicating rights of pretrial detainees despite \$1 damage award).

555. *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). However, fees should not be reduced simply because the plaintiff was not successful on every contention in the litigation. *Id.* at 435. The “most critical factor is the degree of success obtained.” *Id.* at 436. *See also* *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 790–91 (1989) (rejecting test that would focus on the “central issue” in the litigation); *Hirsch & Sheehey*, *supra* note 466, at 27–33.

556. *City of Riverside v. Rivera*, 477 U.S. 561 (1986) (affirming award of \$245,456.25 in attorney’s fees in civil rights litigation in which plaintiff received \$13,300 in damages after prevailing against the city and police officers); *Morales*, 96 F.3d at 363–65 (ordering lodestar application where attorneys submitted bills totaling \$139,783.25 and jury had awarded damages of \$17,500); *see also* *Hirsch & Sheehey*, *supra* note 466, at 33–35.

## 14.2 Proceedings to Award Fees

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### 14.21 Setting Guidelines and Ground Rules

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The judge should encourage agreement by the parties on the fee,<sup>557</sup> but also should keep in mind the potential conflict of interest for the attorney seeking damages for the client and fees for itself.<sup>558</sup> Also, an agreement will not be binding in a class-action settlement or other common-fund litigation.<sup>559</sup> In many instances, there will be no agreement and the judge must determine the fees.

557. *Blum v. Stenson*, 465 U.S. 886, 902 n.19 (1984); *Hensley*, 461 U.S. at 437. *See, e.g., White v. N.H. Dep't of Employment Sec.*, 455 U.S. 445, 453–54 n.15 (1982); *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801–04 (3d Cir. 1995); *Cheng v. GAF Corp.*, 713 F.2d 886, 889–90 (2d Cir. 1983); *Mendoza v. United States*, 623 F.2d 1338, 1352–53 & n.19 (9th Cir. 1980); *Prandini v. Nat'l Tea Co.*, 557 F.2d 1015, 1017 (3d Cir. 1977). *See also supra* section 13.24.

558. *See, e.g., Evans v. Jeff D.*, 475 U.S. 717, 725, 728 n.14 (1986) (describing the attorney's duty to evaluate a settlement offer based on the client's interest without regard to the attorney's interest in obtaining a fee).

559. *See In re Gen. Motors Corp.*, 55 F.3d at 801–04 (examining adequacy of attorneys to represent settlement class); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 126–27 (1885); *see also infra* sections 21.6–21.7.

### 14.211 Selecting Counsel and Establishing Fee Guidelines

In class-action litigation—and generally in multidistrict consolidated litigation—the judge has the opportunity and the obligation to appoint counsel who will represent the beneficiaries of any common fund. See Rule 23(g). As discussed more fully in sections 21.27 (class actions) and 31.5 (securities class actions), judges have used four distinct approaches to the selection of counsel: (1) reviewing the recommendations of lawyers who have filed related actions and appointing the recommended lawyers if they are adequate to represent the interests of the class (“private ordering”); (2) selecting among counsel who have filed related actions but are unable to reach an agreement and who compete for the appointment; (3) inviting bids from counsel who may or may not have filed a related action (“competitive bidding”); and (4) allowing the most adequate plaintiff to select counsel, subject to review by the court (“empowered-plaintiff” approach)—this technique is mandated by the Private Securities Litigation Reform Act for securities class actions. See section 31.31.<sup>560</sup> There will frequently be a number of law firms interested in serving as lead counsel, so judicial involvement is often necessary in selecting counsel and setting guidelines for future fee applications in the case.<sup>561</sup> Procedures for selection or designation of counsel in class-action settings pursuant to Rule 23(g) are discussed in section 21.27, which also presents criteria and procedures that courts have used in considering selection of counsel by competitive bidding.<sup>562</sup>

There are alternatives to bidding. A discussion about fees at an early stage of the litigation can simulate the type of uncertainty a client faces in negotiating a fee.<sup>563</sup> Judges should consider advising the parties at the outset of the litigation about the method to be used for calculating fees and, if using the percentage method, about the likely range of percentages.<sup>564</sup> At an early conference or in an early pretrial order after consultation with counsel, it is helpful to es-

560. Pub. L. No. 104-67, § 27(a)(3)(B)(v), 109 Stat. 737, 740 (codified as amended at 15 U.S.C. §§ 77z-1(a)(3)(B)(v), 78u-4(a)(3)(B)(v) (2000)).

561. See, e.g., *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 720–21 (7th Cir. 2001) (calling for district courts to use competitive bidding or other *ex ante* procedures to approximate a market rate for legal services in a class action).

562. For a discussion of the bidding process, see *Third Circuit 2001 Task Force Report*, *supra* note 487; Symposium, *Third Circuit Task Force Report on Selection of Class Counsel*, 74 Temp. L. Rev. 685 (2001); Hooper & Leary, *supra* note 493.

563. See *In re Synthroid*, 264 F.3d at 718 (remanding a case in which the district court had used a percentage method and indicating that “[t]he best time to determine [a market] rate is the beginning of the case”).

564. Some judges have reported success using this approach. See Hirsch & Sheehy, *supra* note 466, at 100–01 & n.444.

establish guidelines and procedures that will lighten the burdens on the participants, clarify expectations, and reduce the opportunities for disputes.<sup>565</sup> Matters such as those discussed in the following paragraphs should be covered. Although most of these factors are relevant primarily to the lodestar method, they may aid in regulating percentage awards as well. Judges have an independent duty to review fees and specifically determine if they are reasonable, applying traditional legal tests.<sup>566</sup>

#### 14.212 Staffing

A major issue in determining fees is the appropriate level of staffing for the particular litigation. Consider setting at least presumptive guidelines at the outset of the litigation, after discussion with counsel. Some judges find that appointing a single law firm, not a committee, to represent the class helps to keep fees reasonable. Setting guidelines at the outset, subject to revision, can reduce the potential for later conflict and facilitate judicial review of fee applications. Guidelines can cover the number of attorneys who may charge for time spent attending depositions, court hearings, office and court conferences, and trial.<sup>567</sup> Guidelines may also caution against using senior attorneys on projects suitable for less senior (and less costly) attorneys.<sup>568</sup> Finally, guidelines may set forth the range of hourly charges for particular attorneys on the case and permissible charges for travel time.<sup>569</sup> In setting such guidelines, there is a need for some symmetry between the staffing levels of plaintiffs and defendants.

565. See *In re Cont'l Ill. Sec. Litig.*, 572 F. Supp. 931 (N.D. Ill. 1983) (pretrial order establishing fee guidelines and record-keeping responsibilities), *rev'd on other grounds*, 962 F.2d 566 (7th Cir. 1992); Hirsch & Sheehey, *supra* note 466, at 97–98, 109–11; Judicial Regulation, *supra* note 525, at 11–34 (presenting attorneys' reactions to the pretrial order concerning fees in the *Continental Illinois* litigation); Administrative Order re Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (Bankr. S.D.N.Y. June 24, 1991), *reprinted in* 3 Bankr. Local Ct. R. Serv. (CBC) N.Y., 98.14–98.19 (1996). See also Bennett Feigenbaum, *How to Examine Legal Bills*, 177 J. Acct. 84 (May 1994) (listing criteria for testing reasonableness).

566. See generally *Cendant Corp. Prides Litig.*, 243 F.3d 722 (3d Cir. 2001), and cases cited therein.

567. See, e.g., *In re Cont'l Ill.*, 572 F. Supp. at 933–34 (emphasizing individual responsibility and establishing staffing guidelines for depositions and legal research and criteria for compensating document review); see also Judicial Regulation, *supra* note 525, at 15–26.

568. *In re Cont'l Ill.*, 572 F. Supp. at 933 (directing that “[s]enior partner rates will be paid only for work that warrants the attention of a senior partner”).

569. *Id.* at 934 (travel limited; airfare to be reimbursed at tourist rates).

### 14.213 Maintaining Adequate and Comprehensible Records

Complete time records are critical when fees are based on a lodestar and are advisable in any large litigation. Such records may be used as a cross-check on the percentage-of-fund method. Sometimes, however, these records may be too voluminous for effective judicial analysis. The judge should address this issue early in the case by directing counsel to develop record-keeping procedures to facilitate review.<sup>570</sup> Counsel should maintain contemporaneous records that show the name of the attorney, the time spent on each discrete activity, and the nature of the work performed. Consider recommending that attorneys use computer programs to facilitate analysis of billings and of fee requests. Agreed-on forms of summaries may be used to achieve similar results.

### 14.214 Submission of Periodic Reports

Some judges require periodic reports in anticipation of an award at the end of the litigation (it may be necessary to submit some of the information under seal or *in camera*).<sup>571</sup> This practice encourages lawyers to maintain records adequate for the court's purposes and enables the court to spot developing problems. Periodic review of time charges sometimes leads the judge to establish a tentative budget for the case, acceptable billing ranges for attorneys, or at least limits on recoverable fees for particular activities.

### 14.215 Compensation for Designated Counsel

Lead and liaison counsel may have been appointed by the court to perform functions necessary for the management of the case but not appropriately charged to their clients. Early in the litigation, the court should define designated counsel's functions, determine the method of compensation, specify the records to be kept, and establish the arrangements for their compensation, including setting up a fund to which designated parties should contribute in specified proportions. Guidelines should cover staffing, hourly rates, and estimated charges for services and expenses.

570. For a discussion of various approaches that judges use to accomplish this goal, see Hirsch & Sheehey, *supra* note 466, at 103–05. See also Judicial Regulation, *supra* note 525, at 30–32.

571. See Hirsch & Sheehey, *supra* note 466, at 104–05.

### 14.216 Reimbursement of Expenses

Rules and practices vary widely with respect to reimbursement of lawyers' expenses out of the fee award.<sup>572</sup> Charges for paralegals and law clerks at market rates<sup>573</sup> and the fees of necessary experts are generally reimbursable while secretarial assistance is not. Courts have differed over whether overtime is reimbursable, as well as such items as computer-assisted legal research, copy and printing costs, certain meals and travel, and fax, telephone, and delivery charges. The court should establish ground rules at the outset for determination of such claims.

In some litigation, parties may incur substantial costs for various litigation support or services, such as special computer installations, costly expert services, or elaborate trial exhibits or demonstrations. Counsel who expect to treat such items as reimbursable expenses or taxable costs should advise the court and opposing counsel and obtain clearance before incurring the expenses. This should also be done when there are questions relating to taxation of costs.

## 14.22 Motion for Attorney Fees

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### 14.221 Contents of the Fee Motion

Federal Rule of Civil Procedure 23(h) establishes procedures in class actions for ruling on motions for attorney fees, notifying the class, holding hearings, making findings, and using special masters or magistrate judges to assist in the process. See generally section 21.72. In non-class-action cases, Rule 54(d)(2) and any rules specifying the requirements of motions for fees in other cases should be the primary source of procedures governing fee motions. If counsel is advised early in the case of the possibility of departure, they can prepare and maintain records that will facilitate the later preparation of the motion. The judge should give timely notice to counsel of a decision to bifurcate the determination of liability for fees from that of the amount under Rule 54(d)(2)(C).

Where multiple counsel in the case expect to submit separate fee motions, consider requiring them to coordinate their submissions, avoid duplication,

<sup>572</sup>. See generally 1 Alba Conte, *Attorney Fee Awards* §§ 2.19, 4.41–4.43 (2d ed. 1993 & Supp. Nov. 2002) (discussing cost reimbursement in common-fund and statutory-fee cases).

<sup>573</sup>. *Mo. v. Jenkins*, 491 U.S. 274, 288 (1989).

and perhaps attempt to resolve disputes among themselves before submission. Lead counsel can be made responsible for overseeing this process.<sup>574</sup>

#### 14.222 Timing

For nonclass litigation, Rule 54(d)(2)(B) requires that motions for attorney fees be filed and served no later than fourteen days after entry of judgment unless otherwise provided by statute or order of the court. Prompt filing of the motion gives the opponent and other interested parties notice of the claim before the time for appeal has expired, affords the court an opportunity to rule on the application while the services are still fresh in mind, and allows an appeal to be taken at the same time as an appeal on the merits.

Although such motions are ordinarily made at the end of the case, an interim award of fees and expenses will sometimes be appropriate.<sup>575</sup> For discussion of the Rule 23(h)(1) requirement that notice of a motion for attorney fees in a class action be given to class members, see section 21.722.

#### 14.223 Supporting Documentation and Evidence

In advance of any fee-award hearing, counsel should submit time and expense records, to the extent not previously submitted with the motion and in manageable and comprehensible form, to encourage parties to reach agreements where possible and to streamline the hearing. Where different claims were litigated, the records should identify the claims to which particular services relate.<sup>576</sup> Counsel should also submit the evidence on which they will rely in urging particular rates for certain lawyers, or a particular percentage when that method is to be used. The direct testimony of witnesses in support of the application can be in the form of declarations, with the witnesses available at the hearing for cross-examination if requested.<sup>577</sup>

574. For a description of one district judge's approach to using lead counsel to coordinate interim and final submissions of multiple requests for fees, see Hirsch & Sheehey, *supra* note 466, at 117.

575. See *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 790–92 (1989).

576. *Hensley v. Eckerhart*, 461 U.S. 424, 437 & n.12 (1983).

577. See generally Charles Richey, *A Modern Management Technique for Trial Courts to Improve the Quality of Justice: Requiring Direct Testimony To Be Submitted in Written Form Prior to Trial*, 72 *Geo. L.J.* 73 (1983). For a discussion about applying this technique to fee hearings, see Hirsch & Sheehey, *supra* note 466, at 107–08.

In class actions, all agreements or understandings made in connection with a settlement must be described in writing and may have to be disclosed.<sup>578</sup> See section 21.725. In any type of case, the judge may wish to direct the movant to disclose any agreement with a client in which the terms deal with “fees to be paid for the services for which the claim is made.”<sup>579</sup>

#### 14.224 Discovery

For discussion of discovery regarding fee requests in class actions, see section 21.724. Discovery in connection with fee motions should rarely be permitted, but may be advisable where attorneys make competing claims to a settlement fund designated for the payment of fees.<sup>580</sup> With appropriate guidelines and ground rules, the materials submitted should normally meet the needs of the court and other parties. If a party or an objector to a settlement requests clarification of material submitted in support of the fee motion, or requests additional material, the court should determine what information is genuinely needed and arrange for its informal production.

### 14.23 Judicial Review/Hearing and Order

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#### 14.231 Judicial Review

Exacting judicial review of fee applications, burdensome though it may be, is necessary to discharge the obligation to award fees that are reasonable and consistent with governing law. In common-fund litigation, class counsel may be competing with class members for a share of the fund, thus placing a special fiduciary obligation on the judge because class members are unrepresented as

578. Fed. R. Civ. P. 23(e)(2) & committee note; *see also* Smiley v. Sincoff, 958 F.2d 498, 501 (2d Cir. 1992) (discussing the district court’s power to review and invalidate private fee agreements); *In re* “Agent Orange” Prod. Liab. Litig., 818 F.2d 216, 218, 222–24 (2d Cir. 1987); 7B Charles Alan Wright et al., *Federal Practice & Procedure Civil 2d* § 1803 (Supp. 2002) (discussing *Agent Orange*). *But see* Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990) (counsel free to divide lump sum award as they see fit without disclosure). *See generally supra* section 13.23 (full disclosure of all side agreements must be made to the court in presenting a related settlement agreement for judicial approval).

579. Fed. R. Civ. P. 54(d)(2)(B).

580. *See In re* Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 982 F.2d 603, 614 n.20 (1st Cir. 1992) (discovery not required, but is one way to afford competing claimants due process). *See also* Fed. R. Civ. P. 23(h)(2) committee note (“If the motion provides thorough information, the burden should be on the objector to justify discovery . . .”).

to this issue.<sup>581</sup> If there are no objectors to the fee request, consider whether to appoint counsel to represent the class on this issue, balancing the additional cost an appointment will likely entail against the possible benefit to the class.<sup>582</sup>

Standards for reviewing common-fund attorney fee requests are discussed in section 14.12, and standards for reviewing statutory attorney fee requests are discussed in section 14.13. The following is a summary of several techniques judges have developed to expedite the review process, primarily relevant to application of the lodestar approach:

- *Establishing at the outset of the case the method of compensation and, if possible, any percentage formula that will be used.* Innovative methods used in this connection have included competitive bidding procedures for the selection of class counsel<sup>583</sup> and appointment of an outside attorney to negotiate a fee arrangement for the class.<sup>584</sup>
- *Sampling.* The judge can select certain blocks of time, at random, examining them closely to determine the reasonableness of the hours charged and apply the results to the entire fee application by extrapolation.<sup>585</sup>
- *Evaluating the request in light of a budget submitted by counsel at the beginning of the case.*<sup>586</sup> Counsel must justify substantial departures from the budget.
- *Using computer programs to facilitate analysis of fee requests.*<sup>587</sup> See section 14.213.
- *Having defendants submit billing records.* Records showing defendants' attorney fees may provide a reference for determining the reasonableness of fees where defendants oppose plaintiff's counsel's fee request.<sup>588</sup>

581. *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 730–31 (3d Cir. 2001); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994).

582. *In re Wash. Pub. Power*, 19 F.3d at 1302.

583. See *supra* section 14.211.

584. See *Third Circuit 1985 Task Force Report*, *supra* note 480, at 256; see also Hirsch & Sheehey, *supra* note 466, at 101 n.444.

585. *Evans v. City of Evanston*, 941 F.2d 473, 477 (7th Cir. 1991) (approving the sampling technique employed as reasonable); see also Hirsch & Sheehey, *supra* note 466, at 96–97 (reporting interviews with judges who have used sampling).

586. Hirsch & Sheehey, *supra* note 466, at 97–98.

587. *Id.* at 101–02. A bankruptcy judge reported creating and maintaining a database of local attorney billing rates, which she shares with other judges. *Id.* at 102.

588. *Id.* at 105–06.

- *Delegating discrete tasks to law clerks and secretaries.* Law clerks can compare the billing request with the product of the billing as shown in the case file.<sup>589</sup>
- *Using magistrate judges, special masters, or experts.*<sup>590</sup> Before calling on outside assistance, the judge should take all reasonable steps to simplify and streamline the process. The trial judge has a familiarity with the case that cannot be matched by any judicial adjunct.

#### 14.232 Hearing and Order

Rule 54(d)(2)(C) requires the court, on request of a party or class member, to “afford an opportunity for adversary submissions with respect to [a] motion” for attorney fees. An evidentiary hearing may be required in some cases, but Rule 54(d)(2)(D) permits the court to “establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings.” Due process may require affording claimants a meaningful opportunity to be heard concerning competing applications for fees payable from a common fund.<sup>591</sup> A hearing must be held in a class action in which a settlement would bind the class,<sup>592</sup> and that hearing should ordinarily encompass attorney fee petitions. If a hearing is anticipated, the judge should hold a preliminary conference to narrow the issues and resolve as many disputes as possible. Techniques to expedite bench trials should be used, such as exchange and submission of direct testimony subject to cross-examination of the witness at the hearing when requested (see section 12.51).<sup>593</sup>

Rule 54(c)(2)(C) requires the court to “find the facts and state its conclusions of law as provided in Rule 52(a)” and to issue its judgment in a separate document under Rule 58. The order, which should be made public, must “provide a concise but clear explanation of its reasons for the fee award.”

589. *Id.* at 114–15.

590. Fed. R. Civ. P. 54(d)(2)(D). *But see* Estate of Connors v. O’Connor, 6 F.3d 656, 658–59 (9th Cir. 1993) (magistrate judge cannot enter final, appealable order). *See also* Hirsch & Sheehy, *supra* note 466, at 107 (discussing threat to appoint auditor to resolve fee dispute at the loser’s expense), 115–17 (discussing use of magistrate judges, special masters, experts, and settlement judges in managing fee applications).

591. *In re* Nineteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 982 F.2d 603, 616 (1st Cir. 1992). For discussion of the hearing procedures for class-action settlements, see *infra* section 21.634.

592. Fed. R. Civ. P. 23(e)(1)(C) (requiring a hearing before approving a settlement, voluntary dismissal, or a compromise that would bind class members).

593. *See In re* Fine Paper Antitrust Litig., 751 F.2d 562, 572 (3d Cir. 1984).

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### 15.1 Interlocutory Appeals

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#### 15.11 When Permitted

The principal occasions on which an appellate court may permit interlocutory appeal are these:

- *Orders granting, continuing, modifying, dissolving, or refusing to dissolve or modify injunctions.* Appeals as of right from such orders are authorized by 28 U.S.C. § 1292(a)(1),<sup>594</sup> and an appellate court may treat an order as an injunction even if the district court has labeled it otherwise.<sup>595</sup> Interlocutory appeals are also authorized from certain orders relating to receiverships and decrees in admiralty. An interlocutory order that merely has the practical *effect* of denying an injunction is appealable as of right under 28 U.S.C. § 1292(a)(1) upon a showing that the order would have “serious, perhaps irreparable” consequences and can be effectively challenged only by appeal.<sup>596</sup> Section 1292(a)(1) generally does not, however, permit interlocutory appeals from orders granting or refusing to grant stays.<sup>597</sup> Failure to take an interlocutory

594. 28 U.S.C. § 1291 (West 2002).

595. *Sierra Club v. Marsh*, 907 F.2d 210, 214 (1st Cir. 1990); *Cohen v. Bd. of Trs.*, 867 F.2d 1455, 1466 (3d Cir. 1989) (en banc). *See also* *Hershey Foods Corp. v. Hershey Creamery Co.*, 945 F.2d 1272, 1277 (3d Cir. 1991) (to be deemed an injunction, order must be directed to party, enforceable by contempt, and designed to protect some or all of the substantive relief sought).

596. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981). *See also* *Gulfstream Aerospace Corp. v. Maycamas Corp.*, 485 U.S. 271, 287–88 (1988); *Sierra Rutile, Ltd. v. Katz*, 937 F.2d 743, 749 (2d Cir. 1991). Under Title 9, an order refusing a stay to permit arbitration pursuant to a written arbitration agreement is immediately appealable, but one granting such a stay is not. 9 U.S.C. §§ 16(a)(1)(A), 16(b)(1) (2000).

597. *Gulfstream*, 485 U.S. at 279–88 (overruling the *Enelow-Ettleson* doctrine).

appeal does not waive the right to appeal an order after final judgment.<sup>598</sup>

- *Orders not otherwise appealable that “involve a controlling question of law as to which there is substantial ground for difference of opinion . . . [if] an immediate appeal from the order may materially advance the ultimate termination of the litigation.”*<sup>599</sup> Some judges give a party an opportunity to seek interlocutory review of an order by issuing a written order finding that this standard is met. Such an order should clearly articulate the reasons and factors underlying the court’s decision.<sup>600</sup> The court of appeals has discretion to hear or decline the appeal.<sup>601</sup> Adopted with complex litigation in mind,<sup>602</sup> 28 U.S.C. § 1292(b) provides a mechanism for obtaining early review of crucial orders where an appellate ruling may simplify or shorten the litigation.<sup>603</sup> Examples include orders certifying or refusing to certify a class or allocating the cost of notice, granting or denying motions disposing of pivotal claims or defenses, finding a lack of subject-matter jurisdiction,<sup>604</sup> or determining the applicable substantive law. The appellant has ten days from entry of the district court’s order to petition the court of appeals for permission to appeal.<sup>605</sup>
- *Orders constituting a clear abuse of discretion in circumstances where the court’s legal duty is plainly established.* Review may be available by way of extraordinary writ.<sup>606</sup> Appellate courts grant these writs rarely, limiting them to situations where the trial court has clearly committed le-

598. See, e.g., *Clark v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 924 F.2d 550, 553 (4th Cir. 1991). The issue may, of course, become moot after final judgment.

599. 28 U.S.C. § 1292(b) (West 2002).

600. *Metro Transp. Co. v. N. Star Reinsurance Co.*, 912 F.2d 672, 677 (3d Cir. 1990).

601. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978) (appeal may be denied for any reason, including docket congestion).

602. See 16 *Wright et al.*, *supra* note 578, § 3929.

603. See, e.g., *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1016 (5th Cir. 1992) (orders defining class and class issues, designating class representatives, and setting a class trial plan), *reh’g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh’g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing).

604. See *In re TMI Litig. Cases Consol. II*, 940 F.2d 832 (3d Cir. 1991) (order remanding cases to state court upon finding that the federal statute providing federal jurisdictional predicate was unconstitutional).

605. 28 U.S.C. § 1292(b) (West 2002); Fed. R. App. P. 5(a). Failure to meet this deadline is a jurisdictional defect and is strictly enforced. See, e.g., *Tranello v. Frey*, 962 F.2d 244, 247–48 (2d Cir. 1992).

606. See 28 U.S.C. § 1651 (West 2002); Fed. R. App. P. 21.

gal error, and a party is entitled to relief but cannot obtain it through other means.<sup>607</sup> Writs have been granted to require that a demand for trial by jury be honored,<sup>608</sup> to vacate orders restricting communications with class members,<sup>609</sup> to uphold claims of sovereign immunity,<sup>610</sup> to vacate orders appointing special masters,<sup>611</sup> and to enforce claims of privilege<sup>612</sup> or work-product protection.<sup>613</sup> A writ may be sought as an alternative ground for interlocutory review where review is denied under section 1292(b).<sup>614</sup>

- *Collateral orders that finally determine claims separable from rights asserted in the action and that would be effectively unreviewable on appeal from final judgment.* Under the “collateral order” doctrine, certain nonfinal orders may be considered final decisions for purposes of 28 U.S.C. § 1291.<sup>615</sup> Examples are orders denying immunity,<sup>616</sup> preventing intervention,<sup>617</sup> or modifying a protective order.<sup>618</sup> Courts have construed this doctrine narrowly.<sup>619</sup> As an alternative, a writ may be

607. *Kerr v. United States Dist. Court*, 426 U.S. 394, 402–03 (1976).

608. *See, e.g., Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959).

609. *See, e.g., Coles v. Marsh*, 560 F.2d 186 (3d Cir. 1977).

610. *See, e.g., Spacil v. Crowe*, 489 F.2d 614 (5th Cir. 1974).

611. *See, e.g., La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957).

612. *Jenkins v. Weinshienk*, 670 F.2d 915 (10th Cir. 1982); *Rowley v. Macmillan*, 502 F.2d 1326 (4th Cir. 1974); *Harper & Row Publishers, Inc. v. Decker*, 423 F.2d 487 (7th Cir. 1970), *aff’d per curiam*, 400 U.S. 348 (1971).

613. *See, e.g., Bogosian v. Gulf Oil Corp.*, 738 F.2d 587 (3d Cir. 1984).

614. *See, e.g., In re Cement Antitrust Litig.*, 673 F.2d 1020 (9th Cir. 1982) (judge’s recusal reviewable by mandamus, but not under section 1292(b)), *aff’d under 28 U.S.C. § 2109 sub nom. Ariz. v. Ash Grove Cement Co.*, 459 U.S. 1190 (1983).

615. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). *See also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (order directing defendants to bear part of cost of class notice held immediately appealable).

616. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 143 (1993); *Mitchell v. Forsyth*, 472 U.S. 511, 524–30 (1985).

617. *See Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377 (1987).

618. *See Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 472 (9th Cir. 1992) (cases cited therein).

619. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978) (order denying class certification held not immediately appealable). Mindful of the constraints of *Coopers*, appellate courts have declined to review interlocutory orders restricting communications with class members, *Lewis v. Bloomsburg Mills, Inc.*, 608 F.2d 971 (4th Cir. 1979), awarding interim attorneys’ fees, *Hillery v. Rushen*, 702 F.2d 848 (9th Cir. 1983), directing class counsel to create a list of class members at their own expense, *Judd v. First Federal Savings & Loan Ass’n*, 599 F.2d 820 (7th Cir. 1979), and transferring the action to another district court because of a forum selection clause,

sought.<sup>620</sup> It is unclear whether the right to appeal a collateral order is lost if the appeal is not taken immediately.<sup>621</sup>

- *Orders granting or denying class action certification.* See section 21.28.
- *Where a claim has been resolved while others remain pending, or the rights or liabilities of one party have been determined while others remain in the litigation.* Review may be available under Federal Rule of Civil Procedure 54(b) if the district court, in its discretion, makes “an express determination that there is no just cause for delay” and has given “an express direction for the entry of judgment.” The order should state the court’s reasons. The district court has discretion to direct entry of judgment only for those decisions that are “final” within the meaning of 28 U.S.C. § 1291.<sup>622</sup> Unlike 28 U.S.C. § 1292(b), Rule 54(b) does not provide for certification of issues.<sup>623</sup> Once judgment has been entered and the certification made, the party affected must perfect its appeal or it is waived.<sup>624</sup> A Rule 54(b) appeal with respect to a particular party or a discrete claim may be appropriate to speed the final resolution of the litigation. On the other hand, such appeals sometimes result in duplication of work for the court of appeals by having to hear separate appeals on the same or similar issues.<sup>625</sup>
- *Reference of controlling questions of state law to a state appellate court.* A number of state appellate courts entertain references from federal courts of unsettled questions of state law.

*Nascone v. Spudnuts*, 735 F.2d 763 (3d Cir. 1984). *But cf.* *Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190 (3d Cir. 1983) (order refusing to enforce contractual forum selection clause held immediately appealable). For cases on interlocutory appeals of orders on motions to disqualify counsel, see *supra* note 71.

620. Some appellate courts will treat appeals outside the scope of the collateral order doctrine as petitions for special writs. *See, e.g.*, *Cheyney State Coll. Faculty v. Hufstedler*, 703 F.2d 732, 736 (3d Cir. 1983) (discretionary with court of appeals).

621. *See* *Exc. Nat’l Bank v. Daniels*, 763 F.2d 286, 290–92 (7th Cir. 1985).

622. *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 742–44 (1976); *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437–38 (1956).

623. *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 443 (3d Cir. 1977).

624. *See, e.g.*, *Local P-171, Amalgamated Meat Cutters & Butchers Workmen v. Thompson Farms Co.*, 642 F.2d 1065, 1071 n.7 (7th Cir. 1981).

625. *See* *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980); *Sears, Roebuck & Co.*, 351 U.S. at 441–44 (Frankfurter, J., dissenting).

## 15.12 Proceedings While Appeal Pending

An interlocutory appeal, whether by right or by permission, does not ordinarily deprive the trial court of jurisdiction except with respect to the matter that is the subject of the appeal.<sup>626</sup> Notwithstanding the pendency of an interlocutory appeal, the litigation usually proceeds as scheduled through discovery and other pretrial steps toward trial. However, depending on the nature of the issue before the appellate court, it may be appropriate for the trial judge to suspend some portion of the proceedings or alter the sequence in which further activities in the litigation are conducted.

## 15.2 Entry of Final Judgment

Federal Rule of Civil Procedure 58 directs the district judge to set forth the final judgment on a separate document identified as such, separate from any order, memorandum, or opinion. If the final judgment will run to several pages, consider preparing for signature a single cover sheet that refers to and adopts the provisions set forth in an attached appendix. The judgment is effective only when entered by the clerk in accordance with Rule 79(a).<sup>627</sup> The time for appeal does not begin to run until the conditions set by Rules 58 and 79(a) have been met.<sup>628</sup> Though notice of the entry is not required to start the time for appeal running,<sup>629</sup> failure to receive notice may support such a motion for reopening the time to appeal.<sup>630</sup> Prevailing parties should therefore send their own notice as a supplement to that expected from the clerk.<sup>631</sup> A notice filed before disposition of such motion becomes effective upon the motion's disposition.<sup>632</sup> The pendency of a motion for costs or attorneys' fees tolls the time to appeal if the court on timely application delays entry of the underlying judgment.<sup>633</sup>

If a party timely files a motion under Rule 50(b) for judgment as a matter of law, under Rule 52(b) to amend or make additional findings of fact, or under Rule 59 for a new trial or to amend the judgment, the time to appeal runs

626. See *Taylor v. Sterrett*, 640 F.2d 663, 667–68 (5th Cir. 1981); 19 James Wm. Moore et al., *Moore's Federal Practice* § 203.11 (3d ed. 1997).

627. *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 384 (1978).

628. Fed. R. App. P. 4(a)(7); *United States v. Indrelunas*, 411 U.S. 216 (1973).

629. See Fed. R. App. P. 4(a)(1).

630. See Fed. R. App. P. 4(a)(6).

631. See Fed. R. App. P. 4(a)(6) committee note.

632. See Fed. R. App. P. 4 committee note on the 1993 amendments.

633. See Fed. R. Civ. P. 58 committee note.

instead from entry of the order denying a new trial or granting or denying any of the other motions.<sup>634</sup> These postjudgment motions should, therefore, be acted on promptly. Postjudgment motions may affect the appealability of other cases consolidated for trial.

The final judgment in a class action must describe the class with sufficient specificity to identify those bound by the decision.<sup>635</sup> In actions maintained under Rule 23(b)(3), the court should compile—and refer in the judgment to—a list that identifies the persons who were sent individual notice and did not timely elect to be excluded from the class.

### 15.3 Disposition of Materials

Most courts by local rule or order direct or permit the parties, after the time for appeal has expired, to remove many of the documents and other exhibits.

The parties, however, may need those materials—often gathered or compiled at great expense—in other litigation, pending or not. Therefore, the court should be reluctant to authorize immediate destruction of documents and other exhibits. Items permitted to be withdrawn from the court should usually be retained by the parties for a reasonable period of time so that, if shown to be needed in other litigation, they can be produced without undue expense or delay.

634. Fed. R. App. P. 4(a)(4).

635. Fed. R. Civ. P. 23(c)(3).

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## *Part II*

### *Special Problems*

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## 20. Multiple Jurisdiction Litigation

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Multiplication of cases within the federal system or across the federal and state systems is a common characteristic of complex litigation. Multiple claims may be aggregated in a single class action if the prerequisites of Federal Rule of Civil Procedure 23 are met. Frequently, though, separate lawsuits asserting similar claims are initiated; multiple, overlapping class actions are filed in federal and state courts; or class members opt out to file their own cases. Occasionally, peripheral claims in complex litigation will lead to multiple cases, as in the case of insurance coverage litigation or reactive litigation motivated by forum preferences. Control over the proliferation of cases and coordination of multiple claims is crucial to effective management of complex litigation. When the limitations of federal jurisdiction preclude such control, voluntary means may be available to achieve coordination and thereby reduce duplicative activity, minimize the risks of conflict, and avoid unnecessary expense.

The most powerful device for aggregating multiple litigation pending in federal and state courts—the bankruptcy law<sup>636</sup>—is, except for the mass tort context, beyond the scope of this manual. Where related adversary proceedings are pending in bankruptcy court, however, the bankruptcy judge should consider having them reassigned, at least tentatively, to the district judge handling related litigation.<sup>637</sup> When related bankruptcy reorganization pro-

636. See *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986). See generally section 22.5.

637. See generally section 22.54.

ceedings are pending in different districts, judges should consider methods of consolidating those proceedings before a single judge.<sup>638</sup>

## 20.1 Related Federal Civil Cases

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### 20.11 Cases in Same Court

All related civil cases pending in the same court should initially be assigned to a single judge to determine whether consolidation, or at least coordination of pretrial proceedings, is feasible and is likely to reduce conflicts and duplication (see section 10.12). If the cases appear to involve common questions of law or fact, and consolidation may tend to reduce cost and delay, the cases may be consolidated under Federal Rule of Civil Procedure 42(a) (see section 11.631). Cases pending in different divisions of the court may be transferred upon request under 28 U.S.C. § 1404(b). Cases should not be consolidated if it would result in increased delay and other unnecessary burdens on parties, such as having to participate in discovery irrelevant to their cases.<sup>639</sup>

At the initial conference, consider whether cases should be coordinated or consolidated for pretrial proceedings or for all purposes even if the final decision must be deferred pending the development of additional information. When cases are coordinated or consolidated, the court should enter an order establishing a master file for the litigation in the clerk's office, relieving the parties from multiple filings of the same pleadings, motions, notices, orders, and discovery materials, and providing that documents need not be filed separately in an individual case file unless uniquely applicable to that particular case.

638. See Order of Chief Judge Edward H. Becker, Designation of a District Judge for Service in Another District Within the Circuit (3d Cir. Nov. 27, 2001). The order was based on authority granted the chief judge in 28 U.S.C. § 292(b), which permits such reassignments "in the public interest."

639. *In re Repetitive Stress Injury Litig.*, 11 F.3d 368 (2d Cir. 1993).

## 20.12 Cases in Different Federal Courts

Related cases pending in different federal courts may be consolidated in a single district by a transfer of venue. Under 28 U.S.C. § 1404(a), the court may, “[f]or the convenience of parties and witnesses, in the interest of justice . . . transfer any civil action to any other district or division where it might have been brought.”<sup>640</sup> Plaintiffs’ choice of forum is, however, entitled to substantial deference.<sup>641</sup>

## 20.13 Multidistrict Transfers Under Section 1407

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The Judicial Panel on Multidistrict Litigation (“the Panel”) is authorized to transfer civil actions pending in more than one district involving one or more common questions of fact to any district for coordinated or consolidated pretrial proceedings upon the Panel’s determination that transfer “will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions.”<sup>642</sup> The Panel’s authority is not subject to venue restrictions<sup>643</sup>—it extends to most civil actions<sup>644</sup> and, with one statutory exception, only to transfer for pretrial proceedings (as of December 2003).<sup>645</sup>

### 20.131 Requests for Transfer

Transfer proceedings may be initiated by one of the parties or by the Panel itself, although the latter procedure is ordinarily used only for “tag-along” cases (transfer on the request of a person not a party in one or more of the

640. For the implications of the phrase “where it might have been brought,” see *infra* note 649.

641. See *Gulf Oil Co. v. Gilbert*, 330 U.S. 501, 508 (1947).

642. 28 U.S.C. § 1407 (West 2003).

643. *In re N.Y. City Mun. Sec. Litig.*, 572 F.2d 49 (2d Cir. 1978).

644. Antitrust actions brought by the United States are exempt from the Panel’s power, 28 U.S.C. § 1407(g) (West 2002), as are injunctive actions instituted by the Securities and Exchange Commission unless the SEC consents to consolidation, 15 U.S.C. § 78u(g) (2000).

645. See *infra* section 20.132 and text accompanying notes 666–71. *Parens patriae* antitrust actions brought by states under 15 U.S.C. § 15c(a)(1) may be transferred by the Panel for both pretrial and trial. 28 U.S.C. § 1407(h) (West 2002). The Panel can also designate the circuit court to hear appeals of federal agency rulings in certain instances in which petitions for review have been filed in multiple circuits. *Id.* § 2112(a)(3).

cases).<sup>646</sup> The Panel evaluates each group of cases proposed for multidistrict treatment on the cases' own facts in light of the statutory criteria. The objective of transfer is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts.<sup>647</sup> As few as two cases may warrant multidistrict treatment,<sup>648</sup> although those advocating transfer bear a heavy burden of persuasion when there are only a few actions, particularly those involving the same parties and counsel.<sup>649</sup>

Occasionally, only certain claims in an action are related to multidistrict proceedings, or an action contains claims relating to more than one multidistrict docket (e.g., a plaintiff suing its broker over purchases of stock in two different companies, each of which is the subject of a separate multidistrict docket). Section 1407(a) authorizes the Panel to transfer only "civil actions," not claims; however, section 1407(a) also empowers the Panel to accomplish "partial" transfer by (1) transferring an action in its entirety to the transferee district, and (2) simultaneously remanding to the transferor district any claims for which transfer was not deemed appropriate, such as cross-claims, counter-claims, or third-party claims. If the "new" action containing the remanded claim in the transferor district is also appropriate for inclusion in a second transferee docket, the process can proceed one step further with simultaneous retransfer to the second docket's transferee district.

A transfer under section 1407 becomes effective when the order granting the transfer is filed in the office of the clerk of the transferee court. At that point, the jurisdiction of the transferor court ceases and the transferee court has exclusive jurisdiction.<sup>650</sup> During the pendency of a motion (or show cause order) for transfer, however, the court in which the action was filed retains jurisdiction over the case.<sup>651</sup>

The transferor court should not automatically stay discovery; it needs to consider provisions in local rules that may mandate early commencement of discovery, and an order modifying such provisions' impact on the litigation may be necessary. Nor should the court automatically postpone rulings on pending motions, or generally suspend further proceedings. When notified of

646. The Panel may order transfer on the request of a person not a party in one or more of the cases. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 375 F. Supp. 1379, 1390 n.4 (J.P.M.L. 1974).

647. *See In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968).

648. *See, e.g., In re Clark Oil & Ref. Corp. Antitrust Litig.*, 364 F. Supp. 458 (J.P.M.L. 1973).

649. *See, e.g., In re Scotch Whiskey*, 299 F. Supp. 543 (J.P.M.L. 1969).

650. *In re Plumbing Fixture*, 298 F. Supp. 484. Unless altered by the transferee court, orders entered by the transferor court remain in effect.

651. J.P.M.L. R.P. 1.5; *In re Four Seasons Sec. Laws Litig.*, 362 F. Supp. 574 (J.P.M.L. 1973).

the filing of a motion for transfer,<sup>652</sup> therefore, matters such as motions to dismiss or to remand, raising issues unique to the particular case, may be particularly appropriate for resolution before the Panel acts on the motion to transfer. The Panel has sometimes delayed ruling on transfer to permit the court in which the case is pending to decide critical, fully briefed and argued motions. At the same time, it may be advisable to defer certain matters until the Panel has the opportunity to rule on transfer. For example, there would be little purpose in entering a scheduling order while a conditional order of transfer is pending. The court should, however, modify any previously scheduled dates for pretrial proceedings or trial as may be necessary to avoid giving the Panel a misleading picture of the status of the case.

More often, however, the Panel has held that the pendency of potentially dispositive motions is not an impediment to transfer of actions, because such motions can be addressed to the transferee judge for resolution after transfer. Furthermore, the pendency of motions raising questions common to related actions can itself be an additional justification for transfer.<sup>653</sup>

The Panel uses no single factor to select the transferee district,<sup>654</sup> but the Panel does consider where the largest number of cases is pending, where discovery has occurred, where cases have progressed furthest, the site of the occurrence of the common facts, where the cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges. Based on these factors, the Panel will designate a judge (on rare occasions, two judges) to whom the cases are then transferred for pretrial proceedings. The judge is usually a member of the transferee court, but occasionally the Panel selects a judge designated to sit specially in the transferee district on an intracircuit or intercircuit assignment.

#### 20.132 During Period of Transfer

After the transfer, the transferee judge<sup>655</sup> exercises not only the judicial powers in the transferee district but also “the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated proceedings.”<sup>656</sup> The Panel has no authority to direct transferee judges in the exercise of their powers and discretion in supervising multidis-

652. A copy of the motion is to be filed with the court where the action is pending. See J.P.M.L. R.P. 5.12(c).

653. See, e.g., *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

654. See Robert A. Cahn, *A Look at the Judicial Panel on Multidistrict Litigation*, 72 F.R.D. 211, 214–215 (1977).

655. *In re Plumbing Fixture*, 298 F. Supp. at 489.

656. 28 U.S.C. § 1407(b) (West 2003).

strict proceedings.<sup>657</sup> This supervisory power over depositions in other districts may be exercised in person or by telephone.<sup>658</sup> The transferee judge may vacate or modify any order of a transferor court, including protective orders,<sup>659</sup> unless altered, however, the transferor court's orders remain in effect.<sup>660</sup>

Although the transferee judge has no jurisdiction to conduct a trial in cases transferred solely for pretrial proceedings, the judge may terminate actions by ruling on motions to dismiss, for summary judgment, or pursuant to settlement, and may enter consent decrees.<sup>661</sup> Complexities may arise where the rulings turn on questions of substantive law. In diversity cases, the law of the transferor district follows the case to the transferee district.<sup>662</sup> Where the claim or defense arises under federal law, however, the transferee judge should consider whether to apply the law of the transferee circuit or that of the transferor court's circuit,<sup>663</sup> keeping in mind that statutes of limitations may present unique problems.<sup>664</sup> An action is closed by appropriate orders entered in the transferee court, without further involvement by the Panel or the original transferor court.

The transferee judge's management plan for the litigation should include provisions for handling tag-along actions transferred by the Panel after the initial transfer. Panel Rules 7.2(I) and 7.5(e) impose an affirmative obligation on parties in cases in which a motion to transfer is pending, or that previously have been transferred by the Panel, to promptly notify the Panel of any potential tag-along action in which the party is also named. This obligation also is imposed on counsel with respect to any action in which the counsel appears. Ordinarily, it is advisable to order that (1) tag-along actions shall be automatically made part of the centralized proceedings upon transfer to, or filing in, the transferee court; (2) rulings on common issues—for example, on the statute of limitations—shall be deemed to have been made in the tag-along

657. *Id.*

658. See *In re Corrugated Container Antitrust Litig.*, 662 F.2d 875 (D.C. Cir. 1981); *In re Corrugated Container Antitrust Litig.*, 644 F.2d 70 (2d Cir. 1981); *In re Corrugated Container Antitrust Litig.*, 620 F.2d 1086 (5th Cir. 1980).

659. See, e.g., *In re Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 664 F.2d 114 (6th Cir. 1981).

660. See *In re Master Key Antitrust Litig.*, 320 F. Supp. 1404 (J.P.M.L. 1971).

661. See, e.g., *In re Donald J. Trump Casino Sec. Litig.*, 7 F.3d 357, 367–68 (3d Cir. 1993).

662. *Van Dusen v. Barrack*, 376 U.S. 612 (1964); *In re Dow Co. "Sarabond" Prods. Liab. Litig.*, 666 F. Supp. 1466, 1468 (D. Colo. 1987).

663. Compare *In re Korean Air Lines Disaster*, 829 F.2d 1171 (D.C. Cir. 1987), *aff'd on other grounds sub nom.* *Chan v. Korean Air Lines Ltd.*, 490 U.S. 122 (1989), with *Dow "Sarabond"*, 666 F. Supp. 1466 (D. Colo. 1987), and cases cited therein.

664. See, e.g., *Berry Petroleum Co. v. Adams & Peck*, 518 F.2d 402, 406 (2d Cir. 1975).

action without the need for separate motions and orders; and (3) discovery already taken shall be available and usable in the tag-along cases.<sup>665</sup> Consider other means of reducing duplicative discovery activity and expediting later trials by measures such as videotaping key depositions or testimony given in bellwether trials, particularly of expert witnesses, for use at subsequent trials in the transferor courts after remand.

One of the values of multidistrict proceedings is that they bring before a single judge all of the federal cases, parties, and counsel comprising the litigation. They therefore afford a unique opportunity for the negotiation of a global settlement. Few cases are remanded for trial; most multidistrict litigation is settled in the transferee court. As a transferee judge, it is advisable to make the most of this opportunity and facilitate the settlement of the federal and any related state cases. See section 20.31.

Until 1998, actions based on section 1407 proceedings and not settled or otherwise dismissed in the transferee districts during their pretrial stages often remained in the transferee districts for trial. Transferee judges entered orders effecting transfer for trial, pursuant to 28 U.S.C. § 1404 or 1406, of cases previously transferred to them for pretrial under section 1407.

In 1998, the U.S. Supreme Court held that a district court has no authority to invoke section 1404(a) to assign a transferred case to itself for trial, because section 1407(a) “uncondition[ally]” commands the Panel to remand, at the end of pretrial proceedings, each action transferred by the Panel that has not been terminated in the transferee district.<sup>666</sup> However, the policy reasons for the pre-1998 practice remain: (1) during the often protracted time of the section 1407 assignment, the transferee judge gains a solid understanding of the case, and it makes sense for trial to be conducted by the judge with the greatest understanding of the litigation; (2) the transferee judge may already be trying the constituent centralized action(s), and there may be efficiencies in adjudicating related actions or portions thereof in one trial; and (3) the transferee judge, if empowered to try the centralized actions, may have a greater ability to facilitate a global settlement.

<sup>665</sup>. For a discussion of the use of supplemental depositions, see *supra* section 11.453. See also *infra* sample order at section 40.29.

<sup>666</sup>. *In re Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). The Court infers that MDL transferee judges may not use section 1404(a) to transfer to any district at all, neither to a third district or back to the section 1407 transferor district. *Id.* at 41 n.4. By analogy and further inference, an MDL transferee judge likewise now may not transfer under section 1406. See *id.*

Accordingly, evolving alternatives, such as those below, permit the transferee court to resolve multidistrict litigation through trial while remaining faithful to the *Lexecon* limitations:

- Prior to recommending remand, the transferee court could conduct a bellwether trial of a centralized action or actions originally filed in the transferee district, the results of which (1) may, upon the consent of parties to constituent actions not filed in the transferee district, be binding on those parties and actions,<sup>667</sup> or (2) may otherwise promote settlement in the remaining actions.
- Soon after transfer, the plaintiffs in an action transferred for pretrial from another district may seek or be encouraged (1) to dismiss their action and refile the action in the transferee district, provided venue lies there, and the defendant(s) agree, if the ruling can only be accomplished in conjunction with a tolling of the statute of limitations or a waiver of venue objections, or (2) to file an amended complaint asserting venue in the transferee district,<sup>668</sup> or (3) to otherwise consent to remain in the transferee district for trial.<sup>669</sup>

667. See, e.g., *In re Air Crash Near Cali, Colombia* on Dec. 20, 1995, MDL No. 1125, Order No. 1522 (S.D. Fla. Jan. 12, 2000) (noting that parties in some of the actions transferred under section 1407 had agreed to be bound by the results of a consolidated liability trial and had been instructed to file appropriate motions after the completion of the trial, seeking a ruling that effectuated such agreements).

668. Often in multidistrict litigation the transferee court will consider establishing a master file with standard pleadings, motions, and orders. This file may include a single amended consolidated complaint, alleging that venue is proper in the transferee district. If such a document is used, the court and parties should take care to ensure a common understanding of the document's intent and significance—that is, whether it is being used as a device simply to facilitate ease of the docket's administration, or whether the filing in the transferee district constitutes the inception of a new “case or controversy” in that district, thereby superseding and rendering moot the pending separate actions that had been transferred to that district for pretrial proceedings by the Panel under section 1407.

669. See, e.g., *State v. Liquid Air Corp. (In re Carbon Dioxide Indus. Antitrust Litig.)*, 229 F.3d 1321 (11th Cir. 2000) (ruling that *Lexecon* does not prohibit parties from waiving venue objections in centralized actions where transferee court otherwise had subject-matter jurisdiction); *In re Dippin' Dots Patent Litig.*, MDL No. 1377, Docket No. 1:00-CV-907 (N.D. Ga. July 23, 2001) (transferee court ordered all parties to file a pleading stating whether they consented to trial in the transferee district); *In re Research Corp. Techs., Inc. Patent Litig.*, Docket No. 97-2836 (D.N.J. Dec. 3, 1999) (order entering final judgment and staying further pretrial proceedings; transferee court found it reasonable to conclude that final judgment may be entered following trial proceedings consented to by the parties that resulted in termination of the actions).

- After an action has been remanded to the originating transferor court at the end of section 1407 pretrial proceedings, the transferor court could transfer the action,<sup>670</sup> pursuant to 28 U.S.C. § 1404 or 1406, back to the transferee court for trial by the transferee judge.<sup>671</sup>
- The transferee judge could seek an intercircuit or intracircuit assignment pursuant to 28 U.S.C. § 292 or 294 and follow a remanded action, presiding over the trial of that action in that originating district.

### 20.133 Remand

Section 1407 directs the Panel to remand, after appropriate pretrial proceedings, actions not filed or terminated in the transferee court to the respective transferor courts for further proceedings and trial. When this should be done will depend on the circumstances of the litigation. In some cases, remands have been ordered relatively early, while substantial discovery remained to be done; in others, virtually all discovery had been completed and the cases were ready for trial at the time of remand to the transferor districts. Some of the constituent cases may be remanded, while others are retained for further centralized pretrial proceedings.

The Panel looks to the transferee court to suggest when it should order remand, but that court has no independent authority to order section 1407 remand.<sup>672</sup> The transferee court should consider when remand will best serve the expeditious disposition of the litigation. The Panel may also order remand on its own initiative or on the motion of a party.<sup>673</sup> Although authorized to “separate any claim, cross claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded,” the Panel has rejected most requests to exclude portions of a case from transfer

670. *Lexecon*, 523 U.S. at 19.

671. *See, e.g., Kenwin Shops, Inc. v. Bank of La.*, 97 Civ. 907, 1999 WL 294800, at \*11 (S.D.N.Y. May 11, 1999). The transferee court might also facilitate such a transfer by expressly recommending it either in its suggestion of remand to the Panel or in its final pretrial order. *See, e.g., In re Air Crash at Dubrovnik, Croatia* on Apr. 3, 1996, MDL No. 1180 (Letter from Alfred V. Covello, Chief Judge, U.S. District Court, D. Conn., to Michael J. Beck, Clerk of the Panel, Judicial Panel on Multidistrict Litigation, suggesting that four remanded cases be transferred back to the court and consolidated for trial (Jan. 4, 2002) (on file with the Judicial Panel on Multidistrict Litigation)).

672. *See In re Roberts*, 178 F.3d 181 (3d Cir. 1999).

673. J.P.M.L. R.P. 7.6(c). Great deference is given to the views of the transferee judge. *See, e.g., In re IBM Peripheral EDP Devices Antitrust Litig.*, 407 F. Supp. 254, 256 (J.P.M.L. 1976). Efforts by parties to use the Panel as a substitute for appellate review, by seeking premature remand, have been uniformly rejected.

under section 1407.<sup>674</sup> The transferee court may give such matters individualized treatment if warranted, and the transferee judge (who will develop a greater familiarity with the nuances of the litigation) can suggest remand of claims in any constituent action whenever the judge deems it appropriate.<sup>675</sup> The Panel has further concluded that it has no power to transfer (or sever and remand) particular “issues,” as distinguished from particular “claims.”<sup>676</sup>

After remand, the transferor court has exclusive jurisdiction, and further proceedings in the transferee court with respect to a remanded case are not authorized absent a new transfer order by the Panel.<sup>677</sup> The transferor court conducts further pretrial proceedings, as needed, and thus all cases remanded to the same court for additional proceedings and trial should be assigned at least initially to a single judge for coordination or consolidation. Although the transferor judge has the power to vacate or modify rulings made by the transferee judge, subject to comity and “law of the case” considerations, doing so in the absence of a significant change of circumstances would frustrate the purposes of centralized pretrial proceedings.<sup>678</sup>

The complete pretrial record is sent to the transferor court upon remand of the case. One of the final actions of the transferee court should be a pretrial order that fully chronicles the proceedings, summarizes the rulings that will affect further proceedings, outlines the issues remaining for discovery and trial, and indicates the nature and expected duration of further pretrial proceedings.<sup>679</sup> Transferee courts typically do not provide transferor courts with status reports during the pretrial proceedings, so this order will help the transferor

674. *But see In re Hotel Tel. Charge Antitrust Litig.*, 341 F. Supp. 771 (J.P.M.L. 1972); *cf. In re Midwest Milk Monopolization Litig.*, 386 F. Supp. 1401 (J.P.M.L. 1975).

675. *See, e.g., In re Collins*, 233 F.3d 809 (3d Cir. 2000), *cert. denied sub nom. Collins v. Mac-Millan Bloedel, Inc.*, 532 U.S. 1066 (2001) (upholding severance of punitive damage claims by the transferee court in actions where the rest of the claims were suggested for remand); *In re Patenaude*, 210 F.3d 135, 143 (3d Cir. 2000) (ruling that the phrase “coordinated or consolidated pretrial proceedings” in section 1407(a) is to be interpreted broadly, here in the context of the transferee judge’s wide leeway regarding when to suggest remand).

676. *In re Plumbing Fixture Case*, 298 F. Supp. 484, 489–90 (J.P.M.L. 1968).

677. *See, e.g., In re The Upjohn Co. Antibiotic Cleocin Prods. Liab. Litig.*, 508 F. Supp. 1020 (E.D. Mich. 1981). In unusual circumstances, the Panel has by a new order again transferred a remanded case to the transferee district or transferred it to a new district as part of another multidistrict proceeding.

678. *See Stanley A. Weigel, The Judicial Panel on Multidistrict Litigation, Transferor Courts and Transferee Courts*, 78 F.R.D. 575, 577 (1978).

679. *See In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 1962, 2001 WL 497313 (E.D. Pa. May 9, 2001), *available at* [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (final pretrial order establishing a process for the remand of transferred cases that have completed the pretrial process).

courts plan further proceedings and trial. Transferee judges have occasionally received intracircuit or intercircuit assignments under 28 U.S.C. §§ 292(b) and 292(d) to preside at trials of cases remanded to the transferor courts.

## 20.14 Coordination Between Courts

Even when related cases pending in different districts cannot be transferred to a single district, judges can coordinate proceedings in their respective courts to avoid or minimize duplicative activity and conflicts. Coordination requires effective communication between judges and among judges and counsel.

Steps that may be taken include the following:

- *Special assignment of judge.* All cases may be assigned to a single judge designated by the chief justice or the chief circuit judge under 28 U.S.C. §§ 292–294 to sit temporarily in the district where the cases are pending (either within or outside of the assigned judge’s own circuit).
- *Lead case.* Counsel in the various cases may agree with the judge to treat one case as the “lead case.” The agreement may provide for staying proceedings in the other cases pending resolution of the lead case, or rulings in the lead case may be given presumptive, though not conclusive, effect in the other courts.
- *Joint conferences and orders.* All judges may attend joint hearings or conferences, in person or by telephone. Federal Rule of Civil Procedure 77(b) requires consent of the parties for trials or hearings to be conducted outside the district; consent is not required for other proceedings, such as conferences. The joint proceedings may be followed by joint or parallel orders by the several courts in which the cases are pending.
- *Joint appointments.* The several courts may coordinate the appointment of joint experts under Federal Rule of Evidence 706, or special masters under Federal Rule of Civil Procedure 53, to avoid duplicate activity and inconsistencies. The appointments may help resolve claims of privilege made in a number of cases on similar facts, or where global settlement negotiations are undertaken. The courts may also coordinate in appointing lead or liaison counsel.
- *Avoiding duplicative discovery.* Judges should encourage techniques that coordinate discovery and avoid duplication, such as those discussed in sections 11.423, 11.443, 11.452, and 11.464. Filing or cross-filing deposition notices, interrogatories, and requests for production in related cases will make the product of discovery usable in all cases

and avoid duplicative activity. Relevant discovery already completed should ordinarily be made available to litigants in the other cases.<sup>680</sup> If the material is subject to a protective order, the court usually may accommodate legitimate privacy interests by amending the order to include the new litigants within the order's restrictions,<sup>681</sup> and the party seeking the discovery may be required to bear a portion of the cost incurred in initially obtaining the information. Document production should be coordinated and joint depositories established.<sup>682</sup> The resolution of discovery disputes can also be coordinated to some degree (e.g., by referring them to a single magistrate judge or special master).

- *Clarifying class definitions.* Conflicts between class actions, or between a class action and individual actions, can be avoided by coordinating the drafting of class definitions when actions are certified. See section 20.32.
- *Stays.* In appropriate cases, a judge may order an action stayed pending resolution of a related case in a federal court.

## 20.2 Related Criminal and Civil Cases

Major management problems arise in concurrent criminal and civil cases involving the same persons. Witnesses may claim a Fifth Amendment privilege in the civil actions, especially if examined prior to final resolution of the criminal proceedings.<sup>683</sup> Serious questions may arise as to requiring an accused, during the pendency of criminal charges, to produce in civil proceedings either adverse (although nonprivileged) evidence or exculpatory evidence to which

680. See *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1299 (7th Cir. 1980) (“Where an appropriate modification of a protective order can place private litigants in a position they would otherwise reach only after repetition of another’s discovery, such modification can be denied only where it would tangibly prejudice substantial rights of the party opposing modification. . . . Once such prejudice is demonstrated, however, the district court has broad discretion in judging whether that injury outweighs the benefits of any possible modification of the protective order.”).

681. *Id.* at 1301.

682. See Fed. R. Civ. P. 26(b)(2) (“The frequency or extent of use of [discovery] . . . shall be limited by the court if it determines that: (i) the discovery is unreasonably . . . duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive . . .”).

683. Termination of the criminal case will not necessarily result in testimony becoming available. See *Pillsbury Co. v. Conboy*, 459 U.S. 248 (1983) (witness compelled by grant of “use immunity” to give testimony to grand jury does not waive right to claim Fifth Amendment in subsequent civil litigation).

the prosecution would not be entitled under Federal Rule of Criminal Procedure 16. The criminal proceeding ordinarily has first priority because of the short pretrial period allowed under the Speedy Trial Act<sup>684</sup> and because of the potential impact of a conviction. Even if conviction will not preclude relitigation of issues in a subsequent civil proceeding, it may be admissible in the civil case as substantive evidence of the essential elements of the offense under Federal Rule of Evidence 803(22) or as impeachment evidence under Federal Rule of Evidence 609. Suspending all pretrial activities in civil litigation until the end of the criminal proceeding, however, may be inadvisable, since it may be possible to conduct major portions of the civil case's discovery program without prejudice before completion of the criminal proceedings.<sup>685</sup>

To facilitate coordination, related criminal and civil cases should be assigned, if possible, to the same judge (though, as noted in section 10.12, circumstances may make assignment to the same judge inadvisable). Although the MDL Panel has no authority to transfer criminal cases, it has frequently ordered transfer of civil actions to the location of related criminal proceedings. If the cases are assigned to different judges, the judges should at least communicate and coordinate informally. If grand jury materials from another court are sought, the two-step procedure described in *Douglas Oil Co. of California v. Petrol Stops Northwest*<sup>686</sup> must be followed.

## 20.3 Related State and Federal Cases

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### 20.31 Coordination

- .311 Identifying the Need and Opportunity 231
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Increasingly, complex litigation involves related cases brought in both federal and state courts. Such litigation often involves mass torts (see section

684. The complexity of the case may be a ground for extending the statutory time limits. 18 U.S.C. § 3161(h)(8)(B) (2000). *See infra* section 30.4.

685. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *Texaco, Inc. v. Borda*, 383 F.2d 607 (3d Cir. 1967).

686. 441 U.S. 211 (1979).

22.2). Some sets of cases may involve numerous claims arising from a single event, confined to a single locale (such as a plane crash or a hotel fire). Other more-complicated litigations may arise from widespread exposure to harmful products or substances dispersed over time and place.

No single forum has jurisdiction over these groups of cases. Unless the defendant files for bankruptcy, no legal basis exists for exercising exclusive federal control over state litigation. Interdistrict, intradistrict, and multidistrict transfer statutes and rules apply only to cases filed in, or removable to, federal court (see sections 22.32 and 22.33).

State and federal judges, faced with the lack of a comprehensive statutory scheme, have undertaken innovative efforts to coordinate parallel or related litigation<sup>687</sup> so as to reduce the costs, delays, and duplication of effort that often stem from such dispersed litigation. State judges, for example, can bring additional resources that might enable an MDL transferee court to implement a nationwide discovery plan or a coordinated national calendar.<sup>688</sup> There are, however, potential disadvantages of cooperative activity. Coordination can delay or otherwise affect pending litigation, conferring an advantage to one side in contentious, high-stakes cases.<sup>689</sup> Such litigation activates strategic maneuvering by plaintiffs and defendants. For example, plaintiffs may seek early trial dates in jurisdictions with favorable discovery rules.<sup>690</sup>

687. See generally William W Schwarzer et al., *Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts*, 78 Va. L. Rev. 1689 (1992) (reporting on a study of eleven notable instances of state–federal coordination in litigation arising from (1) 1972 Federal Everglades air crash, (2) 1977 Beverly Hills Supper Club fire, (3) 1979 Chicago air crash, (4) 1980 MGM Grand Hotel fire, (5) 1981 Hyatt skywalk cases, (6) 1986 technical equities fraud, (7) 1987 L’Ambience Plaza collapse, (8) 1989 Exxon Valdez oil spill, (9) 1989 Sioux City air crash, (10) Ohio asbestos litigation, and (11) Brooklyn Navy Yard asbestos litigation). See *infra* section 33.23.

688. See Sam C. Pointer, Jr., *Reflections by a Federal Judge: A Comment on Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute*, 73 Tex. L. Rev. 1569, 1571 (1995) (discussing state judges taking primary responsibility for portions of common discovery and other aspects of the silicone gel breast implant MDL process). See also E. Norman Veasey, *A Response to Professor Francis E. McGovern’s Paper Entitled Toward a Cooperative Strategy for Federal and State Judges in Mass Tort Litigation*, 148 U. Pa. L. Rev. 1897, 1898 (2000) (“Over 95% of all litigation and roughly the same percentage of resources are in the state courts.”).

689. See generally Mark Herrmann, *To MDL or Not to MDL: A Defense Perspective*, 24 Litig. 43 (1998).

690. Paul D. Rheingold, *Symposium: National Mass Torts Conference: Comment on Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute*, 73 Tex. L. Rev. 1581, 1582–83 (1995). Defendants may have concerns about state cases being resolved before federal cases consolidated under the MDL procedure. See Francis E. McGovern, *Rethinking Cooperation Among Judges in Mass Tort Litigation*, 44 UCLA L. Rev. 1851, 1858 (1997) [hereinafter McGovern, *Rethinking Cooperation*] (“[P]laintiffs’ attorneys rush to their favorite judges and demand

State and federal judges also have initiated state–federal cooperation between jurisdictions to minimize conflicts that distract from the primary goal of resolving the parties’ disputes.

### 20.311 Identifying the Need and Opportunity

Coordination approaches differ depending on the nature of the litigation. Coordination is relatively easy if all of the cases are pending in a single state. States increasingly have adopted procedures for assigning complex multiparty litigation to a single judge or judicial panel or have created courts to deal with complex business cases,<sup>691</sup> facilitating coordination between state and federal courts. Federal judges should learn about their own state or local courts’ practices and procedures for consolidating cases.

The Judicial Panel on Multidistrict Litigation has no power over cases pending in state courts, but has facilitated coordination by transferring federal cases to a district where related cases are pending in the state courts.<sup>692</sup>

Coordination is easier when counsel for some or all of the parties in the related actions have the same counsel. In appointing lead or liaison counsel or otherwise organizing counsel (see section 10.22 (general) and section 22.62 (mass torts) and 21.27 (class actions)), consider including attorneys from jurisdictions with cases that may need to be coordinated with either class action or multidistrict litigation.

The need to coordinate is especially acute where overlapping or multiple identical class actions are filed in more than one court (see section 21.15). It is best to communicate with state and federal judicial counterparts at an early stage to begin coordinating such cases. Unilateral action by any judge to certify a class or assert nationwide jurisdiction can fatally undermine future coordination efforts.

Coordination becomes much more complex when cases are dispersed across a number of states, even where the federal cases are all centered in a

draconian procedures to pressure defendants to make block settlements . . . Defendants seek the opposite—delay is their nirvana.”).

691. Alexander B. Aikman, *Managing Mass Tort Cases: A Resource Book for State Trial Court Judges* § 3.11 (December 1995). For examples of such rules, see *id.* at app. C. See also Helen E. Freedman, *Product Liability Issues In Mass Torts—View From the Bench*, 15 *Touro L. Rev.* 685, 687, n.8 (1999), and cases cited therein; Paul D. Rheingold, *Mass Tort Litigation* §§ 6:3, 6:7 (1996) (discussing statewide systems in California, New York, and elsewhere). See also, e.g., N.C. Rules of Prac. for Sup. & Dist. Cts. R. 2.1 (West 2003). See [www.ncbusinesscourt.net](http://www.ncbusinesscourt.net) for a history and overview of the workings of the North Carolina Business Court.

692. Cahn, *A Look at the Judicial Panel on Multidistrict Litigation*, *supra* note 654, at 215.

single MDL transferee court. Electronic media—e.g., Internet Web sites and list-servs—can improve communication in such circumstances.

Reciprocity and cooperation create trust and mutual respect so that attempts to coordinate are not perceived as attempts to dominate. The special master who facilitated state–federal coordination in the silicone gel breast implant litigation observed that the more transparent, formal, even-handed, and administrative the proposed cooperative venture is, the more acceptable it will be to other judges.<sup>693</sup>

### 20.312 Threshold Steps

The nature and extent of multiple filings related to the same subject matter in different courts should be clarified, so as to minimize conflicts. The court should direct counsel to identify the names of all similar cases in other courts, their stage of pretrial preparation, and the assigned judges. Such a direction should be part of the initial case-management order in any case with related litigation pending in other courts,<sup>694</sup> and many courts have local rules requiring disclosure of similar information.<sup>695</sup>

Dispersed litigation makes essential an information network, perhaps formalized as a judicial advisory committee,<sup>696</sup> which can serve as a catalyst for some degree of state–federal coordination. If the litigation warrants it, a meeting of a judicial advisory committee can help to develop relationships

693. McGovern, *Rethinking Cooperation*, *supra* note 690, at 1870.

694. *See, e.g., In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 1 (N.D. Ala. June 26, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

695. *See, e.g., Alaska U.S. Dist. Ct. L.R. 40.2* (“Whenever counsel has reason to believe that an action or proceeding on file or about to be filed in this court is related to another action or proceeding in this or any other federal or state court, whether pending, dismissed or otherwise terminated, counsel shall promptly file and serve a Notice of Related Case.”); Ohio N.D., Civ. L.R. 16.3 (“An attorney who represents a party in Complex Litigation, as defined above, shall, with the filing of the complaint, answer, motion, or other pleading, serve and file a Case Information Statement which briefly describes the nature of the case, identifies by title and case number all other related case(s) filed in this and any other jurisdiction (federal or state) . . .”).

696. *See, e.g., In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 1014 (E.D. Pa. Dec. 7, 1999), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003). Judge Bechtel, the MDL judge, had earlier communicated with and established an informal network of state judges to coordinate the litigation. The settlement agreement with American Home Products expressly provided for the creation of a State Court Judicial Advisory Committee to assist in administering the settlement agreement. *In re Diet Drugs*, MDL No. 1203, Nationwide Class Action Settlement Agreement with Am. Home Prods., at § VIII(B)(3)–(6) (E.D. Pa. Nov. 18, 1999), at [http://www.fenphen.verilaw.com/mdl\\_settle/settleagree.pdf](http://www.fenphen.verilaw.com/mdl_settle/settleagree.pdf) (last visited Nov. 10, 2003).

among the judges and ease coordination efforts.<sup>697</sup> An Internet list-serv is another economical way to foster communications among geographically dispersed attorneys and judges. In some mass torts litigation, the National Conference of State Chief Justices, the National Center for State Courts, and the State Justice Institute have helped create and fund coordinating committees of state court judges with significant mass tort assignments. Federal judges with mass tort responsibilities have sometimes participated in person or by presenting written or telephonic reports and updates of federal activities. Such committees help identify specific types of coordination that can be recommended to other state and federal judges assigned to the same type of litigation. It may also be helpful to organize attorneys from states with significant numbers of cases into an advisory committee, to be a channel of communication between the judges and other attorneys.<sup>698</sup>

Federal judges should communicate personally with state court judges who have a significant number of cases in order to discuss mutual concerns and suggestions, such as designating a liaison attorney and judge to communicate with federal counterparts. These communications provide an opportunity to exchange pretrial orders and proposed schedules that help avoid potential conflicts. One special master has concluded that “[t]he earlier and more comprehensive the cooperative intervention occurs in the litigation cycle, the greater the benefits and the less the resistance.”<sup>699</sup>

Class counsel generally have the benefit of the common fund doctrine to support payment for their efforts on behalf of the class or consolidated litigants.<sup>700</sup> MDL judges generally issue orders directing that defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a general fund to pay national counsel.<sup>701</sup> Without special provisions to com-

697. See, e.g., *In re Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001). The transferee judge convened a conference from June 6–8, 2002, that included twenty-three state judges. Notably, the meeting was held in New Orleans, La., not in the transferee district. The agenda of the conference is available online at [http://www.mnd.uscourts.gov/Baycol\\_Mdl](http://www.mnd.uscourts.gov/Baycol_Mdl) (last visited Nov. 10, 2003).

698. See, e.g., *In re Diet Drugs*, MDL No. 1203, Order No. 39 (E.D. Pa. Apr. 21, 1998), available at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (appointing twenty lawyers from fourteen states to serve as members of the plaintiffs’ state liaison committee).

699. McGovern, *Rethinking Cooperation*, *supra* note 690, at 1870.

700. See *supra* section 14.12. See also Paul D. Rheingold, *Mass Tort Litigation* § 7:33 (1996 & Supp. 2000).

701. See, e.g., *In re Diet Drugs*, MDL No. 1203, Order No. 467 (E.D. Pa. Feb. 10, 1999), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (ordering defendants to withhold a fixed portion of settlements and pay into a common fund). See also *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, unnumbered order (N.D. Ala.

pensate state attorneys who cooperate with federal MDL-funded attorneys, the MDL fee structure presents an obstacle to cooperation. State attorneys and judges may realistically perceive that state attorneys' legal work might not be rewarded appropriately even though it advances the national litigation.

There are various ways to handle these fee issues.<sup>702</sup> It is important to allay the coordinating state lawyers' concerns about being fairly compensated. In the diet drug litigation, discovery proceedings were coordinated between the MDL court and the judge presiding over California's statewide consolidated diet drug litigation. The federal and state judges entered orders establishing rates of contribution for lawyers who settled cases using coordinated state–federal discovery.<sup>703</sup> The state judge controlled the fund, eliminating concerns about federal dominance and providing a direct financial link between the state and federal common-benefit activities. In other mass tort litigation, judges have permitted state attorneys who were not part of the MDL plaintiffs' attorneys' steering committee to make claims for MDL-managed funds. In the silicone gel breast implant litigation, the MDL transferee judge appointed a former state judge to rule on attorneys' disputed claims for common fund fees.<sup>704</sup> Lawyers should be encouraged to resolve fee disputes among themselves and to seek judicial intervention only if necessary. It may be helpful to appoint a

Oct. 7, 1998), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (denying attorneys' motions for relief from Order No. 13, which required payment of 6% of settlements into a "common benefit" fund). Judge Pointer carefully tailored Order No. 13, entered on July 23, 1993, to comply with the Fourth Circuit ruling that fee orders in MDL cases cannot be applied to cases that were not within the jurisdiction of the MDL transferee court. See *In re Showa Denko K.K. L-Tryptophan Prods. Liab. Litig.* II, 953 F.2d 162 (4th Cir. 1992). To comply with this jurisdictional limit, Judge Pointer applied the assessment to cases that were in MDL No. 926 at any time, except those that were remanded because they were improperly removed from state court. He also extended the obligation to counsel who agreed to it and to "cases in a state court to the extent so ordered by the presiding judge of that court." *Silicone Gel*, MDL No. 926, Order No. 13, § 2(c), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

702. For an extensive discussion of mechanisms for allocating fees in mass tort litigation, including case summaries discussing the orders in the silicone gel breast implant and diet drug litigations, see Rheingold, *supra* note 691, §§ 7:33, 7:36, 7:40.

703. *In re Diet Drugs*, MDL No. 1203, Order No. 467 (establishing a deduction of 9% from all settlements of MDL cases transferred from California federal district courts and 6% from all settlements in California state court actions, and creating a coordinated discovery plan). See also Rheingold, *supra* note 691, § 7:40 (discussing PTO 467).

704. Thomas E. Willging, Loral L. Hooper, Marie Leary, Dean Miletich, Robert Timothy Reagan, & John Shapard, Special Masters' Incidence and Activity: Report to the Judicial Conference's Advisory Committee on Civil Rules and Its Subcommittee on Special Masters 26–27 (Federal Judicial Center 2000) [hereinafter FJC Study, Special Masters].

special master to coordinate proceedings among the state and federal courts,<sup>705</sup> reducing to manageable proportions the challenge of communicating and coordinating with dozens of judges.

In the silicone gel breast implant and diet drug litigations, state and federal judges created working relationships that came close to achieving a comprehensive approach to state–federal cooperation.<sup>706</sup> Extending that approach to other mass torts “could build upon generally accepted models for resolving local mass torts, such as the use of test plaintiffs for discovery, with settlement discussions based upon the results of the test cases.”<sup>707</sup> In the diet drug and silicone gel breast implant litigations, the federal MDL transferee judge took the lead in implementing a comprehensive state–federal discovery plan while state judges presided over individual trials and settlements. The parties achieved the economies of consolidated discovery and developed information about the value of individual cases, providing a basis for aggregated settlements and judgments.

### 20.313 Specific Forms of Coordination

*Aggregation and consolidation decisions.* Discussions between state and federal judges about the timing of class certification hearings and decisions have a beneficial effect on other aspects of cooperation. The prospect that one judge might unilaterally certify a nationwide class and enter a binding national judgment has a chilling effect on cooperative relationships. Joint deferral of decisions on certification and perhaps joint hearings on motions to certify a class enhance the chances that both sets of courts will find appropriate roles in managing the litigation. Judges might agree that the court with most of the cases or the strongest interest should take the lead in certain proceedings, such as class certification.<sup>708</sup>

The court should also consider staying cases until actions in the other tribunal have been tried. Important factors in making that decision include the

705. In *In re Silicone Gel Breast Implants Product Liability Litigation*, the MDL transferee judge appointed a special master to serve as liaison between the federal and state judges and to facilitate coordination. See Francis E. McGovern, *Toward a Cooperative Strategy for Federal and State Judges in Mass Tort Litigation*, 148 U. Pa. L. Rev. 1867, 1886–87 (2000) [hereinafter McGovern, *Cooperative Strategy*]. See also Francis E. McGovern, *An Analysis of Mass Torts for Judges*, 73 Tex. L. Rev. 1821, 1839 (1995) [hereinafter McGovern, *Mass Torts for Judges*].

706. For a discussion of mechanisms for coordinating cases that are dispersed nationwide among state and federal courts, including a brief history of the Mass Tort Litigation Committee (MTLC), which was funded by the State Justice Institute, see *supra* section 20.31.

707. McGovern, *Cooperative Strategy*, *supra* note 705, at 1886.

708. See, e.g., *Union Light, Heat, & Power Co. v. United States Dist. Court*, 588 F.2d 543 (6th Cir. 1978) (discussing Beverly Hill Supper Club fire class action proceedings on common issues).

extent of pretrial discovery and motions activities in the various jurisdictions, the typicality of the claims, the likelihood that verdicts will provide useful information about the values of other pending cases, and the impact that delay may have on the parties.

*Pretrial motions and hearings.* State and federal judges have often worked together during the pretrial process.<sup>709</sup> They have jointly presided over hearings on pretrial motions, based on a joint motions schedule, sometimes alternating between state and federal courthouses. Joint hearings have used coordinated briefs so that one set of briefs can be used in both state and federal courts, with supplements for variations in the applicable laws and choice-of-law questions.

Cooperative approaches might also include jointly appointing a special master, court-appointed expert, or other adjunct to assist the courts with some aspect of the litigation. Some state courts are not authorized to appoint such adjuncts and may wish to share the benefits of the federal authority.

At a minimum, judges should exchange case-management orders, master pleadings, questionnaires, and discovery protocols. This simple step can encourage judges to adopt the same or similar approaches to discovery and pretrial management.

Also, consider joint appointments of lead counsel, committees of counsel, or liaison counsel to coordinate activities between the courts. Having some overlapping membership among counsel in state and federal cases facilitates cooperation by establishing channels of communication.

*Pretrial discovery.* State and federal judges have considerable experience coordinating and managing nationwide discovery.<sup>710</sup> For example, courts may issue joint orders for the preservation of tangible, documentary, and electronic evidence and for coordinating the examination of evidence by experts in both state and federal proceedings. Early attention to questions concerning expert evidence may be necessary to take advantage of various options for managing such evidence, including the possibility of appointing common experts.<sup>711</sup>

Coordination could involve inviting state judges to participate in a coordinated national discovery program while retaining control of local discovery. Depending on the progress of the state litigation, some aspects of discovery in state cases may in some instances serve as the basis for national

709. See generally, Schwarzer et al., *Judicial Federalism in Action*, *supra* note 687, at 1690.

710. See, e.g., *In re Diet Drugs*, MDL No. 1203, Order No. 467, 1999 WL 124414, at \*4–\*6 (order granting, in part, plaintiff's petition for management committee).

711. Joe S. Cecil & Thomas E. Willging, *Accepting Daubert's Invitation: Defining a Role for Court-Appointed Experts in Assessing Scientific Validity*, 43 *Emory L.J.* 995, 1058–62 (1994) (describing a pretrial procedure designed to identify issues regarding expert evidence and any need for special assistance).

discovery. For example, in the silicone gel breast implant litigation, state judges in Texas had progressed further in discovery than had federal courts at the time the MDL cases were assigned to Judge Pointer. Recognizing the state court's advantage, Judge Pointer "agreed to designate certain Texas depositions as official ones for the entire multidistrict litigation (MDL)."<sup>712</sup> Procedures to minimize duplicative discovery activity include consolidating depositions of experts who will testify in numerous cases and maintaining document depositories. It is important to remember that the rulings of a single court can become preemptive; for example, the first court to reject a particular privilege claim likely will cause the material sought to be protected to become discoverable for the entire litigation.<sup>713</sup>

Specific elements of discovery coordination have included

- creating joint federal–state, plaintiff–defendant document depositories, accessible to attorneys in all states;<sup>714</sup>
- ordering coordinated document production and arrangements for electronic discovery;
- ordering discovery materials from prior state and federal cases to be included in the document depository;
- scheduling and cross-noticing joint federal–state depositions;<sup>715</sup>
- designating state-conducted depositions as official MDL depositions;<sup>716</sup>
- enjoining attorneys conducting federal discovery from objecting to use of that discovery in state courts on the grounds that it originated in federal court;
- adopting standard interrogatories developed by state judges for litigation in their cases; and

712. Sandra Mazer Moss, *Response to Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute from a State Judge's Perspective*, 73 Tex. L. Rev. 1573, 1574 (1995).

713. *Supra* section 22.6 discusses relevant provisions of case-management orders in the silicone breast implant and diet drugs litigations implementing state–federal coordination of multiple actions in many states. See also *supra* section 22.4 for suggestions about eliciting information that may be useful in planning for state–federal coordination.

714. See, e.g., *In re Diet Drugs*, MDL No. 1203, Order No. 22, ¶ 6 (E.D. Pa. Mar. 23, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (establishing plaintiffs' document depository).

715. *In re Diet Drugs*, MDL No. 1203, Order No. 467, 1999 WL 124414, at \*4–\*6.

716. *Id.* (separating the portion of the deposition to be used in the MDL proceedings from portions designed to be admissible in state proceedings).

- coordinating rulings on discovery disputes, such as the assertion of privilege, and using parallel orders to promote uniformity to the extent possible.<sup>717</sup>

*Settlement.* State and federal judges should consider conducting joint comprehensive settlement negotiations, hearings, and alternative dispute resolution procedures to establish case values.<sup>718</sup> Insurance coverage disputes may require special attention and coordination because resolution of the primary litigation may depend on resolution of the coverage dispute.

*Trial.* State and federal judges have developed coordinated management plans for an entire litigation.<sup>719</sup> Joint trials, where separate state and federal juries sit in the same courtroom and hear common evidence, present substantial procedural and practical difficulties,<sup>720</sup> but differences in state and federal procedures have not been insurmountable barriers to useful coordination. Any coordination must be flexible because cases in some state courts will reach trial sooner than those in others. State and federal courts should establish a mechanism to coordinate trial dates so that they do not unduly burden parties or their attorneys with multiple conflicting trial settings. Judges may also set the order and location of trials cooperatively to provide better information as to the diverse range of value of the cases included in the mass tort.

## 20.32 Jurisdictional Conflicts

The pendency of related state and federal actions can cause jurisdictional complexities and conflicts, leading to requests that the federal court either stay or dismiss its proceeding or enjoin state court proceedings. Such injunctions should be a last resort, invoked only after voluntary coordination efforts have failed. An injunction against pending state proceedings, even if authorized by federal statutes and case law (see below, this section, and see also section 21.15), can have a detrimental effect on future efforts to work cooperatively and should be used only as a last resort, if at all.

Federal courts have a duty to exercise their jurisdiction, notwithstanding the mere pendency of parallel or related litigation in state court. Discretion to stay or dismiss the federal proceedings exists, however, in the following circumstances: (1) where a pending state proceeding may decide a pivotal question of state law, the decision of which may remove the need for the

717. See Coordinating Proceedings in Different Courts, *infra* section 40.41.

718. Schwarzer et al., *Judicial Federalism in Action*, *supra* note 687, at 1714–21.

719. See, e.g., *id.* at 1702–03 (describing the Ohio asbestos litigation).

720. See *id.* at 1727–32.

federal court to decide a constitutional issue before it;<sup>721</sup> (2) where state law claims are alleged and federal court litigation would impair a comprehensive state regulatory scheme;<sup>722</sup> and (3) in order to avoid piecemeal litigation where the state court has previously acquired jurisdiction of the res and is the more convenient forum.<sup>723</sup>

Where the action alleges both federal claims and related state law claims joined on the basis of supplemental jurisdiction, 28 U.S.C. § 1367(c) permits the district court to decline to exercise jurisdiction over a state law claim if the claim raises a novel or complex issue of state law, if it substantially predominates over the federal claims, if the district court has dismissed all federal claims, or, in exceptional circumstances, if there are compelling reasons for declining jurisdiction. In some circuits, the court's discretion to dismiss claims entertained under its supplemental jurisdiction has been held to be considerably narrower than under the former doctrine of pendent jurisdiction.<sup>724</sup> In deciding whether to entertain the state law claims, the court should consider whether dismissal or remand will result in substantially duplicative litigation and unnecessary burdens on parties, witnesses, or the courts.

The federal court's power to interfere with parallel or related proceedings in state court is limited by the Anti-Injunction Act, which prohibits federal

721. *R.R. Comm'n v. Pullman*, 312 U.S. 496 (1941).

722. *Burford v. Sun Oil Co.*, 319 U.S. 315 (1942).

723. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983).

724. Some courts have emphasized that discretionary dismissals are limited to exceptional circumstances that are as compelling as the circumstances specified in 28 U.S.C. § 1367(c)(1)–(3) (West 2003) and have held that the statute does not authorize a court to decline jurisdiction based on the amount of judicial time required to adjudicate the state claim. *See Itar–Tass Russian News Agency v. Russian Kurier, Inc.*, 140 F.3d 442, 446–48 (2d Cir. 1998) and cases cited therein; *Executive Software N. Am., Inc. v. United States Dist. Court*, 24 F.3d 1545, 1555–62 (9th Cir. 1994). But other circuits have taken a different view of what constitutes “exceptional circumstances” under section 1367(c). *See Rodriguez v. Doral Mortgage Corp.*, 57 F.3d 1168, 1177 (1st Cir. 1995) (“[T]he district court, in reaching its discretionary determination on the jurisdictional question, will have to assess the totality of the attendant circumstances.”); *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995) (“Section 1367(c) . . . was intended simply to codify the preexisting pendent jurisdiction law, enunciated in *Gibbs* and its progeny . . .”). Where a case has been removed under 28 U.S.C. § 1441(c) (West 2003), discretion to remand the separate and independent state law claim may be broader. *See Morales v. Meat Cutters Local 539*, 778 F. Supp. 368 (D. Mich. 1991) (remanding federal and state claims removed under 28 U.S.C. § 1441(c) on the grounds that the separate and independent state law claims predominate). *See also Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611 (4th Cir. 2001) (finding inherent authority to remand state law statutory claims after federal claims involving some plaintiffs settled, based on finding that state law claims predominated).

courts from enjoining or staying state court proceedings<sup>725</sup> except as expressly authorized by an act of Congress,<sup>726</sup> or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. The exceptions under the Act are narrowly construed.

The pendency of a parallel state court action does not by itself warrant an injunction, even though an impending judgment in that action would be *res judicata* in the federal action.<sup>727</sup> Similarly, the fact that persons who fall within the scope of a class certified in a federal court action have filed parallel actions in state court does not afford a basis for interfering with the state court actions during the pendency of the federal action. Accordingly, when defining a proposed class, a federal court should consider whether a class can be defined so as to avoid unnecessary conflict with state court actions.<sup>728</sup> However, where a class has been certified under Federal Rule of Civil Procedure 23(b)(3), and where class members have failed to avail themselves of their right to opt out and litigate their claims independently in state or federal court, a district judge may enjoin those members from initiating or proceeding with civil actions in other state or federal courts.<sup>729</sup>

In limited circumstances, federal courts have used the All Writs Act<sup>730</sup> and the necessary-in-aid-of-jurisdiction exception to the Anti-Injunction Act<sup>731</sup> to protect their exercise of jurisdiction. The Anti-Injunction Act enables a judge to issue orders directed to nonparties in the pending litigation.<sup>732</sup> Generally, those statutes have been used to effectuate global settlements in large scale litigation by enjoining or removing to federal court parallel state court litigation that would otherwise frustrate the adoption or implementation of comprehensive class settlements approved by the federal court as binding on

725. 28 U.S.C. § 2283 (West 2002). *See also* *Younger v. Harris*, 401 U.S. 37 (1971). Note, however, that *Younger* abstentions have been applied to civil cases only in limited circumstances involving significant state interests. *See, e.g.*, *Pennzoil v. Texaco*, 481 U.S. 1 (1987).

726. The prime example of such authorizing legislation is 42 U.S.C. § 1983 (2000). *See* *Mitchum v. Foster*, 407 U.S. 225 (1972).

727. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 642 (1977).

728. Where the class is certified under Fed. R. Civ. P. 23(b)(3), class members have the right to opt out and litigate their claims independently in state or federal court.

729. *See infra* section 21.42 at notes 934–42.

730. 28 U.S.C. § 1651(a) (West 2002) authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

731. The Anti-Injunction Act bars federal courts from granting “an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283 (West 2003).

732. *See* *United States v. N.Y. Tel. Co.*, 434 U.S. 159 (1977).

the parties to the state court litigation,<sup>733</sup> or that would require relitigation in state court of a matter finally decided in federal court.<sup>734</sup> Courts have also enjoined state court stay orders that would otherwise prevent a federal court from proceeding with pretrial aspects of the litigation.<sup>735</sup>

733. *In re* “Agent Orange” Prod. Liab. Litig., 996 F.2d 1425 (2d Cir. 1993), *cert. denied sub nom.* Ivy v. Diamond Shamrock Chems. Co., 510 U.S. 1140 (1994); *In re* Baldwin-United Corp., 770 F.2d 328 (2d Cir. 1985). *But cf.* Brown v. Ticor Title Ins. Co., 982 F.2d 386 (9th Cir. 1992), *cert. dismissed as improvidently granted*, 511 U.S. 117 (1994) (due process requires that plaintiffs with monetary claims be given right to opt out of class action settlement); *In re* Real Estate Title & Settlement Servs. Antitrust Litig., 869 F.2d 760 (3d Cir. 1989).

734. *See* Kelly v. Merrill Lynch, Pierce, Fenner & Smith, 985 F.2d 1067 (11th Cir. 1993).

735. *See, e.g.*, Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1202–03 (7th Cir. 1996) (holding that an MDL transferee judge had authority to issue an injunction to protect the integrity of an order barring discovery of a particular matter); *In re* Columbia/HCA Healthcare Corp., Billing Practices Litig., 93 F. Supp. 2d 876 (M.D. Tenn. 2000) (issuing injunction under All Writs Act against competing motion to compel discovery filed in state court).

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Equity courts created class action procedures to manage group litigation fairly and efficiently. Since 1966, when Federal Rule of Civil Procedure 23<sup>736</sup> was amended to add the damages class action under Rule 23(b)(3), class action litigation has greatly expanded. Class actions range from claims involving very small individual recoveries (such as consumer claims) that would otherwise likely not be litigated because no individual has a stake sufficient to justify individual litigation, to claims in which individual damages are high but the volume of claims creates advantages in group resolution. Because the stakes and scope of class action litigation can be great, class actions often require closer judicial oversight and more active judicial management than other types of litigation. Class action suits present many of the same problems and issues inherent in other types of complex litigation. The aggregation of a large number of claims and the ability to bind people who are not individual litigants tend to magnify those problems and issues, increase the stakes for the named parties, and create potential risks of prejudice or unfairness for absent class members.<sup>737</sup> This imposes unique responsibilities on the court and

736. Rule 23's predecessor was Federal Equity Rule 38, which provided that one or more may sue or defend for the whole when the question is "one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court." Fed. R. Civ. P. 23(a) committee note (1937 adoption).

737. See generally *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). For a discussion of problems in class action litigation, see Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain*

counsel. Once class allegations are made, decisions such as whether to settle and on what terms are no longer wholly within the litigants' control. Rather, the attorneys and named plaintiffs assume responsibilities to represent the class. The court must protect the interests of absent class members, and Rule 23(d) gives the judge broad administrative powers to do so, reflecting the equity origins of class actions.<sup>738</sup>

This section applies to a broad spectrum of subject areas, including statutory and common-law causes of action involving personal injury, property damage, consumer, civil rights, antitrust, environmental, and employment-related claims. This section also covers various types of relief, including injunctions, declaratory judgments, common resolution of particular issues in a case, and damages.<sup>739</sup> The various aspects of managing class action litigation discussed in this section are closely intertwined with other *MCL*, 4th sections, including those on mass tort litigation, attorney fees, and multiple jurisdiction litigation. Other sections of the *MCL*, 4th describe three types of class actions that have unusual features and procedural requirements: mass torts (see section 22.7); private securities litigation, including shareholder derivative actions under Rule 23.1 (see section 31.5); and employment discrimination (see section 32.42).

Occasionally, a plaintiff or other party seeks to have a defendant class certified. Such requests are unusual. The rules discussed in this section, which focus on plaintiffs' classes, must be specifically tailored to the issues defendant classes raise.<sup>740</sup> Additionally, conflicts of interest between an unwilling class

(2000); John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 Colum. L. Rev. 1343, 1367–82 (1995) (discussing incentives for collusion in settlement class actions); Note, *In-Kind Class Action Settlements*, 109 Harv. L. Rev. 810 (1996).

738. See *Ortiz*, 527 U.S. at 832–33; *Blanchard v. Edgemark Fin. Corp.*, 175 F.R.D. 293, 298–300 (N.D. Ill. 1997) (holding that any individual settlement with a certified class representative must be submitted to the court for approval because the representative has voluntarily undertaken a fiduciary responsibility toward the class as a whole and the court has a commensurate duty to protect absent class members); 7A Charles Alan Wright et al., *Federal Practice and Procedure: Civil 2d* § 1751 (1986 & Supp. 2002).

739. For reference to the law of class actions, see generally Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* (4th ed. 2002); 5 James Wm. Moore et al., *Moore's Federal Practice* (3d ed. 1997 & Supp. 2002); 7A & 7B Wright et al., *supra* note 738. The case-management requirements imposed by the Private Securities Litigation Reform Act of 1995 are discussed in *infra* section 31.33.

740. See 2 Conte & Newberg, *supra* note 739, § 4:46, at 339 (indicating that “[d]efendant class actions must meet all the Rule 23 criteria” and that “[d]efendant classes pose unique problems in the application of Rule 23 criteria” and raise distinct due process concerns). For examples of Rule 23 analysis in the defendant class certification context, see *CBS, Inc. v. Smith*, 681 F. Supp. 794 (S.D. Fla. 1988); *In re LILCO Sec. Litig.*, 111 F.R.D. 663 (E.D.N.Y. 1986). See

representative and the class warrant special attention when a defendant class certification motion is made.<sup>741</sup> Plans for compensating counsel for a defendant class representative need to be addressed at the certification stage. A class settlement that provides for a defendant class representative's attorney fees also may demand special scrutiny.

## 21.1 Precertification Case Management

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### 21.11 Initial Case-Management Orders

Initial case-management orders in a class action guide the parties in presenting the judge with the information necessary to make the certification decision and permit the orderly and efficient development of the case.

*also* Scott D. Miller, Note, *Certification of Defendant Classes Under Rule 23(b)(2)*, 84 Colum. L. Rev. 1371, 1387–89 (1984) (discussing potential burdens defendant classes may impose on courts). Defendant classes may also raise questions about ascertaining the identity of class members that differ from plaintiff classes. *S. Ute Indian Tribe v. Amoco Prod. Co.*, 2 F.3d 1023, 1029–30 (10th Cir. 1993). There is a split among courts of appeals concerning whether Rule 23(b)(2) applies to defendant cases. *See Henson v. E. Lincoln Township*, 814 F.2d 410 (7th Cir. 1987) (affirming district court's order denying certification of a defendant class); *cf. Marcera v. Chinlund*, 595 F.2d 1231, 1238 (2d Cir.), *vacated on other grounds sub nom. Lombard v. Marcera*, 442 U.S. 915 (1979); *Luyando v. Bowen*, 124 F.R.D. 52, 59 (S.D.N.Y. 1989) (certifying a defendant class). Protecting absent members of a defendant class may require special effort on the part of court and counsel. *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1105 (10th Cir. 2001) (stating that “defendant class actions create a special need to be attentive to the due process rights of absent parties”).

<sup>741</sup> Courts should give greater scrutiny to the adequacy of representation in defendant class actions “because of the risk that plaintiff[s] will seek out weak adversaries to represent the class.” 7A Wright et al., *supra* note 738, § 1770. *See, e.g., In re Integra Realty*, 262 F.3d at 1111–13 (finding representation by unwilling mutual fund with largest losses to be adequate and noting that a settlement providing compensation for attorney fees was potentially troubling). For further commentary on *Integra*, see 15A Charles Alan Wright et al., *Federal Practice and Procedure: Jurisdiction 2d* § 3902.1, at 53–54 (Supp. 2002).

Whether a class is certified and how its membership is defined affects case management as well as outcome. Certification and class membership determine not only the stakes involved, but also the scope and timing of discovery and motion practice, the structure of trial and methods of proof, and the length and cost of the litigation. Certification decisions are critical and should be made only after consideration of all relevant information and arguments presented by the parties.<sup>742</sup>

Before ruling on class certification, a judge should address the following matters at an early stage in the case, typically in initial case-management conferences under Rule 16:

- *Whether to hear and determine threshold dispositive motions, particularly motions that do not require extensive discovery, before hearing and determining class certification motions.* Motions such as challenges to jurisdiction and venue, motions to dismiss for failure to state a claim, and motions for summary judgment may be decided before a motion to certify the class, although such precertification rulings bind only the named parties. If the judge decides to hear such threshold motions before ruling on class certification, the initial scheduling order should set a timetable for the submission of motions for briefs and for any necessary discovery.
- *Whether to appoint interim class counsel during the period before class certification is decided.*<sup>743</sup> If the lawyer who filed the suit is likely to be the only lawyer seeking appointment as class counsel, appointing interim class counsel may be unnecessary. If, however, there are a number of overlapping, duplicative, or competing suits pending in other courts, and some or all of those suits may be consolidated, a number of lawyers may compete for class counsel appointment. In such cases, designation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement. In cases

742. A court may act on its own initiative in deciding whether to certify a class. *McGowan v. Faulkner Concrete Pipe Co.*, 659 F.2d 554, 559 (5th Cir. 1981) (“The trial court has an independent obligation to decide whether an action was properly brought as a class action, even where neither party moves for a ruling on class certification.”). A court may not, however, act on its own initiative to expand an individual complaint into a class action. *Newsom v. Norris*, 888 F.2d 371, 380–82 (6th Cir. 1989) (vacating district court order converting an individual action into a class action and certifying the class).

743. See Fed. R. Civ. P. 23(g)(2)(A) committee note (permitting the designation of interim counsel before determining whether to certify a class).

involving overlapping, duplicative, or competing suits in other federal courts or in state courts, the lawyers may stipulate to the appointment of a lead interim counsel and a steering committee to act for the proposed class. Such a stipulation leaves the court with the tasks of determining that the chosen counsel is adequate to serve as interim class counsel and making a formal order of appointment. Absent a stipulation, the court may need to select interim class counsel from lawyers competing for the role and formally designate the lawyer selected.

- *Whether and how to obtain information from parties and their counsel about the status of all related cases pending in state or federal courts, including pretrial preparation, schedules and orders, and the need for any coordinated activity.* Section 20.31 discusses coordination and other approaches to pending parallel litigation with state judges.
- *Whether any discovery is needed to decide whether to certify the proposed class.* See section 21.13. Precertification discovery permits the parties to “gather information necessary to make the certification decision,” which “often includes information required to identify the nature of the issues that actually will be presented at trial.”<sup>744</sup> To define the need for and appropriate limits on precertification discovery, it is useful to direct the parties to discuss these and related problems at the Rule 26(f) conference and to present a plan to the court at an early Rule 16 hearing. The judge can then put into place a schedule for determining the scope of discovery necessary to decide certification, as opposed to merits discovery. At such hearings, the judge should also inquire whether the parties contemplate precertification discovery from the potential class members, determine whether such proposed discovery fills a legitimate need, and make appropriate plans for the most cost-effective means of conducting it.

## 21.12 Precertification Communications with the Proposed Class

Rule 23(d) authorizes the court to regulate communications with potential class members, even before certification.<sup>745</sup> Such regulations, however, could

744. See Fed. R. Civ. P. 23(c)(1) committee note (setting a flexible time standard by providing that certification decisions should be made “at an early practicable time”).

745. *In re Sch. Asbestos Litig.*, 842 F.2d 671, 680 (3d Cir. 1988) (“Rule 23 specifically empowers district courts to issue orders to prevent abuse of the class action process.”).

implicate the First Amendment.<sup>746</sup> Moreover, restrictions of this type may be difficult to implement given the ease and speed of communicating with dispersed groups. For example, many class actions attorneys establish Internet Web sites for specific class actions, in addition to using conventional means of communication, such as newspapers. Most judges are reluctant to restrict communications between the parties or their counsel and potential class members, except when necessary to prevent serious misconduct.<sup>747</sup>

Direct communications with class members, however, whether by plaintiffs or defendants, can lead to abuse.<sup>748</sup> For example, defendants might attempt to obtain releases from class members without informing them that a proposed class action complaint has been filed. If defendants are in an ongoing business relationship with members of a putative class, the court might consider requiring production of communications relating to the case. In appropriate cases, courts have informed counsel that communications during an ongoing business relationship, including individual releases or waivers, must be accompanied by notification to the members of the proposed class that the litigation is pending.<sup>749</sup>

Judicial intervention is generally justified only on a clear record and with specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Such intervention “should result in a carefully drawn order that limits speech as little as possible, consistent with the rights of the parties under the circumstances.”<sup>750</sup> Even if the court finds that there has been an abuse, less burdensome remedies may suffice, such as requiring parties to initiate communication with potential class members

746. See *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

747. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101–02 (1981).

748. See *id.* at 99–100 & n.12; *Kleiner v. First Nat’l Bank*, 751 F.2d 1193 (11th Cir. 1985); *Keystone Tobacco Co. v. U.S. Tobacco Co.*, 238 F. Supp. 2d 151 (D.D.C. 2002), *reconsideration denied*, 2003 U.S. District LEXIS 14653 (2003); *Hampton Hardware Inc. v. Cotter & Co.*, 156 F.R.D. 630 (N.D. Tex. 1994).

749. *Ralph Oldsmobile, Inc. v. Gen. Motors Corp.*, No. 99 Civ. 4567, 2001 WL 1035132, at \*7 (S.D.N.Y. Sept. 7, 2001); see also 2 Geoffrey C. Hazard & W. William Hodes, *The Law of Lawyering* § 38.4, at 38-6 (3d ed. 2002) (copies of communications sent by defendants who have ongoing business relationships with potential class members relating to pending litigation should be given to opposing counsel).

750. *Gulf Oil*, 452 U.S. at 101–02. For an example of a limited ban on communications between a defendant and class members, see *Rankin v. Board of Education of Wichita Public Schools*, 174 F.R.D. 695, 697 (D. Kan. 1997) (ordering that “defendants and their counsel shall not make any contact or communication with [prospective class members] which expressly refers to this litigation”). Generally, more than just the potential for abuse is required to support issuance of a protective order. *Basco v. Wal-Mart Stores, Inc.*, No. CIV.A.00-3184, 2002 WL 272384, at 3–4 (E.D. La. Feb. 25, 2002).

only in writing or to file copies of all nonprivileged communications with class members.<sup>751</sup> If class members have received inaccurate precertification communications, the judge can take action to cure the miscommunication and to prevent similar problems in the future.<sup>752</sup> Rule 23 and the case law make clear that, even before certification or a formal attorney–client relationship, an attorney acting on behalf of a putative class must act in the best interests of the class as a whole.<sup>753</sup>

Misrepresentations or other misconduct in communicating with the class may impair the fairness and adequacy of representation under Rule 23(a)(4), may affect the decision whether to appoint counsel under proposed Rule 23(g), and may be prohibited and penalized under the court’s Rule 23(d)(2) plenary protective authority. Defendants and their counsel generally may communicate with potential class members in the ordinary course of business, including discussing settlement before certification,<sup>754</sup> but may not give false, misleading, or intimidating information, conceal material information, or attempt to influence the decision about whether to request exclusion from a class certified under Rule 23(b)(3). Ethics rules restricting communications with individuals represented by counsel may apply to restrict a defendant’s communications contract with the named plaintiffs.<sup>755</sup>

751. See *Gulf Oil*, 452 U.S. at 104 n.20.

752. *E.E.O.C. v. Mitsubishi Motor Mfg. of Am., Inc.*, 102 F.3d 869, 870–71 (7th Cir. 1996) (reciting district court action to cure precertification miscommunication regarding communications between employees and employer and to require prior notice to prevent future miscommunications); *Ralph Oldsmobile*, 2001 WL 1035132, at \*7 (curative notice sent to members of the proposed class at the expense of defendant).

753. See Fed. R. Civ. P. 23(g)(2)(A) committee note; cf. 2 Hazard & Hodes, *supra* note 749, § 38.4, at 38-7 (indicating that the lawyer for the proposed class has a fiduciary obligation and owes class members “duties of loyalty and care”).

754. See *Gulf Oil*, 452 U.S. 95 (after a class action had been commenced but before certification, defendant continued to deal directly with potential class members concerning an offer of settlement that had been earlier negotiated with the Equal Employment Opportunity Commission (EEOC)).

755. See *Ralph Oldsmobile*, 2001 WL 1035132, at \*4, \*7 (finding that defendant’s failure to inform independent dealers about pending class actions was misleading and ordering defendant to send corrective notice to potential members of the proposed class); *Hampton Hardware v. Cotter & Co.*, 156 F.R.D. 630, 634–35 (N.D. Tex. 1994) (court found abuse and issued protective order limiting communications after defendant contacted potential class members and encouraged them not to participate in the class action by stating that such participation would negatively impact the parties’ ongoing business relationship); see also *infra* section 21.323 (other communications from class members). See generally *Kleiner v. First Nat’l Bank of Atlanta*, 751 F.2d 1193, 1202 (11th Cir. 1985) (“If the class and the class opponent are involved in an ongoing business relationship, communications from the class opponent may be coercive.”) (quoting Note, *Developments in the Law—Class Actions*, 89 Harv. L. Rev. 1318, 1600 (1976)).

## 21.13 Standards for Class Certification and Precertification Discovery

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### 21.131 Certifying a Litigation Class

To obtain an order to prevail in their efforts to certify a class, proponents must satisfy two sets of requirements: those set forth in Rule 23(a) and those contained in Rule 23(b). Rule 23(a) requires that (1) the proposed class be sufficiently numerous; (2) there is at least one common question of fact or law; (3) the named plaintiff's claims are typical of the class as a whole; and (4) the named plaintiff will adequately represent the class.<sup>756</sup>

Rule 23(b) permits maintenance as a class action if the action satisfies Rule 23(a)'s prerequisites and meets one of three alternative criteria for maintainability. First, Rule 23(b)(1)(A) permits certification to prevent inconsistent rulings regarding defendants' required conduct. Standards for certifying a class under Rule 23(b)(1)(B) relate primarily to limited fund settlements and are discussed below in section 21.132. Second, Rule 23(b)(2) permits a class action if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Third, Rule 23(b)(3) permits a class action if "the court finds that questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Section 21.141 elaborates on the requirements for certifying a litigation class.

### 21.132 Certifying a Settlement Class

Parties frequently settle before the judge has decided whether to certify a class.<sup>757</sup> Some settle before a motion to certify or even a class action complaint has been filed. Such settlements typically stipulate that the court may certify a class as defined in the agreement, but only for the purpose of settlement. When a case settles as a class action before certification, the parties must present the

<sup>756</sup> Fed. R. Civ. P. 23(a).

<sup>757</sup> See, e.g., *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330 (N.D. Ohio 2001); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999).

court a plan for notifying the class and, if Rule 23(b)(3) applies, providing an opportunity to opt out, along with the motions for certification and preliminary approval of the settlement. If the case settles after it has been certified as a litigation class, different notice requirements apply (see section 21.312).

Rule 23(a) and (b) standards apply equally to certifying a class action for settlement or for trial, with one exception. In *Amchem Products, Inc. v. Windsor*, the Supreme Court held that because a settlement class action obviates a trial, a district judge faced with a request to certify a settlement class action “need not inquire whether the case, if tried, would present intractable management problems”<sup>758</sup> under Rule 23(b)(3)(D). The Court added, however, “that the settlement context demands undiluted, even heightened attention to unwarranted or overbroad class definitions.”<sup>759</sup>

Post-*Amchem* courts have emphasized that a settlement class must be cohesive. This means, according to one court of appeals, that there should be a common nucleus of facts and potential legal remedies among all class members,<sup>760</sup> and that the class and any necessary subclasses must be definable and defined for the judge. In a nationwide or multistate settlement class, counsel should be ready at the class certification hearing to explain the common elements of the substantive law that are applicable to all class members so that choice of law issues will not defeat predominance and the manageability component of superiority.<sup>761</sup> As in a litigation class, counsel seeking certification of a settlement class must address variations in applicable state law. The court must determine whether the variations or conflicts defeat commonality, predominance, and superiority and the extent to which the creation of subclasses removes such conflicts so as to permit certification. As in a litigation class, counsel seeking certification of a settlement class must show that there are no actual conflicts among the anticipated claims of class members<sup>762</sup> or must show that conflicts can be avoided or ameliorated by proposing subclasses or by providing a plan for distributing benefits based on objective

758. 521 U.S. 591, 620 (1997).

759. *Id.*

760. *Hanlon*, 150 F.3d at 1022 (affirming certification of a settlement class).

761. *Id.*

762. *Id.* at 1021 (finding “no structural conflict of interest based on variations in state law [in part, because] . . . the differences in state remedies are not sufficiently substantial so as to warrant the creation of subclasses”); see also *In re Mex. Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001) (affirming a nationwide class action settlement against objections that class members from certain states had superior remedies not reflected in the settlement terms and noting that class representatives avoided the “pitfall” of state law variations by confining their theories to “federal law plus aspects of state law that are uniform” and by asking for “certification of a class for settlement only”); *In re Prudential*, 148 F.3d at 314–15.

criteria. The court must determine whether the process for presenting claims and awarding relief to individual class members is manageable and takes account of differences among class members without creating conflicting interests.<sup>763</sup> Counsel seeking class certification must also present a plan for communicating adequate notice of a settlement to individual class members, an important factor in the court's determination that the proposed settlement class is manageable.<sup>764</sup>

A proposed settlement of a mandatory "limited fund" class<sup>765</sup> under Rule 23(b)(1)(B) must meet the exacting standards articulated by the Supreme Court in *Ortiz v. Fibreboard Corp.*<sup>766</sup> Because limited-fund classes do not permit opt-outs, certification for settlement imposes particularly stringent standards.

In any certification for settlement, the court must examine adequacy of representation and predominance of common issues to be sure that the settlement does not mask either conflicts within classes or the overwhelming presence of individual issues. Section 21.61 discusses determining whether to approve the terms of proposed settlements in class actions, which involves a separate set of issues from deciding whether to certify a proposed settlement action. The particular problems raised by proposed class and other settlements in mass torts cases are discussed in section 22.9.

### 21.133 Timing of the Certification Decision

Federal Rule of Civil Procedure 23(c)(1) directs the court to determine "at an early practicable time"<sup>767</sup> whether to certify an action as a class action. The "early practicable time" is when the court has sufficient information to decide

763. *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at \*43, \*51–\*52 (E.D. Pa. Aug. 28, 2000) (certifying a settlement class based on objective national standards for claims); *cf.* *Walker v. Liggett Group, Inc.*, 175 F.R.D. 226, 232–33 (S.D. W. Va. 1997) (denying certification of a settlement class and citing need to ascertain variations in state law, to decide how millions of class members could offer input during the comment period, to create subclasses, and to appoint representatives to an already difficult to define class).

764. *Thomas v. NCO Fin. Sys., Inc.*, No. CIV.A.00-5118, 2002 WL 1773035, at \*5–\*7 (E.D. Pa. July 31, 2002) (denying certification of a settlement class where parties proposed notice in two newspapers and failed to introduce evidence that the individual names of class members were available).

765. Class actions certified under Rule 23(b)(1) or (b)(2) are often referred to as "mandatory" class actions because Rule 23 does not expressly require that members be permitted to opt out; some courts, however, have granted limited opt-out rights in so-called "mandatory" class actions, recognizing this act as being within the court's discretion and equity jurisdiction. *See, e.g., County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1302–03 (2d Cir. 1990).

766. 527 U.S. 815, 838–53 (1999).

767. Fed. R. Civ. P. 23(c)(1)(A).

whether the action meets the certification criteria of Rules 23(a) and (b). The timing of the certification decision deserves discussion early in the case, often at the initial scheduling conference where the judge and counsel can address the issues bearing on certification and can establish a schedule for the work necessary to permit an informed ruling on the class certification motion. Appropriate timing will vary with the circumstances of the case, although an early resolution is generally desirable.

Precertification discovery may be necessary. The court may rule on motions pursuant to Rule 12, Rule 56, or other threshold issues before deciding on certification; however, such rulings bind only the named parties.<sup>768</sup> Most courts agree, and Rule 23(c)(1)(A) reflects, that such precertification rulings on threshold dispositive motions are proper, and one study found a substantial rate of precertification rulings on motions to dismiss or for summary judgment.<sup>769</sup> Precertification rulings frequently dispose of all or part of the litigation.<sup>770</sup>

Efficiency and economy are strong reasons for a court to resolve challenges to personal or subject-matter jurisdiction before ruling on certification. The judge should direct counsel to raise such challenges before filing motions to certify. Similarly, courts should rule early on motions to dismiss, challenging whether the plaintiffs have stated a cause of action. Early resolution of these questions may avoid expense for the parties and burdens for the court and may minimize use of the class action process for cases that are weak on the merits.<sup>771</sup> In unusual cases, involuntary precertification dismissal may unfairly

768. Dismissal before certification is *res judicata* only as to the class representatives, not class members. *Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984); *see also Schwarzchild v. Tse*, 69 F.3d 293, 297 (9th Cir. 1995) (moving for and obtaining summary judgment after class certification but before notice to the class implicitly waives defendant's interest in notifying the class). A grant of summary judgment dismissing the claims of class representatives often has the effect of mooting the class certification issue. *Cowen v. Bank United of Tex.*, 70 F.3d 937, 941 (7th Cir. 1995).

769. Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 29–32* (Federal Judicial Center 1996) [hereinafter *FJC Empirical Study of Class Actions*] (finding that the rate of precertification rulings on motions to dismiss was about 80% in three of four districts studied and about 60% in the other district).

770. *Id.* at 33 (finding that “[a]pproximately three out of ten cases in each district were terminated as a direct result of a ruling on a motion to dismiss or for summary judgment”).

771. *See, e.g., Curtin v. United Airlines, Inc.*, 275 F.3d 88, 93 (D.C. Cir. 2001) (holding that “where . . . the plaintiffs’ claims can be readily resolved on summary judgment, where the defendant seeks an early disposition of those claims, and where the plaintiffs are not prejudiced thereby, a district court does not abuse its discretion by resolving the merits before considering the question of class certification”); *Mira v. Nuclear Measurements Corp.*, 107 F.3d 466, 474–76

affect the interests of members of the proposed class. For example, in a case in which the filing was accompanied by extensive publicity, but where the dismissal had little publicity, individual members of the proposed class may rely on the pendency of the class action to toll limitations. If the risk of unfair prejudice is present, some form of notice under Rule 23(d)(2) may be appropriate.

Some local rules specify a short period within which the plaintiff must file a motion to certify a class action. Such rules, however, may be inconsistent with Rule 23(c)(1)(A)'s emphasis on the parties' obligation to present the court with sufficient information to support an informed decision on certification. Parties need sufficient time to develop an adequate record.

Rule 23(c)(1)(C) makes clear that an action should be certified only if it meets Rule 23's requirements. However, Rule 23(c)(1)(C) permits later alteration or amendment of an order granting or denying class certification. Nevertheless, decertifying or redefining an expansive class, certified on insufficient information, may unnecessarily cost the parties substantial time and expense and add to the court's load. In a federal question case, the pendency of class action allegations tolls the statute of limitations.<sup>772</sup> Individuals removed from a narrowed class after receiving notice that they were included may be entitled to notice that the statute of limitations has now begun to run against them.<sup>773</sup> If the judge expands a class definition in a Rule 23(b)(3) case, those added members must receive notice and an opportunity to opt out, adding expense and effort.

(7th Cir. 1997) (asserting that deciding summary judgment before ruling on class certification was an appropriate way to deal with meritless litigation).

772. *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974).

773. For those excluded from the class, the statute of limitations, which was tolled by the filing of the class complaint, begins to run again when the opt-out form is filed. *See, e.g.*, *Chardon v. Fumero Soto*, 462 U.S. 650 (1983); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983); *Am. Pipe*, 414 U.S. at 561. In diversity cases, state rules on equitable and cross-jurisdictional tolling may or may not toll the statute of limitations for individual claims filed subsequent to the denial of certification of a class action. *See, e.g.*, *Wade v. Danek Med., Inc.*, 182 F.3d 281, 290 (4th Cir. 1999) (affirming that statute of limitations for state law claims was not tolled during the pendency of a diversity-based class action in federal court); *Vaught v. Showa Denko K.K.*, 107 F.3d 1137, 1147 (5th Cir. 1997) (same).

## 21.14 Precertification Discovery

.141 Precertification Discovery into the Rule 23(a) Requirements 257

.142 Precertification Discovery into the Rule 23(b) Requirements 260

A judge faced with a motion for class certification must decide whether the record is sufficient to determine if the prerequisites of Rule 23 have been met and, if so, how to define the class.

A threshold question is whether precertification discovery is needed. Discovery may not be necessary when claims for relief rest on readily available and undisputed facts or raise only issues of law (such as a challenge to the legality of a statute or regulation). Some discovery may be necessary, however, when the facts relevant to any of the certification requirements are disputed (see sections 21.141 and 21.142), or when the opposing party contends that proof of the claims or defenses unavoidably raises individual issues. Generally, application of the Rule 23 criteria requires the judge to examine the elements of the parties' substantive claims and defenses<sup>774</sup> in order to analyze commonality, typicality, and adequacy of representation under Rule 23(a), as well as the satisfaction of Rule 23(b)'s maintainability requirements.<sup>775</sup>

At this stage, the court should not decide or even attempt to predict the weight or outcome of the underlying claims and defenses,<sup>776</sup> but it need not rely only on the bare allegations of the pleadings. A preliminary inquiry into the merits may be required to decide whether the claims and defenses can be presented and resolved on a class-wide basis.<sup>777</sup> Some precertification discovery

774. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 & n.12 (1978) (reasoning that “the class determination generally involves considerations that are ‘enmeshed in the factual and legal issues comprising the plaintiff’s cause of action’” and that “[e]valuation of many of the questions entering into determination of class action questions is intimately involved with the merits of the claims” (quoting *Mercantile Nat’l Bank v. Langdeau*, 371 U.S. 555, 558 (1963) and 15 *Charles Wright et al.*, *Federal Practice and Procedure* § 3911, at 485 n.45 (1976))); see also *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 744 (5th Cir. 1996) (ruling that “[g]oing beyond the pleadings is necessary, as a court must understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues” (citing *Manual for Complex Litigation, Third*, § 30.11 (1995))). For consideration of how examination of the merits has evolved in the context of mass tort class actions and other forms of aggregation, see *infra* sections 22.2 and 22.31.

775. *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 676 (7th Cir.) (“Before deciding whether to allow a case to proceed as a class action, therefore, a judge should make whatever factual and legal inquiries are necessary under Rule 23.”), *cert. denied*, 534 U.S. 951 (2001).

776. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177–79 (1974) (reversing order requiring defendant to pay for class notice based on preliminary assessment of probabilities of plaintiff’s success).

777. *Szabo*, 249 F.3d at 676.

may be necessary if the allegations in the pleadings—with affidavits, declarations, and arguments or representations of counsel—do not provide sufficient, reliable information.<sup>778</sup> To make this decision, the court should encourage counsel to confer and stipulate as to relevant facts that are not genuinely disputed, to reduce the extent of precertification discovery, and to refine the pertinent issues for deciding class certification.

Discovery relevant only to the merits delays the certification decision and may ultimately be unnecessary. Courts often bifurcate discovery between certification issues and those related to the merits of the allegations. Generally, discovery into certification issues pertains to the requirements of Rule 23 and tests whether the claims and defenses are susceptible to class-wide proof; discovery into the merits pertains to the strength or weaknesses of the claims or defenses and tests whether they are likely to succeed. There is not always a bright line between the two. Courts have recognized that information about the nature of the claims on the merits and the proof that they require is important to deciding certification. Arbitrary insistence on the merits/class discovery distinction sometimes thwarts the informed judicial assessment that current class certification practice emphasizes.

Allowing some merits discovery during the precertification period is generally more appropriate for cases that are large and likely to continue even if not certified. On the other hand, in cases that are unlikely to continue if not certified, discovery into aspects of the merits unrelated to certification delays the certification decision and can create extraordinary and unnecessary expense and burden. If merits discovery is stayed during the precertification period, the judge should provide for lifting the stay after deciding the certification motion.

It is often useful under Rule 26(f) to require a specific and detailed precertification discovery plan from the parties. The plan should identify the depositions and other discovery contemplated, as well as the subject matter to be covered and the reason it is material to determining the certification inquiry under Rule 23. Discovery relevant to certification should generally be directed to the named parties. Discovery of unnamed members of a proposed class requires a demonstration of need.<sup>779</sup> If precertification discovery of unnamed class members is appropriate, the court should consider imposing limits beyond those contemplated by the Federal Rules of Civil Procedure. Such limits might include the scope, subject matter, number, and time allowed for depositions, interrogatories, or other discovery directed to class representatives

778. *Id.* (referring to use of affidavits and inquiries from judges); *Sirota v. Solitron Devices, Inc.*, 673 F.2d 566, 571–72 (2d Cir. 1982).

779. *See Baldwin & Flynn v. Nat'l Safety Assocs.*, 149 F.R.D. 598 (N.D. Cal. 1993).

or unnamed class members, and might limit the period for completing certification-related discovery. Section 21.41 discusses postcertification discovery from unnamed class members. If some merits discovery is permitted during the precertification period, consider limits that minimize the time and effort involved, such as requiring the use of questionnaires or interrogatories rather than depositions, and consider limiting discovery to a certain number or a sample of proposed class members.<sup>780</sup>

### 21.141 Precertification Discovery into the Rule 23(a) Requirements

*Numerosity.* Determining whether the proposed class is sufficiently numerous for certification is usually straightforward. Affidavits, declarations, or even reasonable estimates in briefs are often sufficient to establish the approximate size of the class and whether joinder might be a practical and manageable alternative to class action litigation.

*Commonality.* Identifying common questions typically requires examining the parties' claims and defenses, identifying the type of proof the parties expect to present, and deciding the extent to which there is a need for individual, as opposed to common, proof. Courts have come to varying results in applying such tests, particularly in the mass tort context. See section 22.7.

A trial plan often assists in identifying the relationship between individual and common elements of proof, but Rule 23 does not operate in a vacuum. Bifurcation and severance under Rule 42 are available as tools that might make a case more manageable by separating out discrete issues for a phased or sequenced decision by the judge or at trial. In making such decisions, the judge must decide whether certification of issues classes, bifurcation, or severance are fair and workable ways to achieve class certification, or whether they would merely mask the predominance of individual issues and result in prejudice

780. *Transamerican Ref. Corp. v. Dravo Corp.*, 139 F.R.D. 619, 621–22 (S.D. Tex. 1991) (approving interrogatories relevant to common issues and limiting their service to 50 of 6,000 absent class members); *cf. Schwartz v. Celestial Seasonings, Inc.*, 185 F.R.D. 313 (D. Colo. 1999) (allowing after class certification, brief, nonmandatory questionnaire relating to common issues); *McCarthy v. Paine Webber Group, Inc.*, 164 F.R.D. 309 (D. Conn. 1995). On the other hand, courts have declined to limit discovery conducted on behalf of a class to a sample selected by the defendant. *See Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 338, 343 (N.D. Ill. 1995) (noting that “[t]he Federal Rules and this [c]ourt do not countenance self-selecting discovery by either party”). Accordingly, the court should assure that any use of sampling in the context of class-related discovery provides a meaningful random, or at least objective, sample of data.

from presenting claims or defenses out of context.<sup>781</sup> Issues classes are discussed further at section 21.24.

*Typicality.* Deciding typicality requires determining whether the named plaintiff's claim arises from the same course of events and involves legal arguments similar to those of each class member.<sup>782</sup> The court must also establish that the proposed class representative's claims are not subject to defenses that do not apply to other members of the class.<sup>783</sup> Discovery may be necessary to determine if the plaintiff's claim is atypical, although discovery may not be necessary if the pleadings or readily available information reveals that a named plaintiff's claim is idiosyncratic.

*Adequacy of representation.* The named plaintiffs must show that the proposed action will fairly and adequately protect the interests of the class. They must first demonstrate that class counsel is qualified, experienced, and able to conduct the litigation in the interests of the class. That also is part of the showing required for appointment of class counsel under Rule 23(g). See section 21.27.

Plaintiffs also must show that the named representatives have no substantial interests antagonistic to those of proposed class members and that the representatives share the desire to prosecute the action vigorously. A trial plan can help to identify distinct claims that may demand separate representation or a denial of certification. If the motion to certify is for a litigation class or for a settlement class that is opposed, as contrasted with a jointly submitted motion to certify a class for settlement, the adversaries may help to identify the range and divergence of claims. In a jointly submitted motion to certify a settlement class, the judge may need to press the parties to identify differences in the positions or interests of class members. Proposed class members' interests may differ from those of the named representatives for a variety of

781. See, e.g., *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1139 (9th Cir. 2002) (remanding with recommendation that the trial court consider “[class] certification only for questions of generic causation common to plaintiffs who suffer from the same or a materially similar disease”); *In re Bendectin Litig.*, 857 F.2d 290 (6th Cir. 1988) (upholding constitutionality of aggregate phase I trial on common issues of generic causation); *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468 (5th Cir. 1986) (dividing trial into phases dealing with common and individual issues separately); see also *Simon v. Philip Morris, Inc.*, 200 F.R.D. 21 (E.D.N.Y. 2001) (discussing severance and consolidation of issues for phased trials in class action); but cf. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995) (discussing difficulty of having multiple juries decide comparative negligence and proximate causation).

782. See generally *Gen. Tel. Co. v. Falcon*, 457 U.S. 147 (1982) (rejecting claim of employee denied promotion as not typical of claims of applicants for work).

783. See *Chateau de Ville Prods., Inc. v. Tams-Witmark Music Library, Inc.*, 586 F.2d 962, 966 (2d Cir. 1978); Douglas M. Towns, Note, *Merit-Based Class Action Certification: Old Wine in a New Bottle*, 78 Va. L. Rev. 1001, 1032–33 (1992).

reasons. Different state law may apply to different class members.<sup>784</sup> In a mass tort case, those with present injuries have different interests than those who have been exposed to the injurious substance but have not yet manifested injury.<sup>785</sup> Those with severe injuries may have different interests than those with slight injuries.

The proponents of certification sometimes attempt to meet Rule 23's adequacy-of-representation requirements by suing for only one type of relief, such as an injunction, on behalf of the class. In that case, the named plaintiffs may be inadequate representatives for class members who also have existing damage claims.<sup>786</sup> Discovery may be needed to identify any appropriate remedies not included in the proposed class claims.

Under the Private Securities Litigation Reform Act (PSLRA), courts must select as "lead plaintiff" the most knowledgeable and sophisticated investor who is willing to serve.<sup>787</sup> Note that the court may or may not select the lead plaintiff to serve as a Rule 23(a) "class representative" if the court decides to certify a class. Even without such a statutory requirement, the proposed class representative should be willing to participate in discovery<sup>788</sup> and demonstrate familiarity with the claims asserted and the role of the class representative.<sup>789</sup>

784. See generally *In re* Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig., 288 F.3d 1012 (7th Cir. 2002); *Spence v. Glock*, 227 F.3d 308 (5th Cir. 2000).

785. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

786. *In re* Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., 209 F.R.D. 323, 338–40 (S.D.N.Y. 2002) (actual conflicts between proposed class representatives who seek injunctive relief and members of the proposed class who have already experienced personal injuries render the representatives inadequate under Rule 23(a)); see also *Thompson v. Am. Tobacco Co.*, 189 F.R.D. 544, 550–51 (D. Minn. 1999) (same).

787. 15 U.S.C. § 78u-4(a)(2)(A) (2000); *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 483 (5th Cir. 2001) (noting that the PSLRA raises the adequacy of representation standard by requiring that "securities class actions be managed by active, able class representatives who are informed and can demonstrate they are directing the litigation"), *reh'g denied*, 279 F.3d 313 (2002) (noting that the Rule 23 standard remains the same).

788. *In re* Storage Tech. Corp. Sec. Litig., 113 F.R.D. 113, 118 (D. Colo. 1986) (holding that "failure to comply with proper discovery is a sufficient basis . . . to conclude that these plaintiffs would not adequately represent the class").

789. *Morris v. Transouth Fin. Corp.*, 175 F.R.D. 694, 698 (M.D. Ala. 1997) (finding that adequate class representatives need only "have a basic understanding about the nature of [the] lawsuit" and "need not be intimately familiar with every factual and legal aspect" of the litigation). A named plaintiff who shows no understanding of the complaint and proceedings is inadequate. *Kelley v. Mid-America Racing Stables, Inc.*, 139 F.R.D. 405, 409 (W.D. Okla. 1990) (finding named plaintiffs inadequate because of "their almost total lack of familiarity with the facts of their case"); *In re Storage Tech.*, 113 F.R.D. at 118 (disqualifying one plaintiff who was "unaware of even the most material aspects of this action" and another who was "too passive to assure vigorous prosecution").

Precertification inquiries into the named parties' finances or the financial arrangements between the class representatives and their counsel are rarely appropriate, except to obtain information necessary to determine whether the parties and their counsel have the resources to represent the class adequately. Ethics rules permit attorneys to advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.<sup>790</sup> Such arrangements may later become relevant when awarding fees. See section 14.12.

### 21.142 Precertification Discovery into the Rule 23(b) Requirements

*Rule 23(b)(1)(B)*. In addition to satisfying the Rule 23(a) criteria, a Rule 23(b)(1)(B) non-opt-out “limited fund” class must overcome a high threshold set by the Supreme Court.<sup>791</sup> Indeed, the Court has questioned whether a mass tort class action could ever be certified as a limited-fund class action.<sup>792</sup> First, the judge must find that there is a limited fund. The evidence must prove that the value of class claims exceeds the proven value of the fund.<sup>793</sup> Next, the judge must find that there would be equitable treatment of all claimants,<sup>794</sup> which may require the creation of subclasses for differing interests or, if the interests are too numerous and too conflicting, may defeat certification.<sup>795</sup> Finally, the judge must find that payment of the claims would exhaust the limited fund or that failure to exhaust the fund would be justified.<sup>796</sup> Efforts to certify limited-fund class actions after *Ortiz* have not been successful.<sup>797</sup>

790. Model Rules of Prof'l Conduct R. 1.8(e)(1) (2002). See *Rand v. Monsanto Co.*, 926 F.2d 596, 599 (7th Cir. 1991) (indicating that class representatives are not responsible to underwrite class-wide costs and that class counsel who are compensated based on class benefits are more appropriate underwriters); *Paul E. Iacono Structural Eng'r, Inc. v. Humphrey*, 722 F.2d 435 (9th Cir. 1983); *In re Workers' Comp.*, 130 F.R.D. 99, 108 (D. Minn. 1990).

791. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 838–53 (1999).

792. *Id.* at 842, 844, 864. See also S. Elizabeth Gibson, *Case Studies of Mass Tort Limited Fund Class Action Settlements & Bankruptcy Reorganizations* 37 (Federal Judicial Center 2000) (indicating that the Supreme Court reserved “[t]he larger question . . . whether a mass tort case could ever qualify for mandatory class treatment under Rule 23(b)(1)(B)”).

793. *Ortiz*, 527 U.S. at 849.

794. *Id.* at 841.

795. *Id.* at 856–57.

796. *Id.* at 841, 858–60.

797. See, e.g., *In re Telectronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 221 F.3d 870, 873 (6th Cir. 2000) (decertifying a limited fund settlement class because parties did not have a “limited fund”); *In re Telectronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985, 1029 (S.D. Ohio 2001) (a renegotiated Rule 23(b)(3) opt-out settlement was granted final approval). See also *In re River City Towing Servs., Inc.*, 204 F.R.D. 94, 96 (E.D. La. 2001) (finding that the “kind of limited fund necessary to certify a (b)(1)

Certifying a Rule 23(b)(1)(B) class ordinarily will call for extensive factual findings showing that the standards have been met,<sup>798</sup> which may require extensive discovery.

*Rule 23(b)(2)*. The Rule 23(b)(2) class action applies when class-wide injunctive or declaratory relief is necessary to redress group injuries, such as infringements on civil rights, and is commonly relied on by litigants seeking institutional reform through injunctive relief.<sup>799</sup> Because a Rule 23(b)(2) class action does not permit opting out, it presumes that the class is homogenous and therefore cohesive. That presumption can be destroyed by showing individualized issues as to liability or remedy.

The grant of Rule 23(b)(2) certification in the tort context depends on factors such as whether state law recognizes medical monitoring claims, and, if so, treats them as calling for injunctive relief rather than money damages. Discovery may be necessary to show the existence of underlying state law preconditions for such claims as medical monitoring. Section 22.74 further

class action” was not determined); *Doe v. Karadzic*, 192 F.R.D. 133, 144 (S.D.N.Y. 2000) (decertifying after reconsideration because plaintiffs could not provide evidence of a limited fund); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 1999 WL 782560, at \*10 (E.D. Pa. Sept. 27, 1999) (vacating a conditionally certified settlement because the parties could not provide evidence of a true limited fund). *Cf. In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 378, 383 (N.D. Ohio) (preliminarily approving a Rule 23(b)(3) class in which participants in settlement would be given prior liens on defendant’s assets over opt outs), *later proceeding at* 174 F. Supp. 2d 648, 653–55 (N.D. Ohio) (granting injunctive relief by enjoining the initiation of claims against defendants), *and injunction stayed*, No. 01-4039, 2001 WL 1774017, at \*1 (6th Cir. Oct. 29, 2001) (ruling that “financial disincentives on the right to opt out of the settlement class . . . raise the due process concerns addressed in *Ortiz*”).

798. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 208 F.R.D. 625, 634 (W.D. Wash. 2002) (stating that “to certify such a class in the context of a limited fund claim, the court must have before it, at a minimum, evidence as to the assets and potential insolvency of the defendants involved in these cases”).

799. *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994). *See also Daniels v. City of New York*, 198 F.R.D. 409, 422 (S.D.N.Y. 2001) (certifying class of African-American and Latino men who were allegedly stopped and frisked by police street crimes unit without reasonable suspicion); *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 451–52 (N.D. Cal. 1994) (certifying class of disabled theatergoers who sought movie theaters’ compliance with the Americans with Disabilities Act). In addition to its frequent application to civil rights cases, some courts have extended this provision to, *inter alia*, classes alleging systemic failure of child welfare services, *see, e.g., Baby Neal*, 43 F.3d at 58–59 *and* *LaShawn A. v. Dixon*, 762 F. Supp. 959, 960 (D.D.C. 1991), as well as suits alleging miscalculation of Social Security benefits. *See Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993); *Gilchrist v. Human Res. Admin.*, No. 87 CV 7820, 1989 U.S. Dist. LEXIS 7850, at \*10 (S.D.N.Y. July 13, 1989). Indeed, its drafters stated expressly that “[s]ubdivision (b)(2) is not limited to civil-rights cases.” Fed. R. Civ. P. 23(b)(2) committee note (1966 amendment).

discusses medical monitoring claims and the factors affecting whether they may be certified as class actions under either Rule 23(b)(2) or Rule 23(b)(3).

When a proposed class seeks both injunctive relief and damages, the judge may have to make findings as to the relative importance of the damage claims and decide whether to provide class members notice and an opportunity to opt out. Rule 23(c)(4)(A) permits certification under the appropriate subsection of the rule to be made on a claim-by-claim basis. Some claims justify Rule 23(b)(3) certification, others will justify Rule 23(b)(2) treatment, and other claims should not be certified at all.

*Rule 23(b)(3).* Rule 23(b)(3) maintainability requires the judge to determine that common questions predominate over individualized ones and that class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

To analyze predominance, the judge must determine whether there are individualized issues of fact and how they relate to the common issues, and then examine how the class action process compares to available alternatives (either alone or in combination): individual suits or joinder; consolidation, intervention, or other nonrepresentational forms of aggregate litigation; test cases; more narrowly defined class actions, perhaps filed in different courts; and agency enforcement. The Supreme Court has emphasized that judges should consider, in cases involving small claims, the access to court that the class mechanism provides.<sup>800</sup>

Precertification discovery may be needed to assist the judge in distinguishing the individual from the common elements of the claims, issues, and defenses, and in deciding the extent to which the need for individual proof outweighs the economy of receiving common proof. A trial plan addressing each element of the claims can help to identify the nature and extent of the individualized proof required.

To analyze superiority, the judge will need information from the parties about alternative approaches to the claims of the proposed class and the defenses they will face. Discovery may be needed to determine the extent to which individual potential class members have an interest in separate actions, inconsistent with class treatment. For example, discovery may be necessary to determine whether some class members are likely to assert individual claims for damages that could support individual suits, while other class members have claims for small amounts that would not justify individual litigation.

800. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (stating that “[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights” (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997))).

The judge must decide whether the proposed Rule 23(b)(3) class will be manageable. For the most part, courts determine manageability by reviewing affidavits, declarations, trial plans, and choice-of-law analyses that counsel present.<sup>801</sup> Discovery may be needed to determine whether a need for individual proof will hinder the fair presentation of common questions to the finder of fact<sup>802</sup> and whether class members can be identified without making numerous fact-intensive inquiries. In unusual circumstances, judges have used test cases or alternative dispute resolution (ADR) approaches to test the manageability of a class trial. See section 21.5.

An important aspect of precertification discovery is coordination with any discovery underway or anticipated in cases involving parallel suits simultaneously pending in other federal or state courts. The following section discusses the precertification relationship with other cases.

## 21.15 Relationship with Other Cases Pending During the Precertification Period

There may be other class actions, consolidated cases, or individual lawsuits in other courts or before other judges in the same division or district that arise out of the same legal and factual basis as the class action proposed for certification. These cases may purport to bind overlapping or duplicative groups. A federal district judge asked to certify a class action that overlaps with, duplicates, or competes with cases pending in other federal or state courts may face conflicts involving rulings on discovery or substantive motions, timetables for discovery, selection of class counsel, certification rulings, trial, and settlement, and may also face duplicative work and expense. The judge should obtain complete information from the parties about other pending or terminated actions in federal or state courts relating to the claims, defenses, and issues presented.

If multiple cases are pending in federal courts, the Judicial Panel on Multidistrict Litigation has the authority to transfer related federal cases to one district court for consolidated and coordinated pretrial proceedings<sup>803</sup> in order to prevent inconsistent rulings and to minimize duplicative discovery. See

801. See, e.g., *Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1187–90 (9th Cir. 2001) (discussing plaintiff's proposals for managing variations in state laws); cf. *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 676 (7th Cir. 2001) (stating that a judge should “receive evidence (if only by affidavit) and resolve the disputes before deciding whether to certify the class”).

802. See *Szabo*, 253 F.3d at 676 (indicating that determining manageability required making a choice-of-law decision that in turn required resolving a factual issue on the merits).

803. 28 U.S.C. § 1407(a) (West 2002).

section 20.1. Prior to overlapping federal cases being transferred, or if the federal cases are not transferred at all, coordination among the judges handling the cases may be critical. Such coordination can be informal, consisting of telephone calls or other communication to minimize conflicts in scheduling and to arrange for the results of discovery to be used in all or most of the related cases. Some judges prefer more formal procedures, such as orders entered in the related cases that establish a coordinated schedule and arrangements for discovery and motions practice.

If the overlapping or duplicative cases are pending in both state and federal courts, there is no formal mechanism for global consolidation. If the federal cases have been transferred to one judge, the transferee court can then contact the other courts to discuss cooperation and coordination. Section 20.31 discusses in more detail approaches to coordination with state courts, particularly after a class action has been certified in the federal court.

Courts rely on a variety of techniques to coordinate overlapping or duplicative cases, such as establishing coordinated schedules for discovery and the filing and briefing of motions. Federal and state judges sometimes jointly hold hearings or arguments on the motions and establish coordinated discovery schedules.

The pendency of overlapping or duplicative cases in other courts may affect the timing of the certification decision. If transfer to a multidistrict litigation (MDL) proceeding is likely, it is usually best to defer certification until the MDL Panel acts (see generally section 20.31). A delay in deciding certification might also be appropriate if other cases in state or federal court are at a more advanced stage in the litigation.

A court may want to defer to other courts that have developed the record necessary to decide certification or are about to decide threshold dispositive motions to dismiss or for summary judgment.<sup>804</sup> Judges sometimes defer certification decisions pending the results of individual actions that are in or nearing trial or summary judgment. For example, in a mass tort case the trial of individual claims might inform a judge considering class certification about the nature of the claims and defenses and whether class certification is proper.<sup>805</sup> On the other hand, if the federal case is more advanced, the judge

804. See, e.g., *Nolan v. Cooper Tire & Rubber Co.*, No. CIV.A.01-83, 2001 WL 253865 (E.D. Pa. Mar. 14, 2001) (remanding nationwide class action to state court based in part on conduct originating in New Jersey).

805. See *In re Norplant Contraceptive Prods. Liab. Litig.*, 955 F. Supp. 700 (E.D. Tex. 1997) (ruling on first set of bellwether plaintiffs' complaints); *infra* section 22.31 (criteria for aggregating mass tort claims); see also Thomas E. Willging, *Beyond Maturity: Mass Tort Case Management in the Manual for Complex Litigation*, 148 U. Pa. L. Rev. 2225, 2253–61 (2000)

may want to accelerate action on certification to protect against inconsistent rulings on class certification, appointment of class counsel, discovery motions, choice of law, and dispositive motions.

Competing class actions may produce a race to certification in different courts for the perceived advantages of a given forum. Such efforts should not influence the timing of the certification decision, and, through coordination with other courts, the judge should avoid facilitating such adversarial contests.

When informal efforts at cooperation and coordination prove unsuccessful, federal courts have on occasion felt it necessary to resort to efforts to stay parallel suits pending in other fora. The Anti-Injunction Act<sup>806</sup> and the All Writs Act<sup>807</sup> define federal court authority to stay or enjoin state court proceedings. Under these statutes, a federal court may enjoin actions in state courts, but only when necessary to aid its jurisdiction.<sup>808</sup> For example, a federal court may enjoin parallel state court actions to protect a class action settlement preliminarily or finally approved in the federal court.<sup>809</sup> Less clear is federal court authority to issue such orders outside the context of a pending settlement and before a class is certified.<sup>810</sup> A federal court considering an injunction

(discussing a multidimensional approach to mass tort case management that includes, among other factors, the concept of maturity). *See generally* McGovern, *Mass Torts for Judges*, *supra* note 705, at 1841–45 (presenting the concept of maturity, i.e., the idea that individual cases should be adjudicated and evaluated before courts consider certifying a class or otherwise aggregating claims).

806. 28 U.S.C. § 2283 (West 2002).

807. *Id.* § 1651.

808. At least four federal courts of appeals have approved such an injunction in “consolidated multidistrict litigation, where a parallel state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation.” *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996) (citing *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 197 (3d Cir. 1993); *In re Baldwin-United Corp.*, 770 F.2d 328, 336 (2d Cir. 1985); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334–35 (5th Cir. 1981)); *see also, e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998) (affirming the district court’s injunction of state court proceedings where it had preliminarily approved a nationwide class settlement); *White v. Nat’l Football League*, 41 F.3d 402, 409 (8th Cir. 1994) (affirming injunction of related proceedings where district court had given final approval to a nationwide class settlement); *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 197 (3d Cir. 1993) (same).

809. *Hanlon*, 150 F.3d at 1025; *White*, 41 F.3d at 409; *Carlough*, 10 F.3d at 197; *In re Baldwin-United Corp.*, 770 F.2d 328, 336 (2d Cir. 1985); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1334–35 (5th Cir. 1981).

810. *See In re Bridgestone/Firestone Tires Prods. Liab. Litig.*, Nos. 03-1-1399 & 03-1564 (7th Cir. June 20, 2003) (once federal appellate court held nationwide class action improper, federal district courts required to enjoin members of the putative national classes and their lawyers to have nationwide classes certified over defendants opposition with respect to same claims). *See also Newby v. Enron Corp.*, 302 F.3d 295, 300 (5th Cir. 2002) (indicating *in dicta* that a district

or similar action directed toward parallel state court actions, before the federal court has certified a class or preliminarily approved a settlement, should be cautious in doing so; it is critical that the court be clear and precise in identifying the legal and factual basis for the injunction and the parties against whom the injunction operates.

## 21.2 Deciding the Certification Motion

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### 21.21 Certification Hearings and Orders

A hearing under Federal Rule of Civil Procedure 23(c) is a routine part of the certification decision. The nature and scope of the disputed issues relating to class certification bear on the kind of hearing<sup>811</sup> the judge should conduct. An evidentiary hearing may be necessary in a challenge to the factual basis for a

judge could not issue an injunction restraining a lawyer from filing related state court proceedings absent a pattern of abuse); *In re Inter-Op Hip Prosthesis Prod. Liab. Litig.*, No. 01-4039, 2001 WL 1774017, at \*2 (6th Cir. Oct. 29, 2001) (staying injunction against members of the proposed class in conditionally certified class “[b]ecause the validity of the proposed settlement is questionable”). See also *infra* section 31.32.

811. *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 676 (7th Cir. 2001) (“Before deciding whether to allow a case to proceed as a class action, therefore, a judge should make whatever factual and legal inquiries are necessary under Rule 23.”); *Marisol A. ex rel. Forbes v. Giuliani*, 126 F.3d 372, 379 (2d Cir. 1997) (affirming certification but ordering the district court to create subclasses and “[i]f necessary, . . . allow additional discovery and hold evidentiary hearings in order to determine which classifications may be appropriate”); *Morrison v. Booth*, 730 F.2d 642, 644 (11th Cir. 1984) (remanding and holding that an evidentiary hearing on class certification is required unless clear grounds for denying certification exist); cf. *In re Domestic Air Transp. Antitrust Litig.*, 137 F.R.D. 677, 682 n.4 (N.D. Ga. 1991) (holding that discretionary evidentiary hearing need not afford defendants unlimited opportunity to examine or cross-examine witnesses opposing class certification and addressing the merits).

class action.<sup>812</sup> Disputed facts material to deciding certification may be narrowed or eliminated by stipulations, requests for admission, affidavits, or declarations. The parties should submit a statement of stipulated facts and identify disputed facts relevant to Rule 23 issues using the general procedure described in section 11.47. When there is disagreement over the legal standards but not over the facts material to the certification decision, the court may rely on the parties' stipulations of fact, affidavits, declarations, and relevant documents to establish the factual record. In such a case, a hearing may be limited to argument over whether the certification requirements are met. A hearing is appropriate, even if the parties jointly move for certification of a class for settlement and for approval of the settlement class. A hearing ensures a full record, particularly if it is unclear that the certification standards are met or if there are likely to be objections to the settlement.

An evidentiary hearing to resolve disputed facts relevant to the certification decision should not be a minitrial on the merits of the class or individual claims.<sup>813</sup> Instead, the parties should present facts and arguments to let the judge determine the nature of the claims and defenses and how they will be presented at trial, whether there are common issues that can be tried on a class-wide basis, and whether those common issues predominate and class treatment is a superior method of resolving them. The judge may limit the number of witnesses, require depositions to be summarized, call for written statements of the direct evidence, and use other techniques described in section 12.5 for nonjury proceedings.<sup>814</sup>

If the parties have submitted a trial plan to aid the judge in determining whether certification standards are met, the certification hearing provides an opportunity to examine the plan and its feasibility.

Expert witnesses play a limited role in class certification hearings; some courts admit testimony on whether Rule 23 standards, such as predominance and superiority, have been met.<sup>815</sup> The judge need not decide at the certification stage whether such expert testimony satisfies standards for admissibility at

812. See *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157–60 (1982).

813. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177–78 (1974).

814. *In re Domestic Air*, 137 F.R.D. at 682 (allowing each side to use written statements of expert witnesses).

815. See, e.g., *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 134–35 (2d Cir. 2001) (affirming district court's reliance on plaintiff's expert testimony to support its decision to certify a class), *cert. denied*, 536 U.S. 917 (2002); *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197, 214–18 (E.D. Pa. 2001) (relying on an econometrics expert to show that issues relating to common impact and common damages predominate and are susceptible to class-wide proof); *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 321–26 (E.D. Mich. 2001) (using expert testimony to show a plausible method of proving class-wide damages).

trial. Courts have applied a high threshold for assessing the need for expert testimony at the certification stage.<sup>816</sup> A judge should not be drawn prematurely into a battle of competing experts.<sup>817</sup>

After the hearing, the court should enter findings of fact and conclusions of law addressing each of the applicable criteria of Rule 23. Failure to make such findings may result in reversal or remand for further proceedings after interlocutory appeal under Rule 23(f).<sup>818</sup>

Rule 23(c)(1)(B) specifies that an order certifying a class must define the class membership and identify the class claims, issues, or defenses. It also requires that the order appoint class counsel under Rule 23(g). An order certifying a Rule 23(b)(3) class must inform the members of the proposed class when and how they may elect to opt out.<sup>819</sup>

## 21.22 Type and Definition of Class

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### 21.221 Type of Class

The certification order must specify whether Rule 23(b)(1), (b)(2), or (b)(3) forms the basis for certification. Members of a Rule 23(b)(3) class are entitled to individual notice and an opportunity to opt out.<sup>820</sup> Rules 23(b)(1)

816. See, e.g., *In re Visa*, 280 F.3d at 135 (“A district court must ensure that the basis of the expert opinion is not so flawed that it would be inadmissible as a matter of law.” (citing *Cruz v. Coach Stores, Inc.*, 96 Civ. 8099, 1998 U.S. Dist. LEXIS 18051, at \*13 n.3 (S.D.N.Y. Nov. 18, 1998))); *Vickers v. Gen. Motors Corp.*, 204 F.R.D. 476, 479 (D. Kan. 2001) (same).

817. See, e.g., *In re Visa*, 280 F.3d at 135 (“[A] district court may not weigh conflicting expert evidence or engage in ‘statistical dueling’ of experts.” (citing *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 292 (2d Cir. 1999))); *In re Linerboard*, 203 F.R.D. at 217 n.13 (same); see also *In re Polypropylene Carpet Antitrust Litig.*, 996 F. Supp. 18, 30 (N.D. Ga. 1997) (noting that “the evidence relied upon . . . has not been subjected to the adjudicative process” and that class certification “should not be viewed as a prediction that Plaintiffs will ultimately prevail on the merits” (quoting *Diaz v. Hillsborough County Hosp. Auth.*, 165 F.R.D. 689, 692 (M.D. Fla. 1996))).

818. See *Consol. Edison Co. of N.Y. v. Richardson*, 233 F.3d 1376, 1384 (Fed. Cir. 2000) (remanding issue of certification because district court provided no reasons for its denial), *amended by* No. 99-1436, 2000 U.S. App. LEXIS 35446, at \*22-\*23 (Fed. Cir. Feb. 27, 2001); see also *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 149–50 (4th Cir. 2001) (vacating and remanding for determination of factual issue); *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1276 (11th Cir. 2000) (noting “a limited or insufficient record may adversely affect the appellate court’s ability to evaluate fully and fairly the class certification decision”).

819. Fed. R. Civ. P. 23(c)(2)(B).

820. *Id.*

and (b)(2) do not mandate notice or an opt-out opportunity, but amended Rule 23(c)(2)(A) recognizes a court's discretion to require notice of class certification in such cases. See section 21.311.<sup>821</sup>

A class action seeking injunctive and declaratory relief may also include a claim for monetary relief, and the judge must decide whether a class should be certified under Rule 23(b)(2) or (b)(3).<sup>822</sup> Courts have held that where money damages constitute the primary relief requested, even though injunctive relief is also sought, the class must be certified under Rule 23(b)(3) and must meet due process requirements.<sup>823</sup> In such cases, the notice and opt-out requirements of that subsection apply, even if the class also qualifies for certification under Rule 23(b)(1) or (b)(2).<sup>824</sup> On the other hand, where the damages flow directly from the equitable remedy, without the need for individual calculation, some courts have held that Rule 23(b)(2) is the only standard that must be met.<sup>825</sup> The circuits have divided on the resolution of this issue, which arises most often in employment discrimination class actions.

821. A court has discretion under Rules 23(d)(2) and (d)(5) to permit a class member to exclude itself from a Rule 23(b)(1)(B) class. *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1304–05 (2d Cir. 1990). A court is not precluded from defining a class under Rule 23(b)(1) or (b)(2) to include only those potential class members who do not opt out of the litigation. Such a definition may be appropriate in some Rule 23(b)(2) cases or in a Rule 23(b)(1)(B) case in which the class was formed merely because separate actions by class members might impede their ability to protect their interests. *See, e.g., Penson v. Terminal Transp. Co.*, 634 F.2d 989, 993 (5th Cir. 1981).

822. *Eubanks v. Billington*, 110 F.3d 87, 91–92 (D.C. Cir. 1997). The above cases deal with employment discrimination actions. Courts have similarly divided over whom to certify in proposed mass tort medical monitoring class actions, and whether under Rule 23(b)(2) or (b)(3). *See infra* section 22.74 (medical monitoring class actions).

823. *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402 (5th Cir. 1998); *see also Molski v. Gleich*, 318 F.3d 937, 947–48 (9th Cir. 2003) (holding in a case primarily seeking injunctive relief that release in settlement of claims for individual damages triggers applicability of Rule 23(b)(3) requirements of individual notice and the right to opt out); *Jefferson v. Ingersoll Int'l Inc.*, 195 F.3d 894 (7th Cir. 1999).

824. *In re Ikon Office Solutions, Inc. Sec. Litig.*, 209 F.R.D. 94, 101–02 (E.D. Pa. 2002) (certifying Rule 23(b)(1) and (b)(3) settlement classes with first-class mail notice supplemented by publication and Internet posting); *Wilson v. United Int'l Investigative Servs.* 401(k) Sav. Plan, No. CIV.A.01-CV-6126, 2002 WL 734339, at \*6–\*7 (E.D. Pa. Apr. 23, 2002) (certifying Rule 23(b)(2) and (b)(3) class with individual notice pursuant to Rule 23(c)(2)).

825. *See Allison*, 151 F.3d at 414–15, and cases cited therein. Damages would be incidental to an injunction when a statute serving as the basis for an injunction also establishes a fixed sum as damages. *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 164 (2d Cir. 2001) (holding that Rule 23(b)(2) certification is permissible if the district court finds that “the positive weight or value [to the plaintiffs] of the injunctive or declaratory relief sought is predominant even though compensatory or punitive damages are also claimed” and that “class treatment would be

## 21.222 Definition of Class

Defining the class is of critical importance because it identifies the persons (1) entitled to relief, (2) bound by a final judgment, and (3) entitled under Rule 23(c)(2) to the “best notice practicable” in a Rule 23(b)(3) action. The definition must be precise, objective, and presently ascertainable. For example, the class may consist of those persons and companies that purchased specified products or securities from the defendants during a specified period, or it may consist of all persons who sought employment or who were employed by the defendant during a fixed period.

Although the identity of individual class members need not be ascertained before class certification, the membership of the class must be ascertainable. Because individual class members must receive the best notice practicable and have an opportunity to opt out, and because individual damage claims are likely, Rule 23(b)(3) actions require a class definition that will permit identification of individual class members, while Rule 23(b)(1) or (b)(2) actions may not.<sup>826</sup> An identifiable class exists if its members can be ascertained by reference to objective criteria. The order defining the class should avoid subjective standards (e.g., a plaintiff’s state of mind) or terms that depend on resolution of the merits (e.g., persons who were discriminated against).<sup>827</sup> The order should use objective terms in defining persons to be excluded from the class, such as affiliates of the defendants, residents of particular states, persons who have filed their own actions, or members of another class.

A class may be defined to include individuals who may not become part of the class until later. Such “future claimants” are primarily a feature of those mass tort actions involving latent injury. Section 22.1 defines the three types of mass tort future claimants. Apart from mass tort cases, membership in a Rule 23(b)(3) class ordinarily should be ascertainable when the court enters judgment. There is no need to identify every individual member at the time of certification of a Rule 23(b)(2) class action for injunctive relief as long as the court can determine at any given time whether a particular individual is a

efficient and manageable” (quoting *Allison*, 151 F.3d at 430 (Dennis, J., dissenting))), *cert. denied*, 535 U.S. 951 (2002).

826. *Garrish v. United Auto., Aerospace, & Agric. Implement Workers*, 149 F. Supp. 2d 326, 331 (E.D. Mich. 2001) (finding that the plaintiff’s definition of the Rule 23(b)(3) class is “readily ascertainable by reference to objective criteria”); *see generally* 5 Moore et al., *supra* note 626, §§ 23.21[1] & 23.21[3] (discussing how a precise class definition allows courts to determine whether a particular individual is a member of the proposed class and who is entitled to notice).

827. *See, e.g., Forman v. Data Transfer, Inc.*, 164 F.R.D. 400, 403 (E.D. Pa. 1995) (“defining the purported class as ‘all residents and businesses who have received unsolicited facsimile advertisements’ requires addressing the central issue of liability” and “[d]etermining a membership in the class would essentially require a mini-hearing on the merits of each case”).

member of the class.<sup>828</sup> See section 21.24 for a discussion of issues classes certified under Rule 23(c)(4).

The court should also consider whether the class definition captures all members necessary for efficient and fair resolution of common questions of fact and law in a single proceeding. If the definition fails to include a substantial number of persons with claims similar to those of the class members, the definition of the class may be questionable. A broader class action definition or separate class might be more appropriate. If the class definition includes people with similar claims but divergent interests or positions, subclasses with separate class representatives and counsel might suffice.

The applicable substantive law and choice-of-law considerations may also affect the appropriate scope of the class.<sup>829</sup> The difficulties posed by these considerations are likely to be compounded in nationwide or multistate class action litigation raising state law claims or defenses. Differences in applicable law and the number of divergent interests may lead a court to decline to certify a class.<sup>830</sup>

The class definition should describe the operative claims, issues, or defenses, such as injury resulting from securities fraud or denial of employment on account of race.<sup>831</sup> The relevant time should be included in the class definition. The relevant time, often referred to as the “class period,” is, for example, the period during which members of the proposed class incurred the claimed injury. The order should delineate how the class representatives meet the commonality and typicality requirements of Rule 23(a).<sup>832</sup> In a Rule 23(b)(3) case, defining the class and the class claims in the order helps confirm

828. *Robertson v. Nat'l Basketball Ass'n*, 389 F. Supp. 867, 897 (S.D.N.Y. 1975).

829. A court to which cases have been transferred, through multidistrict proceedings or otherwise, is obliged to apply the choice-of-law rules of the transferor court. *Van Dusen v. Barrack*, 376 U.S. 612 (1964). Courts have applied *Van Dusen* to proceedings under the multidistrict litigation statute. See Larry Kramer, *Choice of Law in Complex Litigation*, 71 N.Y.U. L. Rev. 547, 552 n.14 (1996) (citing case law).

830. *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012 (7th Cir. 2002); *Spence v. Glock*, 227 F.3d 308, 313 (5th Cir. 2000); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 741 (5th Cir. 1996).

831. Fed. R. Civ. P. 23(c)(2)(B). A description of the claims made on behalf of or against the class will be useful if questions relating to preclusive effects arise in later litigation. See *Collins v. E.I. Dupont de Nemours & Co.*, 34 F.3d 172, 179–80 (3d Cir. 1994); cf. *Cooper v. Fed. Reserve Bank*, 467 U.S. 867, 880–81 (1984) (judgment against class in Title VII action bars only “class claims” and individual claims actually tried).

832. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147 (1982) (meritorious individual claim of employment discrimination in promotion could not serve as a basis for certifying a class claim relating to “across the board” hiring practices).

that class treatment is superior to other available methods for the fair and efficient adjudication of the controversy.<sup>833</sup>

### 21.23 Role of Subclasses

Subclasses must be created when differences in the positions of class members require separate representatives and separate counsel. Those differences may arise from a variety of sources. Subclassing sometimes represents a workable solution to differences in substantive law and for choice-of-law difficulties. For example, in tort cases class members may have different levels of exposure to the same allegedly toxic substance, allege different types and degrees of injury, or seek different relief. Class members who have been exposed to a toxic substance but have no present injury (so-called future claimants) have an interest in ensuring that they will receive adequate compensation if an injury manifests itself in the future; those whose exposure has already resulted in injury have a conflicting interest in maximizing the present recovery for the damage they have already sustained. In securities fraud cases, class members may have received different information or communications at different times, requiring the creation of subclasses.

Each class or subclass must independently satisfy all the prerequisites of Rules 23(a) and (b).<sup>834</sup> The necessity of a large number of subclasses may indicate that common questions do not predominate. The creation of a number of subclasses may result in some that are too small to satisfy the numerosity requirement, may make the case unmanageable, or, in a Rule 23(b)(3) suit, may defeat the superiority requirement. Denial of class status in such circumstances is appropriate; if conflicts and differences among class members are so sharp that a number of small subclasses result, class treatment may not be justified in the first place.

### 21.24 Role of Issues Classes

Rule 23(c)(4)(A) permits a class to be certified for specific issues or elements of claims raised in the litigation.<sup>835</sup> Selectively used, this provision

833. Fed. R. Civ. P. 23(b)(3); *see also In re Fibreboard Corp.*, 893 F.2d 706 (5th Cir. 1990); *Cimino v. Raymark Indus., Inc.*, 751 F. Supp. 649 (E.D. Tex. 1990), *vacated in part*, 151 F.3d 297 (5th Cir. 1998). *See infra* section 22.

834. Fed. R. Civ. P. 23(c)(4)(B); *see, e.g., In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 209 F.R.D. 323, 351 (S.D.N.Y. 2002).

835. *See, e.g., Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 6 F.3d 177, 184 (4th Cir. 1993) (class certified for eight common issues); *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472–73

may enable a court to achieve the economies of class action treatment for a portion of a case, the rest of which may either not qualify under Rule 23(a) or may be unmanageable as a class action.<sup>836</sup> A court may certify a Rule 23(b)(3) class for certain claims, allowing class members to opt out, while creating a non-opt-out Rule 23(b)(1) or (b)(2) class for other claims.<sup>837</sup> Certification of an issues class is appropriate only if it permits fair presentation of the claims and defenses and materially advances the disposition of the litigation as a whole.<sup>838</sup> If the resolution of an issues class leaves a large number of issues requiring individual decisions, the certification may not meet this test. In product-liability cases, there is a split of authority as to whether questions relating to product defects should be certified in an issues class.<sup>839</sup>

(5th Cir. 1986) (class action to adjudicate “state of the art” defense); *Weathers v. Peters Realty Corp.*, 499 F.2d 1197 (6th Cir. 1974) (class for injunctive relief).

836. *See, e.g., Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 84 (3d Cir. 1979) (dictum), *rev’d on other grounds*, 451 U.S. 1 (1981). This appears to have been the intention of the drafters of the clause. *See* Fed. R. Civ. P. 23(c)(4) committee note (1966 amendment). Courts have, for example, considered the propriety of post-verdict proceedings in class actions under the securities acts in which, after the jury has determined liability, individual plaintiffs could seek recovery for qualifying shares. *See Biben v. Card*, 789 F. Supp. 1001, 1003 (W.D. Mo. 1992) (bifurcating trial proceeding into liability determination phase and individual claims for damages phase); *Jaroslawicz v. Engelhard Corp.*, 724 F. Supp. 294, 302–03 (D.N.J. 1989) (“[I]t is well settled that the issue of liability may be tried separately from the damage claims of individual class members.”). If filing a claim is the only way for class members to recover individual damages, this process amounts to a “claims class,” that is, one in which liability has been determined on a class-wide basis, and individual damages are based on reviewing individual claims from class members.

837. *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 147 (2d Cir. 2001); *see also Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147 (2d Cir. 2001), *cert. denied*, 535 U.S. 951 (2002).

838. *Robinson*, 267 F.3d at 167 n.12 (“the issues covered by the request be such that their resolution (as a class matter) will materially advance a disposition of the litigation as a whole” (quoting *In re Tetracycline Cases*, 107 F.R.D. 719, 727 (W.D. Mo. 1985))). *See also MTBE*, 209 F.R.D. at 352–53.

839. *See infra* section 22.75. *Compare In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1302–03 (7th Cir. 1995) (rejecting the use of an issues class in product liability case because of individual liability issues), *and Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.21 (5th Cir. 1996) (same), *with Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (indicating that even “if the common questions do not predominate over the individual questions so that class certification of the entire action is warranted, Rule 23 authorizes the district court in appropriate cases to isolate the common issues under Rule 23(c)(4)(A) and proceed with class treatment of these particular issues”). *See also Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 976 (5th Cir. 2000) (reciting the advantages of claim-by-claim certification and remanding case for determination of whether certification of a modified class with respect to some of the claims under Rule 23(b)(2) or (b)(3) would be proper).

An issues-class approach contemplates a bifurcated trial where the common issues are tried first, followed by individual trials on questions such as proximate causation and damages. A bifurcated trial must adequately present to the jury applicable defenses and be solely a class trial on liability.<sup>840</sup> There is a split of authority on whether the Seventh Amendment is violated by asking different juries to decide separate elements of a single claim.<sup>841</sup>

Before certifying an issues class under Rule 23(d), the judge should be satisfied that common questions are sufficiently separate from other issues and that a severed trial will not infringe any party's constitutional right to a jury trial and will permit all the parties fairly to present the claims and defenses.<sup>842</sup>

## 21.25 Multiple Cases and Classes: The Effect on Certification

The broad range of venues available in class actions means that competing, conflicting, or overlapping suits are often simultaneously pending in state and federal courts. Any of the following circumstances or combinations of circumstances may exist:

- multiple cases with similar class allegations, each of which might be appropriately certified under Rule 23 but which may overlap or conflict if more than one is certified;
- cases alleging a nationwide class and cases seeking multistate or single-state class certification pending in different courts at the same time;
- cases filed as class actions in federal and state courts relating to the same type of transactions and involving some or all of the same parties;
- cases filed by the same lawyers seeking to represent an overlapping or duplicative class of plaintiffs in order to obtain the most favorable forum;
- cases filed by different lawyers competing for the fastest and most favorable rulings on class certification and appointment as class counsel;

840. *In re Rhone-Poulenc*, 51 F.3d at 1299.

841. *Compare In re Rhone-Poulenc*, 51 F.3d at 1303 (holding that the Seventh Amendment includes “a right to have jurable issues determined by the first jury impaneled to hear them”), *with Robinson*, 267 F.3d at 169 (“Trying a bifurcated claim before separate juries does not run afoul of the Seventh Amendment” as long as a single factual issue is not “tried by different, successive juries.”). *See also* Steven S. Gensler, *Bifurcation Unbound*, 75 Wash. L. Rev. 705, 736–37 (2000); Patrick Woolley, *Mass Tort Litigation and the Seventh Amendment Reexamination Clause*, 83 Iowa L. Rev. 499 (1998).

842. *See* *Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500 (1931); *Alabama v. Blue Bird Body Co.*, 573 F.2d 309, 318 (5th Cir. 1978). *See also supra* section 21.132.

- multiple individual actions or other forms of aggregate litigation pending in state and federal courts, raising the same issues and involving some or all of the same parties; or
- prior unsuccessful class certification efforts in state or federal courts.

A judge should be mindful of the various possibilities in deciding the best approach to precertification case management, in deciding whether and for what purpose to certify a class action, and in determining how to define the class. The first step is to obtain complete information from the parties about other pending or terminated actions in federal or state courts relating to the claims presented.

If all the cases are pending in federal court and have been centralized by an MDL proceeding, the transferee court can order consolidated pleadings and motions to decide how to resolve competing claims for certification, appointment of class counsel, and appointment of lead class counsel. See section 21.27. Counsel sometimes request certification of multiple classes and subclasses primarily to gain appointment to positions of leadership in the litigation. The court should attempt to distinguish such requests from competing certification motions that reflect more significant differences.

If multiple class actions or individual actions are pending at the same time in one or more federal and state courts, the certification decision requires the judge to consider the relationship among the cases. Federal class actions may encompass plaintiffs who are parties to individual cases or members of proposed class actions pending in other federal courts. If the MDL Panel has not been asked to centralize those cases, a court that has gathered information about the cases' status might discuss with counsel whether MDL status should be sought. In order to enable and facilitate essential intercourt communication and as an ongoing duty of candor to the tribunal, the court should, at an early date, call on counsel to disclose all related actions in other courts (state or federal) that may involve multiple, overlapping, or competing class allegations. Whether the related cases are pending in other federal or state courts, the federal judge asked to certify a class action that will overlap with or duplicate parallel cases should communicate with the judges handling the other proceedings and coordinate approaches to the class certification issues, including precertification discovery, motions, arguments, and proposed class definitions. See sections 20.14 and 20.31.

If each case meets the Rule 23 requirements, the judge has broad discretion in deciding which of several related cases to certify as a class action. A number of factors are relevant to this decision:

- the extent and nature of other litigation;<sup>843</sup>
- choice-of-law consequences (see section 21.23);
- whether persons who are class members under the allegations of one complaint are also included as members of other classes pleaded in other courts; and
- the existence of parallel state court actions.

If a state court class action has proceeded to certification before the federal action, there may be no need for the federal action. If the federal court finds that a certifiable class exists, it might define that class so as to exclude the members of a certified state class,<sup>844</sup> thus preventing needless conflicts between state and federal proceedings.

To the extent that these problems relate to differences in pleadings in different cases, they may be solved by ordering or allowing the filing of a consolidated complaint that amends existing complaints to add the necessary or appropriate claims and parties. A single pleading, in a single action, can then serve as the vehicle for defining the proposed class and deciding class certification.

A federal class action may include plaintiffs who are members of state classes. Because a prior resolution of the federal action may have a preclusive effect on claims pending in state courts, it is important to give adequate notice to enable individual state plaintiffs<sup>845</sup> to decide whether to opt out. Note, however, that a judgment in a federal non-opt-out Rule 23(b)(1) or (b)(2) class case has the practical effect of an injunction against the state court proceeding.<sup>846</sup> See section 21.3.

## 21.26 Appointment of the Class Representatives

The judge must appoint one or more representatives of the class and any subclass. The Private Securities Litigation Reform Act (PSLRA) requires that a class representative act independently of counsel, be familiar with the subject

843. See *Califano v. Yamasaki*, 442 U.S. 682, 703 (1979) (need to consider whether proposed nationwide class would improperly interfere with similar pending litigation in other courts).

844. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 1999 U.S. Dist. LEXIS 13228, at \*49-\*50 (E.D. Pa. Aug. 26, 1999) (conditionally certifying nationwide medical monitoring class that excludes members of certified state medical monitoring classes).

845. Due process for individual class members requires that the decision whether or not to opt out rests with the individual and not be made by a class representative or class counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1024-25 (9th Cir. 1998); see also *Conte & Newberg supra* note 739, § 16.16 at 210.

846. See *In re Fed. Skywalk Cases*, 680 F.2d 1175 (8th Cir. 1982).

matter of the complaint, and authorize initiation of the action.<sup>847</sup> In other kinds of class actions as well, courts have required that representatives be knowledgeable about the issues in the case. This does not necessarily require legal experience or expertise on the part of the representative, who is usually a layperson. No particular level of education or sophistication is required.<sup>848</sup> In all cases, the representatives must be free of conflicts and must represent the class adequately throughout the litigation. The judge must ensure that the representatives understand their responsibility to remain free of conflicts and to vigorously pursue the litigation in the interests of the class,<sup>849</sup> including subjecting themselves to discovery.

Later replacement of a class representative may become necessary if, for example, the representative's individual claim has been mooted or otherwise significantly altered. Replacement also may be appropriate if a representative has engaged in conduct inconsistent with the interests of the class or is no longer pursuing the litigation.<sup>850</sup> In such circumstances, courts generally allow class counsel time to make reasonable efforts to recruit and identify a new representative who meets the Rule 23(a) requirements. The court may permit intervention by a new representative or may simply designate that person as a representative in the order granting class certification.<sup>851</sup>

847. 15 U.S.C. § 78u-4(a)(2)(A) (2000). *See generally* *Berger v. Compaq Computer Corp.*, 257 F.3d 475 (5th Cir. 2001), *reh'g denied*, 279 F.3d 313 (2002); *see also In re Cell Pathways, Inc.*, Sec. Litig. II, 203 F.R.D. 189, 193–94 (E.D. Pa. 2001) (granting a post-PSLRA motion of a group of four businessmen to serve as lead plaintiffs indicating that they were all “sophisticated businessmen who share a substantial and compelling interest in vigorously prosecuting the claims on behalf of the class”). In a nonsecurities context, courts have commented that demanding a high degree of sophistication from class representatives is inconsistent with allegations in consumer cases that defendants' conduct targets those who are not sophisticated. *See Dienes v. McKenzie Check Advance of Wis., L.L.C.*, No. 99-C-50, 2000 U.S. Dist. LEXIS 20389, at \*20 (E.D. Wis. Dec. 11, 2000); *see also Morris v. Transouth Fin. Corp.*, 175 F.R.D. 694, 698 (M.D. Ala. 1997) (holding that an unsophisticated consumer's reliance on counsel to investigate and litigate the case does not make this plaintiff an inadequate class representative).

848. *See* cases cited *supra* note 789.

849. *See In re Storage Tech. Corp. Sec. Litig.*, 113 F.R.D. 113, 118 (D. Colo. 1986) (disqualifying named plaintiffs who failed to appear at depositions and another who appeared too passive to prosecute the case vigorously); 1 *Conte & Newberg*, *supra* note 739, § 3:22, at 409–14.

850. *See Greenfield v. U.S. Healthcare, Inc.*, 146 F.R.D. 118 (E.D. Pa. 1993).

851. *See In re Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 172 F.R.D. 271, 283 (S.D. Ohio 1997) (court named substitute new class representative without formal intervention joinder); *see also Shankroff v. Advest, Inc.*, 112 F.R.D. 190, 194 (S.D.N.Y. 1986) (sole proposed representative found inadequate, although other class certification criteria were met; plaintiff's counsel were given thirty days to propose at least one substitute representative).

Aside from the need to replace a class representative, formal intervention by class members is infrequent. Intervention is not necessary for a class member to pursue an appeal after objecting to a class settlement.<sup>852</sup> Class members in Rule 23(b)(3) actions may, however, appear by their own attorneys, subject to the court's power to adopt appropriate controls regarding the organization of counsel.

## 21.27 Appointment of Class Counsel

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Rules 23(c)(1)(B) and 23(g) recognize that the certification decision and order require judicial appointment of counsel for the class and any subclasses. This section deals with that process. Sections 21.7 and 14 discuss the procedures for reviewing and awarding attorney fees for class counsel.

Unlike other civil litigation, many class action suits do not involve a client who chooses a lawyer, negotiates the terms of the engagement, and monitors the lawyer's performance. Those tasks, by default, fall to the judge, who creates the class by certifying it and must supervise those who conduct the litigation on behalf of the class. The judge must ensure that the lawyer seeking appointment as class counsel will fairly and adequately represent the interests of the class.<sup>853</sup> If the certification decision includes the creation of subclasses reflecting divergent interests among class members, each subclass must have separate counsel to represent its interests.<sup>854</sup>

### 21.271 Criteria for Appointment

Rule 23(g) sets out the criteria and procedures for appointment of class counsel. In every case, the judge must inquire into the work counsel has done in investigating and identifying the particular case; counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; counsel's knowledge of the applicable law; the resources counsel will commit to representing the class; and any other factors that bear on the attorney's ability to represent the class fairly and adequately. This last category may include the ability to coordinate the litigation with other state and federal

852. *Devlin v. Scardelletti*, 536 U.S. 1, 14 (2002) (holding that “nonnamed class members . . . who have objected in a timely manner to approval of the settlement at the fairness hearing have the power to bring an appeal without first intervening”).

853. Fed. R. Civ. P. 23(g)(1)(B).

854. Fed. R. Civ. P. 23(g)(1)(A) committee note.

class and individual actions involving the same subject matter. Those seeking appointment as class counsel must identify related litigation in which they are participating. It is important for the judge to ensure that counsel does not have a conflict with class interests.<sup>855</sup>

In many cases, the lawyers who filed the suit will be the obvious or only choice to be appointed counsel for the class. In such cases, the judge's task is to determine whether the applicant is able to provide adequate representation for the class in light of the Rule 23(g)(1)(C) factors.

The judge must choose the class counsel when more than one class action has been filed and consolidated or centralized, or more than one lawyer seeks the appointment. The term “appoint” here means to “select” as well as to “designate” the lawyer as class counsel. If there are multiple applicants, the court's task is to select the applicant best able to represent the interests of the class. No single factor is dispositive in evaluating prospective class counsel. In addition to those listed above, relevant considerations might include

- involvement in parallel cases in other courts;
- any existing attorney–client relationship with a named party; and
- fee and expense arrangements that may accompany the proposed appointment.

### 21.272 Approaches to Selecting Counsel

There are several methods for selecting among competing applicants. By far the most common is the so-called “private ordering” approach: The lawyers agree who should be lead class counsel and the court approves the selection after a review to ensure that the counsel selected is adequate to represent the class interests.<sup>856</sup> Counsel may agree to designate a particular lead class counsel in exchange for commitments to share the legal work and fees. To guard against overstaffing and unnecessary fees,<sup>857</sup> the court should order the attorneys to produce for court examination any agreements they have made relating to fees or costs.<sup>858</sup> See section 21.631.

855. For an overview of possible conflicts of interest and other abuses (such as the “reverse auction” settlement in which defendant seeks to settle with counsel willing to accept the lowest offer), see sources cited *supra* note 737 and see *infra* sections 21.611–21.612.

856. See Third Circuit Task Force Report on Selection of Class Counsel, 74 Temp. L. Rev. 689, 693–94 (2001) [hereinafter Third Circuit 2001 Task Force Report]; see generally *supra* section 14.

857. See, e.g., *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48 (E.D. Pa. 1983), *modified*, 751 F.2d 562 (3d Cir. 1984).

858. See Fed. R. Civ. P. 23(h) committee note; see also Fed. R. Civ. P. 23(e)(2) (settlement approval); Fed. R. Civ. P. 54(d)(2)(B) (attorney fees motions).

In the “selection from competing counsel” approach, the judge selects from counsel who have filed actions, are unable to agree on a lead class counsel, and are competing for appointment. The lawyer best able to represent the class’s interests may emerge from an examination of the factors listed in Rule 23(g)(1)(C), as well as other factors, such as those delineated above.

A third and relatively novel approach, competitive bidding, entails inviting applicants for appointment as class counsel to submit competing bids. The fees to be awarded are one of the many factors in the selection.<sup>859</sup> Rules 23(g)(1)(iii) and 23(g)(2)(C) expressly permit the court to consider fee arrangements in appointing counsel. Some judges propose a fee structure as a framework for comparing bids for different percentages at different levels of recovery.<sup>860</sup>

Judges in antitrust and securities class actions have used competitive bidding to select counsel and to establish in advance a rate or formula for calculating attorney fees. Studies suggest that bidding may be more appropriate when

- prospective damages are relatively high;
- the chances of success are relatively predictable;
- prefiling investigative work was conducted by governmental agencies or others, so that the lawyers’ foundational work is minimal; and
- the bidding process does not directly conflict with statutory or policy goals.

Bidding remains an experimental approach to selecting counsel and establishing presumptive fee levels.<sup>861</sup>

859. See Third Circuit 2001 Task Force Report, *supra* note 856, at 715–22; Laural L. Hooper & Marie Leary, Auctioning the Role of Class Counsel in Class Action Cases: A Descriptive Study (Federal Judicial Center Aug. 29, 2001), *reprinted in* 209 F.R.D. 519 (2002); see also *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71 (S.D.N.Y. 2000); *In re Amino Acid Lysine Antitrust Litig.*, 918 F. Supp. 1190 (N.D. Ill. 1996); *In re Wells Fargo Sec. Litig.*, 156 F.R.D. 223 (N.D. Cal.), *later proceedings at* 157 F.R.D. 467 (N.D. Cal. 1994); *In re Oracle Sec. Litig.*, 131 F.R.D. 688 (N.D. Cal.), *later proceedings at* 132 F.R.D. 538 (N.D. Cal. 1990), *and* 136 F.R.D. 639 (N.D. Cal. 1991); *supra* section 10.224. See generally Alan Hirsch & Diane Sheehy, Awarding Attorneys’ Fees and Managing Fee Litigation 99–101 (Federal Judicial Center 1994); Steven A. Burns, Note, *Setting Class Action Attorneys’ Fees: Reform Efforts Raise Ethical Concerns*, 6 Geo. J. Legal Ethics 1161 (1993).

860. For examples of fee structures that were used in the bidding cases, see Hooper & Leary, *supra* note 859, at 34–45, *reprinted in* 209 F.R.D. at 561–73 (documenting key features of the various bidding approaches used in all twelve bidding cases identified in this descriptive study).

861. See generally Hooper & Leary, *supra* note 859; Third Circuit 2001 Task Force Report, *supra* note 856.

Cases in which liability is relatively clear and the amount of damages relatively predictable may be particularly good candidates for *ex ante* fee setting. Even if there is no court-ordered competition, a court may consider asking counsel to submit fee proposals to help analyze which application is best able to represent the class. In any case in which the judge does not appoint as class counsel the attorneys who investigated and filed the case, those attorneys may be entitled to compensation based on work performed. See section 14.12.

The Private Securities Litigation Reform Act of 1995 mandates an “empowered-plaintiff” approach to appointment of counsel in securities class actions.<sup>862</sup> This statute-based model provides that “[t]he most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.”<sup>863</sup> Section 31.3 provides a useful analogy for similar class actions brought by sophisticated plaintiffs with large losses or sizeable claims.

The order that appoints counsel might specify some of the criteria the judge expects to use in determining a fee award. The order can include provisions that will affect the fees *ex ante*<sup>864</sup> as part of the appointment process, even in jurisdictions that require a searching and detailed *ex post* review of the fee award at the end of the case. For example, the court can clarify whether it will use the percentage or lodestar method or a combination of the two in calculating fees. The judge can also specify terms that may reduce duplicative work, unnecessary hours, and unnecessary costs, such as agreements on the numbers of lawyers who may appear at depositions or agreements on the types of permissible expenses. See section 14.211. With the percentage-of-fund method for calculating attorney fee awards, such detailed limitations are less important since the maximum fee award is fixed at a reasonable percentage of the class recovery, no matter how many lawyers work to produce it. Even under a percentage-of-fund approach, however, consider controlling litigation

862. Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended at 15 U.S.C. §§ 77z-1, 78u-4 to 78u-5 (2000)). For a discussion of the underpinnings of the empowered plaintiff model, see generally Elliott J. Weiss & John S. Beckerman, *Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions*, 104 Yale L.J. 2053 (1995).

863. 15 U.S.C. §§ 77z-1(a)(3)(B)(v), 78u-4(a)(3)(B)(v) (2000).

864. At least one court of appeals has expressed a preference for establishing the terms of appointment *ex ante*. See *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718–19 (7th Cir. 2001) (“The best time to determine [a market] rate is the beginning of the case, not the end . . .”). Another court of appeals has ruled that *ex ante* consideration of the terms of appointing counsel is not a substitute for *ex post* review of fees that were calculated using a formula established at the outset of the litigation. *In re Cendant Corp. Prides Litig.*, 243 F.3d 722, 736–37 (3d Cir. 2001).

expenses that would ordinarily be deducted from the award to the class before fees are calculated. Many courts use the lodestar method as a cross-check on the reasonableness of the fee awarded under a percentage-of-fund approach. See section 14.122.

If no applicant would provide adequate representation, the judge may refuse to certify the class. If the class appears otherwise certifiable, however, refusal to certify solely on a finding of inadequate representation is very problematic. One alternative is to allow a reasonable time period for other attorneys to seek appointment.

### 21.273 Procedures for Appointment

If only one lawyer seeks appointment as class counsel, or if the parties agree who should be class counsel or lead class counsel, the application is generally submitted as part of the certification motion. If competing applications are likely, a reasonable period after commencement of the action should be allowed for attorneys to file class counsel applications. Competing applications are likely where more than one class action has been filed or other attorneys have filed individual actions on behalf of members of the proposed class. To facilitate comparison among applications, consider ordering applicants to follow a common format designed to elicit information about the court's appointment criterion. Any order of appointment should include a statement of the reasons for the appointment. Section 10.2 considers appointment of liaison counsel and committees of counsel in complex class action cases or cases resulting from the consolidation of different classes or subclasses.

## 21.28 Interlocutory Appeals of Certification Decisions

Rule 23(f) provides that a court of appeals may permit parties to appeal a district court order granting or denying class certification if application to the court of appeals is made within ten days after entry of the order. An appeal does not stay proceedings in the district court unless the district judge or court of appeals so orders. Whether to grant an interlocutory appeal lies within the discretion of the court of appeals. The reported opinions produce a rough consensus<sup>865</sup> that interlocutory review should not be granted unless one or

865. See Prado-Steiman *ex rel.* Prado v. Bush, 221 F.3d 1266 (11th Cir. 2000); Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288 (1st Cir. 2000); Blair v. Equifax Check Servs., Inc., 181 F.3d 832 (7th Cir. 1999); *but cf.* Isaacs v. Sprint Corp., 261 F.3d 679 (7th Cir. 2001). Other courts, however, have indicated a more expansive standard for granting interlocutory appeals. See, e.g., Isaacs, 261 F.3d at 681 (expressing doubt that creating an exhaustive list of factors to

more of the following factors are evident: (1) the certification order represents the death knell of the litigation for either the plaintiffs (who may not be able to proceed without certification) or defendant (who may be compelled to settle after certification); (2) the certification decision shows a substantial weakness, amounting to an abuse of discretion; or (3) an interlocutory appeal will resolve an unsettled legal issue that is central to the case and intrinsically important to other cases but is otherwise likely to escape review.<sup>866</sup>

Rule 23(f) differs from other interlocutory review provisions in that it does not call for the district judge to recommend whether the appellate court accept the interlocutory appeal. Rule 23(f) also does not automatically impose a stay, either during the pendency of the petition or during any appeal that the court of appeals permits.<sup>867</sup> A party seeking a stay should file an application in the trial court in the first instance.<sup>868</sup> Interlocutory appeals can disrupt and delay the litigation without necessarily changing the outcome of what are often familiar and almost routine issues.<sup>869</sup> Granting a stay depends, in the language of one early decision applying the amended rule, on “a demonstration that the probability of error in the class certification decision is high enough that the costs of pressing ahead in the district court exceed the cost of waiting.”<sup>870</sup> In deciding whether to enter a stay, the effect of the certification decision on the statute of limitations is a consideration.<sup>871</sup> A stay of an order denying certifica-

consider in deciding whether to allow an interlocutory appeal would be desirable); *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 165 (3d Cir. 2001) (an “erroneous ruling” by the trial court or “any consideration that the court of appeals finds persuasive” justifies granting an interlocutory appeal (quoting Fed. R. Civ. P. 23(f) committee note (1998 amendment))).

866. *Prado-Steiman*, 221 F.3d at 1274–75. The court also indicated that the pretrial posture of the case, the state of the record, and future events, such as an impending settlement or bankruptcy, could have a substantial impact on the decision of whether to allow an interlocutory appeal. *Id.* at 1276.

867. Fed. R. Civ. P. 23(f) committee note (“Permission to appeal does not stay trial court proceedings.”).

868. *Newton*, 259 F.3d at 165.

869. Fed. R. Civ. P. 23(f) committee note (referring to FJC Empirical Study of Class Actions, *supra* note 769); *see also In re Sumitomo Copper Litig.*, 262 F.3d 134, 140 (2d Cir. 2001) (noting that “parties should not view Rule 23(f) as a vehicle to delay proceedings in the district court”); *Newton*, 259 F.3d at 165; *Prado-Steiman*, 221 F.3d at 1272 (citing Fed. R. Civ. P. 23(f) committee note).

870. *Blair*, 181 F.3d at 835 (noting that “Rule 23(f) is drafted to avoid delay”); *see also In re Sumitomo*, 262 F.3d at 140 (holding that “a stay will not issue unless the likelihood of error on the part of the district court tips the balance of hardships in favor of the party seeking the stay”).

871. *See Nat’l Asbestos Workers Med. Fund v. Philip Morris, Inc.*, No. 98 CV 1492, 2000 U.S. Dist. LEXIS 13910 (E.D.N.Y. Sept. 26, 2000); *see also In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, 1994 WL 114580, at \*4, \*7 (N.D. Ala. Apr. 1, 1994) (extending

tion may continue to toll the statute of limitations and thereby discourage the filing of individual cases that might otherwise follow denial of class certification, particularly where the stakes for an individual are large enough to support litigation.<sup>872</sup> In general, a court considering whether to grant a stay pending interlocutory appeal should consider possible prejudice to the parties that may arise from delaying the proceedings. If the appeal is from a grant of certification, the district court should ordinarily stay the dissemination of class notice to avoid the confusion and the substantial expense of renotification that may result from appellate reversal or modification after notice dissemination.<sup>873</sup> The ten-day rule for filing appeals is applied strictly.<sup>874</sup>

## 21.3 Postcertification Communications with Class Members

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Communication by the court and counsel with the class is a major concern in the management of class actions. It is important to develop appropriate means for providing information to, and obtaining information from, class

indefinitely the time for opting out of a provisionally certified class action and stating that the pendency of that action would toll the statute of limitations for members of that class). Ordinarily, the tolling effect of a proposed class action ceases when a court denies class certification. *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1378 (11th Cir. 1998).

872. *Nat'l Asbestos Workers*, 2000 U.S. Dist. LEXIS 13910, at \*8. See also *Armstrong*, 138 F.3d at 1380, 1389–90 (a pre-Rule 23(f) decision in which appellants did not seek to certify an interlocutory appeal under 28 U.S.C. § 1292(b); stating test for tolling as whether it is reasonable for members of the proposed class to rely on the possibility of reconsideration, or reversal through an interlocutory appeal, and holding that it was not reasonable in that case).

873. See *Ramirez v. DeCoster*, 203 F.R.D. 30, 40 (D. Me. 2001) (ordering a fairness hearing if no Rule 23(f) appeal filed, staying proceedings if appeal filed).

874. See, e.g., *Richardson Elecs., Ltd. v. Panache Broad. of Pa., Inc.*, 202 F.3d 957, 958–59 (7th Cir. 2000) (denying inexcusably late Rule 23(f) petition to appeal and rebuffing attempt to treat such a petition as an interlocutory appeal under 28 U.S.C. § 1292(b)); *Gary v. Sheahan*, 188 F.3d 891, 893 (7th Cir. 1999) (ruling that to extend the ten-day rule, a motion for reconsideration must be filed within ten days of the certification decision).

members, and for handling inquiries from potential or actual class members. It is equally necessary to avoid communications that might interfere with or burden the litigation. Rule 23(c)(2) provides significant guidance on the form and content of notices to the class. A committee note to that rule urges courts to “work unremittingly at the difficult task of communicating with class members” in plain language.<sup>875</sup>

## 21.31 Notices from the Court to the Class

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.312 Settlement Notice 293

.313 Other Court Notices 296

Notice to class members is required in three circumstances: (1) when a Rule 23(b)(3) class is certified; (2) when the parties propose a settlement or voluntary dismissal that would be binding on the class; and (3) when an attorney or party makes a claim for an attorney fee award. Rule 23(c)(2)(A) expressly grants the court discretion to require certification notice in Rule 23(b)(1) and (b)(2) classes in appropriate circumstances. Notice of settlement is required in all class actions. Rule 23(h)(1) requires that the court direct notice to the class members “in a reasonable manner” when an attorney or party files a motion for an award of attorney fees.<sup>876</sup> A judge who simultaneously certifies a class action and preliminarily approves a class-wide settlement (see section 21.612) typically combines notice of certification with notice of settlement and ordinarily includes notice of an application for an award of attorney fees. A case that is certified as a class action and has notice issue at that point, then settles at a later date (see section 21.611) requires a separate notice of the settlement.

Notice is a critical part of class action practice. It provides the structural assurance of fairness that permits representative parties to bind absent class members.<sup>877</sup> In a Rule 23(b)(3) class, notice conveys the information absent class members need to decide whether to opt out and the opportunity to do so. In all class actions, notice provides an opportunity for class members to participate in the litigation, to monitor the performance of class representatives and class counsel, and to ensure that the predictions of adequate representation made at the time of certification are fulfilled. Proper notice also

875. Fed. R. Civ. P. 23(c)(2)(B) committee note.

876. Fed. R. Civ. P. 23(h)(1).

877. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997).

lessens the vulnerability of the final judgment to collateral attack by class members.<sup>878</sup>

Rule 23(c)(2)(B) specifies information that must be included in a notice, such as the nature of the action, the definition of the class, and the claims, issues, and defenses to be litigated. The rule requires that notices state essential terms “concisely and clearly . . . in plain, easily understood language.” In addition, the court can require notice to be given when needed for the protection of class members or for the fair conduct of the action.<sup>879</sup> Notice generally is given in the name of the court, although one of the parties typically prepares and distributes it.

The Federal Judicial Center has produced illustrative forms of notice that combine notice of class certification and settlement in two types of class actions: a securities case and a products liability case in which both monetary damages and medical monitoring are provided. These forms can be adapted to specific cases. The Center has also drafted a form illustrating certification notice in an employment discrimination case. The form notices can be downloaded from the Center’s Web site.<sup>880</sup>

Published notice should be designed to catch the attention of the class members to whom it applies. In many cases, a one-page summary of the salient points is useful, leaving fuller explanation for a separate document. Headlines and formatting should draw the reader’s attention to key features of the notice. A short, informative blurb (“If you were exposed to \_\_\_\_, you may have a claim in a proposed class action settlement”) on the outside of a mailing envelope serves a similar purpose.

Question-and-answer formats help to make information accessible and can guide the reader through each step of a complicated certification or settlement explanation. Counsel should logically order the information that will assist the class member in making important decisions, such as whether to opt out of the class, object to a settlement, or file a claim. Counsel should discuss with the court whether class members are likely to require notice in a language other than English or delivery by a means other than mail. Lists of class members usually provide the best source of information for deciding how to deliver notice. In some cases, the cohesiveness of a class (for example, employees of a single plant) or the existence of a common gathering place (for

878. See 7B Wright et al., *supra* note 738, §§ 1789, 1793.

879. Fed. R. Civ. P. 23(d).

880. The FJC has tested the form notices for comprehension and identified some principles that will be of value to those drafting such notices. Forms and discussion of plain language drafting principles are on the Center’s Web page at <http://www.fjc.gov> (last visited Nov. 10, 2003).

example, shelters or food kitchens for a case involving the homeless) may suggest reliable and efficient ways to communicate notice.<sup>881</sup>

### 21.311 Certification Notice

Rule 23(c)(2)(A) and Rule 23(d) authorize the court to direct notice that a case has been certified as a Rule 23(b)(1) or (b)(2) class action. The court must provide notice for Rule 23(b)(3) classes. Notice in Rule 23(b)(1) and (b)(2) actions is within the district judge's discretion. Rule 23(c)(2)(A) recognizes the court's authority to direct "appropriate" notice in Rule 23(b)(1) and (b)(2) class actions, but contemplates different and more flexible standards for those cases than for Rule 23(b)(3) actions. Notice to members of classes certified under Rule 23(b)(1) or (b)(2) serves limited but important interests, such as monitoring the conduct of the action. This more flexible role of notice recognizes that in some cases, such as public interest organizations' civil rights class action suits, the costs of a wide-reaching notice might prove crippling and the benefits may be relatively small.

A court must decide whether and how to provide notice in Rule 23(b)(1) and (b)(2) actions. It may be preferable in some cases to forego ordering notice if there is a risk that notice costs could outweigh the benefits of notice, deterring the pursuit of class relief. If notice is appropriate, it need not be individual notice because, unlike a Rule 23(b)(3) class, there is no right to request exclusion from Rule 23(b)(1) and (b)(2) classes.

*Who is to receive notice and how is notice to be delivered?* Individual members in a Rule 23(b)(3) action have a right to opt out of the class proceedings. Rule 23(c)(2)(B) requires that individual notice in 23(b)(3) actions be given to class members who can be identified through reasonable effort. Those who cannot be readily identified must be given "the best notice practicable under the circumstances."<sup>882</sup> When the names and addresses of most class members are known, notice by mail<sup>883</sup> usually is preferred.

881. For a description of a case involving communication of notice on a worldwide basis to disparate groups, see *In re Holocaust Victims Assets Litigation*, 105 F. Supp. 2d 139, 144 (E.D.N.Y. 2000) ("Swiss Banks" litigation). Under the notice plan approved by the court, notice went to forty-eight countries under a "multi-faceted notice plan, involving, in addition to direct mail utilizing existing lists covering segments of the settlement classes, worldwide publication, public relations (i.e., 'earned media'), Internet and grass roots community outreach." *Id.*

882. Fed. R. Civ. P. 23(c)(2)(B); *In re Holocaust Victims*, 105 F. Supp. 2d at 144. Historically, due process has not required actual notice to parties who cannot reasonably be identified. See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313–19 (1950); *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994); *but see Amchem*, 521 U.S. at 595. See also *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 327 n.11 (3d Cir. 2001) (listing recommended practices for expanding the pool of names of class members for actual notice); *In re Holocaust Victims*, 105 F.

Posting notices on dedicated Internet sites, likely to be visited by class members and linked to more detailed certification information, is a useful supplement to individual notice, might be provided at a relatively low cost, and will become increasingly useful as the percentage of the population that regularly relies on the Internet for information increases. An advantage of Internet notice is that follow-up information can easily be added, and lists can be created to notify class members of changes that may occur during the litigation. Similarly, referring class members to an Internet site for further information can provide complete access to a wide range of information about a class settlement.<sup>884</sup> Many courts include the Internet as a component of class certification and class settlement notice programs.

Publication in magazines, newspapers, or trade journals may be necessary if individual class members are not identifiable after reasonable effort or as a supplement to other notice efforts. For example, if no records were kept of sales of an allegedly defective product from retailers to consumers, publication notice may be necessary. Financial and legal journals or financial sections of broad circulation newspapers, while useful to a degree, might not be read by many members of the general public. Such publications may, however, be useful in certain kinds of cases, such as securities fraud suits. Determination of whether a given notification is reasonable under the circumstances of the case is discretionary. The sufficiency of the effort made might become an issue if the preclusive effect of the class action judgment is later challenged. Section 21.22–21.23 discusses class certification under Rule 23(b)(3) in conjunction with Rule 23(b)(2).

*When should notice be given?* Ordinarily, notice to class members should be given promptly after the certification order is issued. When the parties are nearing settlement, however, a reasonable delay in notice might increase incentives to settle and avoid the need for separate class notices of certification and settlement. Delaying notice of certification until after settlement apparently is a common practice in such cases.<sup>885</sup>

Notice to the added class members is required if the certification order is amended to expand the class definition. If the certification order is amended to

Supp. 2d at 144–45; *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000).

883. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 356 n.22 (1978), speaks favorably of the use of mail, without specifying the class of mail.

884. See, for example, the notice and forms published on a Web site created for the diet drugs class action settlement in *In re Diet Drugs Products Liability Litigation*. The site can be visited at <http://www.settlementdietdrugs.com/dhome.php3#forms> (last visited Nov. 10, 2003).

885. FJC Empirical Study of Class Actions, *supra* note 769, at 62.

eliminate previously included class members, consider whether notice is necessary to inform affected individuals who might have relied on the class action to protect their rights. If repetitive notice and frequent orders affect class interests, ordering the parties to use the Internet—especially a specific Web site dedicated to the litigation—may be a particularly cost-effective means to provide current information in a rapidly evolving situation.

*What must the notice include?* If a class is certified and settled simultaneously, a single notice is generally used. Rule 23(c)(2)(B) requires that a class certification notice advise class members of the following:

- the nature of the action;
- the definition of the class and any subclasses;
- the claims, issues, and defenses for which the class has been certified;
- the right of a potential class member to be excluded or to opt out from the class;
- the right of a class member to enter an appearance by counsel; and
- the binding effect of a class judgment.

In Rule 23(b)(3) actions, the notice also must describe when and how a class member may opt out of the class.

Sufficient information about the case should be provided to enable class members to make an informed decision about their participation. The notice should

- describe succinctly the positions of the parties;
- identify the opposing parties, class representatives, and counsel;
- describe the relief sought; and
- explain any risks and benefits of retaining class membership and opting out, while emphasizing that the court has not ruled on the merits of any claims or defenses.

A simple and clear form for opting out is often included with the notice. If the certification notice is combined with a settlement notice, it should identify specific benefits for class or subclass members (or a formula for calculating such benefits), the choices available to class members, and any other information a class member reasonably would need to make an informed judgment about whether to remain in the class.<sup>886</sup> In a combined notice of certification and settlement, the opt-out form should be distinguished from a claims form

<sup>886</sup> Ravens v. Iftikar, 174 F.R.D. 651, 655 (N.D. Cal. 1997) (citing *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104–05 (5th Cir. 1977)).

or a notice of appearance. Color coding or similar approaches may be appropriate.

Notice may be published in more than one language if appropriate to the demographics of the class.<sup>887</sup> The Federal Judicial Center's illustrative notices offer guidance in meeting the plain language requirement.<sup>888</sup>

*Who pays for the notice?* In a Rule 23(b)(3) class, the parties seeking class certification must initially bear the cost of preparing and distributing the certification notice,<sup>889</sup> including the expense of identifying the class members.<sup>890</sup> Individual class representatives, however, are responsible only for their pro rata share of notice costs (and other class action costs).<sup>891</sup> Class counsel may properly advance such costs with repayment contingent on recovery.<sup>892</sup> Class counsel should keep accurate and complete records of the steps taken to provide notice. Those records will be useful for assessing costs and for responding to any post-judgment attacks on the adequacy of notice.

There is no clear rule regarding who should pay the initial cost of preparing and distributing certification notice when it is ordered in Rule 23(b)(1) and (b)(2) actions. Some judges have required class representatives to pay this cost.<sup>893</sup> Others have required the defendant to bear these costs, particularly

887. See, e.g., *Montelongo v. Meese*, 803 F.2d 1341, 1352 (5th Cir. 1986) (finding notice with English and Spanish language mailings, announcements on Spanish radio, and notice in Spanish newspapers to be sufficient); *S.F. NAACP v. S.F. Unified Sch. Dist.*, No. C-78-1445, 2001 WL 1922333, at \*4 (N.D. Cal. Oct. 24, 2001) (finding notice requirements met because of publication and postings in English, Chinese, and Spanish); *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) (reporting “notice was provided via television, radio, and newspaper advertising in the United States and Mexico”).

888. See the Center's Web page at <http://www.fjc.gov> (last visited Nov. 10, 2003).

889. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177–79 (1974) (interpreting Rule 23).

890. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 356 (1978).

891. *Rand v. Monsanto Co.*, 926 F.2d 596, 601 (7th Cir. 1991) (holding that “a district court may not establish a per se rule that the representative plaintiff must be willing to bear all (as opposed to a pro rata share) of the costs of the action”).

892. Model Rules of Prof'l Conduct R. 1.8(e)(1) (2002).

893. *Coalition for Econ. Equity v. Wilson*, No. C 96-4024, 1996 WL 788376, at \*4 (N.D. Cal. Dec. 16, 1996); *Lynch Corp. v. MII Liquidating Co.*, 82 F.R.D. 478, 483 (D.S.D. 1979).

when the defendant requested the notice<sup>894</sup> or where notice follows a finding of liability and the granting of injunctive relief.<sup>895</sup>

In Rule 23(b)(3) class actions, determining how and to whom notice should be delivered can be controversial. The mode and extent of notice implicates issues of cost and fairness to the parties and class members, and raises the potential for prejudice to one side or the other. In securities cases, for example, brokers or financial institutions might hold the shares of many class members, but giving notice to these agents for class members alone may not always suffice to give notice to the class members.<sup>896</sup> In that case, however, the class representatives usually are able to make arrangements with the nominees to forward the notices to class members, or at least to provide a list of the names and addresses of the beneficial owners. If the nominees are not willing to do so and are not parties to the litigation, the court can issue a subpoena *duces tecum* directing them to produce the records from which the class representatives can compile a mailing list. If the litigation eventually is terminated favorably to the class, the representatives might be entitled to reimbursement for these expenses, either from the entire fund recovered for the class, from that part of the fund recovered on behalf of security holders whose shares were held by brokers, or perhaps from the defendants.<sup>897</sup>

Similar problems may arise in consumer class actions on behalf of individual purchasers of goods or services. Sales records might be lost, incomplete, or unreliable, making identification and notification of individual class members difficult. A program to publish notice is especially useful in such cases. The

894. See generally 7B Wright et al., *supra* note 738, § 1788; see also *S. Ute Indian Tribe v. Amoco Prod. Co.*, 2 F.3d 1023, 1030 (10th Cir. 1993) (observing that one of two issues certified would only benefit a class of defendants and reversing an order that plaintiffs pay a portion of the costs that representative defendant had previously incurred in compiling a list of defendants).

895. See *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1236–37 (9th Cir. 1999) (upholding notice of preliminary injunction based in part on finding that notice would not impose a burden on defendant).

896. Compare *Silber v. Mabon*, 18 F.3d 1449, 1454, n.3 (9th Cir. 1994) (approving method of notice where brokerage house forwards notice to shareholders and affirming that class member's notice was sufficient even though not actually received until after the opt-out period expired), and *In re Victor Tech. Sec. Litig.*, 792 F.2d 862, 866 (9th Cir. 1986) (affirming order requiring plaintiffs to pay, in advance, record owners for costs related to forwarding notice to shareholders), with *Blum v. BankAtlantic Fin. Corp.*, 925 F.2d 1357, 1362, n.10 (11th Cir. 1991) (noting that evidence of industry practice of record owners not forwarding notice may "sustain a Rule 23(c)(2) challenge" but appellants presented no current evidence of this practice).

897. See *Zuckerman v. Smart Choice Auto. Group, Inc.*, No. 6:99-CV-237, 2001 WL 686879, at \*2 (M.D. Fla. May 3, 2001).

published notice should give class members access to more detailed and ongoing information by providing telephone numbers and Internet addresses.

Individual notice generally is preferable. If individual names or addresses cannot be obtained through reasonable efforts, the court must, with counsel's assistance, determine how to provide the best notice practicable under the circumstances. Alternative techniques for providing notice include

- publication notice;<sup>898</sup>
- Internet notice;<sup>899</sup> and
- posting notice in public places likely to be frequented by class members.<sup>900</sup>

Plaintiffs may propose distributing notice with a defendant company's routine mailings when, for example, the class members consist of, or overlap with, shareholders, credit card holders, customers, or employees.<sup>901</sup> Defendant may object that requiring it to use its own mailings to announce the certification of

898. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 327 (3d Cir. 1998) (notice published in newspapers in all fifty states and the District of Columbia); *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 475 (E.D. Pa. 2000) (notice published one time in national newspaper); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at \*35 (E.D. Pa. Aug. 28, 2000) (notice published in largest newspapers across the country including those that targeted the Hispanic market).

899. *Fry*, 198 F.R.D. at 475 (Internet notice published on news Web site); *In re Diet Drugs*, 2000 WL 1222042, at \*35 (Web site provided detailed notice package to class members who registered); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 144 (E.D.N.Y. 2000) (extensive notice package was "successfully implemented," which included world-wide publication, press coverage, extensive community outreach, direct mail to 1.4 million people in forty-eight countries, and Internet notice).

900. *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 549 (N.D. Ga. 1992) (notice posters sent to "approximately 36,000 travel agencies in the United States"); *cf. In re Ariz. Dairy Prods. Litig.*, No. Civ. 74-569A, 1975 WL 966, at \*1 (D. Ariz. Oct. 7, 1975) (notice printed on milk cartons).

901. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 356 n.22 (1978) (noting that "a number of courts have required defendants in Rule 23(b)(3) class actions to enclose class notices in their own periodic mailings to class members in order to reduce the expense of sending the notice"); *In re Nasdaq Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515 n.19 (S.D.N.Y. 1996) (requiring notice sent to subclass be inserted in defendants' mailings); *Kan. Hosp. Ass'n v. Whiteman*, 167 F.R.D. 144, 145-46 (D. Kan. 1996) (requiring defendants to insert notice of the "proposed disposition" of case into monthly mailings); *Sollenbarger v. Mountain States Tel. & Tel. Co.*, 121 F.R.D. 417, 437 (D.N.M. 1988) (allowing plaintiffs to provide individual notice to class members by enclosing an insert in defendant's monthly billing statements to current customers).

a class against it may be prejudicial<sup>902</sup> and may even deprive it of First Amendment rights.<sup>903</sup> It is important to balance any efficiencies that might be gained by this approach against the burden such mailings can impose. Before requiring a defendant to use its own mailings to provide certification notice, the court should require class counsel to show the absence of feasible alternatives.

### 21.312 Settlement Notice

Rule 23(e)(1)(B) requires the court to “direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise” regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3). Certification and settlement notices are subject to many of the same considerations.<sup>904</sup>

*When is a settlement notice required?* Rule 23(e) requires notice of a settlement only if it would bind the class. If individual members settle individual claims before class certification, notice to the class is not required even if the class claims have been dismissed without prejudice or withdrawn. When a proposed class has not been certified, however, special circumstances might lead a court to impose terms to prevent abuse of the class action procedure. Section 21.61 discusses potential abuses, especially the filing and voluntary dismissal of class allegations for strategic purposes; section 21.62 discusses criteria for reviewing proposed settlements, especially when named plaintiffs receive relief that is disproportionately large. The judge might also require notice directed to the absent members of the proposed class under Rule 23(d)(2).<sup>905</sup> However, requiring such notice is unusual. The court should

902. *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 757 (3d Cir. 1974) (en banc) (noting that credit card customers might refuse to pay their regular bills as a result of a notice including information about statutory damages).

903. *See Pac. Gas & Elec. Co. v. Public Util. Comm’n*, 475 U.S. 1 (1986) (plurality opinion in nonclass action context).

904. *See supra* note 880. *See, e.g., In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977).

905. The cases cited in this note were all decided under the pre-2003 version of Rule 23(e). *See, e.g., Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1409 (9th Cir. 1989) (notice of a precertification voluntary dismissal of a complaint with class action allegations should be given to protect members of the proposed class from “prejudice [they] would otherwise suffer if class members have refrained from filing suit because of knowledge of the pending class action”; notice not required in *Diaz* case); *see also Glidden v. Chromalloy Am. Corp.*, 808 F.2d 621, 627 (7th Cir. 1986) (dicta that notice of a settlement or summary judgment dismissal of a case before deciding on certification should be given because the settlement or dismissal “creates obvious dangers; the representative may have been a poor negotiator or may even be in cahoots with the defendant”); *In re Nazi Era Cases Against German Defendants Litig.*, 198 F.R.D. 429, 439 (D.N.J.

weigh the costs and consequences of such notices against the need for the protection it may provide in a given case.<sup>906</sup>

*Who is to receive settlement notice and how is notice to be delivered?* Rule 23(e)(1)(B) requires notice in a reasonable manner to “all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Even if a class member has opted out after receiving a certification notice, the parties might direct notice to such opt outs to give them an opportunity to opt back into the class and participate in the proposed settlement.

In general, settlement notices should be delivered or communicated to class members in the same manner as certification notices (see section 21.311). As with certification notices, individual notice is required, where practicable, in Rule 23(b)(3) actions. Posting notices and other information on the Internet, publishing short, attention-getting notices in newspapers and magazines, and issuing public service announcements may be viable substitutes for, or more often supplements to, individual notice if that is not reasonably practicable.

*When should the notice be given?* In an order preliminarily approving the settlement under Rule 23(e), the judge sets the date for providing notice of the proposed settlement. This order, as well as the notice, should establish the time and place of a public hearing on the proposed settlement and specify the procedure and timetable for opting out, filing objections, and appearing at the settlement hearing. If problems or questions concerning the terms of the settlement are identified at the preliminary approval stage, notice to the class ordinarily is deferred until there has been an opportunity to resolve those issues.

*What must the notice include?* The notice should announce the terms of a proposed settlement and state that, if approved, it will bind all class members. If the class has been certified only for settlement purposes, that fact should be disclosed. Even though a settlement is proposed, the notice should outline the original claims, relief sought, and defenses so class members can make an informed decision about whether to opt out.<sup>907</sup>

2000) (stating that “a district court should make a ‘proper inquiry’ to determine whether a proposed settlement and dismissal are tainted by collusion or will prejudice absent members of the putative class”); *Gassie v. SMH, Ltd.*, Civ. A. No. 97-1786, 1997 U.S. Dist. LEXIS 13687, at \*4–\*5 (E.D. La. Sept. 9, 1997) (same).

906. *Diaz*, 876 F.2d at 1411.

907. If the class had been certified previously under Rule 23(b)(3), and if the parties propose a class settlement after expiration of the opportunity for class members to opt out, Rule 23(e)(3) authorizes the court, in its discretion, to refuse to approve a settlement unless the parties provide a second opportunity to opt out. See *infra* section 21.611.

The notice should

- define the class and any subclasses;
- describe clearly the options open to the class members and the deadlines for taking action;
- describe the essential terms of the proposed settlement;
- disclose any special benefits provided to the class representatives;
- provide information regarding attorney fees (see section 14);
- indicate the time and place of the hearing to consider approval of the settlement;
- describe the method for objecting to (or, if permitted, for opting out of) the settlement;
- explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set forth those variations;
- explain the basis for valuation of nonmonetary benefits if the settlement includes them;
- provide information that will enable class members to calculate or at least estimate their individual recoveries, including estimates of the size of the class and any subclasses;<sup>908</sup> and
- prominently display the address and phone number of class counsel and how to make inquiries.

In a Rule 23(b)(3) class, the notice and any Internet Web site should include opt-out forms. The notice must clearly explain the options available to a class member and the difference between opting out and claiming benefits.<sup>909</sup> If the details of a claims procedure have been determined, and there is little

908. See, e.g., *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975) (stating “the notice may consist of a very general description of the proposed settlement, including a summary of the monetary and other benefits that the class would receive and an estimation of attorneys’ fees and other expenses”); *Bogges v. Hogan*, 410 F. Supp. 433, 442 (N.D. Ill. 1975) (stating “the notice should . . . include . . . an estimated range of unitary recovery”). Cf. 3 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 8:32, at 265 (4th ed. 2002) (indicating that “[i]t is unnecessary for the settlement distribution formula to specify precisely the amount that each individual class member may expect to recover”).

909. But see *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 554 (N.D. Ga. 1992) (refusing to include opt-out form with notice to class because of “possible confusion resulting from inclusion of such a form” (citing *Roberts v. Heim*, 130 F.R.D. 416, 423 (N.D. Cal. 1988) (disallowing opt-out form with class notice on the basis that “on balance, such a separate form will engender confusion and encourage investors to unwittingly opt out of the class”)); see also 3 Conte & Newberg, *supra* note 908, § 8:31, at 257–59 (describing use of forms for class members to notify court of desire to be excluded).

indication of any serious challenge to or problems with the settlement, claims forms might be included with the settlement notice. Often, however, the outcome of objections to or concerns over the settlement terms and the details of allocation and distribution are not established until after the settlement is approved. In that situation, claims forms are distributed after the approval.<sup>910</sup> The court can direct class counsel or their agents (such as settlement claims administrators) to communicate with class members whose intentions are unclear in order to help ensure that they make an informed election or exclusion of class membership and that the outcome (claimant status or opt-out status) is what they intended. Rule 23(d)(2) permits the court to revoke inadvertent opt outs to protect class members' interests and advance "the fair conduct of the action."

In most instances, the notice does not include the full text of the proposed settlement. If the agreement itself is not distributed, however, the notice must contain a clear, accurate description of the key terms of the settlement and inform class members where they can examine or obtain a copy, such as from the Internet, the clerk's office, class counsel, or another readily accessible source. For example, in an employment discrimination case, the agreement may be obtained from a defendant's employer's office.

*Who pays for the notice?* The parties generally use the settlement agreement to allocate the cost of settlement notices. The costs are often assessed against a fund created by the defendants or to the defendant, in addition to any funds paid to the class.

### 21.313 Other Court Notices

Rule 23(d)(2) authorizes the court to require that notice be given

for the protection of the members of the class . . . of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action.

910. For example, in *In re Holocaust Victim Assets Litigation* ("Swiss Banks"), the pre-fairness hearing on worldwide notice did not include a detailed plan of allocation; instead, the notice program was actively used to solicit allocation proposals and preferences from the class members themselves. These were submitted to a court-appointed special master, who in turn considered the suggestions and prepared a detailed plan of allocation, after final settlement approval, that the court ultimately approved and implemented. See *In re Holocaust Victim Assets Litig.*, No. CV 96-4849, 2000 U.S. Dist. LEXIS 20817, at \*13 (E.D.N.Y. Nov. 22, 2000).

There are a number of circumstances under which notice is appropriate to protect the class or proposed class or for the fair conduct of the action. For example, if a decision is made to decertify a previously certified class or to exclude previously included members of the class after certification notice has been issued and after the time for opting out has expired, the judge should consider whether to inform the affected class members of the change in their status and any effect on the statute of limitations.<sup>911</sup>

The type and contents of any notice and who should bear the cost depend on the circumstances surrounding the notice, including what prompted the notice, who should be notified, whose duties are discharged, and when the notice is given. The court may consider using means less costly than personal notice. For example, if there was little or no publicity about the filing of a proposed class action, posting or publishing a notice of the court's denial of certification may suffice.

In Rule 23(b)(3) actions in which liability issues are adjudicated on a class-wide basis and individual damages claims are left for separate resolution, the class members must be provided notice of the results of the liability adjudication and an opportunity to file claims for individual relief in a later phase of the proceedings. See, e.g., section 21.322.

The judge also can require notice to correct misinformation or misrepresentations made by one of the parties or by parties' attorneys.<sup>912</sup> See section 21.33. Those who made the misstatements should bear the cost of a notice to correct misstatements. Curative notices generally should be disseminated in the same form as was the misinformation to be corrected.

If the notice of settlement does not establish a claims procedure, subsequent notice will be necessary to advise the class about when, where, and how to file claims, and the notice should also provide claims forms. This notice should be sent to all known members of the class and is generally part of the cost of administering the settlement, paid out of a settlement fund.

911. See *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 354 (1983); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 561 (1974); see also *Culver v. City of Milwaukee*, 277 F.3d 908, 915 (7th Cir. 2002) (notice of decertification of class required unless "it is plain that there is no prejudice"); *Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760, 764–65 (8th Cir. 2001) (when class has not been certified, notice of voluntary dismissal is not required unless there is prejudice).

912. *Georgine v. Amchem Prods., Inc.*, 160 F.R.D. 498, 518 (E.D. Pa. 1995) (finding objectors' communications about settlement misleading and inaccurate and ordering curative action).

## 21.32 Communications from Class Members

- .321 Class Members' Right to Elect Exclusion 298
- .322 Communications Relating to Damage or Benefit Claims 299
- .323 Other Communications from Class Members 299

Important types of communications from class members include solicited responses (such as returns of opt-out forms or claim benefit forms) and unsolicited communications initiated by class members.

### 21.321 Class Members' Right to Elect Exclusion

In Rule 23(b)(3) actions, class members must have the opportunity to exclude themselves from the litigation; this opportunity is discretionary in other types of class actions. See section 21.311. The opt-out procedure should be simple and should afford class members a reasonable time in which to exercise their option. Courts usually establish a period of thirty to sixty days (or longer if appropriate) following mailing or publication of the notice for class members to opt out. If the case involves a complex settlement or significant individual claims, a class member might need more time to consult with attorneys or financial advisors before making an informed opt-out decision. A form for members of the proposed class who wish to opt out might be included with the notice; it should clearly and concisely explain the available alternatives and their consequences. Typically, opt-out forms are filed with the clerk, although in large class actions the court can arrange for a special mailing address and designate an administrator retained by counsel and accountable to the court to assume responsibility for receiving, time-stamping, tabulating, and entering into a database the information from responses (such as name, address, and social security number).

The judge may treat as effective a tardy election to opt out. Factors affecting this decision include the reasons for the delay, whether there was excusable neglect, and whether prejudice resulted.<sup>913</sup> Relief from deadlines, however, should be granted only if the delinquency is not substantial or if there is good cause shown. The state of the class at the end of the opt-out period should be fixed enough to allow parties to conduct their affairs. A general extension of time for making the election may be appropriate if logistical or other problems require further mailings or publications.

Counsel should maintain careful records of who has opted out and when, both to comply with Rule 23(c)(3) and for use in allocating and distributing

913. *Silber v. Mabon*, 18 F.3d 1449, 1455 (9th Cir. 1994).

funds obtained in the litigation for the class. Computer databases are routinely used and are critical if the class is large. For a discussion of settlement opt-out opportunities, see section 21.611.

### 21.322 Communications Relating to Damage or Benefit Claims

Class members are sometimes asked for information regarding their individual claims. This may be appropriate in connection with preparation for the second stage of a bifurcated trial (with adequate time allowed for discovery) or the determination of entitlement to individual relief under a judgment or settlement. See section 21.66.

### 21.323 Other Communications from Class Members

The court can expect to receive inquiries about the litigation from class members and the public and should establish procedures for responding to such inquiries. Notices and other communications to the class should instruct class members to communicate directly with counsel through mechanisms developed for the case, including communications addressed to the court at a post office box number maintained by counsel. A Web site, a voicemail system providing scripted answers to frequently asked questions, or a toll-free telephone number with an automated menu or support staff can provide information efficiently without placing demands on court personnel. The court can establish a routine procedure, using the clerk's office, to refer inquiries to class counsel or another appropriate source of information. If the clerk's office has procedures to handle such matters efficiently and fairly, there should rarely be cause for judicial involvement.

If communications from the class—such as assertions that counsel have refused to respond to their inquiries—indicate the possibility of inadequate representation, the judge should take appropriate steps, including holding a hearing, ordering additional information directed to the class, or, in unusual cases, substituting new class counsel. See section 21.27. If misleading communications have contaminated the notice period, the judge should consider necessary action to correct the misinformation.<sup>914</sup>

914. See, e.g., *Kleiner v. First Nat'l Bank*, 751 F.2d 1193, 1209–11 (11th Cir. 1985) (trial court found that defendants violated court order limiting communication with class members by initiating a surreptitious telephone campaign to solicit potential class members to opt out; trial court ordered defendant's lead trial counsel disqualified and issued a \$50,000 fine against defendants; on appeal, order and fine upheld, but disqualification order remanded for notice and hearing); *Georgine*, 160 F.R.D. at 518–19 (objectors to settlement sent misleading communications and advertisements to absent class members encouraging them to opt out of settlement agreement; court ordered second notice and opt-out period); *Impervious Paint Indus., Inc. v.*

## 21.33 Communications Among Parties, Counsel, and Class Members

Once a class has been certified, the rules governing communications apply as though each class member is a client of the class counsel.<sup>915</sup> (Section 21.12 discusses precertification communication between interim class counsel and potential class members.) Defendants’ attorneys, and defendants acting in collaboration with their attorneys, may only communicate through class counsel with class members on matters regarding the litigation.<sup>916</sup> Communications with class members in the ordinary course of business, unrelated to the litigation, remain permitted.

Where appropriate, the court should authorize defendants’ counsel to answer inquiries from class members about a proposed class settlement. Such inquiries are expected in cases in which the class members have an ongoing relationship with the defendant, such as policyholders in a class action against an insurance company, account holders in a class action against a bank, customers in a class action against a telephone company, or employees in a class action against an employer. To avoid problems over such communication, the courts often channel class members’ requests for information to a “hotline.” Such a telephone line can be staffed by individuals who use agreed-on scripts to respond to questions. Another technique is to include a list of “frequently asked questions” on a Web site or in a notice (or both), with answers prepared jointly by the parties and approved by the court. An interactive Web site can also be used.

The judge has ultimate control over communications among the parties, third parties, or their agents and class members on the subject matter of the litigation to ensure the integrity of the proceedings and the protection of the class.<sup>917</sup> Objectors to a class settlement or their attorneys may not communi-

Ashland Oil, 508 F. Supp. 720, 723–24 (W.D. Ky. 1981) (finding that defendant contacted class members during opt-out period with the intent of sabotaging the class and ordering corrective notice).

915. See *In re Sch. Asbestos Litig.*, 842 F.2d 671, 679–83 (3d Cir. 1988) (indicating that court had authority under Rule 23(d) to require defendants’ affiliate prominently to display a proscribed court-approved notice whenever it communicated directly with the members of the class); *Erhardt v. Prudential Group, Inc.*, 629 F.2d 843, 845 (2d Cir. 1980) (detailing defendants’ compliance with district court’s contempt order enjoining them from further communicating with class members without prior court approval).

916. *Kleiner*, 751 F.2d at 1207 n.28; *Blanchard v. Edgemark Fin. Corp.*, 175 F.R.D. 293, 300–02 (N.D. Ill. 1997); *Resnick v. Am. Dental Ass’n*, 95 F.R.D. 372, 376–77 (N.D. Ill. 1982); see also *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 104 n.21 (1981).

917. Corrective or prophylactic notice to potential class members may be ordered under Rule 23(d)(2) at any stage of the proceedings, including the precertification stage. Ralph

cate misleading or inaccurate statements to class members about the terms of a settlement to induce them to file objections or to opt out.<sup>918</sup>

If improper communications occur, curative action might be necessary, such as extending deadlines for opting out, intervening, or responding to a proposed settlement, or voiding improperly solicited opt outs and providing a new opportunity to opt out.<sup>919</sup> Other sanctions may be justified, such as exclusion of information gained in violation of the attorney–client relationship,<sup>920</sup> contempt and fines,<sup>921</sup> assessment of fees, or, in the most egregious situations, the replacement of counsel or a class representative.<sup>922</sup>

Restrictions on communications with the class can create problems. For example, in employment discrimination class actions, key individuals in supervisory positions might be members of the class. Barring direct communications would seriously handicap the employer’s defense because the employer must rely on those individuals for evidence and for assisting its attorneys. In such circumstances, the court can consider certification under Rule 23(b)(3) (enabling class members to opt out), exclusion of such persons from the class

*Oldsmobile, Inc. v. Gen. Motors Corp.*, No. 99 Civ. 4567, 2001 WL 1035132, at \*7 (S.D.N.Y. Sept. 7, 2001) (ordering curative notice for improper precertification communications). The issuance of corrective or protective notice under Rule 23(d)(2) is considered an exercise of the court’s case-management authority. The “district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.” *Gulf Oil*, 452 U.S. at 100. Courts need not issue a formal injunction requiring the party to meet the procedural requirements of Federal Rule of Civil Procedure 65. *See Kleiner*, 751 F.2d at 1201; *cf. In re Domestic Air Transp. Antitrust Litig.*, MDL No. 861, 1992 WL 357433, at \*1 (N.D. Ga. Nov. 2, 1992) (finding “injunctive relief requested by plaintiffs” is appropriate under Rule 23(d)(2), which “gives to the certifying court specific authority to devise and issue appropriate orders necessary for the protection of class members”).

918. *Georgine*, 160 F.R.D. at 518.

919. *Id.* at 502–08 (invalidating previous opt outs, mandating curative notice limited to opt outs, and creating a new four week opt-out period for them); *cf. In re Potash Antitrust Litig.*, 896 F. Supp. 916, 919–21 (D. Minn. 1995) (rejecting request for gag order and ordering defendants to gather communications and submit for in camera review).

920. *Hammond v. City of Junction City*, 167 F. Supp. 2d 1271, 1293 (D. Kan. 2001) (excluding evidence gained from improper communications).

921. *Ralph Oldsmobile*, 2001 WL 1035132, at \*7 (ordering corrective notice be sent at the expense of the party at fault); *Hammond*, 167 F. Supp. 2d at 1293–94 (ordering party at fault to pay attorneys’ fees and costs incurred by opposing party to file protective orders); *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1239, 1247 (N.D. Cal. 2000) (ordering printing and mailing costs of curative notice to be paid by party at fault).

922. *See Hammond*, 167 F. Supp. 2d at 1289 (disqualifying plaintiff’s counsel and their firm because of improper communications); *see also Kleiner*, 751 F.2d at 1210–11 (holding that due process requires notice and a hearing before any disqualification of counsel).

if they have no genuine claims, or certification of a subclass for which the court could permit limited communication with the defendant.

## 21.4 Postcertification Case Management

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### 21.41 Discovery from Class Members

Postcertification discovery directed at individual class members (other than named plaintiffs) should be conditioned on a showing that it serves a legitimate purpose. See section 21.14. One of the principal advantages of class actions over massive joinder or consolidation would be lost if all class members were routinely subjected to discovery. Most courts limit discovery against unnamed class members, but do not forbid it altogether.<sup>923</sup> In setting appropriate limits, a judge should inquire whether the information sought from absent class members is available from other sources<sup>924</sup> and whether the proposed discovery will require class members to obtain personal legal counsel or technical advice from an expert.<sup>925</sup> Some courts have held that class members are not parties for the purpose of discovery by interrogatories,<sup>926</sup> but may be required to respond to a questionnaire approved by the court. Others have

923. 8A Charles Alan Wright et al., *Federal Practice and Procedure: Civil 2d* § 2171, at 277 (1994).

924. See *Redmond v. Moody's Investor Serv.*, No. 92 CIV. 9161, 1995 WL 276150, at \*2 (S.D.N.Y. May 10, 1995) (granting plaintiff's motion for protective order under Rule 26(c) to restrict interrogatories and document requests); see also *Dellums v. Powell*, 566 F.2d 167, 187 (D.C. Cir. 1977).

925. See, e.g., *Collins v. Int'l Dairy Queen*, 190 F.R.D. 629, 632–33 (M.D. Ga. 1999) (denying discovery motion allowing defendant opportunity to ask absent class members questions that would “require the assistance of an accountant or an attorney”); *Kline v. First W. Gov't Sec., Inc.*, No. CIV.A.83-1076, 1996 WL 122717, at \*5 (E.D. Pa. Mar. 11, 1996) (denying defendant's motion for discovery of absent class members and noting discovery would be impractical as class members would need to consult an attorney or accountant).

926. See, e.g., *Schwartz v. Celestial Seasonings, Inc.*, 185 F.R.D. 313, 319 (D. Colo. 1999) (holding that while “class members are not considered parties for purposes of traditional discovery measures,” limited discovery of class members will be allowed “in the form of questionnaires”); *McCarthy v. Paine Webber Group, Inc.*, 164 F.R.D. 309, 313 (D. Conn. 1995) (holding that questionnaire directed at absent class members was essentially a “proof of claim” form and would not be allowed); cf. *Krueger v. N.Y. Tel. Co.*, 163 F.R.D. 446, 451 (S.D.N.Y. 1995) (allowing defendant to send to all members of a small class a questionnaire limited to individual damage questions).

permitted limited numbers of interrogatories upon a showing of need,<sup>927</sup> limited the number of class members to whom interrogatories may be directed,<sup>928</sup> limited the scope of the discovery to a brief, nonmandatory questionnaire relating to common issues,<sup>929</sup> or have imposed on defendants the added cost of mailing otherwise permissible interrogatories to absent members of a plaintiff class.<sup>930</sup> Deposing absent class members requires greater justification than written discovery.<sup>931</sup>

## 21.42 Relationship with Other Cases

Claims identical or similar to those in a federal class action might be the subject of other litigation in the same court, in other federal district or bankruptcy courts, or in state courts. Once the federal class action has been certified, the issues involving cases pending in other courts are somewhat different than those arising before certification (discussed in section 21.15).

When the claims asserted in a certified Rule 23(b)(3) class action overlap with claims in individual cases pending in other federal courts, in bankruptcy court,<sup>932</sup> or in state courts, the claimants ordinarily will have opted out of the federal class action or will be pursuing related individual actions. Persons who are members of a certified federal court class might pursue their own separate

927. See *Long v. Trans World Airlines Inc.*, 761 F. Supp. 1320, 1329 (N.D. Ill. 1991) (finding discovery of absent class members by sampling necessary and appropriate in determining damage claims).

928. *Transamerican Ref. Corp. v. Dravo Corp.*, 139 F.R.D. 619, 622 (S.D. Tex. 1991) (permitting discovery from 50 of 6,000 absent class members); *Long*, 761 F. Supp. at 1333 (allowing discovery of absent class members “only on a random sample basis”); cf. *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 338, 341–42 (N.D. Ill. 1995) (declining to limit discovery conducted on behalf of a class to a sample selected by the defendant). See also *supra* note 780 and accompanying text.

929. *Schwartz*, 185 F.R.D. at 316–17, 319; see also Wayne D. Brazil, *Special Masters in Complex Cases: Extending the Judiciary or Reshaping Adjudication?*, 53 U. Chi. L. Rev. 394, 403–04 (1986) (describing the use of a survey interview protocol by specially trained college students to elicit information from 9,000 claimants).

930. *Alexander v. Burrus, Cootes & Burrus*, 24 Fed. R. Serv. 2d (Callaghan) 1313, 1314 (4th Cir. 1978) (per curiam) (unpublished opinion) (allowing defendant accounting firm to use contact information furnished by plaintiffs to mail its interrogatories to class members at its own expense); cf. *Schwartz*, 185 F.R.D. at 320 (requiring plaintiffs and defendants to share the costs of mailing to absent class members a questionnaire that aids both sides); *In re Airline Ticket Comm’n Antitrust Litig.*, 918 F. Supp. 283, 288 (D. Minn. 1996) (ordering defendants to pay 75% of costs relating to survey of absent class members).

931. See *Redmond v. Moody’s Investor Serv.*, No. 92 CIV. 9161, 1995 WL 276150, at \*2 (S.D.N.Y. May 10, 1995).

932. See, e.g., *In re Flight Trans. Corp. Sec. Litig.*, 730 F.2d 1128 (8th Cir. 1984).

actions in the same court or in other courts even if they have not elected to be excluded from the class. A member of a certified Rule 23(b)(2) class in a civil rights action might, for example, wish to pursue a damage claim not encompassed in the 23(b)(2) action.<sup>933</sup> Much of the discovery in those parallel cases might be related to the class action and many of the witnesses will overlap. The judges involved should coordinate to avoid undue burden, expense, and conflict. If a federal court has certified a class action that overlaps with individual lawsuits or class actions pending in other federal courts, coordinated action or consolidation can be accomplished through reassignment of cases pending in the same division (see section 20.11); through informal coordination between the judges (see section 20.14); by invoking 28 U.S.C. § 1404, the statutory provision for change of venue (see section 20.12); or through multidistrict transfers under 28 U.S.C. § 1407 (see section 20.13).

If the federal court has certified a class action that duplicates or overlaps with individual suits or class actions pending in state courts, the federal court should consider coordinating the litigation with state courts. Appropriate techniques may include coordinating motions, briefing schedules, and trial schedules setting simultaneous arguments before the different judges, and coordinating the timetable for, and use of, discovery in the different proceedings. See section 20.3.

If informal coordination is unsuccessful, the court may entertain a motion to enjoin the related state cases on the ground that the state cases conflict with, or threaten the integrity of, the federal class action.<sup>934</sup> Some of the constraints

933. See, e.g., *Hiser v. Franklin*, 94 F.3d 1287, 1290–92 (9th Cir. 1996) (issue not resolved in injunctive action and plaintiff's claim had not arisen before the injunction); *Fortner v. Thomas*, 983 F.2d 1024, 1031 (11th Cir. 1993) (stating “[i]t is clear that a prisoner’s claim for monetary damages or other particularized relief is not barred if the class representative sought only declaratory and injunctive relief, even if the prisoner is a member of a pending class action”); but see *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 209 F.R.D. 323, 339–40 (S.D.N.Y. 2002) (holding that claims for equitable relief and damages for personal injuries related to groundwater contamination could not be split and distinguishing *Hiser* and *Fortner* that allow claims splitting).

934. See *In re Diet Drugs Prods. Liab. Litig.*, 282 F.3d 220, 235 (3d Cir. 2002) (holding that “a federal court entertaining complex litigation, especially when it involves a substantial class of persons from multiple states, or represents a consolidation of cases from multiple districts, may appropriately enjoin state court proceedings in order to protect its jurisdiction” (citing *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 202–04 (3d Cir. 1993))); *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996) (injunction may be issued where “the state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation”); see also *Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002) (affirming injunction restraining a lawyer from filing related state court proceedings without the federal district judge’s approval and seeking *ex parte* relief dealing with matters previously adjudicated in

that limit the federal court’s authority to issue such injunctions before certification are not present once the class certification order has issued.<sup>935</sup> For example, the federal court might not have jurisdiction to enjoin state actions before certification<sup>936</sup> because the Anti-Injunction Act, 28 U.S.C. § 2283, limits the power of federal courts to enjoin state proceedings, with certain narrow exceptions. After certification, the federal court is authorized to issue an injunction “when necessary in aid of its jurisdiction,”<sup>937</sup> which may make it possible to enjoin pending state litigation if settlement in the certified federal class action is completed or imminent and the need to protect the class settlement is shown.<sup>938</sup> Another exception allows for an injunction “when

federal court); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 261 F.3d 355, 364–65 (3d Cir. 2001) (injunction appropriate to prevent relitigation of claims settled in federal class action). *But see In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 134 F.3d 133, 145 (3d Cir. 1998) (declining to invoke the All Writs Act to interfere with the state court settlement of a revised version of a proposed settlement a federal court had previously rejected). *See generally* *Southeastern Pa. Transp. Auth. v. Pa. Pub. Util. Comm’n*, 210 F. Supp. 2d 689 (E.D. Pa. 2002); *In re Briarpatch Film Corp.*, 281 B.R. 820 (Bankr. S.D.N.Y. 2002).

935. *See generally In re Diet Drugs*, 282 F.3d at 236–36; *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189, 203 (3d Cir. 1993).

936. *In re Diet Drugs*, 282 F.3d at 236 (noting that the “threat to the federal court’s jurisdiction posed by parallel state actions is particularly significant where there are conditional class certifications and impending settlements in federal actions”); *cf. In re Inter-Op Hip Prosthesis Prod. Liab. Litig.*, No. 01-4039, 2001 WL 1774017, at \*2 (6th Cir. Oct. 29, 2001) (staying injunction against members of the proposed class in a conditionally certified class from opting out or pursuing litigation in state court pending review of a class settlement). *See also* sources cited *supra* notes 806–810.

937. 28 U.S.C. § 2283 (West 2002). The exception overlaps with the provision in the All Writs Act allowing federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions.” *Id.* § 1651(a). The All Writs Act’s use of the term “appropriate” suggests a broader authority than the reference to “necessary” in both the All Writs Act and the Anti-Injunction Act. *In re Diet Drugs*, 282 F.3d at 239.

938. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998); *Carlough*, 10 F.3d at 201–04; *In re Baldwin-United Corp.*, 770 F.2d 328, 336–38 (2d Cir. 1985); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332 (5th Cir. 1981); *supra* notes 808–09 and accompanying text. *See also infra* section 20.32. An extraordinary writ staying or otherwise limiting other litigation involving the same claims or parties may also be warranted. *In re Lease Oil Litig.*, 200 F.3d 317 (5th Cir. 2000). In *In re Lease Oil*, the district judge framed an injunction to bar the parties from settling federal claims in other related cases without its approval, and the court of appeals affirmed the injunction. *Id.* at 319; *see also In re Diet Drugs*, 282 F.3d at 242 (affirming order enjoining a mass opt out of the consolidated federal litigation by a statewide subclass); *Carlough*, 10 F.3d at 202–04 (affirming injunction enjoining state court proceedings pursuant to the “necessary in aid of jurisdiction” exception under the Anti-Injunction Act and All Writs Act).

expressly authorized by Act of Congress.”<sup>939</sup> An injunction or extraordinary writ might also be available to protect the settlement during the period between conditional approval of the class action settlement and the Rule 23(e) fairness hearing.<sup>940</sup>

The binding effect of a judgment in an individual or class action on other related actions depends on principles of claim and issue preclusion. A judgment in the class action adverse to the class will, however, bar only class claims or individual claims actually litigated and resolved in the class action.<sup>941</sup> Questions concerning the court’s ability to bind class members outside of its jurisdiction and the adequacy of the notice given might raise complex due process issues that affect the binding effect of a class action judgment.<sup>942</sup>

## 21.5 Trials

Trial techniques applicable to other forms of complex litigation will also be useful for class actions. Section 12.4 discusses jury notebooks, preliminary instructions, and special verdicts, all of which might help jurors organize the volume of complex information that is likely to be involved in a class action trial. Sections 21.141 and 21.21 discuss trial plans submitted as part of the certification process. In nonjury class action trials, the judge can limit the number of witnesses, require depositions to be summarized, call for the presentation of the direct evidence of witnesses by written statements, and use other techniques (described in section 12.5).

In jury cases, the court may consider trying common issues first, preserving individual issues for later determination. Such orders must be carefully drawn to protect the parties’ right to a fair and balanced presentation of their claims and defenses and their right to have the same jury determine separate claims.<sup>943</sup> Approaches that have been tried in mass tort litigation might apply

939. 28 U.S.C. § 2283 (West 2002); *see also, e.g., In re BankAmerica Corp. Sec. Litig.*, 263 F.3d 795, 801 (8th Cir. 2001) (injunction authorized where a federal statute, the Private Securities Litigation Reform Act of 1995, “create[d] a federal right or remedy that can only be given its intended scope by such an injunction”).

940. *See* cases cited *supra* note 934.

941. *See Cooper v. Fed. Res. Bank*, 467 U.S. 867, 880–81 (1984).

942. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

943. *See In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001) (describing multiphase class-wide trial of claims arising from the Exxon Valdez oil spill; affirming class-wide compensatory damages award, and vacating and remanding for district court recalculation the punitive damages verdict); *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996) (describing and affirming three-phase class-wide trial of punitive damages, liability, and compensatory damages of 10,000 member class of victims of alleged atrocities by the Marcos regime); *In re Bendectin*

(see section 22.93). Judges can encourage parties to stipulate to a test case approach, in which a sufficient number of individual or consolidated cases are tried in order to test the merits of the litigation. Such an approach is particularly useful if the claim is novel or otherwise “immature.” See section 22.315. Some courts have used summary jury trials, an alternative dispute resolution (ADR) technique,<sup>944</sup> to determine the manageability of a class-wide trial of common issues. For example, in the *Telectronics* litigation, summary jury trial demonstrated the manageability of a common-issues trial and, as a result, facilitated informed settlement discussions.<sup>945</sup>

Although not accepted as mainstream, the following approaches have occasionally been suggested as ways to facilitate class action trials: using court-appointed experts to examine cases and report their findings to a jury, subject to cross-examination by the parties;<sup>946</sup> or adopting administrative models to administer damage awards, to the extent that such administrative models meet Seventh Amendment standards.<sup>947</sup> There is no consensus on the use of such procedures, however, and appellate review is scant.

Litig., 857 F.2d 290 (6th Cir. 1988) (describing and upholding constitutionality of trial to verdict of generic causation issue in aggregate proceedings); see also *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001) (suggesting “bifurcating liability and damage trials with the same or different juries” as one alternative for trial of antitrust action).

944. See Robert J. Niemic, Donna Stienstra & Randall E. Ravitz, *Guide to Judicial Management of Cases in ADR 8–9*, 44–45 (Federal Judicial Center 2001).

945. See *In re Telectronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985 (S.D. Ohio 2001).

946. *Hilao*, 103 F.3d at 782–84 (describing district court’s use of a special master as a court-appointed expert); see also Sol Schreiber & Laura D. Weissbach, *In re Estate of Ferdinand E. Marcos Human Rights Litigation: A Personal Account of the Role of the Special Master*, 31 Loy. L.A. L. Rev. 475 (1998).

947. See Samuel Issacharoff, *Administering Damage Awards in Mass-Tort Litigation*, 10 Rev. Litig. 463, 471–80 (1991) (discussing administrative models for determining damage awards in mass contract, Title VII, and tort cases); see also *In re Visa*, 280 F.3d at 141 (listing five alternatives for district court to consider in approaching any need for individualized damages determinations).

## 21.6 Settlements

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### 21.61 Judicial Role in Reviewing a Proposed Class Action Settlement

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This section deals with judicial review of the fairness, reasonableness, and adequacy of proposed settlements in class actions. (Section 13 discusses settlement in complex litigation generally; section 22.9 discusses settlement in the context of mass tort litigation; and section 31.8 discusses settlement in the context of securities class action litigation. Section 21.132 discusses issues relating to certification standards for settlement classes.)

Whether a class action is certified for settlement or certified for trial and later settled, the judge must determine that the settlement terms are fair, adequate, and reasonable. Rule 23(e)(1)(A) mandates judicial review of any “settlement, voluntary dismissal, or compromise of the claims, issues, or

defenses of a certified class.”<sup>948</sup> Rule 23.1 contains a similar directive for shareholder derivative actions.

The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement.<sup>949</sup> A judge’s statement of conditions for approval, reasons for disapproval, or discussion of reservations about proposed settlement terms, however, might lead the parties to revise the agreement. See section 13.14. The parties might be willing to make changes before the notice of the settlement agreement is sent to the class members if the judge makes such suggestions at the preliminary approval stage.<sup>950</sup> Even after notice of a proposed settlement is sent, a judge’s statement of concerns about the settlement during the fairness hearing might stimulate the parties to renegotiate in order to avoid possible rejection by the judge.<sup>951</sup> If the fairness hearing leads to substantial changes adversely affecting some members of the class, additional notice, followed by an opportunity to be heard, might be necessary.

To determine whether a proposed settlement is fair, reasonable, and adequate, the court must examine whether the interests of the class are better served by the settlement than by further litigation. Judicial review must be exacting and thorough. The task is demanding because the adversariness of litigation is often lost after the agreement to settle. The settling parties frequently make a joint presentation of the benefits of the settlement without significant information about any drawbacks. If objectors do not emerge, there may be no lawyers or litigants criticizing the settlement or seeking to expose flaws or abuses. Even if objectors are present, they might simply seek to be treated differently than the class as a whole, rather than advocating for class-

948. Rule 23(e) does not require court approval when the parties voluntarily dismiss class allegations before certification. However, in certain situations in which a voluntary dismissal might represent an abuse of the class action process, the court should inquire into the circumstances behind the dismissal. See discussion *supra* section 21.312 and text accompanying notes 905–06.

949. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The settlement must stand or fall in its entirety.”); *but cf. In re Auction Houses Antitrust Litig.*, No. 00 Civ. 0648, 2001 WL 170792, at \*18 (S.D.N.Y. Feb. 22, 2001) (conditioning approval of a settlement on parties’ adopting changes specified by the district court).

950. *Romstadt v. Apple Computer, Inc.*, 948 F. Supp. 701, 707 (N.D. Ohio 1996) (noting that a “proposed agreement is more readily alterable” and that “[t]he choice facing the court and parties is not limited to the binary alternatives of approval or rejection”).

951. See, e.g., *Bowling v. Pfizer, Inc.* 143 F.R.D. 138 (S.D. Ohio 1992) (raising questions about proposed settlement and continuing fairness hearing); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 146 (S.D. Ohio 1992) (approving revised settlement); see also Jay Tidmarsh, *Mass Tort Settlement Class Actions: Five Case Studies* 35, 38 (Federal Judicial Center 1998).

wide interests. The lack of significant opposition may mean that the settlement meets the requirements of fairness, reasonableness, and adequacy. On the other hand, it might signify no more than inertia by class members or it may indicate success on counsel's part in obtaining, from likely opponents and critics, agreements not to object. Whether or not there are objectors or opponents to the proposed settlement, the court must make an independent analysis of the settlement terms.

Factors that moved the parties to settle can impede the judge's efforts to evaluate the terms of the proposed settlement, to appraise the strength of the class's position, and to understand the nature of the negotiations. Because there is typically no client with the motivation, knowledge, and resources to protect its own interests, the judge must adopt the role of a skeptical client and critically examine the class certification elements, the proposed settlement terms, and procedures for implementation.

There are a number of recurring potential abuses in class action litigation that judges should be wary of as they review proposed settlements:

- conducting a “reverse auction,” in which a defendant selects among attorneys for competing classes and negotiates an agreement with the attorneys who are willing to accept the lowest class recovery (typically in exchange for generous attorney fees);<sup>952</sup>
- granting class members illusory nonmonetary benefits, such as discount coupons for more of defendants' product, while granting substantial monetary attorney fee awards;<sup>953</sup>
- filing or voluntarily dismissing class allegations for strategic purposes (for example, to facilitate shopping for a favorable forum or to obtain a settlement for the named plaintiffs and their attorneys that is disproportionate to the merits of their respective claims);<sup>954</sup>

952. *Coffee*, *supra* note 737, at 1354, 1370–73; *see, e.g.*, *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 839 (7th Cir. 1999) (suggesting that “[p]erhaps [defendant] found a plaintiff (or lawyer) willing to sell out the class”); *see also* *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 283 (7th Cir. 2002) (finding that “[a]lthough there is no proof that the settlement was actually collusive in the reverse-auction sense, the circumstances demanded closer scrutiny than the district judge gave it”); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 882 (7th Cir. 2000) (rejecting class settlement because “Crawford and his attorney were paid handsomely to go away; the other class members received nothing”).

953. *See, e.g.*, *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 818–19 (3d Cir. 1995) (rejecting as unfair a settlement based on \$1,000 nontransferable coupon redeemable only upon purchase of new GM truck); *see generally* FJC Empirical Study of Class Actions, *supra* note 769, at 77–78, 183–85; Note, *supra* note 737, at 816–17.

954. *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989); *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1303, 1314 (4th Cir. 1978) (holding that the Rule 23(e) notice

- imposing such strict eligibility conditions or cumbersome claims procedures that many members will be unlikely to claim benefits, particularly if the settlement provides that the unclaimed portions of the fund will revert to the defendants;<sup>955</sup>
- treating similarly situated class members differently (for example, by settling objectors' claims at significantly higher rates than class members' claims);<sup>956</sup>
- releasing claims against parties who did not contribute to the class settlement;<sup>957</sup>
- releasing claims of parties who received no compensation in the settlement;<sup>958</sup>
- setting attorney fees based on a very high value ascribed to nonmonetary relief awarded to the class, such as medical monitoring injunctions or coupons, or calculating the fee based on the allocated settle-

requirement does not apply to a precertification dismissal that does not bind the class, but that “the court must, after a careful hearing, determine what ‘claims are being compromised’ between the plaintiff and defendant and whether the settling plaintiff has used the class action claim for unfair personal aggrandizement in the settlement, with prejudice to absent putative class members”); 3 Conte & Newberg, *supra* note 908, § 8:19. In many instances, notice and court approval of a voluntary dismissal will not be given or obtainable because the members of the proposed class will not yet have been determined. *Shelton*, 582 F.2d at 1303.

955. *See, e.g.*, Reynolds, 288 F.3d at 282–83; *see also* Deborah R. Hensler et al., Class Action Dilemmas: Pursuing Public Goals for Private Gain 427–30 (2000) [hereinafter RAND Class Action Report] (reporting actual distribution of benefits in ten case studies, in three of which class members claimed less than half the funds).

956. Gibson, *supra* note 792, at 154–55 (payment for dismissal of objectors' appeal regarding Rule 23(b)(1)(B) mandatory class); Tidmarsh, *supra* note 951, at 40–41 (objectors entered into private fee-sharing arrangements; opt-out cases settled for much higher sums than class members received).

957. *See, e.g.*, *In re* Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig., 221 F.3d 870, 873 (6th Cir. 2000) (decertifying a limited fund settlement class because some of the released parties did not qualify for “limited fund” certification); *see also In re* Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig., 137 F. Supp. 2d 985 (S.D. Ohio 2001) (approving a Rule 23(b)(3) opt-out settlement).

958. *Molski v. Gleich*, 318 F.3d 937 (9th Cir. 2003) (finding that settlement released individual damage claims without compensating class members other than class representative); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 882 (7th Cir. 2000) (finding that only the class representative received compensation); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 169–70 (S.D. Ohio 1992) (concluding that objection concerning lack of compensation for release of claims for loss of consortium became moot by addition of \$10 million fund for spouses of class members).

ment funds, rather than the funds actually claimed by and distributed to class members;<sup>959</sup> and

- assessing class members for attorney fees in excess of the amount of damages awarded to each individual.<sup>960</sup>

In addition, although Rule 23(e) no longer requires court approval of a settlement or voluntary dismissal of individual claims as long as the settlement does not bind the class, the settlement of individual claims can represent an abuse of the class action process. For example, a party might plead class allegations to promote forum-shopping or to extract an unreasonably high settlement for the sole benefit of potential class representatives and their attorneys. Use of the court's supervisory authority to police the conduct of proposed class actions under Rule 23(d) may be appropriate in such circumstances.<sup>961</sup>

### 21.611 Issues Relating to Cases Certified for Trial and Later Settled

When a Rule 23(b)(3) class is certified for trial, the decision whether to opt out might have to be made well before the nature and scope of liability and damages are understood. Settlement may be reached only after the opportunity to request exclusion has expired and after changes in class members' circumstances and other aspects of the litigation have occurred. Rule 23(e)(3) permits the court to refuse to approve a settlement unless it affords a new opportunity to request exclusion at a time when class members can make an informed decision based on the proposed settlement terms.<sup>962</sup>

This second opt-out opportunity helps to provide the supervising court the “structural assurance of fairness,” called for in *Amchem Products Inc.* This part of Rule 23(e)(3) affects only cases in which the class is certified and the

959. See *supra* section 14.121.

960. The only reported example of this egregious practice is *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348, 1349 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc) (class member received an award of \$2.19, but \$91.33 was deducted from class member's bank account for attorney fees).

961. See *supra* notes 904–10 and accompanying text. Prior to the change on this issue in Rule 23(e), some courts subjected precertification requests for dismissal to rigorous review. For an example of the Rule 23(e) analysis of the district court in the dismissal (pursuant to diplomatic settlement) of major German Holocaust-related litigation, see *In re Nazi Era Cases Against German Defendants Litigation*, 198 F.R.D. 429 (D.N.J. 2000).

962. Providing a second opportunity to opt out may be appropriate “if the earlier opportunity . . . provided with the certification notice has expired by the time of the settlement notice” and if there have been “changes in the information available to class members since expiration of the first opportunity to elect exclusion.” Rule 23(e)(3) committee note. See also text at note 238 for a description of an organized opt-out campaign.

initial opt-out period expires before a settlement agreement is reached. The rule provides a court with broad discretion to determine whether, in the particular circumstances, a second opt-out opportunity is warranted before approving a settlement.

### 21.612 Issues Relating to Cases Certified and Settled at the Same Time

Parties quite frequently enter into settlement agreements before a decision has been reached whether to certify a class.<sup>963</sup> Section 21.132 discusses the standards for certifying such a class. This section is about reviewing a proposed settlement in such a context.

Settlement classes—cases certified as class actions solely for settlement—can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. See section 22.921. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved and, in Rule 23(b)(3) actions, to withdraw from the settlement if too many class members opt out. An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.<sup>964</sup>

Class actions certified solely for settlement, particularly early in the case, sometimes make meaningful judicial review more difficult and more important. Courts have held that approval of settlement class actions under Rule 23(e) requires closer judicial scrutiny than approval of settlements reached only after class certification has been litigated through the adversary process.<sup>965</sup> See section 22.9. Extended litigation between or among adversaries might

963. FJC Empirical Study of Class Actions, *supra* note 769, at 35.

964. See *supra* section 14.12 (noting the desirability of fee arrangements that reward counsel for efficiency, such as percentage of recovery fees). See also Hirsch & Sheehey, *supra* note 859, at 65–66.

965. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998) (calling for “a higher standard of fairness” in reviewing a settlement negotiated before class certification), and cases cited therein. Cf. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997) (calling for “undiluted, even heightened, attention” to class certification requirements in a settlement class context). Cf. also *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 122 (S.D.N.Y.) (holding that close scrutiny need not be given when class was certified for settlement purposes long before an agreement was reached), *aff’d*, 117 F.3d 721 (2d Cir. 1997). See generally Roger C. Cramton, *Individualized Justice, Mass Torts, and “Settlement Class Actions”: An Introduction*, 80 Cornell L. Rev. 811, 826–35 (1995) (discussing problems relating to adequacy of representation in settlement class involving claims relating to future injuries and setting forth principles for reviewing settlement class actions); Coffee, *supra* note 737, at 1367–82, 1461–65 (discussing incentives for collusion in settlement class actions and possible antidotes). See also John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L. Rev. 370 (2000).

bolster confidence that the settlement negotiations were at arm's length. If, by contrast, the case is filed as a settlement class action or certified for settlement with little or no discovery, it may be more difficult to assess the strengths and weaknesses of the parties' claims and defenses, to determine the appropriate definition of the class, and to consider how class members will actually benefit from the proposed settlement. The court should ask questions about the settlement and provide an adequate opportunity for settlement opponents to be fully heard.

Recurring issues raised by settlement classes include the following:

- *Conflicts between class counsel and counsel for individual plaintiffs.* Approval of the class settlement will, for the most part, take responsibility for providing relief to individual claimants from their individual attorneys and shift it to class counsel. Settlement will also effectively terminate other pending individual and class actions subsumed in the certified settlement class. Divergent interests must be taken into account and fairly accommodated before the parties negotiate a final settlement. Consider whether the counsel who have negotiated the settlement have fairly represented the interests of all class members. (This concern appears to be one of the major reasons the Court rejected the proposed settlement in *Amchem*.<sup>966</sup>) If the parties have not anticipated the need for subclasses, the court may decide to certify subclasses, appoint attorneys to represent the subclasses, and send the parties back to the negotiating table.
- *Future claimants.* In some mass tort cases, the court should consider whether a settlement purports to bind persons who might know that they were exposed to an allegedly harmful substance but are not yet injured, and persons who might not even be aware that they were exposed. The opt-out rights of those in the first category can be illusory in a Rule 23(b)(3)<sup>967</sup> action unless they are protected by “back-end opt-out” rights that permit individuals to decide whether to remain in the class after they become aware that they are injured, may have a claim, and understand the severity of their injury. (Rule 23(e)(3) gives a trial judge discretion to provide class members an opportunity to opt out of a Rule 23(b)(3) class settlement even though they had an earlier opportunity to opt out of the class after it was certified.) Because those in the second category, those who might not even know that they have been exposed or injured, cannot be given meaningful notice, an effort

966. 521 U.S. at 620.

967. See generally *id.*

to include them in the class can raise constitutional and due process issues.<sup>968</sup> See section 22.72. In some settlements, parties have negotiated terms that allow certain class members to defer choosing between accepting the benefits of a class settlement or litigating the class member's claim until after the claim arises.<sup>969</sup>

- *Administration of claims procedure.* The court should determine whether the persons chosen to administer the procedure are disinterested and free from conflicts arising from representing individual claimants.
- *Review of attorney fee applications.* See section 21.7.

## 21.62 Criteria for Evaluating a Proposed Settlement

Rule 23(e)(1)(C) establishes that the settlement must be fair, reasonable, and adequate. Fairness calls for a comparative analysis of the treatment of class members vis-à-vis each other and vis-à-vis similar individuals with similar claims who are not in the class. Reasonableness depends on an analysis of the class allegations and claims and the responsiveness of the settlement to those claims. Adequacy of the settlement involves a comparison of the relief granted relative to what class members might have obtained without using the class action process.

A number of factors are used to apply those criteria and evaluate a proposed settlement. Deciding which factors apply and what weight to give them depends on a number of variables: (1) the merits of the substantive class claims, issues, or defenses; (2) whether the class is mandatory or opt-out; and (3) the mix of claims that can support individual litigation, such as personal injury claims, and claims that are only viable within a class action, such as small economic loss claims. A class involving small claims may provide the only opportunity for relief and pose little risk that the settlement terms will sacrifice the interests of individual class members. A class involving many claims that can support individual suits—ranging from claims of severe injury or death to relatively slight harms, as for example a mass torts personal-injury class—might require more scrutiny by the court to fairness.

968. See *id.* at 628 (questioning whether proper notice could ever be given to “legions so unselfconscious and amorphous”).

969. See, e.g., *In re Diet Drugs*, MDL No. 1203, 2000 WL 1222042, at \*21 (E.D. Pa. Aug. 28, 2000) (approving second opt-out opportunity to pursue individual claim for compensatory (but not punitive) damages if injury worsens); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 170 (S.D. Ohio 1992) (approving settlement in which class members retain rights to sue, pursue arbitration, or accept a guaranteed settlement amount for a future heart valve fracture).

Some factors that may bear on review of a settlement are set out below:<sup>970</sup>

1. the advantages of the proposed settlement versus the probable outcome of a trial on the merits of liability and damages as to the claims, issues, or defenses of the class and individual class members;
2. the probable time, duration, and cost of trial;
3. the probability that the class claims, issues, or defenses could be maintained through trial on a class basis;
4. the maturity of the underlying substantive issues, as measured by the information and experience gained through adjudicating individual actions, the development of scientific knowledge, and other factors that bear on the probable outcome of a trial on the merits;
5. the extent of participation in the settlement negotiations by class members or class representatives, and by a judge, a magistrate judge, or a special master;
6. the number and force of objections by class members;
7. the probable resources and ability of the parties to pay, collect, or enforce the settlement compared with enforcement of the probable judgment predicted under above paragraph 1 or 4;
8. the effect of the settlement on other pending actions;
9. similar claims by other classes and subclasses and their probable outcome;
10. the comparison of the results achieved for individual class or subclass members by the settlement or compromise and the results achieved or likely to be achieved for other claimants pressing similar claims;
11. whether class or subclass members have the right to request exclusion from the settlement, and, if so, the number exercising that right;
12. the reasonableness of any provisions for attorney fees, including agreements on the division of fees among attorneys and the terms of any agreements affecting the fees to be charged for representing individual claimants or objectors;
13. the fairness and reasonableness of the procedure for processing individual claims under the settlement;

970. The list is not exclusive and is subject to change depending on common-law development, including evolving interpretation of the 2003 amendments to Rule 23(e) and any legislation affecting class action or other mass tort suits. A helpful review of many factors that may deserve consideration is provided by *In re Prudential Insurance Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 316–24 (3d Cir. 1998).

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14. whether another court has rejected a substantially similar settlement for a similar class; and
15. the apparent intrinsic fairness of the settlement terms.

In determining the weight accorded these and other factors, courts have examined whether

- other courts have rejected similar settlements for competing or overlapping classes;
- the named plaintiffs are the only class members to receive monetary relief or are to receive relief that is disproportionately large (differentials are not necessarily improper, but may call for judicial scrutiny);<sup>971</sup>
- the settlement amount is much less than the estimated damages incurred by members of the class as indicated by preliminary discovery or other objective measures, including settlements or verdicts in individual cases;
- the settlement was completed at an early stage of the litigation without substantial discovery and with significant uncertainties remaining;
- nonmonetary relief, such as coupons or discounts, is unlikely to have much, if any, market or other value to the class;<sup>972</sup>
- significant components of the settlement provide illusory benefits because of strict eligibility conditions;
- some defendants have incentives to restrict payment of claims because they may reclaim residual funds;
- major claims or types of relief sought in the complaint have been omitted from the settlement;
- particular segments of the class are treated significantly differently from others;
- claimants who are not members of the class (e.g., opt outs) or objectors receive better settlements than the class to resolve similar claims against the same defendants;
- attorney fees are so high in relation to the actual or probable class recovery that they suggest a strong possibility of collusion;

971. Compensation for class representatives may sometimes be merited for time spent meeting with class members, monitoring cases, or responding to discovery. *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990).

972. *See, e.g., In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 818–19 (3d Cir. 1995) (rejecting as unfair a settlement based on \$1,000 nontransferable coupon redeemable only upon purchase of new GM vehicles); *see generally* Note, *supra* note 737.

- defendants appear to have selected, without court involvement, a negotiator from among a number of plaintiffs' counsel; and
- a significant number of class members raise apparently cogent objections to the settlement. (The court should interpret the number of objectors in light of the individual monetary stakes involved in the litigation. When the recovery for each class member is small, the paucity of objections may reflect apathy rather than satisfaction. When the recovery for each class member is high enough to support individual litigation, the percentage of class members who object may be an accurate measure of the class' sentiments toward the settlement. However, an apparently high number of objections may reflect an organized campaign, rather than the sentiments of the class at large. A similar phenomenon is the organized opt-out campaign.)<sup>973</sup>

A settlement will occasionally cover a class different from that certified. Review of the terms of the settlement or objections might reveal a need to redefine the class or to create subclasses based on the revelation of conflicts among class members. Frequently, the parties propose to enlarge the class or the claims of the class to give the settling defendants greater protection against future litigation. The court faced with a request for an expanded class definition should require the parties to explain in detail what new facts, changed circumstances, or earlier errors support the alteration of the original definition. If a Rule 23(b)(3) class is enlarged, notice must be given to the newly added members of their right to opt out; if a class is reduced, those being excluded should receive notice under Rule 23(d) if they previously received notice that they were included in the class and did not opt out.

## 21.63 Procedures for Reviewing a Proposed Settlement

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### 21.631 Obtaining Information

*Required disclosures.* Counsel for the class and the other settling parties bear the burden of persuasion that the proposed settlement is fair, reasonable, and adequate. In discharging that burden, counsel must submit to the court certain required disclosures, such as the terms of the settlement. Rule 23(e)(2)

973. See *Carlough v. Amchem Prods., Inc.*, 10 F.3d 189 (3d Cir. 1993).

also requires a statement identifying any agreement made in connection with the settlement, including all agreements and undertakings “that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others. Doubts should be resolved in favor of identification.”<sup>974</sup>

Separate side agreements or understandings may encompass such matters as resolution of claims outside the class settlement, positions to be taken on later fee applications, division of fees among counsel, or restrictions on counsel’s ability to bring related actions in the future. The reference to agreements or undertakings related to the proposed settlement is necessarily open-ended. It is intended to reach agreements that accompany settlement but are not reflected in formal settlement documents and, perhaps, not even reduced to writing. The spirit of Rule 23(e)(2) is to compel identification of any agreement or understanding that might have affected the interests of class members by altering what they may be receiving or foregoing. Side agreements might indicate, for example, that the settlement is not reasonable because they may reveal additional funds that might have been paid to the class that are instead paid to selected claimants or their attorneys.

The court should, after reviewing the statement identifying related agreements and undertakings, decide whether to require specified agreements to be revealed and whether to require filing complete copies or only summaries of the agreements. Requiring the parties to file the complete agreement might elicit comments from class members and facilitate judicial review. A judge might consider acting in steps, calling first for a summary of any agreement that might have affected the settlement and then for a complete version if the summary does not provide an adequate basis for review.

A direction to disclose a summary or copy of an agreement might raise confidentiality concerns, as with agreements that include information that merits protection against general disclosure. The parties should be given an opportunity to claim work-product or other protections. Opt-out agreements, in which a defendant conditions its agreement on a limit on the number or value of opt outs, may warrant confidential treatment. Knowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out. A common practice is to receive information about such agreements *in camera*.

Agreements between a liability insurer and a defendant may require balancing the need to know the terms of the agreement with the potential impact of making such terms public. The amount of insurance coverage

974. Fed. R. Civ. P. 23(e)(2) committee note.

available to compensate class members can bear on the reasonableness of the settlement, and identification of such agreements sometimes provides insufficient information. Unrestricted access to the details of such agreements, on the other hand, might impede resolution of important coverage disputes.

Rule 23(e)(2) does not specify sanctions for failure to identify an agreement or an understanding connected with the settlement. One possible sanction is reopening the settlement if the agreements or understandings not identified bear significantly on the settlement's reasonableness.

*Requests for additional information.* The judge may direct counsel to provide additional information necessary to evaluate the proposed settlement. Where settlement is proposed early in the litigation, for example, consider asking counsel to provide complete and detailed information about the factors that indicate the value of the settlement. Such factors include<sup>975</sup>

- likelihood of success at trial;
- likelihood of class certification;
- status of competing or overlapping actions;
- claimant's damages and value of claims;
- total present value of monetary and nonmonetary terms;
- attorney fees;
- cost of litigation; and
- defendant's ability to pay.

Discovery in parallel litigation may supply additional information. The outcomes of parallel litigation may also inform the court and objecting class members about the fairness, reasonableness, and adequacy of the proposed settlement.

### 21.632 Preliminary Fairness Review

Review of a proposed class action settlement generally involves two hearings.<sup>976</sup> First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supple-

975. The enumeration of issues and factors affecting the evaluation of settlements in this section draws on the opinion in *In re Prudential Insurance Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283 (3d Cir. 1998), and William W Schwarzer, *Settlement of Mass Tort Class Actions: Order Out of Chaos*, 80 Cornell L. Rev. 837, 843–44 (1995). See also RAND Class Action Report, *supra* note 955, at 486–90.

976. See, e.g., *In re Amino Acid Lysine Antitrust Litig.*, MDL No. 1083, 1996 U.S. Dist. LEXIS 5308, at \*11 (N.D. Ill. Apr. 22, 1996) (conducting a preliminary review of whether a proposed settlement is within the range of reasonableness and raising questions for the fairness hearing).

mented as necessary by briefs, motions, or informal presentations by parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b). See section 21.22. If there is a need for subclasses, the judge must define them and appoint counsel to represent them. The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing. In settlement classes, however, it is often prudent to hear not only from counsel but also from the named plaintiffs, from other parties, and from attorneys who represent individual class members but did not participate in the settlement negotiations.

Whether the case has been certified as a class at an earlier stage or presented for certification and settlement approval at the same time, the judge can have a court-appointed expert or special master review the proposed settlement terms, gather information necessary to understand how those terms affect the absent class members, and assist the judge in determining whether the fairness, reasonableness, and adequacy requirements for approval are met. Individuals sometimes provide expert testimony regarding the valuation of the settlement or even of its legal validity. Given the nonadversarial posture of these experts, it is important to evaluate such testimony under Federal Rules of Evidence 701, 702, and 703 and question whether the proffered expert testimony will “assist the trier of fact to understand the evidence or determine a fact in issue.”<sup>977</sup> The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys. The parties then have an opportunity to resume negotiations in an effort to remove potential obstacles to court approval.

### 21.633 Notice of Fairness Hearing

Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members. For economy, the notice under Rule 23(c)(2) and the Rule 23(e)

977. Fed. R. Evid. 702.

notice are sometimes combined. The fairness hearing notice should alert the class that the hearing will provide class members an opportunity to present their views on the proposed settlement and to hear arguments and evidence for and against the terms.

The notice of the fairness hearing should tell objectors to file written statements of their objections with the clerk of court by a specified date in advance of the hearing and to give notice if they intend to appear at the fairness hearing. Despite such ground rules, people who have not filed a written statement may be allowed to present objections at the hearing.<sup>978</sup>

#### 21.634 Fairness Hearing

At the fairness hearing, the proponents of the settlement must show that the proposed settlement is “fair, reasonable, and adequate.”<sup>979</sup> The parties may present witnesses, experts, and affidavits or declarations. Objectors and class members may also appear and testify. Time limits on the arguments of objectors are appropriate, as is refusal to hear the same objections more than once. An extended hearing may be necessary.<sup>980</sup>

#### 21.635 Findings and Conclusions

Even if there are no or few objections or adverse appearances before or at the fairness hearing, the judge must ensure that there is a sufficient record as to the basis and justification for the settlement. Rule 23 and good practice both require specific findings as to how the settlement meets or fails to meet the statutory requirements. The record and findings must demonstrate to a reviewing court that the judge has made the requisite inquiry and has consid-

978. See, e.g., *In re Ford Motor Co. Bronco II Prods. Liab. Litig.*, MDL No. 991, 1994 U.S. Dist. LEXIS 15790 (E.D. La. Nov. 1, 1994) (permitting testimony by objectors who had not filed written statements, subject to inclusion of such objectors on witness lists and to limitation by the judge based on weight and significance of arguments); *In re Prudential-Bache Energy Income P’ships Sec. Litig.*, 815 F. Supp. 177, 179 (E.D. La. 1993) (allowing objectors to submit evidence and testimony and to cross examine plaintiffs’ experts). See also Tidmarsh, *supra* note 951, at 56, 68 (observing that two mass tort settlement class actions used trial-like procedure at the fairness hearing).

979. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995)); see also Fed. R. Civ. P. 23(e)(1)(C).

980. *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, 1994 WL 578353 (N.D. Ala. Sept. 1, 1994) (reporting hearing from breast implant recipients during three days of hearings); *In re “Agent Orange” Prod. Liab. Litig.*, 597 F. Supp. 740, 746–47 (E.D.N.Y. 1984) (reporting on national hearings involving numerous veterans and their families), *aff’d*, 818 F.2d 226 (2d Cir. 1987).

ered the diverse interests and the requisite factors in determining the settlement's fairness, reasonableness, and adequacy.

## 21.64 Role of Other Participants in Settlement Review

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### 21.641 Role of Class Counsel in Settlement

Attorneys representing a class are responsible for communicating a settlement offer to the class representatives and ultimately to the members of the class. But the attorneys are also responsible for protecting the interests of the class as a whole, even in circumstances where the class representatives take a position that counsel consider contrary to the interests of absent class members.<sup>981</sup> Class counsel must discuss with the class representatives the terms of any settlement offered to the class.<sup>982</sup> Approval or rejection of the offer by the representatives, however, does not end the attorneys' obligations, because they must act in the best interests of the class as a whole.<sup>983</sup> Similarly, class counsel should bring to the court's attention any settlement offer that the class representatives approve, even if, as attorneys for the entire class, they believe it should not receive court approval.

Class counsel must be available to answer questions from class members in the interval between notice of the settlement and the settlement hearing. Counsel for the parties can create a Web site to convey factual information

981. See, e.g., *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174–76 (4th Cir. 1975); cf. *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982); *Saylor v. Lindsley*, 456 F.2d 896, 899–900 (2d Cir. 1972). In the Diet Drugs litigation, several of the subclass representatives opposed approval of a settlement that had been negotiated on their behalf; the trial court discussed adequacy of representation requirements under these circumstances, and the fulfillment of *Amchem* criteria. *In re Diet Drugs Prods. Liab. Litig.*, 2000 WL 1222042, at \*50–\*53 (E.D. Pa. Aug. 28, 2000).

982. *Byes v. Telecheck Recovery Servs., Inc.*, 173 F.R.D. 421, 428–29 (E.D. La. 1997) (finding inadequacy of representation, based in part on counsel's failure to communicate with named plaintiff about settlement offers); *Deadwyler v. Volkswagen of Am., Inc.*, 134 F.R.D. 128, 140–41 (W.D.N.C. 1991) (ordering sanctions because class counsel failed to communicate settlement offers to class representatives).

983. See, e.g., *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 508 (5th Cir. 1981) (indicating that "the 'client' in a class action consists of numerous unnamed class members as well as the class representative"); see also *Heit v. Van Ochten*, 126 F. Supp. 2d 487, 494–95 (W.D. Mich. 2001) (approving proposed settlement and approving class counsel's motion to withdraw from representing named representative who filed objection to the settlement).

about the settlement, including a complete copy of the agreement, and to give jointly prepared and court-approved answers to frequently asked questions.<sup>984</sup> Counsel for the parties may also arrange for a toll-free telephone number that provides information and an opportunity for class members to speak with personnel who have been trained to follow prearranged scripts in responding to various types of questions. In addition to or in lieu of an automated system, the notice may tell members to direct questions to class counsel and give a mailing address, a fax number, an E-mail address, or a telephone number. When most of the class members reside in the same locale (for example, in employment discrimination cases involving a single plant or facility), class attorneys and class representatives can meet with members to explain the terms and consequences of the proposed settlement.

Counsel for the parties are the main court's source of information about the settlement. The judge should ensure that counsel meet their obligations to disclose fully all agreements and understandings, including side agreements with attorneys or class members (see section 21.631) and be prepared to explain how the settlement was reached and why it is fair and reasonable. Counsel must also disclose any facet of the settlement that may adversely affect any member of the class or may result in unequal treatment of class members.

Ordinarily, counsel should confer with the judge to develop an appropriate review process. See section 21.61. Counsel should submit the settlement documents and a draft order setting a hearing date, prescribing the notice to be given to class members, and fixing the procedure for objections. Counsel may also be asked for statements about the status of discovery, the identity of those involved in the settlement discussions, the arrangements and understandings about attorney fees, and the reasons the settlement is in the best interests of the class. Counsel should be required to disclose and explain any incentive awards or other benefits to be received only by the class representatives.

At the hearing to consider final approval of the proposed settlement, counsel for the settling parties must make an appropriate showing on the record as to why the settlement should be approved. The nature and extent of that showing depends on the circumstances of the case—e.g., the importance of individual class members' stakes, the extent of disapproval within the class with regard to the settlement, whether relief to the class is in-kind only,

984. See, e.g., *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, No. 1:01-CV-9000, 2001 WL 1842315, at \*16 (N.D. Ohio Oct. 20, 2001) (notice of class action and proposed settlement can be found at <http://www.sulzerimplantsettlement.com> (last visited Nov. 10, 2003)); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at \*35 (E.D. Pa. Aug. 28, 2000) (additional information available at <http://www.settlementdietdrugs.com> (last visited Nov. 10, 2003)).

whether individual cases are being settled concurrently, and any varying allocations among groups of claimants and attorneys.

Counsel owe a duty of candor to the court to disclose all information relevant to the fairness of the settlement. If the class was certified in adversary proceedings, counsel must take into account their ongoing obligation to their clients and the need to protect their clients' positions should the settlement fail. In evaluating the settlement, the court should take into account not only the presentations of counsel but also information from other sources, such as comments from class representatives and class members, presentations by objections, the court's own knowledge of the case obtained during pretrial proceedings, and information provided by special masters or experts appointed by the court to assess the settlement.

#### 21.642 Role of Class Representatives in Settlement

The court should examine closely any opposition by class representatives to a proposed settlement; those objections might be symptomatic of strained attorney–client relations. Notice of the settlement hearing might indicate any terms about which class counsel and class representatives differ.

Although rejection of a proposed settlement by a class representative may influence class counsel not to present the settlement to the court, a class representative cannot alone veto a settlement, especially one that has been presented to and approved by the court.<sup>985</sup> If the judge concludes that class representatives have placed individual interests ahead of the class's and impeded a settlement that is advantageous to the class as a whole, the judge should take appropriate action, such as notifying the class of the proposed settlement or removing the class representatives, or both.

When class representatives favor acceptance of a settlement offer that class counsel believe is inadequate or unfair, the representatives should be permitted to submit it to the court for preliminary approval and, if the court so orders, a fairness hearing. Although the court will ordinarily not approve a settlement that counsel do not recommend, class counsel, like class representatives, have no veto power over settlement of class actions.

985. *See, e.g.,* *Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 591 (3d Cir. 1999) (affirming order approving settlement of class action and denying lead plaintiff's objections and motions for certification of subclass and disqualification of class counsel); *see also* *Maywalt v. Parker & Parsley Petroleum Co.*, 864 F. Supp. 1422, 1429–30 (S.D.N.Y. 1994) (holding that settlement was fair, adequate, and reasonable despite objections from class representatives and some class members).

### 21.643 Role of Objectors in Settlement

Objectors can play a useful role in the court’s evaluation of the proposed settlement terms. They might, however, have interests and motivations vastly different from other attorneys and parties.

Objectors can provide important information regarding the fairness, adequacy, and reasonableness of settlements. Objectors can also play a beneficial role in opening a proposed settlement to scrutiny and identifying areas that need improvement. For example, an organization’s objection in one case transformed a settlement from one in which the lawyers received a majority of the funds to one that primarily benefited class members.<sup>986</sup>

Some objections, however, are made for improper purposes, and benefit only the objectors and their attorneys (e.g., by seeking additional compensation to withdraw even ill-founded objections). An objection, even of little merit, can be costly and significantly delay implementation of a class settlement. Even a weak objection may have more influence than its merits justify in light of the inherent difficulties that surround review and approval of a class settlement. Objections may be motivated by self-interest rather than a desire to win significant improvements in the class settlement. A challenge for the judge is to distinguish between meritorious objections and those advanced for improper purposes.<sup>987</sup> An objector who wins changes in the settlement that benefit the class may be entitled to attorney fees, either under a fee-shifting statute or under the “common-fund” theory. Fee awards made on the basis of insignificant or cosmetic changes in the settlement serve to condone and encourage improper use of the objection process. Federal Rule of Civil Procedure 11 applies to objectors and their attorneys and should be invoked in appropriate cases.

*Who may object?* Any class member who does not opt out may object to a settlement, voluntary dismissal, or compromise that would bind the class. Any party to the settlement may also object (for example, a shareholder of a corporation involved in the settlement).<sup>988</sup>

986. RAND Class Action Report, *supra* note 955, at 461–62. For a detailed discussion of the objections and the settlement discussions in that case, see *id.* at 201–05. See also *id.* at 355–60 (discussing objections, the fairness hearing, and a renegotiated settlement in the *Oriented Strand Board Home Siding Litigation*).

987. See *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297 (N.D. Ga. 1993).

988. See 4 Conte & Newberg, *supra* note 908, § 11:55, at 168 (“Any party to the settlement proceeding has standing to object to the proposed settlement.”). See also *id.* at 176–77 (“[A]n objection may be registered by . . . any settling defendant, or any shareholder whose corporation is involved in settlement” (footnote call number omitted)).

*Individually based objections.* Objectors sometimes act individually, arguing that the objector should not be included in the class definition or is entitled to terms different than the terms afforded other class members. Unless a number of class members raise similar objections, individual objectors rarely provide much information about the overall reasonableness of the settlement. Individual terms more favorable than those applicable to other class members should be approved *only* on a showing of a reasonable relationship to facts or law that distinguish the objector's position from other class members.

If a complaint about differential treatment reflects genuine distinctions between the objector's position and the positions of other class members, the court should consider whether that distinction requires a subclass or otherwise uncovers an imperfection in the class definition or the settlement terms. Any modification to the settlement agreement generally should benefit other members of the class or subclass in addition to the objector. In the context of a certified class, different treatment of an individual objector must be based on a finding that the objector shares the common characteristics of the class yet possesses distinct attributes that are so unique as not to call for a subclass.

*Class-based objections.* Objections also may be made in terms common to class members or that seem to invoke both individual and class interests. So long as an objector is acting at least in part on behalf of the class, it is appropriate to impose on the objector a duty to the class similar to the duty assumed by a named class representative. In order to guard against an objector who is using the strategic power of objecting for private advantage, the court should examine and consider disapproving the proposed withdrawal of an objection if the objector is receiving payment or other benefits more favorable than those available to other similarly situated class members.<sup>989</sup>

*Discovery and other procedural support.* The important role some objectors play might justify additional discovery, access to information obtained by class counsel and class representatives, and the right to participate in the fairness hearing.<sup>990</sup> Parties to the settlement agreement should generally provide access

989. See, e.g., *Duhaime v. John Hancock Mut. Life Ins. Co.*, 183 F.3d 1 (1st Cir. 1999).

990. See *Scardelletti v. Debarr*, 265 F.3d 195, 204 n.10 (4th Cir. 2001) (affirming denial of motion to intervene and stating “while [the court] should extend to any objector to the settlement leave to be heard, to examine witnesses and to submit evidence on the fairness of the settlement, it is entirely in order for the trial court to limit its proceedings to whatever is necessary to aid it in reaching an informed, just and reasoned decision” (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) (internal quotation marks in original omitted))), *rev'd on other grounds sub nom. Devlin v. Scardelletti*, 536 U.S. 1 (2002); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 24, 26 (D.D.C. 2001) (holding that “[c]lass members who object to a class action settlement do not have an absolute right to discovery; the Court may

to discovery produced during the litigation phases of the class action (if any) as a means of facilitating appraisal of the strengths of the class positions on the merits.

Objectors might seek intervention and discovery to demonstrate the inadequacy of the settlement. Discovery should be minimal and conditioned on a showing of need, because it will delay settlement, introduce uncertainty, and might be undertaken primarily to justify an award of attorney fees to the objector's counsel. A court should monitor postsettlement discovery by objectors and limit it to providing objectors with information central to the fairness of the proposed settlement. A court should not allow discovery into the settlement-negotiation process unless the objector makes a preliminary showing of collusion or other improper behavior.<sup>991</sup>

An opportunity to opt out after the settlement terms are known, either at the initial opportunity or a second opportunity, might reduce the need to provide procedural support to objectors or to rely on objectors to reveal deficiencies in a proposed settlement. Class members who find the settlement unattractive can protect their own interests by opting out of the class.

*Withdrawal of objections.* Court approval is necessary for withdrawal of objections to settlements binding on the class.<sup>992</sup> If objections are withdrawn but result in modifications to the class settlement terms, the withdrawal is reviewed as part of the class settlement. If the objector simply abandons pursuit of the objection, the judge should inquire into the circumstances, asking the parties and the objector to identify any benefit conveyed or promised to the objector or objector's counsel in connection with the withdrawal. Although an objector cannot ordinarily be required to pursue objections, judicial inquiry into—and potential disapproval of—so-called side agreements or tacit understandings can discourage improper uses of objections.

*Intervention and appeal.* A class member may appear at the settlement hearing and object without seeking intervention. Objectors need not formally intervene to appeal matters to which they objected during the fairness hearing.<sup>993</sup> Once an objector appeals, control of the proceeding lies in the court of appeals.

in its discretion allow discovery if it will help the Court determine whether the settlement is fair, reasonable, and adequate” and allowing limited discovery).

991. *Bowling v. Pfizer*, 143 F.R.D. 141, 153 & n.10 (S.D. Ohio 1992).

992. Fed. R. Civ. P. 23(e)(4)(B).

993. *Devlin v. Scardelletti*, 536 U.S. 1 (2002).

### 21.644 Role of Magistrate Judges, Special Masters, and Other Judicial Adjuncts in Settlement

Reviewing a proposed class settlement for fairness, reasonableness, and adequacy is a time-consuming and demanding task, but it is essential and must be done by the judge. Typically, the parties and their attorneys will be primarily interested in upholding the settlement and may present information in a way that supports their position. In cases with a sparse record, the judge may appoint an adjunct: a magistrate judge, guardian *ad litem*, special master, court-appointed expert, or technical advisor, to help obtain or analyze information relevant to the proposed settlement.<sup>994</sup> For example, a judge might retain a special master or a magistrate judge to examine issues regarding the value of nonmonetary benefits to the class and their fairness, reasonableness, and adequacy.<sup>995</sup> Even in that context, however, the judge generally has to identify the issues and the procedures needed to address and resolve them.

## 21.65 Issues Raised by Partial or Conditional Settlements

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.652 Conditional Settlements 330

### 21.651 Partial Settlements

Settlement classes present special problems when they involve partial settlements, such as a settlement with one of several defendants. The settling defendant might be liable to the class as a whole or only to certain members of the class, and members of the settlement class might have difficulty understanding their position in the litigation. Because they may not know whether they will be members of a class with respect to claims against nonsettling defendants, they might be unable to make an informed decision regarding the adequacy of the settlement.

Given that the litigation might continue against other defendants, the parties may be reluctant to disclose fully and candidly their assessment of the proposed settlement's strengths and weaknesses that led them to settle separately. The adequacy of the settlement depends in part on the relative exposure and resources of other parties. An informed evaluation is extremely difficult if

994. For examples of such appointments in a mass tort context, see *infra* notes 1344–46 and accompanying text. Expert testimony may assist the court in making its evaluation. See *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 215 n.30 (5th Cir.), *on second appeal*, 659 F.2d 1322 (5th Cir. 1981).

995. See, e.g., Gibson, *supra* note 792, at 22–23.

discovery is incomplete or has been conducted against only a few of the defendants.

Partial settlements are nevertheless not unusual. If several such settlements are being negotiated, it is ordinarily wise to defer consideration until all are submitted, thereby saving the time and expense of successive notices and hearings and allowing the judge and class members to assess the adequacy of the settlements as a whole. In the interest of fairness, a partial settlement should be brought to the attention of all parties. The judge may wish to defer ruling on temporary approval if a nonsettling party so requests and shows substantial progress in negotiating a settlement of its own. Funds from the settlements typically are placed in income-producing trusts established by class counsel for the benefit of the class and held until the case is fully resolved.

Partial settlements shortly before trial can disrupt the trial, resulting, for example, in the departure of a lead counsel. The court should set a deadline for the presentation of partial settlements sufficiently in advance of trial so that fairness hearings may be completed while still allowing the parties sufficient time to prepare for trial. See section 13.21.

Partial settlements containing provisions that might interfere with further proceedings, such as those attempting to limit further discovery, should rarely be approved. See section 13.22. A provision under which the class agrees to a refund if it later settles on terms more favorable to other defendants is particularly inappropriate, because the adequacy of such a proposed settlement cannot be fairly determined. Similarly, a defendant's agreement to increase the settlement fund if individual plaintiffs later settle for a greater amount does not diminish the court's responsibility to evaluate the adequacy of the amount offered to the class. See section 13.23. Although the court can give some deference to provisions purporting to allocate a settlement fund according to particular theories of recovery, claims, or time periods, it should reserve the power to make modifications when warranted. See section 13.21.

### 21.652 Conditional Settlements

The parties sometimes propose a precertification settlement that permits the settling parties to withdraw from the settlement if a specified number of persons opt out of the class or settlement. Although doing so might promote settlement by giving a defendant greater assurance of ending the controversy and avoiding the expense of litigating numerous individual claims, it might delay a final settlement. A reasonable cut-off date for the defendant's election, such as thirty days after the opt-out period, should keep any delays to a minimum. An alternative approach is to provide that the benefits paid to the class will be reduced in proportion to the number of opt outs or the total amount of their claims. If the reduction in benefits is substantial, fairness might require providing class members another opportunity to opt out.

Some settlements, particularly in securities and consumer litigation, are conditioned on class members waiving claims for additional periods not covered by the pleadings or are conditioned on waiving additional potential claims against the settling defendants. Often such waivers take the form of changing the definition of the class (e.g., by adding spouses or children). Review of such waivers will ensure that notice of them is clear, conspicuous, and not abusive.

## 21.66 Settlement Administration

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.662 Undistributed Funds 333

Class settlements are rarely self-executing and various problems may arise in their administration. Sometimes a settlement fund is to be divided equally among all class members who meet specified criteria (for example, employees who sought promotion during a certain time period) or allocated in proportion to some measure of damage or injury (for example, the price paid for particular securities). In such cases, the class members are in potentially conflicting roles, because increasing one claimant's benefits will reduce another's recovery. Where the settlement provides that each qualifying class member receive a specified payment, either a flat sum or an amount determined according to a formula, settling defendants may have an interest in maximizing the extent to which class members are disqualified or have their claims reduced.

Class members must usually file claims forms providing details about their claims and other information needed to administer the settlement.<sup>996</sup> In larger class actions, forms and instructions might be provided on the Internet, and an E-mail address or a toll-free telephone number may be established for handling questions. In any event, class members should receive some means of personal communication. Verification of claims forms by oath or affirmation under 28 U.S.C. § 1746 may be required, and it may be appropriate to require substantiation of the claims (e.g., through invoices, confirmations, or brokers' records).

Completion and documentation of the claims forms should be no more burdensome than necessary. Nor, for purposes of administering a settlement, should the court require the same amount and specificity of evidence needed

996. For examples of claims forms, see *In re Diet Drugs Products Liability Litigation*, AHP Diet Drug Settlement Forms, available at <http://www.settlementdietdrugs.com/d.home.php3#forms> (last visited Nov. 10, 2003).

to establish damages at a trial; secondary forms of proof and estimates are generally acceptable. A default award may be appropriate for those who can establish membership in the class but cannot, or prefer not to, submit detailed claims. Typically, such an award would be at the low end of the range of expected claims. The parties will usually have negotiated the amount and nature of proof necessary for a class member to recover under the settlement. To achieve the intended distribution to beneficiaries, additional mailings, telephone calls, and investigative searches might be needed if notices to class members are returned or if class members fail to submit claim forms. There may be no need to require action by class members, as where the defendants' records provide a satisfactory, inexpensive, and accurate method for determining the distribution of a settlement fund.

Class counsel should establish a procedure for recording receipt of the claims forms and tabulating their contents, with arrangements subject to court approval. If the class is large, forms are customarily sent to a separate mailing address and the essential information is recorded on computers. Judges sometimes require class counsel to use follow-up procedures to contact class members where only a few have filed claims.<sup>997</sup> Form letters can answer common inquiries from class members and deal with recurring errors in completing the claims forms. These procedures should be made part of the record to minimize subsequent disputes.

Audit and review procedures will depend on the nature of the case. Claims for modest amounts are frequently accepted solely on the basis of the verified claim forms.<sup>998</sup> Medium-sized claims or a portion of such claims selected by random sampling may be subjected to telephone audit inquiries or cross-checks against other records. Large claims might warrant a field audit to check for inaccuracies or fraud.<sup>999</sup>

### 21.661 Claims Administrator or Special Master

Judges often appoint a claims administrator or special master and describe the duties assigned in the order approving the settlement agreement. Duties may include taking custody of settlement funds, administering the distribution procedures, and overseeing implementation of an injunction. The adminis-

997. See Fed. R. Civ. P. 23(d)(2); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 327–28, n.11 (3d Cir. 2001) (listing recommended practices for identifying class members entitled to actual notice).

998. See *infra* section 40.44.

999. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, 236 F. Supp. 2d 445, 462, 464 (E.D. Pa. 2002) (order increasing field audits for doctors and law firms that had submitted medically unreasonable claims).

trator or special master may be charged with reviewing the claims and deciding whether to allow claims that are late, deficient in documentation, or questionable for other reasons.<sup>1000</sup> The specific procedure for reviewing claims may be limited to the materials submitted or may include a hearing at which the claimant and other interested parties may present information bearing on the claim. The claims procedure may allow appeal of a decision to disallow a claim. That appeal may involve review by a disinterested individual or panel or, in some instances, by the court.

The administrator should make periodic reports to the court. These reports should include information about distributions made, interest earned, allowance and disallowance of claims, the progress of the distribution process, administrative claims for fees and expenses, and other matters involving the status of administration. Section 32.39 discusses the use of special masters and magistrate judges in implementing class settlements in employment discrimination cases.

#### 21.662 Undistributed Funds

The settlement might provide for disposition of undistributed or unclaimed funds.<sup>1001</sup> Judicial approval is required for such disposition, and the parties may want the funds to be returned to the settling defendant, paid to other class members, or distributed to a charitable or nonprofit institution. The court should allow adequate time for late claims before any refund or other disposition of settlement funds occurs,<sup>1002</sup> and might consider ordering a reserve for late claims.

1000. See, e.g., *In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 844–47 (E.D.N.Y. 1995) (reviewing criteria for deciding whether to allow late claims).

1001. Although disfavored in a fully tried class action, “fluid recovery,” in which damages are paid in the aggregate without individual proof, may be permissible in a settlement. See *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 179, 185–86 (2d Cir. 1987) (finding “some ‘fluidity’ is permissible in the distribution of settlement proceeds” and holding that the district court must supervise the programs that will consume such proceeds). Compare *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990) (noting “[f]ederal courts have frequently approved this remedy [fluid recovery for distribution of unclaimed funds] in the settlement of class actions where the proof of individual claims would be burdensome or distribution of damages costly”), with *Daly v. Harris*, 209 F.R.D. 180, 197 n.5 (D. Haw. 2002) (noting “fluid recovery system, as a method of aggregating damages as opposed to a distribution method, would not be appropriate here since Section 1983 requires proof of actual damages”).

1002. *In re Crazy Eddie*, 906 F. Supp. at 845 (noting “there is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement” (citing *Manual for Complex Litigation*, Third, § 30.47 (Federal Judicial Center 1995))).

The court's equitable powers may be necessary to deal with other problems that commonly arise during administration of settlement but might not be covered by the terms of the agreement. Such problems include

- the impact of divorce, death, incompetence, claims by minors, and dissolution of business entities or other organizations;
- investment of settlement funds (security of settlement funds is critical—the court should permit these funds to be held in only the most secure investments unless prudent investment of long-term holdings (e.g., to administer a trust for a mass tort settlement involving latent claims) calls for a balance between maintaining security and gaining returns on the investment);
- interim distributions and partial payments of fees and expenses; and
- procedures for handling lost or returned checks (although checks should ordinarily be stamped with a legend requiring deposit or negotiation within ninety days, counsel should be authorized to grant additional time).

The court and counsel should be alert to the possibility of persons soliciting class members after the settlement and offering to provide “collection services” for a percentage of the claims. Such activities might fraudulently deprive class members of benefits provided by the settlement and impinge on the court's responsibility to control fees in class actions.<sup>1003</sup>

## 21.7 Attorney Fee Awards

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Attorney fee applications may arise as part of the settlement of a class award or after litigation of the class proceedings. The request may be based on a percentage of a common fund that the class action has produced or may be based on a statutory fee award. Statutory awards are generally calculated using the lodestar method (number of hours reasonably spent on the litigation

1003. *Jack Faucett Assocs., Inc. v. Am. Tel. & Tel. Co.*, 1985-2 Trade Cas. (CCH) ¶ 66,830 (D.D.C. 1985).

multiplied by the hourly rate, enhanced in some circumstances by a multiplier), subject to any applicable statutory ceiling on the hourly rate. Some courts use a lodestar method as a crosscheck to ensure that the percentage method does not result in an excessive award. See section 14.122.

The court's settlement review should include provisions for the payment of class counsel. In class actions whose primary objective is to recover money damages, settlements may be negotiated on the basis of a lump sum that covers both class claims and attorney fees. Although there is no bar to such arrangements,<sup>1004</sup> the simultaneous negotiation of class relief and attorney fees creates a potential conflict.<sup>1005</sup> Separate negotiation of the class settlement before an agreement on fees is generally preferable. See generally sections 14.22, 14.23 (court-awarded attorney fees), and 32.463 (employment discrimination, attorney fees). This procedure does not entirely eliminate the risk of conflict, and, if negotiations are to be conducted in stages, counsel must scrupulously avoid making concessions affecting the class for personal advantage. If an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses, both amounts must be disclosed to the class. Moreover, the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel. The total fund could be used to measure whether the portion allocated to the class and to attorney fees is reasonable. Although the court may not rewrite the parties' agreement, it can find the proposed funds for the class inadequate and the proposed attorney fees excessive, and can allow the parties to renegotiate their agreement. The judge can condition approval of the settlement on a separate review of the proposed attorneys' compensation.

1004. See *Evans v. Jeff D.*, 475 U.S. 717, 733–34 (1986); *Marek v. Chesny*, 473 U.S. 1, 5–7 (1985).

1005. See, e.g., *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 334–35 (3d Cir. 1998) (approving a settlement in which parties sought permission of the court to negotiate fees after the merits had been resolved); *Malchman v. Davis*, 761 F.2d 893, 904–05 (2d Cir. 1985) (rejecting, for lack of factual support, appellant's argument that simultaneous negotiation of the merits and fees had tainted the settlement); *Manchaca v. Chater*, 927 F. Supp. 962, 966 (E.D. Tex. 1996) (“The decision by plaintiffs to pursue attorneys' fees and costs subsequent to judicial approval of a settlement agreement demonstrates their commitment to arms-length negotiations.”). See also *Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 269 (1985) (calling for, among other things, allowing parties to enter into a conditional settlement pending resolution of fees and for parties to seek the court's permission before discussing fees).

## 21.71 Criteria for Approval

Compensating counsel for the actual benefits conferred on the class members is the basis for awarding attorney fees. The “fundamental focus is the result actually achieved for class members.”<sup>1006</sup> That approach is premised on finding a tangible benefit actually obtained by the class members. See section 14.11. In comparing the fees sought by the lawyers to the benefits conferred on the class, the court’s task is easiest when class members are all provided cash benefits that are distributed. It is more complicated when class members receive nonmonetary or delayed benefits. In such cases, the judge must determine the value of those benefits.

Nonmonetary benefits can take a number of forms. In a Rule 23(b)(3) case, nonmonetary benefits can include coupons, discounts, or securities, or other forms. In a Rule 23(b)(2) case, the benefits may include different forms of injunctive relief, or relief that may mix injunctive and damages elements. A court may need to determine the dollar value of medical monitoring programs or warranty programs. A civil rights case may require evaluating an injunction redressing employment or other forms of discrimination. The court’s evaluation and review of such benefits as part of the settlement review process (see section 21.62) is important for its review of fee applications. If a settlement provides only speculative, uncertain, or amorphous benefits to the class, that resists valuation in dollar terms.

The court should carefully scrutinize any agreement providing that attorneys for the class receive a noncontingent cash award.<sup>1007</sup> The court should refuse to allow attorneys to receive fees based on an inflated or arbitrary evaluation of the benefits to be delivered to class members. It might be appropriate to require attorneys to share in the risk of fluctuations in the value of an in-kind settlement, either by taking all or part of its counsel fees in in-kind benefits or by deferring collection of fees and making them contingent on the value of in-kind benefits that are actually delivered to the class members.<sup>1008</sup>

1006. Fed. R. Civ. P. 23(h) committee note. *See also* 15 U.S.C. § 77z-1(a)(6) (2000) (limiting fee award to a “reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class”); RAND Class Action Report, *supra* note 955, at 490 (concluding that the “single most important action that judges can take to support the public goals of class action litigation is to reward class action attorneys only for lawsuits that actually accomplish something of value to class members and society”) (emphasis omitted).

1007. *See* RAND Class Action Report, *supra* note 955, at 429 (“In at least three instances [among 10 cases studied in depth], class members claimed less than half of the funds set aside for compensation.”).

1008. *See supra* section 24.121; *see also, e.g.*, *Bowling v. Pfizer, Inc.*, 132 F.3d 1147 (6th Cir. 1998) (reserving decisions on fees related to future funding until the class receives its benefits over a ten-year period); *In re Auction Houses Antitrust Litig.*, No. 00 Civ. 0648, 2001 WL

In some instances, the court might find the benefit to the class so speculative that it will use the lodestar method rather than the common-fund method to determine the amount of fees to which the attorneys are entitled.<sup>1009</sup> In other instances, the court may greatly reduce the parties' estimates of the dollar value of the benefits delivered to the class members and base the attorney fee award on the reduced amount. In cases involving a claims procedure or a distribution of benefits over time, the court should not base the attorney fee award on the amount of money set aside to satisfy potential claims. Rather, the fee awards should be based only on the benefits actually delivered. It is common to delay a final assessment of the fee award and to withhold all or a substantial part of the fee until the distribution process is complete.

If a case is primarily concerned with injunctive or declaratory relief, exclusive concern with monetary benefits may not be appropriate.<sup>1010</sup> If the value of such relief cannot be reliably determined or estimated, consider using the lodestar method, including any appropriate multiplier, to calculate fee awards.

The common-fund theory may call for awarding attorney fees to counsel other than class counsel. If the court has appointed as class counsel attorneys who did not file one of the original complaints (see section 21.27), attorneys who investigated and filed the case might be entitled to a fee award. Attorneys for objectors to the settlement or to class counsel's fee application might also have provided sufficient benefits to a class to justify an award.<sup>1011</sup>

Rule 23(h) also authorizes the award of nontaxable costs in class action litigation and settlements.

170792, at \*3–\*5, \*15–\*17 (S.D.N.Y. Feb. 22, 2001) (counsel fees for cash and coupon components of settlement to be paid in same proportion of cash and coupons as class benefits paid).

1009. *Strong v. BellSouth Telecomms., Inc.*, 137 F.3d 844, 851–52 (5th Cir. 1998) (upholding use of lodestar method of calculating fees in relation to a “phantom” common fund); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (calling for lodestar calculation where common benefit “evades the precise evaluation needed for the percentage of recovery method”).

1010. Fed. R. Civ. P. 23(h) committee note (citing an individual civil rights action for the proposition that placing an “undesirable emphasis” on “the importance of the recovery of damages in civil rights litigation” . . . might “shortchange efforts to seek effective injunctive or declaratory relief” (quoting *Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989))).

1011. *Id.*

## 21.72 Procedure for Reviewing Fee Requests

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### 21.721 Motions

Rule 23(h)(1) calls for the court to fix a time for submission of motions for attorney fees in class actions. For a discussion of procedures applicable in other types of cases, see section 14.22. Rule 23(h) does not contemplate application of the fourteen-day rule specified in Rule 54(d)(2)(B) unless the court chooses to set that time. In general, parties should be prepared to submit such motions as soon as possible after announcing a settlement so that the required Rule 23(h)(1) notice of the fee request can be combined with the required Rule 23(e) notice of settlement and sent to the class at the same time.

### 21.722 Notice

Rule 23(h)(1) requires that notice of fee requests be “directed to class members in a reasonable manner.” The rule contemplates that, in cases involving settlement review under Rule 23(e), “notice of class counsel’s fees motion should be combined with notice of the proposed settlement” and afforded the same notice as Rule 23(e) requires.<sup>1012</sup> In adjudicated class actions, “the court can calibrate the notice to avoid undue expense.”<sup>1013</sup>

### 21.723 Objections

Rule 23(h)(2) limits the right to object to class members or parties from whom payment is sought. Specifically, nonsettling defendants who will not be contributing to the fee payment sought may not object to the motion for a fee award.<sup>1014</sup>

### 21.724 Information Supporting Request and Discovery for Fee Requests

The party seeking fees has the burden of submitting sufficient information to justify the requested fees and taxable costs. Even in common fund cases, judges frequently call for an estimate of the number of hours spent on the

1012. Fed. R. Civ. P. 23(h)(1) committee note.

1013. *Id.*

1014. Fed. R. Civ. P. 23(h)(2) committee note.

litigation and a statement of the hourly rates for all attorneys and paralegals who worked on the litigation. Such information can serve as a “cross-check” on the determination of the percentage of the common fund that should be awarded to counsel. See section 14.122. In lodestar or statutory fee award cases, applicants must provide full documentation of hours and rates. To facilitate meaningful review of fee petitions, the court may specify the categories that attorneys should use to group their fee requests (e.g., by motion, brief, or other product) and establish other guidelines for any requests.<sup>1015</sup>

If there is a request for discovery to support an objection to a motion for attorney fees, the court should consider “the completeness of the material submitted in support of the fee motion, which depends in part on the fee measurement standard.”<sup>1016</sup> If “the motion provides thorough information, the burden should be on the objector to justify discovery to obtain further information.”<sup>1017</sup> As provided in Rule 23(e)(2), objectors should usually have access to the parties’ statement about “any agreement made in connection with the proposed settlement.” Whether the actual agreement will be discoverable depends on the extent to which the parties demonstrate a legitimate interest in confidentiality. See section 21.631.

#### 21.725 Required Disclosures

Side agreements provide information relevant to the allocation of fees among counsel for various parties and interests. Any concurrent settlements of individual plaintiffs’ cases by class counsel may be of particular interest. The court should examine the fee arrangements and the terms of individual settlements to avoid some plaintiffs’ being favored over similarly situated class members.<sup>1018</sup>

#### 21.726 Hearing and Findings

Rule 23(h)(3) permits the court to hold a hearing on a fee motion and directs the court to find the facts and state its conclusions of law. The circumstances and needs of the case will dictate the form of any hearing. For example, where the fee request depends on an evaluation of the relief earned for the class, a hearing may be necessary to provide evidence of such an appraisal. Usually, evidence of the value of the settlement will have been presented at the

1015. See Hirsch & Sheehy, *supra* note 859, at 103–05; see also *supra* section 14.21.

1016. Fed. R. Civ. P. 23(h)(2) committee note.

1017. *Id.*

1018. *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246, 258, 260, 307–09 (E.D. Pa. 1994), *vacated on other grounds*, 83 F.3d 610 (3d Cir. 1996), and *aff’d sub nom. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

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hearing on settlement review. In many instances, hearings on settlement review and fees can be conducted at the same time.

#### 21.727 Use of Special Masters or Magistrate Judges

Rule 23(h)(4) provides broad authority to refer issues related to the amount of a request for fees to a special master or magistrate judge. In this context, as in other posttrial contexts, Rule 53(a)(1)(C) does not require a finding of exceptional circumstances before making such a referral. Considerations of timing and cost, however, might affect a decision to refer the matter.

## 22. Mass Torts

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## 22.1 Introduction

This section provides a general definition of mass torts and distinguishes between multiple tort claims arising out of a single incident and dispersed mass tort claims. Section 22.2 identifies categories of information helpful to a judge managing mass tort suits. Section 22.3 analyzes a threshold issue in mass tort litigation—whether and when to aggregate related cases filed in different federal district courts, in federal and state courts, and in federal district courts, bankruptcy courts, and state courts. Throughout this section, “aggregated treatment” refers to various devices that bring claims and cases together for pretrial management, settlement, or trial. These devices include intradistrict consolidation under Federal Rule of Civil Procedure 42, class certification under Rule 23, multidistrict transfer under 28 U.S.C. § 1407, and the assembling of tort claims that automatically accompanies a bankruptcy filing. Section 22.31 focuses on aggregated treatment of related cases for pretrial case

management, criteria for deciding whether consolidation for trial is appropriate, and coordination techniques for nonaggregated cases. Subsequent sections focus on the particulars of mass tort case management and problems that can arise when class certification is sought in mass tort cases.

Mass torts litigation “emerges when an event or series of related events injure a large number of people or damage their property.”<sup>1019</sup> A mass tort is defined by both the nature and number of claims; the claims must arise out of an identifiable event or product, affecting a very large number of people and causing a large number of lawsuits asserting personal injury or property damage to be filed. Some argue that 10,000 claims represent a threshold for mass torts that require special management;<sup>1020</sup> others argue that 100 suits will suffice. A 1999 report by the Working Group on Mass Torts considered fifty distinct groups of mass tort cases, representing a spectrum ranging from hundreds to hundreds of thousands of claims.<sup>1021</sup> The central question is whether the group of claims, whatever its size, calls for special management.

The need for special judicial management of mass torts arises from the sheer volume of the litigation generated. Judges must efficiently and fairly manage hundreds, even thousands, of related cases without unduly disrupting the court’s other work. Mass tort cases are often characterized by a combination of issues, some that may lend themselves to group litigation (such as the history of a product’s design) and others that require individualized presentation (such as the circumstances of individual exposure, causation, and damages). Because these factors vary from tort to tort, and case to case, generalized rules about handling mass tort cases are difficult to formulate.

State substantive law usually governs mass tort cases, making multistate aggregations of cases even more complex. Some products, like asbestos and diethylstilbestrol (DES), were produced by a substantial number of companies, and allocating responsibility among defendants and their insurers introduces additional complications. The trial judge ordinarily should distinguish between issues appropriate for aggregate determination and issues that require individualized determinations before making any decision about whether or how to aggregate claims for pretrial management or final resolution.

Courts have long recognized the need for special case-management practices in single incident mass torts, such as a hotel fire, the collapse of a structure, the crash of a commercial airliner, a major chemical discharge or

1019. Advisory Comm. on Civil Rules and Working Group on Mass Torts, Report on Mass Tort Litigation 10 (Feb. 15, 1999), *reprinted without appendices in* 187 F.R.D. 293, 300 [hereinafter, Working Group Report].

1020. *Id.* at 300 n.1 and sources cited therein.

1021. Working Group Report, *supra* note 1019, app. D, at 1.

explosion, or an oil spill. Since the early 1980s, however, there has been a rapid increase in litigation involving dispersed mass torts, which typically arise from widespread use of, or exposures to, widely distributed products or substances, often over an extended time.<sup>1022</sup> Prominent examples include litigation involving asbestos, Dalkon Shield intrauterine devices, silicone gel breast implants, and diet drugs. Key elements of such claims are a high volume of repetitive litigation involving the same or similar product or substance, and an evolving and uncertain group of potential claimants and potential defendants. In a dispersed mass tort, “the universe of potential plaintiffs is unknown and many times is seemingly unlimited, and the number of potential tortfeasors is equally obtuse . . . .”<sup>1023</sup> By contrast, with single incident mass torts, “the universe of potential claimants is either known or . . . capable of ascertainment and the event or course of conduct . . . occurred over a known time period and is traceable to an identified entity or entities.”<sup>1024</sup>

Some dispersed mass tort cases involve only claims by individuals who know that they consumed a certain product or were exposed to a certain substance and who sustained a present injury of predictable severity within a relatively short period. Examples of such cases include a pharmaceutical drug or a medical device that is withdrawn from the market within a year or two after introduction, such as the Baycol (antistatin drug)<sup>1025</sup> and Sulzer Inter-Op Hip Prosthesis<sup>1026</sup> litigations. In other cases, the product or substance exposure can occur over years and produce latent injury that may take decades or more to appear and even longer for the extent or severity of injury to become clear. Such cases are often termed latent dispersed mass torts. Examples of latent injury claims include those related to asbestos,<sup>1027</sup> intrauterine devices,<sup>1028</sup>

1022. See generally American Law Institute, *Complex Litigation: Statutory Recommendations and Analysis* § 6.01, at 340–41 (1994) [hereinafter ALI, *Complex Litigation*] (a succinct history of some major events in the history of mass torts); see also Francis E. McGovern, *Resolving Mature Mass Tort Litigation*, 69 B.U. L. Rev. 659 (1989) [hereinafter McGovern, *Mature Mass Tort*].

1023. *In re Chevron U.S.A., Inc.*, 109 F.3d 1016, 1018 (5th Cir. 1997) (claims of personal injury and property damage related to alleged contamination of property and groundwater by dumping hazardous wastes).

1024. *Id.* See also McGovern, *Mass Torts for Judges*, *supra* note 705, at 1827–38 (analyzing various factors related to the volume or elasticity of some mass torts).

1025. See *In re Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001).

1026. *In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931 (J.P.M.L. 2001).

1027. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598 (1997) (“[L]atency period that may last as long as 40 years for some asbestos related diseases . . .”).

1028. See Richard B. Sobol, *Bending the Law: The Story of the Dalkon Shield Bankruptcy* 107 (1991) (“The discovery of infertility related to the use of the Dalkon Shield frequently occurred long after the removal of the device.”).

silicone gel breast implants,<sup>1029</sup> radiation exposure,<sup>1030</sup> and pharmaceutical products, such as morning sickness remedies.<sup>1031</sup> Some potential claimants will know that they have been exposed to a harmful product or substance, even absent present injury. Other individuals, however, may not be aware that they have been exposed to a potentially injurious product or substance (e.g., the female children of women who took DES during pregnancy<sup>1032</sup> or individuals who have unknowingly been exposed to asbestos<sup>1033</sup>). Some individuals may not yet have been exposed to products such as asbestos, lead, or other harmful substances, but may be exposed later. Justice Ginsburg described such categories of potential claimants as “unselfconscious and amorphous,”<sup>1034</sup> a characterization that underscores the difficulty of providing notice to them in a class action.

Those who have been exposed to a potentially harmful product or substance but have not discovered injury are sometimes referred to as future claimants or present future claimants. People who have not yet been exposed to the product or substance but who are in the future are sometimes referred to as future future claimants. Some question exists whether future claimants, of whatever type, can receive class action notice that is sufficient under the Constitution and Rule 23.<sup>1035</sup> Some cases present allegations of both present injury and latent injury, adding to the variability among the claims. Breast implant and asbestos claims exemplify this latter category.<sup>1036</sup>

1029. *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, No. CV92-P-10000-S, Civ. A. No. CV 94-P-11558-S, 1994 WL 578353, at \*8 (N.D. Ala. Sept. 1, 1994) (approving ongoing disease compensation program for thirty years that provides for potentially adding illnesses of children of women with implants).

1030. *In re TMI Litig.*, 193 F.3d 613, 643 (3d Cir. 1999) (finding that latency period for exposure to radiation may vary, depending on disease, from eight to ten years).

1031. *In re DES Cases*, 789 F. Supp. 552, 558 (E.D.N.Y. 1992) (noting that babies exposed to DES in womb may have latent diseases in adult years); *cf. In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, MDL No. 1203, No. 99-20593, 2000 WL 1222042, at \*46 (E.D. Pa. Aug. 28, 2000) (finding no real latency period from time of discontinued use of diet drug).

1032. *DES Cases*, 789 F. Supp. at 558 (“Women exposed to DES *in utero* may develop adenosis, a pre-cancerous cell change . . .”).

1033. *Amchem*, 521 U.S. at 628 (noting that many persons may not know they were exposed, including children and spouses of claimants).

1034. *DES Cases*, 789 F. Supp. at 558. *See generally, Amchem*, 521 U.S. at 628.

1035. Jay Tidmarsh, *Mass Tort Settlement Class Actions* 29 n.72 (Federal Judicial Center 1998) (dividing “future plaintiffs” into “present futures” and “future futures”); Working Group Report, *supra* note 1019, at 302 (referring to “future claimants”).

1036. *See, e.g., Amchem*, 521 U.S. at 626–27 (discussing “currently injured” and future claimants); *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, 1994 WL 578353, at \*8 (N.D. Ala. Sept. 1, 1994) (alleging wide range of injuries).

These different categories of potential claimants may create conflicts of interest. Those with present injuries want to maximize present recoveries; those who may reveal no injury for years want to ensure that sufficient assets are available in the future to provide compensation if and as needed.<sup>1037</sup> Those who have not yet been exposed or are unaware of exposure may not be identifiable. Including such individuals in a binding resolution, as in a global settlement, raises issues of notice and fairness.

Identifying the differences between single incident and dispersed mass torts does not necessarily indicate how specific cases should be managed. Some single incidents, such as accidental discharges of pollutants, can also lead to claims that are widely dispersed over time and place.<sup>1038</sup> Even single event torts with a strong local nexus, such as a plant emission or a spill of toxic materials, may include latent exposure effects or be affected by individual variables, such as smoking. The “common distinction between ‘single event’ and ‘dispersed’ mass torts identifies prototypes,” but does not neatly divide mass torts “into two tidy categories that can be managed by separate or distinctive means.”<sup>1039</sup> The “crucial point is not whether the underlying tort itself is a single event, but whether its consequences are dispersed.”<sup>1040</sup>

Toxic tort and defective product cases are often filed throughout the state and federal court systems, including the bankruptcy courts. The sheer number of cases can create enormous pressure to aggregate or combine them in order to reduce delay and docket congestion and to avoid the costs of repetitive litigation that can drain potential compensation funds. That pressure has led to creative and experimental procedures by attorneys and judges. A “process of common law evolution” and “a growing corps of experienced litigators” have helped “state and federal courts continue to experiment with existing procedures and allocations of jurisdiction.”<sup>1041</sup> District judges have exercised their broad discretion to create some of the innovations described in this section. The purpose of these innovations, often stimulated by necessity, was to implement the goals of Rule 42 or 28 U.S.C. § 1407. Although appellate courts have not reviewed many of the innovative techniques, several of these techniques are clearly within the district court’s discretionary power to manage the

1037. *Amchem*, 521 U.S. at 626–27.

1038. *See, e.g., In re TMI Litig.*, 193 F.3d 613, 624, 625 n.8 (3d Cir. 1999) (personal injury claims were filed from the early eighties to mid-nineties); *Allen v. United States*, 588 F. Supp. 247, 257–58 (D. Utah 1984) (discussing personal injury claims related to radioactive fallout from nuclear test site where pollutants were dispersed over parts of Nevada, Utah, and Arizona).

1039. Working Group Report, *supra* note 1019, at 301.

1040. *Id.* at 302.

1041. *Id.* at 316.

litigation. However, some approaches, especially those that aggregate large numbers of claims with significant variations, may not comply with the underlying substantive law or may be unfair to some litigants.<sup>1042</sup> Nevertheless, courts recognize that the complexity, diversity, and volume of mass tort claims require adapting traditional procedures to new contexts, to achieve both fairness and efficiency. Effective management of mass tort cases typically requires early and regular meetings with the lawyers, identifying the nature of the claims, making decisions on pretrial or trial aggregation or coordination, and entering detailed orders necessary to the orderly development of the case.<sup>1043</sup> This management role should begin early in the litigation.

Procedures to aggregate claims sometimes encourage the filing of questionable claims, accelerate the rate at which claims are presented,<sup>1044</sup> or even create a mass tort out of what otherwise might simply have been a flurry of similar cases that would have quickly faded away. For example, in the repetitive stress injury litigation, the Judicial Panel on Multidistrict Litigation (MDL Panel) (see section 20.13) rejected plaintiffs' request for consolidation because the Panel was "not persuaded . . . that the degree of common questions of fact among these actions rises to the level" required under 28 U.S.C. § 1407.<sup>1045</sup> Subsequently, plaintiffs failed to succeed on the merits in trials in seven different jurisdictions and such claims disappeared from the mass tort landscape.<sup>1046</sup>

1042. For a case study discussing the appropriate use of mass tort innovations discussed in this manual, see Thomas E. Willging, *Beyond Maturity: Mass Tort Case Management in the Manual for Complex Litigation*, 148 U. Pa. L. Rev. 2225 (2000) (focusing on use of MCL, 3d's treatment of the maturity concept in nationwide tobacco class action) [hereinafter Willging, *Beyond Maturity*]; see also ALI, *Complex Litigation*, *supra* note 1022, § 3.01, at 41–51 (discussing efficiency and fairness in deciding whether to aggregate claims).

1043. See generally Jack B. Weinstein, *Ethical Dilemmas in Mass Torts Litigation*, 88 Nw. U. L. Rev. 469 (1994); Geoffrey C. Hazard, Jr., *Reflections on Judge Weinstein's Ethical Dilemmas in Mass Torts Litigation*, 88 Nw. U. L. Rev. 569 (1994).

1044. See McGovern, *Mass Torts for Judges*, *supra* note 705, at 1822 ("The more successful judges become at dealing 'fairly and efficiently' with mass torts, the more and larger the mass tort filings become."); see also *id.* at 1841–45 (discussing different case-management approaches for different levels of maturity of mass tort litigation).

1045. *In re Repetitive Stress Injury Prods. Liab. Litig.*, No. 955, 1992 WL 403023, at \*1 (J.P.M.L. Nov. 27, 1992). See also *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 374 (2d Cir. 1993) (vacating a pretrial consolidation order under Rule 42; approving assignment of cases to a single judge).

1046. See George M. Newcombe, *RSI Defendants Fight for Due Process: "Mass Torts" Needn't Always Be Massive*, 63 Def. Couns. J. 36, 39–40 (1996). A prominent plaintiffs' attorney had described RSI cases as "the mass tort of the nineties" (see Stanley J. Levy, *Repetitive Trauma: The Mass Tort of the Nineties*, in *Proving or Defending Repetitive Stress Injury, Medical Device, Lead,*

Although the “just, speedy, and inexpensive determination of every action”<sup>1047</sup> requirement applies to all cases, the difficult and sometimes contradictory demands posed by mass torts make case management both challenging and critical. The absence of precedent or of legislative or rule-making solutions should not foreclose innovation and creativity. Such creativity must be carefully applied, accompanied by an examination of the specific issues raised in each case, the legal authority for and against the procedures devised, and other factors that might affect fairness and efficiency.

## 22.2 Initial Issues in Mass Tort Suits

The goals of mass tort case management parallel the goals of Federal Rule of Civil Procedure 1 and include the following:

- providing a forum for all parties to have a fair test of the merits of their claims and defenses;
- avoiding inefficient and duplicative litigation of similar issues of law or fact;
- effecting the statutory and common-law goals of compensating those injured by tortious conduct and deterring such conduct; and
- affording similar treatment to similar cases in order to promote public confidence in the courts through consistent, predictable, and cost-effective outcomes.

These goals sometimes require the court to marshal limited assets for the protection of present and future claimants not yet before the court.

Mass tort case management must keep the litigation moving efficiently, without truncating necessary pretrial preparation or distorting the presentation of issues. Cases involving a large volume and variety of claims and parties, and the presence of individualized issues, often create conflicting demands for speedy adjudication and fairness to all parties. The challenge for the judge is to avoid excessive delay while preserving the right to a fair trial. For example, the court may need to establish priorities by considering claims involving serious impairment before claims that appear to involve little or no impairment. (This section later discusses types and varieties of claims; section 22.633 discusses deferred docketing.)

The paradox of mass torts is that all of the claims share some common attributes, and all present similar challenges, but each particular case has some

Pharmaceutical and Closed Head Trauma Cases 167 (PLI Comm. Law & Practice Course, Handbook Series No. 723, 1995)).

1047. Fed. R. Civ. P. 1.

unique features. A judge must gather information that affects the threshold decisions for organizing the litigation and for setting a timetable for pretrial discovery, preliminary or dispositive motions, and trial. A critical question often is whether to aggregate cases for pretrial and trial management or to proceed on a case-by-case basis. Important factors to consider include the following:

- *What is the number of potential claims?* Mass production and widespread distribution of potentially harmful products or broad exposure to harmful substances is at the core of most mass torts. The volume of sales or the extent of public exposure to the products or substances at issue can help the court approximate the potential size of a mass tort. Information about the number of cases already filed in state and federal courts and the number of people exposed may provide a basis for predicting the number of cases likely to be filed in the future and the likely rate of filings. The number of actual and potential claimants affects decisions about whether to aggregate a group of cases, when aggregation is appropriate, and what form aggregation should take. A court should be cautious before aggregating claims or cases, particularly for trial, learning first about the nature of the litigation and whether the issues are appropriate even for pretrial aggregation or consolidation. Premature aggregation might be unworkable, unfair, or even accelerate the number and rate of filings and increase the size of the mass tort.
- *What are the types and varieties of claims involved?* Considering the following will help inform case-management decisions:
  - whether there is mixed severity among injury claims and whether any alleged diseases are latent (if a latent disease, the length of the latency period—that is, the period between exposure and manifestation of injury);
  - whether there are claims for personal injury, property damage, economic damage, or combinations of these elements;
  - whether claims for personal injuries involve imminent death, disability, chronic illness, or fear of future injury;
  - if an increased risk of future injuries is at issue, whether medical monitoring is an available cause of action or remedy under applicable law; and
  - whether the mix of injuries suggests a need to establish priorities for the most serious claims and a correlative need to defer consid-

eration of claims with little or no present impairment.<sup>1048</sup> Section 40.52 has a sample order. Section 22.633 discusses deferred docketing. Judges have also devised ways to screen claims that appear to have no factual basis.<sup>1049</sup>

A latency period raises the issue of future claimants and their relationship to those already manifestly injured. A long latency period complicates the identification and resolution of future claims, particularly claims by those who are still unaware that they have been exposed to a dangerous product or substance, or who may not yet have been exposed. The likelihood of future claims, and the number of those claims, may be difficult or impossible to determine.

- *What is the strength and reliability of the scientific evidence?* Is statistically significant and reliable information to support general causation available or likely to become available? Epidemiological evidence may not be available when the exposed population is relatively small, the disease or injury at issue is relatively rare, or both.<sup>1050</sup> Is other reliable evidence available or likely to become available from which a causal relationship might be proven—for example, findings from toxicology or medicine?<sup>1051</sup> These issues are often raised in challenges to the sufficiency and reliability of expert evidence.

1048. See, e.g., *In re Asbestos Prods. Liab. Litig.* (No. VI), No. 875, 2002 U.S. Dist. LEXIS 16590, at \*1 (E.D. Pa. Jan. 16, 2002) (order ruling that “priority will be given to the malignancy and other serious health cases over the asymptomatic claims,” administratively dismissing cases based on mass screenings, and tolling the statute of limitations for such cases). See generally 28 U.S.C. § 1657 (West 2003) and Fed. R. Civ. P. 40 for statutory and rule-based authority of courts to set priorities for civil cases; see also *In re Joint Eastern & Southern Districts Asbestos Litigation*, 237 F. Supp. 2d 297, 319–24, 336 (E.D.N.Y. & Bankr. S.D.N.Y. 2002) (approving amended trust terms that modify disease categories, criteria, and values to increase compensation to claimants with severe impairments).

1049. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, 236 F. Supp. 2d 445, 462–64 (E.D. Pa. 2002) (finding echocardiograms and claims forms submitted by two cardiologists and two law firms to have been medically unreasonable and authorizing the settlement trust to audit all claims submitted by those law firms and all reports by those cardiologists).

1050. See generally Michael D. Green et al., *Reference Guide on Epidemiology*, in Reference Manual on Scientific Evidence 333, 343 (Federal Judicial Center 2d ed. 2000) (indicating that for a rare disease, a cohort study may not be possible because “an extremely large group would have to be studied in order to observe the development of a sufficient number of cases for analysis); see also *id.* at 356 (“Common sense leads one to believe that a large enough sample of individuals must be studied if the study is to identify a relationship between exposure to an agent and disease that truly exists.”).

1051. See Bernard D. Goldstein & Mary Sue Henifin, *Reference Guide on Toxicology*, in Reference Manual on Scientific Evidence 401–37 (Federal Judicial Center 2d ed. 2000), and

- *Do the basic elements of the mass tort present issues common to all claimants? Is the proof of those basic issues common to enough claimants to warrant common treatment? Common factual issues may arise from the development, manufacturing, or marketing of an allegedly defective product. The evidence as to whether a product was defective, whether there is general causation, and the presence and extent of damages must all be analyzed to determine whether it is common to all claimants or primarily dependent on individual circumstances.*

Causation must be analyzed to determine whether it can be established on a group-wide basis. Proof of causation requires evidence of exposure to the allegedly defective product or substance, the amount and duration of exposure, the alleged causal mechanism, and the role of alternative causal agents. In some cases, judges have treated general causation as suitable for aggregation through consolidation or certification of an issues class;<sup>1052</sup> in other cases, judges have found the issue too intertwined with individual questions to permit such an approach.<sup>1053</sup> Some products leave a signature injury, such as mesothelioma from asbestos. Even in those cases, however, proof of individual exposure to the causal agent is essential. An identifiable agent that consistently causes a particular injury may make it easier to prove causation on a group-wide basis. Without a signature injury or a readily identifiable agent, evidence as to the amount of exposure and the role of alternative causal agents is more individualized and may make aggregation of the claims questionable.

Alleged product defects must also be analyzed to determine whether they can be established by proof common to the group. Such proof may relate to a single version of a product or to variations among similar products. The number and extent of the variations will affect

Mary Sue Henifin et al., *Reference Guide on Medical Testimony*, in *Reference Manual on Scientific Evidence* 439–84 (Federal Judicial Center 2d ed. 2002).

1052. See *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1139 (9th Cir. 2002) (distinguishing between nature of expert testimony and proof required for individual as opposed to generic causation, and remanding with recommendation that the trial court consider “[class] certification only for questions of generic causation common to plaintiffs who suffer from the same or materially similar disease”); *In re Bendectin Litig.*, 857 F.2d 290, 308–09 (6th Cir. 1988) (constitutionality of separate common issues trial of generic causation upheld); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188 (6th Cir. 1988) (severing, and granting class certification on, issues of generic causation).

1053. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1302–03 (7th Cir. 1995) (rejecting the use of an issues class in product liability case because of individual liability issues); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.21 (5th Cir. 1996) (same).

the extent to which proof of deficiencies applies across a substantial group of claimants. Similarly, claims for punitive damages may be affected by the number of products involved and variations in their production and marketing.

Proof of individual, compensatory damages will typically be specific to each claimant. Accordingly, individual decisions on actual damages are usually required.

- *How many defendants are there and what is the relationship among them?* The number of defendants that designed, manufactured, or marketed the suspect product is an important consideration. The claims among codefendants or third-party defendants may affect not only the type and extent of discovery, but also whether all necessary parties are before the court for comprehensive adjudication or settlement. In appropriate cases, the court should encourage defendants to present joint defenses or to coordinate motions and eliminate repetitive arguments. Early in the litigation, the court should determine whether other parties, such as insurers, are appropriately and usefully included in the litigation. If there are related insurance coverage actions pending, the court should consider whether those actions should be coordinated or consolidated with the litigation. Treatment of coverage issues in conjunction with personal injury litigation has generally occurred in limited fund class action or bankruptcy contexts.<sup>1054</sup> Whether any of the defendants are judgment-proof or seeking protection under the Bankruptcy Code are also important considerations. If the funds available appear inadequate to satisfy likely claims, the court should assess whether some identifiable plaintiffs are so disabled or critically ill as to warrant priority consideration, such as expedited trial dates.<sup>1055</sup> For example, the MDL asbestos court severed punitive damages claims and delayed their consideration until compensatory damages had been paid.<sup>1056</sup>
- *Have numerous cases presenting the same issues been filed in other courts?* Courts routinely order counsel to disclose, on an ongoing basis past, and pending related cases in state and federal courts and to report on their status and results. This information is necessary to case-management decisions, including the appropriate level of communi-

1054. See generally, e.g., *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) (asbestos-related limited fund class action); *In re Dow Corning Corp.*, 113 F.3d 565 (6th Cir. 1997) (bankruptcy).

1055. See discussion of Tidmarsh and *Working Group Report*, *supra* note 1035.

1056. See *In re Asbestos Prod. Liab. Cases* (No. VI), MDL No. 875, Suggestion of Remand Order (E.D. Pa. Feb. 26, 2003) (ordering punitive damages severed).

cation, cooperation, or coordination with other courts. If similar cases are dispersed among federal courts, the Judicial Panel on Multidistrict Litigation may order the cases transferred to a single court for coordinated or consolidated pretrial purposes. See section 22.33. If similar cases are pending in state courts as well as federal courts, the judge should inquire whether any of the state cases have been considered, and, if so, in what courts. Formal and informal techniques to coordinate discovery, pretrial motions, rulings on class certification, trial schedules, and other matters should be considered. See section 22.4.

- *What is the impact of different state laws that may apply?* State law usually governs tort claims, even when filed in federal court. The judge, early in the litigation, should consider the applicable conflicts and choice-of-law rules. Consider which state laws and defenses apply and how they affect whether issues of defect, causation, or damages are subject to common proof. The judge should examine whether any claims or defenses create individual issues or make aggregate treatment appropriate only for certain parts of the case, or for limited purposes, such as pretrial discovery. And consider whether there are conflicts among the applicable state laws that might present significant obstacles to any aggregate treatment.
- *What are the experiences of other courts with similar claims?* The court might inquire whether similar cases have been tried or settled, and, if so, with what results; whether other courts have ruled on dispositive motions or on the limits of appropriate discovery; and what information is available as to the value of a particular set of cases, based on prior trials or prior settlements.<sup>1057</sup> Consider whether there is a need for more trials of individual cases to determine whether claims should be aggregated and on what terms. Also, determine if trials of test cases, common issues trials, or summary jury trials should be used.<sup>1058</sup>

1057. For an example of an order for counsel to submit preliminary reports summarizing the status of litigation pending in state courts, see *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 1 (N.D. Ala. June 26, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1058. For discussion of summary jury trials as an ADR technique, see Robert J. Niemic, Donna Stienstra & Randall E. Ravitz, *Guide to Judicial Management of Cases in ADR 44* (Federal Judicial Center 2001); see also *In re Telectronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985, 993 (S.D. Ohio 2001).

- *Would a court-appointed expert, panel of experts, technical advisor, or special master be of assistance to the trier of fact?*<sup>1059</sup> Determine whether there are less costly methods or alternative ways for the court to manage the expert testimony, such as joint meetings of the parties' experts to identify the sources of differences in their approaches to the same questions.

The information discussed above will help in devising a plan for managing the litigation. A threshold question is whether to aggregate cases for pretrial management or to proceed on a case-by-case basis.

1059. See generally Laural L. Hooper, Joe S. Cecil & Thomas E. Willging, *Neutral Science Panels: Two Examples of Panels of Court-Appointed Experts in the Breast Implants Product Liability Litigation* (Federal Judicial Center 2001) [hereinafter FJC Study, *Neutral Science Panels*] (comparison of methods two judges used to appoint scientific experts to assist in resolving mass tort litigation); FJC Study, *Special Masters*, *supra* note 704 (reporting empirical findings about the incidence of using special master in various types of cases and describing the appointment and use of such masters); Ellen E. Deason, *Court-Appointed Expert Witnesses: Scientific Positivism Meets Bias and Deference*, 77 Or. L. Rev. 59 (1998) (examining the uses and pitfalls of appointing experts, especially difficulties in assuring neutrality and counteracting the tendency to defer to an appointed expert); Joe S. Cecil & Thomas E. Willging, *Accepting Daubert's Invitation: Defining a Role for Court-Appointed Experts in Assessing Scientific Validity*, 43 Emory L.J. 995 (1994) (reporting results of an empirical study of judicial use of court-appointed experts, identifying purposes and problems relating to the appointments, and describing a pretrial procedure to identify expert issues early in the litigation).

## 22.3 Multiple Filings in Federal District Courts

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### 22.31 Aggregating Claims

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Aggregation—bringing together hundreds or even thousands of similar claims into a single unit—is among the most important decisions a judge faces in mass tort litigation.<sup>1060</sup> The decision whether to aggregate related mass tort cases is very different when made for the purpose of pretrial case management only, as opposed to trial. This section discusses the criteria and factors applicable to both of these decisions.

Aggregation of mass tort cases can take different forms: assigning cases filed within a district to a single judge in that district and entering consolida-

1060. For an overview of the range of informed opinions on whether and when aggregation should be used in mass tort litigation, see Thomas E. Willging, *Appendix C, Mass Torts Problems and Proposals: A Report to the Mass Torts Working Group* (1999), in Working Group Report, *supra* note 1019, at app. C.

tion orders under Federal Rule of Civil Procedure 42<sup>1061</sup> for pretrial or trial management; transferring cases filed in different districts for coordinated or consolidated treatment by a single judge under the multidistrict litigation (MDL) statute;<sup>1062</sup> and certifying similar cases as a class action for litigation or settlement purposes. Sections 22.3 and 20.13 discuss MDL transfers and section 22.7 discusses class actions. The recent trend in federal courts, with a few notable exceptions,<sup>1063</sup> has been to reject certification of nationwide mass tort personal injury class actions,<sup>1064</sup> particularly outside the settlement context. This trend makes the search for other tools of aggregation and coordination even more important.

1061. For a discussion of the structural differences between class actions and consolidations, see Charles Silver, *Comparing Class Actions and Consolidations*, 10 Rev. Litig. 495 (1991). Occasionally, cases are consolidated among districts within the same state, but such consolidations do not warrant separate discussion beyond noting the possibility that judges can be designated to handle cases filed in another district. See *In re Joint E. & S. Dists. Asbestos Litig.*, 769 F. Supp. 85 (E.D.N.Y. & Bankr. S.D.N.Y. 1991); *In re Johns-Manville Corp.*, 1990 Bankr. LEXIS 1940 (Bankr. S.D.N.Y. Aug. 21, 1990) (consolidated cases 82 B 11656 (BRL) through 82 B 11676); *In re Joint E. & S. Dists. Asbestos Litig.*, 120 B.R. 648, 652–53 (E.D.N.Y. & Bankr. S.D.N.Y. 1990) (discussing Order of James L. Oakes, Chief Judge, Second Circuit, dated January 23, 1990, and July 20, 1990; Order of Charles L. Brieant, Chief Judge, United States District Court S.D.N.Y., dated July 20, 1990, assigning responsibility for pending asbestos cases).

1062. 28 U.S.C. § 1407 (West 2003). If a motion to transfer pursuant to the MDL is not filed, there may be motions to transfer the venue of related cases to permit assignment before a single judge. *Id.* § 1404(a).

1063. Federal trial courts certified nationwide classes for specified common liability-related issues in the following cases: *In re Telectronics Pacing System, Inc., Products Liability Litigation*, 172 F.R.D. 271 (S.D. Ohio 1997); *In re Copley Pharmaceutical, Inc., “Albuterol” Products Liability Litigation*, 161 F.R.D. 456 (D. Wyo. 1995); *In re Copley Pharmaceutical, Inc., “Albuterol” Products Liability Litigation*, 158 F.R.D. 485 (D. Wyo. 1994) (manufacturing defect in batch of pharmaceutical product); see also *Lewis Tree Service Inc. v. Lucent Technologies, Inc.*, 211 F.R.D. 228 (S.D.N.Y. 2002). In *Valentino v. Carter-Wallace, Inc.*, the Ninth Circuit vacated the district court’s class certification order and remanded for adequate findings, holding that “the law of this circuit . . . does not create any absolute bar to the certification of a multi-state plaintiff class action in the medical products liability context.” 97 F.3d 1227, 1230 (9th Cir. 1996). In *In re Estate of Marcos Human Rights Litigation*, 910 F. Supp. 1460 (D. Haw. 1995), the Court discusses a litigation class of personal injury, wrongful death, and torture claimants that was certified for purposes of a three-phase class-wide trial on liability, punitive damages, and compensatory damages, under the Alien Tort Claims Act, 28 U.S.C. § 1350 (West 2003).

1064. See, e.g., *In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 288 F.3d 1012, 1018 (7th Cir. 2002) (holding that because the claims would have to “be adjudicated under the law of so many jurisdictions, a single nationwide class is not manageable”); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 743–44, 749–52 (5th Cir. 1996).

### 22.311 Criteria

The criteria for aggregation of mass tort cases for trial are more stringent than for more limited purposes, such as pretrial discovery, motions, or settlement. Aggregation of related cases for pretrial preparation often promotes efficiency in discovery, even when the cases cannot be aggregated for all phases of pretrial preparation or for trial.

The key factor in deciding to aggregate cases for pretrial is the presence of common issues that can be discovered and litigated efficiently and fairly, through motions or otherwise, in coordinated or consolidated proceedings. A common issue is one that is susceptible to common proof. Decisions about whether to aggregate cases, and for what purposes, should be based on the presence of common issues critical to liability determinations. In general, product-based mass torts in which the evidence of exposure and general causation is clear may be candidates for some form of aggregation.<sup>1065</sup> When the circumstances of exposure vary widely, or where causation is uncertain or varying, aggregation for trial is inappropriate. In such cases, aggregation for pretrial discovery and motions may provide some efficiencies but will require careful management to protect some parties from unfair burden.<sup>1066</sup>

### 22.312 Advantages and Disadvantages of Aggregation

Aggregation of similar claims can maximize fair and efficient case management, minimize duplication, reduce cost and delay, enhance the prospect of settlement, promote consistent outcomes, and increase procedural fairness.<sup>1067</sup> Without aggregation, some types of tort or tort-like claims, such as consumer claims asserting economic loss or property damage but not personal injury, may simply be foreclosed or delayed for reasons unrelated to the merits.<sup>1068</sup> On the other hand, aggregation can increase the complexity of cases and introduce

1065. In a report to the Mass Tort Working Group, Federal Judicial Center staff identified the following mass torts areas as having clear causation and identifiable exposure: asbestos, Dalkon Shield, heart valves, HIV blood factors, tobacco, TMJ implants, J-pacemaker leads, and Thalidomide. Working Group Report, *supra* note 1019, app. D, at 10 tbl. 3.

1066. See, e.g., *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 374 (2d Cir. 1993) (vacating consolidation order and noting party pursuing aggregation should not do so to increase costs for adversary).

1067. See Helen E. Freedman, *Product Liability Issues in Mass Torts—View from the Bench*, 15 *Touro L. Rev.* 685, 686–88 (1999).

1068. In *Amchem Products, Inc. v. Windsor*, the Court noted the intent of Rule 23's drafters to vindicate the rights of those who might not be able to use the courts at all without a class action device. 521 U.S. at 617.

additional cost and delay associated with individualized issue resolution. In such instances, aggregation can be unfair to plaintiffs and defendants.<sup>1069</sup>

### 22.313 Timing of Aggregation Decisions

Judges have broad discretion as to the timing of aggregation decisions. Federal Rule of Civil Procedure 42 permits consolidation whenever “actions involving a common question of law or fact are pending before the court.” Rule 23(c)(1) directs the court to decide class certification “at an early practicable time.” The statute governing multidistrict litigation, 28 U.S.C. § 1407, simply refers to “pretrial” proceedings. The MDL Panel sometimes decides to defer or reject consolidation because one or more of the component cases is approaching trial.<sup>1070</sup> On the other hand, MDL consolidation can occur long after a substantial number of similar cases have been resolved by trials or settlements.<sup>1071</sup> In most cases, timing depends on the availability of reliable and sufficient information about whether there are common issues that can be determined fairly and efficiently across a large number of claims and whether the nature and value of the claims makes aggregation useful.

### 22.314 Obtaining Information About Common Issues and Case Values

A “mature” mass tort is one that rests on clearly established law and tested and accepted evidence. In a mature mass tort, the cases have a predictable range of values produced through a number of trials and settlements in a variety of tribunals. Maturity exists on a continuum and resists clear definition. Determining whether a particular mass tort is mature requires scrutinizing the merits of the litigation—merits which may become evident in pretrial rulings

1069. See, e.g., *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993) (“The systematic urge to aggregate litigation must not be allowed to trump our dedication to individual justice, and we must take care that each individual plaintiff’s—and defendant’s—cause not be lost in the shadow of a towering mass litigation.” (quoting *In re Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 853 (2d Cir. 1992))); *Malcolm v. Nat’l Gypsum Co.*, 995 F.2d 346, 354 (2d Cir. 1993) (disapproving a consolidated trial and cautioning “that it is possible to go too far in the interests of expediency and to sacrifice basic fairness in the process”); see also Irwin A. Horowitz & Kenneth S. Bordens, *The Consolidation of Plaintiffs: the Effects of Number of Plaintiffs on Jurors’ Liability Decisions, Damage Awards, and Cognitive Processing of Evidence*, 85 J. Applied Psychol. 909 (2001) (experimental research on jury decision making found that aggregations of up to ten cases—when compared with single trials or smaller aggregations—increased the likelihood that defendant would be found liable, but reduced the average damage award per plaintiff).

1070. See *In re Asbestos & Asbestos Insulation Materials Prods. Liab. Litig.*, 431 F. Supp. 906, 909–10 (J.P.M.L. 1977).

1071. See *In re Asbestos Prods. Liab. Litig.* (No. VI), 771 F. Supp. 415 (J.P.M.L. 1991).

on discovery and motions in the first case filed—to decide whether core issues of liability remain unsettled.<sup>1072</sup> Litigation is generally considered mature if through previous cases (1) discovery has been thorough, producing a consensus that the available important information has been provided, (2) a number of verdicts have been received indicating the value of claims, and (3) plaintiffs' contentions have been shown to have merit.<sup>1073</sup> In a typical mature mass tort, little or no new evidence is likely, appellate review of novel legal issues has been completed, and a full cycle of trial strategies has been explored.<sup>1074</sup>

Cases with extensive history or development in other litigation generally allow a judge to decide whether to aggregate claims, and for what purposes, with little additional information. Perhaps the best example of a mature mass tort is the asbestos litigation where discovery has been exhaustively conducted into many of the issues common to asbestos claims, including factors affecting causation; the many asbestos verdicts and settlements provide information as to the value of a particular claim; and repeated litigation in a variety of tribunals has proven specific causation for certain types of injury. The issues in newly filed asbestos claims focus on whether a particular plaintiff has the injury claimed and, if so, whether it was caused by asbestos exposure or by alternative causes, such as using tobacco.

In less mature mass tort cases, aggregation decisions may be more difficult and may require the judge to obtain additional information. If the injuries allegedly arise from new products or substances, or liability is predicated on novel legal claims, causation may be disputed or scientific evidence may be conflicting. If there are few prior verdicts, judgments, or settlements, additional information may be needed to determine whether aggregation is appropriate. The need for such information may lead a judge to require a number of single-plaintiff, single-defendant trials, or other small trials. These trials would test the claims of causation and damages and whether the evidence applies across groups, in order to provide the necessary information as to whether aggregation is appropriate, the form and extent of aggregation, and the likely range of values of the various claims.

A variety of case-management techniques are available when there is insufficient information as to the nature, strength, or value of the claims.

1072. See generally *infra* section 22.2 and Thomas E. Willging, *Beyond Maturity: Mass Tort Case Management in the Manual for Complex Litigation*, 148 U. Pa. L. Rev. 2225, 2254–55 and sources cited therein (2000); see also George L. Priest, *Procedural Versus Substantive Controls of Mass Tort Class Actions*, 26 J. Legal Stud. 521 (1997) (presenting the view that substantive review of the merits of a claim is essential to effective management of mass tort class actions).

1073. See McGovern, *Mature Mass Tort*, *supra* note 1022, at 659.

1074. *Id.*

Before making aggregation decisions, the judge should order the parties to identify other, pending, related cases and their status. The judge also might consider setting several individual cases on a schedule for pretrial motions, discovery, and trial as test cases, while holding other cases or claims in abeyance. As another technique, a court may stay or defer decisions in the cases before it until more advanced cases or dispositive motions pending in other courts are concluded. Identifying and implementing such approaches promptly will avoid unnecessary delay.

### 22.315 Test Cases

If individual trials, sometimes referred to as bellwether trials or test cases, are to produce reliable information about other mass tort cases, the specific plaintiffs and their claims should be representative of the range of cases. Some judges permit the plaintiffs and defendants to choose which cases to try initially, but this technique may skew the information that is produced.<sup>1075</sup> To obtain the most representative cases from the available pool, a judge should direct the parties to select test cases randomly or limit the selection to cases that the parties agree are typical of the mix of cases.<sup>1076</sup>

Test cases should produce a sufficient number of representative verdicts and settlements to enable the parties and the court to determine the nature and strength of the claims, whether they can be fairly developed and litigated on a group basis' and what range of values the cases may have if resolution is attempted on a group basis. The more representative the test cases, the more reliable the information about similar cases will be.

### 22.316 Case Characteristics

In litigation with numerous plaintiffs, the judge may direct the parties or a special master to identify relevant characteristics of the parties affecting pretrial organization,<sup>1077</sup> discovery, settlement, or trial. For example, in litigation

1075. *In re Chevron U.S.A., Inc.*, 109 F.3d 1016, 1019 (5th Cir. 1997) (noting that trial of cases selected by each side separately “is not a bellwether trial. It is simply a trial of fifteen (15) of the ‘best’ and fifteen (15) of the ‘worst’ cases contained in the universe of claims involved in this litigation.”).

1076. *Id.* (“A bellwether trial designed to achieve its value ascertainment function for settlement purposes or to answer troubling causation or liability issues common to a universe of claimants has as a core element representativeness—that is, the sample must be a randomly selected one of sufficient size so as to achieve statistical significance to the desired level of confidence . . .”).

1077. *See Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990) (affirming consolidation of two cases with similar characteristics and specifying criteria for identifying common

involving allegedly harmful products or substances, the parties might be directed to organize information such as (1) the circumstances of exposure to the toxic product (e.g., the place, time span, and amount of exposure), (2) the types of diseases or injuries attributable to the exposure (e.g., in the diet drug litigation, heart-valve disease and primary pulmonary hypertension), (3) relevant and distinguishing characteristics of multiple products, including manufacturing and distribution information (e.g., prescription from a doctor or over-the-counter distribution through specific retailers), and (4) the types of occupations or other roles of the plaintiffs (e.g., asbestos factory worker, installer, consumer, bystander, exposed spouse). Emerging patterns may assist the court in organizing and managing the litigation, whether by aggregated treatment or otherwise.

Also relevant is whether the cases have the same counsel on one or both sides and whether the cases are at similar stages of pretrial development. Cases having substantially similar evidence from the same expert or percipient witnesses sometimes benefit from some form of aggregation.

#### 22.317 Role of Different State Laws

When different state laws apply, a judge might ask the parties to research the feasibility of organizing cases based on the similarity of the applicable laws.<sup>1078</sup> If the cases are consolidated for pretrial purposes, lead counsel can file “core” briefs on dispositive motions based on the most widely applicable or otherwise most significant state substantive law. Variations in state laws can be addressed separately through supplemental briefs, which can be prepared by lawyers whose clients assert that a different law applies to some or all of their cases.

Differences in the applicable substantive law do not necessarily preclude aggregation for pretrial proceedings, but may create substantial obstacles to consolidation for trial, even if the underlying facts on liability are the same.<sup>1079</sup>

issues); *see also* *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495–97 (11th Cir. 1985) (discussing bases for consolidation); *cf. In re Repetitive Stress Injury Litig.*, 11 F.3d 368 (2d Cir. 1993) (vacating a pretrial consolidation order under Rule 42 while approving assignment of cases to a single judge), *and* *Malcolm v. Nat’l Gypsum Co.*, 995 F.2d 346 (2d Cir. 1993) (reversing a jury verdict after trial of forty-eight consolidated cases involving asbestos workers whose various occupations, worksites, time of exposure, disease types, and injuries were not sufficiently common to support a consolidated trial); *see also* Jay Tidmarsh & Roger H. Trangsrud, *Complex Litigation and the Adversary System* 473–87 (1998); Thomas E. Willging, *Trends in Asbestos Litigation* 104–07 (Federal Judicial Center 1987) [hereinafter *Trends*].

1078. *See In re School Asbestos Litig.*, 789 F.2d 996, 1010–11 (3d Cir. 1986).

1079. *See, e.g., In re Bendectin Litig.*, 857 F.2d 290, 293–94 (6th Cir. 1988) (noting differences in the complaints and finding “most are virtually identical, requesting relief on grounds of

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Differences in affirmative defenses, such as statute of limitations defenses, sometimes create a need for separate discovery and motions practice.

### 22.318 Trial Plans

Trial plans can assist in determining whether common issues justify aggregating related cases for trial and the extent and nature of the appropriate aggregation. Plans should address whether to try cases on a traditional case-by-case basis, on a test case basis, in a bifurcated or multifurcated organization of issues, in a consolidated or class format, or on some other basis. See section 22.32. The parties should point to evidence that will prove the elements of the claims and defenses in issue. Such information enables the judge to test whether common issues support some form of aggregation and whether to limit aggregation to particular issues. One court tested the manageability of a class action trial in a multidistrict medical-device proceeding by designing a plan for a summary jury trial conducted over approximately a one-week period.<sup>1080</sup> Other courts have rejected class certification after the trial plans exposed an inability to try proof of causation or other elements of liability on a class-wide basis.<sup>1081</sup>

### 22.32 Intradistrict Assignment to a Single Judge

A single judge's supervision of related mass tort cases filed in a single district provides centralized management of the cases pending in that district and also can facilitate coordination of related cases in other districts. Efficiency is increased if all related cases pending in the same division or district—including actions regarding insurance coverage, suits for indemnification, and adversary proceedings in bankruptcy—are assigned to the same judge, at least for pretrial management (see sections 20.11 and 10.12).

negligence, breach of warranty, strict liability, fraud, and gross negligence"); *In re Copley Pharm., Inc., "Albuterol" Prods. Liab. Litig.*, 161 F.R.D. 456, 468–69 (D. Wyo. 1995) (presenting trial plan to deal with differences in state laws).

1080. *In re Teletronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prods. Liab. Litig.*, 137 F. Supp. 985, 993 n.8 (S.D. Ohio 2001) (noting that "utilization of the summary jury trial technique in these cases assisted the Court and these Parties in determining whether a trial on the merits was manageable").

1081. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1299 (7th Cir. 1995) (finding the use of multiple juries deciding comparative negligence and proximate causation would violate the Seventh Amendment's reexamination clause); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 334, 351–53 (S.D.N.Y. 2002) (denying plaintiffs' motion for class certification because trial plan could not resolve individual issues of causation).

The district court may withdraw the references to bankruptcy judges of proceedings to determine the dischargeability of tort claims and assign those proceedings to the judge presiding over the underlying claims. 28 U.S.C. § 157(d). See section 22.52. The judges of a district court in which the bankruptcy proceeding is pending may also decide to defer transfer of multiple claims for personal injury or wrongful death under 28 U.S.C. § 157(b)(5), which provides for trial of such claims in the district court in which the bankruptcy case is pending or in the district in which the claim arose, until after a period of centralized pretrial management. In some mass tort cases, district judges and bankruptcy judges have presided jointly and issued joint opinions and orders.<sup>1082</sup> Bankruptcy courts sometimes grant relief from the automatic stay to save time and conserve resources by enabling distinct claims, such as insurance coverage or ERISA claims, to proceed simultaneously in other districts.<sup>1083</sup> See section 22.54.

If several cases are remanded to transferor courts in a single district for trial after a period of multidistrict supervision under 28 U.S.C. § 1407,<sup>1084</sup> judges in that district should consider whether the remanded cases are most efficiently handled by assignment to one judge, at least initially. If so, that judge may coordinate further discovery as needed and determine the most appropriate trial structure and schedule.

Local rules sometimes authorize transfer to a single judge of related mass tort cases filed before different judges in the same division of a district, or in multiple divisions of the same district. For example, one local rule defines related cases as those in which “a substantial saving of judicial resources is likely to result” by assigning them to the same judge “because of the similarity of facts and legal issues or because the cases arise from the same transactions or events.”<sup>1085</sup> Such local rules generally provide a random or objective basis for selecting the transferee judge—for example, assignment to the judge who initially received the lowest-numbered case.<sup>1086</sup> Another court’s local rule directs the clerk to seek the guidance of the judges in the division in the event

1082. See, e.g., *In re A.H. Robins Co.*, 158 B.R. 640 (Bankr. E.D. Va. 1993); *In re Joint E. & S. Dist. Asbestos Litig.*, No. CV90-3973, 1993 WL 207565 (E.D.N.Y. & Bankr. S.D.N.Y. June 10, 1993).

1083. *In re Enron Corp.*, No. 01-16034, 2002 WL 1008240, at \*1 (Bankr. S.D.N.Y. May 17, 2002) (order lifting automatic stay to permit payments under insurance policies).

1084. See *infra* section 22.33 and *supra* section 20.13.

1085. U.S. Dist. Ct. R. 50.3(a) (E.D.N.Y. Westlaw, current as of Oct. 15, 2003); cf. U.S. Dist. Ct. R. 40.1 (E.D. Pa. Westlaw, current as of Oct. 15, 2003) (defining a related case as one that “relates to property included in another suit, or involves the same issue of fact or grows out of the same transaction as another suit”).

1086. U.S. Dist. Ct. R. 50.3(e) (E.D.N.Y. 2002).

of multiple related filings, defined as five or more related cases.<sup>1087</sup> Courts have applied intradistrict assignments to a variety of mass tort cases. In one instance, two courts combined and consolidated their asbestos caseloads before a single judge designated by the chief judge of the court of appeals.<sup>1088</sup>

Once cases have been assigned to a single judge, that judge can determine the nature, extent, and purpose of the coordination or consolidation. Federal Rule of Civil Procedure 42(a) permits consolidation when the cases involve “a common question of law or fact.” Such consolidation may be of “any or all of the matters in issue in the actions.” In single incident mass tort litigation, early aggregation and pretrial consolidation of all or most of the individual cases generally has proved to be feasible and efficient.<sup>1089</sup> In such cases, consolidation under Rule 42 for trial purposes as well is often fair and efficient. If there are some variations among cases within a single district, subdividing them into groups or clusters of cases that raise similar issues or present similar case-management needs can also be an efficient approach.

In dispersed mass tort litigation, by contrast, coordinated discovery and pretrial motions may be feasible, but differences in facts relevant to exposure, causation, and damages, as well as in the applicable law, often make consolidation for trial purposes both inefficient and unfair.<sup>1090</sup> A court should avoid ordering even pretrial aggregation until it is sufficiently clear that there are common questions of fact and law.

Judges in a single division or district sometimes defer any transfer and intradistrict assignment until some of the cases have been discovered or tried on an individual basis. If the cases are assigned to a single judge in the district, that judge often defers the decision on whether to aggregate some or all of the cases for trial until after discovery and motions practice in cases coordinated for pretrial purposes have narrowed the claims, issues, and defenses and illuminated the extent to which they can fairly and efficiently be tried on an aggregated basis.<sup>1091</sup>

1087. *In re Div. of Cases Among Dist. Judges (Standing Order)* (W.D. Va. Jan. 30, 2001), at <http://www.vawd.uscourts.gov/storders/contents.asp> (last visited Nov. 10, 2003).

1088. *In re Joint E. & S. Dists. Asbestos Litig.*, 769 F. Supp. 85 (E.D.N.Y. & Bankr. S.D.N.Y. 1991).

1089. *See generally* Working Group Report, 187 F.R.D. 293, 301–02, *supra* note 1019, at 11–14 (exploring similarities and differences between single incident and dispersed mass torts); *see also In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001) (describing consolidation of oil spill-related claims and multiphase class action trial in single federal court; affirming class-wide compensatory damages verdict, and vacating and remanding class-wide punitive damages verdict to district court for recalculation).

1090. *See In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373–74 (2d Cir. 1993).

1091. Fed. R. Civ. P. 42(a). *See also* cases cited at *supra* note 1079.

The extent and duration of supervision by one judge, and whether to consolidate some or all of the cases for trial, will depend on the facts. A court should, for example, examine whether any common issues are central to the litigation,<sup>1092</sup> whether the common issues are separable from individual issues,<sup>1093</sup> and whether there is a feasible plan for dealing with any individual issues that remain after a verdict on the common issues.<sup>1094</sup> A key factor is whether the claims originated from a single incident. Section 22.32 has further discussion of trial structures. In dispersed mass tort cases, judges often require separate trials of individual actions, or of groups of individual actions, and arrange for assignments or remand to a number of judges after completion of common discovery.<sup>1095</sup>

Intradistrict aggregation sometimes leads to adverse consequences. Assignment to a single judge might delay disposition if that judge has other major cases to handle.<sup>1096</sup> Requiring each party to participate in tangentially related cases brought by or against other parties may increase costs unnecessarily.<sup>1097</sup> Case-management orders should tailor specific discovery to the parties affected, relieving other parties of that expense and burden. Even in a single district, aggregation ordered before it is clear that the cases actually

1092. See, e.g., *In re Bendectin Litig.*, 857 F.2d 290, 295–96 (6th Cir. 1988) (reciting district court finding of common issues relating to causation and liability); see also *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 158 F.R.D. 485, 488–89 (D. Wyo. 1994) (finding common issues based on contamination of product sold across the country).

1093. See *infra* text accompanying notes 1395–99, discussing *Gasoline Products Co. v. Champlin Refining Co.*, 283 U.S. 494, 499 (1931) (holding that “where the requirement of a jury trial has been satisfied by a verdict according to law upon one issue of fact, that requirement does not compel a new trial of that issue even though another and separable issue must be tried again”) and *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995).

1094. See *infra* text at notes 1400–02 (discussing trial plans for issues classes).

1095. See, e.g., *In re Orthopedic Bone Screw Prods. Liab. Litig.*, MDL No. 1014, 1998 WL 118060, at \*1 (E.D. Pa. Jan. 12, 1998) (remanding case after managing all aspects of civil procedure and discovery); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Order 30 (N.D. Ala. Mar. 25, 1996, with app. B (Apr. 2, 1996)), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (remanding cases back to transferor courts with summary of significant rulings, an “outline of issues remaining for discovery and trial,” and indicating “the nature and expected duration of further pretrial proceedings that are likely to be needed after remand or transfer”).

1096. Sam C. Pointer, Jr., *Reflections by a Federal Judge: A Comment on Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute*, 73 Tex. L. Rev. 1569, 1571 (1995) (“formal assignment of all cases to one court may result in the loss of valuable judicial resources”).

1097. See, e.g., *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 374 (2d Cir. 1993) (“A party may not use aggregation as a method of increasing the costs of its adversaries—whether plaintiffs or defendants—by forcing them to participate in discovery or other proceedings that are irrelevant to their case.”).

represent a mass tort litigation, as opposed to a short-lived filing of similar claims, might “encourage additional filings and provide an overly hospitable atmosphere for weak cases,” thereby “render[ing] the label ‘mass tort’ into a self-fulfilling prophecy.”<sup>1098</sup>

### 22.33 Interdistrict Transfer (Including MDL)

Aggregating cases from multiple federal districts can be addressed on a case-by-case basis through motions to transfer<sup>1099</sup> or on a national basis through the MDL Panel. The Panel has transferred a significant number of dispersed products liability and other mass torts cases “for coordinated or consolidated pretrial proceedings” (sometimes referred to as “centralized proceedings”) in a single district.<sup>1100</sup> In one instance, the Panel transferred a single district’s asbestos cases to an adjoining district for centralized management.<sup>1101</sup> Later, the Panel transferred all federal asbestos cases, which were by then mature mass tort cases, to a single district for nationwide centralized management.<sup>1102</sup>

The Panel applies a threshold set of criteria for transfer to a single district. The first issue is whether the underlying actions present common questions of fact.<sup>1103</sup> The common questions of fact must be complex, numerous, and incapable of resolution through other available procedures such as informal coordination.<sup>1104</sup> Next, the Panel looks to prudential and procedural factors

1098. Freedman, *supra* note 1067, at 688.

1099. “For the convenience of the parties and witnesses, in the interest of justice, a district judge may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a) (West 2003). *See also id.* § 1406.

1100. 28 U.S.C. § 1407(a) (West 2003). *See, e.g., In re Meridia Prods. Liab. Litig.*, 217 F. Supp. 2d 1377 (J.P.M.L. 2002); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377 (J.P.M.L. 2001); *In re Propulsid Prods. Liab. Litig.*, No. 1355, 2000 U.S. Dist. LEXIS 11651 (J.P.M.L. Aug. 7, 2000); *In re Diet Drugs Prods. Liab. Litig.*, 990 F. Supp. 834 (J.P.M.L. 1998); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098 (J.P.M.L. 1992).

1101. *In re Joint E. & S. Dists. Asbestos Litig.*, 769 F. Supp. 85 (E.D.N.Y. & Bankr. S.D.N.Y. 1991).

1102. *In re Asbestos Prods. Liab. Litig.* (No. VI), 771 F. Supp. 415 (J.P.M.L. 1991).

1103. *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372 (J.P.M.L. 2002); *In re Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378 (J.P.M.L. 2001); *Silicone Gel Breast Implants*, 793 F. Supp. at 1098.

1104. *See, e.g., In re DaimlerChrysler Corp. Seat Belt Buckle Prods. Liab. Litig.*, 217 F. Supp. 2d 1376 (J.P.M.L. 2002); *In re Unitrin, Inc., Ins. Sales Practices Litig.*, 217 F. Supp. 2d 1371 (J.P.M.L. 2002); *In re Chromated Copper Arsenate (CCA) Treated Wood Prods. Liab. Litig.*, 188 F. Supp. 2d 1380 (J.P.M.L. 2002); *In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696

supporting the necessity of centralization under section 1407. Centralization serves judicial economy by avoiding duplication of discovery, preventing inconsistent or repetitive rulings, and conserving the financial resources of the parties, their counsel, and the judiciary.<sup>1105</sup> The Panel will not grant such a motion unless transfer ultimately will serve the convenience of the parties and the courts. Finally, the Panel looks for an available and convenient transfer forum, usually one that (1) is not overtaxed with other MDL cases,<sup>1106</sup> (2) has a related action pending on its docket,<sup>1107</sup> (3) has a judge with some degree of expertise in handling the issues presented,<sup>1108</sup> and (4) is convenient to the parties.<sup>1109</sup>

Typically, MDL orders do not provide elaborate explanations or justifications for granting transfer in product liability cases; the Panel merely provides a short description of the criteria and concludes that the pending litigation satisfies them. For example:

Common factual questions arise because all actions focus on alleged side effects of Meridia, a widely-prescribed weight loss drug, and whether defendants knew of these side effects and either concealed, misrepresented or failed to warn of them. Centralization under Section 1407 is thus necessary in order to avoid duplication of discovery, prevent inconsistent or repetitive pretrial rulings (such as those regarding class certification), and conserve the resources of the parties, their counsel and the judiciary.<sup>1110</sup>

(J.P.M.L. 1995); *In re Repetitive Stress Injury Prods. Liab. Litig.*, No. 955, 1992 WL 403023, at \*1 (J.P.M.L. Nov. 27, 1992).

1105. For a representative example of the standard language used in nearly all of these grants, see *Baycol*, 180 F. Supp. 2d at 1380 (arguing that “Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary”).

1106. *In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931, 933–34 (J.P.M.L. 2001).

1107. *In re Lupron Mktg. & Sales Practices Litig.*, 180 F. Supp. 2d 1376, 1378 (J.P.M.L. 2001). Though frequently a condition, this factor appears not to be essential. See *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098, 1100–01 (J.P.M.L. 1992) (appointing transferee judge from the “universe of federal district judges,” based on comprehensive complex litigation experience).

1108. *In re Wireless Tel. Radio Frequency Emissions Prods. Liab. Litig.*, 170 F. Supp. 2d 1356, 1358 (J.P.M.L. 2001).

1109. *In re Diet Drugs Prods. Liab. Litig.*, 990 F. Supp. 834, 835–36 (J.P.M.L. 1998).

1110. *In re Meridia Prods. Liab. Litig.*, 217 F. Supp. 2d 1377, 1378 (J.P.M.L. 2002).

## 22.34 Denial of Transfer

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The Panel tends to offer more detailed justifications when denying transfer. It has generally declined to order transfer if one or more of the following are present.

### 22.341 Insufficient Common Facts

The most common reason for denial is that the cases or the common questions of fact are not sufficiently complex or numerous.<sup>1111</sup> For example, in the DaimlerChrysler seat belt buckle litigation, the Panel held that the number of actions on the docket was insufficient to justify the inconvenience that would be caused by the transfer.<sup>1112</sup> Even if the number of cases is substantial, the Panel may find that the cases involve significantly different claims that do not raise common questions of fact.<sup>1113</sup> Section 1407, however, does not require a complete identity of factual and legal issues as a prerequisite to centralization.<sup>1114</sup> The Panel has centralized cases where the presence of core common questions of fact outweighed the existence of individual factual questions or varying legal arguments.<sup>1115</sup> In such cases, the transferee court generally allows concurrent discovery of noncommon and common issues.<sup>1116</sup>

Where it has found common issues, the Panel typically has rejected arguments against transfer that are based solely on the special interests of the parties. For example, in the Starlink corn products liability litigation, a class of farmers argued against section 1407 centralization based on significant

1111. *In re DaimlerChrysler Corp. Seat Belt Buckle Prods. Liab. Litig.*, 217 F. Supp. 2d 1376 (J.P.M.L. 2002). *See also, e.g., In re First Union Mortgage Corp. Yield Spread Premium Litig.*, 215 F. Supp. 2d 1360 (J.P.M.L. 2002); *In re Chromated Copper Arsenate (CCA) Treated Wood Prods. Liab. Litig.*, 188 F. Supp. 2d 1380 (J.P.M.L. 2002); *In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696 (J.P.M.L. 1995); *In re Repetitive Stress Injury Prods. Liab. Litig.*, No. 955, 1992 WL 403023, at \*1 (J.P.M.L. Nov. 27, 1992).

1112. *DaimlerChrysler*, 217 F. Supp. 2d at 1377.

1113. *Amino Acid*, 910 F. Supp. at 701.

1114. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001).

1115. *In re Immunex Corp. Average Wholesale Price Litig.*, 201 F. Supp. 2d 1378, 1380–81 (J.P.M.L. 2002); *In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931, 933 (J.P.M.L. 2001); *In re Bridgestone/Firestone Tires Prods. Liab. Litig.*, No. 1373, 2000 WL 33416573, at \*2 (J.P.M.L. Oct. 24, 2000).

1116. *PPA*, 173 F. Supp. 2d at 1379.

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differences between their interests and the interests of a class of consumers.<sup>1117</sup> In granting the defendants' motion for transfer, the Panel concluded that the farmer actions and the consumer actions were not different enough to warrant separate pretrial proceedings.<sup>1118</sup> The Panel cited the availability of concurrent discovery of common and divergent issues as its primary justification for granting transfer.<sup>1119</sup>

#### 22.342 Procedural Alternatives

Another reason for denying MDL centralization is the existence of other procedural alternatives, such as consolidation or cooperative management.<sup>1120</sup> In the CCA treated wood products liability case, the Panel observed that numerous alternatives to transfer exist for less complex actions.<sup>1121</sup> The Panel also has refused to grant centralization where the resolution of an interlocutory appeal may obviate the need for transfer.<sup>1122</sup>

#### 22.343 Geographical Diversity and Economy

The Panel also has cited lack of geographic diversity between parties as a reason for denying transfer. Where all actions are pending in adjacent federal districts, the Panel has found that the similarity of actions and the ready availability of cooperative management minimize the necessity for section 1407 centralization.<sup>1123</sup>

Conversely, where similar cases are widely dispersed, economic burden or inconvenience arguments are usually rejected as a reason for delaying or

1117. *In re Starlink Corn Prods. Liab. Litig.*, 152 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001).

1118. *Id.*

1119. *Id.*

1120. *In re Unitrin, Inc. Ins. Sales Practices Litig.*, 217 F. Supp. 2d 1371, 1372 (J.P.M.L. 2002); *In re Chromated Copper Arsenate (CCA) Treated Wood Prods. Liab. Litig.*, 188 F. Supp. 2d 1380, 1381 (J.P.M.L. 2002).

1121. *CCA*, 188 F. Supp. 2d at 1381 (finding that “alternatives to transfer exist that can minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings” (citing *In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242 (J.P.M.L. 1978) and *Manual for Complex Litigation*, Third, § 31.14 (1995))). In *In re Eli Lilly*, the Panel identified a number of alternatives for dealing with three cases that involved the validity of the same patent: One or more courts could order that discovery in each case would apply in the others; the parties could stipulate to coordinated discovery and pretrial approaches; the courts could coordinate pretrial rulings to avoid duplicative activity; a court could stay the litigation pending action in the other courts; or collateral estoppel could dispose of the issues. *In re Eli Lilly*, 446 F. Supp. at 244.

1122. *In re First Union Mortgage Corp. Yield Spread Premium Litig.*, 215 F. Supp. 2d 1360, 1361 (J.P.M.L. 2002).

1123. *Unitrin*, 217 F. Supp. 2d at 1372.

denying transfer.<sup>1124</sup> The Panel has noted that after section 1407 centralization, the appointment of lead counsel may reduce the need for large numbers of lawyers to travel to the transferee district.<sup>1125</sup>

### 22.344 Maturity of Litigation

The Panel sometimes rejects a motion for MDL transfer filed late in the litigation when centralization may delay the progress of cases approaching trial and it is too late to avoid duplicative judicial efforts.<sup>1126</sup> In the Propulsid case, the Panel rejected the idea that it should wait until the litigation matured before ordering transfer:

If the Panel were to adopt the defendants' concept of maturity, many of the judges assigned to the various actions would be required to needlessly replicate other judges' work on such matters as class action certifications, medical monitoring claims, the structuring of confidentiality and other discovery orders, the scheduling of depositions and other discovery, rulings on motions to dismiss, and so forth. Only when such common pretrial matters had been repetitiously resolved in an undetermined number of federal actions would defendants concede that Section 1407 centralization might then become appropriate. We conclude that such an approach would defeat the very purposes leading to the enactment of Section 1407.<sup>1127</sup>

In a later opinion, the Panel again rejected the maturity argument by refusing to delay centralization where several actions were subject to pending motions to remand to state court.<sup>1128</sup> Finally, an early transfer affords the Panel flexibility in choosing the best forum for the common questions of fact.

1124. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001).

1125. *Id.* at 1379. *See also In re Nissan Motor Corp. Antitrust Litig.*, 385 F. Supp. 1253, 1255 (J.P.M.L. 1974).

1126. *In re Asbestos Sch. Prods. Liab. Litig.*, 606 F. Supp. 713, 714 (J.P.M.L. 1985) (denying motion to transfer based on several factors including the fact that several "actions [were] scheduled for trial within the next six months"). *See generally In re Grand Funk Railroad Trademark Litig.*, 371 F. Supp. 1084, 1086 (J.P.M.L. 1974) (denying motion to transfer because the case was close to trial and "transfer of these actions at this time will neither serve the convenience of the majority of the parties and witness nor promote the just and efficient conduct of the litigation").

1127. *In re Propulsid Prods. Liab. Litig.*, No. 1355, 2000 U.S. Dist. LEXIS 11651, at \*3-\*4 (J.P.M.L. Aug. 7, 2000).

1128. *In re Bridgestone/Firestone, Inc., ATX, ATX II, & Wilderness Tires Prods. Liab. Litig.*, No. 1373, 2000 WL 33416573, at \*2 (J.P.M.L. Oct. 24, 2000).

## 22.35 Authority of a Judge Pending Decision by the MDL Panel

In many cases, a court with one or more cases that are part of a mass tort may anticipate transfer by the MDL Panel. That court may, however, have motions to remand, motions to dismiss, or motions relating to discovery filed before the MDL Panel rules. A court in that position has the authority to grant or deny a motion or to stay the cases before it, pending the Panel's decision on transfer. If the case is transferred, the transferee court then decides unresolved motions after transfer.<sup>1129</sup>

A stay pending the Panel's decision can increase efficiency and consistency, particularly when the transferor court believes that a transfer order is likely and when the pending motions raise issues likely to be raised in other cases as well.<sup>1130</sup> The reasons for a stay diminish, however, if the pending motions raise issues relating to the law of a single state that are unlikely to arise in other related cases, if MDL transfer appears unlikely, or if the absence of federal jurisdiction is clear.<sup>1131</sup> Judicial economy may then be served by resolving specific issues and declining to stay the proceedings.<sup>1132</sup> Similarly, if the case is far along in discovery or motions practice, and there is an urgent need to have that case resolved, the court may decide not to stay the proceedings.<sup>1133</sup> For example, if the case involves a critically ill plaintiff who cannot wait an ex-

1129. The rules of the Judicial Panel on Multidistrict Litigation expressly provide that the pendency of a proceeding before the Panel to transfer a case “does not affect or suspend orders or pretrial proceedings in the district court in which the action is pending.” J.P.M.L. R. P. 1.5 (West 2003); *see also In re Asbestos Prods. Liab. Litig.*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001) (citing Rule 1.5 and noting that proceedings for transferring tag-along actions experience “a lag time of at least three or four months from the filing of an action . . . and the issuance of the Panel's subsequent order”).

1130. *Moore v. Wyeth-Ayerst Labs.*, 236 F. Supp. 2d 509, 510–11 (D. Md. 2002) (observing that the MDL transferee judge had faced multiple motions to remand cases removed from state courts).

1131. *See, e.g., Caldwell v. Am. Home Prods. Corp.*, 210 F. Supp. 2d 809, 811 (S.D. Miss. 2002) (stating “the law in this circuit is clear that the *All Writs Act* does not provide an independent basis for federal jurisdiction”).

1132. *McGrew v. Schering-Plough Corp.*, No. CIV.A.01-2311, 2001 WL 950790, at \*3 (D. Kan. Aug. 6, 2001) (“For purposes of judicial economy, the jurisdictional issue should be resolved immediately,” before action by the MDL panel.).

1133. *See, e.g., Carden v. Bridgestone/Firestone, Inc.*, No. CIV.00-3017, 2000 WL 33520302, at \*4 (S.D. Fla. Oct. 18, 2000) (denying stay and remanding case seeking injunctive relief to state court); *see also Naquin v. Nokia Mobile Phones, Inc.*, No. CIV.A.00-2023, 2001 WL 1242253, at \*1 (E.D. La. June 20, 2001) (denying motions to stay because “the prior substantial rulings in this case and continuing efforts by counsel may in fact aid the multidistrict litigation”).

tended period for trial, the court may decide to proceed rather than wait for MDL action.

## 22.36 The Tasks of an MDL Transferee Judge

Aside from deciding any threshold motion to remand, the initial tasks of the MDL transferee judge include coordinating or consolidating the cases previously pending in a number of different districts; identifying differences in applicable law; and seeking information from the parties as to the status of the cases in order to determine how to proceed with pretrial discovery and motions. See sections 22.2 and 22.61. As to remand motions, the Panel's policy is not to delay a transfer decision because a remand motion is pending. The transferor court may rule on such a motion—or any other motion—while the Panel considers transfer. If the transferor courts have not decided remand motions before the MDL Panel order is issued, the transferee court should try to resolve the remand motions promptly because they invariably affect federal subject-matter jurisdiction, and the failure to rule on them until a case is returned to the transferor court may result in unnecessary and prejudicial delay.

An MDL transferee judge has authority to dispose of cases on the merits—for example, by ruling on motions for summary judgment<sup>1134</sup> or trying test cases that had been originally filed in the transferee district or refiled in or transferred to that district. If summary judgment motions are pending, the transferee judge must consider whether to decide the motions or to transfer the cases back to the transferor districts. If the summary judgment motion pertains to one or few cases, or rests on application of the transferor court's conflicts-of-law and substantive law rules, the transferor judge may be able to decide the motions most efficiently.<sup>1135</sup> If the summary judgment motions involve issues common to all the cases centralized before the MDL court, however, the transferee judge may be in the best position to rule.<sup>1136</sup>

1134. See, e.g., *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 113 F.3d 1484, 1488 (8th Cir. 1997) (affirming grant of summary judgment for defendant Dow Chemical in relation to liability for the use of silicone gel in TMJ implants).

1135. See *In re Orthopedic Bone Screw Prods. Liab. Litig.*, MDL No. 1014, 1997 WL 109595, at \*2 (E.D. Pa. Mar. 7, 1997) (ruling on motions for partial summary judgment would not advance the litigation and would serve no useful purpose (citing Manual for Complex Litigation, Third, § 21.34 (1995))); see also Francis E. McGovern, *Judicial Centralization and Devolution in Mass Torts*, 95 Mich. L. Rev. 2077 (1997) (citing *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 887 F. Supp. 1455 (N.D. Ala. 1995)) [hereinafter McGovern, *Judicial Centralization*].

1136. See, e.g., *In re Norplant Contraceptive Prods. Liab. Litig.*, 215 F. Supp. 2d 795, 810, 835 (E.D. Tex. 2002) (granting summary judgment terminating “nearly all remaining non-settling

MDL transferee judges cannot try cases that were not filed in their districts or refiled or transferred to their districts by the court of origin, absent consent of the parties.<sup>1137</sup> Some courts and parties, however, have attempted to adopt techniques to facilitate trials in MDL transferee courts—for example, by the filing of a consolidated amended class action complaint, or master complaint, as an original action in the transferee forum. That complaint then may serve as the vehicle for determination of common issues, including trial.<sup>1138</sup> Section 20.132 describes other circumstances in which the transferee court may have authority to retain cases for trial.

Even if the transferee court has authority, by consent or otherwise, to try transferred cases, the court may decide to use a decentralized approach in which authority to decide individual cases remains with or returns to the non-MDL judges.<sup>1139</sup> If, however, there are summary judgment motions that might resolve all of the issues for all of the parties, or if there are common issues that might be tried, either on a test-case basis or otherwise, the transferee judge may find it more efficient to address the merits in a centralized manner.<sup>1140</sup>

Plaintiffs and their claims in the Norplant multidistrict litigation proceedings” based in part on the common-law application of the learned intermediary doctrine); *see also In re Norplant Contraceptive Prods. Liab. Litig.*, 165 F.3d 374, 378 (5th Cir. 1999) (affirming district court’s summary judgment ruling applying learned intermediary doctrine); *cf. In re Norplant Contraceptive Prods. Liab. Litig.*, 961 F. Supp. 163, 169 (E.D. Tex. 1997) (denying defendants’ motion for partial summary judgment based on statute-of-limitations grounds).

1137. *Lexecon, Inc. v. Milberg, Weiss, Bershad, Hynes & Lerach*, 523 U.S. 26 (1998) (interpreting 28 U.S.C. § 1407 as limiting authority of transferee judge to transfer action to itself for trial). Legislation has been proposed to amend section 1407 and remove the limitation on transfers for trial.

1138. For example, in *In re Bridgestone/Firestone Inc., ATX, ATX II, & Wilderness Tires Prods. Liab. Litig.*, 155 F. Supp. 2d 1069 (S.D. Ind. 2001), the parties filed a master complaint as an original proceeding in the MDL transferee court and the court used this complaint to support applying Indiana’s choice-of-law rules to determine defendants’ motions to dismiss. The district court subsequently certified a nationwide class, which order was reversed *sub nom* in *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012 (7th Cir. 2002), on grounds, *inter alia*, that the district court had misapplied Indiana’s choice-of-law doctrine.

1139. *See* McGovern, *Judicial Centralization*, *supra* note 1135, at 2079–81 (describing the approach used in the silicone gel litigation); *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 60A (N.D. Ala. May 30, 2000), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (remanding thirteen cases).

1140. *See, e.g., Norplant*, 215 F. Supp. 2d at 835 (granting partial summary judgment terminating “nearly all remaining non-settling plaintiffs and their claims” in the MDL); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2001 WL 497313, at \*3 (E.D. Pa. May 9, 2001) (noting special master’s dismissal of defendants “for lack of product identification”); *In re MasterCard Int’l, Inc. Internet Gambling Litig.*, 132 F. Supp. 2d 468, 497 (E.D. La. 2001) (dismissing two test cases); *In re Honda Am. Motor Co. Dealership Relations Litig.*, 979 F. Supp. 365, 368–69 (D. Md. 1997) (rejecting test case approach in favor of limited issues class ap-

In a number of recent MDL centralizations, transferee judges have exercised their discretion to select test cases for discovery, motions, and trial, and to coordinate their dockets with state courts handling similar cases.<sup>1141</sup> Courts have also carved out issues classes to resolve common issues.<sup>1142</sup> Section 22.315 discusses the selection of test cases and implementation of a test-case strategy beginning at the pretrial stage, while section 22.93 discusses the use of a test-case strategy at the trial stage. Section 22.75 discusses issues classes, and section 22.4 discusses state–federal coordination.

Two RICO cases illustrate some advantages and disadvantages of using a test-case approach as compared with using a class action approach. In one case—alleging that credit card companies had facilitated use of the Internet to support illegal gambling—the court determined that a test case was the best approach to resolve the RICO issues that the plaintiffs’ claims raised.<sup>1143</sup> In the other case—involving allegations of fraud and bribery in dealings between an automobile franchisor and its franchisee dealerships—the court expressly rejected a test-case approach and elected to deal with RICO and non-RICO issues by managing the case through a bifurcated limited issues class trial.<sup>1144</sup> In both contexts, the case-management approaches focused on whether the RICO claims could establish liability. In context, each approach appears to have adjudicated the validity of plaintiffs’ claims in an efficient, fair, and balanced manner.

An advantage of using the test-case approach in the Internet gambling MDL proceeding was that it allowed the court to isolate and resolve a disputed and dispositive threshold issue: whether plaintiffs’ best cases could survive a motion to dismiss for failure to state a claim for relief.<sup>1145</sup> Other advantages of using test cases might include litigating and trying all of the claims in the test cases, which would allow the litigation to mature through trials. If the MDL

proach); *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 31 (N.D. Ala. May 31, 1996), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (appointing national science panel).

1141. McGovern, *Cooperative Strategy*, *supra* note 705, at 1886–92 (2000) (describing the “de facto” strategy implemented in the diet drug, Norplant, and California silicone gel breast implant litigations).

1142. *See, e.g., In re Honda Am. Motor Co. Dealership Relations Litig.*, 979 F. Supp. 365 (D. Md. 1997).

1143. *In re MasterCard Int’l Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468 (E.D. La. 2001).

1144. *Honda*, 979 F. Supp. at 366.

1145. *MasterCard*, 132 F. Supp. 2d at 497 (holding that plaintiffs failed to plead several elements of a RICO case, dismissing Rule 19 motions as moot, and statistically closing the remaining MDL cases for administrative purposes).

cases include class allegations, the test-case approach resolves the claims as to the named parties, ends the tolling of the statute of limitations, and requires potential litigants to file lawsuits if they wish to pursue claims.<sup>1146</sup>

Potential disadvantages of using test cases include the lack of any clear preclusive effect of a judgment for defendants, possible limits on the preclusive effects of judgments for the plaintiffs, and the possibility of creating “chaos among plaintiffs’ counsel”—that is, lead counsel appointed to represent plaintiffs in the MDL proceedings.<sup>1147</sup> On the other hand, the *Honda American* MDL transferee court decided that an issues class action approach would yield a mutual preclusive effect and would “serve to keep the leadership structure among plaintiffs’ counsel in place.”<sup>1148</sup>

The transferee judge usually supervises discovery, decides motions, and, if called for, decides whether to certify a class action.<sup>1149</sup> Under the decentralized approach, the transferee judge would then remand the cases to their original districts for trial, as in the breast implant and orthopedic bone screw litigations.<sup>1150</sup> In other cases, grants of summary judgment or approvals of settlement have obviated remand to the transferee courts.<sup>1151</sup>

1146. *Honda*, 979 F. Supp. at 368.

1147. *Id.*

1148. *Id.* at 368–69. The disadvantage of continued tolling of the statute the limitations could be ameliorated by ending the tolling for damage claims, which were not included among the issues to be adjudicated on a class-wide basis. *Id.* at 370–71.

1149. See, e.g., *Bridgestone/Firestone*, 288 F.3d at 1018 (holding that the certified class was not manageable). The court noted that the transferee court had certified a nationwide class that “would make all other suits [MDL transferred cases] redundant.” *Id.* at 1015. The court did not decide, however, whether certification of a class action meeting Rule 23 requirements would authorize the transferee court to retain the class action (and all the underlying cases) for trial, effectively bypassing the *Lexecon* restriction on trial of transferred cases by the transferee court. As of mid-2003, that question has not been the subject of an appellate ruling.

1150. See, e.g., *In re Orthopedic Bone Screw Prods. Liab. Litig.*, MDL No. 1014, Order No. 1507, 1998 WL 411380, at \*1 (E.D. Pa. June 30, 1998); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Revised Order No. 30 (N.D. Ala. Mar. 25, 1996), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1151. *In re Norplant Contraceptive Prods. Liab. Litig.*, 165 F.3d 374 (5th Cir. 1999) (affirming summary judgment of test cases); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330 (N.D. Ohio 2001) (certifying settlement class); *In re Diet Drugs Prods. Liab. Litig.*, 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000) (same).

## 22.37 The Task of the Transferor Judge Following Remand After MDL Proceedings

When the MDL pretrial proceedings are concluded and individual cases are remanded to the transferor courts, the transferor judge must decide whether additional discovery and other pretrial work require completion, including deciding dispositive motions.<sup>1152</sup> In some remanded cases, the cases are assigned to a single judge in a district for coordinated final pretrial proceedings and trial. If the remanded cases raise individual questions of exposure, causation, injury, or damages, such aggregated proceedings may not be useful.

## 22.4 Multiple Filings in State and Federal Courts

Mass tort litigation frequently involves filings in both federal and state courts. As discussed in section 22.33, multidistrict treatment of the federal cases under 28 U.S.C. § 1407 may be possible,<sup>1153</sup> but some state court cases may not have been removed—or may not be removable—and will not be subject to section 1407 transfer. Although it is likely that the Panel will transfer federal cases alleging the same mass tort to a single federal district judge for pretrial proceedings, there will likely be numerous state court cases raising similar allegations. Absent certification of a national class (which is unlikely in a mass tort case alleging personal injuries or property damages based on state

1152. *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Pretrial Order No. 30, at ¶ 1 (summarizing the MDL proceedings and significant rulings), ¶ 4(c) (detailing remaining discovery), and ¶ 7(c) (specifying further pretrial proceedings likely to be needed in the remand courts) (N.D. Ala. Mar. 25, 1996), *and id.*, app. B (Apr. 2, 1996), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003). *See also* Recent Developments in the Silicone Gel Breast Implant Products Liability Litigation: A Briefing for Federal and State Court Judges (Federal Judicial Center 1996) (FJC Media Catalog No. 3095-V/96) (videotape supplementing Judge Pointer's order in the silicone gel breast implant litigation instructing judges on the background of the litigation and other pretrial issues).

1153. *See supra* section 20.13. The Judicial Panel on Multidistrict Litigation has centralized a number of mass tort cases for pretrial management. *See supra* section 22.33. After initially rejecting applications to centralize asbestos personal injury actions, *see, e.g., In re Asbestos & Asbestos Insulation Material Prods. Liab. Litig.*, 431 F. Supp. 906 (J.P.M.L. 1977), the panel later transferred all pending federal asbestos personal-injury claims in the Eastern District of Pennsylvania. *In re Asbestos Prods. Liab. Litig.*, 771 F. Supp. 415 (J.P.M.L. 1991). For other examples of centralization of mass tort litigation, *see In re Diet Drugs Products Liability Litigation*, 990 F. Supp. 834 (J.P.M.L. 1998), *In re Temporomandibular Joint (TMJ) Implants Products Liability Litigation*, 844 F. Supp. 1553 (J.P.M.L. 1994), and *In re Silicone Gel Breast Implant Products Liability Litigation*, 793 F. Supp. 1098 (J.P.M.L. 1992).

law causes of action), there is no procedural mechanism analogous to the Multidistrict Litigation Panel's transfer under section 1407 for formal coordination or consolidation of state and federal cases.

Federal and state court judges frequently cooperate informally and effectively to coordinate discovery and pretrial proceedings in mass tort cases. For example, in the PPA litigation, the MDL transferee judge coordinated the discovery and *Daubert* hearing schedules with state judges.<sup>1154</sup> In the diet drug litigation, a state judge, the MDL transferee judge, and counsel worked out a formula for compensating the lawyers handling the state court cases who had conducted discovery that was useful in the MDL cases.<sup>1155</sup> These and other approaches to state–federal coordination are discussed extensively in section 20.3, which emphasizes cooperative efforts that have taken place in the mass tort context.

In the absence of a class certification and a pending settlement, the authority of federal courts to enjoin state court proceedings is limited. Read together, the Anti-Injunction Act<sup>1156</sup> and the All Writs Act<sup>1157</sup> allow injunctions against state proceedings only when necessary to aid a federal court's jurisdiction. For example, in a case in which the MDL transferee judge issued a pretrial order that barred discovery of certain matters and applied to discovery conducted in state court cases involving the same subject matter, the court of appeals held that “the Anti-Injunction Act does not bar courts with jurisdiction over complex multidistrict litigation from issuing injunctions to protect the integrity of their rulings, including pretrial rulings like discovery orders.”<sup>1158</sup> Such an order must be “narrowly crafted to prevent specific abuses which threaten the court's ability to manage the litigation effectively and responsibly.”<sup>1159</sup> Section 21.15 discusses the authority of a federal court to

1154. See *In re* Phenylpropanolamine (PPA) Prods. Liab. Litig., MDL No. 1407, Order Granting in part and Denying in part Manufacturing Defendants Motion to Accelerate *Daubert* Hearing (W.D. Wash. Sept. 19, 2002), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003) (adjusting calendar for *Daubert* proceedings to coordinate with similar proceedings in state courts); *id.*, MDL No. 1407, Order No. 1 (W.D. Wash. Jan. 29, 2002), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003) (“This Court has taken into consideration the present status and progress of discovery against various groups of defendants in fashioning a discovery schedule that will aid in fostering state and federal court coordination of PPA cases, and completing the tasks undertaken in this MDL 1407 with reasonable dispatch in keeping with the needs and expectations of litigants.”).

1155. See *supra* section 20.31 and text accompanying notes 702–04.

1156. 28 U.S.C. § 2283 (West 2003).

1157. *Id.* § 1651.

1158. *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1203 (7th Cir. 1996).

1159. *Id.* See also *In re* Inter-Op Hip Prosthesis Prod. Liab. Litig., 2001 WL 1774017, at \*1 (6th Cir. Oct. 29, 2001) (rejecting order enjoining all litigation pending settlement review).

enjoin state court proceedings before class certification. Section 21.42 discusses such authority in relation to certified class actions. Section 20.32 discusses state–federal jurisdictional conflicts in general and the variety of means of addressing them, including injunctive relief. The limits on a federal court’s authority to enjoin overlapping and duplicative proceedings in state courts makes cooperative efforts at coordination critical to minimize conflicts and duplication unrelated to the strengths or weaknesses of the merits.

## 22.5 Multiple Filings in District and Bankruptcy Courts<sup>1160</sup>

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Corporate defendants in mass tort litigation sometimes file for relief under the Bankruptcy Code in order to attempt a global resolution of pending and threatened mass tort claims. The constraints on certification of some settlement classes imposed by the Supreme Court’s decisions in *Amchem* and *Ortiz* appear to have increased the use of the bankruptcy courts for this purpose,

1160. This subsection draws heavily on a preliminary draft of Professor S. Elizabeth Gibson’s work on a Federal Judicial Center manual on case management of bankruptcy proceedings in cases involving mass torts. S. Elizabeth Gibson, *Judicial Management of Mass Tort Bankruptcy Cases* (Federal Judicial Center forthcoming; title is tentative) [hereinafter Gibson, *Judicial Management*]. See also S. Elizabeth Gibson, *Case Studies of Mass Tort Limited Fund Class Action Settlements & Bankruptcy Reorganizations* (Federal Judicial Center 2000) [hereinafter Gibson, *Case Studies*].

particularly in asbestos cases.<sup>1161</sup> Generally, such defendant-debtors seek confirmation of a reorganization plan under Chapter 11 that will provide adjusted payments to creditors, including tort claimants. Such a plan allows the reorganized business to emerge from bankruptcy free of the obligations to creditors, including tort claimants, that led to the reorganization. On rare occasions debtors liquidate their businesses under Chapter 7. Bankruptcy filings can dramatically alter the scope and direction of a pending mass tort litigation and can alter the claims and cases directly or indirectly related to the bankrupt debtor's activities.

When a defendant in mass tort litigation files for bankruptcy, all the pending litigation in all state and federal courts against that party is automatically stayed as of the petition date.<sup>1162</sup> The automatic stay, combined with the bankruptcy court's exclusive control of the debtor's assets, effectively centralizes that defendant's state and federal mass tort cases into a single federal court. The bankruptcy filing and resulting centralization raise questions relating to the venue of the cases, the division of labor among various judges (including considerations relating to withdrawing the reference to the bankruptcy judge), the coordination and consolidation of the tort claims with other related cases (including cases involving codefendants that are not in bankruptcy), the representation of future mass tort claimants, the process for estimating the value of mass tort claims, and, finally, the process for negotiating a reorganization plan that includes provisions for payment of present and future claims. This section addresses those questions in summary fashion, focusing on issues that involve district as well as bankruptcy judges.<sup>1163</sup>

1161. Stephen Carroll et al., *Asbestos Litigation Costs and Compensation: An Interim Report* (2002), available at <http://www.rand.org/publications/DB/DB397> (last visited Dec. 2, 2003). See generally ALI-ABA, *Asbestos Litigation in the 21st Century* (Sept. 19–20, 2002). See *infra* section 22.71 for discussion of the *Amchem* and *Ortiz* decisions.

1162. 11 U.S.C. § 362(a)(1) (2003). The Bankruptcy Code also bars the bringing of new suits on claims that arose before the petition was filed. *Id.*

1163. See generally Gibson, *Judicial Management*, *supra* note 1160. That manual will also cover topics primarily relevant to the operation of the bankruptcy system, such as the appointment of committees, the compensation of professionals, and procedures for voting on and confirming reorganization plans.

## 22.51 Venue, Transfer, and Consolidation

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### 22.511 Venue and Transfer

The defendant-debtor makes the initial decision about where to file the bankruptcy petition.<sup>1164</sup> Where the MDL Panel has centralized the tort claims in a given district, the bankruptcy petition can be filed in that district if other venue requirements are met.<sup>1165</sup> If the debtor files the bankruptcy case in a district other than the transferee district, the bankruptcy court may, under certain conditions, “transfer a case or proceeding . . . to a district court for another district, in the interest of justice or for the convenience of the parties.”<sup>1166</sup> Although this procedure has not been invoked in any mass tort bankruptcy case to date, a retrospective analysis of the proceedings in the Dow Corning reorganization indicated that “prospects for [bankruptcy/MDL] coordination can be enhanced if the [MDL] transferee judge sits in the district where the bankruptcy proceedings are pending.”<sup>1167</sup> Accordingly, the debtor, other parties, and judges in the district in which the bankruptcy is filed should consider this and other options to centralize MDL and bankruptcy case management in a single district.

### 22.512 Consolidation and Reassignment

In an innovative approach to coordinate asbestos-related bankruptcies, the Third Circuit Court of Appeals found that five asbestos-related Chapter 11 cases that had been filed in the District of Delaware needed “to be consolidated before a single judge so that a coordinated plan for management [could] be developed and implemented.”<sup>1168</sup> Courts may also want to consider consoli-

1164. See generally Gordon Bermant, Arlene Jorgensen Hillestad & Aaron Kerry, Chapter 11 Venue Choice by Large Public Companies: Report to the Judicial Conference Committee on the Administration of the Bankruptcy System (Federal Judicial Center 1997).

1165. See 28 U.S.C. § 1408(1) (West 2003) (specifying as key factors the entity’s domicile, residence, principal place of business, or principal location of assets).

1166. 28 U.S.C. § 1412 (West 2003). For a discussion of the considerations involved in such a transfer, see John F. Nangle, *Bankruptcy’s Impact on Multidistrict Litigation: Legislative Reform as an Alternative to Existing Mechanisms*, 31 Ga. L. Rev. 1093, 1103–04 (1997) (Nangle is the former chair of the JPML).

1167. Nangle, *supra* note 1166, at 1102. See generally Judge Nangle’s article for consideration of the advantages and disadvantages of various options for achieving coordination of bankruptcy and MDL proceedings.

1168. Order of Chief Judge Edward H. Becker, *cited in In re Federal-Mogul Global, Inc.*, 300 F.3d 368 (3d Cir. 2002) (designation of a district judge for service in another district within the

dating bankruptcy cases dealing with the same or similar products to achieve any efficiencies that might be associated with consolidated case management and with the linkage of claims-resolution facilities. Such consolidated procedures are novel. It remains unclear that they will achieve such efficiencies and at what cost.

## 22.52 Withdrawing the Reference

A mass tort bankruptcy brings new judges into a mass tort litigation, including the bankruptcy judge to whom the case is assigned and district judges who will hear appeals from the bankruptcy judge. The district court of the district where the case is filed has the authority to withdraw the reference of jurisdiction to the bankruptcy court in whole or in part.<sup>1169</sup> Throughout the bankruptcy case, the district and bankruptcy judges involved should consider whether some aspects of that case should or must be resolved by judges other than the assigned bankruptcy judge and whether and how knowledge and expertise already accumulated by other judges can be used in the bankruptcy proceedings.

A district judge might partially withdraw the reference in a mass tort bankruptcy case for a number of reasons, including prior familiarity with the tort claims involved, greater expertise as to the legal issues raised, desire to avoid duplication of effort, jurisdictional limitations on the bankruptcy court's authority, and statutory command.<sup>1170</sup> Once the withdrawal occurs, it will be especially important for the bankruptcy and district judges handling the various aspects of the bankruptcy case to have frequent communications so that the matters can proceed in a coordinated fashion.

In several mass tort cases, district judges have withdrawn the reference with respect to various proceedings relating to the personal-injury and

circuit). The order was based on authority granted the chief judge in 28 U.S.C. § 292(b) (West 2003), which permits such reassignments “in the public interest.”

1169. District courts are authorized by 28 U.S.C. § 157(d) to, “for cause,” withdraw the reference of any bankruptcy case or proceeding from the bankruptcy court and to exercise original jurisdiction over the withdrawn matter. The district court may take this action on its own motion or on a party's motion. 28 U.S.C. § 157(d) (West 2003).

1170. See 28 U.S.C. § 157(d) (West 2003) (requiring a district court, upon timely motion of a party, to withdraw the reference of jurisdiction to a bankruptcy judge with respect to a proceeding if resolution of that proceeding “requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce”). Because mass tort personal-injury claims are typically governed by state law, they will rarely trigger the mandatory withdrawal provision. Their liquidation or estimation for purposes of distribution, however, will have to take place in the district court. *Id.* § 157(b)(2)(B)(5).

wrongful-death tort claims against the debtor. Perhaps the broadest example occurred in the *A.H. Robins* case where the district judge, who had been presiding over a large group of Dalkon Shield cases against Robins, partially withdrew the reference of jurisdiction from the bankruptcy court at the debtor's request on the day the debtor filed its petition. The district court specified seventeen categories of proceedings and motions that it would resolve, including all “[p]roceedings involving the estimation or liquidation of any personal injury tort or wrongful death claims against the estate.”<sup>1171</sup> Included within this category of withdrawn matters were the following: motions to establish procedures for filing and resolving the tort claims, including the establishment of bar dates; motions concerning procedures for and discovery in proceedings relating to the estimation or liquidation of the tort claims; requests for declaratory relief concerning the debtor's liability for the tort claims; the estimation or liquidation of the tort claims for purposes of allowance, confirmation, or distribution; motions concerning the automatic stay's application to tort claims; and requests for relief under 11 U.S.C. § 105 with respect to a tort claim. Other matters withdrawn for the district court's determination included motions for conversion or dismissal, appointment of committees, extensions of exclusivity, approval of disclosure statements, confirmation, appointment of a trustee, compensation for services, and enforcement of the automatic stay.<sup>1172</sup>

In other mass tort bankruptcies, district judges have withdrawn the reference with respect to a narrower set of proceedings. In *In re Dow Corning Corp.*,<sup>1173</sup> for example, the district judge withdrew from the bankruptcy court jurisdiction to decide the debtor's “omnibus objection to disease claims” that sought a determination that the tort plaintiffs lacked proof that the debtor's product caused their alleged diseases.<sup>1174</sup> Another district judge acting in a mass tort case withdrew the reference with regard to the validity of the personal injury claims against the debtor, specifically including, within the withdrawn proceedings, motions for the following: setting a bar date for filing claims,

1171. *In re A.H. Robins Co.*, 59 B.R. 99, 105 (Bankr. E.D. Va. 1986).

1172. *Id.* at 105–07.

1173. *In re Dow Corning Corp.*, 215 B.R. 526 (Bankr. E.D. Mich. 1997).

1174. The bankruptcy judge recommended withdrawal of the reference because a similar issue was likely to be raised in cases against the debtor's shareholders already pending in the district court, *id.* at 527–29, and because a ruling on the debtor's objection depended largely on application of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), on which the bankruptcy court believed the district court possessed greater expertise. *In re Dow Corning*, 215 B.R. at 530.

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concerning notice to claimants, relating to the form to be used for proofs of claim, and for summary judgment based on threshold liability issues.<sup>1175</sup>

## 22.53 Dividing the Labor Among Judges

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Withdrawals often retain in the district court matters relating to the estimation and resolution of mass tort liability. Conversely, matters that relate exclusively to the administration of the bankruptcy estate and the supervision of the ongoing business of the debtor have been generally retained in the bankruptcy court. In some bankruptcy cases, following a partial withdrawal of the reference, the bankruptcy and district judges have held hearings at which they presided jointly and after which they issued joint rulings.<sup>1176</sup> In such situations, the judges and the parties should have a clear understanding of their respective roles and responsibilities.

### 22.531 MDL Transferee Judge

In addition to matters relating to withdrawal of the reference, district and bankruptcy judges should consider drawing on the knowledge and experience of other judges who have presided over all or part of the mass tort litigation. The transferee judge assigned to coordinate the multidistrict litigation represents a primary, and in many cases an indispensable, source of such expertise.<sup>1177</sup> When the bankruptcy has been filed in a district other than the MDL transferee district and not transferred to that district, the MDL transferee judge can be assigned to handle portions of a bankruptcy case, but only with the cooperation of the bankruptcy and district judges presiding over the case.<sup>1178</sup>

1175. *In re Babcock & Wilcox Co.*, No. CIV.A.00-0558, 2000 WL 422372, at \*3–\*4 (E.D. La. Apr. 17, 2000). The court based its decision on the fact that the law was unresolved within its circuit as to whether a bankruptcy judge has authority to decide dispositive pretrial motions concerning personal injury and wrongful death claims against a bankruptcy estate. *Id.* at \*4.

1176. *See, e.g., In re A.H. Robins Co.*, 88 B.R. 742, 743 (E.D. Va. 1988) (memorandum in re confirmation order jointly issued by district judge Merhige and bankruptcy judge Shelley, noting that “[b]y agreement, the undersigned, with few exceptions, conducted all proceedings jointly”).

1177. *See generally* Nangle, *supra* note 1166.

1178. *Id.* at 1111 (“It must be remembered, of course, that mere assignment of the multidistrict judge or judges to the district in which the bankruptcy is pending will be of limited utility in the absence of cooperation from that district’s bankruptcy and district judges.”).

Such an assignment should be initiated by judges of the bankruptcy district rather than one of the parties.

The mere existence of an MDL proceeding does not mean that the MDL transferee judge should be assigned automatically to the bankruptcy district. Such an assignment should be sought only when the MDL transferee judge can play a specific and useful role. If causation is not seriously in issue and the bankruptcy court believes the parties will successfully attempt to negotiate a resolution of the tort claims, there may be no need for the MDL transferee judge's involvement. In some bankruptcy cases, however, there may be a need for a ruling on causation or other global liability issues, or for judicial estimation of the tort claims; the MDL transferee judge is often well suited to preside over such matters. There also may be cases in which the participation of the MDL transferee judge facilitates the settlement of claims involving multiple defendants or the establishment of joint claims resolution facilities.

#### 22.532 Other Judges

Litigation pending in other courts may be important to the bankruptcy proceedings, even if the pending litigation does not involve tort claims. For example, the debtor may have previously filed suit against one or more of its insurers seeking a declaration of coverage. A declaratory judgment action against an insurer is not an action against the debtor and would not ordinarily be stayed automatically by the debtor's bankruptcy filing. Unless the parties obtain a transfer of the litigation to the bankruptcy court, or the debtor dismisses the suit and refiles it in the bankruptcy court, the insurance litigation can proceed where originally filed. The bankruptcy judge should stay informed of the progress of that litigation by requiring counsel to submit periodic status reports or through informal consultation with the judge handling the case.<sup>1179</sup> Should it appear that the resolution of the litigation in the nonbankruptcy court will frustrate or delay progress in the bankruptcy case, the bankruptcy judge should encourage the parties to seek a change of venue to the bankruptcy court or initiate a new adversary proceeding there.

#### 22.533 Bankruptcy Appeals

A mass tort bankruptcy case will always involve judges who will hear appeals from the bankruptcy judge. Such appeals may be to district judges,

1179. See McGovern, *Rethinking Cooperation*, *supra* note 690, at 1868 (noting that cooperation among judges in the form of "[s]uccessful coordination of pretrial activities by reconciling overlapping schedules and eliminating redundancies in case development" and "the reduction of duplication" rarely presents problems).

bankruptcy appellate panel judges,<sup>1180</sup> or circuit judges.<sup>1181</sup> The assignment of a single district judge to hear all appeals in a mass tort bankruptcy case will enable that judge to learn about the case, thereby expediting decision making and facilitating consistent rulings. For similar reasons, some courts of appeals have assigned all appeals from a single mass tort bankruptcy case to the same appellate panel.<sup>1182</sup> This approach should also be considered in courts with bankruptcy appellate panels.

## 22.54 Coordinating and Consolidating Tort Claims and Related Cases

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A principal advantage of using a bankruptcy court to resolve mass tort litigation is that it consolidates all pending mass tort litigation in the district in which the bankruptcy case is filed.<sup>1183</sup> The bankruptcy filing itself largely accomplishes this consolidation. Parties may also ask the bankruptcy court to transfer the tort suits pending against the debtor to the district in which the bankruptcy is pending and to expand the scope of this consolidation to include claims against nondebtor parties. Despite possible advantages, a number of legal and practical questions will present themselves to the bankruptcy or district judges who are asked to approve such a consolidation. An important question is what steps, if any, should be taken to resolve the multitude of personal injury tort cases pending against the debtor and others in state and federal courts around the country at the time the bankruptcy petition is filed.

1180. See 28 U.S.C. §§ 158(a), (b)(1) (West 2003).

1181. See *id.* § 158(d).

1182. See, e.g., Official Comm. of Tort Claimants v. Dow Corning Corp. (*In re Dow Corning Corp.*), 142 F.3d 433 (6th Cir. 1998); Lindsey v. Dow Chem. Co. (*In re Dow Corning Corp.*), 113 F.3d 565 (6th Cir. 1997); Tort Claimants' Comm. v. Dow Corning Corp. (*In re Dow Corning Corp.*), 103 F.3d 129 (6th Cir. 1996); Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers (*In re Dow Corning Corp.*), 86 F.3d 482 (6th Cir. 1996) (appeals all decided by a panel of the same three judges).

1183. See, e.g., Alan N. Resnick, *Bankruptcy as a Vehicle for Resolving Enterprise-Threatening Mass Tort Liability*, 148 U. Pa. L. Rev. 2045, 2050–54 (2000); Barbara J. Houser, *Chapter 11 as a Mass Tort Solution*, 31 Loy. L.A. L. Rev. 451, 457 (1998).

## 22.541 Claims Against the Debtor

Consolidation of the mass tort litigation is achieved by virtue of the automatic stay and the bankruptcy court's exclusive jurisdiction over the property of the debtor and of the estate.<sup>1184</sup> The bankruptcy court itself, however, does not have jurisdiction to hear and determine personal injury and wrongful death claims.<sup>1185</sup> Those claims must be adjudicated by the district court, either in the district of the bankruptcy case or the district where the tort claim arose.<sup>1186</sup> Any jury trial rights that exist outside of bankruptcy are statutorily preserved in bankruptcy.<sup>1187</sup> This does not mean, however, that all of the thousands of personal injury and wrongful death claims against the debtor will have to be tried to a jury in district court. A right to jury trial may be waived by a tort claimant who accepts a reorganization plan's provisions for settlement or for alternative dispute resolution methods.<sup>1188</sup> Moreover, most courts have concluded that the bankruptcy court has authority to estimate the value of the mass tort claims for purposes of voting and confirmation and for determining the feasibility of the reorganization plan.<sup>1189</sup>

A practical question is whether there is good reason to transfer the mass tort case files from the federal and state courts around the country to the district in which the bankruptcy case is filed. The district court has authority to do so.<sup>1190</sup> In both the *Dow Corning* and the *A.H. Robins* bankruptcies, courts

1184. See 28 U.S.C. § 1334(e) (West 2003).

1185. *Id.* § 157(b)(5) (excluding the determination of personal injury tort and wrongful death claims for purposes of distribution through bankruptcy from the definition of core bankruptcy proceedings).

1186. *Id.*

1187. *Id.* § 1411(a); see also *id.* § 157(b)(5).

1188. See, e.g., *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1013 n.17 (4th Cir. 1986); *In re Dow Corning Corp.*, 187 B.R. 919, 929–30 (Bankr. E.D. Mich. 1995), *rev'd in part on other grounds*, 86 F.3d 482 (6th Cir. 1996); *In re UNR Indus., Inc.*, 45 B.R. 322, 326 (Bankr. N.D. Ill. 1984); Resnick, *supra* note 1183, at 2053.

1189. See, e.g., *A.H. Robins Co.*, 788 F.2d at 1012 (citing *Roberts v. Johns-Manville Corp.*, 45 B.R. 823, 825–26 (S.D.N.Y. 1984)); *UNR Indus.*, 45 B.R. at 326–27; Resnick, *supra* note 1183, at 2052–53. Courts are divided, however, over whether a bankruptcy judge is authorized to rule on dispositive motions seeking to disallow personal injury and wrongful death claims against the debtor. Compare *In re U.S. Lines, Inc. v. U.S. Lines Reorganization Trust*, 262 B.R. 223 (S.D.N.Y. 2001), and *In re Dow Corning Corp.*, 215 B.R. 346 (Bankr. E.D. Mich. 1997), with *Pettibone Corp. v. Easley*, 935 F.2d 120 (7th Cir. 1991), and *In re UNR Indus., Inc.*, 74 B.R. 146 (N.D. Ill. 1987).

1190. Courts have consistently read 28 U.S.C. § 157(b)(5) as authorizing the district court in the district of the bankruptcy case to transfer personal injury tort and wrongful death claims to its district. See, e.g., *In re Dow Corning Corp.*, 86 F.3d 482, 496 (7th Cir. 1996); *In re Pan Am. Corp.*, 16 F.3d 513, 516 (2d Cir. 1994); *A.H. Robins Co.*, 788 F.2d at 1010–11.

concluded that transfers were warranted<sup>1191</sup> but stopped short of requiring the physical shipment of case files to the district in which the bankruptcy case was filed.<sup>1192</sup> In fact, in the *Dow Corning* case, the court ordered that the files for all removed cases continue to be transferred to the MDL judge for pretrial purposes.<sup>1193</sup> In asbestos-related mass tort bankruptcies, actions pending against the debtors have generally not been transferred to the bankruptcy district. In at least one of those cases, the bankruptcy court was able to estimate the value of the tort claims without having the pending cases transferred to its district,<sup>1194</sup> and in other cases the parties were able to negotiate a value of the relevant tort claims without having all of the underlying actions against the debtor consolidated in the district in which the bankruptcy case was pending.<sup>1195</sup>

After the reorganization plans have been confirmed, individual tort claims generally will be resolved according to the terms of the plans. Those terms typically include the establishment of trusts from which all present and future asbestos claims for payment are paid, under so-called channeling injunctions.<sup>1196</sup>

1191. See *Dow Corning*, 187 B.R. at 929 (discussing the advantage of transferring because “one or more causation trials held during the estimation process for the purpose of assuring a more accurate estimation” might “best be accomplished if all cases pending against the Debtor are before one court”); *A.H. Robins Co.*, 788 F.2d at 1014 (concluding that “[n]o progress along estimating these contingent claims . . . can be made until all Dalkon Shield claims and suits are centralized before a single forum where all interests can be heard and in which the interests of all claimants with one another may be harmonized”).

1192. In the *Dow Corning* case, the district court found that “no physical transfer of case files or case records to the Eastern District of Michigan is necessary at this time.” *Dow Corning Corp.*, 187 B.R. at 932. In the *A.H. Robins* case, physical transfer of the case files to the Eastern District of Virginia was contemplated, but the Fourth Circuit held that no actual transfer of the case files should take place until the individual plaintiff in each case was given notice and an opportunity to object. *A.H. Robins Co.*, 788 F.2d at 1016.

1193. *Id.* But see *Maritime Asbestosis Legal Clinic v. U.S. Lines, Inc. (In re U.S. Lines, Inc.)*, 216 F.3d 228, 236 (2d Cir. 2000) (holding that the district court lacked authority under section 157(b)(5) to transfer personal injury or wrongful death claims against the debtor to the MDL district unless the claims arose there).

1194. See, e.g., *In re Eagle-Picher Indus.*, 189 B.R. 681 (Bankr. S.D. Ohio 1995).

1195. See, e.g., *In re UNR Indus.*, No. 82B9841–45, 1996 Bankr. LEXIS 1455, at \*11 (Bankr. N.D. Ill. Aug. 13, 1996) (quoting disclosure statement explanation of how the value of asbestos claims was negotiated).

1196. See, e.g., *In re Eagle-Picher Indus.*, 203 B.R. 256, 279, 282 (S.D. Ohio 1996); *In re UNR Indus.*, 143 B.R. 506, 514–15 (Bankr. N.D. Ill. 1992).

### 22.542 Claims Against Other Defendants

The provisions of the Bankruptcy Code that allow consolidation and coordination of the mass tort litigation against the debtor are not explicitly applicable to the debtor's nonbankrupt codefendants.<sup>1197</sup> Parties may, however, seek rulings to permit the litigation against these nondebtor parties to be consolidated in the district in which the debtor's bankruptcy case is pending. Nondebtor defendants may also ask the district court to extend the automatic stay to include related claims against them. The motivations for such requests may be any of the following: to achieve the efficiencies of a unified resolution; to prevent the potential unfairness resulting from the continued prosecution of actions against derivative defendants, while the actions against the major defendant, the debtor, are stayed; to prevent the dissipation of a jointly held asset; or to achieve delay. Whatever the reason, a motion to transfer the actions against these nondebtor parties to the district in which the debtor's bankruptcy case is located raises a number of difficult and uncertain legal issues.

### 22.543 Consolidation of Cases

Although the structure of the bankruptcy laws might theoretically permit a nationwide consolidation and resolution of all related claims against all defendants, no mass tort case to date has attempted globally to resolve claims against unaffiliated nondebtor manufacturers as part of a debtor's bankruptcy case. Mass tort litigation against nondebtor parties falls within bankruptcy jurisdiction, if at all, only if it is related to a bankruptcy case. The district court (and by reference the bankruptcy court) is granted subject-matter jurisdiction over cases and all civil proceedings arising under or related to cases arising under title 11. 28 U.S.C. §§ 1334(a) & (b).<sup>1198</sup> The most far-reaching decision regarding mass tort litigation against nondebtor codefendants held that claims against breast implant manufacturers other than the debtor fell within "related

1197. The automatic stay prohibits the "commencement or continuation . . . of a judicial . . . proceeding[] against the *debtor* that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the *debtor* that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1) (West 2003) (emphasis added). Bankruptcy courts are granted exclusive jurisdiction over "all of the property, wherever located, of the *debtor* as of the commencement of such case, and of property of the *estate*." 28 U.S.C. § 1334(e) (West 2003) (emphasis added).

1198. In *Pacor, Inc. v. Higgins*, a proceeding is related to a bankruptcy case, and thus falls within federal subject-matter jurisdiction under section 1334(b), if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted). See also *In re Federal-Mogul Global, Inc.*, 300 F.3d 368, 381 (3d Cir. 2002) (noting "the widespread acceptance of *Pacor*").

to” jurisdiction because the prosecution of such claims could lead to claims for contribution or indemnity against the debtor.<sup>1199</sup> The district court abstained from exercising that jurisdiction,<sup>1200</sup> and the Sixth Circuit denied the petitions for mandamus.<sup>1201</sup> Other courts have not read the jurisdictional statute this broadly.<sup>1202</sup> The bankruptcy of one defendant has not yet achieved a global resolution of a mass tort litigation against an entire industry.<sup>1203</sup> However, courts have allowed some claims against some nondebtor parties to be resolved in the bankruptcy proceedings. Some of the debtor’s codefendants with such close relationships to the debtor as officers, directors, shareholders, and related entities with joint insurance coverage, are more likely to be found within “related to” jurisdiction than other nondebtor parties.<sup>1204</sup>

### 22.544 Transfer of Related Cases of Nondebtor Defendants

A judge who determines that mass tort claims against some or all of the debtor’s codefendants come within bankruptcy jurisdiction must then determine whether the district court in the district of the bankruptcy case has authority to transfer all of those claims from state and federal courts to the bankruptcy district. Section 157(b)(5) authorizes the district court where the bankruptcy case is pending to determine the place of trial of “personal injury tort and wrongful death claims.” Other parts of that same statute refer more specifically to “personal injury tort or wrongful death claims *against the estate*” (emphasis added). Two courts of appeals have concluded that section 157(b)(5) allows the district court in the district where the bankruptcy is filed

1199. *Lindsey v. O’Brien, Tanski, Tanzer & Young Health Care Providers (In re Dow Corning Corp.)*, 86 F.3d 482, 494 (6th Cir. 1996).

1200. *In re Dow Corning Corp.*, No. 95-CV-72397, 1996 WL 511646, at \*4 (E.D. Mich. July 30, 1996).

1201. *In re Dow Corning Corp.*, 113 F.3d 565, 572 (6th Cir. 1997).

1202. See, e.g., *In re Federal-Mogul Global, Inc.* 300 F.3d 368 (3d Cir. 2002); *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984); cf. *GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983) (declining to extend scope of automatic stay to cover suits against nondebtor codefendants).

1203. *Federal-Mogul Global*, 300 F.3d at 379–84 (rejecting codefendants’ argument that claims are related to the debtor’s claims because of the possibility that debtor may have to indemnify codefendants); cf. *In re Johns-Manville Corp.*, 26 B.R. 405, 409 (Bankr. S.D.N.Y. 1983) (rejecting codefendant manufacturer’s proposal for “an industry-wide solution of the entire asbestos health-related problem,” despite finding it “tempting”).

1204. See, e.g., *Lindsey*, 86 F.3d at 490–95; cf. *A.H. Robins v. Piccinin*, 788 F.2d 994, 1007 (4th Cir. 1986) (affirming district court’s exercise of bankruptcy jurisdiction to stay mass tort actions against officers, directors, and employees of the debtor). Direct claims against a debtor’s insurers have also been found to come within “related to” jurisdiction. See, e.g., *Coar v. Nat’l Union Fire Ins. Co.*, 19 F.3d 247 (5th Cir. 1994).

to fix venue for cases pending against nondebtor defendants that are related to a debtor's bankruptcy proceedings, pursuant to section 1334(b).<sup>1205</sup> In both of those cases, however, only claims against certain closely affiliated nondebtor defendants were part of the overall resolution of the tort claims in the debtor's plan of reorganization.<sup>1206</sup> Because those nondebtor parties were released from further liability after confirmation of the debtor's plan, the claims against them were never litigated.

The fact that a district court determines that it has authority under section 157(b)(5) to transfer personal injury tort litigation pending against a debtor's codefendants does not necessarily mean that the court will choose to exercise that authority, especially at the outset of the bankruptcy case. If the goal of the transfer is to coordinate and consolidate all the mass tort cases pending against the debtor and related parties, a favorable ruling by the court on a motion to expand the stay to cover the nondebtor parties (see section 22.545) may make transfer of the litigation to the bankruptcy district unnecessary.<sup>1207</sup>

Claims against nondebtor defendants do not necessarily have to be tried in the bankruptcy district. Courts have held that in addition to the venue options expressly included in section 157(b)(5)—the district where the bankruptcy case is pending and the district where the personal injury claim arose—the district court has the option of abstaining and allowing the personal injury tort cases to remain in the courts in which they are pending.<sup>1208</sup> Other courts, however, may find that the factors governing abstention lend themselves to a categorical analysis when applied to a large number of similar cases against nondebtor defendants. Before making a final decision to transfer personal injury cases to the bankruptcy district, the district court must give an opportunity for the individual plaintiffs in each case to object.<sup>1209</sup>

1205. *Lindsey*, 86 F.3d at 497; *A.H. Robins*, 788 F.2d at 1014.

1206. See, e.g., *In re Dow Corning Corp.*, 255 B.R. 445, 475 (E.D. Mich. 2000); Georgene M. Vairo, *The Dalkon Shield Claimants Trust: Paradigm Lost (or Found)?*, 61 Fordham L. Rev. 617, 629–30 (1982) (describing provisions of *A.H. Robins* reorganization plan that released nondebtor parties from liability).

1207. See *In re Johns-Manville Corp.*, 45 B.R. 823, 825 (S.D.N.Y. 1984) (Section 157(b)(5) “does not mandate that all personal injury and wrongful death claims be tried. It merely sets forth the procedure by which the forum for trial shall be designated for those . . . claimants who do not agree to another procedure for settling their claims.”).

1208. *In re Dow Corning Corp.*, 86 F.3d 482, 497 (6th Cir. 1996); *In re Pan Am. Corp.*, 950 F.2d 839, 844 (2d Cir. 1991); *In re White Motor Credit*, 761 F.2d 270, 271, 273 (6th Cir. 1985). The Sixth Circuit has held that the abstention decision must be made on a case-by-case basis, rather than globally. *In re Dow Corning, Corp.*, 113 F.3d 565, 569–70 (6th Cir. 1997).

1209. *A.H. Robins*, 788 F.2d at 1014 (“[D]ue process requires some form of notice and an opportunity for a hearing before there can be a change of venue and before trial of a personal

## 22.545 Expanding the Automatic Stay or Enjoining Related Cases

Just as nondebtor parties may seek the transfer of mass tort litigation against them to the bankruptcy district, they may also attempt to use the debtor's bankruptcy to gain a stay of the litigation against them by virtue of 11 U.S.C. § 362. Alternatively, nondebtor parties may seek an order under 11 U.S.C. § 105 temporarily enjoining the prosecution of the litigation against them. A court asked to stay litigation pending before it may also be asked to declare that the automatic stay applies to nondebtors or to stay litigation pending in other courts against nondebtors. Courts presented with such requests have concluded that they have authority to enter the requested relief, but only with respect to the cases before them.<sup>1210</sup> A bankruptcy court, however, has authority to enjoin litigation against nondebtors pending in other courts so long as that litigation is at least related to the bankruptcy case.<sup>1211</sup>

*Expanding the automatic stay.* Although only the debtor itself is generally entitled to the benefit of the automatic stay in Chapter 11 cases,<sup>1212</sup> several courts have found circumstances in mass tort bankruptcies that justify expanding the scope of that protection.<sup>1213</sup> The primary considerations in deciding whether to stay related litigation are whether it is tantamount to litigation against the debtor and whether it constitutes an effort to obtain possession of, or exercise control over, property of the estate. The focus must be on the litigation's impact on the debtor and its bankruptcy estate, rather than on the possible impact on the nondebtor parties.<sup>1214</sup>

injury tort cause of action against a debtor may be transferred finally from the court in which the cause was initially filed to the district where the bankruptcy proceedings are pending.”).

1210. *See, e.g.,* *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir. 1983); *In re Related Asbestos Cases*, 23 B.R. 523 (N.D. Cal. 1982); *see also* G. Hisae Ishii-Chang, *Litigation and Bankruptcy: The Dilemma of the Codefendant Stay*, 63 Am. Bankr. L.J. 257, 277–79 (1989).

1211. *Celotex Corp. v. Edwards*, 514 U.S. 300, 307–10 (1995).

1212. *See, e.g.,* *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1197 (6th Cir. 1983); *Wedgeworth*, 706 F.2d at 544; *In re Sunbeam Sec. Litig.*, 261 B.R. 534, 536 (Bankr. S.D. Fla. 2001). In limiting the benefit of the automatic stay to debtors in Chapter 11 cases, courts have sometimes contrasted the expanded scope of the automatic stay in Chapter 13 cases, where it is expressly made applicable to persons liable with the debtor on a debt. *See, e.g.,* *Wedgeworth*, 706 F.2d at 544 (citing 11 U.S.C. § 1301(a) (West 2003)).

1213. *See, e.g.,* *In re Eagle-Picher Indus.*, 963 F.2d 855 (6th Cir. 1992); *A.H. Robins v. Piccinin*, 788 F.2d 994 (6th Cir. 1986); *In re Johns-Manville Corp.*, 40 B.R. 219 (Bankr. S.D.N.Y. 1984).

1214. *See, e.g.,* *Eagle-Picher Indus.*, 963 F.2d at 862 (“[I]t is for the protection of Eagle-Picher’s numerous *creditors*, not for [nondebtor defendants] Hall and Ralston, that AISI is properly prohibited from proceeding with its action against Hall and Ralston . . .”) (emphasis in original); *In re Johns-Manville Corp.*, 26 B.R. 420, 430 (Bankr. S.D.N.Y. 1983) (enjoining under sections 362 and 105 suit against nondebtors because it “threatens adversely to impact on

In *A.H. Robins Co. v. Piccinin*,<sup>1215</sup> the Fourth Circuit affirmed the district court's stay under sections 362(a)(1) and (3) of personal injury suits against various individual defendants who were closely associated with the debtor—its chairman of the board, president, chief medical officer, and the inventor of the Dalkon Shield, whom the debtor had agreed to indemnify—and litigation against the debtor's insurer.<sup>1216</sup> The Fourth Circuit concluded that the interests of the individual defendants were “so intimately intertwined with those of the debtor that the latter may be said to be the real party in interest.”<sup>1217</sup> The court emphasized that the individual defendants had an absolute right to be indemnified by the debtor for any judgments rendered against them.<sup>1218</sup>

Courts have not, however, been willing to read the automatic stay provision as extending to unrelated nondebtor codefendants who have merely a joint tortfeasor relationship with the debtor. In several asbestos bankruptcies, for example, courts have rejected codefendant manufacturers' attempts to bring themselves within the scope of the debtor's automatic stay.<sup>1219</sup>

*Enjoining proceedings under section 105.* Most courts that have extended the automatic stay to nondebtor parties have done so under section 105 rather than by an expansive application of section 362. These courts have entered preliminary injunctions temporarily staying litigation against the protected parties, rather than holding that the debtor's filing of its Chapter 11 petition automatically accomplished this result.<sup>1220</sup> Similar to the Fourth Circuit's

property of the debtor's estate as well as disrupt the reorganization proceedings and frustrate Manville's efforts to achieve financial rehabilitation”), *aff'd*, 40 B.R. 219 (Bankr. S.D.N.Y. 1984); Charles Jordan Tabb, *The Law of Bankruptcy* 170–71 (1997) (discussing the “very limited circumstances” under which actions against nondebtors may be stayed under section 362 in Chapter 11 cases).

1215. 788 F.2d 994 (4th Cir. 1986).

1216. *Id.* at 1007; *see also id.* at 999 (application of the automatic stay to nondebtors was appropriate only in “unusual circumstances”—such unusual circumstances exist “when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor”).

1217. *Id.* at 1001.

1218. *Id.* at 1007.

1219. *See, e.g., Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194 (6th Cir. 1983); *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir. 1983); *In re Johns-Manville Corp.*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983).

1220. *See, e.g., In re Eagle-Picher Indus.*, 963 F.2d 855 (6th Cir. 1992) (affirming grant of preliminary injunction pursuant to section 105 enjoining prosecution of civil action against debtor's officers); *A.H. Robins v. Piccinin*, 788 F.2d 994 (4th Cir. 1986) (affirming grant of preliminary injunction pursuant to section 105 enjoining litigation against debtor's insurers, corporate officers, and other indemnified persons, in addition to relying on section 362 as basis for the stay); *In re Johns-Manville Corp.*, 33 B.R. 254, 263 (Bankr. S.D.N.Y. 1983) (granting

interpretation of section 362(a), however, courts have read section 105 as providing authority to extend the stay to nondebtor parties only if the acts to be enjoined “would frustrate the statutory scheme or impact adversely on a debtor’s ability to formulate a plan or on the debtor’s property.”<sup>1221</sup> Accordingly, courts ruling on requests for extension of the stay to protect nondebtor parties in mass tort cases have generally restricted such relief to key officers and employees of the debtor, persons covered by the debtor’s insurance policy, and in some instances the debtor’s liability insurers.<sup>1222</sup> Courts generally have declined to grant this relief under section 105 to alleged joint tortfeasors who are merely codefendants of the debtor.<sup>1223</sup>

## 22.55 Providing Representation for Future Mass Tort Claimants

As discussed below in section 22.7 and in sections 21.1 and 21.2 of the class actions section, a challenging aspect of managing mass or class litigation is the need to give fair and consistent treatment to claimants who present widely disparate claims. A lesson of the *Amchem* and *Ortiz* (see section 22.71) decisions is that before resolving claims in an aggregated fashion, courts must find a fair mechanism for representing the different interests of present and future claimants. Because the decisions invoked due process principles as well as the limits of Federal Rule of Civil Procedure 23, the concerns that they raise affect bankruptcy proceedings. See section 22.58.

The need for fair treatment of future claimants is heightened in the bankruptcy context because the very act of filing for bankruptcy usually signals that the defendant does not have sufficient assets fully to compensate all claimants. Because most mass tort bankruptcies are precipitated by the debtor’s desire to achieve a global resolution of all the tort claims that have

preliminary injunction enjoining litigation against officers, directors, and employees of debtor “[b]ased upon the broad grant of power contained in Section 105(a)”.

1221. *In re Johns-Manville Corp.*, 26 B.R. 420, 427 (Bankr. S.D.N.Y. 1983); *see also* *Johns-Manville Corp. v. Asbestos Litig. Group (In re Johns-Manville Corp.)*, 40 B.R. 219, 225 (Bankr. S.D.N.Y. 1984) (holding that “to issue a stay under § 105, the court must determine that such relief is at least appropriate to achieve the goals of a Chapter 11 reorganization, and is necessary to protect the debtor”).

1222. *See In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 909 (Bankr. N.D. Ill. 1985); David G. Epstein et al., *Bankruptcy* 126 (1993) (listing factors increasing chances of obtaining a stay of litigation against a nondebtor).

1223. *See, e.g., Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194 (6th Cir. 1983); *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir. 1983); *Johns-Manville Corp.*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983).

been or will be asserted against it, the debtor will seek to discharge not only the claims of persons who are presently sick or injured but also the claims of persons who have been exposed to the offending product but have not yet manifested any injury (i.e., present-future claimants). A debtor may also attempt to discharge the claims of persons who have not yet been exposed to the debtor's product but who will be exposed in the future and will suffer injury as a result (i.e., future-future claimants).

Judges presiding over the early mass tort bankruptcy cases struggled over the question whether persons who had not yet manifested any injury from exposure to the debtor's product could be dealt with in the bankruptcy proceedings.<sup>1224</sup> These doubts arose from an uncertainty whether such persons had a "right to payment" as required by the statutory definition of "claim."<sup>1225</sup> Doubts also arose from the due process concerns raised by adjudicating such persons' rights in the bankruptcy without the persons' notice of and opportunity to participate in the proceedings.<sup>1226</sup> Most courts eventually concluded that future mass tort claims could not be ignored.<sup>1227</sup> At the very least, these future claimants were "parties in interest" who had a right to be heard in the proceedings and were entitled to representation.<sup>1228</sup> As a result, courts began

1224. See, e.g., *In re Amatex Corp.*, 755 F.2d 1034 (3d Cir. 1985) (reversing denial by bankruptcy court, affirmed by district court, of request for appointment of representative for future asbestos claimants); *In re Johns-Manville Corp.*, 36 B.R. 743 (Bankr. S.D.N.Y. 1984) (granting motion for appointment of future claims representative); *In re UNR Indus., Inc.*, 29 B.R. 741 (N.D. Ill. 1983) (denying application for appointment of a future claims representative), *appeal dismissed*, 725 F.2d 1111 (7th Cir. 1984). The specific legal issue presented in the above cases was whether such future claimants were "creditors" who held "claims," within the meaning of the Bankruptcy Code, that could be discharged at the end of the case.

1225. 11 U.S.C. § 101(10)(A) (2000).

1226. See, e.g., *UNR Indus.*, 29 B.R. at 745 ("[T]he putative claimants—who have been exposed to asbestos some time in their lives but do not now have or do not know that they have an asbestos-related disease—have no claims under state law, and therefore do not have claims cognizable under the Code."); *id.* at 747 ("It would be impossible for one legal representative to represent adequately the claims of tens of thousands of future claimants. . . . The practical and legal problems of notifying those who the legal representative would be able to bind . . . are insurmountable.").

1227. See, e.g., *In re UNR Indus.*, 725 F.2d 1111, 1119 (7th Cir. 1984) ("If future claims cannot be discharged before they ripen, UNR may not be able to emerge from bankruptcy with reasonable prospects for continued existence as a going concern."); *Johns-Manville Corp.*, 36 B.R. at 749 ("Any plan not dealing with their interests precludes a meaningful and effective reorganization and thus injures to the detriment of the reorganization body politic.").

1228. See, e.g., *UNR Indus.*, 725 F.2d at 1120; *In re Forty-Eight Insulations, Inc.*, 58 B.R. 476, 478 (Bankr. N.D. Ill. 1986); *Johns-Manville Corp.*, 36 B.R. at 749. See, e.g., *In re Forty-Eight Insulations, Inc.*, 58 B.R. 476, 478 (Bankr. N.D. Ill. 1986); *In re Johns-Manville Corp.*, 36 B.R. 743, 749 (Bankr. S.D.N.Y. 1984).

appointing future claims representatives to represent, in the bankruptcy proceedings, the interests of those persons who would be injured by the debtor's product sometime in the future. Congress ratified this judicial practice in the context of asbestos bankruptcies by amending the Bankruptcy Code to make appointment of a future claims representative a condition for a court's statutory authority to issue a channeling injunction directing that claimants may seek payment only from a trust created under a reorganization plan.<sup>1229</sup> Section 22.58 further discusses statutory provisions for discharging future asbestos claims.

Neither the Bankruptcy Code nor the bankruptcy rules set forth procedures for the appointment of a future claims representative. The courts have had to devise such procedures. Typically the debtor files a motion to have the court appoint a future claims representative.<sup>1230</sup> Occasionally other participants in the bankruptcy have requested the appointment.<sup>1231</sup> In Chapter 11 reorganization cases in which the debtor likely faces significant long-term tort liability, the appointment of a future claims representative has become standard. On the other hand, the request for such an appointment in a mass tort liquidation<sup>1232</sup> or where the existence of future tort liability is disputed<sup>1233</sup> is likely to provoke opposition from some of the existing parties. Courts routinely grant a hearing in such circumstances. The decision whether to appoint a future claims representative should be based on an assessment of the likelihood of future claimants, the number, nature, and variety of their claims, and the impact that the bankruptcy will have on these claims.

The court necessarily selects and appoints the future claims representative without the consent of the class of persons represented; the representative is

1229. 11 U.S.C. § 524(g)(4)(B)(i) (West 2003).

1230. See, e.g., *In re Amatec Corp.*, 755 F.2d 1034, 1036 (3d Cir. 1985) (referring to debtor's application for the appointment of a guardian *ad litem* to represent future asbestos claimants on all issues before the court); *In re UNR Indus.*, 46 B.R. 671, 673 (Bankr. N.D. Ill. 1985) (referring to debtors' application for a legal representative for unknown putative asbestos-related claimants).

1231. See, e.g., *Locks v. U.S. Trustee*, 157 B.R. 89, 90 (Bankr. W.D. Pa. 1993) (referring to motion for the appointment of a future claims representative filed by a plaintiff's attorney who was a member of the unsecured creditors' committee); *Johns-Manville Corp.*, 36 B.R. at 744 (referring to motion filed by Keene Corp., a codefendant of the debtor, to appoint a legal representative for asbestos-exposed future claimants).

1232. See *Locks*, 157 B.R. at 91; *In re H.K. Porter Co.*, 156 B.R. 16, 17–18 (Bankr. W.D. Pa. 1993).

1233. See *In re Dow Corning Corp.*, 211 B.R. 545, 598 n.55 (Bankr. E.D. Mich. 1997) (discussing the denial of a motion to appoint a representative for future breast implant claimants on the ground that all such claimants were aware of their implants and thus were present, not future, claimants).

not a true agent of those represented.<sup>1234</sup> Unlike the named plaintiffs in a class action, the representative is not a member of the class being represented. Instead, the future claims representative is invariably a lawyer and does not claim the same potential injury that the future claimants face. Because there is no shared or common interest to ensure “that the interests of the class members will be fairly and adequately protected in their absence, courts look to other bases for such assurance.”<sup>1235</sup>

Future claims representatives are appointees of the court, and are thus viewed by some as neutral brokers seeking consensual reorganizations rather than as zealous advocates for the interests of future claimants.<sup>1236</sup> A judge appointing a future claims representative can diminish concerns about adequacy of representation in the following ways:<sup>1237</sup>

- Weight should be given to qualifications and experience as an effective advocate when appointing the representative. When a potential future claims representative has previously served in that capacity, the court should consider the results achieved.
- The class of persons represented must be defined as clearly as possible. For example, determine whether the future claims representative is expected to act on behalf of persons injured only by a certain type of product (e.g., those containing asbestos) manufactured by the debtor or on behalf of those injured by multiple products (e.g., lead-based products); on behalf of only persons exposed to the product(s) prior to confirmation or on behalf of those exposed post-bankruptcy as well; or on behalf of those who will suffer only slight or questionable injury as well as those who will be able to demonstrate serious injury.
- The representative needs supporting resources with the same degree of expertise as the creditors’ committees possess. The future claims representative should be authorized to hire counsel and financial experts when shown to be necessary.

1234. See Frederick Tung, *The Future Claims Representative in Mass Tort Bankruptcy: A Preliminary Inquiry*, 3 Chap. L. Rev. 43, 59 (2000).

1235. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (quoting *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 157–58 n.13 (1982)).

1236. See Tung, *supra* note 1234, at 70–71 (“A judge—and certainly parties in interest—might be less interested in finding a person to provide zealous representation for future claimants than one who understands the paramount goal of reorganization.”).

1237. See Gibson, *Case Studies*, *supra* note 792, at 91–93. For the *UNR* reorganization, see *id.* at 161–67, 180–81; for the *Dalkon Shield* reorganization, see *id.* at 207–09.

## 22.56 Estimating the Value of Mass Tort Claims

Most courts have found that the bankruptcy court has the authority to estimate the value of mass tort claims for purposes of determining the feasibility of a reorganization plan, confirming a plan, or establishing a framework for voting on a proposed plan.<sup>1238</sup> However, district judges with experience in handling mass tort claims involving the debtor, particularly an MDL transferee judge, may be able to bring a special knowledge and expertise to the estimation process and should ordinarily be invited into the process. See section 22.53.

Although courts have generally allowed the parties to negotiate a plan without judicial estimation proceedings, such proceedings can clarify the extent and value of potential tort claims against the debtor. Knowing the extent of the potential liability in relation to the debtor's assets may determine whether there is any value in the company for equity shareholders.<sup>1239</sup> That information might propel the negotiations and produce a basis for agreement about a reorganization plan.<sup>1240</sup>

If the parties are unable to reach agreement on the value of the claims, evidentiary hearings can assist the judge in resolving this difficult issue.<sup>1241</sup> Along with any unsecured creditors' committee, tort claimants committee, equity committee, and the debtor, future claims representatives have participated in claims estimation hearings by presenting their own experts on the value of the future claims.<sup>1242</sup> In such cases, the judge should consider whether appointment of an expert under Federal Rule of Evidence 706 or appointment of a special master might be appropriate.

1238. The court's authority to estimate the value of tort claims does not, however, include the authority to use those estimates to determine the final value of any individual claim, *see* 28 U.S.C. § 157(b)(5) (West 2003), or a consensual reorganization plan. *See infra* section 22.57.

1239. *See, e.g.,* the discussion of the effect of the estimation order in *Eagle-Picher*, in Gibson, Case Studies, *supra* note 1160, at 80 ("Given the court's estimation order, the writing was on the wall.").

1240. *See, e.g.,* the discussion of the *A.H. Robins* reorganization in Gibson, Case Studies, *supra* note 1160, at 196 ("Within a week of Judge Mehige's estimation ruling, American Home Products (AHP) made an offer to merge with Robins. . . . This offer became the heart of the reorganization plan soon agreed to by Robins."); *see also id.* at 91 (discussing the effect of the estimation order on *Eagle-Picher* negotiations).

1241. *See* Gibson, Case Studies, *supra* note 1160, at 78–79 (describing the testimony in the *Eagle-Picher* estimation hearing), and *id.* at 195–96 (describing the testimony in the *A.H. Robins* estimation hearing).

1242. *See, e.g., In re A.H. Robins Co.*, 88 B.R. 742, 747 (E.D. Va. 1988) (describing the evidence presented at the claims estimation hearing by the expert for the future claims representative), *aff'd*, 880 F.2d 694 (4th Cir. 1989); *In re Eagle-Picher Indus.*, 189 B.R. 681, 687–88 (Bankr. S.D. Ohio 1995) (same).

A district judge with experience in the mass tort litigation can help lay the groundwork for estimating the tort claims by using different techniques, including the following:

- conducting trials of representative bellwether cases as discussed in section 22.93;
- conducting trials of specific issues to resolve a disputed common issue (e.g., general causation), as discussed in sections 21.24 and 22.75; and
- mediating or otherwise assisting in negotiation of a consensual reorganization plan once any estimation process has been completed.

## 22.57 Negotiating a Reorganization Plan

The traditional practice in mass tort bankruptcies involving future claimants has been for the court to appoint a representative for those interests (see section 22.55). The representative then participates in plan negotiations with the debtor and representatives of other committees, appears in court, and raises objections on behalf of the future claimants.

The primary role of the future claims representative has been that of a negotiator. Typically negotiations take place among the debtor, the tort claimants' committee, the future claims representative, and the unsecured creditors' committee, in varying combinations. These entities try to arrive at an agreement on the ratio of tort debt to other unsecured debt, the division of tort debt between present and future claims, the terms for liquidation and payment of the tort claims, the percentage of payment for unsecured claims, and the amount, if any, to be provided to equity.<sup>1243</sup> Although there is authority for the court to appoint a mediator to facilitate the negotiations of a reorganization plan,<sup>1244</sup> the expense should be considered.

The future claims representative does not have a formal veto over a proposed reorganization plan, but gaining the representative's assent has proven essential for arriving at a consensual plan of reorganization. A representative's influence is based on the concerns of other parties about the feasibility and legitimacy of confirming a plan to which the future claims representative objects, as well as the persuasive abilities of the representative (both in court and in negotiations). The cases provide examples of how the

1243. See, e.g., *In re UNR Indus.*, 212 B.R. 295, 298 (Bankr. N.D. Ill. 1997) (describing the negotiation history of the UNR asbestos bankruptcy); Gibson, Case Studies, *supra* note 1160, at 90–91 (describing the negotiation history of the Eagle-Picher asbestos bankruptcy).

1244. See, e.g., Gibson, Case Studies, *supra* note 1160, at 75–76 (describing the use of mediation in the *Eagle-Picher* reorganization).

future claims representative's implicit veto power and advocacy in court results in the improved treatment of future claimants in the reorganization plans.<sup>1245</sup>

Judges should monitor and evaluate the quality of the future claimants' representation and whether it furthers future claimants' ability to receive a fair and adequate recovery. One way to do so compares the recoveries provided in the reorganization plan for future claimants with recoveries provided to present claimants both in the reorganization plan and in settlements immediately before the reorganization. Another measure of the future claims representative's efficacy is the strength and fairness of any mechanisms established to deal with a possible shortfall of funds for the trust. Consider whether procedures are in place to distribute the burden of such shortfalls across the spectrum of claims, and whether monies have been reserved to deal with anticipated future claims.

## 22.58 Discharging Future Claims

At the end of the bankruptcy, the parties generally negotiate a plan requiring future claimants to proceed against a trust established to pay both present and future tort claims, rather than against the reorganized debtor and related entities. Judicial decisions about future claims have recognized, but not clearly resolved, issues concerning the means of discharging such claims.<sup>1246</sup>

Congress to some extent validated the trust concept in 1984 when it added subsections (g) and (h) to section 524 of the Bankruptcy Code.<sup>1247</sup> This amendment, limited to Chapter 11 asbestos cases, authorizes courts in connection with an order confirming a reorganization plan to issue a channeling injunction requiring claimants—present and future—to proceed only against the tort claimant trust established by the plan.<sup>1248</sup> Section 524(g) requires,

1245. See, e.g., *In re Nat'l Gypsum Co.*, 219 F.3d 478, 481 (5th Cir. 2000) (referring to the future claims representative's successful objection to a permanent injunction that would have prevented future claimants from seeking recovery from the debtor's successor); Gibson, Case Studies, *supra* note 1160, at 208–09 (describing the successful efforts of the future claims representative in the *A.H. Robins* bankruptcy to amend the proposed plan to allow payment for future claimants who did not file a claim in the bankruptcy proceedings by the bar date).

1246. See, e.g., *In re Amatex Corp.*, 755 F.2d 1034, 1043 (1985) (“At this juncture . . . we do not know whether future claimants can or should be considered ‘creditors’ under the Code . . . and how best to solve a whole host of other problems which have not been briefed.”); *In re Johns-Manville Corp.*, 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984) (“[I]t is unnecessary for this Court to face the dischargeability issue at this time in order to decide whether these claimants are parties in interest.”).

1247. See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111, 108 Stat. 4106, 4113–17 (codified as amended at 11 U.S.C. §§ 524(g), (h) (West 2003)).

1248. 11 U.S.C. § 524(g)(1)(A) (West 2003).

among other things, that the court appoint during the bankruptcy proceedings “a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind.”<sup>1249</sup> The statute, however, does not address future claims in the following: mass tort bankruptcies involving a product other than asbestos; Chapter 7 liquidations; or cases creating a payment mechanism other than a trust having the characteristics described in that provision. Nor does the statute address whether future claimants may participate in the bankruptcy proceedings, either directly or through a court-appointed representative; whether the rights of such persons may be dealt with by a reorganization plan; whether such persons are entitled to payment in a liquidation distribution; or whether the rights of such persons to proceed against the reorganized debtor and related entities may be terminated by the plan or court-issued injunction.<sup>1250</sup> Even in Chapter 11 asbestos cases, it is unclear whether section 524(g) provides the exclusive method for dealing with future claims or whether other methods may be used. The act amending section 524 included a provision stating that the amendment “shall not be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization.”<sup>1251</sup> Uncertainties remain concerning the existence of any other authority to enjoin future claimants.

Despite the courts’ reliance on future claims representatives and the analogy to the conditions that Congress found essential to a fair resolution of asbestos mass tort claims under section 524(g), uncertainty as to the constitutionality of binding future claimants remains. One unresolved issue is whether constitutionally adequate notice can be provided to future claimants. The Supreme Court has given conflicting signals. In 1950, the Court held that notice by publication in a single newspaper was sufficient with respect to “beneficiaries whose interests or addresses are unknown to the trustee,”<sup>1252</sup> because “notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all, since any objection sustained would inure to the benefit of all.”<sup>1253</sup> Often, though, no form of notice will be

1249. *Id.* § 524(g)(4)(B)(i).

1250. *See* Nat’l Bankr. Rev. Comm’n, *Bankruptcy: The Next Twenty Years: National Bankruptcy Review Commission Final Report* 320–22 (1997) [hereinafter NBRC Report].

1251. Pub. L. No. 103-394, § 111(b), 108 Stat. 4106, 4117 (codified as amended at 11 U.S.C. § 524 (West 2003), committee note).

1252. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950).

1253. *Id.* at 319. Most authorities that have supported the treatment of future claims in mass tort bankruptcies have relied on the appointment of a future claims representative, not merely notice, as the key to satisfying due process. *See, e.g.*, NBRC Report, *supra* note 1250, at 329–34;

“reasonably certain to reach most” future mass tort claimants. As the Court stated in *Amchem Products, Inc. v. Windsor*, “[m]any persons in the exposure-only category . . . may not even know of their exposure, or realize the extent of the harm they may incur.”<sup>1254</sup>

The Court “recognize[d] the gravity of the question whether class action notice sufficient under the Constitution and Rule 23 could ever be given to legions so unselfconscious and amorphous.”<sup>1255</sup> Whether it is possible to provide constitutionally adequate notice to future claimants in the bankruptcy context similarly remains open to question.

Due process concerns also attend possible conflicts of interest within the class of future claimants. In other representational situations, the Supreme Court has insisted on a careful alignment of interests between the representative and those represented and has prohibited grouping of class members with divergent interests.<sup>1256</sup> A similar insistence in the bankruptcy context might require appointment of more than one future claims representative. For example, separate representatives might be necessary for seriously injured future claimants and for those future claimants who will suffer only minor injury.<sup>1257</sup> Given the lack of clear precedent on the resolution of future claims in the bankruptcy context, courts should proceed with caution, recognizing the constitutional, statutory, and practical questions that remain unresolved. Courts should draw on the practices that have been developed to provide procedural protections for future claimants.

## 22.59 Confirming a Reorganization Plan

The Bankruptcy Code provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan”<sup>1258</sup> and that “[a] party in interest may object to confirmation of a plan.”<sup>1259</sup> Judicial review of the plan must take place

Kathryn R. Heidt, *Future Claims in Bankruptcy: The NBC Amendments Do Not Go Far Enough*, 69 Am. Bankr. L.J. 515 (1995); Resnick, *supra* note 1183, at 2076.

1254. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 628 (1997).

1255. *Id.*

1256. See *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856–57 (1999); *Amchem*, 521 U.S. at 625–28.

1257. See S. Elizabeth Gibson, *A Response to Professor Resnick: Will This Vehicle Pass Inspection?*, 148 U. Pa. L. Rev. 2095, 2114–15 (2000).

1258. 11 U.S.C. § 1128(a) (2000).

1259. *Id.* § 1128(b).

even if every impaired class of claims or interests has affirmatively accepted the plan.<sup>1260</sup>

Before confirming a plan, the Bankruptcy Code requires the court to determine whether the plan satisfies thirteen statutory requirements. For example, the Code explicitly requires that a Chapter 11 reorganization plan identify and designate separate classes of creditors' claims and equity holders' interests, specify the treatment to be afforded each class of claims or interests affected by the plan, provide equal treatment for each claim or interest within a particular class, and avoid benefiting directors, officers, and trustees at the expense of creditors and interest holders.<sup>1261</sup>

It is generally efficient to have the bankruptcy judge and a district judge sit jointly to decide whether a proposed plan should be confirmed. In an asbestos bankruptcy (or one following the asbestos statutory model), this approach streamlines the process because, under the statute, the district judge has to either issue or affirm the confirmation order for a channeling injunction to become valid and enforceable.<sup>1262</sup> In circuits without a bankruptcy appeals panel, a joint sitting may also bypass what would otherwise be an appeal of right from a bankruptcy judge's ruling to a judge of the district court.<sup>1263</sup> Instead, an appeal of the joint decision would proceed directly to the court of appeals.<sup>1264</sup>

1260. See Gerald F. Munitz & Karen M. Gebbia, *The Chapter 11 Plan, Confirmation and Cramdown*, in *Basics of Bankruptcy and Reorganization* 339, 355 (1992).

1261. See 11 U.S.C. § 1129(a)(1)–(13) (West 2003). For additional requirements, see *id.* § 1129(b)–(d); for requirements relating to the contents of a reorganization plan, see *id.* § 1123. For an example of a confirmation ruling and order, see *In re Eagle-Picher Industries*, 203 B.R. 256 (Bankr. S.D. Ohio 1996).

1262. 11 U.S.C. § 524(g)(3)(A) (West 2003).

1263. 28 U.S.C. § 158(a) (West 2003). See, e.g., *In re Eagle-Picher Indus.*, 203 B.R. 256 (Bankr. S.D. Ohio 1996). In the *A.H. Robins* reorganization, the district judge and bankruptcy judge sat jointly throughout the bankruptcy proceedings. Gibson, *Case Studies*, *supra* note 1160, at 190. Because a bankruptcy appellate panel serves as a substitute for appeal to a district court, see 28 U.S.C. § 158 (b)(1) (West 2003), a joint hearing with a bankruptcy judge and a district judge would not save a step in the process. Appeal from that joint decision would lie with a three-judge bankruptcy appellate panel and then with the court of appeals. 28 U.S.C. §§ 158(c) & (d) (West 2003).

1264. *Id.* § 158(d).

## 22.6 Case-Management Orders

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When responsibility for numerous related cases pending in the federal courts is centralized early with a single judge, active case management is imperative. The judge must promptly develop case-management plans and orders, updating and modifying them as the litigation unfolds. An initial case-management order will set the stage for the ongoing management process. That order should start to organize the cases and counsel; address discovery issues, including preservation of documents, electronic data, and other evidence; set priorities for pretrial pleadings and defer unnecessary pleadings; identify preliminarily the critical threshold legal and factual issues; outline preliminary discovery and motions and, if possible, set a timetable; and direct counsel to coordinate the implementation of the order. The order should coordinate discovery and threshold pretrial motions with discovery and motions in related cases pending in state and other federal courts. The order should also take into account the proposals of counsel and encourage continuing collaboration among counsel and the parties in the cases pending in different courts.<sup>1265</sup>

### 22.61 Initial Orders

Items that might be covered in initial and follow-up case-management orders in mass tort litigation are illustrated by the orders issued in the MDL-centralized silicone gel product liability litigation, the fen-phen diet drug litigation, the phenylpropanolamine (PPA) litigation, and other mass tort litigations. Section 40.52 contains a composite of those orders, which typically are used to accomplish the following tasks:<sup>1266</sup>

<sup>1265</sup>. See generally *supra* sections 21.2 & 21.3.

<sup>1266</sup>. See *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, No. CV 92-P-1000-S, Order No. 1 (N.D. Ala. June 26, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003); see also *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1421 (E.D. Pa.), at <http://www.fenphen.verilaw.com/> (last visited Nov. 10, 2003); *In re Phenylpropanolamine (PPA)*

- set the agenda and ground rules for the initial conference and notify parties that attendance by each party or attorney is not necessary and that parties with similar interests are expected to agree to be represented at the conference by a single attorney;
- establish an initial service list of counsel, which can later be modified to include a statement that defendants authorized listed counsel to accept service of process or service of other papers and motions by certified mail or by electronic means;
- urge counsel to familiarize themselves with the *Manual for Complex Litigation* and “be prepared at the conference to suggest procedures to facilitate the expeditious, economical, and just resolution of this litigation”;
- direct counsel for each side to meet, confer, and seek consensus on all agenda items and, specifically, to propose a discovery plan, including methods to obtain expert discovery and a timetable for considering motions, including any class certification motions;
- call for (1) preliminary reports on the critical factual and legal issues, (2) lists of all affiliated companies and counsel (to assist the court in addressing recusal or disqualification questions), (3) lists of pending motions, and (4) summaries of the nature and status of similar litigation pending in state courts;
- direct attorneys interested in serving as lead, liaison, or coordinating counsel to “submit information showing how and at what rates they will be expected to be compensated” and to disclose any “agreements or commitments they have made respecting the role and responsibility of other attorneys in conducting pretrial proceedings, discovery, and trial”;<sup>1267</sup>
- consolidate cases for pretrial proceedings, create a master docket and file, and establish a case-caption format;
- bar motions under Rule 11 or 56 without leave of court and order that counsel meet and attempt to resolve other motions (except Rule 12 motions to dismiss), an approach that should be reaffirmed and applied throughout the litigation;

Prods. Liab. Litig., MDL No. 1407 (W.D. Wash.), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003).

1267. *Id.* See also *In re Diet Drug Prods. Liab. Litig.*, MDL No. 1203, Order No. 16 (E.D. Pa. Mar. 13, 1998), at [http://www.fenphen.verilaw.com/all\\_court.icl](http://www.fenphen.verilaw.com/all_court.icl) (last visited Nov. 10, 2003) (establishing guidelines for attorneys’ common benefit fund time and expense reports, including time categories and limitations on expenses).

- order the parties to preserve all documents and records containing relevant information, establish ground rules for any routine purges of computer records, and address other issues relating to electronic data likely to be the subject of discovery (see sections 11.432 and 40.26);
- stay formal discovery and grant extensions of time for responding to complaints and motions, pending establishment of a schedule; and
- announce whether the judge intends to handle all matters personally and, if applicable, designate a magistrate judge to handle matters requiring immediate judicial attention when the district judge is unavailable.

Similar orders have been used by judges handling a variety of dispersed mass tort personal injury and property damage cases<sup>1268</sup> and single incident mass tort litigation.<sup>1269</sup>

## 22.62 Organization of Counsel<sup>1270</sup>

Early organization of the counsel who have filed the various cases transferred or consolidated for pretrial purposes is a critical case-management task. The judge will often need to appoint lead counsel or a committee of counsel to

1268. See, e.g., *In re Baycol Prods. Litig.*, MDL No. 1431, Order No. 4 (D. Minn. Mar. 4, 2002), at [http://www.mnd.uscourts.gov/Baycol\\_Mdl/pretrial.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/pretrial.htm) (last visited Nov. 10, 2003) (pretrial order, issued after initial conference, dealing with docketing, service, conferences, refinement of pleadings, discovery, and attorneys' time records); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, MDL No. 1407, Order No. 1 (W.D. Wash. Jan. 29, 2002), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003) (order, issued after initial case-management conference, dealing with discovery, experts, use of technology, class actions, and state-federal coordination); *In re Inter-Op Prosthesis Prod. Liab. Litig.*, MDL No. 01-CV-9000, Case Management Order (N.D. Ohio Sept. 13, 2001), at [http://www.ohnd.uscourts.gov/Clerk\\_s\\_Office/Notable\\_Cases/index.html](http://www.ohnd.uscourts.gov/Clerk_s_Office/Notable_Cases/index.html) (last visited Nov. 10, 2003) (pretrial order including statements of responsibilities of counsel and participation of state court counsel; extensive treatment of discovery); *In re Propulsid Prods. Liab. Litig.*, MDL No. 1355, Order No. 2 (E.D. La. Oct. 2, 2000), at <http://propulsid.laed.uscourts.gov/orders.htm> (last visited Nov. 10, 2003) (pretrial case-management plan including detailed organization of counsel).

1269. See, e.g., *In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001); *In re San Juan Dupont Plaza Hotel Fire Litig.*, MDL No. 721, 1989 WL 168401 (D.P.R. Dec. 2, 1988) (case-management order).

1270. For a general outline of factors for the court to consider in selecting, providing compensation for, and monitoring the performance of lead counsel in coordinated or consolidated litigation, see *supra* section 10.22. For more specific discussion of the factors relevant to selecting counsel and establishing an initial understanding about attorney fees, see *infra* section 14.211.

coordinate discovery and other pretrial preparation. Lead counsel and committees of counsel for the plaintiffs in mass tort litigation perform a host of functions. They develop proof of liability and anticipate defenses; gather the expertise necessary to prove causation and other elements of plaintiffs' cases; trace patterns of exposure; manage discovery; coordinate the various filings; and communicate with counsel for plaintiffs, counsel for defendants, and the court.<sup>1271</sup> In cases involving numerous defendants, liaison counsel for defendants generally play an important coordinating role in the mass tort litigation. As the appointing authority, the judge has the opportunity and obligation to monitor the activities of counsel and to implement the litigation management plan. Many judges monitor the activities of the parties and counsel through regularly scheduled status conferences and hearings on pretrial motions and discovery. Section 21.27 discusses the rule provision that applies to appointing counsel in class actions.

Where several counsel are competing to be lead counsel or to serve on a key liaison committee, the court should establish a procedure for attorneys to present their qualifications, including their experience in managing complex litigation and knowledge of the subject matter, their efforts in researching and investigating the claims before the court, and the resources that they can contribute to the litigation.<sup>1272</sup> Often counsel will agree among themselves as to who should serve as lead counsel or assume responsible positions on counsel committees; but the judge must be satisfied that counsel can perform the assigned roles and that they have not entered into improper arrangements to secure such positions.<sup>1273</sup> Including plaintiffs' attorneys with different perspectives and experience in lead or liaison counsel or as committee members can be helpful. Consider also including counsel handling significant numbers of state cases to facilitate coordination among state and federal cases. Section 20.31 discusses steps that judges can take in organizing counsel to help coordinate cases among state and federal courts, emphasizing the need to include attorneys involved in cases needing coordinated efforts.<sup>1274</sup>

1271. See Paul D. Rheingold, *Mass Tort Litigation* §§ 7:20 to 7:28 (1996 & Supp. 2002).

1272. See *infra* section 14.211; see also Fed. R. Civ. P. 23(h)(2) & committee notes.

1273. See, e.g., *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48, 70–75 (E.D. Pa. 1983) (describing agreements among attorneys to influence the organizational structure of the Plaintiffs Steering Committee and the Executive Committee), *aff'd in part, rev'd in part*, 751 F.2d 562 (3d Cir. 1984).

1274. See also, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 39 (E.D. Pa. Apr. 21, 1998), at <http://www.fenphen.verilaw.com/pto.icl> (last visited Nov. 10, 2003) (creating Plaintiff's State Liaison Committee with twenty lawyers from fourteen states).

During the selection process, judges should explicitly articulate their expectations about attorney compensation.<sup>1275</sup> For example, the judge can establish guidelines on the number of attorneys who can be present for or involved in specific tasks, the use of paralegals and associates, record keeping and reporting of time and expenses, ranges of allowable expenses, and similar requirements. See section 14.21.

The cost of the legal services may be apportioned among all parties who benefit from the services.<sup>1276</sup> Fees, however, may not be imposed by an MDL transferee judge on attorneys in cases that are not within the jurisdiction of the MDL courts.<sup>1277</sup> In general, those attorneys who provide a common benefit to a group of litigants may also receive compensation from a common fund—even if the attorneys who provide the benefit are not part of an official committee.<sup>1278</sup>

At a minimum, the judge should consider designating one or more attorneys for the plaintiffs and defendants to conduct common discovery and to present motions and arguments during coordinated pretrial proceedings. To minimize repetitious or marginal presentations, lawyers should be encouraged to consult with such designated or liaison counsel before presenting motions or arguments to the court.

Disagreements among the parties and counsel should not prevent designation of an attorney to act as liaison counsel in distributing documents, developing joint discovery requests, and otherwise assisting in the coordination of the litigation.

1275. See Fed. R. Civ. P. 23(g)(2)(B) & committee notes.

1276. See *Smiley v. Sincoff*, 958 F.2d 498 (2d Cir. 1992); *In re Air Crash Disaster at Fla. Everglades* on Dec. 29, 1992, 549 F.2d 1006 (5th Cir. 1977); *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 13 (N.D. Ala. July 23, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1277. *In re Showa Denko K.K. L-Tryptophan Prods. Liab. Litig.*, 953 F.2d 162 (4th Cir. 1992).

1278. See *supra* section 20.31; see also *Diet Drugs*, Order No. 467 (E.D. Pa. Feb. 10, 1999) (establishing fund for MDL lawyers and corresponding fund for cooperating state lawyers working on common discovery).

## 22.63 Subsequent Case-Management Orders

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### 22.631 Adding Parties

New actions will likely be commenced throughout the course of the litigation, particularly in cases involving latent toxic torts. As discovery progresses, additional defendants can be joined by amendments to plaintiffs' complaints or by a succession of third-party complaints. Under Federal Rule of Civil Procedure 16(b)(1), the judge should establish at the initial pretrial conference a schedule for joinder of additional parties and for amendment of pleadings. The schedule should provide the parties a reasonable opportunity for discovery before the deadline for adding parties or amending pleadings and should not be modified without a showing of good cause. A presumptive period for later-added parties to join—usually sixty days from service—should be included, subject to the right to seek additional time.<sup>1279</sup>

It is helpful to develop a system for adding new plaintiffs into the structure of the litigation<sup>1280</sup>—for example, a system for assigning new cases to existing groups, or for creating new groups if prior cases have been categorized by worksite, disease, or some other feature. Such a system may entail collecting information about the characteristics of each new case. Necessary data about each new case can be collected at filing and used to create a current database of the information needed to manage the litigation.

Consider directing the defendants to compile information, such as the dates on which and areas in which each defendant marketed a particular product, so that plaintiffs can identify the proper defendants.<sup>1281</sup> Such records might forestall claims being filed against improperly named defendants.

Ordinarily, discovery should not be postponed until all parties have been joined; indeed, some discovery is necessary to identify the proper parties.

1279. See, e.g., *Diet Drugs*, Pretrial Order No. 807 (E.D. Pa. July 20, 1999) (establishing a bar date for cross-claims and third-party claims).

1280. See, e.g., *Silicone Gel* (Revised Case Management Order), Pretrial Order No. 5 at ¶ 4(c) (N.D. Ala. Sept. 15, 1992) (granting leave for plaintiffs' counsel to add, without further motion or order, additional plaintiffs from the same state as parties with pending claims against defendants).

1281. See, e.g., *Diet Drugs*, Pretrial Order No. 418 (E.D. Pa. Jan. 6, 1999) (requiring defendants to prepare lists of products and for plaintiffs to provide notice regarding product identification).

Interrogatories may be served on the existing parties, and the judge can order their answers available to, and usable by, parties later added to the litigation. Similarly, new parties may use documents produced in response to requests by others and be given access to document depositories.<sup>1282</sup> Newly added parties may use depositions taken earlier, supplemented as necessary by later, limited depositions. See section 11.453 (deferred supplemental depositions).

## 22.632 Pleadings and Motions

Establishing a master file with standard pleadings, motions, and orders can be particularly helpful if the litigation will involve a number of actions filed, removed, or transferred over an extended period.<sup>1283</sup> Answers, third-party complaints, and motions contained in the master file may be deemed automatically filed in each new case to the extent applicable.<sup>1284</sup> A pretrial order establishing a standard plan and schedule for discovery can also be deemed to apply automatically. Rulings on motions under Federal Rules of Civil Procedure 12 and 56 may be deemed to apply in the newly filed cases unless an objecting party can show good cause.<sup>1285</sup> If the parties have already filed separate motions, consider consolidating related motions that affect the structure of the litigation, such as motions for consolidation for class certification<sup>1286</sup> or to establish a trial plan.

These procedures will expedite proceedings in the later-filed cases while preserving the parties' rights to claim error from adverse rulings. The parties should not, however, be automatically precluded from presenting special issues or requests in individual cases by supplemental pleadings, motions, and arguments.

1282. See *supra* section 11.444.

1283. See *infra* section 40.52.

1284. See *supra* section 11.32 (pleading and motion practice).

1285. See, e.g., *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Order No. 1 (N.D. Ala. June 26, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (deeming that any motion, brief, response, and corresponding order applies to each similarly situated party unless that party expressly disavows it).

1286. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 419 (E.D. Pa. Jan. 6, 1999), at <http://www.fenphen.verilaw.com/pto.icl> (last visited Nov. 10, 2003) (scheduling a hearing on motions to certify classes, requiring each side to specify facts they intend to prove, and calling for stipulations of uncontested facts and briefs); *id.*, Order No. 252 (E.D. Pa. Aug. 13, 1998) (establishing deadlines for class certification motions and requiring parties to confer with the Plaintiffs' Management Committee and seek to consolidate such motions); *id.*, Order No. 4 (E.D. Pa. Jan. 16, 1998) (suspending filing and consideration of motions for class certification).

### 22.633 Deferred Docketing

In latent toxic tort cases, exposure to the product may precede manifestation of injuries by a number of years. The presence, nature, and extent of injury or harm may not be known for years or even decades after exposure. Nevertheless, parties may file cases to prevent statutes of limitation or statutes of repose from extinguishing their claims. Some judges, generally with the consent of the parties affected, have established deferred dockets, sometimes referred to as dormant or inactive dockets, to register such claims with the court and toll the running of statutes of limitation or repose while deferring their consideration until any injuries become manifest.<sup>1287</sup>

Other means are available to defer decisions on mass tort claims that are not ready to be adjudicated. For example, judges severed and deferred cases involving claims of systemic injuries resulting from exposure to the silicone gel in breast implants until a national panel of scientific experts appointed under Federal Rule of Evidence 706 issued its report in the multidistrict litigation on the causation issues. Cases involving allegations of localized injuries were not deferred because those causation issues did not raise the same scientific questions or require the same scientific evidence.<sup>1288</sup> Another judge entered an interim order granting in limine motions to exclude plaintiffs' experts, subject to reexamination when the Rule 706 panel issued its report.<sup>1289</sup> Yet another judge deferred claims by tolling the statute of limitations and maintaining a class action relating to those claims on the court's docket.<sup>1290</sup>

### 22.634 Issue Identification and Development

Identifying the issues—and the governing statutory or decisional law—is critical to developing a plan for efficiently resolving complex tort litigation. Multiple tort cases frequently involve claims and defenses asserted under

1287. See, e.g., *In re Asbestos II Consolidated Pretrial*, 142 F.R.D. 152 (N.D. Ill. 1991); Freedman, *supra* note 1067, at 688–89. See generally, Peter H. Schuck, *The Worst Should Go First: Deferral Registries in Asbestos Litigation*, 75 *Judicature* 318 (1992); see also *In re Asbestos Prods. Liab. Litig.* (No. VI), MDL No. 875, 2002 U.S. Dist. LEXIS 16590 (E.D. Pa. Jan. 14, 2002) and the discussion of priorities, *supra* note 1048; see also *infra* section 40.52, ¶ 9.

1288. *In re Breast Implant Cases*, 942 F. Supp. 958 (E.D.N.Y. & S.D.N.Y. 1996). For a discussion of the process of appointing and receiving the report of the national panel see FJC Study, *Neutral Science Panels*, *supra* note 1059.

1289. *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387, 1394–95 (D. Or. 1998).

1290. See, e.g., *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Order No. 5 (N.D. Ala. Sept. 15, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS.htm> (last visited Nov. 10, 2003) (extending indefinitely the time for opting out of a provisionally certified class action and stating that the pendency of that action would toll the statute of limitations for members of that class).

various federal and state laws. In early Federal Rule of Civil Procedure 16 conferences and status conferences, the judge and counsel should work to narrow the issues, claims, and defenses. Such conferences should explore, for example, whether stipulations are feasible to determine what law applies to certain groups of claims or claimants, or to determine what products were distributed during certain periods or in certain geographic areas.

Issues to be taken up early in the litigation may include the following:

- whether the facts and expert evidence support a finding that the products or acts in question have the capacity to cause the type of injuries alleged;
- whether plaintiffs' claims of causation are generally applicable and susceptible to proof across large groups of individuals and over time;
- what law applies and whether there are material differences among the applicable laws;
- whether plaintiffs' claims are barred by statutes of limitations or other legal bars;
- whether plaintiffs can pursue punitive damages;<sup>1291</sup>
- whether one or more classes should be certified and, if so, how to define the class and whether it should be limited to particular claims or issues;<sup>1292</sup> and
- whether to consolidate groups of cases under Federal Rule of Civil Procedure 42(a) for pretrial management.

Some legal issues may be susceptible to resolution and review on interlocutory appeal relatively early in the litigation.<sup>1293</sup> Examples include whether claims are cognizable under federal common law,<sup>1294</sup> barred by the statute of limitations,<sup>1295</sup> subject to issue or claim preclusion,<sup>1296</sup> or covered by insurance.

1291. See generally *In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001) (reviewing punitive damages award); *In re TMI*, 67 F.3d 1119, 1127–28 (3d Cir. 1995) (affirming order allowing punitive damage award based on state law); *In re Simon II Litig.*, 211 F.R.D. 86, 158–63 (E.D.N.Y. 2002) (discussing punitive damages). See also *State Farm Mut. Auto. Ins. Co.*, 123 S. Ct. 1513 (2003).

1292. See *supra* section 21.1; see also Fed. R. Civ. P. 23(c)(4)(A). Recent decisions have called into question the applicability of Rule 23(c)(4)(A) in the mass tort context. See *infra* section 22.75.

1293. See *supra* sections 15.11–15.12.

1294. See *In re Agent Orange Prod. Liab. Litig.*, 635 F.2d 987 (2d Cir. 1980).

1295. See *Neubauer v. Owens-Corning Fiberglas Corp.*, 686 F.2d 570 (7th Cir. 1982).

1296. See *In re Air Crash at Dallas/Ft. Worth Airport*, 861 F.2d 814 (5th Cir. 1988); *In re Asbestos Litig.*, 829 F.2d 1233, 1242 (3d Cir. 1987); *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334 (5th Cir. 1982); *Ezagui v. Dow Chem. Corp.*, 598 F.2d 727 (2d Cir. 1979); see also

Interlocutory certification of controlling but unresolved questions of state law to state courts may also be feasible.<sup>1297</sup>

Differences in the substantive law governing liability and damages may substantially affect discovery, trial, and settlement. In all mass tort litigation, the judge must analyze applicable choice-of-law rules and determine what state law will govern particular issues.<sup>1298</sup> In single incident mass tort cases, the applicable choice-of-law rules may indicate that only one state's law applies.<sup>1299</sup> In dispersed, multistate toxic tort and defective products litigation, choice-of-law issues may be more problematic because there may be a wide range of applicable state laws, and the state in which the action is pending may not have a significant relationship with many of the class members, with the defendants, or with the activities that are subject to the litigation.<sup>1300</sup> If the choice-of-law and subsequent analysis show little relevant difference in the governing law, or that the law of only a few jurisdictions applies, the court might address these differences by creating subclasses or by other appropriate grouping of claims.<sup>1301</sup> See sections 22.72 and 22.75.

Michael D. Green, *The Inability of Offensive Collateral Estoppel to Fulfill Its Promise: An Examination of Estoppel in Asbestos Litigation*, 70 Iowa L. Rev. 141 (1984).

1297. See *supra* section 15.1.

1298. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). In a case transferred under 28 U.S.C. § 1404(a), the transferee court must apply the choice-of-law rules that would have governed in the transferor court. *Ferens v. John Deere Co.*, 494 U.S. 516 (1990); *Van Dusen v. Barrack*, 376 U.S. 612 (1964).

1299. As a threshold matter, there “can be no injury in applying [the forum state’s law] if it is not in conflict with that of any other jurisdiction” connected with the litigation. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 816 (1985). See also, e.g., *In re Air Crash Disaster near Chicago, Ill.* on May 25, 1979, 644 F.2d 594 (7th Cir. 1981) (punitive damages); *In re Air Crash Disaster near Chicago, Ill.* on May 25, 1979, 644 F.2d 633 (7th Cir. 1981) (prejudgment interest).

1300. *Phillips Petroleum*, 472 U.S. at 821–22 (where a state does not have significant contacts with the claims asserted by each member of the plaintiff class, the application of that state’s law to all members of the class is arbitrary, unfair, and hence unconstitutional). See also *In re Real Estate Title & Settlement Servs. Antitrust Litig.*, 869 F.2d 760, 769 (3d Cir. 1989) (“[I]f the [proposed class] member has not been given the opportunity to opt out in a class action involving both important injunctive relief and damage claims, the member must have either minimum contacts with the forum or consent to jurisdiction” to be precluded from litigating its claims in its own forum.).

1301. *In re Sch. Asbestos Litig.*, 977 F.2d 764, 796–98 (3d Cir. 1992) (division of state laws into four categories that encompass the variations in the product liability laws of the states may prove successful; plaintiff’s proposal to pursue the strictest state standards of liability would raise constitutional issues about whether class members from a state with a less strict law could be precluded from challenging an adverse decision based on another state’s stricter standard). See also *In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001); *In re Teletronics Pacing Sys., Inc. Accufix Atrial “J” Leads Prods. Liab. Litig.*, 221 F.3d 870, 880 (6th Cir. 2000); *Watson v. Shell Oil*

22.635 Electronic Communications<sup>1302</sup>

Effective management requires constant attention to developments in the litigation. The judge must promptly identify and resolve problems, such as difficulties in implementing current orders. Soliciting frequent feedback on the operation of the case-management plan usually yields the information necessary to adjust procedures. Establishing an electronic mechanism for ongoing communication among the lawyers and the court during the course of complex mass tort litigation has become essential.<sup>1303</sup>

## 22.7 Class Actions in Mass Tort Cases

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Federal courts have “ordinarily” disfavored—but not ruled out entirely—using class actions in dispersed mass tort cases.<sup>1304</sup> After experimenta-

Co., 979 F.2d 1014 (5th Cir. 1992), *reh’g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh’g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing).

1302. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 173 (E.D. Pa. July 13, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (setting up Web site); see also *In re Baycol Prods. Litig.*, MDL No. 1431, Order No. 18 (D. Minn. May 9, 2002), at [http://www.mnd.uscourts.gov/Baycol\\_Mdl/pretrial.htm](http://www.mnd.uscourts.gov/Baycol_Mdl/pretrial.htm) (last visited Dec. 2, 2003) (setting up electronic filing, service, storage, and delivery of documents via Web site); *id.*, Order No. 19 (D. Minn. May 9, 2002) (setting up protocol for production of documents from electronic storage); *In re Propulsid Prods. Liab. Litig.*, MDL No. 1355, Order No. 4 (E.D. La. Nov. 21, 2000), at <http://propulsid.laed.uscourts.gov/orders.htm> (last visited Nov. 10, 2003) (setting up electronic records protocols).

1303. *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Order No. 7 (N.D. Ala. Oct. 6, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (establishing an electronic bulletin board). The court also established a Web site located on the Federal Judicial Center’s homepage at <http://www.fjc.gov/BREIMLIT/mdl926.htm> (last visited Nov. 10, 2003).

1304. “A ‘mass accident’ resulting in injuries to numerous persons is ordinarily not appropriate for a class action because of the likelihood that significant questions, not only of

tion with class treatment of some mass torts during the 1980s and 1990s,<sup>1305</sup> the courts have greatly restricted its use in mass torts litigation.<sup>1306</sup> Mass tort personal injury cases are rarely appropriate for class certification for trial. In a settlement context, the proposed class must meet Rule 23 requirements, with the exception of trial manageability, and the court must carefully review the proposed settlement terms to ensure that they are fair, reasonable, and adequate.<sup>1307</sup> The trend appears to be that cases involving significant personal injuries should not be certified for trial, particularly on a nationwide or multistate basis, because individual issues of causation and individual damages often predominate and state law often varies. Property damage claims may be different—if the amounts at issue in each individual claim are too small, individual litigation may not be a superior, or even feasible, alternative for resolution, especially when the proposed mass tort rests on a novel or untested scientific or legal claim. Some courts have addressed these difficulties by certifying some, but not all, issues for class treatment, and by structuring subclasses under Federal Rule of Civil Procedure 23(c)(4) to reflect state law differences.<sup>1308</sup> This section examines the case-management challenges presented by mass tort litigation and settlement class actions.

## 22.71 Background<sup>1309</sup>

In the 1980s and 1990s, some district courts certified mass tort class actions on an opt-out basis under Rule 23(b)(3) for litigation arising both

damages but also of liability and defenses of liability, would be present, affecting the individuals in different ways. In these circumstances an action conducted nominally as a class action would degenerate in practice into multiple lawsuits separately tried.” Fed. R. Civ. P. 23 committee note, reprinted in 39 F.R.D. 69, 103 (1966). For a detailed discussion of a relatively brief trend away from this view, see *In re A.H. Robins Co.*, 880 F.2d 709, 729–38 (4th Cir. 1989).

1305. See Manual for Complex Litigation, Third, § 33.262 (1995).

1306. See, e.g., *Castano v. Am. Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069 (6th Cir. 1996); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995). But see *Valentino v. Carter-Wallace*, 97 F.3d 1227 (9th Cir. 1996) (declining to adopt across-the-board rejection of class treatment in pharmaceutical injury mass tort claim).

1307. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

1308. See *Simon v. Philip Morris*, 200 F.R.D. 21 (E.D.N.Y. 2001) (appeal pending); *In re Electronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 172 F.R.D. 271 (S.D. Ohio 1997); *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 161 F.R.D. 456 (D. Wyo. 1995); *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 158 F.R.D. 485 (D. Wyo. 1994).

1309. For a comprehensive review of class action activity in mass tort litigation, see Rheingold, *supra* note 1271, §§ 3:13 to 3:43.

from single incident mass disasters<sup>1310</sup> and dispersed mass torts.<sup>1311</sup> Opinions in those earlier cases should be read with caution in light of subsequent rulings of the Supreme Court and courts of appeals. For an instructive approach, see that taken by the district and appellate courts that have determined or reviewed class certification requests in the mass tort context after the *Amchem* and *Ortiz* decisions.<sup>1312</sup>

As mass tort litigation expanded and became more prevalent, the phenomenon of a settlement class action emerged—that is, a class certified for settlement purposes only, that may not meet all the requirements for class certification for trial. Sections 22.72 and 22.73 discuss the various types of settlement classes and the important differences among them.

In some mass tort cases, judges focus on common issues of fact or law and carve out issues classes for certification under Rule 23(c)(4)(A),<sup>1313</sup> expressly

1310. *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1020–21 (5th Cir. 1992) (personal injury and property damage claims arising from oil refinery explosion), *reh'g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh'g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188 (6th Cir. 1988) (opt-out class of water-contamination victims in vicinity of a landfill); *In re Fed. Skywalk Cases*, 95 F.R.D. 483 (W.D. Mo. 1982) (certifying opt-out class of business invitees injured in collapse of hotel skywalk after mandatory class was vacated); *Coburn v. 4-R Corp.*, 77 F.R.D. 43 (E.D. Ky. 1977) (Beverly Hills Supper Club fire), *mandamus denied sub nom. Union Light, Heat & Power Co. v. U.S. Dist. Ct.*, 588 F.2d 543 (6th Cir. 1978).

1311. *In re Sch. Asbestos Litig.*, 789 F.2d 996 (3d Cir. 1986) (nationwide Rule 23(b)(3) class of schools presenting property damage claims associated with asbestos-containing building materials used in the schools); *Jenkins v. Raymark Indus.*, 782 F.2d 468, 473 (5th Cir. 1986) (districtwide class of asbestos personal injury claimants to resolve specific issues, including the “state-of-the-art” defense); *Albuterol*, 158 F.R.D. at 485 (wrongful death and personal injury claims relating to a contaminated batch of drugs); *In re Agent Orange Prods. Liab. Litig.*, 100 F.R.D. 718 (E.D.N.Y. 1983) (nationwide class of Vietnam veterans exposed to dioxins certified under Rule 23(b)(3) for compensatory relief and under Rule 23(b)(1)(B) for punitive damages), *aff'd*, 818 F.2d 145, 163–67 (2d Cir. 1987).

1312. *See, e.g., In re The Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001) (affirming class-wide compensatory damages verdict, vacating class-wide punitive damages verdict on review of judgment from multiphase class-wide trial in single incident mass tort certified under “limited punishment” theory as mandatory litigation class action); *see also In re Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 221 F.3d 870 (6th Cir. 2000) (reversing mandatory settlement-purposes class certification pursuant to *Ortiz*). The Sixth Circuit *Teletronics* decision left undisturbed the earlier decision granting a Rule 23(b)(3) litigation class, and the case was later settled on a Rule 23(b)(3) basis. *See In re Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985 (S.D. Ohio 2001).

1313. *See infra* section 22.75 for a discussion of issues classes in light of the decision in *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995) (issues class to determine negligence liability for infected blood decertified on mandamus); *cf. Jenkins*, 782 F.2d at 473 (certifying asbestos personal injury claimant class to resolve common issues, including the “state of the art”

providing for the resolution of individual issues through nonclass procedures, such as individual hearings or alternative dispute resolution. Recently, questions have been raised about the constitutionality, fairness, and usefulness of issues classes in the mass tort context.<sup>1314</sup> Section 22.75 discusses issues classes.

The Supreme Court in *Amchem* and *Ortiz* examined class certification standards in the dispersed mass tort context. The Court focused on settlement classes, but identified principles that apply generally to class certification issues. After *Amchem*, cases can still be certified for settlement purposes only, but they must meet all of Rule 23(a)'s certification standards and all of those in Rule 23(b)(3) except manageability for trial. *Ortiz* has greatly restricted the use of Rule 23(b)(1) to certify mass tort settlement classes on a limited fund theory. Section 22.74 discusses the specific issues in using Rule 23(b)(2) to certify medical monitoring settlement class actions.

## 22.72 Post-*Amchem* Class Certification

After the 1997 *Amchem* decision, a court reviewing a proposed mass tort settlement class action faces two questions: Can the case be certified for settlement? And can the settlement be approved as fair, reasonable, and adequate to the absent class members? This section considers the first question; section 22.92 considers the second, and quite separate, question. The *Amchem* Court unequivocally held that a finding that a proposed settlement is fair does not resolve whether a settlement class can be certified under Rules 23(a) and 23(b).<sup>1315</sup>

In *Amchem*, the Supreme Court ruled that, in order to be certified, a settlement class must meet the requirements in Federal Rules of Civil Procedure 23(a) and (b), even though the parties do not intend to try the case. A court may take the settlement into account in deciding whether Rules 23(a) and (b) are met in that the court need not find that trial manageability is satisfied.<sup>1316</sup> The Court noted, however, that those portions of Rule 23 that are

defense where law of only one state applied); *Albuterol*, 158 F.R.D. at 491–92 (certifying issues class for negligence and breach of warranty claims related to contamination of bronchodilator).

1314. See, e.g., *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 748–51 (5th Cir. 1996) (decertifying issues class, citing Seventh Amendment and fairness grounds); *Rhone-Poulenc*, 51 F.3d at 1298–1304 (same).

1315. *Amchem*, 521 U.S. at 622 (“Federal courts, in any case, lack authority to substitute for Rule 23’s certification criteria a standard never adopted—that if a settlement is ‘fair’ then certification is proper.”).

1316. *Id.* at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

“designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand undiluted, even heightened, attention in the settlement context.”<sup>1317</sup>

The Court rejected the parties’ proposed nationwide settlement in *Amchem* involving hundreds of thousands of class members and twenty asbestos manufacturers because the proposed class was “sprawling” and because common issues failed to predominate over individual issues, as required for an opt-out class action under Rule 23(b)(3).<sup>1318</sup> The class’s sprawl or lack of cohesiveness also implicated Rule 23(a)(4)’s adequacy-of-representation requirement because the interests of some class members and representatives conflicted with those of other members and representatives. In particular, the interest of present claimants asserting asbestos-related injuries conflicted with the interests of future claimants, both those who knew they had been exposed but had not manifested any injury, and those who had no manifest injury and did not even know that they had been exposed.<sup>1319</sup> The Court also noted with concern—but did not rule on—the difficulties of providing adequate notice to future claimants, particularly those who might not know that they had been exposed to asbestos dust or injured by it. The court pointed out “the gravity of the question whether class action notice sufficient under the Constitution and Rule 23 could ever be given to legions so unselfconscious and amorphous.”<sup>1320</sup>

After *Amchem*, judges asked to certify mass tort class actions for settlement purposes only must scrutinize the cohesiveness, adequacy of representation, and predominance of common issues presented in the proposed class. In *Amchem* itself, indications of the lack of cohesiveness included the nationwide dispersal of cases and the wide range of differences in the asbestos products, claimants’ exposures to varied asbestos products, medical histories, severity of injuries, and the presence of alternative causal agents, particularly smoking history.<sup>1321</sup> Judges have also applied *Amchem*’s teachings to mass tort litigation outside of the asbestos context, finding deficiencies under Rule 23 that preclude certification.<sup>1322</sup>

1317. *Id.*

1318. *Id.* at 622–25.

1319. *Id.* at 625–28.

1320. *Id.* at 628.

1321. See John D. Aldock & Richard M. Wyner, *The Use of Settlement Class Actions to Resolve Mass Tort Claims After Amchem Products, Inc. v. Windsor*, 33 Tort & Ins. L.J. 905, 913 (1998) (“[O]ther, unnamed Rule 23 criteria warranted undiluted or even heightened scrutiny—presumably, the criteria that relate to the ‘cohesiveness’ of the class.”).

1322. See text accompanying *infra* notes 1328–29.

Courts have created subclasses to respond to concerns about adequacy of representation, providing separate representation for each.<sup>1323</sup> Each subclass, however, must also meet all the applicable certification criteria of Rule 23.<sup>1324</sup> The individual nature of many exposure, causation, and damages issues may predominate even within a proposed subclass. Such differences can extend far beyond conflicts between present and future claimants and can defeat certification even if there are no future claimants involved.

Two post-*Amchem* mass tort exposure cases illustrate the importance of subclassing. Both involve claims related to defective pacemaker leads. In the first case, a district judge certified subclasses for medical monitoring, negligence, and strict liability claims, but rejected a subclass for punitive damages. Where the laws of various states differed, the judge created subclasses for each of the major groups of state laws, and later approved a settlement of an opt-out class based on the subclasses previously created.<sup>1325</sup> The other case involved a similar product manufactured by the same defendant. The district judge denied plaintiffs' motion to certify a class to litigate claims for negligence,

1323. Aldock & Wyner, *supra* note 1321, at 914 (“[A] prudent reading of *Amchem* would suggest that subclasses, with separate representatives and counsel, should be established where a strong case can be made that groups of class members have conflicting settlement goals.”); Stephen A. Saltzburg (moderator), *The Future of Class Actions in Mass Tort Cases: A Roundtable Discussion*, 66 Fordham L. Rev. 1657, 1681–82 (1998) (Judge Weinstein recounts his experience in the *Manville* litigation in which the first settlement was “properly reversed” for lack of subclasses and then resettled “on a different basis”); Roger C. Cramton, *Individualized Justice, Mass Torts, and “Settlement Class Actions”: An Introduction*, 80 Cornell L. Rev. 811, 828 (1995) (“Adequate representation of a huge class of future tort claimants is possible, if at all, only if the lawyers negotiating for the class are representative of all the major divisions and groups within the class.”).

1324. *Walker v. Liggett Group, Inc.*, 175 F.R.D. 226, 233 (S.D. W. Va. 1997) (holding that a proposed class of past and present cigarette smokers, their families and estates, those exposed to secondhand smoke, and those who paid medical claims was “of such diversity and enormity that adequacy of representation cannot be achieved even with separate representatives and subclasses”).

1325. *In re* Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig., 172 F.R.D. 271 (S.D. Ohio 1997) (certifying a mandatory class pursuant to Rule 23(b)(1)(B) and approving a settlement creating a “limited fund” and releasing the parent corporations as well as the subsidiary from further liability). The court of appeals rejected the settlement and the certification of a Rule 23(b)(1)(B) class and held that “bootstrapping of a Rule 23(b)(3) class into a Rule 23(b)(1)(B) class is impermissible and highlights the problem with defining and certifying class actions by reference to a proposed settlement.” *In re* Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig., 221 F.3d 870, 880 (6th Cir. 2000). After remand, the district court approved a revised settlement providing opt-out rights. *In re* Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig., 137 F. Supp. 2d 985 (S.D. Ohio 2001).

products liability, and medical monitoring. The court of appeals affirmed,<sup>1326</sup> holding that the common issues did not predominate, in part because plaintiffs had not submitted a plan for designating subclasses that would satisfy Rule 23.<sup>1327</sup>

*Amchem* does not categorically preclude certification of a mass tort personal injury or property damage settlement class action. Since *Amchem*, however, a number of district courts have refused to certify dispersed personal injury or property damage mass tort class actions for the purpose of trial, or have decertified them,<sup>1328</sup> finding that varying state laws and individual issues of exposure, causation, and damages defeat the predominance requirement of Rule 23(b)(3), making trial unmanageable. Another basis for rejecting certification is that such variations make class representatives inadequate or atypical of the interests of the absent class members.<sup>1329</sup>

Since *Amchem*, a number of district courts have also refused to certify, or have decertified, mass tort class actions proposed for settlements, or have refused to approve the settlement terms. For example, in a case dealing with a proposed settlement arising out of alleged intentional exposure of workers to radioactive isotopes, the judge rejected a proposed settlement in part because it favored the interests of current employees over the interests of past employees and retirees.<sup>1330</sup> In a case dealing with the alleged exposure of cancer patients to high doses of radiation without their consent, the judge declined to review a proposed settlement because the proposed class did not satisfy the requirements of either Rule 23(a) or (b).<sup>1331</sup> In the former case, the judge reviewed and rejected the entire settlement before ruling on the certification motion. In the

1326. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1198 (9th Cir. 2001) (Fletcher, B., dissenting). The dissent concluded that common issues predominate and that “representative subclasses based on state law commonalities” would satisfy Rule 23’s superiority requirement. *Id.* at 1199.

1327. *Id.* at 1190.

1328. *See, e.g., In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012 (7th Cir. 2002); *Spence v. Glock*, 227 F.3d 308 (5th Cir. 2000); *Barnes v. Am. Tobacco Co.*, 161 F.3d 127 (3d Cir. 1998); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323 (S.D.N.Y. 2002); *Walker v. Liggett Group*, 175 F.R.D. 226 (S.D. W. Va. 1997).

1329. *See, e.g., MTBE*, 209 F.R.D. at 338–41.

1330. *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543, 548–49 (S.D. Ohio 2000) (noting that, after *Amchem*, “if class certification is not appropriate under Rule 23(a) and (b), then the Court *cannot* approve the proposed Agreement”). The court also noted that the parties had up until the proposed settlement disputed the issue whether a class could be certified. *Id.*

1331. *In re Cincinnati Radiation Litig.*, No. C-1-94-126, 1997 WL 1433832 (S.D. Ohio Aug. 4, 1997). Two years later, the same judge reviewed and approved a revised settlement and certified a hybrid opt-out class under Rules 23(b)(2) and (d)(2). *In re Cincinnati Radiation Litig.*, 187 F.R.D. 549 (S.D. Ohio 1999).

latter case, the judge denied certification at the preliminary approval stage and thereby avoided the need to conduct a full review of the settlement. See section 21.63. The better practice is to determine class certification at the preliminary approval stage, thus resolving the central issue of class certification before investing the significant resources required in reviewing what is often a complex settlement agreement and the considerable costs of providing notice to the class.<sup>1332</sup>

In a number of cases, however, judges have continued to certify settlement class actions in the mass tort context, particularly when there are no unknown future claimants and the absent class members are readily identifiable and can be given notice and an opportunity to opt out.<sup>1333</sup> Those judges have emphasized that because the case will be settled rather than tried, differing state laws that might make a class-wide trial unmanageable do not defeat certification for settlement purposes only. The judges address the differences among state laws by certifying subclasses and appointing separate class representatives and counsel for each subclass.<sup>1334</sup> In evaluating the proposed settlements, judges have taken differing state laws into account to ensure that similarly situated claimants do not receive disparate treatment.<sup>1335</sup> In other settlements dealing with the laws of more than one state, parties and judges have avoided choice-of-law and adequacy-of-representation problems by framing settlement

1332. For an example of a case in which the court combined a ruling on certification of a proposed settlement class with a ruling preliminarily approving a proposed settlement, see *In re Inter-Op Hip Prosthesis Liability Litigation*, 204 F.R.D. 330 (N.D. Ohio 2001).

1333. See, e.g., *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, No. 1:01-CV-9000, 2001 WL 1842315, at \*7 n.9, \*14 (N.D. Ohio Oct. 20, 2001) (conditionally certifying settlement class and noting that a “single set of operative facts establishes liability” and a “single proximate cause applies to each potential class member”); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at \*41, \*69 (E.D. Pa. Aug. 28, 2000) (certifying settlement class and finding claimants shared single product and common injury).

1334. See, e.g., *Diet Drugs*, 2000 WL 1222042, at \*50–\*53 (discussing the differences in benefits for different groups of claimants and the role of counsel for subclasses in the negotiations).

1335. *In re Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985, 1022–24 (S.D. Ohio 2001). See also *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146–47 (8th Cir. 1999) (analyzing differences in settlement amounts for property damage claims in different zones and finding sufficient “structural assurance” of adequate representation required by *Amchem*); *Diet Drugs*, 2000 WL 1222042, at \*47–\*49 (discussing the reasons for the different treatment of neurotoxic injuries, which received no benefits but were released in the settlement); *id.* at \*50–\*53 (discussing the differences in benefits for different groups of claimants and the role of counsel for subclasses in the negotiations); *Levell*, 191 F.R.D. at 551 (rejecting settlement because “it disparately benefits current employees, who are represented by nearly all of the named class members, at the expense of former employees and retirees”).

allocations in terms of matrices of benefits based on differences in the severity and impact of various injuries.<sup>1336</sup>

## 22.73 Post-*Ortiz* Mandatory Limited Fund Class Settlements

In *Ortiz v. Fibreboard Corp.*, the Court summarized the traditional and “presumptively necessary” characteristics of a limited-fund class action under Rule 23(b)(1)(B) as “[1] a ‘fund’ with a definitely ascertained limit, [2] all of which would be distributed to satisfy all those with liquidated claims based on a common theory of liability, [3] by an equitable, pro rata distribution.”<sup>1337</sup> The Court refused to recognize an amount of insurance proceeds that the parties had agreed to make available as a limited fund, despite recognition that without the settlement the insurance would be subject to competing claims, and in any event fell below the amounts of projected claims.

Before *Ortiz*, judges had occasionally certified mandatory (i.e., non-opt-out) settlement classes under Rule 23(b)(1) in mass tort cases.<sup>1338</sup> Parties invoked such limited-fund class actions typically as settlement class actions in situations in which “a defendant’s potential tort liability . . . threatens to overwhelm the company’s assets.”<sup>1339</sup> The limited-fund class action usually represented an effort to resolve mass tort liability without forcing a company to file for reorganization under the bankruptcy laws.<sup>1340</sup> *Ortiz* put in doubt the viability of limited-fund class actions in mass tort cases. The requirements are so difficult to meet that a number of companies have turned to Chapter 11 reorganization as a means of limiting mass tort suits and attempting a global resolution of the claims rather than asserting that their assets can be consid-

1336. See, e.g., *Sulzer*, 2001 WL 1842315, at \*11 n.15, \*14 (N.D. Ohio Oct. 20, 2001) (conditionally certifying settlement class and finding “parties’ tentative identification of appropriate factors to include in the matrix” supports a preliminary finding of fairness); *Diet Drugs*, 2000 WL 1222042, at \*19–\*29, \*68 (certifying settlement class and approving matrix compensation benefits).

1337. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 841–42 (1999).

1338. See *In re A.H. Robins Co.*, 880 F.2d 709, 738–40 (4th Cir. 1989) (discussing trend of certifying mass torts for settlement). But see *In re Joint E. & S. Dists. Asbestos Litig. Corp.*, 982 F.2d 721, 735–45 (2d Cir. 1992) (vacating district court approval of a settlement class in which competing interests of subgroups of personal injury claimants and codefendants were combined and represented collectively); see also *infra* section 22.9 (settlement). For a post-*Amchem*, pre-*Ortiz* limited fund certification, see *In re Orthopedic Bone Screw Products Liability Litigation*, 176 F.R.D. 158 (E.D. Pa. 1997). For a detailed discussion of the orthopedic bone screw litigation, see Gibson, Case Studies, *supra* note 1160, at 127–58.

1339. Gibson, Case Studies, *supra* note 1160, at 7.

1340. For an in-depth comparison of limited fund procedures under Rule 23 with comparable procedures under the Bankruptcy Code, see Gibson, Case Studies, *supra* note 1160.

ered a limited fund.<sup>1341</sup> Section 22.5 discusses the management of bankruptcies involving mass tort claims. This section discusses the conditions the Court imposed in *Ortiz*. Note that satisfaction of those conditions for a limited fund does not necessarily require the court to approve a mandatory limited fund action under Rule 23(b)(1)(B), either for settlement or for litigation. The Supreme Court in *Ortiz* announced that it could not, in the context of that case, “decide the ultimate question whether settlements of multitudes of related tort actions are amenable to mandatory class treatment.”<sup>1342</sup> The court said that “the applicability of Rule 23(b)(1)(B) to a fund and plan purporting to liquidate actual and potential tort claims is subject to question . . . .”<sup>1343</sup>

*Ortiz* provides guidance for district judges to follow in reviewing proposed limited fund class settlements under Rule 23(b)(1)(B). A court must

- undertake an independent investigation as to whether the valuation of the assets comprising the proposed fund has been set at the upper limit;<sup>1344</sup>
- determine on the record the value of present and future tort claims against the limited fund and whether the fund is adequate to meet those claims;<sup>1345</sup>
- analyze any side agreements, such as the contingent settlement of present claims, that might affect the incentives of attorneys for the class;<sup>1346</sup>

1341. According to the Rand Institute for Civil Justice, twenty-two companies filed asbestos-related bankruptcies between January 2000 and July 2002. Carroll, *supra* note 1161.

1342. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 842 (1999). The court specifically raised questions about limitations that might inhere in the Rules Enabling Act, 28 U.S.C. § 2072(b) (requiring that federal rules of procedure “not abridge, enlarge or modify any substantive right”), and the Seventh Amendment rights of absent class members, including future claimants, to trial by jury and due process. *Ortiz*, 527 U.S. at 845–47.

1343. *Id.* at 864.

1344. *Id.* at 852 (referring to the general assets of the company plus any insurance coverage and calling for an independent valuation repeatedly in this section of the opinion). A trial court has numerous options, such as directing the parties to present evidence and argument on specific issues, including those in the text following this note, or appointing a magistrate judge, special master, Federal Rule of Evidence 706 expert, or a technical advisor. *See generally supra* section 20.14.

1345. *Ortiz*, 527 U.S. at 849 (“Thus, in an action such as this the settling parties must present not only their agreement, but evidence on which the district court may ascertain the limit and the insufficiency of the fund, with support in findings of fact following a proceeding in which the evidence is subject to challenge.”).

1346. *Id.* at 852–53.

- compare the interests of different claimants who are included in the class, such as present versus future claimants, and consider whether those differing interests were adequately represented in the negotiations;<sup>1347</sup>
- compare the interests of those in the class with those not in the class, such as present claimants who settled before the class was certified or claimants who opt out of the settlement;<sup>1348</sup> and
- consider who should get the savings of “transaction costs” in settlement agreements, plaintiffs or defendants (which the Supreme Court found to be “at least a legitimate question, which we leave for another day”).<sup>1349</sup>

Based on *Ortiz*, several judges have invalidated limited fund settlements approved before the Court’s decision.<sup>1350</sup> Some commentators have expressed doubts as to whether a limited-fund class action is ever appropriate in a mass tort<sup>1351</sup> and whether a class action provides structural fairness equivalent to the

1347. *Id.* at 856 (“[I]t is obvious after *Amchem* that a class divided between holders of present and future claims (some of the latter involving no physical injury and to claimants not yet born) requires division into homogeneous subclasses under Rule 23(c)(4)(B), with separate representation to eliminate conflicting interests of counsel. See *Amchem*, 521 U.S. at 627.”).

1348. *Id.* at 854–55. *Cf. In re Inter-Op Hip Prosthesis Prod. Liab. Litig.*, No. 01-4039, 2001 WL 1774017, at \*1 (6th Cir. Oct. 29, 2001) (staying an injunction against pursuing claims in other forums that “imposes significant financial disincentives on the right to opt out of a proposed class action settlement”).

1349. *Id.* at 861. For further discussion of the allocation of savings in a “going concern” settlement, see Matthew C. Stiegler, Note, *The Uncertain Future of Limited Fund Settlement Class Actions in Mass Tort Litigation After Ortiz v. Fibreboard Corporation*, 78 N.C. L. Rev. 856, 895–99 (2000).

1350. *In re Teletronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 221 F.3d 870, 877 (6th Cir. 2000) (mandatory limited fund class settlement approved by district court before *Ortiz* held invalid for failure to satisfy the *Ortiz* criteria, noting that “the applicability of Rule 23(b)(1)(B) to a fund purporting to liquidate actual and potential tort claims is ‘subject to question’”); *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 1999 WL 782560, at \*6–\*12, \*14 (E.D. Pa. Sept. 27, 1999) (district court disapproved a mandatory limited fund proposed for a Rule 23(b)(1)(B) settlement class that the court had conditionally certified before *Ortiz*, holding that the proposed settlement did not satisfy any of the three criteria in *Ortiz*’s historical model). *But cf. Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1143–48 (8th Cir. 1999) (affirming mandatory settlement for pollution damages and injunctive relief, distinguishing *Ortiz*, and ruling that differences in damages among class members do not necessarily create conflicts of interest that require subclasses).

1351. See Gibson, Case Studies, *supra* note 1160, at 37–38 (“[t]he larger question, repeatedly raised but not answered by [the *Ortiz* opinion] was whether a mass tort could ever qualify for mandatory class treatment under Rule 23(b)(1)(B)”; Stiegler, *supra* note 1349, at 900 (“[O]rtiz

Bankruptcy Code.<sup>1352</sup> Others have declared that bankruptcy is the only recourse for companies facing tort claims exposure that may last for years and ultimately prove overwhelming.<sup>1353</sup> The *Ortiz* decision itself did not go this far,<sup>1354</sup> and the Court expressly recognized that an undetermined portion of a company's limited funds may go back into the business.<sup>1355</sup>

## 22.74 Medical Monitoring Class Actions

In cases involving exposure to allegedly toxic substances in which resulting injury might be latent, plaintiffs may seek certification of a class to provide medical monitoring for the members. Such claims typically seek relief in the form of either a court-administered fund to establish and pay for specific diagnostic testing and research or to prepay for testing or reimburse the class members for costs incurred if and when they obtain such testing on their own.

Medical monitoring has evolved predominantly under state common law<sup>1356</sup> but can also arise under federal<sup>1357</sup> or state statutes.<sup>1358</sup> The elements of

has made limited fund class certification substantially, perhaps prohibitively, more difficult and uncertain.”).

1352. Gibson, Case Studies, *supra* note 1160, at 5–6 (concluding that “bankruptcy comes out ahead of limited fund class action settlements with respect to the fairness of the resolution process and the effectiveness of judicial review” while limited fund class action settlements come out ahead . . . with regard to the efficiency of the resolution process and the likelihood that defendant will invoke that resolution method”).

1353. See, e.g., *Telectronics*, 221 F.3d at 880 (ruling that imminent threat of bankruptcy does not provide a good reason to approve a limited-fund class action settlement).

1354. *Ortiz*, 527 U.S. at 860 (no inherent conflict between a limited-fund class action under Rule 23(b)(1)(B) and the Bankruptcy Code).

1355. *Id.* at 860 n.34 (“We need not decide here how close to insolvency a limited fund defendant must be brought as a condition of class certification.”).

1356. See, e.g., *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 787–88 (3d Cir. 1994) (discussing elements of medical monitoring claim and remedy that Pennsylvania would recognize) [hereinafter *Paoli II*]; *Friends For All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 824–25 (D.C. Cir. 1984) (examining “general principles of tort law, the Restatement (Second) of Torts, and the law of other jurisdictions,” the court found that the District of Columbia Court of Appeals would recognize a medical monitoring claim and remedy in a case brought on behalf of children who were at risk of future neurological disorders because they were exposed to severe decompression and loss of oxygen during an airplane flight); *Bower v. Westinghouse Elec. Corp.*, 522 S.E.2d 424, 431–32 (W. Va. 1999) (on certification from federal district court, state court finds a common-law cause of action for medical monitoring in the context of plaintiffs’ exposure to allegedly toxic substances in a pile of debris from the manufacture of light bulbs); *Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 979–80 (Utah 1993) (workers exposed to asbestos in the course of renovating an office have a state common-law cause of action to the extent that monitoring is “medically advisable”); *Ayers v. Jackson*, 525 A.2d 287, 291 (N.J. 1987)

state law claims for medical monitoring typically include exposure to a harmful substance or product that the defendant marketed or wrongfully released into the environment and that has significantly increased the plaintiffs' risk of developing a serious latent disease. Plaintiffs must show that the defendant caused the exposure to the substance and the consequent increase in risk. Courts generally require plaintiffs to show that diagnostic tests exist, that the increased risk has made testing reasonably necessary, and that early detection can significantly improve medical treatment of the disease.<sup>1359</sup> However, courts have not, to date, required plaintiffs to show that the increase in risk constitutes the proximate cause of any injury that might follow, leaving that issue for any personal injury damage actions that might ensue. Some courts have adopted a lesser standard for evaluating how much of an increase in risk plaintiffs must show to trigger the medical monitoring remedy.<sup>1360</sup>

(residents of an area near a landfill that allegedly leaked contaminants into nearby well sought medical monitoring based on their increased risk of developing cancer).

1357. In *Metro-North Commuter Railroad Co. v. Buckley*, 521 U.S. 424 (1997), the Court refused to recognize an individual claim under the Federal Employers' Liability Act (FELA) for lump-sum economic damages for future medical testing required as a result of plaintiffs' exposure to asbestos. The Court, however, avoided ruling out "medical cost recovery rules more finely tailored than the rule we have considered [lump sum damages]," *id.* at 444, and noted that courts recognizing a medical monitoring remedy often imposed limitations on that remedy, such as channeling payments through a court-supervised fund. *Id.* at 440–41. *See also In re Marine Asbestos Cases*, 265 F.3d 861, 866–67 (9th Cir. 2001) (discussing Jones Act claim and concluding that *Metro-North* left the medical monitoring question unresolved as to a similar FELA claim).

1358. *See, e.g., Redland Soccer Club, Inc. v. Dept. of the Army*, 696 A.2d 137, 142 (Pa. 1997) (holding that plaintiffs' claims for medical monitoring based on alleged exposure to toxic chemicals in a park built over a landfill state a cause of action arising under Pennsylvania Hazardous Sites Cleanup Act because medical testing qualifies as a statutory "cost of response" to the release of a hazardous substance), *dismissed on jurisdictional grounds after remand aff'd sub nom. O'Neil v. Dept. of the Army*, 742 A.2d 1095 (Pa. Super. Ct. 1999).

1359. The elements of a medical monitoring claim, as described above in the text, are set out in *In re Paoli Railroad Yard PCB Litigation*, 916 F.2d 829, 852 (3d Cir. 1990) [hereinafter *Paoli I*]. *See also Marine Asbestos Cases*, 265 F.3d at 866; *Arch v. Am. Tobacco Co.*, 175 F.R.D. 469, 481 (E.D. Pa. 1997); *Redland Soccer Club*, 696 A.2d at 143–45.

1360. *See, e.g., Paoli I*, 916 F.2d at 851 ("[T]he appropriate inquiry is not whether it is reasonably probable that plaintiffs will suffer harm in the future but rather whether medical monitoring is, to a degree of medical certainty, necessary in order to diagnose properly the warning signs of disease."); *Ayers v. Twp. of Jackson*, 525 A.2d 287, 312 (N.J. 1987) ("Even if the likelihood that these plaintiffs would contract cancer were only slightly higher than the national average, medical intervention may be completely appropriate in view of the attendant circumstances."); *cf. Donald L. DeVries & Ian Gallacher, Medical Monitoring in Drug and Medical Device Cases: Taking the Temperature of a New Theory*, 68 Def. Couns. J. 163, 173 (2001)

Some courts have found that the applicable state law precludes medical monitoring claims if the claimants have no present injury.<sup>1361</sup> Still others have held that medical monitoring is “a separate and distinct cause of action.”<sup>1362</sup> Many state courts have not addressed whether there is a cause of action or remedy for medical monitoring. A federal district judge managing mass tort diversity litigation might thus consider certifying to the relevant state courts the question whether there is a cause of action for medical monitoring or a medical monitoring remedy.<sup>1363</sup>

Certifying a class action for medical monitoring raises the same threshold issues that apply to all mass torts, see section 22.72, and that apply to class actions generally, see section 21.2. If state law recognizes medical monitoring, either as a cause of action or as a remedy, a judge must still decide whether the proposed class action satisfies the criteria set out in Federal Rule of Civil Procedure 23(a) and the criteria of at least one of the Rule 23(b) types of classes.<sup>1364</sup> The typicality of the class representatives’ claims and possible conflicts of interest among class representatives and class members remain critical.<sup>1365</sup> See sections 21.141 (adequacy of representation) and 22.72.

(arguing that plaintiffs should have to show a probability of future harm and citing cases requiring such a showing as well as cases not requiring that level of proof).

1361. See, e.g., *Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795 (Cal. 1993) (indicating that medical monitoring is a remedy available to a plaintiff who proves defendant's liability); see also *Crooks v. Metro. Life Ins. Co.*, 785 So. 2d 810, 811 (La. 2001) (applying statute requiring actual physical harm as a prerequisite to medical monitoring damages).

1362. *Arch*, 175 F.R.D. at 481, and cases cited therein.

1363. See, e.g., *Bower v. Westinghouse Elec. Corp.*, 522 S.E.2d 424, 428 (W. Va. 1999) (district judge certified question to state supreme court); but cf. *Paoli II*, 35 F.3d 717, 785 (3d Cir. 1994) (summarizing the judges’ role in *Paoli I* as “predict[ing] the holding of Pennsylvania courts on a claim for medical monitoring”); *Friends For All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 824–25 (D.C. Cir. 1984) (looking to local tort law and general principles of tort law in the Restatement, Second).

1364. See *In re Diet Drugs Products Liability Litigation*, No. CIV.A.98-20626, 1999 WL 673066, at \*14–\*19 (E.D. Pa. Aug. 26, 1999), for a thorough discussion of procedure and of cases applicable to a court’s analysis of Rule 23(a) factors in the context of a proposed medical monitoring class. Note that “a single common question is sufficient to satisfy Rule 23(a)(2).” *In re Diet Drugs*, 1999 WL 673066, at \*8 (quoting *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 624 (E.D. Pa. 1994)).

1365. See generally *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); see also *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998) (“The typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals.”).

Courts are divided over whether Rule 23(b)(2) or Rule 23(b)(3) is the appropriate vehicle for certifying a mass tort class for medical monitoring.<sup>1366</sup> A key question is whether the primary type of relief plaintiffs seek is for money damages. Rule 23(b)(2) generally applies when the relief sought is a court-supervised program for periodic medical examination and research to detect diseases attributable to the product in question.<sup>1367</sup> If money damages are the primary relief sought in a medical monitoring class, as in programs that pay class members but leave it to the members to arrange for and obtain tests, certification generally must meet the Rule 23(b)(3) standards.<sup>1368</sup> Judges who applied Rule 23(b)(3) have generally found that common issues did not predominate and that differing state laws controlled the claims for medical monitoring. These judges concluded that nationwide or multistate class certification was not a superior method of resolving such claims.<sup>1369</sup>

The choice between application of Federal Rules of Civil Procedure 23(b)(2) and (b)(3) revolves around whether the complaint is seeking predominantly money damages or equitable relief.<sup>1370</sup> That determination requires

1366. *Barnes*, 161 F.3d at 142–44 (affirming decertification); *Diet Drugs*, 1999 WL 673066, at \*19 (class certified); *Day v. NLO*, 851 F. Supp. 869, 885–87 (S.D. Ohio 1999) (certification granted). *But cf.* *Cook v. Rockwell Int’l Corp.*, 181 F.R.D. 473, 478–80 (D. Colo. 1998) (decertifying a Rule 23(b)(2) medical monitoring class because the underlying claims are for damages for personal injuries).

1367. *Barnes*, 161 F.3d at 132 (stating that a court-supervised program to detect diseases caused by smoking is a “paradigmatic request for injunctive relief”; certification denied on other grounds); *Diet Drugs*, 1999 WL 673066, at \*6 (finding the “request for relief in this action is equitable in nature”); *Katz v. Warner-Lambert Co.*, 9 F. Supp. 2d 363, 364 (S.D.N.Y. 1998) (stating that “[a] claim for a medical monitoring and research fund is injunctive in nature”); *Day v. NLO, Inc.*, 144 F.R.D. 330, 335–36 (S.D. Ohio 1992) (certifying a Rule 23(b)(2) class for medical monitoring in the form of a court’s program, managed by court-appointed, court-supervised trustees, and using monitoring data for group studies and distinguishing programs seeking monetary relief).

1368. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001) (holding that establishment of reserve fund for past and future damages and compensation for future medical treatment was primarily a claim for money damages; claim for research into alternative methodologies to uncover remedies for class members’ conditions amounted to incidental injunctive relief); *Arch v. Am. Tobacco Co.*, 175 F.R.D. 469 (E.D. Pa. 1997) (claims for relief are primarily for treatment, hence primarily for damages, not injunctive relief).

1369. *See In re Rezulin Prods. Liab. Litig.*, 210 F.R.D. 61, 70–71 (S.D.N.Y. 2002) (denying certification because choice-of-law issues defeat superiority); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 350 (S.D.N.Y. 2002) (concluding that “the class action device in this case is not superior to a combination of individual suits and state agency relief”).

1370. *Zinser*, 253 F.3d at 1195 (rejecting plaintiffs’ argument that their complaint called for equitable relief and stating “[a] request for medical monitoring cannot be characterized as primarily equitable or injunctive *per se*”); *Arch*, 175 F.R.D. at 483 (“The court . . . may properly

an informed understanding of the essential nature of the medical monitoring relief that plaintiffs prove to be necessary in the particular case.

If medical monitoring is available under the applicable state law and the nature of the relief sought is equitable, the court must then decide whether the proposed class meets Rule 23(b)(2)'s requirement that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." In general, Rule 23(b)(2) requires that the class be "cohesive"<sup>1371</sup> in that "the defendant is alleged to have acted in some uniform way toward the class . . . and that the injunctive relief requested is applicable to the entire class."<sup>1372</sup> In cases seeking multistate class certification, the court must determine whether applicable state laws are uniform or whether significant differences can be addressed by certification of subclasses.<sup>1373</sup>

Also important is whether the diagnostic procedures requested are reasonably necessary and likely to provide benefits to the class.<sup>1374</sup> One court has framed the test as whether "informed physicians . . . would recommend routine monitoring on the basis of" former use of the product in question.<sup>1375</sup> Another court examined whether plaintiffs can prove "the existence of accepted medical monitoring regimes that make early detection of [the diseases in question] possible and beneficial."<sup>1376</sup> State and federal medical monitoring case law development remains dynamic and variable.<sup>1377</sup>

certify a medical monitoring claim under Rule 23(b)(2) when the plaintiffs seek such specific relief which can be properly characterized as invoking the court's equitable powers.").

1371. *Barnes*, 161 F.3d at 143.

1372. *Diet Drugs*, 1999 WL 673066, at \*6 (holding that request for medical monitoring relief "in this action is equitable in nature"). Applicability to the entire class does not mean that the class definition or the use of subclasses cannot further define or limit the scope of the class to achieve cohesiveness. *Id.* at \*11–\*12 (establishing subclasses and defining the class to exclude, for example, those who used diet drugs for fewer than thirty days).

1373. *See, e.g., id.*

1374. *See* text accompanying *supra* notes 1357–60.

1375. *In re Rezulin Prods. Liab. Litig.*, 210 F.R.D. 61, 73–74 (S.D.N.Y. 2002).

1376. *Carey v. Kerr-McGee Chem. Corp.*, 60 F. Supp. 2d 800, 811 (N.D. Ill. 1999).

1377. *See, e.g., Rezulin*, 210 F.R.D. at 75 (denying certification of medical monitoring Rule 23(b)(2) class, finding the proposed class lacked cohesion and individual issues, making it unmanageable); *In re Propulsid Prods. Liab. Litig.*, 208 F.R.D. 133, 143–47 (E.D. La. 2002) (denying certification of the proposed class and noting variations in state recognition of medical monitoring as a claim or remedy).

## 22.75 Issues Classes

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Rule 23 provides that “an action may be brought and maintained as a class action with respect to particular issues” under Rule 23(c)(4)(A),<sup>1378</sup> but courts have held that the proponent must show that issue certification “will materially advance a disposition of the litigation as a whole.”<sup>1379</sup> Section 21.24 discusses the role of issues classes in class actions generally.

In deciding whether an issues class will materially advance the disposition of a set of mass tort cases, courts often consider the following factors:

- the issue(s) to be resolved on a class-wide basis;
- the applicable law, based in part on whether the cases arise from a single incident or a series of dispersed activities;<sup>1380</sup>

1378. Fed. R. Civ. P. 23(c)(4)(A). The rule was intended to recognize that “an action may be maintained as to particular issues only,” for example, by separating class adjudication of liability from individual adjudication of damages. *Id.*, committee note to 1966 Amendment, subdivision (c)(4). See also *Simon v. Philip Morris, Inc.*, 200 F.R.D. 21 (E.D.N.Y. 2001) (analyzing Rule 23(c)(4)(A) in the historical context of the Seventh Amendment) (appeal pending).

1379. *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 167 n.12 (2d Cir. 2001). See also *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 351–53 (S.D.N.Y. 2002); *Sprague v. Gen. Motors Corp.* 133 F.3d 388, 397 (6th Cir. 1998) (stating that the court is looking for a common issue that will advance and resolve the litigation); *Harding v. Tambrands, Inc.*, 165 F.R.D. 623, 630 (D. Kan. 1996) (“[c]ertification [of ‘general causation’] would not materially advance the disposition of the litigation as a whole” where individual issues of causation and damages under the laws of fifty states would remain); cf. *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig.*, 174 F.R.D. 332, 352 (D.N.J. 1997) (“If there were certain basic issues (such as defect) to which only one state’s laws applied and concerning which class-wide issues predominated, the court could consider certifying a class with respect to those issues only.”) (citing Fed. R. Civ. P. 23(c)(4)).

1380. See, e.g., *MTBE*, 209 F.R.D. at 330 (alleging widespread dispersed groundwater contamination by petroleum companies as a result of a gasoline additive); cf. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 623 (5th Cir. 1999) (casino employees claiming they developed respiratory illness caused by the casino’s “defective and/or improperly maintained air-conditioning”); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1229 (9th Cir. 1996) (claiming side effects arising from taking a single drug by a single manufacturer for a relatively short period); *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 161 F.R.D. 456, 457 (D. Wyo. 1995) (claims arising from a nationwide recall of a bronchodilator prescription pharmaceutical following alleged incident of contamination).

- in dispersed mass tort cases, whether a limited and manageable set of state or federal substantive laws would apply in a trial of specific issues;
- if there are differences in applicable state laws, whether subclasses can be used to organize the applicable laws into manageable categories;
- whether each common issue is sufficiently separable from the individual issues so that it need not be “reexamined” in individual trials that may follow;
- whether the remaining issues of liability or damages will be resolved, an analysis often aided by trial plans that the parties submit; and
- the impact that determining the common issues will have on advancing the litigation as a whole.

### 22.751 Identify the Issues

The threshold question is whether there is a separate common issue that can be certified under Rule 23(c)(4)(A). In mass tort litigation, issues classes have been used to establish liability elements, such as general causation, negligence, or breach of warranty.<sup>1381</sup> Judges have also certified issues classes to establish class-wide affirmative defenses, such as the state of the art,<sup>1382</sup> the defendant’s status as a government contractor,<sup>1383</sup> and medical monitoring claims (see section 22.74). Issues of specific causation and resulting damages to exposed individuals, however, cannot fairly or realistically be decided on a class-wide basis. As discussed in section 22.756, the judge and parties need to design other appropriate structures for resolving individual issues if adjudication of common issues establishes entitlement to damages upon proof of injury. The fact that such procedures will eventually be required does not

1381. See, e.g., *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 912 (7th Cir. 2003) (identifying as common issues leakage of contaminant by defendant and the geographical limits of the leakage); *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124 (9th Cir. 2002) (identifying general causation as potential issue for class treatment, approving certification of Price-Anderson Act common liability issues as issues class, and approving bifurcated trial with common issues trial followed by individual trials of causation and damages issues); *Jenkins v. Raymark Indus.*, 782 F.2d 468, 473 (5th Cir. 1986) (affirming certification of asbestos personal injury claimant class to resolve common liability issues and the “state of the art” defense); *Albuterol*, 161 F.R.D. at 467 (certifying issues classes for negligence and breach of warranty claims relating to contamination of bronchodilator).

1382. *Jenkins*, 782 F.2d at 473.

1383. *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 166–67 (2d Cir. 1987).

necessarily defeat the predominance or superiority requirements of Rule 23(b)(3).<sup>1384</sup>

### 22.752 Determine Applicable Law

The choice of applicable law is critical. It often turns on whether the mass tort in question derives from a single incident in a confined locale or from a series of events dispersed by geography or time, or both. For example, a court addressing a Jones Act case dealing with occupational respiratory illnesses allegedly caused by a defective ventilation system on board a ship found that certification of an issues class was appropriate.<sup>1385</sup> The discrete issue presented in that case was very different from the “Frankenstein Monster” later described by the same court in rejecting an issues class for a nationwide group of millions claiming damages for tobacco addiction.<sup>1386</sup>

The dichotomy between a single incident and a dispersed mass tort is not always so clear. In a case involving a contaminated product that was distributed nationally before its recall, a judge certified an issues class as to liability. The judge found that defendant’s admission of liability for some of the contamination, the widespread use of strict liability concepts by the states involved, and the improbability that comparative negligence would apply to use of a contaminated product, made the applicable law and proof consistent across the class.<sup>1387</sup> At the other end of the spectrum, in the Methyl Tertiary Butyl Ether (MTBE) multidistrict litigation, a group of plaintiff ground well owners complained of contamination from MTBE, a product used as a gasoline additive that had allegedly leaked into groundwater sources. The district court rejected an effort to certify “the appropriateness of injunctive relief” or “general liability” as issues classes under Rule 23(c)(4). The court also held that the proposed injunctive issues class failed to meet Rule 23(b)(2) criteria: The well owners were not a cohesive class because of the differences in the levels of any contamination, in the sources of any contamination, in the effects on each plaintiff, and in the extent and nature of relief required.<sup>1388</sup> The

1384. See *Jenkins*, 782 F.2d at 472–73.

1385. *Mullen*, 186 F.3d at 620 (approving certification of Jones Act common liability issues as issues class and approving bifurcated trial with common issues trial of negligence and seaworthiness followed by individual trials of causation and damages issues); see also *Mejdrech*, 319 F.3d at 911 (all class members in groundwater pollution case proceeding under same state and federal laws).

1386. *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.19 (5th Cir. 1996).

1387. *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 161 F.R.D. 456, 464–65 (D. Wyo. 1995).

1388. *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 341–44 (S.D.N.Y. 2002).

court also held that the general liability issues class would not materially advance the litigation and would be subject to the individual differences among plaintiffs, requiring countless individual trials.<sup>1389</sup>

#### 22.753 Identify a Limited Set of Laws<sup>1390</sup>

Where the cases are derived from activities with dispersed origins, an issues class will advance the litigation only if it can proceed to jury trial with clear instructions relating to a common legal standard or a small group of standards. Drafting sample jury instructions may help to clarify whether an issues class will work. Where liability relates to an allegedly defective product, Restatement of Law principles may be applicable and an issues class may be viable.<sup>1391</sup> With regard to negligence claims that are strongly disputed, courts could face the ungainly prospect of a “single trial before a single jury instructed in accordance with no actual law of any jurisdiction—a jury that will receive a kind of Esperanto instruction, merging the negligence standards of the fifty states and the District of Columbia.”<sup>1392</sup> An issues class is rarely viable in such circumstances.

#### 22.754 Subclasses to Reflect Differences in State Law

Determining whether the applicable laws can be grouped into a few sets that are very similar may help determine whether common issues are sufficiently present.<sup>1393</sup> If subclasses are proposed based on different categories of

1389. *Id.* at 344–46.

1390. *See supra* section 22.317. The process of classifying and grouping the pertinent states’ laws is a task that has been described as “not . . . fun, but . . . far from impossible.” Larry Kramer, *Choice-of-Law in Complex Litigation*, 71 N.Y.U. L. Rev. 547, 582 (1996). As Professor Kramer observed, “surveying state laws is not the problem that could make mass consolidation unmanageable. Determining the law in many states is not easy, to be sure. But every practicing lawyer has done a fifty-state search at some time in his or her career and this is certainly manageable. Moreover, the time and expense required to ascertain the content of the laws, even in a fifty-state search, are a drop in the bucket compared to the other costs of litigating a mass tort.” *Id.*

1391. *See Albuterol*, 161 F.R.D. at 465 (citing *In re Asbestos Sch. Litig.*, 104 F.R.D. 422, 434 (E.D. Pa. 1984), *modified*, 789 F.2d 996 (3d Cir. 1986)) (observing that “51 jurisdictions are in virtual agreement in that they apply the Restatement (Second) of Torts § 388” and “forty seven jurisdictions have adopted strict liability and all of them start with the concept of a defective product,” and holding that “substantial duplication” of negligence and strict liability laws in fifty-one jurisdictions make a nationwide class manageable).

1392. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1300 (7th Cir. 1995).

1393. *See In re Telectronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 172 F.R.D. 271, 293–94 (S.D. Ohio 1997) (finding that four subclasses “sufficiently take into account state law variations in the law of strict liability”); *Albuterol*, 161 F.R.D. at 465 (directing

applicable state law, each subclass must independently meet all the requirements of Rule 23(a) and at least one of the categories specified in Rule 23(b). See sections 22.72, 21.22, and 21.23.

### 22.755 Determine Separability of Common Issue

The Reexamination Clause of the Seventh Amendment of the U.S. Constitution provides: “[N]o fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.” The courts have divided over the application of this clause to issues classes when two or more trials, with separate juries, will be required.<sup>1394</sup> See section 21.24. In the *Gasoline Products* case, the Supreme Court held that it is consistent with the Seventh Amendment to allow separate juries to hear different issues in the same case, as long as the issues tried to separate juries are so “distinct and separable” that the second jury will not revisit issues determined by the first, and separate trials may be “had without injustice.”<sup>1395</sup> See section 21.24. In *Rhone-Poulenc*, the Seventh Circuit concluded that a trial plan under which one jury would first determine the common issue of negligence and subsequent juries would determine comparative negligence and proximate causation violated the Reexamination Clause.<sup>1396</sup> Other courts have concluded that the Seventh Amendment is not offended by a bifurcation of the proceedings into class-wide claims and individual claims, on the ground that the second phase would not involve the “same issues” as the first phase.<sup>1397</sup> See section 22.751. Unless the decision of the first jury will “provide sufficient guidance to allow later juries to implement the first jury’s formal findings

that “if an individual state’s law is at variance with the general law on a relevant point of law, its residents may be removed from the class”). *Cf.* *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001) (rejecting the use of subclasses).

1394. *Compare In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995), *with* *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 169 (2d Cir. 2001). *See supra* section 21.24; *see also* *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 750–51 (5th Cir. 1996) (ruling that “if separate juries are allowed to pass on issues involving overlapping legal and factual questions the verdicts rendered by each jury could be inconsistent”); *cf.* *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 628–29 (5th Cir. 1999) (distinguishing *Castano* and *Rhone-Poulenc*).

1395. *Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500 (1931). *See also* *Ala. v. Blue Bird Body Co.*, 573 F.2d 309 (5th Cir. 1978) (approving a bifurcated statewide class trial of an antitrust action and disapproving a nationwide class action trial plan).

1396. *Rhone-Poulenc*, 51 F.3d at 1303–04.

1397. *See In re Asbestos Sch. Litig.*, 789 F.2d 996 (3d Cir. 1986); *see also* *Albuterol*, 161 F.R.D. at 456.

without confusion or uncertainty, issues cannot be certified.”<sup>1398</sup> Use of special verdict forms can provide the specificity necessary for instructing a second jury as to the aspects of the litigation previously resolved. The forms should clearly distinguish among the possible interpretations of the first jury’s findings, to allow later juries to understand and apply those findings.<sup>1399</sup>

### 22.756 Establish a Trial Plan

A trial plan for the proposed common issues class will help determine whether a trial will be manageable and meet all the Rule 23 certification standards. Section 22.93 discusses mass tort trial plans. Any plan should also address individual issues, such as specific causation and damages, and defenses such as comparative negligence or limitations.<sup>1400</sup> Some judges have used trial plans that rely on representative plaintiffs to present test cases, followed by a procedure for determining remaining issues.<sup>1401</sup>

A trial on general liability can impose unfair burdens on parties forced to litigate issues out of context—for example, by trying liability on a class-wide basis without reference to statute of limitations defenses. One concern is that a “composite” issues class is often much stronger than any plaintiff’s individual action would be.<sup>1402</sup> A trial plan should identify such risks and propose ways to avoid or minimize them.

1398. Patrick Woolley, *Mass Tort Litigation and the Seventh Amendment Reexamination Clause*, 83 Iowa L. Rev. 499, 531 (1998). See also Steven S. Gensler, *Bifurcation Unbound*, 75 Wash. L. Rev. 705, 736–37 (2000).

1399. See, e.g., *Henley v. FMC Corp.*, 20 Fed. Appx. 108, 118–20 (4th Cir. 2001) (finding an inability to distinguish whether jury finding applied to representative parties or the class as a whole, reversing, and remanding).

1400. *Jenkins v. Raymark Indus.*, 782 F.2d 468, 471 (5th Cir. 1986) (affirming district court’s determination that a bifurcated trial plan would best address specific causation and damage issues); *In re Copley Pharm., Inc., “Albuterol” Prods. Liab. Litig.*, 158 F.R.D. 485, 492 (D. Wyo. 1994) (outlining a bifurcated trial plan to determine class-wide liability and individual causation/damages).

1401. See, e.g., *In re Shell Oil Refinery*, 136 F.R.D. 588, 593–97 (E.D. La. 1991), *affirmed sub nom.* *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1017–20 (5th Cir. 1992), *reh’g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh’g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing); see also *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 623 (5th Cir. 1999) (providing for hearing individual issues in groups of approximately five class members at a time).

1402. *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1299–1301 (7th Cir. 1995); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 352–53 (S.D.N.Y. 2002).

22.757 Assess the Overall Impact<sup>1403</sup>

When one or more issues classes are proposed, a judge should do the following: weigh whether the issues are sufficiently distinct and separate to comply with the Seventh Amendment under the *Gasoline Products* test;<sup>1404</sup> consider the delays that might be occasioned by separate trials; balance the need for individualized determinations, even apart from damages, on issues such as the type or duration of exposure, proximate causation, comparative causation, or the applicability of different defenses; and, ultimately, determine whether certification of an issues class or case-by-case adjudication represents the fairest response to the demands of the Seventh Amendment and due process of law. One court of appeals identified three primary considerations in deciding whether issues could be separately tried in consolidated mass tort litigation: “(1) whether the issue was indeed a separate issue; (2) whether it could be tried separately without injustice or prejudice; and (3) whether the separate trial would be conducive to judicial economy, especially if a decision regarding that question would be dispositive of the case and would obviate the necessity to trying any other issues.”<sup>1405</sup>

## 22.8 Discovery

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Discovery in mass tort cases generally has two distinct dimensions: one involving the conduct of the defendants, and another relating to the individual plaintiffs’ conduct, causation, and injuries. Sometimes—particularly in multidistrict litigation—judges direct initial discovery toward matters bearing on the defendants’ liability to all plaintiffs.<sup>1406</sup> This approach may be appropriate when liability is seriously disputed. In other cases, however, particularly

1403. For an exploration of the difficulties of applying prior findings in later trials in a mass tort context, see *Green*, *supra* note 1296.

1404. *Gasoline Prods. Co. v. Champlin Refining Co.*, 283 U.S. 494, 500 (1931).

1405. *In re Bendectin Litig.*, 857 F.2d 290, 320 (6th Cir. 1988) (affirming constitutionality of bifurcated trial plan).

1406. Videotaped depositions are particularly useful in multidistrict litigation where the testimony of key witnesses may have to be presented at trial in numerous, geographically dispersed transferor (or state) courts after remand. See generally *supra* section 11.452.

those involving “mature” mass torts, the judge and parties prefer at the outset to discover plaintiff-specific information or to conduct discovery from plaintiffs concurrently with discovery from the defendants. Interrogatories inquiring into the extent of the plaintiffs’ damages may be useful early in the litigation even if depositions of the plaintiffs are to be delayed. Answers to such interrogatories may be prepared without disrupting the schedule for discovery from the defendants and may be a valuable starting point for settlement discussions. For example, in the Ohio asbestos litigation, special masters worked with the parties to develop standard forms disclosing information that would be relevant to both settlement and trial.<sup>1407</sup>

The volume and complexity of discovery in dispersed mass tort litigation might warrant appointing a special master to assist the court. In the breast implant litigation, the MDL transferee judge resolved discovery disputes without such assistance, but did appoint a special master to coordinate discovery and case management with state court judges handling large numbers of related cases. In the diet drug litigation, the MDL transferee judge appointed a special master to resolve discovery disputes and to help coordinate state and federal litigation.<sup>1408</sup> Other steps to organize discovery and divide work into manageable categories include organizing discovery in waves, as in the diet drug litigation,<sup>1409</sup> or dividing discovery into national, regional, and case-specific categories, as in the breast implant litigation.<sup>1410</sup>

## 22.81 Sampling

In some cases that involve a massive number of claims for damages for similar injuries and in which causation is not in doubt, sampling techniques can streamline discovery relating to individual plaintiffs’ conduct and injuries.<sup>1411</sup> Sampling and surveying by questionnaires can provide information for

1407. See Francis E. McGovern, *Toward a Functional Approach for Managing Complex Litigation*, 53 U. Chi. L. Rev. 440, 478–91 (1986); Wayne D. Brazil, *Special Masters in Complex Case: Expanding the Judiciary or Reshaping Adjudication?*, 53 U. Chi. L. Rev. 394, 399–402 (1986); Trends, *supra* note 1077, at 60–69.

1408. *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 26 (E.D. Pa. Mar. 30, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003).

1409. *Id.*, Order No. 22 (E.D. Pa. Mar. 23, 1998).

1410. *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 5 (N.D. Ala. Sept. 15, 1992), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1411. See *supra* section 11.493; see also Hilao v. Estate of Marcos, 103 F.3d 767, 782–87 (9th Cir. 1996) (describing sampling for discovery and aggregated trial of damages issues).

settlement discussions and for test case selection for individual trials.<sup>1412</sup> For example, in a case involving thousands of claimants seeking damages for injuries allegedly caused by eating fish contaminated with DDT, the parties agreed to limit formal discovery to a sample of the claimants randomly selected by a special master.<sup>1413</sup> Responses to questionnaires provided information about the remaining claimants and served as the basis for screening out a substantial number of claims.<sup>1414</sup> In the absence of consent or a settlement, however, litigants are entitled to full discovery and to adjudication consistent with the U.S. Constitution.<sup>1415</sup> Whether the aim is discovery, settlement, or a test-case trial, any sample should be representative of the claims and claimants, taking into account relevant factors such as the severity of the injuries, the circumstances of exposure to the product or accident, the mechanisms of causation, the products and defendants alleged to be responsible, any affirmative defenses, and the applicable state law.<sup>1416</sup> If sampling does not lead to a global settlement, individual discovery of all plaintiffs will likely be needed.

## 22.82 Initial Disclosures

Federal Rule of Civil Procedure 26(a) specifies information that must be disclosed in advance of discovery. Such disclosures are often inappropriate to mass tort cases because they require repetitive disclosures of the same information to the same attorneys.<sup>1417</sup> The rule permits the judge to order or the parties to stipulate that these requirements do not apply to the particular litigation.<sup>1418</sup> See also section 22.61.

1412. See *supra* sections 11.422, 11.423, 11.464, and *infra* section 22.9. See also Brazil, *supra* note 1407, at 402–06 (discussing sampling and surveying techniques used by special master as settlement aid in Alabama DDT case); *In re Chevron U.S.A., Inc.*, 109 F.3d 1016 (5th Cir. 1997) (ruling that cases selected for a bellwether trial need to be representative of all cases).

1413. *Willhoite v. Olin Corp.*, No. CV-83-C-5021-NE (N.D. Ala. 1983) (discussed in Brazil, *supra* note 1407, at 402 n.32, 403–06). Use of random sampling apparently quelled defendants' fears that plaintiffs' counsel would otherwise select "a disproportionately small or unrepresentative sample." Brazil, *supra* note 1407, at 403. The size of the sample was twenty. *Id.*

1414. *Id.* at 403.

1415. See *Cimino v. Raymark Indus.*, 151 F.3d 297, 320 (5th Cir. 1998) (holding that nonconsensual statistical extrapolation violated the defendant's "Seventh Amendment right to have the amount of legally recoverable damages fixed and determined by a jury").

1416. See, e.g., *Chevron U.S.A.*, 109 F.3d at 1020.

1417. See Fed. R. Civ. P. 26(a)(1) committee note ("Case-specific orders remain proper" and "are expressly required if a party objects that initial disclosure is not appropriate to the circumstances of the action."); see also *supra* section 11.13 (pre-discovery disclosure).

1418. Fed. R. Civ. P. 26(a)(1).

## 22.83 Interrogatories

Encouraging or requiring parties with similar interests to confer and fashion joint interrogatories supplemented as necessary can help prevent multiple requests for the same information.<sup>1419</sup> In lieu of interrogatories, questionnaires directed to individual plaintiffs in standard, agreed-on forms were used successfully in the breast implant and diet drug litigations.<sup>1420</sup> Answers to interrogatories should generally be made available to other litigants, who in turn might then be permitted to ask only supplemental questions.

## 22.84 Depositions: New Parties

Standard discovery requests can be deemed filed automatically as new parties are joined or new actions filed. Consider instituting procedures to facilitate the use of depositions against similarly situated parties later added to the litigation<sup>1421</sup> and to provide counsel in related cases in other courts with access to relevant confidential materials covered by protective orders.<sup>1422</sup> Courts routinely establish preliminary guidelines for conducting depositions and create a system for resolving disputes that arise during depositions.<sup>1423</sup>

Limiting repetitive depositions of some witnesses promotes efficiency, as does using videotaped depositions for witnesses likely to testify more than once.<sup>1424</sup> Parties with different interests must be allowed fair discovery, but discovery that has already been competently conducted need not be reopened for later-added parties, absent a showing of a specific need. Judges may wish to

1419. Trends, *supra* note 1077, at 47–50. Alternative sets of interrogatories might be drafted to deal with variations, such as differences in the use of a toxic product or in the measure of damages for various plaintiffs.

1420. *In re* Diet Drugs Prods. Liab. Litig., MDL No. 1203, Order No. 22 (E.D. Pa. Mar. 23, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (including “Plaintiff Fact Sheet” and medical authorizations in “First Wave Discovery”); *In re* Silicone Gel Breast Implants Prods. Liab. Litig., MDL No. 926, Order No. 30 (N.D. Ala. Mar. 25, 1996), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (approving the use of MDL questionnaire “which is treated as the plaintiff’s answer to interrogatories and requests for production”) (last visited Nov. 10, 2003).

1421. See *supra* sections 11.453, 11.445.

1422. See *supra* section 11.43.

1423. See, e.g., *In re* Diet Drugs Prods. Liab. Litig., MDL No. 1203, Order No. 21 (E.D. Pa. Mar. 16, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (deposition guidelines). In *Diet Drugs*, the court appointed a special master to supervise discovery and rule initially on any disputes. *Id.*, Order No. 26, filed Mar. 30, 1998. See also, e.g., *Silicone Gel*, Order No. 11 (N.D. Ala. June 30, 1993) (deposition guidelines).

1424. See, e.g., *Silicone Gel*, Order No. 5, at ¶¶ 7(f)(1)(A)–(d) (N.D. Ala. Sept. 15, 1992).

consider vacating any protective orders issued in individual cases before their consolidation and taking other actions to promote access to materials from other litigation.<sup>1425</sup> See section 11.452 for discussion of technology to enable broad remote participation in depositions conducted by a few lawyers physically present and other lawyers participating by electronic access, perhaps with a magistrate judge or other discovery “master” available to handle objections. In mass tort litigation, such approaches may avoid the need for repetitive depositions of significant decision makers, defendants, or experts.

## 22.85 Documents

The volume of discovery in a mass tort often warrants creation of a document depository, a Web site or sites, and other physical and electronic means of making discovery materials available to all parties. The goal is to have as much discovery material as possible readily accessible to litigants in federal and state courts. Generally, documents relating to scientific studies, public records, and public reports would be included at such a site, as well as responses to written discovery requests, copies of deposition transcripts, and documents discovered by the parties. Requests for documents can be coordinated and handled by using an electronic or physical depository for the collection and storage of the requested documents. The parties and court reporters should provide depositions and other discoverable documents in an electronic format so that the court and the parties can use electronic search tools to locate relevant information. Procedures should permit a party easily and quickly to request the return of inadvertently disclosed privileged or confidential information or documents without waiving attorney–client or work-product privilege or protection against discovery.<sup>1426</sup>

## 22.86 Physical Evidence

In a single-event mass tort case, such as an airplane crash or other accident simultaneously affecting a number of persons, it may be advisable to order the

1425. See, e.g., *id.*, at § 7(e)(5). In that order the court indicated that it expected parties to the litigation to waive rights under protective orders issued in cases that were not centralized under the MDL order. The court also required applications for protective orders to specify the materials to be protected and the terms and conditions of any proposed limits to the protection.

1426. See, e.g., *Diet Drugs*, Order No. 41 (E.D. Pa. Apr. 23, 1998) (providing that inadvertent disclosure of privileged documents does not constitute a waiver of the privilege generally or in relation to the specific document in question); *id.*, Order No. 27 (E.D. Pa. Mar. 31, 1998) (last visited Nov. 10, 2003) (establishing ground rules for making and preserving claims of confidentiality during the discovery process).

preservation of physical evidence, to set conditions on its handling, testing, and custody, and to establish ground rules for access to and examination of the accident site. This type of discovery may require participation by experts from both sides—and perhaps a court-appointed expert or special master—to sift through evidence at the site, preserve and document samples for common testing and use at trial, and videotape and photograph the scene.<sup>1427</sup> A judge might appoint a joint committee of experts to coordinate collecting, recording, and testing evidence,<sup>1428</sup> thereby reducing disputes over testing procedures. As soon as practicable, the court should establish a central location, accessible to all parties, for storage and preservation of evidence. In mass accidents occurring on a defendant's property or involving a mechanical product, it may be necessary for the defendant to produce blueprints or other technical drawings to enable plaintiffs to investigate the site or product adequately.

Dispersed mass tort cases may also require steps to ensure the retention and preservation of physical evidence. In cases alleging product design or manufacturing defects in models, makes, or lots that may have changed over time, such orders should be entered early in the case. For example, in the *Bridgestone/Firestone* MDL proceedings, the judge ordered a detailed system for the parties to identify, inspect, retain, and store—and, in the case of new salable models, share the cost of obtaining—the extensive range of recalled and new tires that were in issue.<sup>1429</sup> If the case involves a number of product makes, models, or lots, the parties should work toward a joint proposed order setting procedures to collect, store, and inspect or test a sampling of such products. Although the need for joint testing might be less critical than in single-incident torts where there may be only a single product or remnant to be tested, joint testing may still be advisable to minimize unnecessary disputes.

## 22.87 Experts and Scientific Evidence

Section 23.2 discusses management of expert evidence in complex litigation generally. Because expert opinions play a vital role in many mass tort cases, both during the discovery process and at trial, judges often establish at an early pretrial conference a schedule for disclosing expert opinions in a

1427. See *In re Shell Oil Refinery*, 132 F.R.D. 437, 439–40 (E.D. La. 1990).

1428. See *infra* section 34.25 (discussing use of databases in Superfund litigation); see also *infra* section 40.52, at ¶¶ 3, 4 (mass tort case-management order).

1429. See *In re Bridgestone/Firestone, Inc., ATX, ATXII, & Wilderness Tires Prods. Liab. Litig.*, No. IP00-9373, 2001 WL 219858, at \*1 (S.D. Ind. Mar. 6, 2001) (Tire Preservation Order); see also *In re Bridgestone/Firestone, Inc., ATX, ATXII, & Wilderness Tires Prods. Liab. Litig.*, 129 F. Supp. 2d 1207, 1213 (S.D. Ind. 2001) (ordering parties to jointly prepare a preservation order).

written report, for deposing the experts, and for resolving *Daubert* motions.<sup>1430</sup> In deciding the timing of expert disclosures, depositions, and *Daubert* hearings, courts should consider whether and to what extent

- scientific or technical issues are novel, developing, or settled;
- scientific or technical issues are central to the claims and defenses and whether resolution of the admissibility of such evidence will as a practical matter be dispositive of the litigation;
- parties and their experts disagree about crucial scientific evidence;
- underlying scientific issues are complex and require extensive time for discovery and for experts to prepare the reports required by Rule 26(a)(2)(B); and
- scientific issues need to be sequenced or staged in a particular order to promote economy and efficiency in the litigation.

Generally, the more novel, complex, and central the scientific or technical issues, the more time the parties will need to conduct discovery, prepare expert reports, and brief the issues for a *Daubert* hearing. Although an evidentiary hearing is not always required to resolve *Daubert* issues, having the witnesses testify may allow the judge to test the underlying assumptions and reasoning employed by the experts and to compare various approaches to the same subject.<sup>1431</sup>

Where causation issues dominate litigation, it may be appropriate for the transferee court in an MDL proceeding to conduct a *Daubert* hearing on general causation issues, leaving specific causation issues for the transferor courts on remand.<sup>1432</sup> Such a division in the appropriate case efficiently separates the role of the MDL court from that of the trial courts after re-

1430. See *infra* section 23.32 (outlining expert evidence questions for the initial conference) & *supra* section 11.48 (disclosure and discovery of expert opinions); see also, e.g., *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, MDL No. 1407, Order No. 6 (W.D. Wash. Mar. 22, 2002), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003) (Expert Discovery Schedule).

1431. See *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1138 (9th Cir. 2002) (“[W]e encourage the court to hold a hearing on remand to provide plaintiffs with an opportunity to respond to the defendants’ challenges . . . .”); see also *infra* section 23.33 (discussion of using a post-disclosure Rule 16 conference to identify the bases for disagreements among the experts).

1432. *Hanford Nuclear*, 292 F.3d at 1129; see also *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1200 (6th Cir. 1988).

mand.<sup>1433</sup> In scheduling *Daubert* proceedings in a dispersed mass tort case, an MDL judge should explore opportunities to coordinate scheduling with state courts handling parallel cases.<sup>1434</sup> Federal and state judges have successfully conducted joint *Daubert* hearings creating a record that other judges might use.

Early consideration of expert disclosure and discovery also assists a court in deciding whether to appoint an independent expert or panel of experts under Federal Rule of Evidence 706.<sup>1435</sup> Court-appointed experts or panels of experts under Rule 706 occasionally have been used in mass tort litigation to help resolve disputed causation issues.<sup>1436</sup> Such experts have also been used to screen cases to determine whether individual plaintiffs or groups of plaintiffs can establish a threshold level of injury.<sup>1437</sup> The experience with Rule 706 experts in the silicone gel breast implant litigation indicates that the benefits must be weighed against the cost<sup>1438</sup> and delay<sup>1439</sup> involved. Before appointing a Rule 706 expert or a panel of experts in mass tort litigation, a judge should determine at an early stage of the litigation whether the cases sufficiently demonstrate the following features:

- a highly disputed subject in which strong evidence appears to support the contentions of both sides of the litigation;
- a technical complexity that taxes the capacity of the adversary system;<sup>1440</sup>

1433. See *PPA*, Order Clarifying Expert Discovery Order (filed Aug. 13, 2002) (finding that issues relating to substantial subsets of the general population “constitute issues of general applicability” suitable for resolution by an MDL transferee court).

1434. See *PPA*, Order Granting in Part and Denying in Part Defendants’ Motion to Accelerate *Daubert* Hearing (filed Sept. 19, 2002) (altering *Daubert* discovery schedule to coordinate with state court schedule). See also *id.*, Order Granting in Part and Denying in Part Defendants’ Motion to Preclude Plaintiffs’ Expert Witnesses as to General Causation (June 18, 2003).

1435. See generally *supra* section 11.51. For a discussion of a pretrial procedure to assist in determining the need for a court-appointed expert, see Joe S. Cecil & Thomas E. Willging, *Court-Appointed Experts: Defining the Role of Experts Appointed Under Federal Rule of Evidence 706*, at 83–95 (Federal Judicial Center 1993).

1436. FJC Study, *Neutral Science Panels*, *supra* note 1059 (comparison of methods two judges used to appoint scientific experts to assist in resolving mass tort litigation).

1437. Carl B. Rubin & Laura Ringenbach, *The Use of Court Experts in Asbestos Litigation*, 137 F.R.D. 35 (1991) (appointment of experts from a roster compiled by a district court to perform pulmonary function analyses in asbestos litigation in a single district).

1438. FJC Study, *Neutral Science Panels*, *supra* note 1059, at 3.

1439. *Id.*

1440. See FJC Study, *Court-Appointed Experts*, *supra* note 1435, at 12–14.

- a likelihood that scientific evidence will determine the course of the litigation;<sup>1441</sup>
- sufficient homogeneity among the parties that the findings of court-appointed experts will have a significant impact on other claims;
- a need to develop criteria to decide the admissibility of evidence, as in cases involving novel claims;<sup>1442</sup>
- a sufficiently large number of cases to support the costs of an expert or panel of experts; and
- the availability of neutral experts to serve under Rule 706.<sup>1443</sup>

Appointing an expert without unduly delaying the litigation requires establishing procedures for previewing proposed expert testimony at an early stage.<sup>1444</sup>

In cases involving disputed scientific evidence on causation, there will often be ongoing scientific studies addressing the disputed issue. The court may need to establish procedures for discovery of information regarding such studies. Generally, courts have afforded protection to researchers from disclosure of data or opinions relating to an ongoing unpublished study.<sup>1445</sup> By

1441. See FJC Study, Neutral Science Panels, *supra* note 1059, at 87–92 (finding mixed but generally positive early assessments of the impact of the expert panel appointed in the silicone gel breast implant litigation).

1442. See *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387, 1391–93 (D. Or. 1996) (acting “in its role as ‘gatekeeper’” in about seventy statewide consolidated silicone gel breast implant cases, the court appointed a technical advisor).

1443. There are programs available that help judges identify and obtain expert assistance. See American Association for the Advancement of Science (AAAS), *Court Appointed Scientific Experts: A Demonstration Project of the AAAS*, at <http://www.aaas.org/spp/case/case.htm> (last visited Nov. 10, 2003).

1444. For the series of orders addressing matters related to the work of the science panel in the breast implant litigation, see *In re Silicone Gel Breast Implant Products Liability Litigation*, MDL No. 926, Order No. 31 (N.D. Ala. May 30, 1996) and subsequent orders using the number 31 and a letter, at <http://www.fjc.gov/BREIMLIT/mdl926.htm> (last visited Nov. 10, 2003).

1445. See, e.g., *In re Am. Tobacco Co.*, 880 F.2d 1520, 1529 (2d Cir. 1989) (stating, *in dicta*, that the “principal legitimate chilling effect on scientific research . . . is the possibility that research results discovered prior to their publication would be vulnerable to preemptive or predatory publication by others”); *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 565 (7th Cir. 1984) (indicating that “[n]o discovery should be allowed of any material reflecting development of [the researcher’s] ideas or stating his or others’ conclusions not yet published”); *Dow Chem. Co. v. Allen*, 672 F.2d 1262, 1276 (7th Cir. 1982), *affg sub nom.* *United States v. Allen*, 494 F. Supp. 107, 113 (W.D. Wis. 1980) (referring to a possible “chilling effect” on academic research by subjecting it to premature criticism); see also Elizabeth C. Wiggins & Judith A. McKenna, *Researchers’ Reactions to Compelled Disclosure of Scientific Information*, 59 *Law & Contemp. Probs.* 67, 86–88 (1996).

contrast, courts generally allow some discovery into party-sponsored studies.<sup>1446</sup> For completed party-sponsored studies, courts generally require production of all data; for pending studies, courts often require disclosure of the written protocol, the statistical plan, sample data entry forms, and a specific description of the progress of the study until it is completed.<sup>1447</sup>

In some cases, one or both of the parties will attempt to subpoena raw data and other information regarding scientific studies that were not sponsored by a party from researchers who were not retained by a party. Subpoenas issued to discover ongoing or completed research conducted by scientists independent of the parties raise a number of considerations. A paradigmatic case would involve a subpoena directed at an academic researcher whose studies examine whether a causal link exists between a product and plaintiffs' alleged injuries.<sup>1448</sup> A court faced with a challenge to such a subpoena must balance the researcher's claim for protection of confidentiality, intellectual property rights, research privilege, and the integrity of the research with opposing claims that the information is necessary and cannot be obtained from any alternative source.<sup>1449</sup> The burden of compliance with repetitive subpoenas in mass tort litigation may need to be considered.<sup>1450</sup>

Federal Rule of Civil Procedure 45(c)(3)(B)(ii) permits enforcement of subpoenas on a showing of "substantial need for the testimony that cannot be otherwise met without undue hardship," and on assurance that third parties

1446. *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 420 (E.D. Pa. Jan. 6, 1999), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (defining an ongoing study as one in which data-collection activity occurred within the last 150 days). See also *id.*, Order No. 580, filed Apr. 23, 1999 (modifying Order 420 in context of a request for international judicial assistance regarding studies by a foreign defendant); *Silicone Gel*, Order No. 36 (E.D. Pa. Nov. 27, 1996) & Order No. 36A (E.D. Pa. May 9, 1997) (ordering reciprocal exchange of information regarding ongoing studies funded by a party), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1447. *Diet Drugs*, Order No. 420, at ¶ 4 (E.D. Pa. Jan. 6, 1999).

1448. See, e.g., *Deitchman*, 740 F.2d at 562 (involving research showing a statistical relationship between diethylstilbestrol (DES) and certain cancers); see also *Am. Tobacco*, 880 F.2d at 1522–23 (seeking raw data from studies examining the effects of asbestos and smoking). See generally Barbara B. Crabb, *Judicially Compelled Disclosure of Researchers' Data: A Judge's View*, 59 Law & Contemp. Probs. 9, 10–16 (1996) (discussing *Deitchman*).

1449. See generally Crabb, *supra* note 1448.

1450. See *Am. Tobacco*, 880 F.2d at 1530 (discussing a report that forty subpoenas had been served seeking the same data and suggesting district court consider establishing a central repository or consider seeking a centralized MDL response); see also *Anker v. G.D. Searle & Co.*, 126 F.R.D. 515, 521 (M.D.N.C. 1989) (discussing a requirement that the party who discovers the records make them available to other litigants); Wiggins & McKenna, *supra* note 1445, at 90–91 (reporting that one tobacco company "agreed to serve as a central depository for the information" involved in *American Tobacco*).

subject to the subpoena “will be reasonably compensated.” Judges have recognized litigants’ need to examine data underlying research studies used to support claims or defenses asserted against them.<sup>1451</sup> The court has discretion to impose additional conditions on enforcement of a subpoena.<sup>1452</sup> Judges have generally crafted orders that enforce the subpoena while imposing restrictions to protect the researchers’ interests. For example, the judge may redact information that would divulge the identity of research subjects who have been promised confidentiality;<sup>1453</sup> the judge may also consider other ways of protecting the identity of subjects.<sup>1454</sup> Claims of excessive burden on researchers have been accommodated by financial reimbursement, use of temporary workers to prepare data for production, or extending the response time to allow a researcher to continue working with minimal disruption.<sup>1455</sup>

1451. *Deitchman*, 740 F.2d at 563 (concluding that for defendant “to prepare properly a defense on the causation issue, access to the Registry data to analyze its accuracy and methodology is absolutely essential”). Consider also Judge Crabb’s summary of the balancing test courts apply. Crabb, *supra* note 1448, at 28.

1452. For a thorough discussion of the issues involved in enforcing such subpoenas, see generally Joe S. Cecil & Gerald T. Wetherington, *Court-Ordered Disclosure of Academic Research: A Clash of Values of Science and Law*, 59 Law & Contemp. Probs. 1 (1996).

1453. Crabb, *supra* note 1448, at 28–29. See also *Am. Tobacco*, 880 F.2d at 1530 (affirming a protective order allowing redaction of research participants’ names, addresses, social security numbers, employers, and union registration numbers).

1454. Crabb, *supra* note 1448, at 28–29. See also *Am. Tobacco*, 880 F.2d at 1530 (affirming a protective order binding party and subsequent users not to determine the identity of research participants, under penalty of contempt); *Deitchman*, 740 F.2d at 564 (suggesting review by an independent third party).

1455. See Crabb, *supra* note 1448, at 28.

## 22.9 Settlement and Trial

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### 22.91 Judicial Role and Settlement<sup>1456</sup>

In mass torts, as in other types of complex litigation, questions regarding the appropriate extent of judicial involvement in settlement negotiations are important because the costs associated with recusing a judge familiar with the litigation are high.<sup>1457</sup> Although some judges participate actively in settlement negotiations,<sup>1458</sup> others insulate themselves from the negotiations, leaving this activity to a magistrate judge, a special master, or a settlement judge.<sup>1459</sup> Judges who have been involved in unsuccessful settlement negotiations sometimes turn over to another judge the responsibility for trying the case because they have been privy to information on the merits of the case or on issues that

1456. See generally *supra* sections 13 (settlement), 13.14 (judicial review and approval of settlements), 21.61 (judicial review of class action settlements), & 21.66 (administration of class action settlements). See also D. Marie Provine, *Settlement Strategies for Federal District Judges* (Federal Judicial Center 1986).

1457. See *supra* section 13.11. See, e.g., *In re Sch. Asbestos Litig. Pfizer, Inc.*, 977 F.2d 764, 784–85 (3d Cir. 1992) (ordering the judge to disqualify himself and noting that the “newly assigned district judge will face a gargantuan task in becoming familiar with the case” and additional delay that may “disadvantage the plaintiffs”).

1458. See, e.g., *In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740 (2d Cir. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). For an assessment of the risks of such judicial involvement in settlement, see Peter H. Schuck, *The Role of Judges in Settling Complex Cases: The Agent Orange Example*, 53 U. Chi. L. Rev. 337, 359–65 (1986).

1459. See, e.g., *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, Order: Opinion & Final Judgment Approving Global Settlement (N.D. Ala. Sept. 1, 1994), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (in which the transferee judge appointed three judges to act as mediators to assist in discussing a global settlement); *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. 913, 918 (D. Nev. 1983) (special master appointed as “settlement coordinator”); *id.* at 924–26. In *In re San Juan Dupont Plaza Hotel Fire Litigation*, MDL No. 721, 1988 U.S. Dist. LEXIS 17332, at \*201 (D.P.R. Dec. 2, 1988), the transferee judge appointed the former transferee judge from the *MGM Grand* litigation to serve as settlement coordinator while the transferee judge managed the litigation.

would otherwise not have been revealed. Judges who have been involved in successful settlement negotiations may transfer to another judge judicial review of the settlement to avoid having to rule on the fairness, reasonableness, and adequacy of a settlement they helped to craft.<sup>1460</sup>

In some cases, a judge can facilitate settlement negotiations by establishing a system to collect information about past, pending, and likely future claims.<sup>1461</sup> In some MDL mass tort centralizations, courts have ordered claimants to complete questionnaires eliciting a wide range of information, such as the circumstances of their exposures and the severity of their injuries, to facilitate settlement negotiations or improve claim administration following settlement.<sup>1462</sup> In many cases, the parties themselves provide the data for entry into a centralized electronic database. Judges have occasionally appointed special masters to assemble databases documenting essential information concerning the thousands of personal injury claims that may be pending. Special masters have sometimes used electronic data to compare individual pending cases against closed cases having similar characteristics to produce a range of settlement values.<sup>1463</sup>

The judge may assist the parties to achieve a “global” settlement resolving not only the defendants’ potential liability to the plaintiffs, but also their

1460. *Carlough v. Amchem Prods., Inc.*, 834 F. Supp. 1437, 1445 (E.D. Pa. 1993) (order appointing second district judge to conduct hearings on fairness of class settlement), *settlement approved sub nom.* *Georgine v. Amchem Prods.*, 157 F.R.D. 246 (E.D. Pa. 1994), *vacated and remanded*, 83 F.3d 610 (3d Cir. 1996), *aff’d sub nom.* *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). *See also* *Flanagan v. Ahearn*, 90 F.3d 963, 994 (5th Cir. 1996) (Smith, J., dissenting) (noting, in dissent, that “the district judge presided at the fairness hearing on the very settlement he had helped to craft”), *reversed sub nom.* *Ortiz v. Fibreboard*, 527 U.S. 815 (1999); and Hon. S. Arthur Spiegel, *Settling Class Actions*, 62 U. Cin. L. Rev. 1565 (1994) (discussing the advantages and disadvantages of having a judge participate in and review the same settlement).

1461. In *Jenkins v. Raymark*, the special master used the same database to support settlement discussions and to demonstrate to a jury the array of claims in the class action. McGovern, *Mature Mass Tort*, *supra* note 1022, at 669–70, 674. *See also id.* at 682–88 (describing the \$5 million data-collection process established to estimate the value of Dalkon Shield personal injury claims under section 502(c) of the Bankruptcy Code).

1462. *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 22 (E.D. Pa. Mar. 23, 1998), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, MDL No. 1014, 1995 WL 925678 (E.D. Pa. Feb. 1, 1995); *see also* *Brazil*, *supra* note 1407, at 402–06 (describing the use of questionnaires to obtain claims-related information from thousands of claimants alleging damages from DDT contamination).

1463. *See* *Brazil*, *supra* note 1407, at 399–402 (describing the computer-based data-collection procedures used by special masters Francis McGovern and Eric Green in the Ohio asbestos litigation); *see also* *Trends*, *supra* note 1077, at 60–69 (discussing and evaluating the use of computer data in the Ohio asbestos litigation).

liability to one another for indemnification or contribution. Efforts to achieve global settlements through class certification, however, may not pass muster under Rule 23 or the due process clause. See discussion at sections 22.72, 22.73, 22.922. The parties may be able to resolve discrete sets of claims that significantly reduce or limit the scope of the litigation through a series of case-by-case, party-by-party settlements.<sup>1464</sup>

District judges have approved settlements affecting the rights of “future claimants” who have no present injury, even after *Amchem* and *Ortiz*. However, they have done so only in cases involving claimants who could be identified and given notice, and after scrutiny to ensure that Rule 23 was satisfied, including the requirement of adequate representation both to those presently injured and to those exposed but not presently injured. Courts have approved settlements that included protections for those who knew that they had been exposed to a potentially injurious substance but did not know if injury would result or whether it would be disabling or much less severe. Such protections have included the opportunity to opt out if and when injury is manifested or its extent is apparent. See discussion of back-end opt outs in section 22.922 and the discussion of future claimants in section 21.612.

Parties that are unable to agree on a global settlement may still be able to agree on a process for resolving the litigation. For example, in cases involving immature torts, the parties may agree to use test-case trials to establish a range of values for resolving similar claims. Alternatively, they may agree to draw a representative sample of claims and resolve the sample through mediation, arbitration, or another form of alternative dispute resolution.<sup>1465</sup> Information generated through trials or ADR processes might enable the parties to arrive at a reasonable estimate of the value of the aggregate claims from which they drew the sample. Alternative dispute resolution techniques (e.g., summary jury trials) may assist the parties in valuing cases for settlement purposes and give the court and parties information about the viability of various trial options.<sup>1466</sup> Yet another approach is to appoint a special master to facilitate settlement by reviewing information on liability and damages and placing an estimated value

1464. See, e.g., *Ortiz*, 527 U.S. at 822–28 (reciting the history of asbestos litigation and *Fibreboard’s* settlements). The hazards of partial settlements are discussed in *supra* sections 13.21 and 21.651.

1465. See Brazil, *supra* note 1407, at 403, nn.37–38.

1466. See, e.g., *In re Telectronics Pacing Sys., Inc., Accufix Atrial “J” Leads Prods. Liab. Litig.*, 137 F. Supp. 2d 985, 993–94 (S.D. Ohio 2001) (illustrating the advantage of a summary jury trial).

on each claim. Judges have used this approach with considerable success in both single-incident and dispersed mass tort litigation.<sup>1467</sup>

Approaches to resolving presently identifiable future claims on a class-wide basis must meet the Supreme Court's standards for opt-out or limited fund settlement class actions. See sections 22.72 and 22.73.<sup>1468</sup> In some cases, litigants have invoked the bankruptcy process as a settlement vehicle for mass tort litigation. See section 22.5. The issues presented by the need for court approval of settlement classes in mass tort cases are fully discussed in the following section.

## 22.92 Review of Settlement in Mass Tort Class Actions

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Federal Rule of Civil Procedure 23(e) calls for the court to review “any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class” and to “direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Judicial review requires two separate determinations: first, whether the proposed settlement class satisfies the criteria for

1467. See William W Schwarzer, Nancy E. Weiss, & Alan Hirsch, *Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts*, 78 Va. L. Rev. 1689, 1715–20 (1992) (discussing settlement techniques used in the L’Ambience Plaza building collapse litigation and in the MGM Grand Hotel fire litigation).

1468. Cases involving future claimants in narrow contexts, such as single-incident torts involving a small number of claims, do not appear to raise the problems of adequacy of representation or due process of law that were present in *Amchem*. For example, the court in one case set aside a portion of settlement funds to purchase an annuity, to fund a trust to pay future benefits, or to provide diagnostic services to cover future injuries to known plaintiffs. The fund allowed the parties to accommodate such contingencies as medical developments, expenses, and economic losses after the date of the settlement. *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816 (D.C. Cir. 1984) (affirming preliminary injunction requiring a corporate defendant that had conceded liability and settled some cases to provide funds for diagnostic, treatment, and educational services for plaintiffs awaiting trial). Similarly, to deal with concerns about the possibility of actions being instituted after the settlement—for example, by minors with respect to whom the statute of limitations may have tolled—a court reserved settlement funds to pay such claims when asserted later. See, e.g., *In re MGM Grand Fire Hotel Litig.*, 570 F. Supp. 913, 929 (D. Nev. 1983).

certification under Rules 23(a) and (b);<sup>1469</sup> and second, whether the proposed settlement terms are fair, reasonable, and adequate. Rule 23(e)(1)(C) requires the court to make such determinations “only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.” This subsection analyzes the Rule 23(a) and (b) criteria for certifying a settlement class, the process of gathering information and conducting a Rule 23(e) hearing on the fairness of a proposed settlement, and the criteria for evaluating the merits of a proposed settlement.<sup>1470</sup>

### 22.921 Class Certification in a Settlement Context

Even if the parties have agreed to settle a case on a class-wide basis, the court must determine whether the proposed class satisfies all the requirements of Rule 23(a) (numerosity, typicality, commonality, and adequacy of representation) and either Rule 23(b)(1), (2), or (3).<sup>1471</sup> As discussed in sections 21.6 and 22.71, a settlement in a class action can arise in several ways: (1) a class action may have previously been certified as a litigation class and a settlement reached after certification; (2) a proposed class action may be presented for certification as a settlement class after pretrial discovery has taken place and certain motions have been decided; or (3) a proposed class action may be filed simultaneously with motions to certify the class for settlement and to approve the settlement terms. In the third category, there may or may not have been litigation before the settlement and certification motions were presented.

Each of the three categories raises different issues. If the case has been filed as a settlement class, with little or no prior litigation, there may be insufficient information to determine whether the class can properly be certified under Rules 23(a) and (b) and whether the settlement terms can properly be approved as fair, adequate, and reasonable. Judicial review should be proactive. The parties who support the settlement may have previously reached agreements with potential objectors, calling for them to refrain from objecting or to withdraw objections previously filed. If individual damages are small, there may be insufficient incentive for objectors to participate. The judge may have little or no adversarial presentation to assist in exploring the settlement terms and determining whether the terms are fair to the absent class members.

1469. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997) (finding that “the ‘class action’ to which Rule 23(e) refers is one qualified for certification under Rule 23(a) and (b)”).

1470. For an example of a trial court’s post-*Amchem* evaluation of a personal injury class settlement, see *In re Diet Drugs Products Liability Litigation*, MDL No. 1203, 2000 U.S. Dist. LEXIS 12275 (E.D. Pa. Aug. 28, 2000).

1471. *Amchem*, 521 U.S. at 613–14.

If the case has been litigated extensively, the judge may have sufficient reliable information to determine whether the class should be certified and whether the settlement terms are the fair, reasonable, and adequate result of arms-length negotiations. Mass torts rarely come before a court for class settlement without extensive pre-settlement litigation; lack of information about the issues and the litigants is usually not a problem for the court. Nonetheless, it is important to have an informed understanding of the dynamics of the settlement discussions and negotiations, the participants, and the steps taken by those negotiating on the plaintiffs' behalf to protect the procedural and substantive rights and interests of those whose claims they propose to settle. A judge should consider conducting such an inquiry in chambers if necessary to preserve confidential aspects of the negotiations.

If, however, the parties have reached settlement simultaneously with or shortly after filing the case and there is little prior related litigation, the parties must provide sufficient information to support their contentions regarding each applicable element of Rules 23(a) and (b) and the settlement's fairness, adequacy, and reasonableness. The judge must make specific findings on certification and settlement approval and must ensure that there is a record to support those findings.

In considering the Rule 23(a) factors, the Court in *Amchem* and *Ortiz* gave paramount importance to the district court's assessment of the adequacy of class representation.<sup>1472</sup> Accordingly, the judge should examine the interests of all groups, including any future claimants, and make affirmative findings that each group is adequately represented by claimants and counsel who have no conflicting interests.<sup>1473</sup> Sometimes it is necessary to create subclasses to accommodate divergent interests.<sup>1474</sup> For a discussion of numerosity, typicality, and commonality under Rule 23(a), see section 21.141.

Even if the proposed settlement class action meets all four Rule 23(a) requirements, it must also meet the requirements of at least one of the subsections of Rule 23(b), with the exception of trial manageability. Section 22.73 discusses whether a proposed mass tort class action meets the post-*Ortiz* standards for certification under Rule 23(b)(2) as a "limited fund" class. Section 22.74 discusses whether a proposed mass tort class action meets the standards for certification as a medical monitoring class under Rule 23(b)(2).

1472. See *supra* section 21.26; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831–32 (1999) (noting that the lower court fell short of its duty to apply *Amchem* when it failed "to ensure that the potentially conflicting interests of easily identifiable categories of claimants be protected by provisional certification of subclasses under Rule 23(c)(4)").

1473. See *Amchem*, 521 U.S. at 625–27.

1474. *Id.* at 627.

In evaluating whether common questions of law or fact predominate over individual issues, the court should

- determine whether the alleged injuries arose from a single incident and therefore might be more likely to have common issues predominate than in a dispersed mass tort;<sup>1475</sup>
- focus “on the legal or factual questions that qualify each class member’s case as a genuine controversy”;<sup>1476</sup>
- look for variations in individual factual issues that may arise out of different levels and timing of exposure, different types of injuries and levels of damages, and different issues of causation; and
- consider whether “[d]ifferences in state law . . . compound [any] disparities.”<sup>1477</sup>

In evaluating whether a proposed settlement class action is “superior to other available means for the fair and efficient adjudication of the controversy,”<sup>1478</sup> the judge must consider the following factors:

- whether the proposed settlement<sup>1479</sup> is manageable;<sup>1480</sup>
- whether, given the individual stakes for members of the proposed class, potential class members have an interest in “individually controlling the prosecution . . . of separate actions,” recognizing that as the amount of damages at stake increases, a class member’s interest in individual control typically increases;<sup>1481</sup> and

1475. *Id.* at 625 (referring to the 1966 advisory committee note to Rule 23(b)(3) where the Court stated a “mass accident” resulting in injuries to numerous persons is “ordinarily not appropriate for a class treatment”).

1476. *Id.* at 623. The court explicitly held that a common interest in a fair settlement cannot be used to satisfy the predominance test. *Id.*

1477. *Id.* at 624. Because the case is to be settled and not tried, variations in state laws that might make a class-wide trial unmanageable might not defeat certification for settlement purposes. *Id.* at 620, 636. See also *In re Diet Drugs Products Liability Litigation*, MDL No. 1203, 2000 WL 1222042 (E.D. Pa. Aug. 28, 2000), describing the litigation and ultimate settlement of claims for medical monitoring, economic loss, and present and future personal injuries arising from ingesting diet drugs.

1478. Fed. R. Civ. P. 23(b)(3). The rule lists four factors that might affect superiority. *Id.*

1479. *Amchem*, 521 U.S. at 620 (“a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial”).

1480. See, e.g., *Diet Drugs*, 2000 WL 1222042, at \*43, \*49 (settlement approval opinion discussing the fact that the settlement contemplates a national matrix based on the type of injury and does not require variable treatment based on state law).

1481. *Amchem*, 521 U.S. at 616–17 (quoting the advisory committee’s reporter, Benjamin Kaplan, to the effect that the “interest [in individual control] can be high where the stake of each member bulks large and his will and ability to take care of himself are strong; the interest may be

- whether other settlements have been presented to other courts, and, if so, the status of those actions and whether any determinations in other courts might preclude certification of the class proposed.

### 22.922 Fairness, Adequacy, and Reasonableness of the Settlement

Claimants in many personal injury dispersed mass torts may range from those with severe present injuries to those with minor present injury to those with no present injury whatsoever. A variety of techniques acknowledge these differences and still achieve broad settlements that courts have found to be fair, reasonable, and adequate. Some of these techniques are listed below:

- *Back-end opt-outs*. This is a deferred opportunity for an absent class member to request exclusion from the class until a certain point in the future. A class member who does not have a present injury may postpone the decision on whether to remain in the class and accept the settlement or opt out to pursue separate litigation.

This decision may be deferred until the class member discovers that the past exposure has resulted in an injury.<sup>1482</sup> This differs from a front-end decision to opt out because the back-end opt-out class member may be bound by an agreement to give up certain rights, such as any right to punitive damages.<sup>1483</sup> This type of opt-out depends on identifying the class members and giving them adequate notice of their right to accept a present settlement, opt out, or, if they have no present injury, defer the decision. Individuals who ingested an identified prescription drug can, for example, be readily identified and provided such notice. A back-end opt-out provision may not be appropriate if the absent class members cannot be identified or provided notice of the deferred right to request exclusion.

no more than theoretic where the individual stake is so small as to make a separate action impracticable” and that “the Advisory Committee had dominantly in mind vindication of ‘the rights of groups of people who individually would be without effective strength to bring their opponents into court at all’” (citation omitted).

1482. See, e.g., *Diet Drugs*, 2000 WL 1222042, at \*20–\*21, \*26, \*39 (E.D. Pa. Aug. 28, 2000) (describing back-end opt-out provisions and concluding that they contribute to resolving potential notice problems).

1483. *Id.* at \*20. In a settlement involving an allegedly defective heart valve, class members who did not opt out of a settlement retained their right to sue the manufacturer, subject to all defenses, in the event that a heart valve fractured at any time. *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 170 (S.D. Ohio 1992). In those cases, class members also had the option of accepting an amount specified in the settlement or proceeding to arbitration against the defendant who waived all defenses to proceeding in arbitration. *Id.*

- *Limits on opt-outs.* Defendants often condition a settlement in a Rule 23(b)(3) class on having the number of opt-outs remain at or below a certain percentage or number of absent class members, commonly known as a “blow-out” clause. This is particularly significant in cases with a large number of claims that might support individual litigation. In the event the number of opt-outs exceeds the parties’ expectations, the parties may attempt to renegotiate the settlement terms. In that event, there may be a need for additional notice to the class members.<sup>1484</sup>
- *Using claims facilities.* Where the value of the personal injury claims varies, courts have approved settlements that establish fixed amounts for injuries that meet defined criteria and create claims facilities to administer the claims process.<sup>1485</sup> The parties may establish an administrative appeal process, an auditing process, or both, to review the claims of those dissatisfied with the application of the criteria. At least one court has found that such review processes help satisfy the fairness prong of Rule 23(e).<sup>1486</sup>

### 22.923 Criteria for Evaluating the Merits of a Proposed Settlement

For the most part, the judge’s role in evaluating the merits of a proposed mass tort class settlement parallels the review of any other class action settlement. A judge examines the proposed settlement terms and determines “whether the compensation for loss and damage provided by the settlement is within the range of reason, taking into account the balance of costs to defendant and benefits to class members,”<sup>1487</sup> and “whether the claims process under the settlement is likely to be fair and equitable in its operation.”<sup>1488</sup> Section 21.61 to 21.66 discusses standards and issues relating to review and administration of class action settlements generally. The following guidelines may

1484. *In re Silicone Gel Breast Implant Prods. Liab. Litig.*, MDL No. 926, Order No. 27 (N.D. Ala. Dec. 22, 1995), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003).

1485. *Diet Drugs*, 2000 WL 1222042, at \*23–\*24.

1486. *Id.* at \*63.

1487. *In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 324 n.73 (3d Cir. 1998) (citing William W Schwarzer, *Settlement of Mass Tort Class Actions: Order Out of Chaos*, 80 Cornell L. Rev. 837, 843–44 (1995)). See also Tidmarsh, *supra* note 951, at 6 (observing that courts generally examined mass tort settlement class actions for “the strength of the plaintiff’s case in relation to the settlement, the maturity of the litigation, the complexity of the case, and the objections to the settlement”).

1488. *Prudential Ins.*, 148 F.3d at 324 n.73 (citing Schwarzer, *Mass Tort Class Actions*, *supra* note 1487, at 843–44).

help the judge to bring to light any serious defect in the settlement terms and ensure that a mass torts class settlement is fair, reasonable, and adequate.

A meaningful review of a proposed class settlement in a mass tort case requires an accurate understanding of what benefits the class members will actually receive and on what terms. Rule 23(e)(2) requires disclosure of any side agreements. See section 21.631. In a mass tort context, the parties must identify to the overseeing court any agreements that relate to the proposed settlement, such as agreements to settle “inventories” of individual cases in addition to the class settlement;<sup>1489</sup> agreements by lawyers not to bring certain types of cases in the future; collateral agreements that affect attorney fees;<sup>1490</sup> or other agreements relating to the factors discussed below.<sup>1491</sup> Active judicial oversight of the settlement process helps “prevent collusion between counsel for the class and defendant” and minimize the potential for unfair settlements.<sup>1492</sup>

Courts have identified certain features of settlement terms that, if uncorrected, should bar approval. Section 21.62 discusses factors that may affect class action settlements generally. Sections 21.631 discusses things to avoid in mass tort settlement, including the following:

- providing dissimilar treatment to persons with similar claims,<sup>1493</sup>

1489. Unless the court makes a special effort, the clients in these “inventory settlements” have none of the formal procedural rights enjoyed by absent class members in litigation or settlement classes. *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246 (E.D. Pa. 1994) (appointing special master and comparing inventory settlements with class settlement), *vacated on other grounds*, 83 F.3d 610 (3d Cir. 1996), *aff’d sub nom.* *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). See, e.g., Tidmarsh, *supra* note 951, at 40–41 (discussing the “cloud of secrecy [that] hung over the negotiation process” in the Bjork–Shiley heart valve litigation and the settlement of large inventories of cases for greater sums than class members received).

1490. See, e.g., *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48, 70–75 (E.D. Pa. 1983) (describing agreements among attorneys regarding the structure and composition of committees to represent a class of plaintiffs), *aff’d in part, rev’d in part*, 751 F.2d 562 (3d Cir. 1984).

1491. John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 Colum. L. Rev. 1343, 1367–79 (1995). For a post-*Amchem* analysis of the structural and procedural alternatives for the protection of class members’ interests in the mass tort settlement context, see John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L. Rev. 370 (2000).

1492. Manuel L. Real, *What Evil Have We Wrought: Class Action, Mass Torts, and Settlement*, 31 Loy. L.A. L. Rev. 437, 449 (1998); see also Tidmarsh, *supra* note 951, at 6 (“[c]ollusion was also frequently mentioned” by judges in reviewing mass tort settlement class actions).

1493. See, e.g., *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 630–31 (3d Cir. 1996) (comparing class settlement’s treatment of various types of present and future claimants), *aff’d sub nom.* *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

- splitting claims of class members for injuries or losses arising out of the same or related occurrences and excluding some claims from the settlement (e.g., potentially precluding personal injury claims when settling medical monitoring claims or economic claims for breach of warranty);<sup>1494</sup>
- settling an inventory of pending cases at a premium level and future cases at lesser amounts;<sup>1495</sup>
- allowing duplicative or overlapping attorney fees both for serving as class counsel and for representing individual plaintiffs;
- using strict eligibility criteria for receipt of settlement proceeds to mask the fact that the settlement benefits that will be distributed are far less than the stated value of the settlement fund made available;
- permitting defendants to select certain plaintiffs' counsel with whom to negotiate a precertification and perhaps prefile a settlement class action, resulting in a settlement with the lowest bid (a so-called reverse auction);
- restricting the ability of individuals to opt out of a settlement;
- providing illusory benefits, such as coupons, to class members while providing attorneys with fees calculated by valuing illusory class benefits at an unrealistically high level (see section 22.925); and
- calculating attorney fees on the basis of the maximum value of benefits set aside for the class members, rather than on the amounts actually distributed, particularly when an elaborate claims procedure reduces or minimizes the amounts distributed and the settlement provides that unclaimed benefits revert to the defendants.

### 22.924 Gathering Information and Conducting a Fairness Hearing

Reviewing a settlement consists of (1) a hearing and preliminary findings on the fairness, reasonableness, and adequacy of the proposed settlement; (2) review of any notice to the class; and (3) a final fairness hearing to make a final determination. Section 21.63 discusses the process.

1494. See generally, Schwarzer, *Mass Tort Class Actions*, *supra* note 975, at 843–44. For an example and discussion of the possible effects of this type of claim-splitting, see *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation*, 209 F.R.D. 323, 339–41 (S.D.N.Y. 2002).

1495. See, e.g., *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246, 295–304 (E.D. Pa. 1994) (discussing relation of inventory settlement and class settlement), *vacated on other grounds*, 83 F.3d 610 (3d Cir. 1996), *aff'd sub nom. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

Reviewing a proposed settlement requires objective information about factors related to class certification and to the fairness and reasonableness of the proposed settlement.<sup>1496</sup> The parties will be advocates for the settlement they have crafted; without direction from the court, they may not volunteer all the information the court needs to understand fully the settlement terms and their effect. Settlement class actions pose special challenges because they may not include an underlying record of discovery or other adversarial activity bearing on the merits of the dispute.

In some cases, objectors may provide an adversarial scrutiny of the proposed certification and settlement terms. Section 21.643 discusses the role of objectors in class actions generally and the differences between class-based objections and individually based objections. At their best, objectors may speak out on behalf of class interests that have not been fully represented or accounted for in the proposed settlement. On the other hand, some objectors may represent narrow self-interests and seek to impede or delay a settlement until those interests are accommodated.

To fulfill their role under Rule 23(e),<sup>1497</sup> judges may find it helpful to undertake the following steps:

- Identify and require the parties to provide information useful for evaluating the proposed settlement, particularly information relating to the merits of the claims and defenses and the historic values of cases involving the same or similar claims and defenses. See section 21.631.<sup>1498</sup>
- Require disclosure of side agreements among the parties or lawyers relating to the terms or implementation of the settlement, including eligibility for, or amounts and allocation of, attorney fees.<sup>1499</sup>
- Permit focused discovery by objectors on a showing of need. In considering such discovery requests, consider whether the objectors represent a large and potentially discrete group whose interests were not

1496. See Jonathan R. Macey & Geoffrey P. Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. Chi. L. Rev. 1, 46 (1991) (asserting that “trial courts may simply lack information to make an informed evaluation of the fairness of the settlement”).

1497. See *supra* section 21.61. For a descriptive case study discussing ways that judges evaluated settlements and attorney fees in a select group of substantial cases, see Deborah Hensler et al., *Class Actions Dilemmas: Pursuing Public Goals for Private Gain* 460–66 (2000).

1498. See also *Bowling v. Pfizer, Inc.*, 143 F.R.D. 138, 140 (S.D. Ohio 1992) (requesting information, including *in camera* disclosure of all prior settlements involving the Bjork-Shiley heart valve).

1499. See, e.g., *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 852, 867 (W.D. Pa. 1995) (ordering counsel to disclose side agreements pertaining to attorney fees).

accommodated in the settlement. It is important to distinguish between objectors' discovery into the merits of the claims and defenses in relationship to the fairness, reasonableness, and adequacy of the proposed settlement,<sup>1500</sup> and discovery into the settlement negotiations, which courts have refused to permit absent evidence of collusion.<sup>1501</sup>

- Consider establishing a special settlement discovery court to be convened on a regular basis during the period leading up to the final fairness hearing.<sup>1502</sup>
- List specific issues and concerns that bring into question the fairness, reasonableness, and adequacy of the proposed settlement, and give the parties an opportunity to explain or renegotiate the settlement before the court rules.<sup>1503</sup>
- Appoint one or more adjuncts, such as a magistrate judge, guardian *ad litem*,<sup>1504</sup> special master,<sup>1505</sup> or court-appointed expert<sup>1506</sup> to assist in gathering information and in evaluating the proposed settlement.

1500. See, e.g., *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246, 260 n.9 (“Objectors were given the opportunity to probe into facts surrounding the proposed settlement through depositions of relevant persons. . . . In all, thousands of pages of documents were produced and over thirty depositions took place during the discovery period.”); see also *Tidmarsh*, *supra* note 951, at 5, 12 (finding that “[t]wo of the [five] cases (*Georgine* and *Ahearn*) permitted broad rights of discovery to objecting parties”).

1501. See *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 153 n.10 (S.D. Ohio 1992); see also Charles Alan Wright et al., *Federal Practice and Procedure* § 1797.1, at 413 (2d ed. 1986).

1502. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 1071 (E.D. Pa. Jan. 28, 2000), at [http://www.fenphen.verilaw.com/search\\_common.icl](http://www.fenphen.verilaw.com/search_common.icl) (last visited Nov. 10, 2003) (establishing a special discovery court to meet weekly prior to the fairness hearing).

1503. See *Bowling v. Pfizer, Inc.*, 143 F.R.D. 138, 140–41 (S.D. Ohio 1992) (listing six concerns, continuing the fairness hearing after three days, and directing the parties to report on any changes in the proposed settlement when the hearings resume).

1504. See, e.g., *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 827, 854 (1999) (noting the appointment by the district court of a law professor as guardian *ad litem* and citing the guardian's report on a factual matter). The district judge requested the guardian *ad litem* in *Ortiz* “to review the settlement from the point of view of members of the class and thereby to afford the class additional assurance that their interest will be adequately protected.” *In re Asbestos Litig.*, 90 F.3d 963, 972 (5th Cir. 1996), *rev'd sub nom Ortiz v. Fibreboard*, 527 U.S. 815 (1999). See also *Miller v. Mackey Int'l, Inc.*, 70 F.R.D. 533, 535–36 (S.D. Fla. 1976) (using its residual authority under Rule 23(d)(5), the district court appointed a guardian *ad litem* to represent the interests of the class in responding to plaintiffs' attorneys' requests for fees). See generally *Macey & Miller*, *supra* note 1496, at 47–48 (suggesting that judicial review of class action settlements could be improved by the use of guardians *ad litem* to represent the interest of the class).

1505. See, e.g., *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246, 257–58 (E.D. Pa. 1994) (indicating that the parties “filed a joint motion for appointment of a special master to assist the

- In a limited fund settlement, permit additional discovery by objectors or an independent evaluator to examine whether a limited fund exists and meets the standards set forth in Rule 23(b)(1) and *Ortiz*.<sup>1507</sup>
- Allow some trial-type procedures for the fairness hearing, such as the receipt of sworn testimony subject to cross-examination.<sup>1508</sup> Whether an evidentiary hearing is necessary will depend on the facts and circumstances of the case, including the extent to which there are objections to the settlement or reasons for the court to be skeptical of its fairness.<sup>1509</sup>

A court should also consider whether class members who did not opt out initially should receive a second opportunity to opt out after a settlement is reached. Rule 23(e)(3) grants the court authority to refuse to approve a settlement that does not afford an opportunity for members of the proposed class to opt out after the parties announce the settlement terms. See section

court during the discovery process, and to review sensitive and confidential information relevant to these proceedings”), *vacated on other grounds*, 83 F.3d 610 (3d Cir. 1996), *aff’d sub nom* Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997). See generally FJC Study, Special Masters, *supra* note 704 (reporting empirical findings about the use of special masters at pretrial and posttrial stages of civil litigation).

1506. See, e.g., *Williams v. City of New Orleans*, 543 F. Supp. 662 (E.D. La. 1982) (evaluation of a consent decree in the face of objections from intervenors); *Ohio Pub. Interest Campaign v. Fisher Foods, Inc.*, 546 F. Supp. 1, 4, 11 (N.D. Ohio 1982) (court-appointed expert who played “key role in the lengthy, protracted, and heated negotiations” testified that the resulting settlement was “fair, reasonable, and adequate”); *but cf. In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1375 (N.D. Ga. 1979) (court-appointed expert on damages was unnecessary because “educated estimate[s]” of the parties were sufficient to support evaluation of proposed settlement). See also *Real*, *supra* note 1492, at 448–49 (advocating that judges “know the details of how a settlement has been reached,” which “may require consultation with independent experts—available under Rule 706 of the Federal Rules of Evidence—who have knowledge of the business or industry that gave rise to the injury or damages”).

1507. *Ortiz*, 527 U.S. at 853–54; see also *id.* at 864 (“[I]t would be essential that the fund be shown to be limited independently of the agreement of the parties to the action . . .”). See also section 22.73.

1508. See, e.g., *In re The Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 325 (3d Cir. 1998) (“Objectors are ‘entitled to an opportunity to develop a record in support of [their] contentions by means of cross-examination and argument to the court.’” (quoting *Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 833 (3d Cir. 1973))); see also *Tidmarsh*, *supra* note 951, at 5, 12 (finding that “[t]wo of the [five] cases (*Georgine* and *Ahearn*) . . . used trial-like procedures at the fairness hearing.”).

1509. See *Wright*, *supra* note 1501, § 1797, at 354, and cases cited therein (stating “whether an evidentiary hearing is necessary before the approval of a proposed settlement and the extent of the testimony that may be allowed at any hearing that is held depends on the circumstances of each case”).

21.611 for a discussion conditioning settlement approval on the extension of a second opt-out opportunity.

### 22.925 Evaluating Nonmonetary Benefits

Determining the fairness, adequacy, and reasonableness of a settlement, and determining the reasonableness of attorney fees, presupposes that the court can place a value on the parties' settlement terms. Establishing a value for nonmonetary benefits, such as coupons, stock, or other contingent promises to pay a benefit of uncertain value, represents a special challenge. Experts sometimes can assist in determining a market value for coupons or other non-monetary settlement proceeds.<sup>1510</sup>

Establishing a value of medical monitoring remedies for individual class members may present a particularly difficult challenge. If the law of the state supports medical monitoring in the form of payments for monitoring examinations, the value will depend on the number of people who actually use the monitoring made available, which may require the court to defer valuation.<sup>1511</sup>

If the judge assigned to the case has actively assisted the parties in crafting a proposed settlement, transferring the case to another district judge to review the settlement may be appropriate.<sup>1512</sup> Some judges who have participated in settlement negotiations, however, believe that they are better equipped to review the settlement because they know its provisions and the compromises that went into its creation.<sup>1513</sup> One judge, for example, suggests that judicial oversight of the settlement process allows the judge to “[a]ssess fairness and reasonableness of the settlement to all class members, and make findings as to the value to each individual plaintiff.”<sup>1514</sup>

### 22.926 Presenting the Decision

The fairness hearing should create a record sufficient to determine whether the proposed settlement is fair, reasonable, and adequate to the class and to

1510. See, e.g., *In re Auction Houses Antitrust Litig.*, No. 00-0648, 2001 WL 170792, at \*10 (S.D.N.Y. Feb. 22, 2001).

1511. *In re Diet Drugs Prods. Liab. Litig.*, No. CIV.A. 98-20626, 1999 WL 673066, at \*18–\*19 (E.D. Pa. Aug. 26, 1999) (“Absent class treatment, the class members will be unable to obtain the benefit of collection and research of medical data and thereby better understand issues such as latency periods and techniques of diagnosis of the diseases . . .”).

1512. See, e.g., *Georgine v. Amchem Prods., Inc.*, 157 F.R.D. 246, 258 (E.D. Pa. 1994).

1513. See Hon. S. Arthur Spiegel, *Settling Class Actions*, 62 U. Cin. L. Rev. 1565, 1569 (1994) (indicating that “the judge who was involved in the settlement negotiations will be in a better position to consider objections at the fairness hearing, particularly in a complex case”).

1514. Real, *supra* note 1492, at 450.

support findings of fact and conclusions of law. See section 21.635. Section 21.66 discusses issues that may arise during the administration of a class action settlement.

Occasionally, a proposed settlement will directly affect cases that are pending in other courts. The parties may, for example, agree to dismiss related cases pending in a state court or another federal court.<sup>1515</sup> It is important to communicate clearly and directly with the other courts to prevent any misunderstandings. Section 20.31 discusses state–federal coordination. If counsel are charged with communicating with the other courts, it is helpful to specify that responsibility and to follow up, if necessary, to enforce counsel’s duty.<sup>1516</sup> If proceedings in other courts threaten the integrity of the certified class settlement and the ability of the court to enforce the approved class action settlement terms, the court presiding over the class action should consider whether to enjoin the parties from proceeding further in derogation of the certified class action, as discussed in section 21.42.

## 22.927 Awarding and Allocating Attorney Fees

Section 14.12 discusses standards for reviewing attorney fee petitions in common fund class actions. Section 14.21 discusses techniques for simplifying and expediting the review of attorney fee applications.

Linking attorney fees to the value of the settlement benefits actually received by class members is especially important in mass tort litigation. Settlements that call for nonmonetary or deferred payments—such as medical monitoring, the contingent payment of future claims, or coupons for repair or replacement of allegedly defective products—should either be assigned an accurate present value or the payment of attorney fees should be delayed until benefits are in fact distributed to class members and the court knows how much they actually received.<sup>1517</sup>

A major difference between mass torts and other class actions is that class members in mass tort litigation are often represented by individually retained

1515. See, e.g., *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 30–31 (2002) (describing setting in which parties agreed to dismiss stayed state case and plaintiff informed court that agreement was limited to some claims). The Court held that the All Writs Act did not provide an independent source of federal jurisdiction and could not be used to remove a diversity case to federal court. *Id.* at 33–35.

1516. *Id.* at 31–32 (imposing sanctions that were upheld on appeal).

1517. See generally, *Bowling v. Pfizer, Inc.*, 132 F.3d 1147 (6th Cir. 1998) (overarching principle is to compensate counsel for benefits actually conferred on the class).

plaintiffs' attorneys.<sup>1518</sup> In a class action or in federal litigation that has been centralized by the Judicial Panel on Multidistrict Litigation, the transferee judge generally appoints class counsel to litigate common issues and prepare the case for trial or settlement.<sup>1519</sup> Individually retained attorneys may conduct discovery, motions practice, and settlement negotiations on behalf of individual clients. If an MDL case proceeds to trial in federal court, individual attorneys may handle aspects of the trial, such as individual exposure and damages.<sup>1520</sup> If a related case proceeds to trial in state court, individual attorneys represent their clients, with or without the use of discovery conducted in the MDL proceedings. Individually retained counsel have contingent fee arrangements, and counsel for the class or the MDL counsel steering committee may represent individual class members under such agreements.

Absent agreement among the attorneys, the court will have to allocate fees among the attorneys, a task that involves placing a value on the services provided by different attorneys.<sup>1521</sup> The judge can protect members of the class from excessive fees by limiting the amount of contingent fees awarded for pursuing individual claims in a common-fund settlement.<sup>1522</sup> If there is a combination of individual settlements and a class-wide settlement, the judge sometimes orders individual plaintiffs' lawyers to pay a certain percentage of

1518. *In re* Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295 (1st Cir. 1995). *See generally* Judith Resnik et al., *Individuals Within the Aggregate: Relationships, Representation, and Fees*, 71 N.Y.U. L. Rev. 296, 300 (1996). *See also* Dennis E. Curtis & Judith Resnik, *Contingency Fees in Mass Torts: Access, Risk, and the Provision of Legal Services When Layers of Lawyers Work for Individuals and Collectives of Clients*, 47 DePaul L. Rev. 425 (1998).

1519. *See, e.g., Thirteen Appeals*, 56 F.3d at 300 (“The PSC [Plaintiffs’ Steering Committee] members looked after the big picture: mapping the overarching discovery, trial, and settlement strategies and coordinating the implementation of those strategies.”).

1520. *See, e.g., id.* (“The IRPAs [Individually-Retained Plaintiffs’ Attorneys] handled individual client communication and other case-specific tasks such as answering interrogatories addressed to particular plaintiffs, preparing and attending the depositions of their clients, and taking depositions which bore on damages.”). IRPAs also worked with a settlement judge to negotiate appropriate settlement values for individual claims and collaborated with PSC members in the trial of twelve representative claims.

1521. *See generally, Thirteen Appeals*, 56 F.3d at 309–11.

1522. *See, e.g., In re* Rio Hair Naturalizer Prods. Liab. Litig., MDL No. 1055, 1996 WL 780512, at \*20–\*21 (E.D. Mich. Dec. 20, 1996) (limiting contingency fee contracts with individual class members to 5% of limited fund class settlement); *In re* A.H. Robins Co., 86 F.3d 364, 377–78 (4th Cir. 1996) (upholding district court’s limit of 10% on contingent fees for supplemental payments from settlement trust); *In re* Joint E. & S. Dists. Asbestos Litig., 878 F. Supp. 473, 561–62 (E.D.N.Y. & S.D.N.Y. 1995) (contingency fee contracts reduced from 33.3% to 25%); *In re* Beverly Hills Fire Litig., 639 F. Supp. 915, 924–25 (E.D. Ky. 1986) (class members’ individual attorneys’ contingency fees limited to 6.3% of the individual client’s award).

the fees they received into a common fund to contribute to the fees of the class counsel, whose work in discovery and trial preparation contributed to the settlement of the individual cases as well.<sup>1523</sup> Section 20.31 discusses some state–federal considerations in setting such fees. Typically courts have also limited the percentage of a mass settlement allocated to attorneys representing the class or the MDL aggregate. See section 14.121.<sup>1524</sup>

## 22.93 Trial<sup>1525</sup>

For cases transferred to a court by the MDL Panel, the initial question is whether the transferee court has authority to conduct trials of the cases at all. The Supreme Court ruled in *Lexecon* that a transferee court did not have the authority to transfer cases from another district to itself by ruling on a pretrial motion for change of venue.<sup>1526</sup> Nothing in that decision, however, precludes the transferee judge from presiding over cases that litigants filed in the transferee district originally, that transferor courts transferred by ruling on motions change venue, or that the parties consented to have tried in the transferee district. Section 20.132 discusses these and other practices relating to the trial of cases in transferee courts.

The structure of the trial should be addressed as early in the pretrial process as is feasible. Judges often require the parties to submit detailed trial plans early in the case and to modify the plans as the case develops. Such plans assist the court and the parties in determining what issues, claims, and defenses

1523. See, e.g., *In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, Order No. 467 (E.D. Pa. Feb. 10, 1999), at [http://www.fenphen.verialw.com/search\\_common.icl](http://www.fenphen.verialw.com/search_common.icl) (last visited Nov. 10, 2003) (ordering defendants to withhold a fixed percentage from settlements and pay those amounts into a common fund); see also *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, MDL No. 926, unnumbered order (N.D. Ala. Oct. 7, 1998), at <http://www.fjc.gov/BREIMLIT/ORDERS/orders.htm> (last visited Nov. 10, 2003) (denying attorneys' motions for relief from Order No. 13, requiring payment of 6% of settlements into a "common benefit" fund); see also *In re Showa Denko K.K. L-Tryptophan Prods. Liab. Litig. II*, 953 F.2d 162, 166 (4th Cir. 1992) (holding that fee-withholding orders in MDL cases can only be applied to cases that were within the jurisdiction of the MDL transferee court).

1524. See also Tidmarsh, *supra* note 951, at 14 (documenting class counsel fees in mass tort settlement class actions ranging from 3% (*Georgine/Amchem* and *Ahearn*) to 6% (silicone gel breast implants) to 10% (Bjork–Shiley heart valve litigation) and stating limits on fees to attorneys for individual class members). See also Rheingold, *supra* note 1271, §§ 7:40 to 7:47 (detailing fee arrangements in L-Tryptophan, swine flu vaccine, breast implant, Neptune Society, Shell Oil (Watson), MGM Grand, and Bjork–Shiley cases, a mixture of class action and MDL litigations).

1525. For discussion of complex trials generally, see *supra* section 12.

1526. *Lexecon, Inc. v. Milberg, Weiss, Bershad, Hynes & Lerach*, 523 U.S. 26 (1998).

may apply across groups and how to present the proof to a jury. If a mass tort litigation is to proceed by first adjudicating individual test cases, identification of those plaintiffs and discovery into their exposure and injury should occur at the earliest opportunity. If the trial is to be of consolidated groups of claimants with comparable exposure or injuries, the composition of those groups should be defined during discovery and pretrial motions stages.

In general, a consolidated or aggregated trial must take into account defenses and the measure of damages. A joint trial of common issues may be feasible, followed by separate trials of remaining issues.<sup>1527</sup> To avoid inconsistent adjudications and duplicative presentation of evidence, punitive damage claims should ordinarily be tried to the same jury that determined liability and overall compensatory damages, although in most cases the issue of punitive damages is bifurcated.<sup>1528</sup>

Test case trials of mass torts can draw on many of the standard practices for managing complex trials. See section 12. Similarities among the cases tried and cases pending trial may allow use of a standard pretrial order and application of rulings on evidentiary and trial issues. Videotaped expert testimony and use of a standard set of exhibits can streamline presentation of evidence. See sections 12.13 and 23.345.

1527. See, e.g., *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1194–97 (6th Cir. 1988) (describing class trial of common liability issues, compensatory damages for representative plaintiffs, and punitive damages for class as a whole); *Jenkins v. Raymark Indus.*, 782 F.2d 468, 470–71 (5th Cir. 1986) (describing asbestos intradistrict class trial plan for resolving liability issues, for punitive-damages liability and amount, and for state-of-the-art defense to be followed by consolidated minitrials of seven to ten plaintiffs); cf. *In re Copley Pharm., Inc., “Albuterol” Prod. Liab. Litig.*, 161 F.R.D. 456, 468–70 (D. Wyo. 1995) (discussing class trial of common liability issues followed by individual trials in transferor courts to establish individual causation, damages, and punitive damages). See also *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1139 (9th Cir. 2002) (recommending that court “resolve the pending motions for class certification as soon as possible, and . . . consider such certification only for questions of generic causation common to plaintiffs who suffer from the same or a materially similar disease”). See also *supra* section 22.75.

1528. See, e.g., *In re The Exxon Valdez*, 270 F.3d 1215, 1225 (9th Cir. 2001) (describing trial structure starting with a stipulation of negligence and providing separate phases for jury findings regarding liability for punitive damages, class compensatory damages, and class punitive damages, followed by individual compensatory damages); *Jenkins*, 782 F.2d at 470–71; *In re Simon II Litig.*, 211 F.R.D. 86, 193 (E.D.N.Y. Oct. 22, 2002) (ordering three-stage trial: (1) determination of fraud and conspiracy claims and “estimated total compensatory claims” followed by (2) punitive liability issues followed by (3) “evidence of amount of harm suffered by the class [as result of conduct warranting punitive damages]”) (appeal pending); *but cf. Albuterol*, 161 F.R.D. at 467–68 (rejecting inclusion of punitive damages in common issues trial because “punitive damages and punitive conduct should be determined on an individual basis”).

In pursuing traditional or test case trials, the judge may conduct a unitary trial, bifurcate liability and damages,<sup>1529</sup> or create other helpful trial structures. A court must identify and minimize any risk of unfairness in requiring litigants to present claims or defenses in a piecemeal fashion. For example, the judge in the Bendectin litigation found the use of a trifurcated trial plan (causation, liability, damages) to be troubling yet concluded that, on balance, the procedure served overriding purposes of efficiency and fairness.<sup>1530</sup> Courts have recognized “a danger that bifurcation may deprive plaintiffs of their legitimate right to place before the jury the circumstances and atmosphere of the entire cause of action.”<sup>1531</sup> In litigation concerning HIV contamination of the blood supply, one court held that a bifurcated trial plan calling for more than one jury interfered with the right of a defendant to present comparative negligence defenses against individual plaintiffs.<sup>1532</sup> In general, the Seventh Amendment entitles parties to have facts decided by one jury and prohibits a second jury from reexamining those facts.<sup>1533</sup> The test is whether the issues can be presented separately to different juries without generating “confusion” and “uncertainty.”<sup>1534</sup>

Another approach is reverse bifurcation or reverse trifurcation, starting with individual damages. This is generally appropriate only when the degree of injury and the amount of damages are the primary issues in dispute.<sup>1535</sup>

Courts have found some approaches inappropriate. For example, one court rejected nonconsensual sampling and extrapolation of causation and damages in personal injury cases because these procedures contravened

1529. See, e.g., cases discussed in *supra* notes 1394–1405.

1530. *In re Bendectin Litig.*, 857 F.2d 290, 306–09, 315 (6th Cir. 1988).

1531. *In re Beverly Hills Fire Litig.*, 695 F.2d 207, 217 (6th Cir. 1982). See also *Bendectin*, 857 F.2d at 314–16.

1532. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995) (holding that a trial plan to determine defendant’s negligence first while leaving determination of comparative negligence and proximate causation for a later jury would violate the Reexamination Clause of the Constitution); see also *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 209 F.R.D. 323, 334–35 (S.D.N.Y. 2002).

1533. *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 750 (5th Cir. 1996).

1534. See *Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500 (1931) (a new trial on the single issue of damages could not be conducted “unless it clearly appears that the issue to be retried is so distinct and separable from the others that a trial of it alone may be had without injustice”). See discussion at *supra* section 22.75 and text accompanying notes 1394–99.

1535. See, e.g., *Angelo v. Armstrong World Indus.*, 11 F.3d 957 (10th Cir. 1993) (finding no abuse of discretion in trying issue of whether plaintiff had incurred an asbestos-related disease before liability issues); see also Trends, *supra* note 1077, at 102–04 (discussing use of various forms of bifurcation and trifurcation in asbestos litigation).

litigants' right to a jury trial under the Seventh Amendment and violated due process.<sup>1536</sup>

Courts and litigants have experimented with various trial structures to achieve greater efficiency and expedition in resolving mass tort cases. Some approaches are described below:

- *A series of individual trials against one or more defendants on all issues.* The verdicts in representative cases inform the parties as to a likely range of verdicts in other similar cases. For the most part, the silicone gel breast implant litigation and the diet drug litigation have followed this model, with most of the individual trials conducted at the state level.
- *A series of consolidated trials on all issues, if they are sufficiently common.*<sup>1537</sup> Each trial involves defined groups of similarly situated plaintiffs (e.g., a manageable number of coworkers from the same job site or homeowners who had the same type of siding installed by the same contractor) against one or more defendants,<sup>1538</sup> with special procedures, if necessary, to assist the jury in comprehending multiple claims against multiple parties. See section 12.42.

1536. See *Cimino v. Raymark Indus.*, 151 F.3d 297, 319–22 (5th Cir. 1998) (holding that individual jury determinations of liability, injury, and damages are required by the Seventh Amendment in an asbestos mass tort personal injury context); see also *In re Fibreboard*, 893 F.2d 706, 711–12 (5th Cir. 1990) (holding that, as a matter of Texas product liability law, plaintiffs must show specific causation and individual injuries to establish a claim); cf. *Hilao v. Estate of Marcos*, 103 F.3d 767, 786–87 (9th Cir. 1996) (holding that, on balance, in an “extraordinarily unusual” case involving 10,000 injury claims, the use of statistical sampling and extrapolation to determine individual personal injury recoveries did not violate due process); *In re Simon II Litig.*, 211 F.R.D. 86, 146–59 (E.D.N.Y. 2002) (discussing use of statistical extrapolation to establish class-wide liability and damages and concluding that statistical extrapolation comports with due process and the Seventh Amendment) (appeal pending).

1537. See *Malcolm v. Nat'l Gypsum Co.*, 995 F.2d 346 (2d Cir. 1993) (reversing joint trial of forty-eight asbestos cases on ground that lack of commonality resulted in jury confusion). Consolidation of fewer than ten cases has been called “extremely effective.” See McGovern, *Mature Mass Tort*, *supra* note 1022, at 688.

1538. See, e.g., Michael J. Saks & Peter David Blanck, *Justice Improved: The Unrecognized Benefits of Aggregation and Sampling in the Trial of Mass Torts*, 44 Stan. L. Rev. 815 (1992). Statistical sampling, however, can be expected to yield accurate results only when the set of cases being tried is homogenous (i.e., similar injuries to similar plaintiffs under similar circumstances) and the sample is representative of the whole. Kenneth S. Bordens & Irwin A. Horowitz, *The Limits of Sampling and Consolidation in Mass Tort Trials: Justice Improved or Justice Altered?*, 22 Law & Psychol. Rev. 43, 47 (1998). In addition, where there is a serious question as to liability, a jury's knowledge that more than one plaintiff was injured can be expected to affect a jury's decision on liability. *Id.* at 59–60.

- *A consolidated common issues trial with some plaintiffs presenting their claims against defendants on all issues, yielding findings on common issues.* This works in a single-incident mass tort case,<sup>1539</sup> a property damage case,<sup>1540</sup> or a narrowly defined aspect of a dispersed mass tort (e.g., a case involving a single product and injuries allegedly incurred in a single work site or in a single state, within a limited time period).<sup>1541</sup> The remaining plaintiffs would have to prove specific causation and damages in later proceedings in which the findings on common issues from the first trial would apply. The individual issues may also be resolved through the procedures discussed immediately below involving trials of representative cases. Certain issues relating to liability may be severed under Federal Rule of Civil Procedure 42(b) from issues relating to causation or damages, and then consolidated as to multiple parties under Rule 42(a) for a joint trial.<sup>1542</sup> Federal courts have frequently concluded that dispersed mass tort personal injury

1539. See, e.g., *In re The Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001).

1540. See, e.g., *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910 (7th Cir. 2003) (groundwater pollution claims); *In re Sch. Asbestos Litig.*, 789 F.2d 996 (3d Cir. 1986); but cf. *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 288 F.3d 1012 (7th Cir. 2002).

1541. See, e.g., *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620 (5th Cir. 1999) (approving certification of Jones Act common-liability issues as issues class and approving bifurcated trial with common issues trial followed by individual trials of causation and damages issues); *Jenkins v. Raymark Indus.*, 782 F.2d 468 (5th Cir. 1986) (single class action trial of punitive damages and state-of-the-art defense followed by joint trials on individual issues with seven to ten plaintiffs); see also *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1017–20 (5th Cir. 1992), *reh'g granted*, 990 F.2d 805 (5th Cir. 1993), *other reh'g*, 53 F.3d 663 (5th Cir. 1994) (case settled before rehearing; panel affirmed a trial plan for determination of liability and punitive damages in conjunction with compensatory damages in twenty fully tried sample cases to be followed by full trials of other individual claims by a different jury). In that case, the first stage of the trial plan included the apportionment of liability between the two primary defendants. See *supra* section 11.632 and discussion at notes 1529–34. State laws precluding bifurcation may not be binding on the federal courts. See *Rosales v. Honda Motor Co., Ltd.*, 726 F.2d 259 (5th Cir. 1984).

1542. See, e.g., *In re Copley Pharm., Inc., "Albuterol" Prods. Liab. Litig.*, 161 F.R.D. 456, 468–70 (D. Wyo. 1995) (discussing trial plan in which class representatives' individual strict liability, negligence, and breach of warranty claims would be tried along with common issues relating to general causation, followed by individual trials in transferor courts on issues of individual causation, damages, and punitive damages); see also *Foster v. Detroit*, 254 F. Supp. 655 (E.D. Mich. 1966) (treating the post-liability condemnation claims of class members as not involving new issues of law or fact and delegating their resolution to a special master presiding over claims of class members), *aff'd*, 405 F.2d 138 (6th Cir. 1968); Samuel Issacharoff, *Administering Damage Awards in Mass Tort Litigation*, 10 Rev. Litig. 463, 471–80 (1991) (discussing administrative models for apportioning damage awards in mass contract, Title VII, and tort cases).

claims, particularly those involving the law of different states, cannot generally be tried on a consolidated or aggregated basis.<sup>1543</sup>

- *A consolidated trial on common issues followed by a stipulated binding procedure (such as arbitration or mediation) agreed to by the parties to resolve individual issues.*<sup>1544</sup> This type of approach to the individual issues encompasses possible test-case trials or special master adjudications. Such an approach is more feasible in a single incident mass tort than in a dispersed mass tort.
- *A stipulated resolution of all elements of individual claims according to a formula or by a hearing before an arbitrator, special master, or magistrate judge.* The court should ensure that the parties' waiver of the right to a jury trial is knowing and intelligent.

1543. See generally *Castano v. Am. Tobacco Co.*, 84 F.3d 734 (5th Cir. 1996) (nationwide class action decertified); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995) (also class action decertified); *In re Repetitive Stress Injury Litig.*, 11 F.3d 368 (2d Cir. 1993) (consolidation of cases reversed). Cf. *In re Bendectin Litig.*, 857 F.2d 290 (6th Cir. 1988) (consolidation for bifurcated trial upheld); *Jenkins v. Raymark Indus.*, 782 F.2d 468 (5th Cir. 1986) (district-wide class action trial of common issues approved).

1544. After the settlement of the class claims in *Jenkins* (discussed above), the court created a voluntary alternative dispute resolution procedure to handle future claims. The program had some initial success, but the court later judged it to be ineffective. *Cimino v. Raymark Indus.*, 751 F. Supp. 649, 651 (E.D. Tex. 1990), *rev'd on other grounds*, 151 F.3d 297 (5th Cir. 1998).

## 23. Expert Scientific Evidence

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### 23.1 Introduction

A significant issue in many complex cases—particularly in areas of law such as mass tort, antitrust, environmental, and intellectual property, but increasingly appearing in other areas as well—is the admission and use of expert scientific or technical testimony. “Scientific evidence encompasses so-called hard sciences (such as physics, chemistry, mathematics, and biology) as well as soft sciences (such as economics, psychology, and sociology), and it may be offered by persons with scientific, technical, or other specialized knowledge whose skill, experience, training, or education may assist the trier of

fact in understanding the evidence or determining a fact in issue.”<sup>1545</sup> Expert scientific testimony can add additional layers of complexity to already complex cases, and scientific and technical evidence often plays a pivotal role in litigation. In toxic tort cases, for example, excluding scientific evidence can prevent the plaintiff from establishing the prima facie elements of his or her case, thereby entitling the defendant to summary disposition.<sup>1546</sup> Judicial findings on the relevance of toxicological studies and their weight in relation to epidemiological studies may also significantly affect the ability of mass or toxic tort plaintiffs to prevail.<sup>1547</sup> Superfund cases, usually brought many years after the release of hazardous contaminants, rely heavily on scientific and toxicological evidence to establish the liability of potentially responsible parties and to evaluate remedial actions and the imminent threat presented to human health and the environment.<sup>1548</sup> Statistical evidence is routinely introduced and

1545. William W Schwarzer & Joe S. Cecil, *Management of Expert Evidence* [hereinafter *Expert Evidence*], in Reference Manual on Scientific Evidence 39, 42 (Federal Judicial Center, 2d ed. 2000). In a survey of federal judges conducted by the Federal Judicial Center examining recent trials involving expert witnesses, tort cases represented the greatest percentage (45%) of cases reported. Carol Krafka, Meghan A. Dunn, Molly Treadway Johnson, Joe S. Cecil & Dean Miletich, *Judge and Attorney Experiences, Practices, and Concerns Regarding Expert Testimony in Federal Civil Trials*, 8 Psychol. Pub. Pol’y & L. 309, 318 (2002) [hereinafter *FJC Survey on Expert Testimony*]. This survey also provides, among other things, a breakdown of experts appearing in federal courts. *Id.* at 319–20 & tbl.2. For a breakdown of experts appearing in state courts, see Anthony Champagne et al., *Expert Witnesses in the Courts: An Empirical Examination*, 76 *Judicature* 5 (1992); Samuel R. Gross, *Expert Evidence*, 1991 *Wis. L. Rev.* 1113.

1546. See, e.g., *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1314, 1321–22 (9th Cir. 1995) (affirming grant of summary judgment where plaintiff’s expert testimony found inadmissible); *Wheat v. Sofamor, S.N.C.*, 46 F. Supp. 2d 1351, 1360–61 (N.D. Ga. 1999) (with the exclusion of plaintiff’s expert, insufficient evidence of defect existed to preclude entry of summary judgment for defendant).

1547. See, e.g., *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 144–45 (1997) (animal studies relied on by expert “were so dissimilar to the facts presented in this litigation” that district court did not abuse its discretion in excluding them). The introduction of scientific evidence in toxic tort cases, however, encompasses more than testimony by medical experts. Expert witnesses can range from experts on sampling, *Trail v. Civil Engineer Corps*, 849 F. Supp. 766 (W.D. Wash. 1994), to atmospheric dispersion, *In re Hanford Nuclear Reservation Litig. (Hanford II)*, No. CY-91-3015, 1998 WL 775340 (E.D. Wash. Aug. 21, 1998), to fisheries, *In re Hanford Nuclear Reservation Litig. (Hanford I)*, 894 F. Supp. 1436 (E.D. Wash. 1995).

1548. See generally *supra* section 34. See also *Freeport-McMoran Res. Partners Ltd. P’ship v. B-B Paint Corp.*, 56 F. Supp. 2d 823, 833–34 (E.D. Mich. 1999) (rejecting plaintiff’s argument that *Daubert* requirements should be inapplicable to CERCLA cases and excluding expert testimony where none of the *Daubert* indicia of reliability are met). See, e.g., *Burns Philp Food, Inc. v. Cavalea Cont’l Freight, Inc.*, 135 F.3d 526, 530–31 (7th Cir. 1998) (affirming exclusion of testimony of environmental consultant as failing to reliably link petroleum distillates on property with defendants’ actions); Keum J. Park, Note, *Judicial Utilization of Scientific Evidence*

explained by experts in antitrust litigation, employment litigation, and other areas,<sup>1549</sup> and proof of damages suffered by plaintiffs in these cases also may rest heavily on expert testimony.<sup>1550</sup> The decision to admit or exclude scientific evidence and testimony thus strongly affects the ability of a party to prevail.

This section can assist judges in effectively managing expert evidence that involves scientific or technical subject matter. Part I discusses the current standards under which expert testimony is to be judged in light of *Daubert v. Merrill Dow Pharmaceuticals*<sup>1551</sup> and its progeny and the Federal Rules of Evidence. It examines some issues that can arise in the application of these standards and then addresses case-management issues specific to expert testimony. The discussion focuses principally on expert testimony that is scientific or technical in nature, but is equally applicable to expert testimony in Federal Rule of Evidence 702's "other specialized knowledge" category. The discussion does not address some of the issues that have frequently arisen in criminal cases, such as those surrounding DNA and fingerprint evidence.

*in Complex Environmental Torts: Redefining Litigation Driven Research*, 7 Fordham Envtl. L.J. 483, 492–93 (1996) (noting that the Oil Pollution Liability and Compensation Act of 1990 established "procedures for natural resource trustees to determine resource injuries").

1549. *See, e.g.*, *Munoz v. Orr*, 200 F.3d 291, 300–02 (5th Cir. 2000) (affirming exclusion of statistical testimony of plaintiff's expert in Title VII disparate impact claim as unreliable); *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 564–67 (11th Cir. 1998) (expert testimony of statistician admissible in antitrust case); *Bean v. S.W. Waste Mgmt. Corp.*, 482 F. Supp. 673, 677–80 (S.D. Tex. 1979) (statistical evidence showing disparate impact insufficient to prove intentional discrimination under Equal Protection Clause in environmental justice case), *aff'd without opinion*, 782 F.2d 1038 (5th Cir. 1986).

1550. For example, in employment cases, forensic psychiatrists may be called to testify on the relationship between a plaintiff's emotional harm and his or her work environment, and psychological testimony has been found probative on the question of damages and causation. *See, e.g.*, *Blakey v. Cont'l Airlines, Inc.*, 992 F. Supp. 731, 735–39 (D.N.J. 1998). *See EFCO Corp. v. Symons Corp.*, 219 F.3d 734, 739 (8th Cir. 2000) (expert testimony admissible on damages); *Hurley v. Atl. City Police Dept.*, 933 F. Supp. 396, 408–09, 424 (D.N.J. 1996) (expert testimony on mental harm to employee resulting from sexual harassment); *Bottomly v. Leucadia Nat'l Corp.*, 163 F.R.D. 617, 619–20 (D. Utah 1995) (expert testimony admissible on issue of damages and causation). Expert testimony relating to the amount of damages occurred in almost half of the reported trials examined in a recent Federal Judicial Center survey. *See FJC Survey on Expert Testimony*, *supra* note 1545, at 321.

1551. 509 U.S. 579 (1993).

## 23.2 The Use of Scientific Evidence in Complex Litigation

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### 23.21 The Federal Rules of Evidence

*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, *General Electric Co. v. Joiner*,<sup>1552</sup> and *Kumho Tire Co. v. Carmichael*,<sup>1553</sup> the “*Daubert* trilogy,” have made management of expert evidence an integral part of proper case management.<sup>1554</sup> Those decisions make the district judge the gatekeeper who must pass on the reliability and relevance of proffered evidence pursuant to Federal Rule of Evidence 702.

Rule 702, amended in 2000 with the italicized language, takes account of the trilogy:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experiences, training, or education, may testify thereto in the form of an opinion or otherwise *if (1) the testimony is based upon sufficient facts or data, (2) the testimony is*

1552. 522 U.S. 136 (1997).

1553. 526 U.S. 137 (1999).

1554. The judge’s performance of the gatekeeper function will be intertwined with his or her implementation of Federal Rule of Civil Procedure 16. See *Joiner*, 522 U.S. at 149 (Breyer, J., concurring):

[J]udges have increasingly found in the Rules of Evidence and Civil Procedure ways to help them overcome the inherent difficulty of making determinations about complicated scientific or otherwise technical evidence. Among these techniques are an increased use of Rule 16’s pretrial conference authority to narrow the scientific issues in dispute, pretrial hearings where potential experts are subject to examination by the court, and the appointment of special masters and specially trained law clerks.

*the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.*<sup>1555</sup>

An extensive committee note provides guidance to courts in assessing the admissibility of expert evidence. It emphasizes the breadth of the standards set forth in the rule and reiterates that its purpose is to ensure the reliability of the proffered testimony. For example, “The amendment specifically provides that the trial court must scrutinize not only the principles and methods used by the expert, but also whether those principles and methods have been properly applied to the facts of the case.”<sup>1556</sup> Federal Rules of Evidence 701 and 703 also were amended in conjunction with the amendments to Rule 702. Rule 701 seeks to ensure that the gatekeeping requirements of Rule 702 not be circumvented through “proffering an expert in lay witness clothing,”<sup>1557</sup> stating that opinions and inferences of lay witnesses may not be based on “scientific, technical or other specialized knowledge within the scope of Rule 702.”<sup>1558</sup> Rule 703 clarifies the circumstances under which inadmissible evidence relied on by an expert witness in forming his or her opinion can be disclosed to a jury.<sup>1559</sup>

1555. Fed. R. Evid. 702 (emphasis added). *See also* Hon. Lee H. Rosenthal, *Strategies for Handling Expert Challenges in Federal Court*, App. Law., at 1, 8 (Houston Bar Ass’n Spring 1999) (“Counsel should . . . familiarize themselves with the recent proposed amendments to Rule 702 [which] largely codify the two major holdings of the Supreme Court’s *Kumho Tire* decision.”).

1556. Fed. R. Evid. 702 committee note. *See* *Zic v. Italian Gov’t Travel Office*, 130 F. Supp. 2d 991, 999 (N.D. Ill. 2001) (amendments to Rule 702 added “three new ‘reliability’ requirements: reliable data, reliable methodology, and reliable application of the methodology”).

1557. Fed. R. Evid. 701 committee note. Rule 701 provides the following:

If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue . . . .

1558. Fed. R. Evid. 701 committee note.

1559. Rule 703 directs the court to apply a balancing test when deciding whether to let the jury hear otherwise inadmissible information to assist the jury in evaluating the expert’s opinion by weighing the probative value of the evidence against its prejudicial effect. Unless the probative value substantially outweighs its prejudicial effect, the evidence should not be disclosed to the jury. Unlike the balancing test in Rule 403, the test established in Rule 703 places the presumption against admission, and the committee note to Rule 703 further emphasizes that, to the extent the information is disclosed, it is not admissible for substantive purposes, and a limiting instruction should be given to the jury to that effect.

### 23.22 The *Daubert* Trilogy<sup>1560</sup>

Expert scientific evidence in the courtroom has grown in tandem with the increasing reliance on technological and scientific advances in virtually every facet of American life.<sup>1561</sup> This convergence of science and law has inevitably placed judges in the position of assessing the admissibility of such evidence using standards that many charged were too ill-defined to realistically separate valid scientific endeavors from science lacking any real empirical support.<sup>1562</sup> Prior to *Daubert*,<sup>1563</sup> scientific evidence was often judged according to the standard set forth in *Frye v. United States*.<sup>1564</sup> *Frye* set forth a test for the admission of expert testimony as one of “general acceptance,” with admissibility premised on whether the scientific principle or discovery from which the testimony derived was generally accepted in the pertinent scientific community.<sup>1565</sup> Despite criticisms of the *Frye* test, the general acceptance criterion

1560. For an excellent discussion of the *Daubert* trilogy, see Margaret A. Berger, *The Supreme Court’s Trilogy on the Admissibility of Expert Testimony* [hereinafter *Supreme Court’s Trilogy*], in Reference Manual on Scientific Evidence 9 (Federal Judicial Center, 2d ed. 2000).

1561. See David L. Faigman et al., *Check Your Crystal Ball at the Courthouse Door, Please: Exploring the Past, Understanding the Present, and Worrying About the Future of Scientific Evidence*, 15 Cardozo L. Rev. 1799, 1802 n.6 (1994) (citing William L. Foster, *Expert Testimony,—Prevalent Complaints and Proposed Remedies*, 11 Harv. L. Rev. 169, 176 (1897–98) (quoting unattributed comments that “the scientific expert is a product of an advanced and rapidly advancing civilization . . . [and has acquired] a far greater frequency of employment by the recent marvelous advances in the applications of science,—applications which have increased the sphere of things to be litigated about”)); Joseph Sanders, *Scientifically Complex Cases, Trial by Jury, and the Erosion of Adversarial Processes*, 48 DePaul L. Rev. 355, 357–58 (1998) (citing statistics from several studies reflecting growth in number of cases in which experts testify as well as the number of testifying experts).

1562. See, e.g., 1 David L. Faigman et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* § 1-2.4, at 9–10 (2d ed. 2002).

1563. 509 U.S. 579 (1993). See also *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1314 & n.2 (9th Cir. 1995) (noting that prior standard for admissibility in Ninth Circuit was *Frye* test of general acceptance); *Christopherson v. Allied-Signal Corp.*, 939 F.2d 1106 (5th Cir. 1991) (overruled by *Daubert*).

1564. 293 F. 1013 (D.C. Cir. 1923). The *Frye* test initially was applied almost exclusively in criminal cases and was not relied on in federal civil litigation until 1984. Paul C. Giannelli, *Daubert: Interpreting the Federal Rules of Evidence*, 15 Cardozo L. Rev. 1999, 2008 (1994).

1565. 293 F. at 1014. *Frye* has been described as simply a relocation of the marketplace test, where expertise is judged by the success of the expert in his or her profession. “In effect, the marketplace determined whether valid knowledge existed by endowing it with commercial value.” 1 Faigman et al., *supra* note 1562, § 1-2.1, at 4. However, *Frye* is also argued to have recognized a distinction between the expert and the expertise, and to have placed the assessment of the value of the expertise offered in the hands of “the people who produced the knowledge and offered it, and themselves, to the courts.” *Id.* § 1-2.2, at 7.

became the most common standard for assessing the admissibility of expert testimony,<sup>1566</sup> even after the advent of the Federal Rules of Evidence in 1975, and in particular Rule 702.

*Daubert*, *Joiner*, and *Kumho Tire*, however, changed the way in which courts assess the admissibility of scientific evidence.<sup>1567</sup> *Daubert* explicitly rejected the *Frye* test, holding that the admissibility of expert testimony was governed by Rule 702, and that nothing in the language of the rule reflected an intent to incorporate “general acceptance” as a precondition to admission.<sup>1568</sup> “The drafting history makes no mention of *Frye*, and a rigid ‘general acceptance’ requirement would be at odds with the ‘liberal thrust’ of the Federal Rules and their ‘general approach of relaxing the traditional barriers to ‘opinion’ testimony.’”<sup>1569</sup> Rather, *Daubert* established that Rule 702 mandates federal courts to serve as gatekeepers, ensuring (1) that the subject of the expert testimony is scientific “knowledge” grounded “in the methods and procedures of science”<sup>1570</sup> and (2) that the testimony is relevant, i.e., it will assist the trier of fact in understanding the evidence or determining an issue in the case.<sup>1571</sup> According to *Daubert*, “[t]his entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue.”<sup>1572</sup>

1566. 1 Faigman et al., *supra* note 1562, § 1-2.4, at 10. Among these criticisms were that the general acceptance standard precluded the admission of reliable evidence, it left to the scientific community the determination of validity, and it rested on the invalid assumption that jurors were unable to handle scientific evidence. 1 Paul C. Giannelli & Edward J. Imwinkelried, *Scientific Evidence* § 1-5(G), at 28–29 (3d ed. 1999). Other criticisms included that the general acceptance standard was vague and easily manipulated, was overly conservative, provided no clear demarcation or other guideline as to the point at which a proposition became “generally acceptable,” lacked standards for defining the “particular field,” and, more importantly, left “the law at the mercy of the practitioners of the respective fields” who may differ in degree of rigorousness. 1 Faigman et al., *supra* note 1562, § 1-2.4, at 8–9, 10.

1567. *But see* *United States v. Downing*, 753 F.2d 1224, 1232 (3d Cir. 1985) (foreshadowing *Daubert* by concluding that “the status of the *Frye* test under Rule 702 is somewhat uncertain”).

1568. *Daubert*, 509 U.S. at 588–89. The Court noted that the rules occupied the field, and that the inability to find any reference to the common-law doctrine in Rule 702 or its drafting history clearly indicated that Rule 702 superceded *Frye*. “Given the Rules’ permissive backdrop and their inclusion of a specific rule on expert testimony that does not mention ‘general acceptance,’ the assertion that the Rules somehow assimilated *Frye* is unconvincing.” *Id.* at 589.

1569. *Id.* at 588 (quoting *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 169 (1988)).

1570. *Id.* at 589–90.

1571. *Id.* at 591.

1572. *Id.* at 592–93. *See* *Brasher v. Sandoz Pharms. Corp.*, 160 F. Supp. 2d 1291, 1295 (N.D. Ala. 2001) (“The point of the gatekeeping role is to separate opinion evidence based on ‘good grounds’ from simple subjective speculation masquerading as scientific knowledge.”).

### 23.23 The *Daubert* Criteria

Central to any determination of admissibility is the finding, as a threshold matter, that the witness is qualified to testify as an expert under Rule 702. The courts generally have interpreted this requirement liberally.<sup>1573</sup> In many fields of expertise, for example, neither formal education nor training may be necessary. It is the inquiry into the scientific validity of the underlying reasoning or methodology that presents the greatest challenge to judges. Rule 702 establishes the general standards against which expert testimony is to be judged, relying on criteria delineated in *Daubert*, as well as others that might be appropriate. It is for the trial judge to then determine whether those standards have been met.

*Daubert* identifies several considerations that might bear on the trial court's determination whether given testimony is scientifically valid and therefore "trustworthy": (1) whether the theory or technique had been tested; (2) whether the theory or technique can be or has been peer reviewed or published; (3) the known or potential error rate; (4) the "existence and maintenance of standards controlling the technique's operation"; and (5) the general acceptance by the relevant scientific community and the testimony's degree of acceptance therein.<sup>1574</sup> These considerations, however, are neither a checklist nor exhaustive, and the trial court's inquiry should be a "flexible

1573. See, e.g., *Alvarado v. Weinberger*, 511 F.2d 1046, 1048–49 (1st Cir. 1975). Some cases decided since the *Daubert* trilogy seem to reflect a tightening of the standard against which expert qualifications are judged, a trend that may become more prominent in light of the amendments to Rule 702. See, e.g., *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 156 (1999) ("The trial court had to decide whether this particular expert had sufficient specialized knowledge to assist the jurors 'in deciding the particular issues in the case.'" (quoting 4 Joseph McLaughlin, Weinstein's Federal Evidence ¶ 702.05[1] (2d ed. 1998))); *Smelser v. Norfolk S. Ry.*, 105 F.3d 299, 303 (6th Cir. 1997) (court to examine "not the qualifications of a witness in the abstract, but whether those qualifications provide a foundation for a witness to answer a specific question" (quoting *Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994))). Professor Edward Imwinkelried has suggested that the former liberality of the courts in qualifying experts as only needing to have knowledge or skill beyond the average layperson is disappearing in favor of a standard that requires a showing "that the witness has expertise highly relevant to the precise issue before the court." Edward J. Imwinkelried, *An Unheralded Change*, Nat'l L.J., Feb. 5, 2001, at A10. Professor Imwinkelried argues that recent decisions reflect a trend away from qualifying experts who are not specialists in the area relevant to the subject matter of the testimony. *Id.* See, e.g., *Berry v. Crown Equip. Corp.*, 108 F. Supp. 2d 743, 752–53 (E.D. Mich. 2000) (excluding testimony of plaintiff's expert witness because he was not qualified to render an opinion on defective forklift design).

1574. *Daubert*, 509 U.S. at 593–94 (1993).

one,” consistent with the “permissive backdrop” of the Federal Rules.<sup>1575</sup> The committee note similarly states that there may be circumstances in which the *Daubert* factors are inapplicable and other criteria more probative; however, in each case the court is to use criteria to achieve the standards set forth in the rule.<sup>1576</sup> Once the judge determines that proposed scientific testimony is valid (i.e., trustworthy or reliable), the inquiry turns to whether the evidence is relevant to the facts of the case, or its “fit.”<sup>1577</sup>

*Daubert* dealt specifically with scientific expert testimony. In response to the conflict among the lower courts as to *Daubert*’s reach, *Kumho Tire* clarified that the gatekeeping obligation of Rule 702 applied not just to expert scientific testimony but to all expert testimony: “This language makes no relevant distinction between ‘scientific’ knowledge and ‘technical’ or ‘other specialized’ knowledge . . . Hence, as a matter of language, the Rule applies its reliability standard to all ‘scientific,’ ‘technical,’ or ‘other specialized’ matters within its scope.”<sup>1578</sup> The Court further held that it was proper, where appropriate, to apply the *Daubert* factors to nonscientific evidence, recognizing, however, that other factors might be of greater assistance in light of the “many different kinds of experts, and many different kinds of expertise.”<sup>1579</sup> The Court expressly declined to establish a definitive list of factors that would apply to all cases.<sup>1580</sup> Instead, it remains for the district court to apply those factors it deems appropriate in order to ensure that the expert “employs in the court-

1575. *Id.* at 593. “[Rule 702’s] overarching subject is the scientific validity—and thus the evidentiary relevance and reliability—of principles that underlie a proposed submission.” *Id.* at 594–95. *See also* *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 155 (3d Cir. 1999) (“[N]ot only must each stage of the expert’s testimony be reliable, but each stage must be evaluated practically and flexibly without bright-line exclusionary (or inclusionary) rules.”).

1576. Fed. R. Evid. 702 committee note.

1577. *See, e.g.*, *Clark v. Takata Corp.*, 192 F.3d 750, 757 (7th Cir. 1999) (noting that “an expert does not assist the trier of fact in determining whether a product failed if he starts his analysis based upon the assumption that the product failed (the very question he was called upon to resolve)”).

1578. *Kumho Tire*, 526 U.S. at 147.

1579. *Id.* at 150. The Court cited to the amicus brief filed by the United States referencing a wide variety of cases in which nonscientific expert testimony had been offered, from handwriting analysis, to agricultural practice, to attorney fee valuation. *See also* *Elcock v. Kmart Corp.*, 233 F.3d 734, 747 (3d Cir. 2000) (analogizing two of the *Daubert* factors in reviewing testimony of vocational rehabilitation expert, noting “[v]ocational rehabilitation is a social science that does not exactly mirror the fundamental precepts of the so-called harder sciences”); *Ohio ex rel. Montgomery v. Louis Trauth Dairy, Inc.*, 925 F. Supp. 1247, 1252 (S.D. Ohio 1996) (noting reasoning and general framework of *Daubert* applied to economic and statistical evidence).

1580. *Kumho Tire*, 526 U.S. at 150–51.

room the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.”<sup>1581</sup>

### 23.24 Opinions and Conclusions Under *Daubert*

One issue that has caused debate is the appropriate degree of inquiry into the conclusions of an expert. In making the *Daubert* inquiry, some courts have examined not only the appropriateness and reliability of the methodology used by the expert,<sup>1582</sup> but whether the expert’s conclusions are supported by the methodology used.<sup>1583</sup> The *Daubert* Court cautioned that the focus of the inquiry under Rule 702 is not on the conclusions reached by the expert but on the principles adduced and methodologies used.<sup>1584</sup> *Joiner*, decided several years later, blurred *Daubert*’s distinction between methodology and conclusion, stating that “conclusions and methodology are not entirely distinct from one another.”<sup>1585</sup> Indeed, *Joiner* implies that to find an expert’s proffered testimony reliable, the district court must not only conclude the expert followed proper methodology for the science, but also that the conclusion reached was supported by the methodology used. The *Joiner* Court noted that “nothing in either *Daubert* or the Federal Rules of Evidence requires a district

1581. *Id.* at 151–53.

1582. *Allen v. Pa. Eng’g Corp.*, 102 F.3d 194 (5th Cir. 1996).

1583. *Jahn v. Equine Servs., PSC*, 233 F.3d 382, 393 (6th Cir. 2000) (expert methodology can be reliable even where matter might be in debate because of other testimony); *Smith v. Ford Motor Co.*, 215 F.3d 713, 720–21 (7th Cir. 2000) (district court abused discretion in relying on single, potentially irrelevant criterion in finding expert conclusions were based on unreliable methodologies, did not consider other factors, and failed to explain connection between factor selected by court and reliability under the circumstances); *McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1043–44 (2d Cir. 1995); *United States v. Martinez*, 3 F.3d 1191, 1197–98 (8th Cir. 1993); *Spearman Indus., Inc. v. St. Paul Fire & Marine Ins. Co.*, 128 F. Supp. 2d 1148, 1150 (N.D. Ill. 2001) (court’s gatekeeping function focuses on methodology, leaving the correctness of expert’s conclusion or soundness of facts on which conclusion is based to fact-finder).

1584. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993). *See NutraSweet Co. v. X-L Eng’g Co.*, 227 F.3d 776, 788–89 (7th Cir. 2000) (“The district court did not abuse its discretion in concluding that the common and official acceptance of photographic analysis made it sufficiently reliable.”); *Clark v. Takata Corp.*, 192 F.3d 750, 758–59 (7th Cir. 1999) (expert opinion properly excluded where based only on experience or training with no scientific data or supporting research material or other rigorous methodology).

1585. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Justice Stevens, concurring in part and dissenting in part in *Joiner*, questioned “When qualified experts have reached relevant conclusions on the basis of an acceptable methodology, why are their opinions inadmissible?” *Id.* at 154.

court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert.”<sup>1586</sup>

The amendment to Rule 702, which became effective after *Daubert*, *Joiner*, and *Kumho Tire*, provides some guidance. The rule contemplates, among other things, that in making a reliability determination, the court will “scrutinize not only the principles and methods used by the expert, but also whether those principles and methods have been properly applied to the facts of the case.”<sup>1587</sup> In light of *Joiner* and Rule 702, *Daubert*’s caution against inquiring into the expert’s conclusion appears to have lost some of its authority, although the degree to which the conclusion must be supported by the methodology and supporting reasoning remains unclear.<sup>1588</sup> Where the expert’s conclusion is drawn from a reliable methodology, however, the correctness of that conclusion is still an issue for the finder of fact. The original intent of Rule 702 in 1975 was to liberalize, not restrict, the admission of expert evidence.<sup>1589</sup> Accordingly, a judge must be cognizant of the constraints imposed by the Seventh Amendment and not preclude the jury from hearing an opinion that, although in the minority, is nonetheless responsibly grounded in the science and reliable even if the judge does not believe the conclusion to be “correct.”<sup>1590</sup> Presumably, cross-examination and presentation of contrary evidence by the opposing party, as suggested in *Daubert*, would identify for the jury the shakiness of the foundation on which the conclusion is based.

1586. *Id.* at 146.

1587. Fed. R. Evid. 702 committee note. *See, e.g.*, *Pride v. BIC Corp.*, 218 F.3d 566, 578 (6th Cir. 2000) (excluding testimony where, among other things, experts failed to timely conduct replicable experiments); *Moore v. Ashland Chem., Inc.*, 151 F.3d 269, 279 (5th Cir. 1998) (where wide analytical gap existed between expert opinion and scientific knowledge, opinion would be excluded as unreliable).

1588. *Ruiz-Troche v. Pepsi Cola of P.R.*, 161 F.3d 77, 81 (1st Cir. 1998) (“[W]hile methodology remains the central focus of a *Daubert* inquiry, this focus need not completely pretermit judicial consideration of an expert’s conclusions.”).

1589. *See Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999) (courts should be mindful of the intent to liberalize the introduction of expert testimony while also recognizing the potential of expert witnesses to “be both powerful and quite misleading” (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595 (1993))).

1590. *See, e.g.*, *Bonner v. ISP Techs., Inc.*, 259 F.3d 924, 929 (8th Cir. 2001) (evidence should be admitted where there are good grounds for the expert’s conclusions, even though the judge may believe there are better grounds for alternative conclusions); *Jahn v. Equine Servs., PSC*, 233 F.3d 382, 391 (6th Cir. 2000) (district court improperly weighed testimony of expert against pathologist testimony in finding expert’s opinion suspect).

### 23.25 The *Daubert* “Fit” Test

Rule 702 has always required that expert testimony “assist the trier of fact” to understand evidence or resolve issues in the case, and the second prong of the *Daubert* test reiterates the necessity of such a determination. The *Daubert* Court discussed this inquiry as one of relevance, noting that if “it is not always obvious, and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes.”<sup>1591</sup> Since *Daubert*, however, courts have differed on their interpretation of “fit” in assessing expert scientific evidence. This disagreement has turned in part on whether the inquiry under Rule 702 looks only at the admissibility of the expert evidence (whether it is reliable and relevant) separate from any inquiry into its sufficiency.<sup>1592</sup> In some cases the courts have excluded expert testimony as lacking relevance where it was insufficient to prove the matter for which the party sought its introduction.<sup>1593</sup> Other courts have held that the evidence need only meet a low threshold of “relevance” to be admissible.<sup>1594</sup> These decisions limit the trial court, once the methodology underlying expert testimony is found to be appropriate or reliable, to determining whether the testimony is pertinent to an issue in the case in order to be admissible.<sup>1595</sup> Courts adhering to this latter view have

1591. *Daubert*, 509 U.S. at 591. See also *Amorgianos v. Nat’l R.R. Passenger Corp.*, 137 F. Supp. 2d 147 (E.D.N.Y. 2001).

1592. See, e.g., *In re Joint E. & S. Dists. Asbestos Litig.*, 52 F.3d 1124, 1132 (2d Cir. 1995) (stating that admissibility is a threshold inquiry as to whether a certain piece of evidence ought to be admitted at trial, whereas a “sufficiency inquiry, which asks whether the collective weight of a litigant’s evidence is adequate to present a jury question, lies further down the litigational road”).

1593. See, e.g., *Rosen v. Ciba-Geigy Corp.*, 78 F.3d 316, 319–20 (7th Cir. 1996) (expert opinion excluded where it failed to establish how nicotine overdose can precipitate a heart attack in person with heart disease). See also *Blevins v. New Holland N. Am., Inc.*, 128 F. Supp. 2d 952, 957–59 (W.D. Va. 2001) (seemingly conflating both admissibility and sufficiency inquiries). For example, in some toxic tort cases, if the expert’s evidence, considered by itself, did not meet the legal standard of causation, it would be inadmissible as lacking relevance. See, e.g., *Wheat v. Sofamor S.N.C.*, 46 F. Supp. 2d 1351, 1357–58 (N.D. Ga. 1999) (where expert could not state to reasonable degree of medical certainty as to either a general or specific causal relationship between product and harm, testimony “is unhelpful and irrelevant”).

1594. See, e.g., *Adams v. Ameritech Servs., Inc.*, 231 F.3d 414, 425 (7th Cir. 2000) (“First, the question before us is not whether the reports proffered by the plaintiffs prove the entire case; it is whether they were prepared in a reliable and statistically sound way, such that they contained relevant evidence that a trier of fact would have been entitled to consider.”); *Md. Cas. Co. v. Therm-O-Disc, Inc.*, 137 F.3d 780, 783 (4th Cir. 1998) (“prescribing fluid and general standards for the admission of scientific testimony”); *Ambrosini v. Labarraque*, 101 F.3d 129, 135–36 (D.C. Cir. 1996).

1595. *Smith v. Ford Motor Co.*, 215 F.3d 713, 719 (7th Cir. 2000).

maintained that litigants need only “demonstrate by a preponderance of the evidence that their opinions are reliable,”<sup>1596</sup> and they are not required to “prove their case twice . . . .”<sup>1597</sup> Under this view of the fit test, an expert’s testimony, even though insufficient to prove causation when viewed alone, would be admissible for consideration by the jury collectively with all the other evidence in the case.<sup>1598</sup>

In addition to the conflict in the circuits on the proper interpretation of *Daubert*’s second prong, the fit test has also been used to exclude evidence based on the nature of the science at issue or the degree to which the science sought to be introduced differs from the facts at issue in the case.<sup>1599</sup> In some instances, the very unreliability of the expert testimony has supported the conclusion that the evidence therefore did not fit the case.<sup>1600</sup> *Daubert* articulated the relevant inquiry as whether the testimony offered is “sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute,”<sup>1601</sup>

1596. See *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 562–63 (11th Cir. 1998).

1597. *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744 (3d Cir. 1994); see, e.g., *In re TMI Litig.*, 193 F.3d 613, 665 (3d Cir. 1999) (quoting *In re Paoli*, 35 F.3d at 744). The *TMI* court noted that there was a distinction between the evidentiary requirement of reliability and the higher standard of whether the expert’s conclusions were correct on the merits, commenting, “The distinction is indeed significant as it preserves the fact finding role of the jury.” *In re TMI Litig.*, at 665 n.90.

1598. See, e.g., *Bonner v. ISP Techs., Inc.*, 259 F.3d 924, 929 (8th Cir. 2001) (“[N]either Rule 702 nor *Daubert* requires that an expert opinion resolve an ultimate issue of fact to a scientific absolute in order to be admissible.”); *City of Tuscaloosa*, 158 F.3d at 565 (“As circumstantial evidence, McClave’s data and testimony need not prove the plaintiffs’ case by themselves; they must merely constitute one piece of the puzzle that the plaintiffs endeavor to assemble before the jury.”).

1599. See, e.g., *Savage v. Union Pac. R.R. Co.*, 67 F. Supp. 2d 1021, 1035–39 (E.D. Ark. 1999) (excluding expert testimony where no scientific evidence was introduced as to whether the chemicals to which plaintiff was exposed were implicated in the type of cancer suffered by plaintiff). One issue of significance is the threshold necessary to maintain a science-based claim. This conflict is probably most prominent in mass and toxic tort cases, where the ability to prove causation typically relies on inferences and hypotheses about an unknown causal mechanism, but arises in other areas as well. See Michael D. Green et al., *Reference Guide on Epidemiology* [hereinafter *Epidemiology*], in *Reference Manual on Scientific Evidence* 333–400 (Federal Judicial Center, 2d ed. 2000).

1600. See, e.g., *Bourne v. E.I. DuPont De Nemours & Co.*, 189 F. Supp. 2d 482, 499 (S.D. W. Va. 2002) (finding methodologies used by experts in extrapolating from animal studies to humans was unsound and therefore “a poor ‘fit’ for the facts of the case”).

1601. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993) (quoting *United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985)). But see *Mattis v. Carlon Elec. Prods.*, 114 F. Supp. 2d 888, 895 (D.S.D. 2000) (examining whether testimony demonstrates level of exposure hazardous to humans and plaintiff’s actual level of exposure in terms of “fit” under *Daubert*).

with the determination as to what constitutes a “sufficient” relationship clearly left to judicial discretion.<sup>1602</sup>

## 23.26 The Scope of Appellate Review

*Joiner* addressed the scope of the district court’s discretion in applying Rule 702. The Court held that the standard of review of evidentiary rulings by the district court, including rulings pursuant to Rule 702, is abuse of discretion.<sup>1603</sup> *Kumho Tire* clarified the extent of the trial court’s discretion, holding that the abuse-of-discretion standard applied not just to the ultimate conclusion on admissibility, but to all of the findings on admissibility. Thus the district court has “considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable.”<sup>1604</sup> This includes determinations on the best way to proceed as well as what factors are reasonable measures of reliability of the particular expert testimony proffered.<sup>1605</sup> *Kumho Tire* rejected any suggestion that specific criteria must be

1602. See, e.g., *Textron, Inc. ex rel. Homelite Div. v. Barber-Colman Co.* (Textron I), 903 F. Supp. 1546, 1558 (W.D.N.C. 1995) (The court rejected expert testimony that relied on studies of household solid waste, concluding that such substances were hazardous where the expert was unable to demonstrate that the “studies relied upon [were] sufficiently similar to the households connected to Burlington’s wastewater system to merit comparison.”). See also *Mitchell v. Gencorp., Inc.*, 165 F.3d 778, 782 (10th Cir. 1999) (affirming exclusion of expert testimony as unreliable: “[W]ithout scientific data supporting their conclusions that chemicals similar to benzene caused the same problems as benzene, the analytical gap in the expert’s testimony is simply too wide . . . .”); *Bradley v. Armstrong Rubber Co.*, 130 F.3d 168, 176–78 (5th Cir. 1997) (court considering admissibility under Rule 703 found expert opinion could be properly excluded as irrelevant where facts on which opinion was based were wrong); *Textron, Inc. ex rel. Homelite Div. Co. v. Barber-Colman Co.* (Textron II), 903 F. Supp. 1558, 1568–69 (W.D.N.C. 1995).

1603. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997). A *de novo* standard of review applies, however, to the initial inquiry into whether the district court properly followed *Daubert*’s framework. See *Walker v. Soo Line R.R. Co.*, 208 F.3d 581, 590 (7th Cir. 2000) (“We review *de novo* ‘whether the district court properly followed the framework set forth in *Daubert*.’” (quoting *United States v. Hall*, 165 F.3d 1095, 1101 (7th Cir. 1999))); *United States v. Call*, 129 F.3d 1402, 1405 (10th Cir. 1997).

1604. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

1605. *Id.* at 152–53. See also *Quiet Technology DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333 (11th Cir. 2003) (holding that (1) witness qualified as an expert by virtue of extensive education, training, and experience; (2) expert’s methods and results were discernible and rooted in real science, and therefore were empirically testable; and (3) expert’s testimony was relevant and would assist the jury); *Bourelle v. Crown Equip. Corp.*, 220 F.3d 532, 537–38 (7th Cir. 2000) (district court did not abuse its discretion in excluding testimony of expert who failed to test or observe vehicle, conduct computer analysis, or otherwise satisfy *Daubert*); *Clay v. Ford Motor Co.*, 215 F.3d 663, 668 (6th Cir. 2000) (“The District Court, in its discretion, could have

applied to certain types of expert testimony;<sup>1606</sup> however, Justice Scalia emphasized in a concurring opinion that although the *Daubert* factors “are not holy writ, in a particular case the failure to apply one or another of them may be unreasonable, and hence an abuse of discretion.”<sup>1607</sup>

In addition, the Supreme Court in *Weisgram v. Marley Co.*<sup>1608</sup> resolved any uncertainty surrounding the scope of appellate courts’ authority to enter judgment as a matter of law under Federal Rule of Civil Procedure 50 where expert testimony has been improperly admitted. The Court held that an appellate court, upon concluding that the district court abused its discretion in admitting expert testimony at trial, has the authority to overturn a jury verdict and enter judgment as a matter of law where the exclusion of the evidence renders the proof legally insufficient.<sup>1609</sup> The Court commented that “[s]ince *Daubert*, parties relying on expert evidence have had notice of the exacting standards of reliability such evidence must meet. It is implausible to suggest, post-*Daubert*, that parties will initially present less than their best expert evidence in the expectation of a second chance should their first try fail.”<sup>1610</sup>

decided that [the expert’s] failure to test his theories went to the weight of his testimony regarding defects in the *Bronco II*, not to its admissibility.”).

1606. “[W]e can neither rule out, nor rule in, for all cases and for all time the applicability of the factors mentioned in *Daubert*, nor can we now do so for subsets of cases categorized by category of expert or by kind of evidence. Too much depends upon the particular circumstances of the particular case at issue.” 526 U.S. at 150. The Court also rejected any interpretation of Rule 702 that would “[map] certain kinds of questions to certain kinds of experts.” *Id.* at 151.

1607. *Id.* at 159 (Scalia, J., concurring). See *Black v. Food Lion, Inc.*, 171 F.3d 308, 311–12 (5th Cir. 1999) (stating “[I]n the vast majority of cases, the district court first should decide whether the [*Daubert* factors] are appropriate . . . [I]t then can consider whether other factors . . . are relevant to the case at hand,” and suggesting failure to apply *Daubert* factors may be an abuse of discretion). The danger of establishing criteria that must be applied is that the validity of the science turns on being shoehorned into the correlative criteria, regardless of whether the science involved was amenable to such a qualification, rather than being measured against scientific work outside the courtroom.

1608. 528 U.S. 440 (2000).

1609. *Id.*

1610. *Id.* at 455 (citations and footnote omitted). Although the Court’s decision in *Weisgram* and its earlier decision in *Neely v. Martin K. Elby Construction Co.* recognized that the authority to enter judgment on appeal was afforded by Rule 50, the Court did caution that in exercising its discretion, the court of appeals should take into consideration the rights of the verdict winner as well as the trial judge’s firsthand knowledge of the case. “Part of the Court’s concern has been to protect the rights of the party whose jury verdict has been set aside on appeal and who may have valid grounds for a new trial, some or all of which should be passed upon by the district court, rather than the court of appeals, because of the trial judge’s first-hand knowledge of witnesses, testimony, and issues—because of his ‘feel’ for the overall case.” *Weisgram*, 528 U.S. at 451 (quoting *Neely v. Martin K. Elby Construction Co.*, 386 U.S. 317, 325 (1967)).

Subsequent circuit court decisions, following the rationale in *Weisgram*, have entered judgment under Rule 50 where expert testimony was admitted in error.<sup>1611</sup> Accordingly, the *Daubert* trilogy, together with *Weisgram*, clearly indicates not only the significance of the gatekeeping inquiry, but the potential prejudice to a party should that inquiry be superficial or inadequate and expert testimony subsequently deemed unreliable and therefore inadmissible on appeal. At the same time, parties are placed on notice that borderline expert testimony may be excised on appeal to their detriment. One possible effect of *Weisgram* is that parties might attempt to identify extra experts to minimize the negative impact on their case should an appellate court find the testimony of one expert was erroneously admitted—with extra experts, the subsequent excision of one would not be fatal to the verdict. Such an approach would result in increased time and costs, both to the parties as well as the trial court, and the court should discourage multiple expert identification.

### 23.27 Emerging Issues in the Use of Scientific Evidence

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As amended, Federal Rule of Evidence 702 establishes general standards for the judge to use in determining the reliability of expert testimony. Rule 702 not only requires that the testimony be relevant, but also that it be based on sufficient facts or data, that it be the product of reliable principles and methods, and that the witness applied those principles and methods reliably to the facts of the case. The rule contemplates judicial analysis of various factors, including but not limited to those set forth in *Daubert*, to assess whether the proposed testimony meets these standards. However, the court should avoid interpreting these factors (and others deemed appropriate) so rigidly that valid science is excluded because it does not neatly fit within the confines of the criteria selected by the court as indicia of reliability.

There are several issues that have emerged as the district courts have wrestled with their role as gatekeeper, including the issues discussed below.

1611. See, e.g., *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1057 (8th Cir. 2000) (“It cannot be said that the verdict would have been the same without the expert testimony, and its admission affected Brunswick’s substantial rights.”).

### 23.271 The Validity of Toxicological Evidence Versus Epidemiological Evidence

The courts have had little difficulty admitting expert testimony based on epidemiological studies.<sup>1612</sup> In order for toxicological studies to be admissible to prove causation in humans, however, a number of courts have required that sufficient grounds exist to support the extrapolation from animals to humans, “just as the methodology of the studies must constitute good grounds to reach conclusions about the animals themselves.”<sup>1613</sup> As a result, and particularly in cases where either no epidemiological evidence is offered by the proposing party or epidemiological evidence is unavailable, some courts have been inclined to exclude toxicological evidence based on lack of “fit.”<sup>1614</sup>

### 23.272 Aggregation of Scientific Evidence

Another concern is whether the aggregation of scientific evidence undermines the reliability of expert testimony based on such evidence. For example, epidemiological studies are often small and lack sufficient independent

1612. *Christophersen v. Allied-Signal Corp.*, 939 F.2d 1106, 1115 (5th Cir. 1991) (“[O]nly when . . . critically inaccurate or incomplete, as determined by what other experts would or would not be willing to base opinions upon, would the facts and data lack the necessary requisites of Rule 703.”); *DeLuca ex rel. Deluca v. Merrell Dow Pharms., Inc.*, 911 F.2d 941, 953 (3d Cir. 1990), *aff’d*, 8 F.3d 778 (3d Cir. 1993); *In re Agent Orange Prod. Liab. Litig.*, 611 F. Supp. 1223, 1240 (E.D.N.Y. 1985), *aff’d*, 818 F.2d 187 (2d Cir. 1987); *Cook v. United States*, 545 F. Supp. 306, 307–16 (N.D. Cal. 1982) (whether swine flue vaccine led to Guillain-Barre disease). *See also Magistrini v. One Hour Martinizing Dry Cleaning*, 180 F. Supp. 2d 584, 593 (D.N.J. 2002) (“[A]nimal bioassays are of limited use in determining whether a particular chemical causes a particular disease, or type of cancer, in humans.”); *Bourne v. E.I. DuPont De Nemours*, 189 F. Supp. 2d 482, 496 (S.D. W. Va. 2002) (noting jurisdictions where extrapolating human teratogenicity from in vivo animal studies and in vivo test found unreliable). *But see Villari v. Terminix Int’l, Inc.*, 692 F. Supp. 568, 570–71 (E.D. Pa. 1988) (finding substantial portion of scientific community relied on animal studies of the type offered by plaintiff to assess human health risks). *See also Brock v. Merrell Dow Pharms., Inc.*, 874 F.2d 307, 313 (5th Cir.) (“This circuit has previously realized the very limited usefulness of animal studies when confronted with questions of toxicity.”), *modified*, 884 F.2d 166, 167 (5th Cir. 1989) (court changing its holding that the plaintiffs’ case was undermined by “the lack of conclusive epidemiological proof” to a “failure to present statistically significant epidemiological proof”).

1613. *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 743 (3d Cir. 1994).

1614. *See, e.g., Allen v. Pa. Eng’g Corp.*, 102 F.3d 194, 197 (5th Cir. 1996) (“In the absence of scientifically valid reasoning, methodology and evidence supporting these experts’ opinions, the district court properly excluded them.”); *Turpin v. Merrell Dow Pharms., Inc.*, 959 F.2d 1349, 1360–61 (6th Cir. 1992).

statistical significance to support definitive conclusions.<sup>1615</sup> Furthermore, several studies may differ or disagree in whether or not an association is found or in the magnitude of the association.<sup>1616</sup> As a result, a formal technique (“meta-analysis”) was developed to aggregate these studies, which would derive a single figure to represent the totality of the studies reviewed.<sup>1617</sup> At issue is whether this technique renders the conclusion “unreliable” for purposes of *Daubert* if the individual studies alone would not satisfy a *Daubert* inquiry. There are valid concerns with the aggregation of empirical studies under these circumstances.<sup>1618</sup> At the same time, the mere fact that the studies have been aggregated to make an assessment should not automatically disqualify the conclusion or serve as the basis for excluding epidemiological evidence.<sup>1619</sup>

Questions regarding the reliability of aggregated evidence can arise in more informal contexts as well, such as where the expert considers several studies, none of which would support the expert’s conclusions by itself, but when taken together form the basis for the proffered opinion.<sup>1620</sup> This “weight of the evidence” methodology was rejected as unreliable by the district court in *Joiner*, at least as presented by the proffered experts, but the court of appeals

1615. See, e.g., *Moore v. Ashland Chem.*, 151 F.3d 269, 281 (5th Cir. 1998) (en banc) (Dennis J., dissenting) (noting that “[t]he quantity of persons who sustain this type of exposure was simply too small for a plaintiff to be able to provide epidemiological, animal testing or other hard scientific evidence linking the particular chemical compound to reactive airways disease”).

1616. *Epidemiology*, *supra* note 1599, at 380. The criteria used to determine whether an observed association is causal are known as the Hill criteria, after their author Sir Austin Bradford Hill. For a list of these criteria, see, e.g., *Magistrini*, 180 F. Supp. 2d at 592–93 (D.N.J. 2002).

1617. “In meta-analysis, studies are given different weights in proportion to the sizes of their study populations and other characteristics.” *Epidemiology*, *supra* note 1599, at 380.

1618. *Id.* In many instances, the “differences among the individual studies included in the meta-analysis and the reasons for the differences are important in themselves and need to be understood.” *Id.* at 381. And, as meta-analysis generates a single estimate of risk, it could “lead to a false sense of security regarding the certainty of the estimate.” *Id.* at 381 (citing John C. Bailar III, *Assessing Assessments*, 277 *Science* 528, 529 (1997)).

1619. See *id.* at 381 (discussing criteria that may be more appropriate in assessing the reliability of meta-analysis).

1620. See *Brasher v. Sandoz Pharms. Corp.*, 160 F. Supp. 2d 1291, 1296 (N.D. Ala. 2001) (noting that although evidence of animal studies, medical texts, and a limited number of case reports do not “establish conclusively that Parlodel can cause [injury], taken together they present a compelling picture, one which can support a scientific inference”). A variation of this approach would occur where information from different kinds of studies across different fields is considered in reaching the expert’s conclusion. *Supreme Court’s Trilogy*, *supra* note 1560, at 33.

found the approach scientifically acceptable.<sup>1621</sup> Justice Stevens, in a concurring and dissenting opinion in *Joiner*, commented that “[i]t is not intrinsically ‘unscientific’ for experienced professionals to arrive at a conclusion by weighing all available scientific evidence—this is not the sort of ‘junk science’ with which *Daubert* was concerned.”<sup>1622</sup> Some courts, however, have required experts to use a “weight of the evidence” methodology to demonstrate how each study or piece of evidence was valued by the expert and the methodological basis upon which the expert may have discounted some pieces of evidence while relying more heavily on others in reaching his or her conclusion.<sup>1623</sup> The uncertainty surrounding the reliability of aggregated studies or evidence is inextricably tied to the debate on the distinction between methodology and conclusion,<sup>1624</sup> as well as the disagreement among the courts on the admissibility versus the sufficiency of expert evidence under the second prong of *Daubert*.<sup>1625</sup>

### 23.273 Clinical Medical Judgment

Many tort cases involve the introduction of expert evidence through the use of clinical treating physicians, relying on a methodology referred to as

1621. *Joiner v. Gen. Elec. Co.*, 864 F. Supp. 1310, 1320–26 (N.D. Ga. 1994), *rev’d*, 78 F.3d 524, 532 (11th Cir. 1996) (according to the Eleventh Circuit, “opinions of any kind are derived from individual pieces of evidence, each of which by itself might not be conclusive, but when viewed in their entirety are the building blocks of a perfectly reasonable conclusion, one reliable enough to be submitted to a jury along with the tests and criticisms cross-examination and contrary evidence would supply”). *See also* *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 153–54 (1997) (Stevens, J., concurring in part and dissenting in part) (noting approvingly the court of appeal’s acceptance of the “‘weight of the evidence’ methodology”). Where the data permit a reasonable scientist to make a probabilistic statement with regard to effect, even though lacking statistical significance, these judgments should not be automatically discarded as legally insufficient simply because of epistemological or proof problems as long as they can be expressed with a level of confidence that meets or exceeds the demands of Federal Rule of Evidence 104(a). The court should allow consideration of all methodically sound studies with the focus on whether the studies reliably permit the inference sought to be drawn.

1622. 522 U.S. at 153. In *Joiner*, the district court had examined various animal studies offered by the plaintiff and found that none of them supported the experts’ conclusions that the plaintiff’s cancer was caused by PCB exposure. The majority opinion did not specifically address whether the experts properly could have aggregated these studies to reach their conclusion that there was a causal relationship between the plaintiff’s cancer and PCB exposure. Rather, the Court pointed to *Joiner*’s failure to explain “how and why the experts could have extrapolated their opinions from these seemingly far-removed animal studies . . . .” *Id.* at 144.

1623. *See, e.g.,* *Magistrini v. One Hour Martinizing Dry Cleaning*, 180 F. Supp. 2d 584, 602 (D.N.J. 2002).

1624. *See supra* section 23.24.

1625. *See id.*

“differential diagnosis” to establish a causal relationship between the plaintiff’s harm and an allegedly injurious substance.<sup>1626</sup> Differential diagnosis seeks to establish specific causation by ruling out other causative factors, leaving the exposure to the harmful agent as the likely explanation for plaintiff’s harm. Although a number of judges have permitted expert testimony based on differential diagnosis, others have held such testimony to be inadmissible where the expert was unable to show general causation or otherwise rule out alternative causes that might also explain all of the plaintiff’s symptoms.<sup>1627</sup> This has hampered the ability of plaintiffs to prove causation through clinical physicians in cases where, for example, the relevant science has not clearly established a known etiology for the disease in question.<sup>1628</sup> The apparent split in approach is based in part on a disagreement regarding the degree to which the expert must rely on more than the traditional methodology of clinical medical reasoning to support his or her opinion, and the extent of the court’s inquiry into the evidence forming the basis for the clinical medical judg-

1626. For a discussion of medical testimony and differential diagnosis, see Mary Sue Henifin et al., *Reference Guide on Medical Testimony* [hereinafter *Medical Testimony*], in *Reference Manual on Scientific Evidence* 441–84 (Federal Judicial Center, 2d ed. 2000).

1627. *Compare* *Glastetter v. Novartis Pharms. Corp.*, 252 F.3d 986 (8th Cir. 2001) (finding differential diagnosis presumptively admissible and only those diagnoses that are scientifically invalid should be excluded), *and* *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 154–57 (3d Cir. 1999) (discussing the different components to differential analysis and stating, where properly done, that it will support expert medical opinion on causation), *and* *McCullock v. H.B. Fuller Co.*, 61 F.3d 1038, 1044 (2d Cir. 1995) (differential analysis requires “listing possible causes, then eliminating all causes but one”), *with* *Raynor v. Merrell Pharms., Inc.*, 104 F.3d 1371, 1374–76 (D.C. Cir. 1997) (where contradictory epidemiological evidence was “overwhelming” relating to Bendectin, and expert opinion on causation based in part on differential diagnosis was inadmissible). *See also* *Mattis v. Carlon Elec. Prods.*, 114 F. Supp. 2d 888, 893 (D.S.D. 2000) (noting that a number of cases have accepted differential diagnosis as reliable, but that “[d]ifferential diagnosis of RADS . . . have not fared so well in the federal courts”); Gary Sloboda, *Differential Diagnosis or Distortion?*, 35 U.S.F. L. Rev. 301 (2001) (discussing differential diagnosis and issues of causation).

1628. *See, e.g.*, *Mitchell v. Gencorp, Inc.*, 165 F.3d 778, 781 (10th Cir. 1999); *Black v. Food Lion, Inc.*, 171 F.3d 308, 314 (5th Cir. 1999); *Allen v. Pa. Eng’g Corp.*, 102 F.3d 194, 199 (5th Cir. 1996); *Wright v. Willamette Indus., Inc.*, 91 F.3d 1105, 1106 (8th Cir. 1996) (plaintiffs have burden of proving “the levels of exposure that are hazardous to human beings generally as well as plaintiff’s actual level of exposure”); *Siharth v. Sandoz Pharm. Corp.*, 131 F. Supp. 2d 1347 (N.D. Ga. 2001). *But see* *Meister v. Med. Eng’g Corp.*, 267 F.3d 1123 (D.C. Cir. 2001) (overwhelming epidemiological evidence finding no causal relationship between breast implants and scleroderma overcame plaintiff’s evidence to the contrary based on asserted differential diagnosis). *See also* *Supreme Court’s Trilogy*, *supra* note 1560, at 26; Joseph Sanders & Julie Machal-Fulks, *The Admissibility of Differential Diagnosis Testimony to Prove Causation in Toxic Tort Cases: The Interplay of Adjective and Substantive Law*, 64 *Law & Contemp. Probs.* 107 (2001); *Sloboda*, *supra* note 1627.

ment.<sup>1629</sup> A lack of epidemiological or other studies demonstrating an objective, scientifically established association between the disease and the causative agent has led some circuits to reject some clinical medical testimony as unreliable.<sup>1630</sup> However, all methodologically sound studies should be considered, with the focus on whether the studies reasonably permit the inference or conclusion sought to be drawn. “While an epidemiological study may be the best or ideal evidence, *Daubert* requires only that reliable evidence be presented . . . .”<sup>1631</sup> It is unclear whether *Kumho Tire*’s admonition that no specified set of factors will apply to every case, and that each case must be considered in light of the circumstances, will affect how the circuits consider clinical medical evidence.<sup>1632</sup>

### 23.274 Research as a Result of Litigation

Another area of concern is whether an inordinate focus on independent research and peer review as indicia of reliability may lead to the exclusion of research conducted as a result of litigation, even though the science is valid. The committee note to Rule 702 offers as a possible relevant factor whether the

1629. *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 264 (4th Cir. 1999) (evidence of exposure and temporal proximity to plaintiff’s injury was sufficient to “rule in” talc as a causal agent, even though physician had no scientific literature upon which to rely); *Ruiz-Troche v. Pepsi Cola of P.R.*, 161 F.3d 77, 86 (1st Cir. 1998) (finding district court had improperly imposed requirement that expert be able to “declare that a precise quantity of cocaine in the bloodstream produces an equally precise degree of impairment”); *Brasher v. Sandoz Pharms. Corp.*, 160 F. Supp. 2d 1291 (N.D. Ala. 2001) (finding that “animal studies, the medical literature reviews, the ADRs reported to the FDA, and the ‘general acceptance’ of the association between stroke and Parlodel, reflected in several neurology and toxicology textbooks and treatises” constituted reliable evidence on which a conclusion could be drawn); *Hollander v. Sandoz Pharms. Corp.*, 95 F. Supp. 2d 1230 (W.D. Okla. 2000) (lack of controlled epidemiological studies reflecting association between stroke and Parlodel, reliance on anecdotal case reports, and the dissimilarity of the animal studies and the experts’ methodologies failed to establish reliability of methods used by plaintiffs’ experts); *Savage v. Union Pac. R.R. Co.*, 67 F. Supp. 2d 1021, 1033–34 (E.D. Ark. 1999) (expert testimony excluded where plaintiff introduced no evidence of the nature of creosote exposure necessary to lead to basal cell carcinoma, the level of exposure needed, or the level of his own exposure with any degree of scientific certainty). *Compare Heller v. Shaw Indus., Inc.*, 167 F.3d 146 (3d Cir. 1999), *with Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999), *and Moore v. Ashland Chems., Inc.*, 151 F.3d 269 (5th Cir. 1998).

1630. *See, e.g., Hollander v. Sandoz Pharms. Corp.*, 95 F. Supp. 2d 1230 (W.D. Okla. 2000); *Black*, 171 F.3d at 313–14. *But see Nat’l Bank of Commerce v. Associated Milk Producers, Inc.*, 191 F.3d 858, 864 (8th Cir. 1999) (affirming exclusion of expert testimony based on differential diagnosis in absence of scientific studies correlating aflatoxin M-1 with laryngeal cancer).

1631. *Brasher*, 160 F. Supp. 2d at 1298.

1632. For an example of an opinion issued after *Kumho Tire*, *see Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999).

expert is proposing to testify about matters growing naturally and directly out of research independent of litigation, and the Ninth Circuit on remand in *Daubert* stated “If the proffered expert testimony is not based on independent research, the party proffering it must come forward with other objective, verifiable evidence that the testimony is based on ‘scientifically valid principles.’”<sup>1633</sup> The Supreme Court in *Daubert* said that a corollary indicator of reliability could be whether the research had been subject to peer review or published.<sup>1634</sup> Although in some instances a failure to satisfy these two criteria may justifiably call into question the reliability of the science, in other cases there may be a dearth of scientific evidence as to the existence of a causal relationship between exposure to a chemical, product, or contaminant and adverse health effects, because the relationship has not been sufficiently tested or because the substance is new.<sup>1635</sup> The Court noted in *Kumho Tire* that the “particular application at issue may never previously have interested any scientist,”<sup>1636</sup> or the issue may not have been one to generate any interest among editors of scientific publications. In such cases there are no established studies on which experts can rely, and often it is the harm which gave rise to the litigation that spurred whatever research exists.<sup>1637</sup> Such research may be both credible and reliable, even though it has neither grown “naturally and directly out of research independent of litigation,”<sup>1638</sup> nor yet been published. Rigid application of these criteria might preclude a party’s ability to prove causation simply because the question as to whether there was a causal relationship had never arisen before.

1633. *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1317–18 (9th Cir. 1995).

1634. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593–94 (1993); *Ruiz-Troche*, 161 F.3d at 84 (“The publication of these pieces and their exposure to peer review serve as independent indicia of the reliability of the . . . technique . . . [and] also demonstrate a measure of acceptance of the methodology within the scientific community.”).

1635. See Wendy E. Wagner, *The Science Charade in Toxic Risk Regulation*, 95 Colum. L. Rev. 1613 (1995).

1636. 526 U.S. at 151. See, e.g., *Lauzon v. Senco Prods. Inc.*, 270 F.3d 681, 691 (8th Cir. 2001) (lack of peer reviewed information on dangers associated with pneumatic nailers a result of the fact that only recently had there been an increase in popularity of pneumatic-fire nailers and concomitant increase in injuries).

1637. The Bendectin litigation seems to provide an example of research spurred by litigation. See Joseph Sanders, *The Bendectin Litigation: A Case Study in the Life Cycle of Mass Torts*, 43 Hastings L.J. 301 (1992). See also *Bourne v. E.I. DuPont De Nemours*, 189 F. Supp. 2d 482, 484 n.2 (S.D. W. Va. 2002) (parties engaged in studies of benomyl and its relationship to plaintiff’s birth defects during pendency of case).

1638. *Daubert*, 43 F.3d at 1317.

## 23.3 Case Management<sup>1639</sup>

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### 23.31 Preliminary Considerations in Assessing Expert Testimony

Although *Kumho Tire* clarified that the gatekeeping requirement extends to “technical or other specialized knowledge” and reemphasized that the test for determining reliability is a flexible one, nuances of *Daubert* and its proper interpretation remain a subject of debate.<sup>1640</sup> In ruling on the admissibility of scientific evidence under the *Daubert* standard, and in light of the amendments to Rule 702, the court must still consider the following questions:

*What factors should apply to ensure the reliability of expert testimony?* The *Daubert* Court set out several factors as indicia of scientific reliability, but also recognized that these factors might not be pertinent in every case. Rather, different types of expert scientific evidence might require application of different indicia of reliability.<sup>1641</sup> Moreover, *Kumho Tire* did not set forth any factors that would be more appropriate than others in assessing expert evi-

1639. Portions of the following subsections were adapted from and substantially incorporate the text of *Management of Expert Evidence*, *supra* note 1545, at 39.

1640. 526 U.S. at 147 (quoting Fed. R. Evid. 702). *See, e.g.*, Ned Miltenberg, *Step Out of the Fryeing Pan and into the Fire, and Out Back Again—or “Back to the Future,”* 2 Ann. 2000 ATLA-CLE 2645, § I (2000) (“Although nearly a decade has passed since *Daubert* was decided, its meaning is still sufficiently unclear that each year it inspires scores of precedent-setting interpretations and new law review articles . . . . Thus, *Daubert* and its progeny have been the subject of nearly 2,800 published opinions and 3,300 law review articles.”).

1641. *See, e.g.*, *City of Tuscaloosa v. Harcros Chem., Inc.*, 158 F.3d 548, 566 n.25 (11th Cir. 1998) (factors other than “testability” may have more bearing on methodologies employed by economic and statistical experts).

dence that fell under the rubric of “technological or other specialized knowledge.”<sup>1642</sup> The possible fields of such nonscientific evidence were simply considered too diverse. As a practical matter, as it relates to testimony to which the *Daubert* factors do not easily apply, the selection of criteria appropriate to judge the reliability of a particular type of expert testimony will be a coordinated effort between the judge and the parties. Even nonscientific testimony, however, must be measured against the standards reflected in the amendments to Rule 702. Thus, underlying any *Daubert* inquiry is the manner or method by which the court determines first the appropriate criteria necessary to fulfill its gatekeeping role, and then how the testimony is judged against those criteria. Commentators have expressed varying views on when, and how, *Daubert*’s gatekeeping obligation is triggered.<sup>1643</sup>

The *Reference Manual on Scientific Evidence* provides a good starting place for determining how to structure an inquiry into the process and methods used by an expert in order to establish whether the testimony or evidence is sufficiently reliable to be admitted.<sup>1644</sup> In addition, the committee note to amended Rule 702 details additional factors beyond the *Daubert* criteria that may be relevant in making reliability determinations in various types of cases. Below are some examples:

- whether the expert is proposing to testify about matters growing naturally and directly out of research independent of litigation (a matter discussed immediately above);

1642. See Robert J. Goodwin, *Roadblocks to Achieving “Reliability” for Non-Scientific Expert Testimony: A Response to Professor Edward J. Imwinkelried*, 30 *Cumb. L. Rev.* 215 (1999–2000) (asserting that cases involving hard sciences are more likely to include testability as factor, and that soft science or nonscientific evidence might not be subject to similar constraints); see also *McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1043 (2d Cir. 1995) (concluding that the consulting engineer’s “background and practical experience qualif[ied] as ‘specialized knowledge’” and that expert had practical experience and necessary academic training to reach conclusion).

1643. See, e.g., Andrew I. Gavil, *Defining Reliable Forensic Economics in the Post-Daubert/Kumho Tire Era: Case Studies from Antitrust*, 57 *Wash. & Lee L. Rev.* 831, 849 (2000) (The party seeking exclusion bears the initial burden of demonstrating the unreliability of the evidence, presumably utilizing *Daubert*, which would then shift the burden to the proponent to provide a “defense” of the testimony by proffering alternative factors as the “right” criteria and that his or her expert’s testimony is reliable when judged by that criteria.). See also *Blevins v. New Holland N.A., Inc.*, 128 F. Supp. 2d 952, 956–57 (W.D. Va. 2001) (noting that all of the *Daubert* factors will not apply in every case and finding expert’s testimony admissible based on all the circumstances).

1644. *Expert Evidence*, *supra* note 1545, at 39–66.

- whether the expert has engaged in improper extrapolation (i.e., drawing an unsupported conclusion from an accepted premise);<sup>1645</sup>
- whether the expert took into account possible alternative explanations (for example, an important element of differential diagnosis is that the expert take into account other potential causes);<sup>1646</sup>
- whether the expert is being as careful as he or she would be in regular professional work, outside of paid litigation consulting; and
- whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Courts also have considered

- whether the expert relied on anecdotal evidence, basing an opinion solely on personal experience with patients or a few case studies—this issue can arise when considering expert testimony based on clinical medical judgment or differential diagnosis;<sup>1647</sup>
- whether there is a temporal relationship between the exposure to the event and the subsequent injury—this factor is premised on requiring a conclusion as to causation to be based on more than just temporal proximity;<sup>1648</sup>

1645. See, e.g., *Black v. Food Lion, Inc.*, 171 F.3d 308, 313–14 (5th Cir. 1999) (expert opinion based in “fallacy of post-hoc propter-hoc reasoning” was unsupported by specific reliable methodology and contradicted by general level of medical knowledge); *Moore v. Ashland Chem., Inc.*, 151 F.3d 269, 279 (5th Cir. 1998) (expert testimony would be excluded where expert drew unsupported extrapolations).

1646. *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 265 (4th Cir. 1999) (alternative causes affect weight, not admissibility of the testimony unless the expert cannot explain why she concluded that a proffered alternative was not the sole cause). See also *Fed. R. Evid. 702* committee note; *Clair v. Burlington N. R.R. Co.*, 29 F.3d 499, 502 (9th Cir. 1994) (expert opinion excluded for failing to “rule out other possible causes for” plaintiffs’ injuries); *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 764–65 (3d Cir. 1994) (expert opinion based on differential diagnosis not inadmissible where it failed to account for all possible causes, as long as the expert considered alternative causes and can explain the soundness of the opinion in the face of alternative causes proposed by the opposing party).

1647. See, e.g., *Antoine-Tubbs v. Local 513*, 50 F. Supp. 2d 601, 609–11 (N.D. Tex. 1998) (testimony of physician practicing less than two years, who had seen only one case of preeclampsia and had not seen medical literature or studies on whether work-related stress can cause illness, was unreliable and not grounded in traditional clinical medical knowledge).

1648. See, e.g., *Mattis v. Carlon Elec. Prods.*, 114 F. Supp. 2d 888, 894 (D.S.D. 2000) (“[O]pinion based solely on the temporal relationship between exposure and the onset of symptoms is not generally enough to qualify as scientifically valid under *Daubert*.”). Although temporal proximity can be considered, there also must be some established connection between the injury-producing substance and illness. Temporal proximity can then be used to confirm the causal connection but, although there are some exceptions, it is generally considered unreliable

- the relationship of the technique used by the expert to established methodologies;<sup>1649</sup>
- the qualifications of the expert witness to use the methodology;<sup>1650</sup> and
- the nonlitigation uses to which the method has been put.<sup>1651</sup>

*Is there consistency within the circuit, as well as the district, on the factors used to assess similar types of expert evidence?* One of the questions surrounding *Daubert* inquiries is whether there is a need to ensure consistency and predictability in the factors applied to different types of expert evidence, both in the district and within the circuit. *Kumho Tire's* admonition regarding the deference afforded trial court's determination as to the appropriate factors to apply in a given case could result in one court within a district applying different factors than another court applies to similar expert testimony.<sup>1652</sup> Variation across the circuit is also likely.

### 23.32 The Initial Conference

The probability that expert testimony will play a prominent role in a case often is apparent from the face of the complaint. Where the expert evidence promises to be protracted or controversial, or to address novel subjects that will challenge the comprehension of the judge and the jury, management of expert testimony should be part of a coordinated case-management strategy. The initial conference presents a good opportunity to explore preliminarily the nature and extent of the need for judicial management of expert evidence in

to explain the result in a particular case. *Moore*, 151 F.3d at 278 (“In the absence of an established scientific connection . . . or compelling circumstances . . . the temporal connection between exposure to chemicals and an onset of symptoms, standing alone, it is entitled to little weight in determining causation.”). *But see Westberry*, 178 F.3d at 265 (“[D]epending on the circumstances, a temporal relationship between exposure to a substance and the onset of a disease or a worsening of symptoms can provide compelling evidence of causation.”).

1649. *Oddi v. Ford Motor Co.*, 234 F.3d 136, 145 (3d Cir. 2000) and *In re TMI Litig.*, 193 F.3d 613, 665 (3d Cir. 1999) (both cases citing *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 742 (3d Cir. 1994)). See *Braun v. Lorillard, Inc.*, 84 F.3d 230, 234–35 (7th Cir. 1996) (excluding testimony of expert with no previous experience testing human or animal tissue for asbestos fibers before being hired by plaintiff and who, to test such tissues, used test method that was designed for use on building materials).

1650. *In re TMI Litig.*, 193 F.3d at 665. “However, ‘the level of expertise may affect the reliability of the expert’s opinion.’” *Id.* at 664 (quoting *In re Paoli*, 35 F.3d at 741).

1651. *In re TMI Litig.*, 193 F.3d at 665.

1652. Justice Breyer emphasized that “[t]oo much depends on the particular circumstances of the particular case at issue” and declined to identify factors that would be applicable to all cases or “subsets of cases categorized by category of expert or by kind of evidence.” 526 U.S. 137, 150 (1999).

the case.<sup>1653</sup> Areas that can be explored, either at the initial conference or, depending on the complexity of the litigation, in subsequent case-management conferences once the issues have been more refined, include the kinds of evidence likely to be offered, the technical and scientific subject matter, and anticipated areas of controversy. The court should inquire into whether the science involved is novel and still in development, or whether the scientific issues for which expert testimony will be offered are well settled.<sup>1654</sup> To the extent the conference discloses that a particular scientific issue is relevant but not in dispute, such as whether exposure to asbestos is capable of causing lung cancer and mesothelioma (i.e., general causation), the court should encourage the parties to stipulate to its admission. (Judges take different positions on use of collateral estoppel to preclude relitigation of facts based on scientific evidence.<sup>1655</sup>)

One approach to handling the issue of expert evidence at the initial pretrial conference is to advise counsel in advance to be prepared to respond to inquiries into the nature of the claims and defenses together with any underlying assumptions, into the nature of expert evidence expected to be offered, and, if known, into the areas of disagreement among experts.<sup>1656</sup> Additional areas that may be appropriate for discussion during the initial conference, depending on the complexity of the case, include the following:

1653. The committee note states that the rule is intended to “clarify that in advance of trial the court may address the need for, and possible limitations on, the use of expert testimony . . . .” Fed. R. Civ. P. 16(c)(4) committee note. *See also* Med. Consultants Network, Inc. v. Cantor & Johnson, P.C., No. CIV.A. 99-0528, 2001 WL 10788 \*3 (E.D. Pa. Dec. 27, 2000) (expert accounting testimony unnecessary where all accountant did was multiply each employee’s hours by his or her hourly rate, which does not require accounting expertise).

1654. The court may also want to determine whether the scientific issues in the case before it are also pending in other litigation.

1655. *Compare* Ezagui v. Dow Chem. Corp., 598 F.2d 727, 732–33 (2d Cir. 1979) (estopping litigation on the issue that vaccination package inserts inadequately apprised doctors of known hazards), *with* Hardy v. Johns-Manville Sales Corp., 681 F.2d 334, 341–48 (5th Cir. 1982) (disallowing collateral estoppel to preclude relitigation of the fact that asbestos products are unreasonably dangerous and that asbestos dust causes mesothelioma). For an interesting discussion of the application of collateral estoppel, see *Bertrand v. Johns-Manville Sales Corp.*, 529 F. Supp. 539, 544–45 (D. Minn. 1982) (holding it is “clear” that the court should collaterally estop litigation on the specific fact that “asbestos dust can cause diseases such as asbestosis and mesothelioma . . . .” because “[t]his proposition is so firmly entrenched in the medical and legal literature that it is not subject to serious dispute,” but declining to apply collateral estoppel to the more disputable use of the “state of the art” defense and the claim that asbestos is “unreasonably dangerous”).

1656. The object of this exercise should be education, not argument; all participants should be given an opportunity to learn about the case. By infusing the conference with a spirit of inquiry, the court can set the tone for the litigation, encouraging clarity, candor, and civility.

- *Do the parties anticipate retaining testifying experts?* In cases where settlement is likely, the parties may wish to defer retaining experts and thereby avoid unnecessary expense.<sup>1657</sup> Where the case can make progress toward settlement without early identification of experts (for example, if nonexpert discovery could provide a basis for settlement), consider deferring expert evidence issues for some period.<sup>1658</sup> In more complex cases, the resolution of a conflict over expert testimony may be dispositive and deferral of expert discovery might impede, rather than facilitate, resolution of the case. In cases where discovery is proceeding in phases, consider discussing with the parties the feasibility of identifying experts in a similarly staged fashion, or whether the case would best be served by delaying all expert discovery until all other discovery has been completed.
- *Should there be a limit on the number of expert witnesses?* Some judges limit parties to one expert per scientific discipline. Ordinarily this is sufficient; however, as a science increases in sophistication, subspecialties develop. In addition, experts in a single specialty may bring to bear a variety of experiences or perspectives relevant to the case. If a party anticipates offering testimony from more than one expert in what appears to be a distinct discipline, it is advisable for the court to inquire whether multiple experts are warranted. Discourage efforts by attorneys to try to bolster the weight of their case by cumulative expert testimony, even where multiple parties are represented on one or both sides.<sup>1659</sup> Consider whether to impose a set limit on the number of expert witnesses that may be offered by a party, subject to modification as the case develops should it appear that multiple experts are necessary.
- *When should the parties exchange experts' reports?* Federal Rule of Civil Procedure 26(a)(2) provides that the timing and sequencing of expert disclosures is at the discretion of the trial court. The rule generally requires that expert disclosures be made not less than ninety days before

1657. Deferral may be inappropriate, however, in class-action contexts.

1658. On the other hand, deferring identification of experts until the eve of trial can be costly. In a medical malpractice case, for example, expert evidence is essential to resolve the threshold issue whether the defendant conformed to the applicable standard of practice; without such evidence, the plaintiff has no case.

1659. *In re Factor VIII or IX Concentrate Blood Prods. Litig.*, 169 F.R.D. 632, 637 (N.D. Ill. 1996) (transferee court in multidistrict litigation has authority to limit the number of expert witnesses who may be called at trial). See *supra* section 23.26 for a discussion of *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).

trial or at such other time as the judge may order.<sup>1660</sup> The parties are to make detailed written disclosures with respect to each expert retained to testify at trial, including a complete statement of all opinions to be expressed, the basis and reasons supporting the opinions, and the data or other information considered by the witness in forming the opinions.<sup>1661</sup> Although experts' reports obviously will be helpful in identifying issues, financial considerations generally mandate that they not be required until issues have been narrowed to the greatest extent possible. In some cases, however, consider scheduling disclosures in accordance with the sequence in which issues are addressed. For example, in patent cases, expert disclosures relating to claims construction<sup>1662</sup> may be called for early in the case, whereas disclosures relating to infringement and damages may be deferred. In toxic tort cases, submission of expert reports may not be appropriate until factual discovery has been completed. It is best to discuss at the conference when and in what sequence these disclosures should be made.

- *Is the case appropriate for referral to a magistrate judge?* Many district judges routinely refer the pretrial management of civil cases to magistrate judges.<sup>1663</sup> Others believe that there are advantages in having the judge who will try the case manage its pretrial stages to promote familiarity with the issues and avoid delay caused by appeals of the magistrate judge's rulings.<sup>1664</sup>
- *Should the court appoint a special master or an outside expert?*<sup>1665</sup> In many cases it may be helpful for the court to be educated at the outset about the science or technology involved, particularly where the expert evidence will involve science and technology that use language foreign to the uninitiated. Arrangements for initial education can be made pursuant to court order or by stipulation between the parties. In addition, the court should establish whether any tutorials should be

1660. Fed. R. Civ. P. 26(a)(2)(B).

1661. *Id.* Usually the party bearing the burden at trial should make the first disclosure, and the other party should respond.

1662. *See infra* section 33.22; *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).

1663. Rule 16(c)(8) makes the referral of matters to a magistrate judge or a special master a subject for consideration at the initial pretrial conference.

1664. *See supra* section 11.53.

1665. The American Association for the Advancement of Science's "Scientific Freedom, Responsibility and Law" program launched a demonstration program, "Court-Appointed Scientific Experts," to help federal judges locate qualified individuals to serve as court-appointed experts. More information is available at <http://www.aaas.org/spp/case/case.htm> (last visited Nov. 10, 2003).

videotaped or transcribed for review by the judge as the litigation proceeds. If there is a need for judicial education, consider raising the matter at the initial conference and discussing the available options with the parties (e.g., the use of tutorials or neutral court-appointed advisors).<sup>1666</sup> The techniques discussed by Justice Breyer in his concurring opinion in *Joiner* may be appropriate in some cases to help the court meet its gatekeeping obligations: using court-appointed experts, special masters, and specially trained law clerks.<sup>1667</sup> These appointed experts could be asked to assess the methodology used by the testifying experts and whether the conclusion reached is supported by that methodology, short of any inquiry into the validity or “correctness” of that conclusion. The primary focus is on determining what mechanisms would assist the court in its gatekeeping function under Rule 702.<sup>1668</sup> The utility of outside advisors or experts depends on their ability to maintain objectivity and neutrality in their presentation. Among other things, the elements of the advisor’s relationship to the judge should be defined, such as prohibitions on *ex parte* communications, if any, and limits on discovery. Always consider the costs and additional time associated with these procedures.<sup>1669</sup> In addition to this discussion, more information can be found at sections 11.51–11.54 and in several Federal Judicial Center publications on the use of special masters and court-appointed experts.<sup>1670</sup>

1666. For a discussion of considerations involved in the appointment of special masters and neutral expert witnesses, see *supra* section 11.5.

1667. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 148–50 (1997). For excellent discussions of the issue, see also Ellen E. Deason, *Court-Appointed Expert Witnesses: Scientific Positivism Meets Bias and Deference*, 77 *Or. L. Rev.* 59 (1998); Karen Butler Reisinger, Note, *Court-Appointed Expert Panels: A Comparison of Two Models*, 32 *Ind. L. Rev.* 225 (1998); Joe S. Cecil & Thomas E. Willging, *Accepting Daubert’s Invitation: Defining a Role for Court-Appointed Experts in Assessing Scientific Validity*, 43 *Emory L.J.* 995 (1994).

1668. See, e.g., *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1243 (10th Cir. 2000) (“The purpose of *Daubert* gatekeeping function is not to measure every expert by an inflexible set of criteria . . . .”); *Hall v. Baxter Healthcare*, 947 F. Supp. 1387, 1392–93 (D. Or. 1996) (In view of the complicated scientific and medical issues involved, the court appointed independent advisors in “epidemiology, immunology/toxicology, rheumatology, and chemistry” to assist in “evaluating the reliability and relevance of the scientific evidence.”).

1669. Expert compensation should also be discussed and appropriate fee-sharing arrangements made.

1670. FJC Study, *Neutral Science Panels*, *supra* note 1059; FJC Study, *Special Masters*, *supra* note 704; Cecil & Willging, *supra* note 1435.

### 23.33 Disclosures

Federal Rule of Civil Procedure 26(a)(2) sets out required disclosures for parties presenting expert testimony and requires disclosure not only of the data and materials on which the expert relied but also those that the expert “considered . . . in forming the opinions.”<sup>1671</sup> Parties need adequate time for experts to be retained and to prepare their reports before the required disclosures are due. The court should impress on counsel the critical importance of Rule 26(a)(2)(B) requirements to the judge’s gatekeeping obligations, and the seriousness of the disclosure requirement and any accompanying deadlines.<sup>1672</sup> Counsel should be informed that opinions and supporting facts not included in the disclosure may be excluded at trial, even if they were testified to on deposition.<sup>1673</sup> The judge should remind the parties that destruction of materials furnished to or produced by an expert in the course of the litigation (such as test results, correspondence, or draft memoranda) may lead to sanctions<sup>1674</sup> and that an expert’s disclosure must be supplemented if it turns out that any information disclosed was, or has become, incomplete or incorrect.<sup>1675</sup> Failure of a party to comply with the disclosure requirements of Rule 26(a)(2) may

1671. Fed. R. Civ. P. 26(a)(2)(B). Litigants may therefore no longer assume that materials furnished to an expert by counsel or the party will be protected from discovery. Fed. R. Civ. P. 26(a)(2)(B) committee note. Courts are divided on the extent to which they require disclosure of attorney work product provided to a testifying expert. *Compare* *Karn v. Ingersoll-Rand Co.*, 168 F.R.D. 633, 639 (N.D. Ind. 1996) (holding that work-product protection does not apply to documents related to the subject matter of litigation provided by counsel to testifying experts), *with* *Magee v. Paul Revere Life Ins. Co.*, 172 F.R.D. 627, 642 (E.D.N.Y. 1997) (holding that “data or other information” considered by the expert, which is subject to disclosure, includes only factual materials and not core attorney work product considered by the expert).

1672. *See, e.g.*, *Dura Automotive Sys. v. CTS Corp.*, 285 F.3d 609 (7th Cir. 2002) (affirming trial court’s exclusion of untimely filed disclosure of additional expert witnesses); *Nutrasweet Co. v. X-L Eng’g Co.*, 227 F.3d 776, 786 (7th Cir. 2000) (district court did not abuse its discretion in excluding expert testimony on supplemental report where party failed to timely file the report under Rule 26); *In re Hanford Nuclear Reservation Litig.*, No. CY-91-3015, 1998 WL 775340, \*172–\*73 (E.D. Wash. Aug. 21, 1998) (expert who discovered flaw in model should not change model to conform to estimate after deadline for submission of expert reports).

1673. *Santiago v. Furniture Chauffeurs, Piano Movers, Packers & Handlers Local 705*, No. 99C 2886G, 2001 WL 11058, \*5 (N.D. Ill. 2001) (damage expert barred from testifying on lost goodwill where report was limited to lost profits).

1674. *Schmid v. Milwaukee Elec. Tool Corp.*, 13 F.3d 76, 81 (3d Cir. 1994) (sanctions for spoliation of evidence arising from inspection by an expert must be commensurate with the fault and prejudice arising in the case).

1675. Fed. R. Civ. P. 26(e)(1).

lead to exclusion of the expert's testimony at trial, unless such failure is harmless.<sup>1676</sup>

Once the disclosures are in hand, a follow-up Rule 16 conference may help further identify and narrow disputed issues. The court should attempt to identify the bases for any disagreements that disclosure reveals between experts on critical points. Frequently, differences between experts rest on tacit assumptions, such as choices among policies, selection of statistical data or databases, judgments about the level of reasonable risk, or the existence of particular facts. In addition to narrowing the substantive issues, consider the need to address the process by which the expert reached his or her conclusions or the purpose for which the testimony is being offered. The conclusions of a witness offering scientific testimony generally will be the product of multistep reasoning. By breaking down the process, the judge may be able to narrow disputes relating to the testimony to a particular step in the process, and thereby facilitate a resolution.<sup>1677</sup>

1676. Rule 37(c)(1) provides: "A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) or to amend a prior response to discovery as required by Rule 26(e)(2) is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed." *See, e.g.,* S.W. Whey, Inc. v. Nutrition 101, Inc., 126 F. Supp. 2d 1143, 1148–49 (C.D. Ill. 2001) (declining to impose sanction of exclusion under Rule 37 for failure to timely disclose expert report where exclusion would result in large monetary loss that was disproportionate to circumstances surrounding violation and where failure to comply was harmless); *In re* Brand Name Prescription Drugs Antitrust Litig., MDL No. 997, Docket No. 94C897, 2001 WL 30454 (N.D. Ill. Jan. 11, 2001) (precluding plaintiffs from introducing expert evidence of any kind under Rule 37 in light of failure to comply with Rule 26); *Bastys v. Rothschild*, No. 97 Civ. 5154, 2000 WL 1810107, \*26–\*27 (S.D.N.Y. 2000) (finding plaintiff's failure to identify and disclose expert warranted sanction under Rule 37 striking affidavits of plaintiff's experts submitted in response to defendant's motion). *See also* *Pride v. BIC Corp.*, 218 F.3d 566, 578 (6th Cir. 2000) ("District courts have broad discretion to exclude untimely disclosed expert-witness testimony."); *Kostantopoulos v. Westvaco Corp.*, 112 F.3d 710, 719 (3d Cir. 1997) (expert testimony would be excluded where there was a violation of pretrial discovery order); *Coastal Fuels, Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 202–03 (1st Cir. 1996) (finding no abuse of discretion in district court's exclusion of expert testimony in price discrimination and monopolization case where party failed to produce expert report in accordance with the court's scheduling order). Appellate courts seem cautious about precluding expert testimony where such testimony is an essential element of the case. *See* *Freeland v. Amigo*, 103 F.3d 1271, 1276 (6th Cir. 1997) (district court abused its discretion by precluding expert testimony in a medical malpractice case as a sanction for failing to comply with a pretrial order setting the deadline for discovery where such preclusion would amount to a dismissal of the case).

1677. For example, proffered survey research may be subject to a hearsay objection. *See* Shari Seidman Diamond, *Reference Guide on Survey Research* [hereinafter *Survey Research*], *in* Reference Manual on Scientific Evidence 233 n.12 (Federal Judicial Center, 2d ed. 2000). Thus, it

The Federal Judicial Center's *Reference Manual on Scientific Evidence* includes subject-specific reference guides to assist the court in narrowing issues and understanding the applicable scientific criteria within the context of scientific, as opposed to legal, conclusions.<sup>1678</sup> The *Reference Guide on Survey Research*, for example, facilitates narrowing a dispute over proffered evidence by breaking the inquiry into a series of questions about the following topics: the purpose of the survey; identification of the appropriate population and sample frame; the structure of the questions; the recording of data; and reporting.<sup>1679</sup> The *Reference Guide on DNA Evidence* summarizes scientific principles that underlie DNA testing; basic methods used in such testing; characteristics of DNA samples necessary for adequate testing; laboratory standards necessary for reliable analysis; interpretation of results, including the likelihood of a coincidental match; and emerging applications of DNA testing in forensic settings.<sup>1680</sup> Other reference guides in the *Reference Manual on Scientific Evidence* deal with statistics,<sup>1681</sup> multiple regression,<sup>1682</sup> estimation of

is critical to determine whether the purpose of the particular survey is to prove the truth of the matter asserted or only the fact of its assertion.

1678. The reference guides are not primers on substantive issues of scientific proof or normative statements on the merits of scientific proof. See *Preface*, in *Reference Manual on Scientific Evidence* v–vii (Federal Judicial Center, 2d ed. 2000).

1679. Each of these issues is then broken into a series of suggested questions that will enable the judge to explore the methodology and reasoning underlying the expert's opinion. For example, the questions concerning identification of the appropriate population and sample frame are as follows: "Was an appropriate universe or population identified?"; "Did the sampling frame approximate the population?"; "How was the sample selected to approximate the relevant characteristics of the population?"; "Was the level of nonresponse sufficient to raise questions about the representativeness of the sample?"; "What procedures were used to reduce the likelihood of a biased sample?"; and "What precautions were taken to ensure that only qualified respondents were included in the survey?" *Survey Research*, *supra* note 1677, at 239–48.

1680. David H. Kaye & George F. Sensabaugh, Jr., *Reference Guide on DNA Testing*, in *Reference Manual on Scientific Evidence* 485–576 (Federal Judicial Center, 2d ed. 2000).

1681. The guide identifies three major issues in the field of statistics: the design of the data-collection process; the extraction and presentation of relevant data; and the drawing of appropriate inferences. David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in *Reference Manual on Scientific Evidence* 85 (Federal Judicial Center, 2d ed. 2000).

1682. This section deals with issues concerning the analysis of data bearing on the relationship of two or more variables, the presentation of such evidence, the research design, and the interpretation of the regression results. Daniel L. Rubinfeld, *Reference Guide on Multiple Regression*, in *Reference Manual on Scientific Evidence* 179–227 (Federal Judicial Center, 2d ed. 2000).

economic losses in damages awards,<sup>1683</sup> epidemiology,<sup>1684</sup> medical testimony,<sup>1685</sup> and engineering practice and methods.<sup>1686</sup>

These reference guides, although limited in scope, suggest analytical approaches and opportunities that judges can use in identifying issues. For example, following the general outline of the reference guides, a judge could ask counsel for both sides to exchange and provide to the court a step-by-step outline of the experts' reasoning processes for use at the Rule 16 conference at which issue definition and narrowing is discussed. In addition, after the exchange of written statements of expert opinions (required by Federal Rule of Civil Procedure 26(a)(2)), the judge could direct each side to identify each part of the opposing expert's opinion that is disputed and to state the specific basis for the dispute. To facilitate later *Daubert* inquiries, consider having the parties submit a written critique of the reasoning and methodology utilized by opposing experts prior to beginning expert depositions. Any supplemental submissions necessary to respond to the critique offered by the opposing party could then be disclosed, reducing the need for a second round of depositions that normally would be sought when supplemental reports are disclosed after depositions have occurred.

1683. This guide identifies issues concerning expert qualification, characterization of the harmful event, measurement of loss of earnings before trial and future loss, prejudgment interest, and related issues generally and as they arise in particular kinds of litigation. Robert E. Hall & Victoria E. Lazear, *Reference Guide on Estimation of Economic Losses in Damages Awards*, in *Reference Manual on Scientific Evidence* 277–332 (Federal Judicial Center, 2d ed. 2000).

1684. This guide identifies issues concerning the appropriateness of the research design, the definition and selection of the research population, the measurement of exposure to the putative agent, the measurement of the association between exposure and the disease, and the assessment of the causal association between exposure and the disease. *Epidemiology*, *supra* note 1050, at 333–400.

1685. This section describes the various roles of physicians, the kinds of information that physicians consider, and how this information is used in reaching a diagnosis and attributing causation. *Medical Testimony*, *supra* note 1051, at 439–84.

1686. This section describes the nature of engineering, including the issues that must be considered in developing a design, the evolution of subsequent design modifications, and the manner in which failure influences subsequent design. Henry Petroski, *Reference Guide on Engineering Practice and Methods*, in *Reference Manual on Scientific Evidence* 577–624 (Federal Judicial Center, 2d ed. 2000).

## 23.34 Discovery Control and Management

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### 23.341 Discovery of Testifying Experts

Parties may depose experts who have been identified as trial witnesses under Federal Rule of Civil Procedure 26(b)(4)(A), but only after those experts make their disclosure required under Rule 26(a)(2)(B).<sup>1687</sup> Although the judge may relieve the parties of the obligation to exchange these disclosures, it will rarely be advisable to do so; it is also inadvisable to permit the parties to stipulate around the obligation, for a number of reasons:

- Preparation and exchange of the expert disclosures compels parties to focus on the issues and the evidence supporting or refuting their positions. Moreover, the cost and burden of preparing disclosures forces parties to consider whether to designate a particular person as an expert witness and may discourage or limit the use of excessive numbers of experts.
- Exchange of the disclosures may lead the parties to dispense with the opposing experts' depositions. Some attorneys believe that depositions tend to educate the expert more than the attorney when disclosures have been made as required by the rule.
- The disclosures will inform the consideration of any limitations and restrictions on expert evidence.
- The disclosures will compel an expert's proponent to be prepared for trial. Because the proponent must disclose all opinions to be expressed and their bases, surprise at trial will be eliminated, the opponent's trial

<sup>1687</sup> Fed. R. Civ. P. 26(b)(4)(A). The report under Rule 26(a)(2)(B) is presumptively required of any "witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony." Fed. R. Civ. P. 26(a)(2)(B). This would normally exclude a treating physician, but the rule extends to other areas of expertise. *Riddick v. Wash. Hosp. Ctr.*, 183 F.R.D. 327, 330 (D.D.C. 1998). Courts have looked to the nature of the testimony rather than to the employment status of the witness to determine if such a report is required. *Sullivan v. Glock, Inc.*, 175 F.R.D. 497, 500 (D. Md. 1997). The court may by order, or the parties may by stipulation, exempt a case from this requirement. Rule 26(a)(2)(B) also gives the parties the right to modify, without court order, the procedures or limitations governing discovery, except for stipulations that would interfere with any time set for completion of discovery, hearing of a motion, or trial.

preparation will be improved, and cross-examination will be more effective and efficient.

- The disclosures will aid in identifying evidentiary issues early so that they can be resolved in advance of trial.
- The disclosures may encourage early settlement.

### 23.342 Discovery of Nontestifying Experts

Under Federal Rule of Civil Procedure 26(b)(4)(B), the court may permit discovery by interrogatory or deposition of consulting nontestifying experts “upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.”<sup>1688</sup> Exceptional circumstances may exist where a party has conducted destructive testing,<sup>1689</sup> the results of which may be material, or where the opponent has retained all available qualified experts.<sup>1690</sup> In the absence of such circumstances, a party should not be penalized for having sought expert assistance early in the litigation, and its opponent should not benefit from the party’s diligence.<sup>1691</sup>

### 23.343 Discovery of Nonretained Experts

Parties may seek the opinions and expertise of persons not retained in the litigation. However, Federal Rule of Civil Procedure 45(c)(3)(B)(ii) authorizes the court to quash a subpoena requiring “disclosure of an unretained expert’s

<sup>1688</sup>. See generally *Spearman Indus., Inc. v. St. Paul Fire & Marine Ins. Co.*, 128 F. Supp. 2d 1148, 1151–52 (N.D. Ill. 2001) (“[C]ourts have consistently held that a party may not discover the identity of, facts know by, or opinions held by an informally consulted expert.”).

<sup>1689</sup>. Deterioration in the evidence may occur through other means than destructive testing. See *Delacastor, Inc. v. Vail Assoc.*, 108 F.R.D. 405 (D. Colo. 1985) (expert who observed site the day after a mudslide was subject to discovery).

<sup>1690</sup>. See *Spearman Indus.*, 128 F. Supp. 2d at 1152 (restating and applying the “destructive testing” and “available experts” tests); *Disidore v. Mail Contractors, Inc.*, 196 F.R.D. 410, 417 (D. Kan. 2000) (“Plaintiff has failed to show exceptional circumstances justifying discovery of Defendant’s non-testifying expert.”); *Bank Brussels Lambert v. Chase Manhattan Bank, N.A.*, 175 F.R.D. 34, 44 (S.D.N.Y. 1997) (“Courts and commentators have commonly identified two situations where the exceptional circumstances standard has been met.”); *Queen’s Univ. at Kingston v. Kinedyne Corp.*, 161 F.R.D. 443, 447 (D. Kan. 1995) (parties have to meet heavy burden to demonstrate existence of exceptional circumstances (quoting *Ager v. Jane Stormont Hosp. & Training Sch. for Nurses*, 622 F.2d 496, 502 (10th Cir. 1980))); exceptional circumstances have also been found to exist when the costs of replacing the testimony are “judicially prohibitive.” *Bank Brussels Lambert*, 175 F.R.D. at 44.

<sup>1691</sup>. See *Spearman Indus.*, 128 F. Supp. 2d at 1152 (rule regarding nontestifying experts designed to protect party from having its experts’ testimony used by the opponent).

opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party."<sup>1692</sup> In ruling on such a motion to quash, consider whether the party seeking discovery has shown a substantial need that cannot be otherwise met without undue hardship, whether party will reasonably compensate the subpoenaed person, and whether to impose appropriate conditions on discovery.<sup>1693</sup>

### 23.344 Discovery of Court-Appointed Experts

Federal Rule of Evidence 706 contemplates that the deposition of a court-appointed expert witness may be taken by any party. Technical advisors or other nontestifying experts appointed under the inherent authority of the courts are not necessarily subject to the discovery requirements of Rule 706, permitting the court greater discretion in structuring the terms and conditions for access to such experts for discovery.<sup>1694</sup> The order appointing the expert should discuss the extent to which the parties may seek such discovery from the expert.

### 23.345 Use of Videotaped Depositions

Videotaping expert depositions is particularly appropriate for several reasons: It preserves the testimony of an expert who may be unavailable for trial or whose testimony may be used in more than one trial or in different

<sup>1692</sup>. Fed. R. Civ. P. 45(c)(3)(B)(ii). See also *Spearman Indus.*, 128 F. Supp. 2d at 1152 (exceptional-circumstances standard similarly applies to discovery of notes, reports, and records of nontestifying expert developed in anticipation of litigation).

<sup>1693</sup>. The committee notes on Rule 45(c)(3)(B)(ii) point out that this provision was intended to protect the intellectual property of nonretained experts:

The rule establishes the right of such persons to withhold their expertise, at least unless the party seeking it makes the kind of showing required for a conditional denial of a motion to quash...; that requirement is the same as that necessary to secure work product under Rule 26(b)(3) and gives assurance of reasonable compensation.

For a discussion of issues arising with a subpoena for research data from unretained scholars, see *In re American Tobacco Co.*, 880 F.2d 1520, 1527–30 (2d Cir. 1989); see also Paul D. Carrington & Traci L. Jones, *Reluctant Experts*, 59 Law & Contemp. Probs. 51 (1996); Richard L. Marcus, *Discovery Along the Litigation/Science Interface*, 57 Brook. L. Rev. 381 (1991); Mark Labaton, Note, *Discovery and Testimony of Unretained Experts: Creating a Clear and Equitable Standard to Govern Compliance with Subpoenas*, 1987 Duke L.J. 140.

<sup>1694</sup>. *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387, 1393 n.8 (D. Or. 1996) (“To keep the advisors independent of any ongoing proceedings, I appointed them under FRE 104, not FRE 706, which requires court-appointed experts, in effect, to act as additional witnesses subject to depositions and testifying at trial.”).

phases of a single trial; it also permits demonstrations (for example, of tests or of large machinery not feasible in the courtroom); and it provides a more lively and interesting presentation than reading a transcript at trial. Federal Rule of Civil Procedure 30(b)(2) permits a party to videotape a deposition unless otherwise ordered by the court. The judge should establish in advance the ground rules for videotaping, such as the placement and operation of the camera, off-camera breaks, lighting, procedures for objections, and review in advance of use at trial.<sup>1695</sup>

### 23.35 Motion Practice

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Challenges to expert testimony are likely.<sup>1696</sup> The court can take several approaches to them. Rule 26 requires the disclosure of not only the full opinions to be offered by certain experts, but also the bases for the opinions.<sup>1697</sup> The right to depose experts further allows for the exploration by the parties of the bases for opinion, thereby allowing the parties to identify weaknesses in the methodologies employed in order to raise objections to the admissibility of the testimony or evidence. Consider making some preliminary determinations during the initial pretrial conference, not just on the timing of expert discovery and disclosures, but also on appropriate deadlines for any challenges to the reliability and credibility of proposed testimony once disclosures are made. It is helpful to decide objections to expert evidence relating to admissibility, qualifications of a witness, or existence of a privilege in advance of trial whenever possible.<sup>1698</sup> Exclusion of evidence may in some cases remove an essential element of a party's proof, providing the basis for summary judg-

1695. See William W Schwarzer et al., *Civil Discovery and Mandatory Disclosure: A Guide to Efficient Practice* 3-15 to 3-17, app. 79 (2d ed. 1994).

1696. A Federal Judicial Center survey determined that the admissibility of expert testimony was not disputed in 46% of the reported cases. *FJC Survey on Expert Testimony*, *supra* note 1545, at 4.

1697. See Fed. R. Civ. P. 26(a)(2).

1698. See *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–93 (1993) (Before admitting expert testimony, the trial court must make a “preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid.”).

ment.<sup>1699</sup> In other cases, the ruling on an objection may permit the proponent to cure a technical deficiency before trial, such as clarifying an expert's qualifications.

### 23.351 Initiating a *Daubert* Inquiry

Rule 702 directs a court faced with a proffer of expert testimony to determine preliminarily whether the testimony is reliable and scientifically valid. Most courts agree that these gatekeeping obligations do not require a formal Federal Rule of Evidence 104(a) hearing.<sup>1700</sup> Rule 702 requires only that the determination as to the reliability of expert testimony be made prior to its admission into evidence. Some courts have required expert challenges to be made early in the litigation. Failure to raise an objection could be considered a waiver, although *Daubert* suggests the court may still have an obligation to ensure the reliability of the testimony prior to its admission, even in the absence of a formal challenge. At least one court permitted a party whose expert witness was stricken following an early *Daubert* hearing to hire a new expert, although other judges disagree with that approach.<sup>1701</sup> *Kumho Tire* noted that a trial court could “avoid unnecessary ‘reliability’ proceedings in ordinary cases where the reliability of an expert’s methods is properly taken for granted,”<sup>1702</sup> which suggests that the trial court is to engage in at least a cursory assessment, however minimal, to ensure reliability.<sup>1703</sup> At the same time, however, *Kumho Tire* also stated that “where such testimony’s factual basis, data, principles, methods, or their application are *called sufficiently into question*,”<sup>1704</sup> the trial judge should determine whether that testimony is reliable. *Kumho Tire* does not specify whether that challenge must come from a party or may be raised *sua sponte*. Thus, despite the “broad latitude” it provided judges in determining how to test reliability, *Kumho Tire* provided no real guidance as to when the court’s gatekeeping obligations attach. As a result,

1699. See, e.g., *Rosen v. Ciba-Geigy Corp.*, 78 F.3d 316, 319–20 (7th Cir. 1996); *Wheat v. Sofamor, S.N.C.*, 46 F. Supp. 2d 1351, 1357–58 (N.D. Ga. 1999) (expert testimony excluded because it was not relevant).

1700. See *Goebel v. Denver & Rio Grande W. R.R. Co.*, 215 F.3d 1083, 1087 (10th Cir. 2000); *United States v. Nichols*, 169 F.3d 1255, 1263 (10th Cir. 1999); *Kirstein v. Parks Corp.*, 159 F.3d 1065, 1067 (7th Cir. 1998).

1701. See *Summers v. Mo. Pac. R.R. Sys.*, 132 F.3d 599, 605 (10th Cir. 1997) (permitting plaintiff to locate new experts after first expert stricken).

1702. 526 U.S. 137, 152 (1999).

1703. “Indeed, the Rules seek to avoid ‘unjustifiable expense and delay’ as part of their search for ‘truth’ and the ‘jus[t] determin[ation]’ of proceedings.” *Id.* at 152–53 (citing Fed. R. Evid. 102).

1704. *Id.* at 152 (emphasis added).

there is disagreement as to whether such a preliminary assessment is triggered by the proffer of expert testimony, or only on an objection from the opposing party that calls the testimony sufficiently into question. Considering *Daubert*'s mandate for trial judges to exercise their obligation as gatekeeper, the better view is that judges have an independent duty to challenge expert testimony whenever questions of validity and reliability exist.

### 23.352 Timing of Challenges to Expert Testimony

The judge can require the parties to present objections to expert testimony at any point during the case. One option is to require challenges to be made shortly after the close of expert discovery. At that time, the parties will have had an opportunity to depose opposing experts and determine whether there are any weaknesses in the experts' qualifications or methodologies. This approach facilitates the disposition of summary-judgment motions, to the extent those motions rely in whole or in part on expert evidence. A second option is to require that motions seeking to strike or limit expert testimony be made shortly before trial. Many cases settle before trial, thereby obviating the need to hold a hearing at all. A third option is to require any challenges to expert testimony to be presented during trial.<sup>1705</sup> Holding a *Daubert* hearing during trial, following formal objection, helps minimize the expense of bringing the expert to court twice, and the judge is likely to better understand the testimony in the context of the case. Reserving consideration of the reliability of expert testimony until trial, however, probably carries more disadvantages than advantages. Cases that could have been resolved at the summary-judgment stage instead proceed to trial, with its attendant time and expense. In addition, because of the demands of trial, the judge may not have as full an opportunity to consider the merits of the motion.<sup>1706</sup> On balance, the best approach is to require that challenges to expert testimony be made during pretrial proceedings, either at the close of expert discovery or through in

1705. See *United States v. Alatorre*, 222 F.3d 1098, 1103–04 (9th Cir. 2000) (district court did not abuse discretion in reserving ruling on admissibility of expert testimony until voir dire at trial); *United States v. Nichols*, 169 F.3d 1255, 1262–64 (10th Cir. 1999) (affirming district court decision to reserve ruling on expert evidence until trial). *But see* *Alfred v. Caterpillar, Inc.*, 262 F.3d 1083, 1087 (10th Cir. 2001) (characterizing *Daubert* objections made at the close of evidence as litigation by “ambush,” but finding it unnecessary to reach the issue of the timing of the objection).

1706. Other disadvantages include keeping the jury waiting while the *Daubert* issues are resolved and, should the expert be stricken, “judicial resources, taxpayer money, and juror time may be wasted because the striking of an expert will in some cases be tantamount to a directed verdict.” Judge Harvey Brown, *Procedural Issues Under Daubert*, 36 *Hous. L. Rev.* 1133, 1144 (1999). See *Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 133 (11th Cir. 2003).

limine or other motion immediately prior to trial. In cases involving multistage discovery, motions challenging expert witnesses can be presented in a similarly staged manner, if necessary.

### 23.353 Handling a Challenge to Expert Testimony

As discussed previously, *Kumho Tire* affords trial judges wide discretion in deciding “whether or when [a] special briefing or other proceedings are needed to investigate reliability.”<sup>1707</sup> The challenge may take the form of a motion to strike or exclude evidence during any pretrial phases or a motion in limine immediately before or during trial, although the failure to correctly characterize a motion should not necessarily preclude its consideration or otherwise impact its disposition.<sup>1708</sup> Such motions often will be accompanied by a motion for summary judgment. Regardless of the form, the movant should set forth specific deficiencies in the expert’s report or proposed evidence so that the motion may be handled in an economic and expeditious fashion.<sup>1709</sup> Consider requiring that any expert affidavits or declarations supporting dispositive motions include specific facts that would help to determine the reliability and validity of the data relied on in reaching the opinions and conclusions contained in the declaration. The court can either rule on the motions on the basis of the papers submitted<sup>1710</sup> and the argument by counsel or hold a *Daubert* hearing under Federal Rule of Evidence 104(a) where those issues can be more

1707. *Kumho Tire*, 526 U.S. at 152. See *supra* section 23.351. See also *Expert Evidence*, *supra* note 1545, at 53.54.

1708. See, e.g., *Kumho Tire*, 526 U.S. at 145 (motion to exclude expert testimony accompanied by summary-judgment motion); *Ruiz-Troche v. Pepsi Cola of P.R.*, 161 F.3d 77, 82 (1st Cir. 1998) (motions in limine to exclude expert testimony filed immediately before trial). Typically these motions are presented as in limine motions. The type of motion presented may, however, effect whether objections are preserved for appeal or must be reasserted during trial. *Blevins v. New Holland N. Am., Inc.*, 128 F. Supp. 2d 952, 954 (W.D. Va. 2001) (motion in limine); *Zic v. Italian Gov’t Travel Office*, 130 F. Supp. 2d 991, 994 (N.D. Ill. 2001) (motion to strike damages expert); *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387, 1392 (D. Or. 1996) (defendants filed motions in limine to exclude testimony on silicone gel breast implants after initial trial dates set). See *Brown, Procedural Issues*, *supra* note 1706, at 1145–48 (discussing cases where parties failed to preserve objection for appeal).

1709. See generally *Supreme Court’s Trilogy*, *supra* note 1560, at 9–38; Margaret A. Berger, *Procedural Paradigms for Applying the Daubert Test*, 78 Minn. L. Rev. 1345 (1994) [hereinafter *Procedural Paradigms*]; Goodwin, *supra* note 1642; see also *Kumho Tire*, 526 U.S. at 152–53 (the Federal Rules of Evidence “seek to avoid ‘unjustifiable expense and delay’ as part of their search for truth and the ‘just determination’ of proceedings” (quoting Fed. R. Evid. 102)).

1710. See *Procedural Paradigms*, *supra* note 1709, at 1373–75.

fully explored.<sup>1711</sup> Where the case-management order requires the parties to provide written critiques of the reasoning and methodology of opposing experts that would form a basis for a *Daubert* challenge prior to the beginning of expert depositions, the parties have the opportunity to explore—and the challenged expert to defend—whether *Daubert* requirements have been met, perhaps facilitating resolution of any subsequent *Daubert* motions on written materials and eliminating the need for an evidentiary hearing.

The *Daubert* Court noted that a Rule 104(a) hearing is necessary only where the opposing party, in response to a prima facie showing of admissibility, can point to a material dispute as to the expert’s methodology. The Third Circuit, for example, has held that “when the ruling on admissibility turns on factual issues, . . . at least in the summary judgment context, failure to hold [an in limine] hearing may be an abuse of discretion.”<sup>1712</sup> Although a number of judges have provided for extensive *Daubert* hearings in some cases, the general consensus seems to be that neither the party proffering the testimony nor the party opposing it is entitled to a Rule 104(a) hearing.<sup>1713</sup> One alternative is to hold an evidentiary hearing only where, despite the affidavits and evidence submitted by the parties, there are still questions that have not been addressed.<sup>1714</sup>

There is some disagreement as to whether a full-blown evidentiary hearing is ever appropriate. Some courts have afforded an expanded *Daubert* hearing that has taken the form of a minitrial, focused solely on the question of expert admissibility. The Third Circuit has stated that the decision to grant a hearing does not entitle the party to “an open-ended and never-ending opportunity to meet a *Daubert* challenge until [the party] ‘gets it right.’”<sup>1715</sup> If an evidentiary

1711. See, e.g., *Oddi v. Ford Motor Co.*, 234 F.3d 143, 154 (3d Cir. 2000) (the most efficient procedure is an in limine hearing, but where evidentiary record is well developed it is within court’s discretion to conclude hearing may not be necessary). “The facts of the case and the consequences of losing the in limine motion will determine the extent of the opportunity the proponent of the expert must be given to present its case. When a hearing is held, it is important that its limits be well defined and its progress carefully controlled.” *Supreme Court’s Trilogy*, *supra* note 1560, at 29.

1712. *Padillas v. Stork-Gamco, Inc.*, 186 F.3d 412, 418 (3d Cir. 1999); see also *In re TMI Litig.*, 199 F.3d 158, 159 (3d Cir. 2000) (in limine hearing is important where evidentiary challenge is in context of summary judgment or where exclusion will eventually result in summary judgment being granted). For a more thorough discussion of the interplay between a Rule 104(a) hearing and a motion for summary judgment, see William W. Schwarzer & Joe S. Cecil, *Management of Expert Evidence*, in *Reference Manual on Scientific Evidence* 39, 54–56 (Federal Judicial Center 2d ed. 2000).

1713. See *Oddi*, 234 F.3d at 154–55.

1714. See, e.g., *Padillas*, 186 F.3d at 418.

1715. *In re TMI Litig.*, 199 F.3d at 159.

hearing is necessary, the extensiveness of the hearing will be determined by the nature of the case and the type of expert testimony being offered. Obviously, expanded proceedings can consider a broader range of issues and delve more deeply into the underpinnings of expert testimony. However, the court should take care to avoid assessing the credibility of expert testimony and should ensure that it is not encroaching into the province of the jury in deciding factual disputes among the parties.<sup>1716</sup> In all cases, consider whether extensive *Daubert* hearings are an effective use of both judicial and party resources.

When a hearing is appropriate, the court should precisely define the hearing's scope and control its progress; otherwise, hearings may take on a life of their own, resulting in a lengthy, expensive, and unnecessary preview of the trial. It is best to rule on motions by written order or on the record, stating specifically the effect of the ruling and the grounds for it.<sup>1717</sup> It is also advisable to indicate whether the ruling is final or might be revisited at trial. Parties are entitled to know whether they have preserved the issue for appeal or whether an offer or objection at trial is necessary. It is helpful if the judge indicates whether the ruling might be affected by evidence received at trial.<sup>1718</sup>

1716. “This gatekeeping role is simply to guard the jury from considering as proof pure speculation presented in the guise of legitimate scientifically-based expert opinion. It is not intended to turn judges into jurors or surrogate scientists.” *Joiner v. Gen. Elec. Co.*, 78 F.3d 524, 530 (11th Cir. 1996), *rev'd*, 522 U.S. 136 (1997). See *Jahn v. Equine Servs., PSC*, 233 F.3d 382, 393 (6th Cir. 2000) (“[T]he district court erred by mischaracterizing the methodology employed by Jahn’s experts and by weighing their testimony against that of pathologists . . . .”); see also Anthony Z. Roisman, *The Courts, Daubert, and Environmental Torts: Gatekeepers or Auditors*, 14 Pace Envtl. L. Rev. 545 (1997).

1717. *Jahn*, 233 F.3d at 393 (“A district court should not make a *Daubert* ruling prematurely, but should only do so where the record is complete enough to measure the proffered testimony against the proper standards of reliability and relevance.”); *United States v. Call*, 129 F.3d 1402, 1405 (10th Cir. 1997) (although *Daubert* does not require a hearing, the district court should ensure the record is sufficiently developed to allow appellate “determination of whether the district court properly applied the relevant law”).

1718. See *In re Paoli R.R. Yard PCB Litig.*, 916 F.2d 829, 854–55 (3d Cir. 1990) (proponent of expert witness entitled to notice of grounds for exclusion and opportunity to remedy deficiency); see also *Padillas*, 186 F.3d at 418 (court abused its discretion in entering summary judgment after excluding expert evidence without holding an in limine hearing to consider shortcomings of the expert’s report); *Hall v. Baxter Healthcare Corp.*, 947 F. Supp. 1387, 1392–95 (D. Or. 1996) (convening Rule 104(a) hearing to determine admissibility of evidence of harmful effects of silicone gel breast implants); *Procedural Paradigms*, *supra* note 1709, at 1380–81 (calling for fully developed record in challenges to scientific evidence to permit a basis for trial court ruling on summary-judgment motion and for appellate court review). Federal Rule of Evidence 103(a) was recently amended to preserve a claim of error for appeal once the court makes a definitive ruling on the record admitting or excluding evidence either at or before trial without the party’s renewing the objection. Fed. R. Evid. 103(a) committee note.

### 23.354 Summary Judgment

When a ruling excludes expert evidence offered to meet an essential element of a party's case,<sup>1719</sup> or where the court rules that expert evidence is too conclusory to raise a genuine issue of fact,<sup>1720</sup> the ruling may provide a basis for summary judgment. Summary-judgment motions frequently will be submitted in conjunction with motions under Federal Rule of Evidence 104(a). Issues determinative of admissibility under Rule 104(a), however, will not necessarily be dispositive of the issues under Federal Rule of Civil Procedure 56 (i.e., the absence of a genuine issue of material fact), although they may lay the foundation for summary judgment. The judge is advised to discuss with counsel their intentions with respect to such motions at an early Rule 16 conference and to consider whether there are likely to be grounds for a meritorious motion.<sup>1721</sup> However, it is best to discourage the filing of proposed motions where triable issues clearly appear to be present; voluminous and complex motions unlikely to succeed simply delay the litigation and impose unjustified burdens on the court and parties.<sup>1722</sup>

Declarations filed in opposition to summary-judgment motions must present specific facts that would be admissible in evidence and that show a genuine issue for trial.<sup>1723</sup> At trial an expert is permitted to state an opinion

1719. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 320 (1986) (district court excluded plaintiff's submitted evidence in defense of summary judgment regarding her deceased husband's exposure to defendant corporation's asbestos products).

1720. In his dissenting opinion in *American International Adjustment Co. v. Galvin*, Judge Posner stated the following:

[A] party cannot assure himself of a trial merely by trotting out in response to a motion for summary judgment his expert's naked conclusion about the ultimate issue . . . The fact that a party opposing summary judgment has some admissible evidence does not preclude summary judgment. We and other courts have so held with specific reference to an expert's conclusional statements . . . The Federal Rules of Evidence permit 'experts to present naked opinions,' but 'admissibility does not imply utility . . . An expert who supplies nothing but a bottom line supplies nothing of value to the judicial process,' and his 'naked opinion' does not preclude summary judgment.

86 F.3d 1455, 1464 (7th Cir. 1996) (Posner, C.J., dissenting).

Parties must be given an adequate opportunity for discovery to develop the evidence necessary to oppose a summary-judgment motion. See *Celotex*, 477 U.S. at 322 (the opponent of the motion is entitled to "adequate time for discovery" needed to oppose the motion); William W. Schwarzer & Alan Hirsch, *Summary Judgment After Eastman Kodak*, 45 *Hastings L.J.* 1, 17 (1993). The disclosures required under Rule 26(a)(2) should help in developing an adequate record.

1721. See Fed. R. Civ. P. 16(c)(5).

1722. See generally *Procedural Paradigms*, *supra* note 1709, at 1376–81; Edward Brunet, *The Use and Misuse of Expert Testimony in Summary Judgment*, 22 *U.C. Davis L. Rev.* 93 (1988).

1723. See Fed. R. Civ. P. 56(e).

without first testifying to the underlying data. (Federal Rule of Evidence 705, as amended in 1993, permits an expert “to testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise.” This eliminated the much criticized practice of asking experts hypothetical questions, leaving it to cross-examination at trial to bring out relevant facts.<sup>1724</sup>) A declaration containing conclusory statements of opinion by an expert, however, unsupported by facts, is insufficient to raise a triable issue.<sup>1725</sup> The sufficiency of an expert’s declaration is logically intertwined with the admissibility of the expert’s testimony at trial. Thus, it makes sense, as noted above, to combine the Rule 104(a) and Rule 56 proceedings. The reliability and validity of the expert evidence should be assessed prior to resolving the issues presented on summary judgment.

### 23.36 Final Pretrial Conference

The goal of the final pretrial conference is to formulate the plan for trial, including a program for facilitating the admission of evidence.<sup>1726</sup> Issues should at this point be defined with precision and finality to the extent they can be resolved prior to trial. This includes ruling on pending objections to expert testimony by motions in limine or otherwise, and trying to arrive at stipulations of facts and other matters to streamline the trial. The following techniques can aid this process:

- direct the parties to submit statements identifying the disputed portions of the opposing experts’ reports;
- require the submission of a joint statement specifying the matters on which the experts disagree and the bases for each disagreement;
- rule on the admissibility of all exhibits and demonstrations to be offered by experts at trial, such as films, videos, simulations, or mod-

1724. Fed. R. Evid. 705 committee note; *see also id.* 703 (requiring court to balance the probative value of inadmissible evidence relied on by an expert in forming his or her opinion, with its prejudicial effect if it were to be disclosed to the jury).

1725. *See First United Fin. Corp. v. United States Fid. & Guar. Co.*, 96 F.3d 135, 140–41 (5th Cir. 1996) (according to circuit precedent, expert affidavits should include some indication of the reasoning process underlying the expert’s opinion); *Mendes-Silva v. United States*, 980 F.2d 1482, 1488 (D.C. Cir. 1993). *But see Bulthuis v. Rexall Corp.*, 789 F.2d 1315, 1318 (9th Cir. 1985) (per curiam) (holding that expert opinion is admissible and may defeat a summary-judgment motion if it appears that the affiant is competent to give expert opinion and the factual basis for the opinion is stated in the affidavit, even though the underlying factual details and reasoning on which the opinion is based are not).

1726. Fed. R. Civ. P. 16(d).

- els—the judge should give opposing parties a full opportunity to review them in advance of trial and to raise any objections;
- encourage cooperation in presenting scientific or technical evidence, such as joint use of courtroom electronics, stipulated models, charts or displays, tutorials, and a glossary of technical terms for the court and jury; and
  - encourage stipulations on relevant background facts and other non-controversial matters.

### 23.37 Trial

Attorneys and witnesses in scientific and technological cases tend to use the jargon of the discipline, which is a language foreign to others. From the outset, it is advisable to require the attorneys and the witnesses to use plain English to describe the subject matter and present evidence so that it can be understood by laypersons. Consider reminding experts from time to time that they are not talking to each other, but are there to communicate with the jury and the judge.<sup>1727</sup> The court also may explore at the pretrial conference the use of techniques to facilitate presentation of evidence so that the trier of fact can understand the subject matter and make informed decisions. Practices that, singly or in combination, are worthy of consideration include the following:<sup>1728</sup>

- *Structuring the trial.* One of the main obstacles to comprehension is an excessively lengthy trial. The court may limit the trial's length by limiting the scope of the issues, the number of witnesses and documents, and the time for each side to conduct direct examination and cross-examination. Some cases can be bifurcated, and some can be segmented by issues so that the jury retires at the conclusion of the evidence on each issue to deliberate on a special verdict.<sup>1729</sup> Such sequential approaches to the presentation of a case to the jury may be useful for the trial of severable issues, such as punitive damages, general causation, exposure to a product, and certain affirmative defenses. On the other hand, such approaches make it more difficult to predict for the jurors how long the trial will last.
- *Jury management.* Consider giving preliminary instructions that explain what the case is about and what issues the jury will have to de-

1727. See generally *supra* sections 11.6, 12.2–12.4; William W. Schwarzer, *Reforming Jury Trials*, 1990 U. Chi. Legal F. 119.

1728. See also 1998 ABA Civ. Trial Prac. Stand. 26.

1729. See Fed. R. Civ. P. 42(b).

cide. Jurors may be permitted to take notes, and they may be given notebooks with key exhibits, glossaries of complex terms, stipulations, lists of witnesses, and timelines or chronologies. Permitting jurors to ask questions, usually submitted through the court, can also aid their comprehension. Some judges have found interim summations (or interim opening statements) helpful to juror comprehension; the attorneys are allotted a certain amount of time to introduce witnesses and point out the expected significance of their testimony (e.g., “The next witness will be Dr. X, who will explain how the fracture should have been set. He will give you his opinion about the proper use of screws.”).

- *Tutorials.* A neutral expert can be retained to present a tutorial for the judge and jury before the presentation of expert evidence at trial begins, outlining the fundamentals of the relevant science or technology without touching on disputed issues. Consider having the parties’ experts testify back-to-back at trial so that jurors can get the complete picture of a particular issue at one time rather than getting bits and pieces at various times during the trial.
- *Presentation of evidence.* Various technologies can facilitate the presentation of exhibits. Some technologies are computer based and some simply facilitate projection of documents on a screen, which allows all jurors to follow testimony about a document. Counsel should be advised to use summaries of voluminous data; stipulated summaries of depositions in lieu of a reading of the transcript are helpful. Charts, models, pictures, videos, and demonstrations can all assist juror comprehension.

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## *Part III*

### *Particular Types of Litigation*

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## 30. Antitrust

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Claims or defenses arising under the antitrust laws do not invariably require treatment as complex litigation. Antitrust litigation can, however, involve voluminous documentary and testimonial evidence, extensive discovery, complicated legal, factual, and technical (particularly economic) questions, numerous parties and attorneys, and substantial sums of money, calling for the application of techniques and procedures for the management of complex litigation.<sup>1730</sup> Antitrust claims are not limited to complaints: They are also frequently raised in counterclaims, particularly in patent litigation. Antitrust claims are often brought as class actions and may be filed in several federal and state courts concurrently with or following criminal or administrative proceedings. Antitrust trials usually are long, and there often are controversies over settlements and attorney fees. The earlier sections of this manual will therefore be relevant to many of the issues that arise in the management of complex antitrust litigation, both civil and criminal. In particular, some of the procedures used to manage mass tort and securities cases (see sections 22, 31) may also be of value in multiparty antitrust cases.

### 30.1 Managing the Issues

Effective management of antitrust litigation requires identifying, clarifying, and narrowing pivotal factual and legal issues as soon as practicable (see generally section 11.3). Unless the judge and the attorneys give early attention to these issues, substantial time may be wasted on claims subject to summary dismissal, on class action disputes not critical to the class-certification ruling, and on discovery not relevant to the later-refined issues regarding liability or damages. Defining the issues at an early stage may enable the court to structure

<sup>1730</sup> Many of the principles and practices of judicial management and of the procedures discussed in this manual were initially developed in antitrust litigation. See William W Schwarzer, *Managing Antitrust and Other Complex Litigation* (1982); ABA Antitrust Section, *Monograph No. 3, Expediting Pretrial and Trial of Antitrust Cases* (1979); National Commission for the Review of Antitrust Laws and Procedures, *Antitrust Commission Report*, 80 F.R.D. 509 (1979). See also ABA Section of Antitrust Law, *Antitrust Law Developments* (5th ed. 2002).

the litigation so as to limit the scope and volume of discovery, reduce cost and delay, facilitate the prospects of settlement, and improve the trial.

The procedures for pretrial management of complex litigation discussed in section 11 apply generally to antitrust litigation. General principles relevant to structuring trials apply to antitrust litigation, although the judge should take particular care when considering severance of damage issues from other elements of the claim (see sections 11.631–11.632).<sup>1731</sup>

Issues that may arise in antitrust litigation and may be appropriate for pretrial resolution include the following:

- *Subject-matter jurisdiction.* Jurisdictional issues that may be capable of summary resolution under Federal Rule of Civil Procedure 56 or by a separate Rule 42 evidentiary hearing are (1) whether the requisite effect on interstate commerce can be established<sup>1732</sup> and (2) whether the claim is within the reach of the antitrust laws.<sup>1733</sup>
- *Standing.* A motion under Rule 12 or 56 or by a separate trial under Rule 42 can sometimes resolve the legal issues of whether the claimant enjoys standing to maintain a claim for damages<sup>1734</sup> and whether injury to competition can be demonstrated.
- *Exemptions, immunities.* The application of antitrust laws may be barred or limited by statutory exemptions or immunities, such as

1731. Compare *Ala. v. Blue Bird Body Co.*, 573 F.2d 309, 318–19, 328 (5th Cir. 1978) (disapproving of bifurcation of liability and damages), and *Windham v. Am. Brands, Inc.*, 565 F.2d 59, 70–72 (4th Cir. 1977) (upholding denial of bifurcation), with *In re Plywood Antitrust Litig.*, 655 F.2d 627, 631–36 (5th Cir. 1981) (permissible to try issue of statutory violation, including existence of injury and method of calculating damages, separately from amount of individual damages), and *Franklin Music Co. v. Am. Broad. Cos.*, 616 F.2d 528, 538 (3d Cir. 1979) (upholding bifurcation of liability and damages phases of trial). Bifurcation of liability and damages issues “must be approached with trepidation.” *Response of Carolina, Inc. v. Leasco Response, Inc.*, 537 F.2d 1307, 1324 (5th Cir. 1976).

1732. See, e.g., *McLain v. Real Estate Bd. of New Orleans, Inc.*, 444 U.S. 232 (1980).

1733. Compare *Hunt v. Mobil Oil Corp.*, 550 F.2d 68, 73, 79 (2d Cir. 1977) (pretrial dismissal based on “act of state” doctrine), with *Int’l Ass’n of Machinists & Aerospace Workers v. Org. of the Petroleum Exporting Countries*, 649 F.2d 1354, 1361–62 (9th Cir. 1981) (“act of state” doctrine applied after trial).

1734. See, e.g., *Kansas v. Utilicorp. United, Inc.*, 497 U.S. 199 (1990) (actions by states and utilities consolidated after summary judgment as to standing); *Associated Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983) (standing requires analysis of relationship between defendants’ conduct and plaintiff’s injury); *Ill. Brick Co. v. Ill.*, 431 U.S. 720 (1977) (no federal antitrust damages for “indirect” purchases); *Brunswick v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977) (“antitrust injury” requirement); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969) (“direct injury” requirement).

those applicable to the insurance industry<sup>1735</sup> or organized labor,<sup>1736</sup> where restraints are imposed or authorized by state action,<sup>1737</sup> or where collective solicitation of governmental action has occurred.<sup>1738</sup> The application of the antitrust laws may also be circumscribed by the primary or exclusive jurisdiction of a regulatory agency.

- *Statute of limitations.* Whether an action or claim is time-barred may be appropriate for early resolution by summary judgment.<sup>1739</sup>
- *Market definition.* The definition of the relevant geographic and product market may be critical, and it may determine the existence of market power requisite to prove liability and may also determine the scope of relevant evidence. The parties may be willing to stipulate to, or narrow, the range of dispute over the facts, and at least some facts may be subject to judicial notice. The dispute over the market may be susceptible to resolution under Rule 56 in the absence of disputed evidentiary facts (see section 11.34), or through a separate bench or jury trial under Rule 42. Where extensive fact finding is required, the issue may be referred to a special master, magistrate judge, or court-appointed expert for a report and recommendation (see section 11.5).
- *Theory and proof of damages.* Attention to liability issues in antitrust cases may lead to neglect of injury and damage issues. Early consideration of the proposed theory of damages and proof of cognizable injury may significantly affect the conduct of the litigation. The alleged injury may not qualify as antitrust injury, or the damages claimed may, in whole or in part, not be recoverable under the antitrust laws; if so, claims may be subject to dismissal, the scope of discovery may be reduced, or the method for proving damages may be altered. The extent to which injury and damages will require individualized proof can be critical in determining whether to certify a class of antitrust claim-

1735. See 15 U.S.C. §§ 1011–1015 (2000); *Group Life and Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205 (1979) (narrow construction of insurance exception).

1736. 29 U.S.C. §§ 101–110, 113–115 (2000); *United States v. Hutcheson*, 312 U.S. 219 (1941).

1737. See *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992); *Patrick v. Burget*, 486 U.S. 94 (1988); *S. Motor Carriers Rate Conf., Inc. v. United States*, 471 U.S. 48 (1985); *Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980); *Parker v. Brown*, 317 U.S. 341 (1943).

1738. *United Mine Workers v. Pennington*, 381 U.S. 657 (1965); *E. R.R. Presidents’ Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

1739. See, e.g., *Norton-Children’s Hosps. v. James E. Smith & Sons*, 658 F.2d 440 (6th Cir. 1981); *Dayco Corp. v. Goodyear Tire & Rubber Co.*, 523 F.2d 389 (6th Cir. 1975).

ants or whether a consolidated trial of separate but related claims is feasible.

Early scrutiny of the claimed damages can facilitate settlement, either because of the magnitude of the potential exposure or because provable damages are too small to justify the cost of pursuing the litigation. Indeed, in some cases the court may conclude that the initial discovery should focus on the existence and amount of damages. Such discovery may lead to a separate trial on damages issues prior to conducting extensive discovery and a trial on liability issues, such as the existence of a conspiracy (see discussion of sequencing discovery in section 11.422). If relatively little time would be needed for discovery and trial of the issues of impact and damages caused by a particular practice, substantial savings may be effected by postponing significant discovery on liability issues, since any damage verdict could pave the way to an early settlement. If the practice in question is well defined in scope and time, such “reverse bifurcation” may be feasible, subject to the substantive rules of antitrust law. In any event, the pretrial exchange of expert reports, computations, and exhibits regarding injury and damages should be required (see section 11.48), whether a separate trial is held or not.

Consider establishing a schedule for early completion of motion-related discovery and the submission and decision of motions. Merits discovery should be stayed only to the extent that the outcome of a motion will significantly affect the scope of that discovery.

## 30.2 Transactional and Economic Data, and Expert Opinions

Antitrust cases often involve the collection, assimilation, and evaluation of vast amounts of evidence regarding numerous transactions and other economic data. Some of this material may be entitled to protection as trade secrets or confidential commercial information. Effective management of such cases depends on pretrial procedures that facilitate the production and utilization of this material and its efficient presentation at trial as well as the early resolution of privilege claims. The following are among the measures that may be useful:

- *Limiting scope of discovery.* Early attention to the issues may make feasible reasonable limits on the scope of discovery. Limits may be fixed with reference to the transactions alleged to be the subject matter of the case, to the relevant products or services, or to geographical areas and time periods. Limits should be subject to modification if a need for broader discovery later arises. See generally section 11.423.

- *Confidentiality orders.* Protective orders may facilitate the expeditious discovery of materials entitled to protection as trade secrets or other confidential commercial information (see section 11.432). Especially if the parties are competitors, provisions may preclude or restrict disclosure by the attorneys to their clients. Particularly sensitive information, such as customer names and pricing instructions, may be masked by excision, codes, or summaries without impairing the utility of the information in the litigation.
- *Summaries and computerized data.* The court should encourage the parties to work out arrangements for the efficient and economical exchange of voluminous data. Where feasible, data in computerized form should be produced in computer-readable format. Identification of computerized data may lead to agreement on a single database on which all expert and other witnesses will rely in their testimony. Other voluminous data can be produced by way of summaries or tabulations—subject to appropriate verification procedures to minimize and quickly resolve disputes about accuracy—obviating extensive discovery of source documents. Counsel should produce such exhibits well in advance of trial. See generally sections 11.446 (discovery of computerized data) and 11.492 (summaries).
- *Other sources.* Relevant economic data may be available from government or industry sources more quickly and cheaply than through discovery from the litigants. Accordingly, consider making an early determination regarding the admissibility of such evidence under Federal Rules of Evidence 803(8), (17), and (18).
- *Expert opinions.* Parties may plan to retain economists to study such topics as relevant markets, the concentration of economic power, pricing structures, elasticity of demand, barriers to entry, marginal costs, and the effect of the challenged practices on competition and the claimants. Early in the litigation, it is advisable to call for an identification of the subjects on which expert testimony will likely be offered, determine whether such testimony is necessary, rule at least preliminarily on the appropriate scope of expert testimony, and establish a schedule for disclosure of experts' reports, recognizing that some studies may require considerable time to prepare and review. Agreement on a common database for all experts to use is desirable, and the court can require the parties to agree on methodology and form before

conducting surveys or polls (see section 11.493).<sup>1740</sup> Under Federal Rule of Evidence 104(a),<sup>1741</sup> the judge must hear and decide, before trial, objections to the admissibility of experts' opinions. If significant conflicts exist between the parties' experts on matters of theory, an expert may be appointed by the court under Federal Rule of Evidence 706 (see section 11.51). See generally section 11.48.

### 30.3 Conflicts of Interest

The judge should identify, early in the litigation, possible conflicts of interest that may lead to disqualification of attorneys<sup>1742</sup> (see section 10.23) or recusal of the judge (see section 10.121). These problems may be acute in anti-trust actions brought on behalf of large classes of purchasers, because the identification of class members—which can result in disqualification of the judge under 28 U.S.C. § 455<sup>1743</sup>—usually may not occur until after substantial proceedings have taken place. Accordingly, it is wise to consider the feasibility of asking the parties to provide a list of known class members.

### 30.4 Related Proceedings

Antitrust litigation sometimes involves a number of individual and class actions for damages filed in several federal and state courts, and may involve criminal or administrative proceedings as well. Such parallel or related proceedings should be taken into account when developing and implementing a management plan for the litigation.

Recognizing the desirability of centralized management, the Judicial Panel on Multidistrict Litigation commonly transfers civil antitrust cases for pretrial purposes under 28 U.S.C. § 1407, usually to a district in which related civil cases, and sometimes also criminal or civil proceedings brought by the United

1740. See also Reference Manual on Scientific Evidence (Federal Judicial Center, 2d ed. 2000).

1741. See, e.g., *Daubert v. Merrell-Dow Pharm., Inc.*, 509 U.S. 579 (1993).

1742. See, e.g., *Westinghouse Elec. Corp. v. Gulf Oil Corp.*, 588 F.2d 221 (7th Cir. 1978); *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311 (7th Cir. 1978).

1743. See *In re Cement Antitrust Litig.*, 688 F.2d 1297 (9th Cir. 1982), *aff'd sub nom. Ariz. v. United States Dist. Court*, 459 U.S. 1191 (1983) (affirming under 28 U.S.C. § 2109). Note that 28 U.S.C. § 455(f) (added following this decision) allows a judicial officer who discovers a financial interest after devoting “substantial judicial time” to a case to avoid recusal by divestment, unless the interest “could be substantially affected by the outcome.” 28 U.S.C. § 455(f) (West 2002).

States, are pending (section 1407 does not apply to criminal cases or civil antitrust actions brought by the United States<sup>1744</sup>). If centralized management of the entire litigation is impossible or impractical, the affected courts should nevertheless attempt to coordinate proceedings through procedures such as those described in sections 10.123 and 20.14. Injunctions against or stays of parallel actions generally are not available (see section 20.32).

Special problems are presented when conduct that is the basis for civil antitrust claims is also the subject of criminal or administrative proceedings. Indeed, disclosure of a criminal or administrative investigation frequently triggers the filing of civil actions (see section 20.2). Ordinarily, the criminal charges should be tried first, not only because of the requirements of the Speedy Trial Act but also because Fifth Amendment claims tend to disrupt civil discovery. (Completion of a witness's testimony in the criminal case will not necessarily preclude that witness from invoking the Fifth Amendment in subsequent civil proceedings.<sup>1745</sup>) However, a general stay of all activities in the civil litigation pending completion of the criminal case will rarely be appropriate.<sup>1746</sup> Similarly, although a decision by the Federal Trade Commission or some other agency may narrow the issues or reduce the scope of discovery, the judge should weigh the rights and interests of all parties before deciding whether to defer any of the proceedings in the civil actions. For example, enforcement proceedings may result in collateral estoppel.<sup>1747</sup>

Special problems are also presented where parallel litigation is brought in federal and state courts (see section 20.3) alleging violations of federal and state antitrust laws arising out of substantially the same conduct. Although state and federal claims may substantially overlap, federal antitrust law does not preempt state law.<sup>1748</sup> Removal is not permissible except in the unusual case where the court finds that the claim asserted is simply a disguised federal claim,<sup>1749</sup> and an

1744. 28 U.S.C. § 1407(g) (West 2002).

1745. See *Pillsbury Co. v. Conboy*, 459 U.S. 248 (1983).

1746. See *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *Texaco, Inc. v. Borda*, 383 F.2d 607 (3d Cir. 1967).

1747. See, e.g., *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). Moreover, the findings of an agency may be admissible under Federal Rule of Evidence 803(8)(C), perhaps eliminating the need for certain discovery. See, e.g., *In re Japanese Elec. Prods. Antitrust Litig.*, 723 F.2d 238 (3d Cir. 1983), *rev'd on other grounds sub nom. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *In re Plywood Antitrust Litig.*, 655 F.2d 527 (5th Cir. 1981).

1748. See *Cal. v. ARC Am. Corp.*, 490 U.S. 93 (1989).

1749. See *Federated Dep't Stores v. Moitie*, 452 U.S. 394, 397 n.2 (1981) (reaching merits of defense in antitrust action removed from state court).

injunction is rarely available.<sup>1750</sup> The judges involved, however, may coordinate the proceedings informally. See section 20.31.

The availability to different classes of purchasers of separate and distinct remedies in state and federal court, along with the general unavailability of injunctions against state proceedings, can create serious problems in achieving global settlements. Antitrust claims are frequently brought under state antitrust laws that permit indirect purchasers to recover or provide a more favorable measure of damages.<sup>1751</sup> Thus, a settlement with the federal plaintiffs (direct purchasers) will not bar later state law claims by indirect purchasers.<sup>1752</sup> In some circumstances, however, a court may enjoin state proceedings under the All Writs Act<sup>1753</sup> to effectuate a global settlement in a complex litigation.<sup>1754</sup>

1750. See 28 U.S.C. § 2283 (West 2002) (Anti-Injunction Act); *Younger v. Harris*, 401 U.S. 37 (1971) (federal courts should ordinarily not enjoin pending state criminal proceedings).

1751. See *Alton Box Bd. Co. v. Esprit De Corp.*, 682 F.2d 1267 (9th Cir. 1982); *In re Corrugated Container Antitrust Litig.*, 659 F.2d 1332, 1336 (5th Cir. 1981). See Antitrust Law Developments, *supra* note 1730, at 811–12 (“nineteen states and the District of Columbia have statutes that specifically permit indirect purchasers (who could not recover damages under federal law) to recover damages for state antitrust violations”); 14 Herbert Hovenkamp, Antitrust Law ¶ 2412d (1999) (indirect purchasers under federal and state law); 2 Phillip E. Areeda et al., Antitrust Law ¶ 317f (2d ed. 2000) (res judicata and state law).

1752. *Cal. v. ARC Am. Corp.*, 490 U.S. 93 (1989).

1753. 28 U.S.C. § 1651 (West 2002). See *supra* sections 21.15 & 21.42. See also *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–04 (1966) (citing cases interpreting the Act).

1754. See, e.g., *Battle v. Liberty Nat’l Life Ins. Co.*, 877 F.2d 877 (11th Cir. 1989), *aff’d* 660 F. Supp. 1449 (N.D. Ala. 1987); *In re Corrugated Container*, 659 F.2d 1332 (5th Cir. 1981). *Cf. In re Real Estate Title & Settlement Services Antitrust Litig.*, 869 F.2d 760 (3d Cir. 1989) (directing lower court to vacate injunction for lack of personal jurisdiction); *Alton Box*, 682 F.2d at 1270–73 (upholding denial of injunction sought against nonparty to federal action in different court). See *supra* section 20.32 (jurisdictional conflicts in related state and federal cases).

## 31. Securities

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### 31.1 Introduction

The goal of the Securities Act of 1933<sup>1755</sup> (1933 Act) and the Securities Exchange Act of 1934<sup>1756</sup> (1934 Exchange Act) is to ensure that issuers of public securities provide all necessary and accurate information to investors. The statutes prohibit the sale or purchase of securities through false or misleading statements. Most litigation in the securities area centers on these two statutes and is based on allegations of fraud or misstatements in the purchase, sale, or offering of securities and other alleged market or management abuses. Causes of action also exist under sections 77k, 77l(a), and 77o of the 1933 Act and section 78t(a) of the 1934 Exchange Act. Private rights of action, both express and implied, are available under the statutes,<sup>1757</sup> although the Supreme Court in recent years has narrowed the availability of implied remedies through cases

1755. 15 U.S.C. §§ 77a–77aa (2000).

1756. *Id.* §§ 78a–78mm.

1757. Most notably, there is the implied remedy under Securities and Exchange Commission (SEC) Rule 10b-5 for fraud in connection with the purchase or sale of securities and the remedy for fraud in connection with the solicitation of shareholder votes. These two remedies have been so firmly entrenched in the federal jurisprudence that they have survived the general cutback in the recognition of private remedies. Thomas Lee Hazen, *The Law of Securities Regulation* § 1.7, at 65 (3d ed. 1996). *See also* Herman & MacLean v. Huddleston, 459 U.S. 375 (1983).

such as *Central Bank of Denver v. First Interstate Bank of Denver*,<sup>1758</sup> which eliminated an implied private right of action against aiders and abettors.<sup>1759</sup>

Cases alleging securities fraud can present problems similar to those that arise in mass tort litigation. Many cases are brought as class actions, triggering the requirements of Federal Rule of Civil Procedure 23 as well as limitations imposed by the Private Securities Litigation Reform Act (PSLRA).<sup>1760</sup> This section discusses some of the issues and problems peculiar to securities litigation, and particularly securities fraud class actions.

## 31.2 Statutory Framework

The 1933 Act prohibits offering securities to the public for sale or purchase unless they have been registered with the Securities and Exchange Commission (SEC).<sup>1761</sup> Companies are required to file registration statements that fully disclose all of the information required by the statute and by SEC rules prior to such sale. These registration and disclosure provisions apply to the issuance or distribution of securities, and the statute's protection extends only to the purchaser.<sup>1762</sup> Civil liability can be imposed for misrepresentations and omissions in registration statements or where securities are sold in violation of the registration requirements, as well as under the general antifraud provisions of section 77q(a).<sup>1763</sup> The 1934 Exchange Act regulates the public trading of securities. The statute requires that any securities traded on a national exchange must be registered with the SEC, with full disclosure of relevant information about the company. Unlike the 1933 Act, the 1934 Exchange Act protects both sellers and purchasers.

1758. 511 U.S. 164 (1994).

1759. The Supreme Court had previously noted the absence of "aiding and abetting" language in section 10(b) of the Exchange Act and in 17 C.F.R. § 240.10b-5 (1995), but it was not until the decision in *Central Bank of Denver* that the Court held aiding and abetting liability in private actions could not be imposed. As a consequence, civil actions based on theories of aiding and abetting may only be brought by the SEC and then, only where the defendant acts knowingly. See Melissa Harrison, *The Assault on the Liability of Outside Professionals: Are Lawyers and Accountants Off the Hook?*, 65 U. Cin. L. Rev. 473, 505 (1997); see also Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended at 15 U.S.C. §§ 77z-1, 78u-4 to -5 (2000)) (citations to the PSLRA hereafter will refer to the amendments to the 1934 Exchange Act, although parallel provisions were added to the 1933 Act except where noted).

1760. 15 U.S.C. § 78u-4 (2000).

1761. *Id.* § 77e.

1762. Express remedies are provided for in 15 U.S.C. §§ 77k, 77l(a), 77o (2000).

1763. See *Hazen*, *supra* note 1757, at 7.

Most securities actions under the 1934 Exchange Act allege either violations of section 10(b),<sup>1764</sup> which prohibits using any manipulative or deceptive device in connection with the purchase or sale of securities, or violations of SEC Rule 10b-5,<sup>1765</sup> which extends liability to include misstatements and omissions, or both. These actions typically take the form of securities fraud class actions. The 1934 Exchange Act also created the SEC to administer and enforce the securities statutes.<sup>1766</sup> Both the 1933 Act and the 1934 Exchange Act rely heavily on self-regulation by affected companies, with the SEC providing the necessary oversight. The SEC has the authority to promulgate rules and regulations, investigate potential violations, impose fines, and seek equitable or other relief.<sup>1767</sup> In addition to instituting enforcement actions and levying administrative sanctions,<sup>1768</sup> however, the SEC can refer conduct to the Department of Justice for criminal prosecution.

### 31.3 The Private Securities Litigation Reform Act

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The Private Securities Litigation Reform Act of 1995 (PSLRA) sought to prevent frivolous and unmeritorious securities class actions through broad-based legislation reaching both substantive and procedural law, as well as by instituting other reforms in securities actions. The legislation was targeted towards certain perceived abuses of securities class actions arising out of lawsuits brought on behalf of “professional plaintiffs” or plaintiffs with at best a nominal interest in the securities at issue.<sup>1769</sup> The PSLRA directs the court to appoint

1764. 15 U.S.C. § 78j(b) (2000).

1765. 17 C.F.R. § 240.10b-5 (1995).

1766. The SEC is composed of five members, appointed by the President with the approval of the Senate, who function as a bipartisan, quasi-judicial agency. 15 U.S.C. § 78d(a) (2000); *see also* 1 Hazen, *supra* note 1757, §§ 1.3–1.3[3].

1767. The SEC also functions as an original and appellate tribunal in connection with licensing and disciplinary charges.

1768. The SEC can, among other things, issue civil fines in administrative proceedings, freeze assets, and seek forfeiture. *See, e.g.*, SEC v. Gonzales de Castilla, 170 F. Supp. 2d 427 (S.D.N.Y. 2001) (SEC issued freeze order on defendant’s assets in insider trading case).

1769. “In place of that practice—a practice wherein the class lawyer selected the class plaintiff—Congress sought to substitute a new model . . . Under the new model, the court would appoint the lead plaintiff who, in turn, would select and direct class counsel.” *In re Network Assocs., Inc. Sec. Litig.*, 76 F. Supp. 2d 1017, 1020 (N.D. Cal. 1999). *See also* Greebel v. FTP

as lead plaintiffs the “person or group of persons” with the greatest financial interest in order to encourage institutional investors, who are more likely to have significant financial holdings at stake as well as greater sophistication and experience in securities matters, to exercise control over the litigation and over counsel.<sup>1770</sup> The PSLRA changed the selection criteria for lead plaintiffs from the first to file to the adequacy of the proposed class representative. The PSLRA has had the greatest impact on class actions alleging corporate fraud under 15 U.S.C. § 78j(b) and SEC Rule 10b-5, and its provisions are found in 15 U.S.C. §§ 77z-1 and 77z-2 of the 1933 Act and 15 U.S.C. §§ 78u-4 and 78u-5 of the 1934 Exchange Act.

Efforts by plaintiffs to circumvent the statutory reforms of the PSLRA by filing securities fraud class actions in state court were rebuffed with the passage of the Securities Litigation Uniform Standards Act in 1998 (Uniform Standards Act).<sup>1771</sup> The Uniform Standards Act preempted state law securities fraud class

Software, Inc., 939 F. Supp. 57, 58 (D. Mass. 1996) (The PSLRA arose from a belief “that the plaintiff’s bar had seized control of class action suits, bringing frivolous suits on behalf of only nominally interested plaintiffs in the hope of obtaining a quick settlement.” (citing S. Rep. No. 104-98, at 8–11 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 687–90)); *In re Party City Sec. Litig.*, 189 F.R.D. 91, 103 (D.N.J. 1999) (“Prior to the enactment of the PSLRA, plaintiffs in securities fraud cases tended to profit irrespective of the culpability of the defendants, most of whom chose settlement over prolonged and expensive litigation.” (citing H.R. Conf. Rep. No. 104-369, at 31–35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730–34)).

1770. *In re USEC Sec. Litig.*, 168 F. Supp. 2d 560, 560–64 (D. Md. 2001); *see In re Donnkenney Inc. Sec. Litig.*, 171 F.R.D. 156, 157 (S.D.N.Y. 1997) (The PSLRA serves to “ensure that institutional plaintiffs with expertise in the securities market and real financial interests in the integrity of the market would control the litigation, not lawyers.” (citing H.R. Conf. Rep. No. 104-369, at 31–35 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730–34)); *Gluck v. CellStar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex. 1997) (institutional investors likely to have largest financial interest, and Congress intended institutional investors to play greater role in directing securities fraud litigation); *Greebel*, 939 F. Supp. at 63 (PSLRA creates presumption in favor of institutional investors). *See also In re Horizon/CMS Healthcare Corp. Sec. Litig.*, 3 F. Supp. 2d 1208, 1212 (D.N.M. 1998) (The PSLRA “appears to reflect a congressional intent to transfer power from counsel who win the race to the courthouse to those shareholders who possess a sufficient financial interest in the outcome to maintain some supervisory responsibility over both the litigation and their counsel.” (citing Michael Y. Scudder, Comment, *The Implications of Market-Based Damages Caps in Securities Class Actions*, 92 Nw. U. L. Rev. 435, 437 (1997))).

1771. 15 U.S.C. §§ 77p, 78bb (2000). The statute exempts four categories of actions: (1) exclusively derivative actions; (2) actions pursuant to contractual agreements between issuers and indenture trustees; (3) actions by states or political subdivisions or pension plans; and (4) certain other actions brought under the corporate laws of the state of incorporation. *Id.* §§ 77p(f), 78bb(f). *See, e.g., Derdiger v. Tallman*, 75 F. Supp. 2d 322, 324 (D. Del. 1999) (case involving claims under Delaware law by issuer to shareholders not subject to Uniform Standards Act provisions).

actions,<sup>1772</sup> granted federal courts the authority to stay discovery in private state-court actions<sup>1773</sup> and mandated removal to federal court of state-court securities class actions that fell within the purview of the statute, followed by their automatic dismissal.<sup>1774</sup> The enactment of the Uniform Standards Act effectively placed exclusive jurisdiction over fraud-based securities class actions in federal court.

The PSLRA has had a significant impact on case management of securities litigation, including procedures for the appointment of class representatives and counsel, heightened pleading requirements on claims alleging fraud, provisions for discovery stays, and a “safe harbor” for forward-looking statements. Other changes include the adoption of a “90-Day Look-Back Period” in calculating damages under 17 Code of Federal Regulations (C.F.R.) § 10b-5, limiting attorney fees in class actions to a reasonable percentage of the class recovery, and limiting defendants’ liability in section 10(b) cases to their proportionate share (with certain exceptions where joint and several liability may still apply). Much of the case law interpreting the PSLRA obligations has focused on the lead plaintiff and pleading provisions.

### 31.31 Class Representatives and Lead Plaintiffs

The PSLRA does not establish specific procedures for courts in implementing the lead plaintiff provisions, nor does it identify selection criteria other than financial interest and the traditional adequacy and typicality requirements of Federal Rule of Civil Procedure 23. As a result, the courts have wrestled with the interpretation of the lead plaintiff provisions in light of the legislative goal to remedy lawyer-driven lawsuits. The statute imposes certain preliminary procedural requirements on plaintiffs at the time the complaint is filed. It requires a plaintiff seeking to represent a securities class to file, along with the complaint,<sup>1775</sup> a certification that (1) confirms the plaintiff did not purchase the securities at issue at the direction of counsel; (2) shows the plain-

1772. 15 U.S.C. §§ 77p(b), 78bb(f)(1) (2000).

1773. *Id.* § 77z-1(4).

1774. *Id.* § 78bb(f)(2). *See, e.g.,* *Green v. Ameritrade, Inc.*, 279 F.3d 590 (8th Cir. 2002) (district court properly remanded case following removal under Uniform Standards Act where plaintiff filed amended complaint eliminating any securities causes of action, leaving only state-law claims). State-court jurisdiction was preserved over certain covered class actions, such as actions based on the statutory or common law of the state in which the issuer is incorporated and that involve purchases or sales by issuers to equity holders, 15 U.S.C. § 78bb(f)(3)(A) (2000), or actions by a state, political subdivision, or pension plan. *Id.* § 78bb(f)(3)(B).

1775. However, a movant need not file a complaint to seek lead plaintiff status. *See Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1155 (N.D. Cal. 1999).

tiff is willing to serve as a representative party on behalf of the class; (3) identifies all transactions by the plaintiff in the security at issue during the relevant time period; (4) identifies all other actions filed during the preceding three years in which the plaintiff served or sought to serve as a representative party; and (5) certifies that the plaintiff's recovery will be limited to his or her pro rata share, except as ordered by the court.<sup>1776</sup> The PSLRA (or “the statute”) creates a presumption precluding any plaintiff seeking to serve as lead plaintiff who has been a lead plaintiff in more than five securities class actions during any three-year period.<sup>1777</sup> There is a split of authority over whether and when the presumption should be rebutted if an institutional investor is seeking lead plaintiff status.<sup>1778</sup>

The PSLRA also directs the plaintiff, shortly after filing, to comply with detailed notice provisions informing potential class members of the existence of the securities class action.<sup>1779</sup> The PSLRA specifically provides, however, that notices required under the statute “shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.”<sup>1780</sup> The plaintiff must pub-

1776. 15 U.S.C. § 78u-4(a)(2)(A) (2000). The Northern District of California held in *Aronson* that the certification requirement only applied to plaintiffs filing the complaint, and its provisions did not attach to non-initiating movants for lead plaintiff status. *Aronson*, 79 F. Supp. 2d at 1155–56. *But see* *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398 (D. Minn. 1998) (imposing certification requirements on plaintiffs seeking lead plaintiff status, even though they did not file the complaint). The *Aronson* court noted, however, that the local rules for the Northern District of California provide that although not required to file a certification, a plaintiff seeking lead plaintiff status must at the time of its initial appearance state it has reviewed the complaint and adopted the complaint's allegations or identify additional allegations it intends to assert. *Aronson*, 79 F. Supp. 2d at 1155–56 (citing N.D. Cal. Civ. L.R. 3-7(c)).

1777. 15 U.S.C. § 78u-4(a)(3)(B)(vi) (2000).

1778. *Compare In re Enron Corp. Sec. Litig.*, 206 F.R.D. 427 (S.D. Tex. 2002) (discussing whether it would be proper to appoint Florida State Board of Administration (FSBA) as lead plaintiff where it was serving as or seeking lead plaintiff status in nine cases), *and In re Telxon Corp. Sec. Litig.*, 67 F. Supp. 2d 803 (N.D. Ohio 1999) (FSBA would be barred from serving as lead plaintiff where it had served or was serving as lead plaintiff in five other securities class actions in three years), *and Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146 (N.D. Cal. 1999) (FSBA disqualified as lead plaintiff where it was serving as lead plaintiff in six other securities class actions), *with Piven v. Sykes Enters., Inc.*, 137 F. Supp. 2d 1295 (M.D. Fla. 2000) (finding presumptive bar against serving as lead plaintiff created by lead plaintiff status in five other cases could be overcome); *In re Critical Path, Inc. Sec. Litig.*, 156 F. Supp. 2d 1102 (N.D. Cal. 2001); *In re Network Assocs., Inc. Sec. Litig.*, 76 F. Supp. 2d 1017 (N.D. Cal. 1999). *See* Melanie M. Piech, *Was the Selection of Lead Plaintiff and Lead Counsel in Enron Correct?*, 13 Sec. Reform Act Litig. Rep. 6 (Apr. 2002).

1779. *See Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 60 (D. Mass. 1996) (suggesting that failure to comply with the PSLRA notice provisions would be fatal to maintaining the action as a proposed class action).

1780. 15 U.S.C. §§ 77z-1(a)(3)(A)(iii), 78u-4(a)(3)(A)(iii) (2000).

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lish notice of the action in “a widely circulated national business-oriented publication or wire service” within twenty days of the filing of the complaint, advising of the action, the claims asserted therein, and the class period.<sup>1781</sup> The notice must also state that any purported class member may move to serve as lead plaintiff within sixty days of the date of the notice.<sup>1782</sup> Several courts have held that the sixty-day notice requirement is mandatory and precludes consideration of untimely filed motions for lead plaintiff appointment.<sup>1783</sup>

Where multiple actions alleging substantially the same claims have been filed by more than one plaintiff, the statute imposes the obligation to provide early notification on the plaintiff who was the first to file. One of the effects of the notice provisions, however, has been to help some attorneys to continue to exert control over securities class actions, a result contrary to the goals of the PSLRA. One court observed that notices have been filed by attorneys on multiple occasions in related cases “over and again, all in an effort to compile the largest portfolio [of clients]” who are then presented by the firm as a “group” for purposes of appointment under the lead plaintiff provisions.<sup>1784</sup> The SEC has also cautioned that the notice provisions afford an opportunity to continue the very abuses the PSLRA sought to redress.<sup>1785</sup> Scrutiny of the early notices the plaintiff proposes to disseminate, with a critical eye towards any language that “extols” the virtue of the firm or otherwise solicits support for the lawyer-proposed lead plaintiff, may assist in reducing the incidence of these tactics. In

1781. *Id.* §§ 77z-1(a)(3)(A)(i), 78u-4(a)(3)(A)(i). See *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1067 (C.D. Cal. 1999) (finding that plaintiffs met notice requirements of PSLRA by announcing class action suit in national wire service); *Greebel*, 939 F. Supp. at 63 (*Business Wire* met requirements for widely circulated national business wire service).

1782. *But see* *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 404 (D. Minn. 1998) (where several notices were published, court would extend the sixty-day notice period beyond original publication date where to do otherwise “would deprive injured investors of any opportunity to seek to be selected as [l]ead [p]laintiff”).

1783. See *Skwartz v. Crayfish Co.*, No. 00 Civ. 6766, 2001 WL 1160745, at \*5 (S.D.N.Y. Sept. 28, 2001) (finding motion for appointment as lead plaintiff filed beyond the sixty-day period was untimely, thereby eliminating movant as a candidate for lead plaintiff); *In re MicroStrategy Inc. Sec. Litig.*, 110 F. Supp. 2d 427, 439–40 (E.D. Va. 2000) (rejecting party’s application for lead plaintiff for procedural failure to file timely motion for appointment). *But see* *Chill*, 181 F.R.D. at 404.

1784. See *In re Network Assocs., Inc. Sec. Litig.*, 76 F. Supp. 2d 1017, 1021 (N.D. Cal. 1999) (detailing method used by law firms to accumulate clients for the purpose of aggregating claims and claiming overwhelming support for the lawyer-created “group” as lead plaintiff and the firm as lead counsel). The court in *Network Associates* rejected a motion by 1,725 members collected by attorneys to appoint a subgroup of 10, also chosen by the attorneys, noting there was “no organized decisionmaking apparatus, no coherency, no common ground other than the lawyer. They [the subgroup] too are simply disparate, unlinked, and unrelated investors.” *Id.* at 1023.

1785. *In re Baan Co. Sec. Litig.*, 186 F.R.D. 214 (D.D.C. 1999).

addition, the judge should try to ensure that these early communications to class members encourage them to serve as lead plaintiffs and do not mislead them into believing that they are filling out claims forms. In many cases, however, plaintiffs will publish notice of the action concurrently with the filing of the complaint in order to comply with the twenty-day deadline for publication imposed by the PSLRA. To the extent the court requires judicial approval of the proposed notices prior to publication, perhaps through a standing order, the court will need to complete its review prior to the expiration of the twenty-day period.

The PSLRA contemplates that the court will appoint a lead plaintiff within ninety days of the date on which notice is published. In certain circumstances, such as when a defendant is facing possible bankruptcy, the court should make the lead plaintiff determination as quickly as possible. These time constraints are modified, however, where a motion to consolidate multiple actions has been filed. In such cases, the statute directs the court to appoint the lead plaintiff “as soon as practicable” after resolving the motion to consolidate. Indeed, 15 U.S.C. § 78u-4(a)(3)(B)(ii) directs the court to address and resolve the motion to consolidate prior to rendering a decision on the appointment of lead plaintiffs.<sup>1786</sup> The statute further creates a rebuttable presumption that the plaintiff most capable of adequately representing the class is the person or group of persons with the largest financial interest in the relief sought, who also satisfies the requirements of Federal Rule of Civil Procedure 23.<sup>1787</sup> The showing under Rule 23 is considered a preliminary inquiry into whether the plaintiff has made a prima facie showing that the adequacy and typicality requirements have been met.<sup>1788</sup> This presumption can be rebutted upon proof that the plaintiff either “will not fairly and adequately protect the interests of the class” or is subject to unique defenses that impair the plaintiff’s ability to do so.<sup>1789</sup> In most cases, the plaintiff filing the action will also seek appointment

1786. See *Vincelli v. Nat’l Home Health Care Corp.*, 112 F. Supp. 2d 1309 (M.D. Fla. 2000); *Chill*, 181 F.R.D. at 405–08 (considering motion to consolidate, followed by motion to appoint lead plaintiff).

1787. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I) (2000).

1788. *In re Advanced Tissue Scis. Sec. Litig.*, 184 F.R.D. 346 (S.D. Cal. 1998).

1789. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II) (2000). The PSLRA only permits purported class members to challenge the adequacy of the presumptive lead plaintiff. *Id.* § 78u-4(a)(3)(B)(i); *Gluck v. CellStar Corp.*, 976 F. Supp. 542 (N.D. Tex. 1997). See *In re Cendant Corp. Litig.*, 264 F.3d 201, 262 (3d Cir. 2001) (“The Reform Act establishes a two-step process for appointing a lead plaintiff: the court first identifies the presumptive lead plaintiff and then determines whether any member of the putative class has rebutted the presumption.”). However, defendants may challenge whether the lead plaintiff meets Rule 23 requirements at the class certification stage. See *In re Lucent Techs., Inc. Sec. Litig.*, 194 F.R.D. 137, 150 n.17 (D.N.J. 2000) (“The

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as lead plaintiff, although once the statutory early notification is published, other investors may file competing motions.

The PSLRA does not require courts to hold a hearing on lead plaintiff motions. Courts have approached the decision-making process in various ways, ranging from requiring movants to respond to a written questionnaire prepared by the court, to conducting interviews of the candidates and their counsel at hearings on motions for appointment,<sup>1790</sup> to simply considering the parties' submissions and oral argument.<sup>1791</sup> Although some decisions have allowed discovery as part of the appointment process,<sup>1792</sup> the PSLRA severely restricts discovery into the adequacy of the representation by the proposed lead plaintiff.<sup>1793</sup> A member of the proposed plaintiff class can challenge the adequacy of lead plaintiff's representation only by demonstrating "a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class."<sup>1794</sup> Absent such a showing, a class member objecting to the presumptive lead plaintiff will not be entitled to discovery.

Where the movant is a single investor or institution, the court's task is fairly straightforward. In identifying the plaintiff with the largest financial interest, courts have considered factors such as the number of shares purchased or sold during the class period,<sup>1795</sup> the net number of shares purchased, the net funds spent, and approximate losses suffered by the plaintiff.<sup>1796</sup> These factors courts have found helpful "because they look to relatively objective indicators . . . rather than to the ultimate question of damages."<sup>1797</sup> One option in assessing the merits of competing lead plaintiff petitions is to have those parties seeking lead plaintiff status file a joint submission setting forth their claimed financial interests and comparing their financial stakes in the litigation, preferably through an agreed on method. Such an approach allows the court to assess the merits of competing parties' positions without expending significant

determination, however, that . . . [l]ead [p]laintiffs meet the requirements of Rule 23 does not preclude revisiting the issue at the class certification stage.").

1790. See *In re Network Assocs., Inc. Sec. Litig.*, 76 F. Supp. 2d 1017, 1027 (N.D. Cal. 1999).

1791. *In re Cell Pathways, Inc. Sec. Litig.*, II, 203 F.R.D. 189 (E.D. Pa. 2001).

1792. *In re Network Assocs.*, 76 F. Supp. 2d at 1027 (permitting four-hour depositions of each of the main candidate representatives).

1793. 15 U.S.C. § 78u-4(a)(3)(B)(iv) (2000).

1794. *Gluck*, 976 F. Supp. at 547.

1795. *In re Network Assocs.*, 76 F. Supp. 2d at 1027 ("At least as a first approximation, the candidate with the most net shares purchased will normally have the largest potential damage recovery.").

1796. See *In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001); *In re Critical Path, Inc. Sec. Litig.*, 156 F. Supp. 2d 1102, 1107 (N.D. Cal. 2001).

1797. *Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1158 (N.D. Cal. 1999).

judicial resources wading through or reconstructing underlying figures on which the calculations are based. In addition, the court may find it difficult to reconcile damage calculations based on differing methodologies.

Complications arise where a group seeks appointment as lead plaintiff. Although the PSLRA contemplates that more than one class member may be appointed as lead plaintiff, courts disagree as to whether and when a group will qualify as the presumptively most adequate plaintiff. One issue the courts have struggled with is whether the claims of unrelated investors can be aggregated to meet the financial interest requirement of the PSLRA.<sup>1798</sup> Several courts have held that aggregation of claims was proper,<sup>1799</sup> although some decisions have allowed groups to serve as lead plaintiff simply because there was no opposition by individual class members, or the only opposition presented was by a competing group.<sup>1800</sup> Other courts have concluded that aggregation of numerous unrelated plaintiffs defeats the purpose of the PSLRA's lead plaintiff provisions.<sup>1801</sup> Those courts permitting groups to be appointed have looked to whether the proposed group demonstrates the ability to control the litigation and the lawyers.<sup>1802</sup> The size of the group also has been a determinative fac-

1798. See, e.g., *In re Cendant Corp.*, 264 F.3d at 266 (“The [PSLRA] contains no requirement mandating that the members of a proper group be ‘related’ in some manner.”); *Aronson*, 79 F. Supp. 2d at 1159.

1799. See, e.g., *In re Rent-Way Sec. Litig.*, 209 F. Supp. 2d 493, 518 (W.D. Pa. 2002) (“We see no reason to find that group pled allegations *per se* cannot meet the heightened pleading standards of Rule 9(b) or the PSLRA, and rather will consider the allegations individually.”); *Weltz v. Lee*, 199 F.R.D. 129, 132–33 (S.D.N.Y. 2001) (permitting aggregation); *In re Advanced Tissue Scis. Sec. Litig.*, 184 F.R.D. 346, 352–53 (S.D. Cal. 1998) (rejecting proposal to appoint entire 250-member group as lead plaintiff and approving alternative proposal to appoint six designated group members).

1800. See, e.g., *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1067–68 (C.D. Cal. 1999); *In re Advanced Tissue*, 184 F.R.D. at 352–53; *In re Milestone Scientific Sec. Litig.*, 183 F.R.D. 404 (D.N.J. 1998); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42 (S.D.N.Y. 1998); *In re Horizon/CMS Healthcare Corp. Sec. Litig.*, 3 F. Supp. 2d 1208 (D.N.M. 1998); *Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 64 (D. Mass. 1996) (no opposition to motion for group to serve as lead plaintiff).

1801. See, e.g., *Donnkenny Inc. Sec. Litig.*, 171 F.R.D. 156, 157–58 (S.D.N.Y. 1997) (“To allow lawyers to designate unrelated plaintiffs as a ‘group’ and aggregate their financial stakes would allow and encourage lawyers to direct the litigation.”); see also *In re Bank One S’holders Class Actions*, 96 F. Supp. 2d 780, 783 (N.D. Ill. 2000); *In re Network Assocs., Inc. Sec. Litig.*, 76 F. Supp. 2d 1017, 1023–24 (N.D. Cal. 1999) (cannot aggregate unrelated investors to satisfy lead plaintiff); *Aronson*, 79 F. Supp. 2d at 1153–54; *In re Advanced Tissue*, 184 F.R.D. at 352 (rejecting appointment of 250 unrelated individual investors).

1802. See *In re Network Assocs.*, 76 F. Supp. 2d at 1025–26 (citing SEC memoranda discussing meaning of “group of persons” under PSLRA and that the agency’s interpretation was entitled to great deference).

tor.<sup>1803</sup> The SEC has suggested that groups of three to five plaintiffs are permissible.<sup>1804</sup> Additional relevant factors have included (1) the prior experience of group members; (2) the structure of the group; (3) communication mechanisms both within the group and with counsel; (4) how the group was formed;<sup>1805</sup> (5) the ability of the group to oversee the litigation; (6) the ability of the group to work together; and (7) the existence of a prelitigation relationship among group members.<sup>1806</sup> Courts also have been presented with motions for appointment of co-lead plaintiffs. These requests have raised similar, but less troublesome, issues regarding the number of proposed co-leads and whether appointment of a large group of co-lead plaintiffs would impede their ability to control the litigation and supervise counsel.<sup>1807</sup>

1803. The district court in *In re Baan Co. Securities Litigation*, for example, shared the SEC's view that a group should consist of "no more than three to five persons, a number that will facilitate joint decisionmaking and also help to assure that each group member has a sufficiently large stake in the litigation." *In re Baan Co. Sec. Litig.*, 186 F.R.D. 214, 217 (D.D.C. 1999) (citing Memorandum of the Securities and Exchange Commission, *Amicus Curiae*, at 16–17). See *In re Gemstar-TV Guide Int'l, Inc. Sec. Litig.*, 209 F.R.D. 447, 450 (C.D. Cal. 2002) (holding that a group of three institutional investors and four individual investors was too large and diverse to represent the class); *In re Network Assocs.*, 76 F. Supp. 2d at 1023, 1026–27 (refusing to consider group of 1,725 members and rejecting 10-member subgroup); *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 408 (D. Minn. 1998) (approval of proposed group comprised of 300 plaintiffs "would threaten the interests of the class, would subvert the intent of Congress, and would be too unwieldy to allow for the just, speedy and inexpensive determination of this action"); *Gluck v. CellStar Corp.*, 976 F. Supp. 542 (N.D. Tex. 1997); see also *In re Tyco Int'l, Ltd. Sec. Litig.*, MDL No. 1335, 2000 WL 1513772, at \*4 (D.N.H. Aug. 17, 2000) (mem.) ("[A] group that consists of a small number of large shareholders should be capable of managing [the] litigation and providing direction to class counsel."); *Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1152–54 (N.D. Cal. 1999) (defining group as "a small number of members that share such an identity of characteristics, distinct from those of almost all other class members, that they can almost be seen as being the same person").

1804. *In re Baan Co.*, 186 F.R.D. at 216–17. See also *In re Cendant Corp. Litig.*, 264 F.3d 201, 267 (3d Cir. 2001) (noting that groups of "more than five members are too large to work effectively").

1805. The *Cendant* court included an additional factor where the presumptive lead plaintiff was a group: an inquiry into whether the way in which the group was formed "preclude[d] it from fulfilling the tasks assigned to a lead plaintiff." *In re Cendant Corp.*, 264 F.3d at 266.

1806. *In re Waste Mgmt., Inc. Sec. Litig.*, 128 F. Supp. 2d 401, 413, 432 (S.D. Tex. 2000) (requiring, among other things, a prelitigation relationship other than the loss); *In re Network Assocs.*, 76 F. Supp. 2d at 1026.

1807. See, e.g., *D'Hondt v. Digi Int'l Inc.*, Civ. No. 97-5, 1997 WL 405668, at \*5 (D. Minn. Apr. 3, 1997) (mem.) (appointing twenty-one plaintiffs as "co-lead" plaintiffs); *In re Cephalon Sec. Litig.*, No. 96-CV-0633, 1996 WL 515203, at \*1 (E.D. Pa. Aug. 27, 1996) (mem.) (finding that PSLRA "does not preclude appointing more than one lead plaintiff"); but see *In re*

The presumptive lead plaintiff must also make a *prima facie* showing that it satisfies the adequacy and typicality requirements of Rule 23.<sup>1808</sup> Drawing on the PSLRA, the Third Circuit in *In re Cendant Corp. Securities Litigation*<sup>1809</sup> expanded the traditional Rule 23 inquiry into “adequacy” and “typicality” to include whether the presumptive lead plaintiff “has demonstrated a willingness and ability to select competent class counsel and to negotiate a reasonable retainer agreement with that counsel.”<sup>1810</sup> Information about the firm selected and its ability to conduct the litigation, as well as the manner in which the fee structure was derived, were found to be indicia of whether the lead plaintiff was capable of representing the class.

Thus, a court might conclude that the movant with the largest losses could not surmount the threshold adequacy inquiry if it lacked legal experience or sophistication, intended to select as lead counsel a firm that was plainly incapable of undertaking the representation, or had negotiated a clearly unreasonable fee agreement with its chosen counsel.<sup>1811</sup>

The PSLRA places the selection of lead counsel in the hands of the lead plaintiff, subject to the approval of the court,<sup>1812</sup> although some courts have held that lead counsel be selected through a competitive bidding process, sometimes referred to as an auction.<sup>1813</sup> When determining whether to approve lead counsel proffered by the lead plaintiff, courts focus on the selection process used by the lead plaintiff to choose counsel, the proposed fee structure, whether the firm has adequate resources, and the extent of the firm’s (and lead attorney’s) experience in class action securities cases. On some occasions, the appointment of more than one firm as lead counsel may be appropriate in order to protect the interests of the class.<sup>1814</sup> Courts that have approved the ap-

Donnkenny Inc. Sec. Litig., 171 F.R.D. 156, 157–58 (S.D.N.Y. 1997) (co-lead plaintiffs not permitted by PSLRA).

1808. See *In re Cendant Corp.*, 264 F.3d at 263.

1809. 264 F.3d 201 (3d Cir. 2001).

1810. *Id.* at 265.

1811. *Id.* at 265–66.

1812. 15 U.S.C. § 78u-4(a)(3)(B)(v) (2000). See *Vincelli v. Nat’l Home Health Care Corp.*, 112 F. Supp. 2d 1309, 1315 (M.D. Fla. 2000) (“The decision to approve counsel selected by the lead plaintiff is a matter within the discretion of the district court.”).

1813. See, e.g., *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 969 (N.D. Cal. 2001); *In re Bank One S’holders Class Actions*, 96 F. Supp. 2d 780, 784 (N.D. Ill. 2000); *In re Lucent Techs., Inc. Sec. Litig.*, 194 F.R.D. 137, 156–57 (D.N.J. 2000); *Wenderhold v. Cylink Corp.*, 188 F.R.D. 577, 587 (N.D. Cal. 1999); *In re Cendant Corp. Litig.*, 182 F.R.D. 144, 150–51 (D.N.J. 1998).

1814. *In re Lernout & Hauspie Sec. Litig.*, 138 F. Supp. 2d 39, 46–47 (D. Mass. 2001) (appointing three law firms as co-lead counsel and noting factors warranting appointment of more than one firm including the large amount of monies at stake and pending bankruptcy proceeding of defendant corporation). *But see In re Wells Fargo Sec. Litig.*, 156 F.R.D. 223, 226 (N.D.

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pointment of co-lead plaintiffs often have been willing to approve the appointment of more than one counsel to serve as co-lead counsel.<sup>1815</sup> The sharing of resources and expertise in costly cases may favor the appointment of multiple counsel.<sup>1816</sup>

Factors disfavoring more than one firm include the potential for duplicative services, absence of coordination, the risk of increased litigation time and expense, and the potential for the attorneys to take over or control the litigation—a particular concern of the PSLRA.<sup>1817</sup> The court in *In re Milestone Scientific Securities Litigation*<sup>1818</sup> required that before multiple counsel would be appointed, there must be a showing that “the lead plaintiff will be able to withstand any limitation on, or usurpation of, control, and effectively supervise the several law firms acting as lead counsel.”<sup>1819</sup> Review of the proposed organizational structure of lead counsel may reveal potential conflicts among firms, as well as whether the independence and ability of the lead plaintiff to manage the litigation will be impaired.<sup>1820</sup> In cases where the court has determined that the appointment of multiple law firms as lead counsel is ill-advised, the court can still encourage lead counsel to seek the assistance of other firms where appropriate.<sup>1821</sup>

Cal. 1994) (finding joint appointment of co-class counsel unwarranted and posing a “‘dangerous probability’ of lessened competition” where the firms seeking joint appointment were large and dominant players).

1815. *Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d 845, 854 (S.D. Ind. 1999) (approving selection of two law firms as co-lead counsel and a third firm as local counsel); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 50 (S.D.N.Y. 1998) (appointing three law firms as co-lead counsel); *In re Advanced Tissue Scis. Sec. Litig.*, 184 F.R.D. 346, 353 (S.D. Cal. 1998) (granting plaintiff’s motion to approve selection of two firms as co-lead counsel).

1816. *See, e.g., Vincelli*, 112 F. Supp. 2d at 1315; *In re Milestone Scientific Sec. Litig.*, 187 F.R.D. 165, 176 (D.N.J. 1999); *In re Oxford Health Plans*, 182 F.R.D. at 49–50.

1817. *See Vincelli*, 112 F. Supp. 2d at 1315–16; *In re Advanced Tissue*, 184 F.R.D. at 351.

1818. 187 F.R.D. 165 (D.N.J. 1999).

1819. *Id.* at 177. *See also In re Sprint Corp. Sec. Litig.*, 164 F. Supp. 2d 1240, 1246 (D. Kan. 2001) (approving co-lead counsel but warning that “the court will not approve any possible award of fees and expenses that reflects duplication, inefficiency, or the costs of coordinating the efforts of the two firms . . . [and] will not tolerate co-lead counsel speaking with a divided voice”).

1820. *See In re Milestone Scientific*, 187 F.R.D. at 179.

1821. *See, e.g., id.* at 181 & n.10; *In re Horizons/CMS Healthcare Corp. Sec. Litig.*, 3 F. Supp. 2d 1208, 1211 (D.N.M. 1998) (appointing firm as lead counsel and two local attorneys as liaison counsel).

### 31.32 Pleading Requirements

Fraud claims, including allegations of securities fraud, must meet the requirements of Federal Rule of Civil Procedure 9(b), which requires that fraud be pleaded with particularity.<sup>1822</sup> The PSLRA reinforced the pleading requirements for securities fraud claims<sup>1823</sup> by specifically mandating that where these pleading requirements are not met, the district court “shall, on the motion of any defendant, dismiss the complaint.”<sup>1824</sup> Under the PSLRA, the complaint now must include each allegedly misleading statement together with reasons why it is misleading. Any allegations regarding statements or omissions that are made on information and belief must be supported by a particularized statement of facts supporting such belief.<sup>1825</sup> The courts have disagreed as to whether the group pleading doctrine survives the PSLRA. Some have interpreted the PSLRA to preclude plaintiffs from grouping all defendants together in order to survive a motion to dismiss, requiring instead identification of the specific misrepresentations made by each.<sup>1826</sup> Others have adhered to a narrow interpretation of the doctrine, holding that in appropriate circumstances it may still apply.<sup>1827</sup> Some courts have required the plaintiff to plead with par-

1822. Fed. R. Civ. P. 9(b) provides: “In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally.”

1823. The enhanced pleading requirements were not included in the PSLRA provisions of the 1933 Act.

1824. 15 U.S.C. § 78u-4(b)(3)(A) (2000). See *San Leandro Emergency Med. Group Profit Sharing Plan v. Philip Morris Cos.*, 75 F.3d 801, 812–13, 815 (2d Cir. 1996) (affirming lower court’s ruling that plaintiffs did not allege fraud with sufficient particularity). *But cf.* *Novak v. Kasaks*, 216 F.3d 300, 315 (2d Cir. 2000) (vacating and remanding lower court’s dismissal of the case for failure to allege fraud with particularity).

1825. 15 U.S.C. § 78u-4(b)(1) (2000). See *Liberty Ridge LLC v. Realtech Sys. Corp.*, 173 F. Supp. 2d 129 (S.D.N.Y. 2001).

1826. See, e.g., *In re U.S. Interactive, Inc.*, No. 01-CV-522, 2002 WL 1971252, at \*4 (E.D. Pa. Aug. 23, 2002) (finding group pleading doctrine could be applied to corporate officers where it was clear, given their high level positions and the nature of writing at issue, that the officer would have been involved directly with its writing, approval of its contents, or privy to information concerning its accuracy); *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1350 (S.D. Cal. 1998) (“[T]he continued vitality of the judicially created group-published doctrine is suspect since the PSLRA specifically requires that the untrue statements or omissions be set forth with particularity as to ‘the defendant’ . . .”).

1827. See e.g., *In re Raytheon Securities Litig.*, 157 F. Supp. 2d 131, 152–53 (D. Mass. 2001) (“this Court agrees with the majority of courts that have held that the rationale behind the group pleading doctrine remains sound in the wake of the passage of the PSLRA”); *In re Stratosphere Corp. Sec. Litig.*, 1 F. Supp. 2d 1096, 1108 (D. Nev. 1998) (declining to adopt defendant’s proposition that “group pleading has been sub silentio abolished by the PSLRA”).

ticularity each defendant's specific statements supporting the plaintiff's claim against that defendant.<sup>1828</sup>

The degree of specificity required has varied.<sup>1829</sup> Courts have required the plaintiff to identify how the plaintiff learned of the conduct for the basis for its allegations, including confidential sources underlying allegations on information and belief.<sup>1830</sup> To the extent such sources are documentary, courts also have required plaintiffs to identify the document, its author, its date, and its recipient, and to describe the document's contents.<sup>1831</sup> Other courts have held the PSLRA's heightened pleading standard does not "require that plaintiffs plead with particularity every single fact upon which their beliefs concerning false or misleading statements are based."<sup>1832</sup> One option is to require plaintiffs (in all cases subject to the provisions of the PSLRA) to file, along with a complaint alleging securities fraud, a "case statement" modeled after those often utilized in Racketeer Influenced and Corrupt Organizations Act (RICO) litigation.<sup>1833</sup> For example, a judge ordered plaintiffs filing an amended complaint to include, with respect to each false or misleading statement, the following information:<sup>1834</sup>

- whether the statements were written or oral;
- the title, author, date of preparation, and persons reviewing any written statements;
- when, where, and the circumstances under which oral statements were made;

1828. See, e.g., *Coates v. Heartland Wireless Communications, Inc.*, 26 F. Supp. 2d 910, 915–16 (N.D. Tex. 1998) (holding group pleading banned by PSLRA); *Allison*, 999 F. Supp. at 1350 (questioning continued vitality of group pleading doctrine); *Zuckerman v. Foxmeyer Health Corp.*, 4 F. Supp. 2d 618, 626–27 & n.4 (N.D. Tex. 1998).

1829. See, e.g., *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1248 (N.D. Cal. 2000); *In re Eng'g Animation Sec. Litig.*, 110 F. Supp. 2d 1183 (S.D. Iowa 2000).

1830. *In re Green Tree Fin. Corp. Stock. Litig.*, 61 F. Supp. 2d 860 (D. Minn. 1999); *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746 (N.D. Cal. 1997), *aff'd*, 183 F.3d 970 (9th Cir. 1999).

1831. *In re Guess?, Inc. Sec. Litig.*, 174 F. Supp. 2d 1067 (C.D. Cal. 2001). Compare *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746 (N.D. Cal. 1997), *aff'd*, 183 F.3d 970 (9th Cir. 1999), and *In re Green Tree Fin. Corp. Stock Litig.*, 61 F. Supp. 2d 860 (D. Minn. 1999), with *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000); see also *In re Digi Int'l Inc. Sec. Litig.*, 6 F. Supp. 2d 1089 (D. Minn. 1998).

1832. *Novak*, 216 F.3d at 313.

1833. See *infra* § 35.

1834. *In re Guess?*, 174 F. Supp. 2d at 1079–80.

- all facts supporting the claim that the statement was false or misleading when made;
- details regarding any reports or other sources that plaintiffs allege support or demonstrate the falsity of the statements; and
- all facts giving rise to a strong inference of recklessness, and detailed information regarding any documents or other sources supporting such an inference.

Such statements can be designed to detail both the factual and legal basis for the plaintiff's claim. These statements may prove helpful in assisting a plaintiff with a meritorious case to comply with the PSLRA pleading requirements as interpreted within the jurisdiction, and they may assist the court when ruling on motions brought pursuant to Federal Rule of Civil Procedure 12. The PSLRA requires a plaintiff to have a detailed factual basis for the allegations at the time suit is filed. This suggests that the normal liberality of amendment provided by the Federal Rules may be inappropriate in shareholder class actions. Where it is apparent that repeated amendment of the complaint cannot correct the deficiencies, dismissal with prejudice may be appropriate.

The PSLRA also imposes a uniform standard for pleading scienter in order to survive a motion to dismiss.<sup>1835</sup> Prior to the PSLRA, the Second Circuit, for example, had held that a plaintiff must plead a strong inference of scienter either by (1) alleging facts establishing a motive and opportunity to commit fraud, or (2) presenting circumstantial evidence of recklessness or conscious misbehavior.<sup>1836</sup> Other circuits held that compliance with Federal Rule of Civil Procedure 9(b), permitting general averments of scienter, was sufficient.<sup>1837</sup> Although the PSLRA incorporated language from Second Circuit jurisprudence requiring the plaintiff to allege with particularity all “facts giving rise to a strong inference that the defendant acted with the required state of mind,”<sup>1838</sup> Congress declined to expressly codify the Second Circuit standard.<sup>1839</sup> Nor did

1835. “[T]he PSLRA did not change the scienter that a plaintiff must prove to prevail in a securities fraud case but instead changed what a plaintiff must plead in his complaint in order to survive a motion to dismiss.” *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542, 548–49 (6th Cir. 1999).

1836. *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 268–69 (2d Cir. 1993).

1837. *See In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1545 (9th Cir. 1994) (en banc).

1838. S. Rep. No. 104-98, at 26 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 705; *see also id.* at 15, *reprinted in* 1995 U.S.C.C.A.N. at 694 (choosing “a uniform standard modeled upon the pleading standard of the Second Circuit”); H.R. Conf. Rep. No. 104-369, at 41 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 740 (“The Conference Committee language is based in part on the pleading standard of the Second Circuit.”).

1839. *See Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1282 (11th Cir. 1999) (questioning whether Congress “merely borrow[ed] the Second Circuit’s ‘strong inference’ language without

Congress define the “required state of mind” or change the scienter plaintiffs must prove.<sup>1840</sup> The courts construing the PSLRA, however, have split on whether a “strong inference” of scienter can be shown by motive and opportunity alone or whether the statute heightens the Second Circuit standard and more is required.<sup>1841</sup>

### 31.33 Safe Harbor

The PSLRA’s statutory “safe-harbor” provision protects statements defined as “forward looking” in section 78u-5(i)(1). However, the Act specifically excludes certain statements from the definition of forward-looking and also withdraws the safe-harbor protections from any person convicted of securities violations within the previous three years.<sup>1842</sup> Under this provision, liability will not attach to forward-looking statements that are accompanied by appropriate

adopting its motive and opportunity test”); *In re Boeing Sec. Litig.*, 40 F. Supp. 2d 1160, 1173 (W.D. Wash. 1998) (Although modeled after the Second Circuit standard, “[t]he Committee does not intend to codify the Second Circuit’s caselaw interpreting this pleading standard, although courts may find this body of law instructive.” (emphasis omitted) (quoting S. Rep. No. 104-98, at 15 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 694 (citations omitted))).

1840. *In re SmarTalk Teleservices, Inc. Sec. Litig.*, 124 F. Supp. 2d 505, 512 (S.D. Ohio 2000); *In re Glenayre Techs., Inc. Sec. Litig.*, 982 F. Supp. 294, 298 (S.D.N.Y. 1997).

1841. 15 U.S.C. § 78u-4(b)(2) (2000). *See, e.g.*, *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000) (adhering to traditional test of motive and opportunity and strong inference); *Bryant*, 187 F.3d at 1283, 1285 (holding that “[PSLRA] does not codify the ‘motive and opportunity’ test formulated by the Second Circuit” and that allegations of motive and opportunity alone are insufficient); *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542, 551 (6th Cir. 1999) (rejecting motive and opportunity alone as sufficient evidence of scienter); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 974 (9th Cir. 1999) (“In order to show a strong inference of deliberate recklessness, plaintiffs must state facts that come closer to demonstrating intent, as opposed to mere motive and opportunity.”); *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 535 (3d Cir. 1999) (following Second Circuit test but barring “catch-all” allegations and adhering to heightened pleading); *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177–78 (5th Cir. 1997) (Second Circuit test still viable after PSLRA); *In re Boeing*, 40 F. Supp. 2d at 1174 (finding motive and opportunity alone, while usually insufficient, may be sufficient to plead scienter “if the totality of the circumstances creates a strong inference of fraud”); *In re Stratosphere Corp. Sec. Litig.*, 1 F. Supp. 2d 1096, 1107–08 (D. Nev. 1998) (finding motive and opportunity alone not presumed to be sufficient); *In re Glenayre*, 982 F. Supp. at 297–98 (motive and opportunity relevant, but insufficient on own); *In re Health Mgmt., Inc. Sec. Litig.*, 970 F. Supp. 192, 201 (E.D.N.Y. 1997) (Second Circuit test still viable); *Friedberg v. Discreet Logic Inc.*, 959 F. Supp. 42, 48 (D. Mass. 1997) (Reform Act heightened Second Circuit pleading standard); *Marksman Partners L.P. v. Chantal Pharm. Corp.*, 927 F. Supp. 1297, 1308–11 (C.D. Cal. 1996) (Second Circuit test still viable). *See also* *Greebel v. FTP Software, Inc.*, 194 F.3d 185 (1st Cir. 1999).

1842. 15 U.S.C. § 78u-5(b) (2000).

cautionary statements<sup>1843</sup> tailored to the particular risks.<sup>1844</sup> The provision, however, does not apply to statements included in financial or registration statements.<sup>1845</sup> Also, it will not protect statements that are knowingly false when made, even if such statements otherwise would fall within the scope of section 78u-5(i)(1).<sup>1846</sup> Early review of the complaint may disclose that the statements complained of fall within the safe-harbor provisions and that the claims consequently are subject to dismissal under Federal Rule of Civil Procedure 12 or 56.

### 31.34 Discovery Stays

The PSLRA provides that all discovery and other proceedings “shall be stayed during the pendency of any motion to dismiss” absent a showing of “undue prejudice”<sup>1847</sup> or a showing that “particularized discovery is necessary to preserve evidence.”<sup>1848</sup> The safe harbor provisions exempting forward-looking statements from liability also permit a stay of discovery pending resolution of summary judgment motions,<sup>1849</sup> although limited discovery targeted towards the applicability of the safe-harbor provisions may be permitted. The discovery stay provisions were designed to protect defendants from fishing expeditions and unnecessary costs of discovery where the legal sufficiency of the

1843. The statute protects individuals making forward-looking statements if accompanied by “meaningful cautionary statements identifying important factors that could cause actual results to differ materially . . .” *Id.* § 78u-5(c)(1)(A)(i).

1844. *See* EP Medsystems, Inc. v. Echocath, Inc., 30 F. Supp. 2d 726 (D.N.J. 1998) (representations effectively “bespeak caution”).

1845. 15 U.S.C. § 78u-5(b)(2)(A)–(B) (2000).

1846. *Fugman v. Arogenex, Inc.*, 961 F. Supp. 1190, 1196–97 (N.D. Ill. 1997).

1847. *See* SG Cowen Sec. Corp. v. United States Dist. Court, 189 F.3d 909, 913 (9th Cir. 1999) (“[F]ailure to muster facts sufficient to meet the Act’s pleading requirements cannot constitute the requisite ‘under prejudice’ to the plaintiff . . .”); *Anderson v. First Sec. Corp.*, 157 F. Supp. 2d 1230, 1242 (D. Utah 2001) (existence of confidentiality agreement between defendant and third-party merger candidate precluded plaintiffs from obtaining specific information and therefore plaintiffs would be unduly prejudiced unless afforded limited discovery); *In re Carnegie Int’l Corp. Sec. Litig.*, 107 F. Supp. 2d 676, 684 (D. Md. 2000) (defendants failed to show undue prejudice); *Med. Imaging Ctrs. of Am., Inc. v. Lichtenstein*, 917 F. Supp. 717, 720–22 (S.D. Cal. 1996) (failing to show undue prejudice standard).

1848. 15 U.S.C. § 78u-4(b)(3)(B) (2000). *See also* *Berkeley Inv. Group, Ltd. v. Colkitt*, 984 F. Supp. 827, 828 (M.D. Pa. 1997) (stay applies where motion to dismiss is directed towards counterclaim asserting claims under the securities laws). “Congress clearly intended that complaints in these securities actions should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed.” *Medhekar v. United States Dist. Court*, 99 F.3d 325, 328 (9th Cir. 1996) (per curiam).

1849. 15 U.S.C. §§ 77z-2(f), 78u-5(f) (2000).

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complaint had not been determined.<sup>1850</sup> The provisions apply to both party and nonparty discovery<sup>1851</sup> and preempt the mandatory disclosure provisions of Rule 26.<sup>1852</sup>

The courts have disagreed on whether the discovery stay provisions apply even though a motion to dismiss has not yet been filed. Several courts have held that the stay provisions are triggered once the defendant indicates an intent to file a motion to dismiss.<sup>1853</sup> The court, in *In re Carnegie International Corp. Securities Litigation*, commented that the defendant had to be given an opportunity to challenge the complaint and “[a]ny other interpretation would encourage unseemly gamesmanship, i.e., a race to serve subpoenas for discovery before a defendant had the opportunity to test the sufficiency of the complaint.”<sup>1854</sup> Other courts have required an actual motion to be filed before imposing a stay.<sup>1855</sup> Application of the discovery stay provisions does not, however, automatically apply to all claims asserted in the complaint. Where the complaint contains separate state law claims that are distinct from the securities claims, some courts have allowed discovery to proceed on those claims; staying the entire case, however, generally is more efficient.<sup>1856</sup>

### 31.4 Initial Pretrial Conference

Securities claims can arise under both federal and state statutes, as well as the common law, and can involve numerous parties. Complaints typically assert numerous claims against various defendants, ranging from companies and securities professionals to accountants and lawyers, with the latter defendants

1850. See, e.g., *Angell Invs., L.L.C. v. Purizer Corp.*, No. 01-C-6359, 2001 WL 1345996, at \*2 (N.D. Ill. Oct. 30, 2001).

1851. *In re Carnegie*, 107 F. Supp. 2d at 679–81 (quashing subpoena duces tecum issued to third parties).

1852. *Medhekar*, 99 F.3d at 327–28 (holding that “initial disclosures are a subset of discovery, and that, as such, they are included in the Act’s stay provision”).

1853. See, e.g., *In re Carnegie*, 107 F. Supp. 2d at 683.

1854. *Id.* See also *In re Trump Hotel S’holder Derivative Litig.*, No. 96-CIV-7820, 1997 WL 442135, at \*2 (S.D.N.Y. Aug. 5, 1997) (staying discovery even though motion to dismiss had not been filed where lack of dismissal motion was result of agreed on schedule).

1855. See, e.g., *Novak v. Kasaks*, No. 96-CIV-3073, 1996 WL 467534, at \*1 (S.D.N.Y. Aug. 16, 1996).

1856. See *Tobias Holdings, Inc. v. Bank United Corp.*, 177 F. Supp. 2d 162, 167 (S.D.N.Y. 2001) (allowing discovery to proceed on plaintiff’s state law claims, where “separate and distinct” from federal securities claims “would not represent an impermissible ‘end run’ around the PSLRA’s automatic stay provisions”); *Angell Invs., L.L.C. v. Purizer Corp.*, No. 01-C-6359, 2001 WL 1345996, at \*2 (N.D. Ill. Oct. 30, 2001). *But see In re Trump Hotel*, 1997 WL 442135, at \*2 (staying discovery).

implicating issues of privilege and confidentiality.<sup>1857</sup> Complaints also may be lengthy, in part as a result of the requirements of Federal Rule of Civil Procedure 9(b) and the PSLRA that fraud be pleaded with particularity.<sup>1858</sup> Failure to comply with Rule 9(b) and the more stringent pleading standards of the PSLRA provide a basis for dismissal of securities actions.<sup>1859</sup> Defendants frequently seek substantial time to respond to the complaint and to decide whether to file counterclaims, cross-claims, and third-party complaints. Immediately after assignment of the litigation, the judge should consider entering an order suspending the time for all defendants to respond to the complaint in cases where a motion to consolidate is pending or a lead plaintiff has not been selected, as the initial complaint is likely to be amended. The initial conference offers an opportunity to learn about the potential size and complexity of the litigation; set a schedule for amendments, motions, and responsive pleadings; and schedule discovery accordingly.

Early institution of an initial case-management order will help to organize the case and preliminarily identify key legal and factual issues. Of particular significance in assessing securities litigation is early determination of the following issues:

- *The likely size and scope of the case.* Complaints will often name as defendants the company whose securities are involved, its officers, directors, independent accountants, attorneys, and brokerage firms. Standards for both pleading and liability may differ depending on the type of defendant. In addition, many securities cases are brought as class actions, raising issues under Federal Rule of Civil Procedure 23 and the PSLRA.
- *Pending or expected related litigation.* In addition to private actions, the SEC or other administrative agencies may institute proceedings. In some instances, related criminal proceedings may also be pending, which may lead the government to request staying the litigation.<sup>1860</sup> A

1857. In addition to claims under the 1933 Act and the 1934 Exchange Act, plaintiffs may include claims under the RICO Act, 18 U.S.C. §§ 1961–1968 (2000), as well as claims for common-law fraud, negligent misrepresentation, and breach of fiduciary duty, among others.

1858. See, e.g., *Greenstone v. Cambex Corp.*, 975 F.2d 22, 25 (1st Cir. 1992); *Whalen v. Carter*, 954 F.2d 1087, 1097–98 (5th Cir. 1992).

1859. See, e.g., *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 549–50 (8th Cir. 1997) (holding that lower court properly dismissed claims for failing to meet particularity requirements); *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1021 (5th Cir. 1996) (holding lower court properly dismissed claims based on failing to adequately plead scienter under Rule 9(b)).

1860. See, e.g., *In re Aid Auto Stores, Inc. Sec. Litig.*, No. CV-98-7395, 2001 WL 1478803, at \*1 (E.D.N.Y. July 13, 2001) (order granting government’s motion to intervene and staying discovery pending resolution of criminal proceeding).

party may also be a debtor in bankruptcy, which may result in automatic stays with respect to that party, removal of cases, related adversary proceedings, and objections to the discharge of debts. In addition, separate actions may have been filed regarding fidelity bonds and other insurance coverage issues, or to prevent foreclosure of security interests. All related litigation in the same court, including pertinent aspects of bankruptcy proceedings, ordinarily should be assigned or transferred to one judge for initial supervision and planning.<sup>1861</sup> The extent to which these cases should be formally consolidated for further pretrial proceedings and trial will depend on the circumstances<sup>1862</sup> and, after a period of centralized management, some cases may be appropriately reassigned to other judges. In class actions, the PSLRA provides that the court should consolidate multiple actions where appropriate.<sup>1863</sup> Related cases may also have been filed in different jurisdictions, as the conduct alleged in securities fraud litigation often affects persons in many states. Centralized pretrial management of the federal litigation may be possible through motions to transfer, or through transfer by the Judicial Panel on Multidistrict Litigation under 28 U.S.C. § 1407.<sup>1864</sup> In general, the optimal venue for a shareholder class action is the district in which the defendant company is headquartered. To the extent that cases remain in different courts, each court should consider whether formal or informal coordination is possible to minimize the risk of conflict.<sup>1865</sup>

- *Takeover litigation.* Takeover litigation—actions brought in connection with the attempted acquisition or transfer of control of a corporation by obtaining securities, assets, or stockholder support—often will involve several actions filed almost simultaneously in different

1861. See, e.g., *Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1150 (N.D. Cal. 1999) (fifty-four related class actions assigned to the court by the District Reassignment Committee).

1862. See Fed. R. Civ. P. 42(a).

1863. See *Aronson*, 79 F. Supp. 2d at 1152 (consolidating all cases except shareholder derivative suit, which was deferred for full briefing); *Chill v. Green Tree Fin. Corp.*, 181 F.R.D. 398, 405–07 (D. Minn. 1998) (granting motion to consolidate and consolidating actions into two class actions).

1864. See, e.g., *In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 196 F. Supp. 2d 1375, 1376 (J.P.M.L. 2002) (transferring all related cases outside the Southern District of Texas to that forum “for centralized pretrial proceedings” pursuant to 28 U.S.C. § 1407); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 568 F. Supp. 1250 (J.P.M.L. 1983) (section 1407 transfer order).

1865. For example, coordination may be possible on decisions regarding lead plaintiffs or class notification.

courts seeking a preliminary injunction against violation of the federal antitrust and securities laws. Takeover litigation can be extremely time sensitive, requiring the court's attention to the need for quick resolution of many issues and the impact on the market of even the timing of rulings and hearings. See section 31.7 regarding special problems in takeover litigation.

- *Parties seeking protective orders.* Discovery in securities actions can result in the disclosure of sensitive information, the dissemination of which is potentially detrimental, particularly to corporate defendants.<sup>1866</sup> Securities claims can also implicate attorney–client privileges.
- *Referral to a special master.* Securities cases can present complex factual disputes over matters of accounting, corporate finance, market analyses, or the negotiation or implementation of complex settlements.
- *Potential for settlement.* The parties may be amenable to settlement before substantial time and expense is wasted in litigation, and the court may want to explore the possibilities of early settlement.<sup>1867</sup>

Several foundational issues may preclude the action altogether, and thereby render it subject to early resolution under Federal Rule of Civil Procedure 12(b) or 56. Examples of such issues include

- whether an instrument constitutes a security subject to registration for purposes of liability under the securities laws;<sup>1868</sup>
- whether the alleged misstatements are material;<sup>1869</sup>
- whether the conduct falls within the PSLRA's statutory safe-harbor provisions, or the "bespeaks caution" doctrine;<sup>1870</sup>
- whether a claim is barred by the statute of limitations;<sup>1871</sup>

1866. See, e.g., *SEC v. TheStreet.com*, 273 F.3d 222, 230–31 (2d Cir. 2001) (discussing circumstances under which modification of protective order was appropriate); *In re Cephalon Sec. Litig.*, No. 96-0633, 1998 WL 744067 (E.D. Pa. Oct. 22, 1998) (mem.).

1867. See, e.g., *In re Horizon/CMS Healthcare Corp. Sec. Litig.*, 3 F. Supp. 2d 1208, 1211 (D.N.M. 1998) (settlement reached where litigation stood in the way of acquisition of the defendant by major healthcare provider).

1868. See, e.g., *Assocs. in Adolescent Psychiatry v. Home Life Ins. Co.*, 941 F.2d 561, 564–66 (7th Cir. 1991).

1869. See *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir. 1997).

1870. See *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276 n.7 (11th Cir. 1999) (describing the safe-harbor provision and the bespeaks caution doctrine). The bespeaks caution doctrine appears to remain viable after the PSLRA. See *In re Boeing Sec. Litig.*, 40 F. Supp. 2d 1160, 1170 (W.D. Wash. 1998) ("The PSLRA's safe harbor provisions do not supplant the 'bespeaks caution' doctrine.").

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- whether a demand must be made on a corporation’s directors;<sup>1872</sup>
- whether the “business judgment” rule allows the directors, or a committee they have established, to dismiss or settle the action;<sup>1873</sup>
- whether the defendant is a “controlling person” on whom liability may be imposed;<sup>1874</sup>
- whether and when a “sale” or “purchase” occurred;<sup>1875</sup>
- whether public availability of material information excuses nondisclosure in an action relying on the “fraud-on-the-market” theory;<sup>1876</sup>
- whether loss causation can be established—the PSLRA places the burden of proving loss causation on the plaintiff;<sup>1877</sup>
- whether scienter has been properly alleged and can be established;<sup>1878</sup>  
and

1871. Litigation pursuant to section 10(b) and Rule 10b-5 must be commenced within one year from the discovery of a violation and no more than three years from the date the violation occurred. 15 U.S.C. §§ 77m, 78i(e) (2000); *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 364 (1991). The one-year period begins to run when plaintiffs are on inquiry or constructive notice of the facts giving rise to the claims. *Berry v. Valence Tech., Inc.*, 175 F.3d 699, 703–04 (9th Cir. 1999); *Liberty Ridge LLC v. Realtech Sys. Corp.*, 173 F. Supp. 2d 129, 135 (S.D.N.Y. 2001); *Reisman v. KPMG Peat Marwick LLP*, 965 F. Supp. 165, 170 (D. Mass. 1997). The Supreme Court in *Lampf* established a uniform federal statute of limitations for such claims and further held the doctrine of equitable tolling would not apply. 501 U.S. at 361–62, 363. In some cases, plaintiffs must affirmatively plead compliance with the statute of limitations, with supporting facts. *See, e.g., In re Chaus Sec. Litig.*, 801 F. Supp. 1257, 1265 (S.D.N.Y. 1992).

1872. *See, e.g., Daily Income Fund, Inc. v. Fox*, 464 U.S. 523 (1984).

1873. *See Burks v. Lasker*, 441 U.S. 471, 486 (1979) (state law controls issue of board’s power to discontinue derivative action on federal claim); *see also RCM Sec. Fund, Inc. v. Stanton*, 928 F.2d 1318 (2d Cir. 1991); *Joy v. North*, 692 F.2d 880 (2d Cir. 1982); *Clark v. Lomas & Nettleton Fin. Corp.*, 625 F.2d 49 (5th Cir. 1980).

1874. *See, e.g., Martin v. Shearson Lehman Hutton, Inc.*, 986 F.2d 242, 244 (8th Cir. 1993); *Hollinger v. Tital Capital Corp.*, 914 F.2d 1564, 1572–76 (9th Cir. 1990) (en banc); *In re Indep. Energy Holdings PLC Sec. Litig.*, 154 F. Supp. 2d 741, 772 (S.D.N.Y. 2001); *In re Xerox Corp. Sec. Litig.*, 165 F. Supp. 2d 208, 220 (D. Conn. 2001); *In re Sirrom Capital Corp. Sec. Litig.*, 84 F. Supp. 2d 933, 940 (M.D. Tenn. 1999) (denying motion to dismiss).

1875. *See, e.g., Frankel v. Slotkin*, 984 F.2d 1328, 1333 & n.3, 1337–38 (2d Cir. 1993); *Colan v. Mesa Petroleum Co.*, 951 F.2d 1512, 1522–25 (9th Cir. 1991); *Freeman v. Decio*, 584 F.2d 186, 200 (7th Cir. 1978).

1876. *See In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1115 (9th Cir. 1989).

1877. 15 U.S.C. § 78u-4(b)(4) (2000). *See EP MedSystems, Inc. v. EchoCath, Inc.*, 235 F.3d 865, 883–85 (3d Cir. 2000); *McGonigle v. Combs*, 968 F.2d 810, 819–20 (9th Cir. 1991); *Norwood Venture Corp. v. Converse Inc.*, 959 F. Supp. 205, 209–10 (S.D.N.Y. 1997). Loss causation requires plaintiffs to do more than allege that “they would not have bought . . . stock had they known the truth; they must allege that they would not have suffered the loss” but for defendant’s actions. *Miller v. New Am. High Income Fund*, 755 F. Supp. 1099, 1108 (D. Mass. 1991).

- whether the defendant may be held liable as a “seller.”<sup>1879</sup>

In addition, the resolution of various issues—for example, whether the plaintiffs may proceed on a fraud-on-the-market theory<sup>1880</sup>—will be relevant to whether individual cases may be consolidated for joint trial or should proceed as a class action.<sup>1881</sup>

## 31.5 Class Actions and Derivative Actions

Where appropriate, the court can use the initial pretrial conference to set a schedule for determining whether one or more of the cases should proceed as a class action under Federal Rule of Civil Procedure 23, or a derivative action under Rule 23.1. In addition to ensuring that the notice and pleading requirements of the PSLRA have been met, the following can be assessed as an initial matter:

- whether there has been more than one class action filed, and the parties’ intent to seek consolidation or transfer;
- if the action has been removed pursuant to the Uniform Standards Act, whether removal was appropriate;<sup>1882</sup>
- whether there have been or will be challenges to lead plaintiff certification;
- whether there has been a demonstrable need for limited discovery regarding lead plaintiff certification—in addition to showing a significant financial interest in the relief sought by the class, the plaintiff must also satisfy the typicality and adequacy requirements of Rule 23(a);
- whether appropriate discovery stays pending resolution of any motions to dismiss have been instituted;
- whether lead plaintiff has been selected;
- whether lead counsel has been identified and approved by the court; and

1878. See *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976). See also *Hollinger*, 914 F.2d at 1568–72.

1879. See *Pinter v. Dahl*, 486 U.S. 622, 641–47 (1988).

1880. See *Basic Inc. v. Levinson*, 485 U.S. 224, 241–49 (1988).

1881. See, e.g., *In re LTV Sec. Litig.*, 88 F.R.D. 134 (N.D. Tex. 1980); *Mirkin v. Wasserman*, 858 P.2d 568 (Cal. 1993).

1882. *Derdiger v. Tallman*, 75 F. Supp. 2d 322, 325 (D. Del. 1999) (finding remand required where claims fell within savings clause of 15 U.S.C. § 78bb(f)(3)(A)(ii)).

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- whether the complaint alleges claims that are not susceptible to class treatment.

Other matters must be resolved before a class can be defined. The initial complaint occasionally will include some claims (e.g., reliance on oral misrepresentations or the breach of a “suitability” standard) that rarely would be susceptible to class action treatment, along with other claims (e.g., an omission of a material fact from a proxy statement) that may well be presented on behalf of a class. The dates when plaintiffs bought or sold the securities, and what information they possessed on those dates, may not be clear from the complaint, yet may be critical to a decision regarding the class of persons they might properly represent. Whether the plaintiffs may proceed on a fraud-on-the-market theory may depend both on matters developed during discovery and on what claims will be pursued in the case. The court may need to determine whether a particular claim is made derivatively or individually<sup>1883</sup> and whether the same plaintiff may assert both derivative and class claims.<sup>1884</sup> In deciding whether a class should be certified, consider what class the plaintiffs may represent, and whether multiple classes or subclasses should be formed. It is advisable to consider sources of potential conflict and their effect, such as

- whether the class members are holders of different types of securities;<sup>1885</sup>
- whether some class members took certain key actions while others did not;<sup>1886</sup>
- whether some class members bought or sold before the alleged misconduct and others did so afterwards (or continued to hold the security);<sup>1887</sup>
- whether some class members had inside information;<sup>1888</sup>

1883. See *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 527–34 (1984).

1884. Compare *Hawk Indus., Inc. v. Bausch & Lomb, Inc.*, 59 F.R.D. 619, 623–24 (S.D.N.Y. 1973), and *Ruggiero v. Am. Bioculture, Inc.*, 56 F.R.D. 93, 95 (S.D.N.Y. 1972), with *Keyser v. Commonwealth Nat’l Fin. Corp.*, 120 F.R.D. 489, 492–93 (M.D. Pa. 1988), and *In re Dayco Corp. Derivative Sec. Litig.*, 102 F.R.D. 624, 629–31 (S.D. Ohio 1984). The court may choose to address any actual conflict arising between the claims at the remedy stage. *Keyser*, 120 F.R.D. at 492 n.8 (citing *Bertozzi v. King Louie Int’l, Inc.*, 420 F. Supp. 1166 (D.R.I. 1976)).

1885. See, e.g., *Margolis v. Caterpillar, Inc.*, 815 F. Supp. 1150, 1157 (C.D. Ill. 1991) (buyers of call options and sellers of put options); *Deutschman v. Beneficial Corp.*, 761 F. Supp. 1080, 1082–83 (D. Del. 1991) (common stock and call options).

1886. See, e.g., *In re Bally Mfg. Sec. Corp. Litig.*, 141 F.R.D. 262, 270 (N.D. Ill. 1992) (those who sold during the class period and those who did not).

1887. See, e.g., *Kovaleff v. Piano*, 142 F.R.D. 406, 408 (S.D.N.Y. 1992); *Deutschman v. Beneficial Corp.*, 132 F.R.D. 359, 382–83 (D. Del. 1990); *In re LTV Sec. Litig.*, 88 F.R.D. 134, 149 (N.D. Tex. 1980).

- whether class members purchased or sold securities at different times based on different information;<sup>1889</sup> and
- whether class members are seeking damages or rescission.<sup>1890</sup>

These differences in the various groups of plaintiffs and proposed class members require the court's early attention. Defendants may raise these differences when opposing class treatment, and in some cases opposing positions may justify denial of class certification. In many instances, however, differences may be resolved by limiting the definition of the class or classes that the plaintiffs may represent, by creating additional classes or subclasses, or by tailoring the relief afforded to different plaintiffs. For example, the court may define a class to exclude (or treat as a subclass) those who, as often occurs in complex securities litigation, are also defendants in the class action or in related litigation. If a subclass should be formed and no representative of that subclass is a party, the court may direct notice to the unrepresented class members, to afford them time to have a representative intervene.<sup>1891</sup> Although, as discussed in section 21.23, unnecessary classes generally should be avoided, in some securities cases multiple classes or subclasses may be needed to ensure that the interests of all class members are fairly and adequately protected, particularly during settlement negotiations. Occasionally a mandatory class under Federal Rule of Civil Procedure 23(b)(1) or (b)(2) may be proper, but generally classes in securities litigation will be certified under Rule 23(b)(3), with members enjoying the right to notice and an opportunity to opt out. Class members' opting out of a 23(b)(3) class, if adequately disclosed, may cure some conflicts.

Although the PSLRA provides for early notice to class members by the plaintiff who first files a securities class action, class representatives must also comply with Rule 23(c)(2)'s notice provisions. Absent special circumstances, the class representatives must bear not only the cost of providing Rule 23(c)(2) notice, but also the expense of obtaining class members' names and addresses, which frequently are in the possession of the defendants or a transfer agent.<sup>1892</sup> When securities are registered in "street" names with brokerage houses or fi-

1888. *See, e.g.*, *Dubin v. Miller*, 132 F.R.D. 269, 274–75 (D. Colo. 1990).

1889. *See, e.g.*, *Hoexter v. Simmons*, 140 F.R.D. 416, 421–22 (D. Ariz. 1991); *Alfus v. Pyramid Tech. Corp.*, 764 F. Supp. 598, 605–06 (N.D. Cal. 1991).

1890. *See, e.g.*, *Larson v. Dumke*, 900 F.2d 1363, 1366–68 (9th Cir. 1990); *Davis v. Comed, Inc.*, 619 F.2d 588, 592–98 (6th Cir. 1980).

1891. *See Fed. R. Civ. P.* 23(d)(2).

1892. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

nancial institutions, these nominees' assistance will be needed.<sup>1893</sup> Class representatives should make arrangements with nominees to provide the necessary names and addresses or to forward notices where appropriate, or, where necessary, issue a *subpoena duces tecum*.<sup>1894</sup> Sometimes—for example, in a class action on behalf of holders of bearer bonds—the identity of class members may not be ascertainable. In such a case, the plaintiffs' attorneys should give notice by publication in media likely to be seen by the class members.

### 31.6 Discovery

The principles and procedures discussed in section 11.4 for controlling discovery are generally applicable to securities litigation, subject to the discovery stay provisions of the PSLRA where class action litigation is involved. As an initial matter, the judge should consider what information will be needed from the parties to determine whether the litigation should proceed as a derivative action or class action. In cases that do not raise class issues, the parties are subject to Rule 26 disclosures and the court should further ascertain at the initial pretrial conference the scope of discovery likely to be sought by the parties and tailor a discovery schedule accordingly. Additional reciprocal pre-discovery disclosures may expedite and reduce the amount of discovery needed. Similarly, deferral of depositions until the completion of document discovery may help facilitate and expedite the depositions, reducing the burden and cost on the parties. In class actions, the discovery process can begin once the court has resolved any outstanding motions to dismiss; therefore, it is helpful to set a discovery schedule that includes dates for Rule 26 disclosures (which would have been preempted by any stay of discovery) prior to permitting the parties to begin the formal discovery process. Staged discovery may be appropriate, such as where there are certain factual issues that may be key to summary judgment or settlement. Discovery into these areas first may facilitate early resolution or, at minimum, identify areas that remain in dispute.

To avoid duplicative discovery in multiple litigation, it is best to require plaintiffs in related cases to prepare a single set of interrogatories to be propounded to each defendant, and require the parties to coordinate discovery plans. Consider also establishing a common document depository, perhaps online, cross-noticing depositions of common witnesses for use in all cases. Whether claims of attorney–client privilege or other requests for protective

1893. See *Silber v. Mabon*, 18 F.3d 1449, 1453–55 (9th Cir. 1994) (no due process violation where notice mailed to broker holding stock in street name was not sent to class member until after opt-out period, but court should have considered allowing late opt out).

1894. See, e.g., *In re Penn Cent. Sec. Litig.*, 560 F.2d 1138 (3d Cir. 1977).

orders are likely to arise during the course of discovery can be ascertained at the initial conference, and efforts can be made to resolve such issues before they can disrupt the discovery schedule. The court can also establish a schedule for exchanging expert reports and taking depositions early in the litigation and can adopt procedures to facilitate discovery and use at trial of summaries and computerized data. As in other cases, counsel should be expected to stipulate to facts not genuinely in controversy and directed to develop a joint statement of agreed-on (or uncontroverted) facts.

## 31.7 Takeover Litigation

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Takeover litigation presents special problems. Several actions and counteractions may be filed almost simultaneously in different courts to enjoin or remedy alleged violations of federal antitrust laws, federal securities laws, and state statutes. Major decisions must often be made rapidly about complex factual, legal, and economic issues that involve large amounts of money and would ordinarily take months or even years to resolve. Fortunately, such litigation typically involves only a few parties, represented by experienced attorneys accustomed to working under severe time constraints and other pressures. The existence of state statutes and corporate defenses, such as shareholders' rights plans ("poison pills"), may render time constraints less severe than suggested by the Williams Act.<sup>1895</sup>

### 31.71 Initial Conference

It is wise to hold a preliminary conference with counsel as soon as possible after the commencement of takeover litigation—preferably within a day or two after the complaint is filed. Plaintiff's counsel usually will know or be able to ascertain the identity of counsel for the defendants. The judge should consider whether attorneys for other companies with an interest in the litigation, either as potential intervenors or parties in related cases, should participate. Consider also inviting counsel for government enforcement agencies, such as the Securities and Exchange Commission or the Antitrust Division of the Department

<sup>1895</sup> Pub. L. No. 90-439, 82 Stat. 454 (1968) (codified as amended at 15 U.S.C. §§ 78m(d)–(e), 78n(d)–(f) (2000)).

of Justice. Telephone conferences can accommodate attorneys who are not available on short notice for a conference in chambers.

Procedures can be established—such as telephone conference calls or setting aside a period before or after normal office hours for an in-person conference—for emergency or other matters that may arise and require an immediate ruling. The parties should be cautioned, however, that unnecessary “emergency” motions, whose primary purpose may be to influence the market, may subject offending counsel or their clients to appropriate sanctions. All orders in takeover litigation involving entities with publicly traded securities should, to the extent feasible, be announced after the stock market closes. These rulings may have a substantial impact on the stock market for both plaintiffs’ and defendants’ stock and are sometimes monitored by securities professionals in an attempt to take immediate action in response to the court’s actions, often to the disadvantage of less sophisticated market participants. In unusual situations involving important confidential information, consider holding certain proceedings in camera or receiving some evidence under seal. Although the court may order counsel to defer disclosing the results of a court conference, the court will need to examine whether such an order could conflict with the disclosure requirements of the federal securities laws. Because of the limited time within which rulings must be made, the need for the judge to be personally involved in management and supervision is greater here than in other complex litigation. For this reason, some judges avoid referral to a magistrate judge or special master, which may result in critical delays while rulings are reviewed.

A schedule should be established at the initial conference for filing responsive pleadings and motions, defining and narrowing issues, conducting necessary discovery, and holding the next conference. The schedule usually will be substantially compressed compared with those typical of other litigation. For example, the court may require that the answer be combined with any motions and filed well before the twenty-day period prescribed by Federal Rule of Civil Procedure 12(a), and parties may also be required to serve papers by personal delivery rather than through the mail. In setting the schedule, the suggestions and requests of counsel should be considered. Although the schedule should be regarded as firm, unforeseen events may dictate revisions. The attorneys should confer in advance of each conference, seeking through discussion and compromise to narrow, if not eliminate, disagreements as to matters to be considered by the court. If counsel has not done so, the court might consider adjourning the conference for a day or two to permit counsel to develop more detailed proposals for management of the case.

Additional agenda items that may be appropriate for consideration at this initial conference, whether the conference is held in person or by telephone, include whether the parties anticipate filing threshold motions and the exist-

tence and status of any related cases. The parties may contemplate challenging standing, personal jurisdiction, venue, or other threshold matters that, if resolved promptly, might reduce or eliminate the need for discovery. If so, the judge should establish a schedule for expedited resolution of these issues. This is also an appropriate time to ascertain, or direct counsel to ascertain, the status of other related cases, including times set for hearings, and make plans to coordinate the proceedings to the extent possible. If jurisdiction and venue will not be contested, consider requiring the parties to include any related claims that may arise and enjoining them from instituting new litigation in other courts. Because of time constraints, multidistrict transfer under 28 U.S.C. § 1407 is rarely feasible. Transfer of cases to a single district under 28 U.S.C. § 1404 or 1406 may, however, be appropriate; if so, such transfers should be ordered as expeditiously as possible. If the cases remain in separate courts, the judges should confer and attempt to avoid conflicts in schedules.

### 31.72 Injunctive Relief

The most significant hearing in takeover litigation usually is that on the preliminary injunction. The court's ruling may moot or resolve other issues. Although the complaint typically will include a request for a temporary restraining order (TRO) and an application for a preliminary injunction, a TRO—or any order in takeover litigation—should almost never be granted *ex parte*, particularly given the opportunity for a telephone conference. Ordinarily, any pending request for a TRO should be resolved at the initial conference, and a date should be set for hearing the motion for injunctive relief. Depending on the date of the hearing, the court may, under Federal Rule of Civil Procedure 65(a)(2), order the trial on the merits to be advanced and consolidated with the hearing. In some cases, it is advisable to refuse hearing a motion for preliminary injunction if a hearing on a permanent injunction can be held expeditiously. Before deciding when or whether to hear the application for a preliminary injunction, the court should determine whether a ruling on the application must be rendered by an identifiable date. It is also wise to ascertain from counsel all dates important to the litigation, including those on which any statutory waiting periods expire or significant events (such as a stockholders meeting, or the commencement of acquisition of shares by a competing offeror) are scheduled to occur. The federal statutory waiting period may not be controlling, because of the prevalence of state statutes, such as control share acquisition acts and business combination statutes, as well as shareholders' rights plans (poison pills). Counsel should be questioned about the interplay of such laws and corporate defenses and the effect they will have on the date to be set for the hearing. If the deadline for a ruling cannot be met because of requirements of the litigation, such as criminal proceedings subject to the Speedy

Trial Act, consider reassigning the case to another judge. Counsel's views about the minimum time needed to conduct essential discovery and to conduct the hearing itself should be considered. The court may make a tentative determination on the form of the hearing—for example, whether the motion will be decided on affidavits, depositions, and documents alone, or whether witnesses will be heard in person and, if so, whether their direct testimony will be presented by prepared statements and reports.

One or two additional case-management conferences usually will be needed before the hearing. A meeting (or conference call) among counsel should precede each conference. The primary purposes of these case-management conferences are to ensure that schedules are being met, to narrow or revise the issues based on intervening circumstances (such as an offer being made by another company for the target company's stock, or other defensive measures adopted or proposed to be adopted by the "target" company), and to make final preparations for any scheduled hearing.

Complaints in takeover litigation frequently include a number of claims that the plaintiffs may be willing to eliminate, after further exploration, at least for purposes of the preliminary injunction. Similarly, defenses and counterclaims may be abandoned as the hearing date approaches. The judge can encourage the parties to narrow the scope of the case to the most important issues, setting a date by which they are to specify those allegations the parties will press at the hearing.

Various steps may be taken to expedite and streamline the hearing, including the following:

- holding the hearing on only the affidavits, where no substantial factual disputes exist;
- directing the parties to submit statements of undisputed facts or requests for admission to narrow the scope of the hearing;
- directing counsel to identify any witnesses in advance along with the substance of their testimony and the exhibits they will sponsor;
- requiring that direct testimony be offered in the form of adopted narrative statements, exchanged in advance and subject to motions to strike, to cross-examination, and to redirect at the hearing if issues of credibility are presented;
- directing counsel to exchange proposed exhibits in advance of the hearing, and giving notice that objections may be treated as waived if not made in writing in advance of the hearing;
- resolving objections to foundation before the hearing;
- directing counsel to present stipulated summaries or extracts of any deposition testimony to be used in lieu of lengthy readings of transcripts;

- directing counsel to submit briefs in advance of the hearing, along with proposed findings of fact and conclusions of law; and
- where time is of the essence, ruling from the bench at the conclusion of the hearing, dictating findings and conclusions into the record, and requiring counsel to state immediately, at the hearing, any motions for modified or additional findings and conclusions based on the record.

### 31.73 Discovery

The court should encourage counsel to submit a jointly agreed on discovery plan for approval. The potential scope of disputed issues in takeover litigation can lead to excessive discovery demands, both for documents and depositions, creating unreasonable burdens on the parties in view of the brief time usually available for compliance. The need to identify and narrow the disputed issues and tailor the discovery plan narrowly in light of those issues should be stressed.

Discovery should begin with an expedited procedure for the production of relevant files, records, and documents necessary for the resolution of the issues. Where the initial conference is held within days of the filing of the complaint, the parties will have been unable to comply with early disclosure mandates of Federal Rule of Civil Procedure 26. The judge should discuss with the parties how to effectuate the goals of Rule 26 within the time pressures imposed by takeover litigation and take steps to avoid excessively voluminous production that will burden rather than assist the parties. The following may be helpful:

- limiting the relevant periods of time for discovery requests;
- requiring the parties to minimize objections and to redact documents and files to eliminate extraneous matter;
- encouraging counsel and the parties to consider alternative means of obtaining testimony in the limited time available, such as through statements from interviews of witnesses or discovery in related litigation; and
- encouraging and approving stipulated protective orders.

## 31.8 Trial and Settlement

The court should always be prepared for the possibility of trial, even though complex securities cases seldom proceed that far. Procedures similar to

those used for trial and settlement of mass tort litigation<sup>1896</sup> may be appropriate for securities litigation. For example, consider consolidating related cases for a joint trial on specified issues, such as the defendants' respective liabilities for alleged misrepresentations and omissions, while leaving for subsequent separate trials other issues, such as damages and individual defenses. In cases subject to the PSLRA, the defendant is entitled, upon request, to have a written interrogatory submitted to the jury on the "defendant's state of mind at the time the alleged violation occurred."<sup>1897</sup> The PSLRA further requires that special interrogatories be submitted in jury cases (or findings of fact in bench trials) as to each covered person or each person alleged to have caused or contributed to the plaintiff's loss, regarding (1) whether such person violated the securities laws; (2) the person's percentage of responsibility; and (3) whether the securities violation was committed knowingly.<sup>1898</sup> In selected cases, the court may direct the parties to confer with the court about the precise text of appropriate special questions to a jury.

Securities cases typically involve experienced and sophisticated lawyers, as well as large sums of money. It is best to refer settlements to another judge, a special master, or a court-appointed expert with comparable experience and skills. Counsel need court approval to settle class or derivative actions, and when such approval is sought, the court should apply the principles and procedures governing settlements of class actions in general. The PSLRA contains specific provisions relating to settlement of covered class actions, including statements that must be included in proposed or final settlement agreements disseminated to the class<sup>1899</sup> and restrictions on settlements under seal.<sup>1900</sup> The PSLRA also provides for the discharge of all contribution claims against a covered person who settles before final judgment.<sup>1901</sup> In derivative actions, non-monetary benefits—such as a change in corporate management or policies—may play a significant role.<sup>1902</sup>

The PSLRA provides for the court's mandatory review of the parties' conduct and that of their counsel during the course of the action, and upon final adjudication it requires the court to "include in the record specific findings regarding compliance by each party and each attorney representing any party

1896. *See supra* section 22.9.

1897. 15 U.S.C. § 78u-4(d) (2000).

1898. *Id.* § 78u-4(f)(3)(A). The statute sets out factors to be considered by the trier of fact in determining the percentage of responsibility. *Id.* § 78u-4(f)(3)(C).

1899. *Id.* § 78u-4(a)(7).

1900. *Id.* § 78u-4(a)(5).

1901. *Id.* § 78u-4(f)(7).

1902. *See Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1310–12 (3d Cir. 1993), and cases cited therein.

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with each requirement of Rule 11(b) . . . as to any complaint, responsive pleading, or dispositive motion.<sup>1903</sup> The parties should be afforded an opportunity to be heard on the issue before any such finding is made. Sanctions are mandatory, however, once a finding of noncompliance has been made.

1903. 15 U.S.C. § 78u-4(c)(1) (2000).

## 32. Employment Discrimination

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### 32.1 Introduction

Employment discrimination litigation<sup>1904</sup> can arise in a number of contexts and include both statutory and common-law claims. Individual actions alleging employment discrimination are generally not factually complex. Nonetheless, complexity can be introduced into employment discrimination suits by class action allegations, questions regarding the scope of discovery, the technical nature of expert testimony, and issues relating to the granting of relief, whether by way of judgment or consent decree.

1904. This section is designed to highlight some of the areas in which case-management issues may arise under the most commonly litigated statutes and does not purport to afford comprehensive coverage of all of the issues that may arise in employment discrimination law.

## 32.2 The Statutory Framework

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The main federal statutes governing employment discrimination litigation are Title VII of the Civil Rights Act of 1964,<sup>1905</sup> the Civil Rights Acts of 1866 and 1871 (sections 1981 and 1985(c)),<sup>1906</sup> the Age Discrimination in Employment Act of 1967 (ADEA),<sup>1907</sup> and the Americans with Disabilities Act of 1990 (ADA).<sup>1908</sup> Other federal statutes also afford a basis for employment discrimination claims. These include, but are not limited to, the Equal Pay Act of 1963,<sup>1909</sup> the Uniformed Services Employment and Reemployment Rights Act (USERRA),<sup>1910</sup> the Fair Labor Standards Act,<sup>1911</sup> Title IX of the Educational Amendments of 1972,<sup>1912</sup> the Family and Medical Leave Act (FMLA),<sup>1913</sup> and 42 U.S.C. § 1983.<sup>1914</sup> These statutes afford a panoply of remedies covering a wide variety of conduct.

1905. 42 U.S.C. § 2000e (2000).

1906. *Id.* § 1981(a) (section 1981 prohibits, among other things, discrimination in employment contracting); *Id.* § 1985 (prohibits conspiracy to interfere with civil rights).

1907. 29 U.S.C. § 623(a) (2000) (the ADEA prohibits discrimination based on age).

1908. 42 U.S.C. § 12112(a) (2000) (the ADA affords protection against employment discrimination based on disability).

1909. 29 U.S.C.A. § 206(d) (2000). The Equal Pay Act prohibits only discrimination based on sex and requires equal pay “for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions . . .” *Id.* § 206(d)(1). The statute authorizes both public and private actions against employers, but limits a private individual’s right to sue only if there has been no public action filed on the individual’s behalf or the individual has accepted no prior remedies. *Id.* § 216(b).

1910. 38 U.S.C. § 4301 (2000).

1911. 29 U.S.C. § 201 (2000).

1912. 20 U.S.C. § 1681 (2000) (Title IX prohibits discrimination on the basis of sex in federally funded programs or activities).

1913. 29 U.S.C. § 2615 (2000).

1914. *See Evans v. Avery*, 100 F.3d 1033, 1036 (1st Cir. 1996) (“Section 1983 supplies a private right of action against a person who, under color of state law, deprives another of rights secured by the Constitution or by federal law.”); *see also Morris v. Oldham County Fiscal Court*, 201 F.3d 784, 794 (6th Cir. 2000) (“The showing a plaintiff must make to recover on an employment discrimination claim under Title VII mirrors that which must be made to recover on an equal protection claim under section 1983.”). Section 1983 is the vehicle for suits against federal officials under other sources of federal statutory law prohibiting discrimination.

A plaintiff can establish a prima facie case of employment discrimination through “direct” evidence of a defendant’s discriminatory intent.<sup>1915</sup> When the plaintiff relies only on inferential or circumstantial evidence of discriminatory intent, however, it is common to apply some variation of the four-factor test set out in *McDonnell Douglas Corp. v. Green*.<sup>1916</sup> In *McDonnell Douglas*, the Supreme Court, in addressing a claim under Title VII, held that to establish a prima facie case of employment discrimination in cases where the plaintiff lacks direct evidence of discriminatory intent, a plaintiff must prove (1) that the plaintiff is a member of a protected class, (2) who applied and was qualified for a job for which the employer was seeking applicants, (3) that, despite plaintiff’s qualifications, he or she was rejected, and (4) that, after the plaintiff was rejected, the position remained open and the employer continued to seek applications from persons of plaintiff’s qualifications.<sup>1917</sup>

*McDonnell Douglas* also “established an allocation of the burden of production and an order for the presentation of proof in . . . discriminatory-treatment cases.”<sup>1918</sup> Once the plaintiff has established a prima facie case under the *McDonnell Douglas* standard, the plaintiff creates a rebuttable presumption that the employer engaged in unlawful discrimination.<sup>1919</sup> The burden of production then shifts to the defendant to produce evidence that its challenged employment decision was based on factors other than the protected status of the plaintiff and based on a legitimate, nondiscriminatory reason.<sup>1920</sup> The pre-

1915. See, e.g., *Hopson v. DaimlerChrysler Corp.*, 306 F.3d 427, 433 (6th Cir. 2002); see also *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 852–53 (9th Cir. 2002) (discussing approaches among the circuits to “direct evidence”), *aff’d*, 123 S. Ct. 2148 (2003); Harold S. Lewis, Jr. & Elizabeth J. Norman, *Employment Discrimination Law and Practice* 115–123 (2001) (discussing modes of proof for Title VII claim).

1916. 411 U.S. 792 (1973). In addition to claims brought under Title VII, the *McDonnell Douglas* test applies to claims for employment discrimination brought under §§ 1981 and 1983 of the Civil Rights Act, and under the ADEA. See, e.g., *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000) (noting that the issue had not squarely come before the Court but assumed *arguendo* that the *McDonnell Douglas* burden-shifting standard applied where the parties did not dispute its application), and cases cited therein; see also *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 571 (7th Cir. 1998) (variant of *McDonnell Douglas* test applies to ADEA case).

1917. 411 U.S. at 802.

1918. *Reeves*, 530 U.S. at 142 (quoting *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 506 (1993)).

1919. *Reeves*, 530 U.S. at 142; *Tex. Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253–54 (1981). The court in *Jones v. Union Pac. R.R. Co.*, 302 F.3d 735, 742 (7th Cir. 2002) noted that “[t]he need to establish a prima facie case does not always arise; frequently employers concede the prima facie case and simply offer a non-discriminatory justification.” See also *Hopson v. DaimlerChrysler Corp.*, 306 F.3d 427, 428 (6th Cir. 2002) (employer conceded prima facie case).

1920. *Reeves*, 530 U.S. at 142 (citing *Burdine*, 450 U.S. at 254); *Hicks*, 509 U.S. at 506–07.

sumptions created by the *McDonnell Douglas* framework then disappear, and the plaintiff must prove that the employer's proffered reasons were simply a pretext for discrimination.<sup>1921</sup> The defendant's burden is one of production only, however, and "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff."<sup>1922</sup> The Supreme Court, in *Reeves v. Sanderson*, held that a plaintiff can satisfy this burden through proof of "a *prima facie* case, combined with sufficient evidence to find the employer's asserted justification is false."<sup>1923</sup> The plaintiff is not required to present independent proof of discrimination.<sup>1924</sup>

### 32.21 Title VII: Discrimination in Employee Hiring and Advancement

Title VII has been referred to as the "centerpiece of employment discrimination law,"<sup>1925</sup> prohibiting discrimination based on sex (including sexual harassment),<sup>1926</sup> race,<sup>1927</sup> religion, and national origin.<sup>1928</sup> Title VII further prohibits retaliation against employees who exercise their rights under the statute. Title VII applies to employers (of fifteen or more employees),<sup>1929</sup> employment agencies,<sup>1930</sup> and labor organizations,<sup>1931</sup> as well as state and federal entities.

1921. See, e.g., *Waterhouse v. District of Columbia*, 298 F.3d 989, 994 (D.C. Cir. 2002) (plaintiff failed to establish employer's proffered explanation lacked credence where plaintiff admitted deficiencies cited by employer concerning her performance).

1922. *Hicks*, 509 U.S. at 507 (quoting *Burdine*, 450 U.S. at 253).

1923. 530 U.S. at 148 (emphasis added).

1924. *Id.* at 149; see also *Hopson*, 306 F.3d at 434–35 ("It strains credulity to conclude that, not once, but five times, the other employees who applied for the open positions were so significantly more qualified than Hopson that he was not even worthy of an interview.").

1925. Mack A. Player, *Federal Law of Employment Discrimination in a Nutshell* 12 (3d ed. 1992).

1926. See *Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 853 (2001) (holding that front pay was not an element of compensatory damages to a claim of sexual harassment under Title VII); *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 531 (1999) (gender); *Faragher v. City of Boca Raton*, 524 U.S. 775, 777 (1998) (holding that employers may be vicariously liable for sexual harassment by their employees); *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998) (recognizing discrimination under Title VII applies to sexual harassment by those of the same sex); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 19–20 (1993) (alleging abusive work environment from sexual harassment).

1927. See *Loum v. Houston's Rests., Inc.*, 985 F. Supp. 1315, 1317 (D. Kan. 1997).

1928. 42 U.S.C. § 2000e-2(a) (2000) (plaintiff may bring Title VII claims based on national origin discrimination). See *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002).

1929. 42 U.S.C. § 2000e-2(a) (2000).

1930. *Id.* § 2000e-2(b).

When the plaintiff has direct evidence of discrimination, plaintiff's prima facie case is met through proof that the employer took an adverse employment action against him or her because of race, age, sex, or religion. The *McDonnell Douglas* standard typically will govern the pretrial evidentiary burdens if direct evidence of discrimination is unavailable. Remedies include both compensatory and punitive damages,<sup>1932</sup> injunctive relief, reinstatement, back pay, attorney fees, and lost profits.<sup>1933</sup>

Title VII established the Equal Employment Opportunity Commission (EEOC),<sup>1934</sup> which also enforces provisions of the ADA and ADEA.<sup>1935</sup> The EEOC functions as an "institution of first-resort" for claims under Title VII. The statute also authorizes the EEOC itself to bring suit against the employer.<sup>1936</sup> Prior to seeking judicial relief, a plaintiff must timely file his or her claim with a regional EEOC office.<sup>1937</sup> The EEOC may grant the plaintiff

1931. *Id.* § 2000e-2(c).

1932. 42 U.S.C. § 1981a(a)(1) (2000). However, both compensatory and punitive damages are subject to the statutory limitations provided in 42 U.S.C. § 1981a(b)(3), limitations that are based on the number of employees of the defendant. *See Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 848 (2001) (holding that front pay is not subject to the statutory limitations provided in § 1981a). Punitive damages are not available against a public employer. 42 U.S.C. § 1981a(b)(1) (2000).

1933. *Pollard*, 532 U.S. at 847. Other recoverable damages may include "consequential losses, such as humiliation, economic dislocations, and loss of credit." *Player*, *supra* note 1925, at 222.

1934. 42 U.S.C. § 2000e-5(a), (e) (2000).

1935. *Id.* The EEOC is comprised of five members appointed by the President, with regional offices throughout the country. *Player*, *supra* note 1925, at 40.

1936. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291 (2002) (where the EEOC files suit, "the employee has no independent cause of action, although the employee may intervene in the EEOC's suit" (discussing 42 U.S.C. § 2000e-5(f)(1))).

1937. 42 U.S.C. § 2000e-5(a), (e) (2000). When the charge must be filed with the EEOC depends on whether the state affords administrative remedies for unlawful employment practices. Where no such legislation exists, the charge must be filed with the EEOC within 180 days of the unlawful practice. Where the state has enacted equal employment legislation and maintains agencies to enforce such laws, however, the charge must first be filed with the state agency. The state agency has 60 days to review the charge and seek to resolve the plaintiff's complaint. The plaintiff then has 30 days from receipt of a notice of dismissal or notice of a right-to-sue letter from the state agency, or 300 days from the unlawful practice complained of, whichever is sooner, to file a charge with the EEOC. *See Lewis & Norman*, *supra* note 1915, § 4.2, at 199–204, for a discussion of the notice provisions and work-sharing arrangements between the state and federal agencies, noting "although Sec 706 appears to require that the state or local filing precede the filing of a charge with EEOC, it is apparent from the Court's approval of deferral and work-sharing agreements that in practice EEOC is often the first, and sometimes the only agency to investigate and conciliate charges, even in deferral states." *See also Tewksbury v. Ottoway Newspapers*, 192 F.3d 322, 324–26 (2d Cir. 1999) (discussing relationship between EEOC and defer-

“statutory notice of the right to sue,”<sup>1938</sup> following an investigation. Alternatively, regardless of whether the EEOC has found the charge to be supported by reasonable cause, the plaintiff may request a right-to-sue letter after 180 days and abandon further EEOC proceedings. Title VII does not restrict a complainant’s right to sue on charges that the commission has found unsupported by reasonable cause.<sup>1939</sup>

Congress enacted The Civil Rights Act of 1991 (CRA) in response to Supreme Court decisions that, in Congress’s view, diminished Title VII and section 1981 protections.<sup>1940</sup> The CRA gives plaintiffs a right to a jury trial and the right to seek compensatory and punitive damages for claims of intentional discrimination under Title VII.<sup>1941</sup> “The 1991 Act’s enhanced damages provisions were designed to compensate victims of discrimination for humiliation, trauma, physical distress, medical expenses, and other economic and non-economic harms caused by workplace discrimination.”<sup>1942</sup> The 1991 Act also expressly designates claims for disparate impact as within the scope of Title VII relief.<sup>1943</sup> Other changes include requiring employers to demonstrate that a challenged employment practice is “job related for the position in question and consistent with business necessity,”<sup>1944</sup> and allowing the award of attorney fees and costs where the plaintiff successfully shows that an employment decision was motivated by an impermissible factor (even though other factors may have been involved). The 1991 Act allows for the recovery of expert fees in all cases where attorney fees are recoverable. In addition, the Act limits the remedies available against an employer who is able to show that it would have taken the

ral-state agency and whether claim is timely filed where EEOC forwards charges to state agency under work-sharing agreement).

1938. See 42 U.S.C. § 2000e-5(f)(1) (2000); see also *Smith v. HealthSouth Rehab. Ctr.*, 234 F. Supp. 2d 812, 814 (W.D. Tenn. 2002) (quoting *Marquis v. Tecumseh Prods. Co.*, 206 F.R.D. 132, 151 (E.D. Mich. 2002)).

1939. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973).

1940. Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1992).

1941. Title VII initially provided only for declaratory or equitable relief, typically either injunctive or an award of front or back pay. Damages are also now available for discrimination based on sex, religion, or disability. Damages are limited to \$50,000–\$300,000 for claims brought under Title VII; however, states cannot be liable for punitive damages. See, e.g., *Waffle House*, 534 U.S. at 287 (CRA added compensatory and punitive damages to remedies available under ADA).

1942. Daniel F. Piar, *The Uncertain Future of Title VII Class Actions After the Civil Rights Act of 1991*, 2001 BYU L. Rev. 301, 307 (2001).

1943. Civil Rights Act of 1991, Pub. L. No. 102-166, § 105, 105 Stat. 1071 (1992) (codified as amended at 42 U.S.C. § 2000e-2(k)(1)(A) to (3)).

1944. *Id.*

same action even in the absence of the impermissible motivating factor.<sup>1945</sup> The employer may still have liability for the unlawful employment practice, but it has a defense against the award of certain types of relief.<sup>1946</sup> Remedies include injunctive or declaratory relief, but not reinstatement, hiring, or promotion. Attorney fees and costs directly attributable to pursuit of the plaintiff's Title VII claim may be awarded, but damages may not.

### 32.22 The Civil Rights Act of 1964: Discrimination in Contracting

Section 1981 of Title 42 of the U.S. Code prohibits, among other things, racial discrimination in employment contracting.<sup>1947</sup> The Supreme Court has interpreted the statute to reach discrimination based on ethnicity,<sup>1948</sup> and courts have interpreted the Act to prohibit discrimination on the basis of alienage.<sup>1949</sup> There is no minimum employer size requirement as there is under other antidiscrimination statutes.<sup>1950</sup> In order to maintain a claim under section 1981, the record must show that plaintiff (1) is a member of a protected class; (2) was qualified for the position; (3) was terminated; and (4) was replaced by someone outside the protected class.<sup>1951</sup> Plaintiffs suing under section 1981 are not required to exhaust administrative avenues.<sup>1952</sup> Damages under section 1981 are unlimited and include both compensatory and punitive damages.<sup>1953</sup>

The scope of 42 U.S.C. § 1981 was also clarified in the CRA. Prior decisions by the Supreme Court had limited application of the statute to discrimination in the actual *formation* of contracts.<sup>1954</sup> The CRA amended section 1981

1945. 42 U.S.C. § 2000e-5(g)(2)(b) (2000).

1946. *Id.*

1947. 42 U.S.C. § 1981 (2000).

1948. *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987) (section 1981 applies to discrimination based on ancestry or ethnic characteristics).

1949. *Duane v. GEICO*, 37 F.3d 1036, 1040 (4th Cir. 1994) (discrimination against aliens is prohibited by both public and private persons).

1950. *See, e.g.*, 42 U.S.C. § 2000e(b) (2000) (“fifteen or more employees”).

1951. *LaPierre v. Benson Nissan, Inc.*, 86 F.3d 444, 448 (5th Cir. 1996). “Claims of racial discrimination brought under § 1981 are governed by the same evidentiary framework applicable to claims of employment discrimination brought under Title VII.” *Id.* at 448 n.2.

1952. *See, e.g.*, *Walker v. Thompson*, 214 F.3d 615, 624–25 (5th Cir. 2000) (discussing dissimilarity in administrative filing requirements between Title VII and section 1981 claims).

1953. 42 U.S.C. § 1981a(a)(1), (b)(1) (2000). Compensatory damages under section 1981(b)(1) do not include back pay or interest on back pay. *Id.* § 1981(b)(2).

1954. *Patterson v. Mclean Credit Union*, 491 U.S. 164, 176 (1989) (“Section 1981 cannot be construed as a general proscription of racial discrimination in all aspects of contract relations,

to extend to all aspects of the contractual relationship, including the performance and termination of contracts, as well as “benefits, privileges, terms and conditions of contractual relationship.”<sup>1955</sup> Whether the Supreme Court’s decision in *Jett v. Dallas Independent School District*<sup>1956</sup> (which held that a municipality may not be held liable for its employees’ violations of the plaintiff’s “right to make contracts” as protected by section 1981 under *respondeat superior*) was overruled by the CRA is unresolved.<sup>1957</sup>

### 32.23 Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age against anyone who is at least forty years old<sup>1958</sup> and covers employers and employment agencies with at least twenty employees, labor organizations, and the federal government.<sup>1959</sup> The EEOC is charged with enforcement of the ADEA. As with Title VII, the plaintiff must file a charge with the EEOC and, if applicable, the state-deferral agency. The Supreme

for it expressly prohibits discrimination only in the making and enforcement of contracts.”); *see also* *Ford v. City of Rockford*, No. 88 C 20323, 1992 WL 309603, at \*2 (N.D. Ill. Oct. 15, 1992) (citing *Patterson* and stating that section 1981 does not provide relief unless the plaintiff was discriminated against in the making and formation of contracts).

1955. 42 U.S.C. § 1981(b) (2000); *see also* *Keller v. City of Portland*, No. CV-98-263, 1998 WL 1060222, at \*13–14 (D. Or. Nov. 13, 1998) (section 1981 not limited to contractual matters and includes discrimination that deprives individuals of “equal benefits”).

1956. 491 U.S. 701 (1989).

1957. *See* George Rutherglen, *Major Issues in the Federal Law of Employment Discrimination* 102 (Federal Judicial Center 3d ed. 1996). *See, e.g., Ford*, 1992 WL 309603, at \*2 (stating Congress overruled *Jett* in enactment of CRA by extending section 1981 to state actors but further holding section 1981 only applies to making and formation of contracts); *Keller*, 1998 WL 1060222, at \*14 (1991 amendments to CRA overrule *Jett* and allow suits against municipality directly under section 1981); *Villanueva v. City of Fort Pierce*, 24 F. Supp. 2d 1364, 1368 (S.D. Fla. 1998) (noting that CRA amendments to section 1981 “have created some confusion among the circuits as to whether the CRA overruled the *Jett* rule against simultaneous § 1981 and § 1983 claims” and holding CRA did not overrule *Jett*). *Compare* *Fed. of African Am. Contractors v. Oakland*, 96 F.3d 1204 (9th Cir. 1996), and *Jackson v. City of Chi.*, No. 96 C 3636, 1996 WL 734701, at \*8 (N.D. Ill. Dec. 18, 1996), with *Dennis v. Cmty. of Fairfax*, 55 F.3d 151, 156 n.1 (1995).

1958. 29 U.S.C. §§ 623(a), (a)(1) (2000). *See O’Connor v. Consol. Coin Caterers Corp.*, 517 U.S. 308, 312 (1996) (holding that 56-year-old plaintiff who was replaced by 40-year-old could still maintain an action under ADEA, which simply limits the protected class to plaintiffs over 40).

1959. 29 U.S.C. §§ 623(a)–(c) (2000) (sections 623(b) and (c) provide that it shall be unlawful for employment agencies and labor organizations to discriminate based on age); *see also id.* § 630(b) (confining “employer” to “a person . . . who has twenty or more employees”).

Court in *Kimel v. Florida Board of Regents*<sup>1960</sup> held that ADEA claims are unavailable against state employers.<sup>1961</sup>

A prima facie case of age discrimination under *McDonnell Douglas* is shown if the plaintiff (1) is 40 years or older, (2) had satisfactory job performance, and (3) has suffered an adverse employment action because of age.<sup>1962</sup> Some courts have held that the plaintiff must show that he or she was replaced by or treated differently than a younger employee.<sup>1963</sup> Others, however, have interpreted the Act as requiring only that the plaintiff demonstrate that he or she is a member of the protected class (employees over 40 years old) and was discriminated against on the basis of age, even if the beneficiary of the discriminatory acts was older than the plaintiff.<sup>1964</sup> As with Title VII and section 1981, if an employer presents nondiscriminatory reasons for the adverse actions, the presumption created by the prima facie case drops out and the plaintiff must bear the ultimate burden of proving that age was a mitigating factor in the adverse employment decision.<sup>1965</sup> Specifically, employers can defend themselves by showing that the challenged employment decision was based on “reasonable factors other than age,” that the employee was disciplined or discharged for good cause,<sup>1966</sup> or that the employment decision related to a bona fide occupational qualification.<sup>1967</sup> Although ADEA plaintiffs cannot recover compensatory or punitive damages, the Act incorporates the remedies available under the Fair Labor Standards Act, as well as other relief,

1960. 528 U.S. 62 (2000).

1961. *Id.* at 66 (“The ADEA does not validly abrogate the state’s sovereign immunity.”).

1962. *Fairchild v. Forma Scientific, Inc.*, 147 F.3d 567, 571 (7th Cir. 1998).

1963. *Franzoni v. Hartmarx Corp.*, 300 F.3d 767, 772 (7th Cir. 2002); *see also O’Connor*, 517 U.S. at 308 (56-year-old plaintiff replaced by a 40-year-old).

1964. *See, e.g., Cline v. Gen. Dynamics Land Sys., Inc.*, 296 F.3d 466, 469–70 (6th Cir. 2002).

1965. *Fairchild*, 147 F.3d at 572 (employer defendant presented evidence that employee plaintiff was terminated based on legitimate financial reasons, overcoming the presumption of discrimination, and plaintiff failed to show employer’s reason was pretextual).

1966. 29 U.S.C. § 623(f)(1) (2000). In addition, defenses exist where seniority systems are involved. *See Rutherglen, supra* note 1957, at 110 (“The ADEA also contains an exception for certain executives over age sixty-five; and it authorizes the EEOC to create further exceptions in the public interest . . . .”) (footnote omitted); *EEOC v. Francis W. Parker Sch.*, 41 F.3d 1073, 1078 (7th Cir. 1994) (noting ADEA contains safe-harbor provision permitting use of seniority system); *see also Hazen Paper Co. v. Biggins*, 507 U.S. 604, 609 (1993) (“[T]here is no disparate treatment under the ADEA when the factor motivating the employer is some feature other than the employee’s age.”), *and id.* at 618 (Kennedy, J., concurring) (“[N]othing in the Court’s opinion should be read as incorporating in the ADEA context the so-called ‘disparate impact’ theory of Title VII . . . and there are substantial arguments that it is improper to carry over disparate impact analysis from Title VII to the ADEA.” (citation omitted)).

1967. *See Rutherglen, supra* note 1957, at 111.

such as injunctive relief, promotion, reinstatement, back and front pay, and attorney fees.<sup>1968</sup> Defendants also can be liable for liquidated damages where the plaintiff proves “willful violation” of the Act.<sup>1969</sup>

It is unclear whether disparate impact claims are available under the ADEA, and the Supreme Court in *Hazen Paper Co. v. Biggins*<sup>1970</sup> questioned the use of a disparate impact theory. The CRA amendments expressly codified disparate impact claims only for Title VII.<sup>1971</sup>

### 32.24 Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits, among other things, employment discrimination against “qualified persons with a disability.”<sup>1972</sup> Liability under the ADA is limited to employers with fifteen or more employees.<sup>1973</sup> Although employers are permitted to establish physical criteria necessary for a position, or to prefer some physical attributes over others, the employer “runs afoul of the ADA when it makes an employment decision based on a physical or mental impairment, real or imagined, that is regarded as sub-

1968. 29 U.S.C. § 626(b) (2000). See *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 74–75 (2000).

1969. See *Meachem v. Knolls Atomic Power Lab.*, 185 F. Supp. 2d 193, 218 (N.D.N.Y. 2002) (awards of damages for back pay and front pay and punitive damages for willful conduct are authorized under ADEA, but damages for emotional distress are unavailable).

1970. 507 U.S. 604, 610 (1993) (stating “[d]isparate treatment, thus defined, captured the essence of what Congress sought to prohibit in the ADEA” and noting that court had not addressed question of whether a plaintiff could proceed on a disparate impact theory under the ADEA). But see *Smith v. City of Des Moines*, 99 F.3d 1466, 1470 (8th Cir. 1996) (disparate impact claims cognizable under ADEA); *Mangold v. Cal. Pub. Utilities Comm’n*, 67 F.3d 1470, 1474 (9th Cir. 1995) (plaintiff may pursue disparate impact theory under ADEA); *Francis W. Parker*, 41 F.3d 1073, 1077 (7th Cir. 1994) (“[D]ecisions based on criteria which merely tend to affect workers over the age of forty more adversely than workers under forty are not prohibited.”).

1971. See *Francis W. Parker*, 41 F.3d at 1073, 1076–77 (rejecting disparate impact theory).

1972. 42 U.S.C. § 12112(a) (2000) (section 12112(a) provides that no employer may “discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment”). “Disability” is defined as a “physical or mental impairment that substantially limits one or more . . . major life activities . . .” 29 C.F.R. § 1630.2(g)(1) (1999). Thus, the ADA is violated where the employee is able to perform the essential functions of the job “with or without reasonable accommodation which does not impose an undue hardship on the employer.” *Id.*

1973. 42 U.S.C. § 12111(5)(a) (2000).

stantially limiting a major life activity.”<sup>1974</sup> Employers are required to make reasonable accommodations for employees or applicants with disabilities. As with other employment discrimination claims, the employer may rebut a claim of ADA discrimination by providing “evidence of a ‘legitimate, nondiscriminatory reason’ for its action.”<sup>1975</sup>

The provisions of the ADA are enforced by the EEOC in the same manner as Title VII claims.<sup>1976</sup> Thus, under the ADA, the EEOC “may bring suit to enjoin an employer from engaging in unlawful employment practices, and to pursue reinstatement, back pay, and compensatory or punitive damages.”<sup>1977</sup>

### 32.25 Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles an eligible employee<sup>1978</sup> to up to twelve weeks of leave for absences resulting from a disabling health problem, serious illness of a family member or the employee, or the birth or adoption of a child.<sup>1979</sup> Actions brought under the FMLA are generally brought in the context of retaliation claims arising out of the employee’s exercise of his or her leave rights.<sup>1980</sup> In addition to showing the exercise of leave rights, the plaintiff must have suffered an adverse employment action, and further demonstrate a causal relationship between the exercise of leave rights and the chal-

1974. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 490 (1999). Major life activity is defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 29 C.F.R. § 1630.2(i) (1999). The term “substantially limits” means “(i) [u]nable to perform a major life activity that the average person in the general population can perform; or (ii) [s]ignificantly restricted as to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.” *Id.* § 1630.2(j). *See Sutton*, 527 U.S. at 492–93 (holding that the petitioners “failed to allege adequately that their poor eyesight is regarded as an impairment that substantially limits them in the major life activity of working”). *But see Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 197–98 (2002).

1975. *Adreani v. First Colonial Bankshares Corp.*, 154 F.3d 389, 394 (7th Cir. 1998).

1976. *EEOC v. Waffle House*, 534 U.S. 279, 285 (2002) (“Congress has directed the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act of 1964 when it is enforcing the ADA’s prohibitions against employment discrimination on the basis of disability.”).

1977. *Id.*

1978. As defined by the FMLA, an eligible employee is someone who has worked at least 1,250 hours a year at a company employing fifty or more employees at least twenty weeks of the year. 29 U.S.C. §§ 2611(2)(a) (2000).

1979. 29 U.S.C. § 2612(a)(1) (2000).

1980. *But see Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002) (holding regulation requiring employer to designate leave as FMLA leave in order for it to count against an employee’s FMLA entitlement was contrary to FMLA).

lenged employment action. Courts have applied the *McDonnell Douglas* burden-shifting standard to FMLA claims.<sup>1981</sup>

### 32.3 Developments in the Law of Employment Discrimination

Supreme Court decisions have addressed such diverse issues as when punitive damages may be awarded,<sup>1982</sup> the intersection of the employment discrimination statutes and the First Amendment,<sup>1983</sup> and the sovereign immunity of the states under the Eleventh Amendment.<sup>1984</sup> Several decisions have resolved splits among the circuits. In *Burlington Industries Inc. v. Ellerth*<sup>1985</sup> and *Faragher v. City of Boca Raton*,<sup>1986</sup> the Supreme Court held that employers who meet a two-factor affirmative defense can avoid liability for acts of supervisors that create a hostile work environment. If an employer can show that it exercised reasonable care to prevent and promptly correct harassing behavior, and the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer, no liability will exist.<sup>1987</sup> Same-sex harassment was held actionable under Title VII in *Oncale v. Sundowner Offshore Services Inc.*,<sup>1988</sup> which overruled prior precedent in the Fifth Circuit rejecting such claims. “If our precedents leave any doubt on the question, we hold that nothing in Title VII necessarily bars the claim of discrimination because of sex merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex.”<sup>1989</sup> In order to prevail, plaintiffs in same-sex harassment cases must show, as must plaintiffs in opposite-sex harassment cases, that the harassment they suffered was due to sex, and that it was sufficiently severe and persistent to create a hostile or abusive work environment.

1981. See, e.g., *Smith v. Allen Health Sys., Inc.*, 2002 WL 31015648 (8th Cir. 2002); *Bylsma v. Bailey*, 127 F. Supp. 2d 1211 (M.D. Ala. 2001); *Miranda v. BBII Acquisition Corp.*, 120 F. Supp. 2d 157 (D.P.R. 2000).

1982. *Kolstad v. Am. Dental Ass’n*, 527 U.S. 526 (1999).

1983. *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

1984. *Bd. of Trustees of University of Ala. v. Garrett*, 531 U.S. 356 (2001) (holding ADA did not abrogate state’s immunity under the Eleventh Amendment); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000) (same with respect to ADEA).

1985. 524 U.S. 742 (1998).

1986. 524 U.S. 775 (1998).

1987. Although the defendant may avoid liability under the federal statutes, liability may still exist under state law in ancillary claims.

1988. 523 U.S. 75 (1998).

1989. *Id.* at 79.

In *Desert Palace, Inc. v. Costa*,<sup>1990</sup> the Court resolved a split among the circuits as to whether a plaintiff seeking relief pursuant to Title VII was required to prove by direct evidence that an impermissible motive was a motivating factor in an adverse employment decision in order to establish liability under section 2000e-2(m).<sup>1991</sup> Noting that the language of Title VII did not impose special evidentiary burdens, the Court held that a plaintiff in a mixed-motive case was required to prove that the employment action was motivated by an impermissible factor only by a preponderance of the evidence, which could be met through either direct or circumstantial evidence. “Section 2000e-2(m) unambiguously states that a plaintiff need only ‘demonstrat[e]’ that an employer used a forbidden consideration with respect to ‘any employment practice.’ On its face, the statute does not mention, much less require, that a plaintiff make a heightened showing through direct evidence.”<sup>1992</sup>

Addressing cases arising under other employment statutes, the Court in *Gebser v. Lago Vista Independent School District*<sup>1993</sup> held that, under Title IX, a school district’s liability for the sexual harassment of a student by a teacher required a showing that a school district official with authority to take corrective action had actual notice of the harassment or was deliberately indifferent to it.

The Court declined to hold a school district liable based on a theory of constructive notice, stating “[w]hen Congress attaches conditions to the award of federal funds under its spending power, U.S. Const., Art. I, § 8, cl. 1, as it has in Title IX and Title VI, we examine closely the propriety of private actions holding the recipient liable in monetary damages for noncompliance with the condition . . . Our central concern in that regard is with ensuring that ‘the receiving entity of federal funds [has] notice that it will be liable for a monetary award.’”<sup>1994</sup> Imposition of liability based on constructive notice or respondeat superior was inconsistent with the enforcement mechanism of Title IX, which assumed actual notice of the violation by the recipient and an opportunity to remedy noncompliance. In *Nevada Department of Human Resources v. Hibbs*,<sup>1995</sup> the Court held that state employees could recover damages where the state violated the family-care provisions of the FMLA. Addressing whether Congress had acted within its authority in abrogating state immunity under the Eleventh Amendment, the Court noted that “the States’ record of uncon-

1990. 123 S. Ct. 2148 (2003).

1991. See 42 U.S.C. § 2000e-2(m).

1992. *Desert Palace*, 123 S. Ct. at 2149–50.

1993. 524 U.S. 274 (1998).

1994. *Id.* at 287 (quoting *Franklin v. Guinn County Pub. Sch.*, 503 U.S. 60, 74 (1992)).

1995. 123 S. Ct. 1972 (2003).

stitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic § 5 legislation.”<sup>1996</sup>

The Court also has addressed the standard for determining when an individual is substantially limited in performing manual tasks within the meaning of the Americans with Disabilities Act (ADA) (see *Toyota Mfg., Kentucky, Inc. v. Williams*<sup>1997</sup>), holding that the terms “major life activity” and “substantial impairment” should be strictly interpreted.<sup>1998</sup> Accordingly, in order for a plaintiff to prove that he or she suffers from a substantial limitation of a major life activity in performing manual tasks, the plaintiff must show that he or she suffers from an impairment “that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.”<sup>1999</sup> This determination must be made on a case-by-case basis.<sup>2000</sup> In examining whether the plaintiff had shown a substantial limitation in performing manual tasks, the Court rejected a focus limited only to whether the plaintiff was able to perform her specific job as proof of a substantial limitation.<sup>2001</sup> “When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people’s daily lives, not whether the claimant is unable to perform the tasks associated with her specific job.”<sup>2002</sup> Thus, a plaintiff seeking to establish such an impairment must show substantial impairment in both job-related and non-job-related manual tasks.

Several Supreme Court decisions have addressed procedural issues relevant to employment discrimination claims. For example, the Court resolved a split among the circuits as to the proper pleading standard in such cases. Several circuits had imposed a heightened pleading standard on plaintiffs, requiring them to plead facts in support of each element of the prima facie *McDonnell*

1996. *Id.* at 1981.

1997. 534 U.S. 184 (2002).

1998. *Id.* at 691 (“If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher.”).

1999. *Id.* at 185.

2000. *Id.* at 198. The Court found that it was not sufficient for the plaintiff to show that her manual disability implicated a class of manual activities, as held by the Sixth Circuit. *Id.* at 199–200.

2001. *Id.* at 200.

2002. *Id.* at 200–01.

*Douglas* case in order to survive a motion to dismiss.<sup>2003</sup> The Court rejected this heightened pleading standard in *Swierkiewicz v. Sorema*,<sup>2004</sup> however, stating “[t]his court has never indicated that the requirements for establishing a prima facie case . . . also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss.”<sup>2005</sup> Rather, the complaint is governed by the general notice pleading requirements of Federal Rule of Civil Procedure 8(a).<sup>2006</sup>

Acts falling outside of the statutory time period for filing charges,<sup>2007</sup> although no longer actionable themselves as discrete acts of discrimination or unlawful practice, may be used to support a claim based on allegations of a hostile work environment. The Court stated in *National Railroad Passenger Corp. v. Morgan*<sup>2008</sup> “[i]t does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered . . . .”<sup>2009</sup>

Finally, the scope and effect of arbitration agreements in employment contracts was discussed in *Circuit City Stores Inc. v. Adams*<sup>2010</sup> and *EEOC v. Waffle House, Inc.*<sup>2011</sup> The Court in *Circuit City* rejected a Ninth Circuit decision excluding employment contracts from the scope of the Federal Arbitration Act (FAA). The Court held that section 1 of the FAA contained a limited exclusion applicable only to transportation workers, agreeing with the majority of circuits that employment discrimination claims brought by nontransportation workers could be subject to arbitration.<sup>2012</sup> The scope of the FAA was also addressed in *Waffle House*, resolving a split among the circuits as to whether

2003. 411 U.S. 792 (1973). *See, e.g.*, *Tarshis v. Riese Org.*, 211 F.3d 30 (2d Cir. 2000); *Jackson v. Columbus*, 194 F.3d 737 (6th Cir. 1999); *cf. Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111 (D.C. Cir. 2000); *Bennett v. Schmidt*, 153 F.3d 516 (7th Cir. 1998).

2004. 534 U.S. 506 (2002).

2005. *Id.* at 511. The Court further cautioned that while the *McDonnell Douglas* standard applies in many cases, it does not always control an employment discrimination claim. “For instance, if a plaintiff is able to produce direct evidence of discrimination, he may prevail without proving all the elements of a prima facie case.” *Id.*

2006. *Id.* at 512–13.

2007. *See* 42 U.S.C. § 2000e-5(e) (2000) (providing that claims must be filed within 180 or 300 days).

2008. 536 U.S. 101 (2002).

2009. *Id.* at 103.

2010. 532 U.S. 105 (2001); *see also Carter v. Countrywide Credit Indus., Inc.*, 189 F. Supp. 2d 606 (N.D. Tex. 2002).

2011. 534 U.S. 279 (2002).

2012. *Circuit City*, 532 U.S. at 113–15.

the Equal Employment Opportunity Commission (EEOC) could seek victim-specific relief in addition to injunctive relief for discrimination claims brought under Title VII and the ADA. The Court held that the EEOC was not a party to any agreements to arbitrate between the employer and employee and that an employee's agreement to arbitrate did not limit the remedies available to the EEOC.<sup>2013</sup>

## 32.4 Case Management

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### 32.41 Initial Pretrial Conference

Efficient management of employment discrimination litigation requires that the disputed legal and factual issues be identified and, if possible, narrowed early in the case. The pleadings often will reveal jurisdictional issues that must be addressed at the outset. In some cases, discovery may be necessary on factual issues underpinning a motion to dismiss for lack of subject-matter jurisdiction.<sup>2014</sup> The complaint can be dismissed after notice and hearing, where it is apparent that jurisdiction is improper.<sup>2015</sup> At the initial pretrial conference,

2013. *Waffle House*, 534 U.S. at 297–98.

2014. *See, e.g.*, *Sizova v. Nat'l Inst. of Standards & Tech.*, 282 F.3d 1320, 1326 (10th Cir. 2002) (“Although a district court has discretion in the manner by which it resolves an issue of subject matter jurisdiction . . . a refusal to grant discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant.” (citations omitted)).

2015. *See, e.g.*, *Tang v. State of R.I., Dep't of Elderly Affairs*, 904 F. Supp. 55, 58–59 (D.R.I. 1995) (courts have held that the receipt of a right-to-sue letter is a statutory prerequisite, not a jurisdictional prerequisite).

the court should attempt to identify the specific acts of discrimination that each plaintiff claims to have suffered, as well as the particular relief sought. Many employment discrimination claims are brought as class actions, and early identification of the specific claims being pursued in such cases is necessary for determining whether they qualify for class certification,<sup>2016</sup> as well as for developing an appropriate plan for discovery and trial. The court also should ascertain whether plaintiffs have timely satisfied any administrative prerequisites to the filing of the action.<sup>2017</sup> Inquiry into the following areas, either before or in conjunction with the initial Rule 16 conference, will help identify possible jurisdictional problems:

- Is the case barred by the statute of limitations?<sup>2018</sup>
- Has the plaintiff exhausted administrative remedies?<sup>2019</sup>
- Do any pending parallel state or agency actions involving the same parties and issues warrant consolidation or a stay of proceedings?<sup>2020</sup>

2016. *See* Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147 (1982).

2017. *Harriss v. Pan Am. World Airways, Inc.*, 74 F.R.D. 24 (N.D. Cal. 1977). Although claims under Title VII require the prior filing by the individual claimant of a charge with the EEOC, claims under 42 U.S.C. § 1981 (racial discrimination) and 42 U.S.C. § 1983 (discrimination by government employers) do not require filing of an administrative charge, but are subject to state statutes of limitations. *See also Sizova*, 282 F.3d at 1325 (noting that although failure to file a charge with the EEOC is a jurisdictional bar to suit, failure to timely file an administrative charge is not jurisdictional).

2018. *See, e.g., Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 108–10 (2002). Courts generally treat discrete employment decisions that occur over a period of time as individual violations for limitations purposes, although a series of adverse actions can constitute a single continuing violation if the plaintiff was unaware he or she was a victim of discrimination until a pattern emerged. *See, e.g., Jones v. Merchs. Nat'l Bank & Trust Co.*, 42 F.3d 1054, 1058 (7th Cir. 1994) (discussing three scenarios under which continuing violation can be shown).

2019. A plaintiff must file a timely charge of discrimination with the EEOC as a prerequisite to maintaining a Title VII, Age Discrimination in Employment Act (ADEA), or Americans with Disabilities Act (ADA) claim. *See* 42 U.S.C. § 2000e-5(e)(1), (f)(1) (2000) (Title VII); 42 U.S.C. § 12117(a) (2000) (ADA); 29 U.S.C. § 626(d) (2000) (ADEA); *see also Jackson v. City of Chi.*, No. 96 C 3636, 1996 WL 734701, at \*2 (N.D. Ill. Dec. 18, 1996). A plaintiff's failure to file a charge with the EEOC in a Title VII claim can result in a dismissal of the complaint. *See, e.g., Sizova*, 282 F.3d at 1325 (stating that “exhaustion of administrative remedies is a jurisdictional prerequisite to suit under Title VII”); *Tang*, 904 F. Supp. at 58–59.

2020. *See, e.g., Currie v. Group Ins. Comm'n*, 290 F.3d 1, 12 (1st Cir. 2002) (holding “there is no danger that the plaintiff will be prejudiced by ineffective prosecution of the state law claim. Nor will the defendant be prejudiced by our staying the action . . . .”); *Murphy v. Uncle Ben's, Inc.*, 168 F.3d 734, 740 (5th Cir. 1999) (ADEA “does not constitute express Congressional authorization for federal courts to enter injunctions staying state judicial proceedings involving parallel state law age discrimination claims”).

- Is the claim subject to arbitration?<sup>2021</sup>
- Is the plaintiff seeking to pursue claims against unnamed parties?<sup>2022</sup>

Issues usually can be narrowed initially without discovery, and disputed jurisdictional facts—such as when a plaintiff received a “right to sue” letter—can be resolved through an expedited hearing if necessary.

Plaintiffs often seek relief that might adversely affect other employees or proposed employees of the defendant. Where potentially affected employees are represented by a labor organization, even if only the employer was named in the administrative charges or is alleged to have engaged in discrimination, consider joining the organization as a necessary party or having it intervene in order to make any decree binding should the plaintiffs prevail.<sup>2023</sup> Similarly, in some cases joinder or intervention of other employees who would be adversely affected by the plaintiffs’ success may be warranted to ensure that all competing interests are adequately represented and to protect against subsequent claims of reverse discrimination.<sup>2024</sup>

2021. *See, e.g.*, *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) (“The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement.”); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26–27 (1991) (ADEA claims arbitrable under FAA); *Carter v. Countrywide Credit Indus., Inc.*, 189 F. Supp. 2d 606, 612–14 (N.D. Tex. 2002) (Fair Labor Standards Act claims arbitrable under FAA).

2022. In some instances, plaintiffs may seek to bring claims against defendants who were not named in the EEOC charge. The courts have liberally construed the requirement, focusing on whether the party had adequate notice of the charge and an opportunity to participate in the conciliation process. *See Fernandez Molinary v. Industrias La Famosa, Inc.*, 203 F. Supp. 2d 111, 116–17 (D.P.R. 2002) (plaintiff failed to exhaust administrative remedies where plaintiff failed to name respondents in EEOC complaint); *Frazier v. Smith*, 12 F. Supp. 2d 1362, 1369 (S.D. Ga. 1998) (sheriff should have had notice of claim from plaintiff’s naming of Camden County sheriff’s department and allegations of particular events naming sheriff specifically); *Afande v. Nat’l Lutheran Home for the Aged*, 868 F. Supp. 795, 800 (D. Md. 1994) (plaintiff properly named defendant in EEOC charge where plaintiff identified defendant as plaintiff’s supervisor in attached affidavit and defendant availed self of opportunity to participate in EEOC’s resolution and conciliation).

2023. *See Fed. R. Civ. P.* 19, 24 (West 2003).

2024. *See, e.g.*, *Martin v. Wilks*, 490 U.S. 755, 762–65 (1989) (white firefighters challenge to actions taken pursuant to consent decree as reverse discrimination not impermissible collateral attack (superseded in part by statute 42 U.S.C. § 2000e-2(n)(1) (2000))); *Rafferty v. City of Youngstown*, 54 F.3d 278, 282 (6th Cir. 1995) (denying leave to intervene to attack 1996 consent decree where court found union was represented in negotiations that led to consent decree); *EEOC v. United Ass’n of Journeymen*, 235 F.3d 244, 254–55 (6th Cir. 2000) (joinder).

### 32.42 Class Actions

Many employment discrimination cases, particularly Title VII cases, are brought on behalf of a proposed class. For such actions to proceed, a named representative must have filed a timely charge with the EEOC. Plaintiffs must have exhausted administrative remedies on behalf of the class “and with respect to any claim that was the subject of or could reasonably have been expected to grow out of the EEOC’s investigation.”<sup>2025</sup> The statutory basis for the claim can also affect how a class action proceeds. The provisions of Rule 23 will apply to most employment discrimination class actions, but not all. For example, Rule 23’s opt-out provisions do not apply where proposed class claims are brought pursuant to the ADEA or the Fair Labor Standards Act (FLSA).<sup>2026</sup> Collective actions under the ADEA are authorized by 29 U.S.C. § 626(b), which adopts the opt-in class mechanism of section 216 of the FLSA. Section 216 of the FLSA, in turn, provides that plaintiffs must affirmatively opt into a collective action in order to be considered a class member.<sup>2027</sup> “Rule 23 and § 216(b) class actions are ‘mutually exclusive and irreconcilable’ and those who choose not to opt-in to a class action under § 216(b) are not bound by and may not benefit from the judgment.”<sup>2028</sup> There is discretion to authorize notice of the class to similarly situated employees in order to afford them an opportunity to opt in.<sup>2029</sup>

2025. Rutherglen, *supra* note 1957, at 81–82. *But see* Winbush v. State of Iowa, 66 F.3d 1471, 1478 (8th Cir. 1995) (district court properly allowed intervention without requiring a separate EEOC filing by each intervenor where there was a “similar and sufficient factual basis” between the intervenors and the original plaintiffs).

2026. See 29 U.S.C. § 216(b) (West 2003) (providing that “[n]o employee shall be a party plaintiff . . . unless he gives his consent in writing to become such”); *see also* Lewis & Norman, *supra* note 1915, § 4.9, at 246.

2027. See, e.g., Grayson v. Kmart Corp., 79 F.3d 1086, 1106 (11th Cir. 1996); Anson v. Univ. of Tex. Health Sci. Ctr., 962 F.2d 539 (5th Cir. 1992). While all included plaintiffs need to be similarly situated in order to maintain an opt-in class action under section 216(b), the possibility of varying defenses does not vitiate a collective action. See Lockhart v. Westinghouse Credit Corp., 879 F.2d 43, 52 (3d Cir. 1989) (“While the potential for problems with respect to class management may arise from the assertion of individualized defenses, a district court has the discretion to determine whether such problems would make manageability of the class impossible.”), *overruled on other grounds*, Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089 (3d Cir. 1995).

2028. Hall v. Burk, No. 301CV2487H, 2002 WL 413901, at \*2 (N.D. Tex. Mar. 11, 2002) (citation omitted). See Ownes v. Bethlehem Mines Corp., 108 F.R.D. 207, 209–10 (S.D. W. Va. 1985) (Rule 23 is not applicable to collective actions under ADEA).

2029. See Hoffmann-La Roche Inc. v. Sperling, 493 U.S. 165, 169 (1989); Hall, 2002 WL 413901, at \*2. In order to serve as the basis for an ADEA class action, the underlying EEOC

In class actions subject to Rule 23, deciding whether the action should be maintained under Rule 23(b)(2) or (b)(3) will make a significant difference with respect to various aspects of the class litigation, in particular the definition of the class, entitlement to damages, class notice, and opt-out rights. Employment discrimination cases that meet the prerequisites of Rule 23(a) may qualify as class actions under Rule 23(b)(2) where the defendant “has acted . . . on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.”<sup>2030</sup> They may also qualify under Rule 23(b)(3) on the ground that a common question of fact or law predominates; indeed, where monetary relief is sought, a (b)(3) class is generally the appropriate vehicle.

Class action certification of disparate treatment claims under Rule 23(b) has become more complicated since the 1991 amendments to Title VII.<sup>2031</sup> Members of a Rule 23(b)(2) class generally are not entitled to recover anything other than incidental damages (i.e., damages to which the plaintiffs would be automatically entitled once liability is established). The 1991 amendments, however, permit plaintiffs alleging intentional discrimination to seek monetary relief in the form of compensatory or punitive damages. These damages would otherwise not be considered “incidental” to the relief sought,<sup>2032</sup> making certification under Rule 23(b)(2) inappropriate. At the same time, certification may still be improper under Rule 23(b)(3) because individual concerns may outweigh legal questions common to the class.<sup>2033</sup> In *Allison v. Citgo Petroleum Corp.*,<sup>2034</sup> the Fifth Circuit rejected certification under both Rules 23(b)(2) and (b)(3), noting that “the predominance of individual-specific issues relating to the plaintiffs’ claims for compensatory and punitive damages in turn detracts from the superiority of the class action device in resolving these claims.”<sup>2035</sup> The court viewed the issue as one of manageability, particularly in light of the

charge must give adequate notice of the scope of the class. *See, e.g., Hipp v. Liberty Nat’l Life Ins. Co.*, 252 F.3d 1208, 1224–25 (11th Cir. 2001).

2030. Fed. R. Civ. P. 23(b)(2) (West 2003).

2031. *See Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 157 (2d Cir. 2001) (“Prior to the passage of the 1991 Act, a plaintiff seeking a monetary award for disparate treatment . . . and disparate impact claims under Title VII could recover only back pay and front pay. Because back pay and front pay have historically been recognized as equitable relief under Title VII, neither party was entitled to a jury trial; both disparate treatment and disparate impact claims were tried to the bench.” (footnote omitted)).

2032. *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 410 (5th Cir. 1998).

2033. *See, e.g., id.* at 417–18.

2034. 151 F.3d 402 (5th Cir. 1998).

2035. *Id.* at 419 (holding damage claims were not incidental to the class claims for injunctive relief).

number of potential plaintiffs, the length of time over which the discrimination was alleged to have occurred, and the number of departments involved in the alleged discrimination.<sup>2036</sup>

Other courts have declined to follow the reasoning in *Allison*, or have found that the decision did not establish a bright-line rule that a class seeking compensatory and punitive damages in a jury trial can never be certified.<sup>2037</sup> In *Robinson v. Metro-North Commuter Railroad Co.*,<sup>2038</sup> for example, the Second Circuit declined to follow *Allison*, holding that the district court should “assess whether Rule 23(b)(2) certification is appropriate in light of ‘the relative importance of the remedies sought, given all of the facts and circumstances of the case.’”<sup>2039</sup> In particular, the Second Circuit instructed the district court to ensure that the value to the plaintiffs of the equitable relief sought was predominant (i.e., plaintiffs would still bring the action for injunctive relief even if monetary damages were unavailable) and that class treatment would be “efficient and manageable.”<sup>2040</sup>

Rule 23(c)(4) permits maintaining an action as a class action with respect to particular issues. Several courts have suggested a “hybrid” approach in discrimination cases to deal with the problems created by the enhanced-damages provision of the Civil Rights Act. Hybrid options include a Rule 23(b)(2) class with an opt-out provision<sup>2041</sup> or certifying a Rule 23(b)(2) class with respect to the injunctive aspects of the suit and a Rule 23(b)(3) class to consider the claims for monetary relief.<sup>2042</sup> Other alternatives include certification of a Rule 23(b)(2) class for class-wide damages and severing the issue of individual dam-

2036. *Id.* at 419–20; *see also* *Jefferson v. Ingersoll Int’l*, 195 F.3d 894 (7th Cir. 1999); *Faulk v. Home Oil Co.*, 184 F.R.D. 645 (M.D. Ala. 1999).

2037. *See, e.g.*, *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147 (2d Cir. 2001); *Smith v. Texaco, Inc.*, 88 F. Supp. 2d 663, 678 (E.D. Tex. 2000); *Hoffman v. Honda of Am. Mfg. Inc.*, 191 F.R.D. 530, 536 (S.D. Ohio 1999); *Stewart v. Rubin*, 948 F. Supp. 1077, 1090 (D.D.C. 1996).

2038. 267 F.3d 147 (2d Cir. 2001).

2039. *Id.* at 164 (quoting *Hoffman*, 191 F.R.D. at 536).

2040. *Id.* at 164.

2041. *Lemon v. Int’l Union of Operating Eng’r, Local No. 139*, 216 F.3d 577, 580–81 (7th Cir. 2000); *Jefferson v. Ingersoll Int’l, Inc.*, 195 F.3d 894, 898–99 (7th Cir. 1999); *Eubanks v. Billington*, 110 F.3d 87, 96 (D.C. Cir. 1997); *Smith*, 88 F. Supp. 2d at 679–80.

2042. *See Beck v. Boeing Co.*, 203 F.R.D. 459, 465–68 (W.D. Wash. 2001); *Eubanks*, 110 F.3d at 96; *see also Lemon*, 216 F.3d at 581–82 (“Since the Civil Rights Act of 1991 entitles the parties to a jury trial on claims of intentional discrimination . . . a district court that proceeds with divided certification must adjudicate the damages claims first before a jury to preserve the Seventh Amendment right to a jury trial, even if adjudication of these claims decides the equitable claims as well.” (citation omitted)).

ages to be considered later in the suit.<sup>2043</sup> Consider whether one of these approaches would be useful and, specifically, whether a Rule 23(b)(3) or (b)(2) class should be certified for bifurcated adjudication of a common issue (Phase I), to be followed by separate trials (coordinated or consolidated as may be appropriate) to adjudicate individual damage claims (Phase II). Once there has been a finding in Phase I of a class-wide violation, “the court should decide the issue of class-wide relief, typically in the form of an injunction prospectively prohibiting the discriminatory practice.”<sup>2044</sup> There are cases, however, where injunctive relief would not remedy the challenged employment practice, such as where the practice has been discontinued or the plaintiff is no longer employed by the defendant.<sup>2045</sup> The court can then determine what individual relief is appropriate for class members.

In a motion for class certification, consider whether the complaint challenges an employment practice affecting a class of employees as opposed to challenging the individual treatment of employees. In general, disparate impact cases are more suitable to class treatment, because they arise out of a neutral policy or practice that plaintiffs say has a disproportionate impact on a protected class.<sup>2046</sup> As a result, plaintiffs can more easily satisfy the typicality and commonality requirements of Rule 23 in such cases.<sup>2047</sup> Class certification of actions based on disparate treatment claims, however, is more complicated.<sup>2048</sup>

2043. *Kernan Holiday Universal, Inc.*, No. JH90-971, 1990 WL 289505, at \*5–7 (D. Md. Aug. 14, 1990); *Morgan v. United Parcel Serv. of Am., Inc.*, 169 F.R.D. 349, 358 (E.D. Mo. 1996). *See also Beck*, 203 F.R.D. at 465–68 (W.D. Wash. 2001) (certifying the liability phase under Rule 23(b)(2) and the damages phase under Rule 23(b)(3), but excluding from the class certification individual claims for back pay).

2044. *Rutherglen*, *supra* note 1957, at 90. Injunctive relief will almost invariably be appropriate where Title VII has been violated. *See, e.g., Int’l Bd. of Teamsters v. United States*, 431 U.S. 324, 361 (1977).

2045. *See, e.g., Cardenas v. Massey*, 269 F.3d 251, 265 (3d Cir. 2001) (holding injunctive relief would not remedy plaintiff’s wrongful treatment where defendant no longer employed plaintiff); *Webb v. Mo. Pac. R.R. Co.*, 98 F.3d 1067, 1068 (8th Cir. 1996) (injunctive relief not appropriate where no discrimination complaints filed and affidavit exhibited effective implementation of antidiscrimination and affirmative action programs since the close of the liability phase of the trial); *see, e.g., Amirmokri v. Baltimore Gas & Elec. Co.*, 60 F.3d 1126 (4th Cir. 1995) (since plaintiff was no longer employed by defendant, equitable relief would be unavailable on harassment claim unless plaintiff prevailed on his constructive discharge claim).

2046. *See, e.g., Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (discussing whether Title VII prohibits hiring prerequisites and aptitude tests as conditions of employment).

2047. *See Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 159 n.15 (1982); *see, e.g., McKenzie v. Sawyer*, 684 F.2d 62 (D.C. Cir. 1982).

2048. *Swanson v. Perry*, No. 4:01-CV-0258-A, 2002 WL 324283, at \*3 (N.D. Tex. Feb. 27, 2002) (noting that disparate treatment claims are necessarily individual, but can still support class action treatment where appropriate).

Where disparate treatment forms the basis of the action, individual issues are more likely to predominate and class certification may not be warranted.<sup>2049</sup> Plaintiffs seeking class-wide relief on the basis of the impact of a policy on their individual employment conditions must show that their claims are sufficiently similar to those of the proposed class members that they meet the requirements of commonality and typicality for the class.<sup>2050</sup> The commonality requirement is rarely satisfied by broad allegations of discrimination.<sup>2051</sup> Courts have refused to certify classes where, for example, the named plaintiffs worked in different groups and job types;<sup>2052</sup> the proposed class included current, past, and present employees in both supervisory and non-supervisory positions in addition to job applicants;<sup>2053</sup> or the employees worked in different facilities or

2049. See, e.g., *Donaldson v. Microsoft Corp.*, 205 F.R.D. 558, 565 (W.D. Wash. 2001) (“The mere allegation of individualized discrimination on the basis of race, coupled with proof that other people of color work in the same environment, is insufficient to establish commonality.”); *Zachery v. Texaco Exploration & Prod., Inc.*, 185 F.R.D. 230, 239 (W.D. Tex. 1999) (proposed class was spread across fifteen states in seventeen separate business units, each with varying degrees of autonomy over evaluation and promotion decisions involving 523 autonomous supervisors); *Reyes v. Walt Disney World Co.*, 176 F.R.D. 654, 658 (M.D. Fla. 1998) (disparate treatment claims by their nature “are highly individualized” and plaintiffs were employed by three separate divisions, presumably with a different hierarchy of decision makers, and therefore each plaintiff was subject to “own set of unique circumstances surrounding the adverse employment action about which they now attempt to collectively complain”).

2050. *Gen. Tel. Co.*, 457 U.S. at 156–57 (emphasizing the need for careful attention to the requirements of Rule 23 in the light of the legal and factual issues underlying plaintiff’s cause of action and rejecting proposition that plaintiff’s injury from ethnic discrimination automatically qualifies plaintiff to represent all members of that ethnic class allegedly adversely affected by some manifestation of discrimination). See also *Donaldson*, 205 F.R.D. at 567 (“Courts have recognized that it is not possible to make a finding of commonality where putative class involves extensive diversity in terms of geography, job requirements, and/or managerial responsibilities.”); *Swanson*, 2002 WL 324283, at \*3 (“[T]he central problem with the proposed class action [is that it] is composed of individuals with widely varying job classifications, pay scales, supervisory responsibility, and histories of discrimination.”).

2051. See *Zachery*, 185 F.R.D. at 238–39 (geographic dispersion of facilities and localized employment decisions precluded finding of commonality); *Appleton v. Deloitte & Touche L.L.P.*, 168 F.R.D. 221, 231–32 (M.D. Tenn. 1996) (noting class encompassed varying job levels with different criteria used for decision making for each job level); *Swanson*, 2002 WL 324283, at \*2–3.

2052. *Kresefky v. Panasonic Communications & Sys. Co.*, 169 F.R.D. 54, 60 & 62–63 (D.N.J. 1996).

2053. *Troupe v. Randall’s Food & Drug, Inc.*, No. CIV.A. 3:98-CV-2462, 1999 WL 552727, at \*5 (N.D. Tex. July 28, 1999) (noting proposed class also covered at least “fifty separate stores spread over two large cities and their outlying suburbs” with “management practices vary[ing] widely according to stores across the division”).

geographical locations.<sup>2054</sup> In *General Telephone v. Falcon*,<sup>2055</sup> however, the Supreme Court noted that commonality may be satisfied where the plaintiffs can demonstrate that “an employer operated under a general policy of discrimination . . . [that] manifested itself . . . in the same general fashion, such as through entirely subjective decisionmaking processes.”<sup>2056</sup> Inquiry into whether the practice or conduct complained of involves the entire operation of the employer, or only a specific facility, department, or individual supervisor, will assist in determining whether the requirements of Rule 23 are met.

To ascertain the precise nature of the class claim and determine whether it meets the prerequisites of Rule 23(a), the court should probe beneath the pleadings at an early stage to identify the particular practice or procedure complained of and the extent to which the evidence to be offered in support of the named plaintiffs’ claims will also support the claims of other class members. Some discovery may be needed, although precertification discovery should be held to a minimum.<sup>2057</sup> Occasionally, the class claims will be consolidated with individual claims, and there may be reasons for proceeding with merits discovery on the latter. If so, the attorneys should be instructed to organize discovery so as to avoid duplication. A ruling that the class representatives’ individual claims have merit will not determine whether class certification is appropriate. The court will still need to determine if common issues predominate. A named plaintiff with a claim that lacks merit, however, will not be an adequate class representative.

Less precision is required in the definition of a Rule 23(b)(2) class. Members of a Rule 23(b)(2) class generally are limited to equitable relief (and appropriate incidental damages), and *res judicata* considerations with respect to individual claims are not significant. On the other hand, in a Rule 23(b)(3) action, plaintiffs’ primary claim is for damages. Thus, the class must be defined with more specificity, and the court must satisfy itself that the determination of individual claims does not preclude the existence of a predominant common question. The ruling on certification should describe the class (and any subclasses) as precisely as possible, both to facilitate planning for discovery, trial,

2054. *Zachery*, 185 F.R.D. at 239 (proposed class spread across fifteen states and involved seventeen business units).

2055. 457 U.S. 147 (1982).

2056. *Id.* at 159 n.15. *But see Appleton*, 168 F.R.D. at 221 (“In applying Footnote 15 [of *General Telephone*], the courts have required plaintiffs to show that a defendant’s decisionmaking process is *entirely* subjective before permitting an across the board attack.”).

2057. *But see Zapata v. IBP, Inc.*, No. CIV.A. 93-2366, 1994 WL 649322, at \*1 (D. Kan. Nov. 10, 1994) (staying discovery on merits until after plaintiff moved for certification but permitting discovery relevant to certification and noting that discovery relevant to certification may also be relevant to the merits).

and settlement and to define the persons (and claims) that will be entitled to relief under, or barred by, a final judgment in the action.<sup>2058</sup> To the extent feasible, this definition should be stated in objective terms: e.g., all female applicants during a specified time who, like the plaintiffs, failed to meet the employer's height and weight requirements. If unclear from the description of the class itself, the ruling should indicate the nature of the claimed class discrimination: e.g., all persons of color employed by the defendant during a specified period who allege that they were denied promotion during that period on account of their race. Criteria that are subjective or depend on the merits of the claim should be excluded. Although Rule 23(c)(1) authorizes a conditional order of certification and modification of that order prior to final judgment, such modification can be prejudicial to class members and interfere with the effective management of the action.<sup>2059</sup> In cases brought pursuant to the FLSA or ADEA, however, a determination whether similarly situated employees exist will help to determine whether notice of a right to opt in should be given and whether to conditionally certify the class. Once notice has been given and the time for opting in has expired, the judge can reexamine whether the class should be decertified.

Rule 23(c)(2) entitles each class member in a class certified under Rule 23(b)(3) to personal notice and an opportunity to opt out of the class.<sup>2060</sup> Rule 23 does not provide for opt-out by members of a (b)(2) class. If certain members of the class should be excluded, perhaps because their interests are aligned with management or to avoid conflicts within a class, the class definition should be tailored to reflect their exclusion or to create one or more subclasses.<sup>2061</sup>

Notice to class members must be given when a Rule 23(b)(3) class is certified.<sup>2062</sup> Although not required for a (b)(2) class, notice may still be advisable for a number of reasons, such as to bring to light possible conflicts and to ensure the *res judicata* effect of a judgment. The form of notice—individual mailing, posting on bulletin boards, or inclusion in pay envelopes—will depend on the circumstances of the case. While the cost of notice generally is

2058. See *Cooper v. Fed. Res. Bank of Richmond*, 467 U.S. 867, 876–78 (1984) (related individual claims of discrimination not precluded by a finding of no class discrimination); *Kernan v. Holiday Universal, Inc.*, No. JH90-971, 1990 WL 289505, at \*2, 6 (D. Md. Aug. 14, 1990).

2059. *Hall v. Burk*, No. CIV.A. 301CV2487, 2002 WL 413901, at \*2–3 (N.D. Tex. Mar. 11, 2002).

2060. Fed. R. Civ. P. 23(c)(2) (West 2003); see also *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 844 (1999). Rule 23 does not provide for opt-out by members of a (b)(2) class. See *supra* section 21.311 [certification notice].

2061. See *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 993–94 (5th Cir. 1981).

2062. Fed. R. Civ. P. 23(c)(2) (West 2003).

borne by the plaintiffs,<sup>2063</sup> relatively cost-free methods of reaching at least current employees usually are available. Moreover, where notice is being given in a (b)(2) action at the employer's request, the employer may be required to bear the cost.

### 32.43 Discovery

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Five considerations are important in planning the discovery program for employment discrimination litigation:

1. Many aspects of the company's employment practices and its workforce may be potentially relevant as circumstantial evidence.
2. Most of the information will be within the control of the employer, often in computerized form.
3. Except for the government, plaintiffs usually have limited resources.
4. Expert testimony and complex statistical evidence will play an important role at trial.
5. Trial often will be conducted in stages.

#### 32.431 Identification of Source Materials

The judge can simplify and expedite discovery by directing the parties to exchange core information before discovery begins. Core information includes information required under Rule 26 or local rules. It also includes potentially relevant documentary materials, such as statements of employment policies, policy manuals and guides, and an identification and general explanation (perhaps with samples) of the types of records that contain data that may be relevant to the issues in the case. After obtaining this information, plaintiffs may need to depose the personnel director or other individuals responsible for maintaining such records in order to clarify the nature of the information contained in the records, how the information is coded or compiled, and how data may be extracted from the various sources.

Employers frequently maintain the same or similar information in different forms. For example, earnings information may be in a personnel file, in tax

2063. See *Eisen v. Carlisle & Jaquelin*, 417 U.S. 156, 177 (1974).

records, and in payroll records. Job histories of employees may be determined from periodic transfer and promotion records, from individual work record cards, or from personnel files. The company may also have compiled relevant data regarding its workforce and employment practices for reporting to governmental agencies or for use in other litigation. Many aspects of the company's employment practices may have some potential relevance as circumstantial evidence, and various records may contain information about these practices. The parties can determine the most efficient and economical method for the employer to produce, and for plaintiffs to obtain, the most relevant information. Federal Rule of Civil Procedure 26(g) directs counsel to weigh the potential value of particular discovery against the time and expense of production, and Rule 26(b)(2) expects the judge to limit discovery to avoid duplication and unjustified expense.<sup>2064</sup>

### 32.432 Computerized Records

The time and expense of discovery may sometimes be substantially reduced if pertinent information can be retrieved from existing computerized records. Moreover, production in computer-readable form of relevant files and fields (or even of an entire database) can reduce disputes over the accuracy of compilations made from such data and enable experts for both sides to conduct studies using a common set of data.<sup>2065</sup> On the other hand, accessing and

2064. See *Aramburu v. Boeing Co.*, 885 F. Supp. 1434, 1444–45 (D. Kan. 1995) (holding that production of 1,700 personnel files would unduly burdensome in light of information already produced by defendant and relevance appeared negligible in light of burden, but giving plaintiff leave to seek reconsideration should additional discovery prove necessary); *Zapata v. IBP, Inc.*, No. CIV.A. 93-2366, 1994 WL 649322, at \*3 (D. Kan. Nov. 10, 1994) (requiring defendant to produce computerized records and noting that all discovery is burdensome and burden is on party resisting discovery to demonstrate it would be unduly burdened by the discovery request); *Couplin v. Lee*, 946 F.2d 1152, 1160 (5th Cir. 1991) (district court abused discretion in limiting plaintiff's access to personnel files, and although some limitations can be imposed on ground of burdensomeness, the "more important the information sought in discovery is to the case, the greater the burden the opposing party can be legitimately required to shoulder"). In *Sattar v. Motorola*, for example, the district court denied plaintiff's discovery request for hard copies of over 200,000 pages of E-mail messages. The court instead ordered the defendant to accommodate the plaintiff in one of several alternative ways, such as downloading the data onto diskettes (as opposed to submitting the tapes on which the information was maintained), permitting the plaintiff to use the software needed to read the tapes, or giving the plaintiff access to the defendant's computer system, otherwise the parties would be required to split the costs of hard copies. 138 F.3d 1164, 1171 (7th Cir. 1998).

2065. See *Hines v. Widnall*, 183 F.R.D. 596, 601 (N.D. Fla. 1998) (requiring defendant to produce computer images to plaintiffs even though defendant computerized records after litigation began).

using computer-generated evidence is subject to numerous pitfalls. For a more complete discussion see section 11.446. The parties' computer experts should informally discuss, in person or by telephone, procedures to facilitate retrieval and production of computerized information; the attorneys can then confirm these arrangements in writing.

### 32.433 Confidential Information

Employees' privacy interests may be protected by excluding from production records or portions of records irrelevant to the litigation (employees' medical histories, for example, are rarely of significance in a discrimination case) or by masking the names of individuals in particular compilations.<sup>2066</sup> If the company fears exposure to privacy claims were it to disclose personal information voluntarily, consider issuing a protective order barring unnecessary disclosure of sensitive items to facilitate the production of sensitive information. The protective order may identify information regarding the employee, such as names or social security numbers, and may limit the persons to whom plaintiffs' counsel will be permitted to disclose confidential materials. For example, counsel might be allowed to disclose some sensitive information to the plaintiffs or even to class members, but permitted to disclose information about tests only to an expert.

Discovery sought by the defendant employer often targets private information regarding the plaintiffs or nonparty witnesses. In sexual harassment cases, defendants may seek discovery as to the plaintiff's emotional well-being, including medical and psychological records, or the plaintiff's sexual history.<sup>2067</sup> As always, the plaintiffs (and nonparty witness's) privacy interests

2066. Some jurisdictions have held that employees' tax returns were subject to a quasi-privilege and not generally discoverable in civil actions. *See, e.g., Gattegno v. PriceWaterhouseCoopers, LLP*, 205 F.R.D. 70, 71–72 (D. Conn. 2001) (discussing discoverability of tax returns and approaches taken by different jurisdictions and holding tax returns subject to a quasi-privilege).

2067. *See, e.g., Gatewood v. Stone Container Corp.*, 170 F.R.D. 455, 460 (S.D. Iowa 1996) (“[A] defendant is entitled to discover whether there have been other stressors relating to plaintiff's mental and physical health during the relevant time period which may have contributed to the claimed emotional distress.”); *Fox v. Gates Corp.*, 179 F.R.D. 303, 305–06 (D. Colo. 1998) (plaintiff claiming emotional distress as element of claim waived psychotherapist–patient privilege for communications within applicable time period); *Butler v. Burroughs Wellcome, Inc.*, 920 F. Supp. 90, 92 (E.D.N.C. 1996) (plaintiff's entire medical history is relevant in ADA action and defendant also entitled to inquire into history of sexual abuse and sexual dysfunction, since claim predicated upon mental state arising out of these issues). *But see Burger v. Litton Indus. Inc.*, No. 91 CIV. 0918, 1995 WL 476712, at \*2–3 (S.D.N.Y. Aug. 10, 1995) (defendants failed to show that the need for information relating to sex life of nonparty witness outweighed witness's privacy interests and noting that although Federal Rule of Evidence 412 did not apply to civil

should be balanced against the probative value of the information sought.<sup>2068</sup> Determinations as to whether the plaintiff may have waived any physician–patient privilege also may be required.<sup>2069</sup>

### 32.434 Preservation of Records

When a charge of discrimination or a civil action has been filed, EEOC regulations require that employers “shall preserve all personnel records relevant to the charge or action until final disposition of the charge or action.”<sup>2070</sup> The parties may disagree on which records are covered by this mandate, particularly with respect to computerized data that may be periodically erased as new information is electronically stored. A separate order may be needed to clarify what records must be preserved and to provide relief from unduly burdensome retention requirements.

### 32.435 Statistical Evidence and Expert Testimony

Employment discrimination litigation frequently involves the collection and presentation of voluminous data regarding characteristics of the company’s workforce and its employment practices. In addition to using data already computerized by the company, the parties often prepare new databases, electronically storing information manually extracted from other records. Disagreements may arise about the accuracy of these new databases, and preparing and verifying separate databases involves time and expense. Consider encouraging the parties to agree on joint development of a common database on which their respective experts will conduct their studies. If they cannot agree on a common database, the court should direct them to use pretrial verification procedures to eliminate (or quantify) errors in the different databases. Whenever possible, complex data should be presented at trial through summaries, charts, and other tabulations.<sup>2071</sup>

actions, “[i]n order not to undermine the rationale of Rule 412 . . . courts should enter appropriate orders pursuant to Fed. R. Civ. P. 26(c) to protect the victim against unwarranted inquiries and to ensure confidentiality”).

2068. *Gatewood*, 170 F.R.D. at 460 (noting defendant did not have “carte blanche” to “peruse plaintiff’s medical history”).

2069. *See, e.g., Fox*, 179 F.R.D. at 305–06; *Vann v. Lone Star Steakhouse & Saloon*, 967 F. Supp. 346, 349–50 (C.D. Ill. 1997).

2070. 29 C.F.R. § 1602.14 (1999).

2071. In discrimination cases, the parties sometimes attempt to introduce in bulk numerous personnel files, work history cards, and other similar documents. *See, e.g., Crawford v. W. Elec. Co.*, 614 F.2d 1300, 1319 (5th Cir. 1980) (the court may insist on compilations and is not required to “[wade] through a sea of uninterpreted raw evidence”).

Adopting pretrial procedures to facilitate this presentation will reduce disputes over the accuracy of the underlying data and the compilations derived from such data. Indeed, to the extent practicable, disputes at trial regarding statistical evidence should be limited to its interpretation, relevance, and weight, not its accuracy. Experts submitting statistical studies in the form of written reports should include, among other things, the data and information considered in arriving at their conclusions. Such information includes the applicable labor or employment pool, historical data, and other characteristics.<sup>2072</sup> After reviewing these reports and considering the comments of counsel, it may be appropriate to appoint an independent statistical expert under Federal Rule of Evidence 706. The court should be wary of making such an appointment, however, if the plaintiffs will be able to pay their share of any assessed fees only if they prevail.<sup>2073</sup>

### 32.436 Discovery from Class Members

The extent of permissible discovery from class members, as well as its timing and form, will depend on the circumstances of the case. The judge should require the parties to obtain court approval before taking any discovery from class members and should limit that discovery to what is genuinely needed. Depositions of a limited number of proposed class members are sometimes needed prior to a ruling on class certification. In some cases, limited discovery from class members may be conducted in a bifurcated case in the liability phase of the pretrial proceedings, with any remaining discovery deferred.<sup>2074</sup> Each party ordinarily should be permitted to depose any class member whom the other party plans to call as a witness. Discovery of a class member whose employment history will be used as evidence to show the existence (or nonexistence) of the alleged discrimination may also be appropriate. Whether anecdotal experiences of individual class members are relevant at a Phase I trial will depend on the circumstances of the case. Consider deferring discovery from those class members if such evidence will become relevant at subsequent proceedings only if liability to the class is established. Similarly, class members on whose behalf claims for individual relief are presented after a finding of class-wide liability may be treated as subject to discovery.

2072. Fed. R. Civ. P. 26(a)(2) (2000).

2073. *See generally*, Joe S. Cecil & Thomas E. Willging, *Court-Appointed Experts: Defining the Role of Experts Appointed Under Federal Rule of Evidence 706* (Federal Judicial Center 1993).

2074. *See, e.g.*, *W. Elec. Co. v. Stern*, 544 F.2d 1196, 1198–99 (3d Cir. 1976).

### 32.44 Summary Judgment

Summary judgment can be an effective tool in employment discrimination cases. Although typically brought by one of the parties, some courts have approved the use of summary judgment *sua sponte* in appropriate cases.<sup>2075</sup> The courts have consistently held that the *McDonnell Douglas* burden-shifting framework, applicable where the plaintiff's case rests on circumstantial evidence of discrimination, governs summary judgment but should not be introduced to the jury.<sup>2076</sup> The Ninth Circuit noted in *Costa v. Desert Palace Inc.*<sup>2077</sup> that the presumption of discrimination may be relevant at trial where the employer does not rebut the prima facie case, but factual disputes remain. In most cases, however, “[r]egardless of the method chosen to arrive at trial, it is not normally appropriate to introduce the *McDonnell Douglas* burden-shifting framework to the jury.”<sup>2078</sup> Accordingly, once the employer proffers a nondiscriminatory reason for the employment practice at issue, the plaintiff must offer evidence to show that the defendant's asserted reason is pretextual in order to defeat summary judgment in favor of the employer.<sup>2079</sup> It may be enough for the plaintiff to establish a prima facie case, together with sufficient evidence to challenge the credibility of the employer's proffered explanation, in order to create a triable issue of fact.<sup>2080</sup> The plaintiff is not required to introduce independent evidence of discrimination in order to avoid summary judgment. Rather, once the plaintiff adequately challenges the credibility of the explana-

2075. See, e.g., *Jones v. Union Pac. R.R. Co.*, 302 F.3d 735, 740 (7th Cir. 2002).

2076. See, e.g., *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 854–55 (9th Cir. 2002), *aff'd*, 123 S. Ct. 2148 (2003); *Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1216 (10th Cir. 2002); see also *Crone v. United Parcel Serv.*, 301 F.3d 942, 944 (8th Cir. 2002) (stating summary judgment would be analyzed under *McDonnell Douglas* burden-shifting standard).

2077. 299 F.3d 838 (9th Cir. 2002), *aff'd*, 123 S. Ct. 2148 (2003).

2078. *Id.* at 855.

2079. *Heap v. County of Schenectady*, 214 F. Supp. 2d 263, 269 (N.D.N.Y. 2002); *Crone*, 301 F.3d at 942, 944–45 (affirming grant of summary judgment for employer where plaintiff failed to demonstrate reason for nonpromotion was pretext).

2080. *Reeves v. Sanderson Plumbing Prods. Inc.*, 530 U.S. 133, 148 (2000) (“This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational factfinder could conclude that the action was discriminatory.”). The Seventh Circuit in *Jones v. Union Pacific Railroad Co.*, noted that with respect to the issue of pretext, the “question is not whether the employer's reasons for a decision are ‘right but whether the employer's description of its reasons is honest.” 302 F.3d 735, 744 (7th Cir. 2002) (quoting *Kariotis v. Navistar Int'l Transp. Co.*, 131 F.3d 672, 677 (7th Cir. 1997)). However, the court also seemed to require the plaintiff to provide admissible evidence that the employer's reason was pretextual “and that the actual reason was discriminatory.” *Id.* at 743.

tion, it is within the province of the fact-finder at trial to look at the totality of the evidence and then determine whether such evidence creates an inference of discrimination.

### 32.45 Trial

Employment discrimination class actions have commonly been tried in separate stages under Rule 42(b).<sup>2081</sup> In some cases the class issues may themselves be severed, with the Phase I trials of different class issues conducted separately. The Phase I trial determines whether the defendants have discriminated against the class. Whether the merits of the individual claims of the class representatives should be tried in Phase I depends on whether proof of those claims is essential to establishing liability on the class claim. If class-wide discrimination is found, issues of relief are tried in Phase II. The 1991 CRA entitles parties in disparate treatment cases to request a jury trial. If a jury is requested, the bifurcation of class actions will be substantially more complicated. Although the class-wide issue of discrimination is readily tried to a jury in Phase I, the trial of individual damage claims to a jury in Phase II will result in potentially lengthy trials. In some cases, Title VII permits recovery of front and back pay as well as compensatory damages, including future loss, and pain and suffering. Consider whether fairness to the parties requires that both liability and relief be tried to a single jury.<sup>2082</sup>

Where the case is tried to the court, the judge should determine, in Phase I, the appropriateness of class-wide injunctive relief. Injunctive relief commonly ordered in employment discrimination cases includes the following: establishing goals to diversify the workforce; implementing mandatory hiring or promotion of specified individuals or groups of individuals; abolishing or restricting testing procedures; instituting training programs; establishing or modifying recruitment policies; or imposing an affirmative action plan in one form or another.<sup>2083</sup> Reinstatement may also be a viable remedy depending on the circumstances of the case.<sup>2084</sup> An immediate appeal of the ruling on injunc-

2081. See *Gen. Bldg. Contractors Ass'n v. Pa.*, 458 U.S. 375, 380 (1982); *Kernan Holiday Universal, Inc.*, No. JH90-971, 1990 WL 289505, at \*4-5 (D. Md. Aug. 14, 1990); *United States v. United States Steel Corp.*, 520 F.2d 1043 (5th Cir. 1975).

2082. See, e.g., *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 423-24 (5th Cir. 1998) (expressing concern that consideration of overlapping issues by different juries would violate the Seventh Amendment).

2083. John F. Buckley, IV & Michael R. Lindsay, *Defense of Equal Employment Claims* § 14.18, at 14-17 (2d ed. 1995 & Supp. 2000).

2084. Hostility between the parties may militate against consideration of reinstatement. *Simpson v. Ernst & Young*, 100 F.3d 436, 445 (6th Cir. 1996) (amount of award of front pay

tive relief is permissible under 28 U.S.C. § 1292(a). Because resolution of claims for injunctive relief can be an expensive and time-consuming process, such an appeal may be desirable as a means for obtaining early appellate review of a finding of liability. If an appeal under 28 U.S.C. § 1292(a) is unavailable, consider certifying the ruling on class liability for appeal under section 1292(b). The award of attorneys' fees may be deferred until completion of proceedings for individual relief; an interim award, however, frequently is made after a grant of injunctive relief.<sup>2085</sup>

The individual damage claims of the class members should be resolved in Phase II. In some instances, a period of additional discovery may be necessary. In this second stage, the claimants—who, by proof of their membership in the class, are presumed to have been subjected to the discrimination practiced against the class<sup>2086</sup>—are permitted to present their individual claims of injury,<sup>2087</sup> subject to the right of the employer to raise defenses to those claims that were not resolved during the Phase I proceedings. Further severance may be useful at the individual remedy stage. For example, consider identifying those entitled to relief before the parties proceed with discovery and possible trial regarding the amount of damages. One approach is to require class members to complete information forms disclosing the critical facts on which their claims of individual injury is based (e.g., the job bids that they assert were discriminatorily rejected by the company). It may also be feasible to establish a claims resolution procedure administered by a magistrate judge or special master under Rule 53.<sup>2088</sup> In some cases, class-wide monetary relief may be ap-

“supplemented by evidence that disclosed the underlying hostility that existed between defendant and Simpson, making reinstatement highly impractical and improbable”); *Avitia v. Metro. Club of Chi., Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (noting that courts should not compel reinstatement “where such debilitating frictions between employer and employee can be anticipated that the court might have to exercise continuing supervision over the employment relationship for many years”). In addition, where reinstatement would require the removal of another employee from the desired position, reinstatement may not be feasible. *See Avitia*, 49 F.3d at 1231–32.

2085. *See* Fed. R. Civ. P. 54(d) (2000).

2086. *Cox v. Am. Case Iron Pipe Co.*, 784 F.2d 1546 (11th Cir. 1986); *King v. Trans World Airlines, Inc.*, 738 F.2d 255 (8th Cir. 1984); *McKenzie v. Sawyer*, 684 F.2d 62 (D.C. Cir. 1982); *Pettway v. Am. Cast Iron Pipe*, 494 F.2d 211 (5th Cir. 1974).

2087. As to whether the amount of damages each class member has sustained must be individually determined or whether damages may be assessed on a class-wide basis, compare *Mitchell v. Mid-Continent Spring Co.*, 583 F.2d 175, 283–84 (6th Cir. 1978), with *Pettway*, 494 F.2d at 259–63 (class-wide formula permissible).

2088. *See, e.g.,* *Bridgeport Guardians, Inc. v. Delmonte*, 248 F.3d 66, 70–72 (2d Cir. 2001); *Ass'n of Mexican-Am. Educators v. State of Cal.*, 231 F.3d 572, 590–91 (9th Cir. 2000); *Reynolds v. Roberts*, 207 F.3d 1288, 1295 n.9 (11th Cir. 2000); *Berger v. Iron Workers Reinforced Rod-*

propriate.<sup>2089</sup> Where calculation of the pecuniary effects of the discrimination would be nothing more than guesswork based on hypothetical analyses, an individualized determination of the amount a particular class member should recover may not be possible.<sup>2090</sup> Other factors that may weigh on the appropriateness of class-wide relief include the size of the class, whether the promotion or hiring practices are ambiguous, and the length of time the challenged practices continued.<sup>2091</sup>

When the trial of the action is bifurcated, the court should define precisely the issues to be resolved at each stage of the trial. This delineation will not eliminate all duplicative evidence. For example, anecdotal testimony may be admissible as circumstantial evidence at the first trial and, if liability is established, be offered as direct evidence on individual claims in later proceedings. The delineation, however, will enable counsel to prepare more effectively for both stages of the litigation. Issues generally are separated according to the extent they depend on the particular circumstances of individual employers; for example, defenses such as “business necessity”<sup>2092</sup> and “bonafide occupation qualification”<sup>2093</sup> usually are resolved in the first phase, while the issue of whether employees may be excused from applying for a position is typically reserved for decision in later proceedings.

Statistical evidence and expert testimony typically play a significant role in the liability phase of the trial,<sup>2094</sup> especially where the plaintiff is alleging dispa-

men, Local 201, 170 F.3d 1111, 1117–18 (D.C. Cir. 1999); *Jensen v. Eveleth Taconite Co.*, 130 F.3d 1287, 1289–91 (8th Cir. 1997).

2089. *See, e.g.*, *EEOC v. O & G Spring & Wire Forms Specialty Co.*, 38 F.3d 872 (7th Cir. 1994); *Catlett v. Mo. Highway & Transp. Comm’n*, 828 F.2d 1260, 1267–68 (8th Cir. 1987) (noting class-wide relief in form of award of back pay appropriate but remanding district court’s grant of a class-wide hiring preference for further review). *But see* *Shipes v. Trinity Indus.*, 987 F.2d 311, 317 (5th Cir. 1993) (stating that “fashioning a class-wide back pay award is exceedingly complex and difficult, and the process is fraught with uncertainty”).

2090. *See* *Stewart v. Gen. Motors Corp.*, 542 F.2d 445, 452 (7th Cir. 1976) (“subjectivity of defendant’s method of filling job vacancies renders impossible anything like a precise calculation of the pecuniary effects of discrimination”).

2091. *See* *Shipes*, 987 F.2d at 318.

2092. 42 U.S.C. § 2000e-2(k)(1)(A)(I) (2000).

2093. 29 U.S.C. § 623(f)(1) (2000).

2094. *See, e.g.*, *Hemmings v. Tidyman’s Inc.*, 285 F.3d 1174 (9th Cir. 2002); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271 (9th Cir. 2000); *Bell v. EPA*, 232 F.3d 546, 553 (7th Cir. 2000) (“In a pattern and practice disparate treatment case, statistical evidence constitutes the core of a plaintiff’s prima facie case.”); *Meacham v. Knolls Atomic Power Lab.*, 185 F. Supp. 2d 193, 208 (N.D.N.Y. 2002) (plaintiff in ADEA case must “demonstrate, generally through statistical data, that the employment practice caused a significant disparity in outcome between older employees and younger employees”); *O & G Spring & Wire*, 38 F.3d at 876 (statistical proof alone can establish discrimination case).

rate impact as opposed to intentional discrimination. The probative value of statistical evidence offered by the parties will depend on, among other things, the relevant labor pool,<sup>2095</sup> the geographic area, and other comparison pools.<sup>2096</sup> The court must ensure that such evidence meets the requirements of *Daubert v. Merrel Dow Pharmaceuticals*.<sup>2097</sup> The “Reference Guide on Statistics” in the *Reference Manual on Scientific Evidence*<sup>2098</sup> may be helpful in assessing statistical evidence in employment discrimination cases.

Judges routinely admit expert testimony regarding statistical evidence, but disagree about the need or value of expert testimony on other issues.<sup>2099</sup> It is helpful to consider in the pretrial planning stage the extent to which “anecdotal” evidence regarding the individual experiences of various employees, union stewards, supervisors, and managers will be admitted. Plaintiffs or defendants may offer to provide illustrative support for their respective positions and for the studies conducted by their experts.<sup>2100</sup> Some limits on the number of witnesses may be appropriate. To avoid unnecessary duplication, the court should require pretrial disclosure of witnesses’ names and the general subject matter of their expected testimony.<sup>2101</sup>

2095. See, e.g., *EEOC v. Turtle Creek Mansion Corp.*, No. 3:93-CV-1649, 1995 WL 478833, at \*7–9 (N.D. Tex. May 18, 1995); see also *McKenzie v. Sawyer*, 684 F.2d 62, 71 (D.C. Cir. 1982) (“A showing that few if any blacks were hired for a given kind of job is not probative of discrimination without a showing of the numbers of blacks available in the appropriate labor pool.”).

2096. See, e.g., *Aiken v. Memphis*, 37 F.3d 1155 (6th Cir. 1994).

2097. 509 U.S. 579 (1993). See *Wyche v. Marine Midland Bank*, No. 94 CIV. 4022, 1997 WL 109564, at \*1 (S.D.N.Y. Mar. 11, 1997).

2098. David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in *Reference Manual on Scientific Evidence* (Federal Judicial Center, 2d ed. 2000) at 83–178.

2099. *Sherbert v. Alcan Aluminum Corp.*, 66 F.3d 965, 967 (8th Cir. 1995) (operation of forklift within the common knowledge of the jury); *Karibian v. Columbia Univ.*, 930 F. Supp. 143, 144 (S.D.N.Y. 1996) (expert testimony as to plaintiff’s emotional state unnecessary); *Skidmore v. Precision Printing & Packaging, Inc.*, 188 F.3d 606, 618 (5th Cir. 1999) (testimony of psychologist on plaintiff’s emotional distress admissible); *Harper v. S.E. Ala. Med. Ctr.*, 998 F. Supp. 1289, 1297 (M.D. Ala. 1998) (permitting expert testimony on inadequacy of discrimination policy).

2100. See, e.g., *Turtle Creek Mansion*, 1995 WL 478833, at \*2–6.

2101. Fed. R. Civ. P. 26(a)(3) (West 2003).

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### 32.461 Timing

Precertification settlements of discrimination cases brought as class actions present special problems. If the parties propose settlement of only the individual claims of the named plaintiffs and abandonment of the class claim, the judge should ensure that members of the proposed class are not prejudiced. It is appropriate to consider whether the proposed class should be notified of the proposed settlement and given an opportunity to intervene to pursue the class claims. Although the parties should be encouraged to engage in settlement negotiations early in the litigation, formal settlement negotiations in class actions ordinarily should be deferred until there is a certification ruling. In employment discrimination litigation, the parties should explore settlement possibilities as the case proceeds toward trial after the certification ruling and, if those initial efforts are unsuccessful, they should renew their discussions after the liability phase of the trial.

### 32.462 Affirmative Relief

Many employment discrimination cases terminate in consent decrees or in litigated judgments that order implementation of certain employment practices that may be seen as constituting affirmative action.<sup>2102</sup> Such provisions raise difficult issues concerning their effect on groups of employees that may be adversely affected by the provisions and their vulnerability to subsequent legal challenge. The Civil Rights Act establishes procedures for precluding subsequent challenge by persons (1) who, prior to entry of the order, had actual notice of the potential adverse effect and an opportunity to object, or (2) who were adequately represented.<sup>2103</sup> Parties to the decree may also seek to intervene or join persons who may claim to be adversely affected.

2102. See, e.g., *Thigpen v. Bibb County, Ga., Sheriff's Dept.*, 223 F.3d 1231 (11th Cir. 2000); *Bishop v. Gainer*, 272 F.3d 1009 (7th Cir. 2001); *Maitland v. Univ. of Minn.*, 155 F.3d 1013 (8th Cir. 1998).

2103. 42 U.S.C. § 2000e-2(n) (2000).

### 32.463 Attorney Fees

The court should be wary of parties' attempts to settle claims for attorney fees before a settlement of the class claims has been effected or where the defendants offer to settle class claims by payment of a lump sum on condition that attorney fees be waived. The parties should be encouraged to settle claims regarding attorney fees, but these negotiations preferably should not be commenced until the class claims have been resolved by trial or settlement.

### 32.464 Settlement Hearing

Hearings on approval of class action settlements in employment discrimination litigation may generate vigorous objections. Opposition often stems from misunderstandings about the terms of the proposed settlement and will be mitigated if the notice of settlement provides full information in comprehensible form. Class counsel may also schedule, in advance of the hearing, meetings with the class at which counsel and the class representatives can explain in person the terms of the agreement and can answer questions. At the outset of the hearing, before the judge hears objections from class members or others, counsel should again describe in plain language the key features of the settlement, clarify misunderstandings, and indicate why they believe it to be advantageous to the class. The judge may also explain portions of the proposed settlement that may have been confusing to class members. The judge's notice to the class of the proposed settlement typically should require that any objections or requests to be heard be filed in writing by a specified date. It is prudent, however, to permit persons who have not filed timely objections to express their views at the hearing, including representatives of employees who, while not members of the class, claim they will be adversely affected by the settlement.

### 32.465 Implementation

Settlements of employment discrimination cases sometimes specify the persons to whom awards will be made and the amount each person is to be paid. More frequently, however, settlements provide only the basic principles for determining these awards, contemplating further proceedings to ascertain the factual matters on which the awards depend. The settlement may, for example, establish one or more funds to be shared by persons satisfying prescribed criteria; in this situation, class counsel may be required after the settlement to preliminarily identify those class members eligible to participate in distribution, and provide those found ineligible an opportunity to present their claims to the court or a special master. The settlement may provide for a specified payment—whether a flat sum or an amount determined under a formula—to each class member meeting specified criteria. If so, the defendants

may have a financial interest in challenging the claims of class members, and referral to a magistrate judge or special master may be necessary in order to conduct individual hearings. Also, a special master appointed under Federal Rule of Civil Procedure 53 can monitor future implementation of injunctive features of the settlement. Although Rule 53 contemplates that the appointment of a special master “shall be the exception and not the rule,”<sup>2104</sup> Title VII cases have a relaxed standard for assessing whether there are exceptional circumstances that warrant reference to a special master.<sup>2105</sup> The statute authorizes the appointment of a special master where necessary to ensure compliance with Title VII’s mandate to expedite discrimination cases, even though the circumstances might otherwise be unexceptional.<sup>2106</sup>

2104. See also *La Buy v. Howes Leather Co.*, 352 U.S. 249, 254 n.4 (1957); *Sierra Club v. Clifford*, 257 F.3d 444, 447 (5th Cir. 2001) (“The fact that a case has been pending for two years is not so exceptional as to require the reference of dispositive matters . . . to a special master.”); *United States v. Microsoft Corp.*, 147 F.3d 935, 955–56 (D.C. Cir. 1998).

2105. See *Goins v. Hitchcock*, 191 F. Supp. 2d 860, 867 (S.D. Tex. 2002) (citing *Hackley v. Roudebush*, 520 F.2d 108 (D.C. Cir. 1975)).

2106. 42 U.S.C. § 2000e-5(f)(5) (2000); see also *Hackley*, 520 F.2d at 154 n.181 (D.C. Cir. 1975) (“That provision was merely included so that the test of Rule 53, which only permits masters to be appointed in exceptional circumstances, would be somewhat relaxed in the area of Title VII, ‘where justice delayed is very often justice denied.’” (quoting House Comm. on Educ. & Labor, 92d Cong., Legislative History of the Equal Employment Opportunity Act 1731 (Comm. Print 1972))).

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### 33.1 Introduction

Intellectual property litigation comprises three related areas of the law: patent, copyright, and trademark. Trade secret claims—seeking to protect state-law-based rights in information—can appear under supplemental jurisdiction and often are related to patent issues (e.g., inventorship, ownership, “best mode”).<sup>2107</sup> Copyright actions arise out of the unauthorized copying or exploitation of the “pattern of expression” reflected by writings, music, and art.<sup>2108</sup> Trademark cases, on the other hand, do not involve the protection per se of an invention or original work, but involve disputes over the unauthorized use of those “marks” of a product or service that are associated in the public’s mind with that product or service.<sup>2109</sup> Intellectual property litigation has grown increasingly more complicated as technology, biology, and communications have advanced, expanding claims beyond the traditional mechanical processes originally contemplated by the various statutes in each area. Motions for temporary and permanent injunctive relief, frequently filed on an expedited basis,

2107. James Pooley, Trade Secrets § 3.01[2]–[3] (2003) (discussing statutory requirements for patentability of an invention).

2108. Robert A. Gorman, Copyright Law 4 (Federal Judicial Center 1991).

2109. *Id.* at 5.

create additional complexities. This section focuses primarily on patent litigation, but also discusses issues peculiar to copyright and trademark cases that may increase the complexity of otherwise straightforward litigation.

## 33.2 Patent Law

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### 33.21 The Statutory Framework

Patent law derives from Article 1, section 8 of the U.S. Constitution, which authorizes Congress “[t]o promote the progress of . . . useful arts, by securing for limited times to . . . inventors the exclusive right to their . . . discoveries.” Congress exercised this authority through the 1793 Patent Act, most recently revised in 1952 and codified at 35 U.S.C. § 101.<sup>2110</sup> Patent law grants the inventor of a product or process, together with its useful improvements, exclusive right to the use and marketing of the invention, and protects the underlying concept or system as “usefully embodied.”<sup>2111</sup> Obtaining a patent can be lengthy and involved. The applicant must satisfy certain statutory conditions: the invention must be (1) useful;<sup>2112</sup> (2) novel;<sup>2113</sup> and (3) non-obvious.<sup>2114</sup> The patent document itself contains a set of claims to identify the bounds of the

2110. See *Graham v. John Deere Co.*, 383 U.S. 1, 3 (1966) (discussing constitutional grant of authority and history of Patent Act).

2111. Section 101 of the Patent Act provides: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101 (2000).

2112. *Id.*

2113. 35 U.S.C. §§ 101 & 102 (2000). In order to satisfy the requirement of novelty, the invention cannot be anticipated by a product or process that is already in the public domain, or cannot have an insignificant enough difference from that existing in the public domain that it would have been obvious to a person skilled in the art of the invention.

2114. 35 U.S.C. § 102 (2000).

patent owner's monopoly. These claims define the limits of the invention and serve to set the bounds for the patentee's rights. Typically they are the result of a back and forth negotiation between the patent applicant and the U.S. Patent and Trademark Office (PTO). "Because others look to the patent claims to determine what cannot be done without the patent owner's permission, the inventor must present claims that particularly point out and distinctly claim the invention."<sup>2115</sup> To further the Act's goals of promoting the "progress of the useful arts,"<sup>2116</sup> it also requires the patentee to make certain disclosures as to the best mode of practicing the invention and to include a description sufficient to enable a person of ordinary skill in the art of the invention to do so. Once the patent has been issued, the owner of the patent has the exclusive right to make, use, or sell the invention for twenty years from the date of the original patent application, at which time the patent expires and the invention becomes part of the public domain. Extensions of the patent may be granted under limited circumstances.

Patent litigation typically arises out of the patent owner's assertions of infringement of the patent resulting from unauthorized use of the patented product or process.<sup>2117</sup> Actions may also be brought by others to challenge the validity of the patent itself, either through the PTO or by way of a declaratory judgment action in federal court.<sup>2118</sup> In addition, appeals from proceedings or decisions of the Patent Office Board of Appeals, such as the denial of a patent, can be brought in the district court for the District of Columbia. Patent appeals from any of the ninety-four district courts go to the Court of Appeals for the Federal Circuit.

Patent cases can and often do involve a number of separate, but related, claims and defenses. In addition to seeking injunctive relief and damages for alleged infringement, plaintiffs may assert causes of action for unfair competition, antitrust, interference with business or contractual relations, and other related claims.<sup>2119</sup> Plaintiffs almost always allege willful infringement in order

2115. Herbert F. Schwartz, *Patent Law & Practice* 95 (Federal Judicial Center, 3d ed. 2001). The Supreme Court, in *Markman v. Westview Instruments, Inc.*, commented that "[t]he limits of a patent must be known for the protection of the patentee, the encouragement of the inventive genius of others and the assurance that the subject of the patent will be dedicated ultimately to the public." 517 U.S. 370, 389 (1996) (citing *Gen. Elec. Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 369 (1938)).

2116. Patent Act, ch. 11, 1 Stat. 318 (1793) (current version at 35 U.S.C. § 101 (2000)).

2117. Schwartz, *supra* note 2115, at 40–42.

2118. *Id.* at 42–44.

2119. *Eastman Kodak Co v. Goodyear Tire & Rubber Co.*, 114 F.3d 1547 (Fed. Cir. 1997). Most defendants also include a counterclaim for declaratory relief on essentially the same grounds as their affirmative defenses.

to increase the damages potentially available should their claim prevail or as an avenue to collect attorneys' fees. Most defendants assert defenses of noninfringement, invalidity based on the prior art, and invalidity based on other defects.<sup>2120</sup> Defendants may plead several of the statutory bars under 35 U.S.C. §§ 102 and 103 or other sections of Title 35, as well as assert misuse of the patent or various equitable defenses. Equitable defenses include laches, unclean hands, estoppel, patent misuse, and inequitable conduct before the PTO.<sup>2121</sup> Just as plaintiffs often allege willful infringement, defendants will often raise a defense of inequitable conduct based on a patentee's failure to satisfy its obligations of full disclosure and candor to the PTO during prosecution of the patent application.<sup>2122</sup>

### 33.22 Claim Construction Under *Markman v. Westview Instruments*

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The construction of patent claims is pivotal to infringement actions (or those challenging the validity of a patent), because the patent claims define the patentee's rights. It is only after the claims have been properly construed by the court that the trier of fact can determine whether each element of the claim is present, either literally or under the doctrine of equivalents, in the allegedly infringing product or process.<sup>2123</sup> The doctrine of equivalents extends patent

2120. Allegations of invalidity challenge whether the invention met the statutory requirements for patentability, such as novelty or non-obviousness. Section 103(a) of Title 35 precludes issuance of a patent "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which such subject matter pertains." Section 103(b) excepts biotechnological processes under certain circumstances from the operation of (a). Several primary considerations were identified by the Supreme Court in *Graham v. John Deere Co.*, as relevant to a determination of nonobviousness, such as the scope and content of the prior art, as well as inquiry into "objective" considerations relating to economic success or social need. 383 U.S. 1, 17–18 (1966). See also Schwartz, *supra* note 2115, at 79–82 (discussing various secondary considerations applied by the courts).

2121. See Schwartz, *supra* note 2115, at 155–68.

2122. See *id.* at 155–61; see also *Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, 326 F.3d 1226, 1233–34 (2d Cir. 2003).

2123. See, e.g., *Loral Fairchild Corp. v. Sony Corp.*, 181 F.3d 1313, 1321 (Fed. Cir. 1999) ("An infringement analysis entails two steps: (1) the claims must be construed; and (2) the

protection to include accused products or processes that, although not infringing on the literal meaning of the claims, are not substantially different from the patented device.<sup>2124</sup> In a significant development, the Federal Circuit foreclosed all resort to the doctrine of equivalents for any amendments narrowing a patent claim during prosecution, but the Supreme Court vacated the appellate decision, rejecting the absolute bar rule adopted by the Federal Circuit. The Court, however, held the burden was on the patentee to prove that the amendment should not give rise to estoppel.<sup>2125</sup>

Construing claims may also reveal whether the claim is novel or whether it is obvious in light of the prior art, and the court applies the same claim construction for purposes of analyzing both infringement and validity. As a result, claim construction can be, and often is, outcome determinative.

*Markman v. Westview Instruments*<sup>2126</sup> reflected a significant development in the construction of patent claims. The Court held that the interpretation of a patent is exclusively a question of law for the court.<sup>2127</sup> Likening claim construction to the interpretation of other written documents, the Court stated “[t]he judge, from his training and discipline, is more likely to give a proper interpretation to such instruments than a jury; and he is, therefore, more likely to be right in performing such a duty, than a jury can be expected to be.”<sup>2128</sup> Removing the issue of claim construction from the jury, it said, would also contribute to certainty and uniformity in patent litigation.<sup>2129</sup> Claim construction is now subject to de novo review by the Federal Circuit, even where construction involves determination of underlying factual issues.<sup>2130</sup>

As a result, many patent cases are resolved once the claim construction is decided, either through summary judgment or settlement, with substantial savings in judicial time and resources that would otherwise be spent in a

properly construed claims must be compared to the allegedly infringing device.”); *NEC Corp. v. Hyundai Elecs. Indus. Co.*, 30 F. Supp. 2d 560, 565 (E.D. Va. 1998) (infringement analysis is a two-step determination).

2124. Schwartz, *supra* note 2115, at 141.

2125. *Festo Corp. v. Soketasu Kinsoku Kogyo Kabushiki Co.*, 535 U.S. 722, 740 (2002).

2126. 517 U.S. 370 (1996).

2127. *Markman v. Westview Instruments*, 52 F.3d 967, 970–71 (Fed. Cir. 1995).

2128. *Markman*, 517 U.S. at 388–89.

2129. *Id.* at 391 (“[W]hereas issue preclusion could not be asserted against new and independent infringement defendants even within a given jurisdiction, treating interpretive issues as purely legal will promote . . . intrajurisdictional certainty through the application of stare decisis . . .”).

2130. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1456 (Fed. Cir. 1998) (stating court would “review claim construction de novo on appeal including any alleged fact-based questions relating to claim construction”). The determination of whether the patent has been infringed, however, remains a question of fact for the jury.

lengthy, often complicated trial.<sup>2131</sup> Claim construction also puts the court and the parties in a better position to determine what issues remain in the case in light of the court’s construction and to tailor the remaining course of the litigation accordingly.

There is no consistent approach among the courts as to the procedural boundaries of claim-construction proceedings. *Markman* did not establish when or how a patent was to be construed, only that it must be done prior to submission of the case to the jury.<sup>2132</sup> At least one jurisdiction has adopted a special set of “Patent Local Rules” that dictate a prescribed series of disclosures by each party that help to define the claim-construction issues in dispute and lead directly to briefing on claim construction and a *Markman* hearing.<sup>2133</sup> Accordingly, decisions on how to structure claim-construction proceedings involve several interrelated questions, the answers to which can affect subsequent case-management strategies:

- Is a *Markman* hearing necessary? If so, what claim terms need to be construed?
- How should the hearing be structured, and what submissions should be considered?
- When should the hearing be held?
- What is the procedural vehicle through which claim-construction issues are raised?
- What happens if the claim construction is reversed on appeal?

### 33.221 Holding a *Markman* Hearing

There is no requirement that the court conduct a formal hearing to interpret the patent. Whether a hearing is warranted often turns on the degree of ambiguity in the patent claim. Where the language of the patent claim is clear the judge may be able to construe the claim based solely on the paper record.<sup>2134</sup> If the language is truly unambiguous, the judge should not resort to the use of extrinsic evidence or testimony.<sup>2135</sup> The degree of ambiguity not-

2131. See William F. Lee & Anita K. Krug, *Still Adjusting to Markman: A Prescription for the Timing of Claims Construction Hearings*, 13 Harv. J.L. & Tech. 55, 59 (1999); see also *K-2 Corp. v. Salomen S.A.*, 191 F.3d 1356, 1362 (Fed. Cir. 1999).

2132. See generally *Markman*, 517 U.S. 370 (1996).

2133. See, e.g., N.D. Cal. Patent L.R. (2002).

2134. See Schwartz, *supra* note 2115, at 102–14 (discussing meaning of claim language).

2135. See *Vitronics Corp. v. Conceptionics, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996); *Biovail Corp. Int’l v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1300 (Fed. Cir. 2001) (“When intrinsic evidence unambiguously describes the scope of a patented invention, reliance on extrinsic evi-

withstanding, the court has the discretion to consider both intrinsic and extrinsic evidence, including expert testimony, in interpreting the claims.<sup>2136</sup> As a consequence, some courts routinely conduct *Markman* hearings before construing the claim.<sup>2137</sup> *Markman* hearings offer the court the opportunity to question any expert or other witnesses offered (such as the inventor) on issues related to the patent process and the technology. This enables the judge to gain a better understanding of the claims as a whole and the meaning of the patent's terms from the perspective of a person "skilled in the relevant art." The Federal Circuit has cautioned, however, that such extrinsic evidence may not be used for any purpose other than to assist the court in understanding the science and what "one skilled in the art" would understand. Conversely, conducting a *Markman* hearing may require the parties to produce their experts twice, both

dence is improper."); *ADC Telecomm., Inc. v. Siecor Corp.*, 954 F. Supp. 820, 831 (D. Del. 1997); *Ekchian v. Home Depot, Inc.*, 104 F.3d 1299, 1302 (Fed. Cir. 1997). This "intrinsic" evidence has been held to include the language of the patent, its specifications, the prosecution history, and the written description. *See, e.g., Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 976–77 (Fed. Cir. 1999); *NEC Corp. v. Hyundai Elecs. Indus. Co.*, 30 F. Supp. 2d 561, 565 (E.D. Va. 1998) (court will look to claims, written description portion of the specification, and the prosecution history in construing claim and resort to extrinsic evidence only where the intrinsic evidence is insufficient to resolve ambiguities in the claim language). However, in *Pitney Bowes, Inc. v. Hewlett Packard Co.*, the Federal Circuit commented that there were circumstances where the prohibition against consideration of *Vitronics* might properly be relaxed. 182 F.3d 1298, 1309 (Fed. Cir. 1999) ("[C]onsultation of extrinsic evidence is particularly appropriate to ensure that [the judge's] understanding of the technical aspects of the patent is not entirely at variance with the understanding of one skilled in the art.").

2136. *See Pitney Bowes*, 182 F.3d at 1308; *ARG Indus., Inc. v. Cardinal IG Co.*, 239 F.3d 1239, 1249 (Fed. Cir. 2001) (noting times when "extrinsic evidence can and should be used to inform a court's claim construction" and trial court should have considered testimony offered by scientific experts); *see, e.g., Chad Indus., Inc. v. Automation Tooling Sys., Inc.*, 938 F. Supp. 601, 608 (C.D. Cal. 1996) (expert and inventor testimony as well as testimony of patent law expert); *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 144 F.3d 1547, 1555 (Fed. Cir. 1997) (expert testimony considered where language of claim remained ambiguous after looking at intrinsic evidence); *Genentech, Inc. v. Boehringer Mannheim GmbH*, 989 F. Supp. 359, 363 (D. Mass. 1999) (resorting to extrinsic evidence where claim terms were unclear); *see also Schwartz, supra* note 2115, at 116–19 (discussing examples of extrinsic evidence) and cases cited therein.

2137. *See, e.g., Bernhardt L.L.C. v. Collezione Europa USA, Inc.*, No. CIV. 1:01CV00957, slip op. at 1 (M.D.N.C. May 30, 2003) ("Claim interpretation is a matter of law and is usually accomplished with the assistance of a *Markman* hearing."); *S.S. White Burs, Inc. v. Neo-Flo, Inc.*, No. CIV.A. 02-3656, slip op. at 1 (E.D. Pa. May 2, 2003) (stating claim construction "typically occurs following a '*Markman* hearing'"); *Ill. Tool Works, Inc. v. Powers Fasteners, Inc.*, No. 01C7019, 2002 WL 1998300, at \*2 (N.D. Ill. Aug. 28, 2002) (deciding "claim construction is more properly left to a *Markman* hearing"). *But see J.G. Peta, Inc. v. Club Protector, Inc.*, No. 02-1127, 1128, slip op. at 6 n.2 (Fed. Cir. 2003) (saying district courts not required to "conduct evidentiary hearings as part of the claim construction process").

at the hearing on claim construction and again at trial, thereby increasing litigation costs. The court should determine, based on the disputed claim terms and the complexity of technology, whether a hearing is appropriate and what type of evidence will aid the court in construing the claims.

In constructing procedural devices, two practical realities are likely to arise at trial. First, no matter how well considered the court’s claim-construction ruling, the parties are likely to “construe the construction”—i.e., disputes will arise regarding the exact meaning of the court’s ruling. Second, the meaning of a term previously thought to be undisputed may suddenly become disputed at trial, perhaps because the term’s meaning was not considered to be significant at the time of the *Markman* hearing. This typically occurs when both parties initially agree that a term should be given its “usual meaning,” and the parties then discover at trial that they disagree on the usual meaning of a previously insignificant claim term.

### 33.222 Structuring the *Markman* Hearing

Claim construction hearings have “run the gamut from mid-trial sidebar conferences that undergird relevance rulings . . . to virtual mini-trials extending over several days and generating extensive evidentiary records.”<sup>2138</sup> The length of the hearing, the evidence permitted, and the scope of the hearing are all within the discretion of the trial court. Prior to holding a hearing, however, consider requiring the parties to submit, in addition to any briefs, statements setting forth each side’s proposed construction of the claims in dispute. Courts have required parties to exchange proposed claim-construction statements that include (1) any contentions regarding specialized meaning to be given claim language; (2) a description of each element of the claim together with supporting specifications or material in the prosecution history; and (3) extrinsic evidence that supports the parties’ proposed construction.

Parties also have been required to meet and confer in an effort to narrow the issues and to prepare and submit a joint statement<sup>2139</sup> that identifies (1) the

2138. *MediaCom Corp. v. Rates Tech., Inc.*, 4 F. Supp. 2d 17, 21 (D. Mass. 1998) (citations omitted). *See also Schering Corp. v. Amgen*, 25 F. Supp. 2d 293, 294 (D. Del. 1998) (one day); *Automation Tooling Sys.*, 938 F. Supp. at 604 (allocating two days to hearing, although only one became necessary); *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1577 (Fed. Cir. 1996) (five days); *Loral Fairchild Corp. v. Victor Co. of Japan, Ltd.*, 906 F. Supp. 798, 802 (E.D.N.Y. 1995).

2139. *See, e.g., N.D. Cal. Patent L.R. 3-1* (2002); *see also Genentech, Inc. v. Amgen, Inc.*, 289 F.3d 761 (Fed. Cir. 2002) (district court did not abuse discretion in precluding Genentech from amending its claim chart to include theory of infringement under doctrine of equivalents in light of local rule); *Precision Shooting Equip., Inc. v. High Country Archery*, 1 F. Supp. 2d 1041, 1042 (D. Ariz. 1998) (stating that Northern District of California’s local rules “promote judicial effi-

construction of the claims and terms to which the parties agree; (2) each side's construction of disputed claims and terms; (3) each side's rebuttal to the proposed construction submitted by the opposing party; and (4) each proposed witness at the claim-construction hearing together with a description of the witness's testimony.<sup>2140</sup> These procedures apprise the judge of those portions of the patent actually in dispute, helping the judge understand the relevant technology and determine the need, if any, for tutorials or the assistance of court-appointed experts prior to the hearing.<sup>2141</sup> These procedures also force the parties to state definitively their competing positions, thereby avoiding the “shifting sands”<sup>2142</sup> approach to claim construction.

### 33.223 Timing the *Markman* Hearing

Timing is one of the more problematic issues. Claim construction involves interpreting the words of the claim from the perspective of one skilled in the art, construed in light of the patent documents and the prosecution history.<sup>2143</sup> Theoretically, claim construction can occur at virtually any point in the case: prior to discovery, pursuant to motions for summary judgment,<sup>2144</sup> or following the close of evidence at trial.<sup>2145</sup> Nevertheless, the timing of the *Markman* hearing can significantly affect the pretrial proceedings. Several courts and commentators agree that early *Markman* hearings are preferable to delaying claim construction until after the evidence has been heard at trial.<sup>2146</sup> Although

ciency by presenting to the Court clearly delineated disputes of claim construction and clearly defined issues of infringement and validity prior to any *Markman* hearing or trial”).

2140. *Precision Shooting Equip.*, 1 F. Supp. 2d at 1042–43 (using local rules adopted by the Northern District of California as guide); *Pioneer Hi-Bred Int'l, Inc. v. Seed Co.*, No. CIV. 4-98-CV-90577, 90578, 2000 WL 33363188, at \*4 (S.D. La. May 5, 2000) (adopting structure of Northern District of California's local rules); *Automation Tooling Sys.*, 938 F. Supp. at 604 (parties submitted statement of issues, exhibit list, and expected testimony).

2141. *See, e.g.*, *Biovail Corp. Int'l v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1301 (Fed. Cir. 2001) (noting it was unnecessary to construe claim terms that were not relevant to the outcome of the case).

2142. *LG Elecs. Inc. v. Q-Lity Computer Inc.*, 211 F.R.D. 360, 367 (N.D. Cal. 2002) (citing *Atmel Corp. v. Info. Storage Devices, Inc.*, No. C. 95-1987, 1998 WL 775115, at \*3 (N.D. Cal. Nov. 5, 1998)).

2143. Schwartz, *supra* note 2115, at 101–02 (“Claim construction ‘begins and ends’ with the actual words of the claims.”).

2144. *MediaCom*, 4 F. Supp. 2d at 22.

2145. *See Sofamor Danek Group Inc. v. DePuy-Motech Inc.*, 74 F.3d 1216 (Fed. Cir. 1996).

2146. *MediaCom*, 4 F. Supp. 2d at 22 (“Questions regarding the construction of patents can now safely be addressed in many circumstances prior to the completion of fact discovery, and certainly before trial.”); *MacNeill Eng'g Co. v. Trisport, Ltd.*, 126 F. Supp. 2d 51, 54 (D. Mass. 2001) (“It has now become generally accepted that . . . the best time to hold a *Markman* hearing

construing the claim after trial will permit the judge to hear all of the evidence in the case, and thereby better understand the background of the patent and any prior art,<sup>2147</sup> there are several disadvantages:

- causing delay in submitting the case to the jury while the claim is being construed, thereby making the evidence less fresh;<sup>2148</sup>
- requiring the jury to disregard evidence and testimony relating to alternative claim interpretations;<sup>2149</sup> and
- forcing the parties to try the case presenting alternative claim constructions—parties will not likely base their case on a claim construction that has yet to be determined.

Holding *Markman* hearings prior to trial allows the court and the parties to narrow the issues and, in some cases, provides an opportunity to focus discovery.<sup>2150</sup> Early claim construction may also facilitate settlement and may permit resolution, either in whole or in part, through dispositive motions, thereby reducing litigation costs.<sup>2151</sup> More importantly, once aware of the interpretation being given to the patent, the parties can plan their cases accordingly,

is at the summary judgment stage of the litigation . . . .”); *Loral Fairchild Corp. v. Victor Co. of Japan, Ltd.*, 906 F. Supp. 798 (E.D.N.Y. 1995). “With most aspects of the trial hinging on [claim construction]—‘now strictly a question of law of the court’—a conservative court will generally endeavor to make this ruling before trial . . . . As in this case, this proceeding to assist the court in ascertaining the law is likely to occur after discovery in which the parties have exchanged information relevant to their understanding of the claims.” *Loral Fairchild Corp. v. Victor Co. of Japan, Ltd.*, 911 F. Supp. 76, 79 (E.D.N.Y. 1996); see also Mark L. Austrian & Shaun Mohler, *Timing is Everything in Patent Litigation—Fulfilling the Purpose of Markman*, 9 Fed. Cir. B.J. 227 (1999).

2147. *Lee & Krug, supra* note 2131, at 75; see also *York Prods., Inc. v. Cent. Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1571 (Fed. Cir. 1996) (claims construction after trial before jury instructed); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1580 (Fed. Cir. 1996) (noting district court delayed construing claim until all evidence was heard at trial).

2148. *Lee & Krug, supra* note 2131, at 75–76; see also *Thorn EMI N. Am., Inc. v. Intel Corp.*, 936 F. Supp. 1186, 1189 (D. Del. 1996) (ruling on claims construction immediately before trial and dismissing jury pending resolution of summary judgment motion sought upon issuance of ruling).

2149. *Lee & Krug, supra* note 2131, at 77.

2150. See *MediaCom Corp. v. Rates Tech, Inc.*, 4 F. Supp. 2d 17, 22 (D. Mass. 1998).

2151. *MacNeill Eng’g Co. v. Trisport Ltd.*, 126 F. Supp. 2d 51, 52 (D. Mass. 2001) (noting *Markman* hearings “now required as a practical matter in virtually every patent case before serious settlement negotiations take place”). However, some commentators argue that *Markman* hampers settlement and prolongs the litigation because of the large percentage of reversals on appeal, leading to intransigence by defendants losing on the issue of claim construction and forcing trial in order to have another opportunity at the appellate level. *Lee & Krug, supra* note 2131, at 69–70.

eliminating the need to propose alternative claim constructions to the jury and reducing the expense and complexity of the trial.<sup>2152</sup>

A number of scheduling options are available within the various pretrial phases, such as holding the hearing before discovery, after expert discovery but before concluding fact discovery, or after all discovery. There are advantages and disadvantages to each. In most cases, the optimal time for a *Markman* hearing will depend on the court's assessment of which approach will best utilize judicial resources in the specific case before it.<sup>2153</sup> Construing claims at the close of discovery is advisable if the parties have all relevant and necessary information to articulate the issues or terms in dispute; parties must also be able to provide the court with a full factual background within which to construe the claim.<sup>2154</sup> In addition, should the case settle during discovery or as a result of information developed during discovery, a potentially lengthy and expensive hearing can be avoided.

One option is to permit the parties initially to conduct limited discovery, including that of experts, only on issues relevant to claim construction. The burden would be on the parties to conduct sufficient discovery to reveal all relevant information not considered during the prosecution of the patent that may affect the interpretation of the claim, as well as information bearing on which claims are important to resolution of the dispute. The parties would also have the burden of assisting the judge in understanding the technology and technical language, through the use of tutorials or by consenting to a special master or neutral expert. Once the claims have been construed, general discovery can proceed on the remaining issues, including questions related to validity, infringement, and other matters.

It is often difficult, however, to attempt to separate the discovery needed for claim construction from fact discovery in general, and attempts to do so can increase the number of discovery disputes. It may be advisable, therefore, for the court to focus on the timing of the *Markman* hearing and allow the

2152. Austrian & Mohler, *supra* note 2146, at 228 (“Pretrial discovery, the selection of experts, and the content of their testimony on the issues of validity and infringement will depend almost entirely on claim construction.”). However, the claim construction may be subject to modification following trial and prior to the submission to the jury, where the court concludes after listening to all the evidence presented, and considering the claim in context, that its previous construction was erroneous. See *MacNeill Eng'g Co.*, 126 F. Supp. 2d at 57 (claim construction done during resolution of summary-judgment motions remained open to clarification or modification for jury at trial).

2153. See, e.g., *Toter, Inc. v. City of Visalia*, No. CVF96-6234, 1997 WL 715459, at \*3 (E.D. Cal. July 14, 1997) (court finding that in case before it, “an early *Markman* hearing would not promote the interest of judicial economy”).

2154. *Id.* at \*2–3.

parties to proceed with fact and expert discovery in accordance with the set schedule, so long as there is sufficient time for necessary discovery to be completed prior to the *Markman* hearing.

### 33.224 Requesting a *Markman* Hearing

Inextricably tied to the question of when a *Markman* hearing should be held is the court's determination of how counsel should raise the issue procedurally. Some judges have incorporated dates for hearings in early scheduling orders or resorted to the promulgated local rules to address claim construction issues, including timing.<sup>2155</sup> Others have addressed claim construction upon motion by the parties, such as a motion for claim construction or for a *Markman* hearing, or alternatively within the context of summary-judgment motions.<sup>2156</sup> The advantage of claim construction in the context of a motion for summary judgment is that only those elements of the claims that are truly in dispute will be presented for construction. Claim construction can also arise in the context of motions for injunctive relief, although the patent need not be definitively construed in such instances.<sup>2157</sup> When construing claims in conjunction with dispositive motions, however, it is important to separate the question of claim construction from other legal issues in the case. One judge noted the need not to conflate “the legal explication required by *Markman*

2155. See, e.g., *Ill. Tool Works, Inc. v. Powers Fasteners, Inc.*, No. 01C7019, 2002 WL 1160087, at \*1 (N.D. Ill. May 23, 2002) (scheduling order). See generally N.D. Cal. Patent L.R. (2002) for examples of local rules governing claim construction.

2156. See, e.g., *Precision Shooting Equip., Inc. v. High Country Archery*, 1 F. Supp. 2d 1041, 1042 (D. Ariz. 1998) (motion filed by defendant seeking a *Markman* hearing); *Toter*, 1997 WL 715459, at \*1 (defendant moved for *Markman* hearing pursuant to Fed. R. Civ. P. 42 or the *Markman* decision); *Ahlstrom Mach., Inc. v. Clement*, 13 F. Supp. 2d 45, 46 (D.D.C. 1998) (hearing argument supporting claim construction during hearing on motion for summary judgment); *MediaCom*, 4 F. Supp. 2d at 22 (concluding claim construction should take place within conventional motion practice and that “[f]ree-standing *Markman* hearings are of little use in actual litigation”); Schwartz, *supra* note 2115, at 121 (“The claim construction ruling can be made in a number of different contexts, including the resolution of (1) a motion for preliminary injunction, (2) a motion for summary judgment . . . , (3) a motion for judgment as a matter of law, or (4) requests for jury instructions.”) (footnotes omitted). Those courts favoring early *Markman* hearings generally have held them at the close of discovery or used summary judgment as the procedural vehicle through which the claims were construed. *But see* *Control Res., Inc. v. Delta Elecs., Inc.*, 133 F. Supp. 2d 121, 126 (D. Mass. 2001) (conducting *Markman* hearing “prior to and entirely independently of the summary judgment hearing”).

2157. See, e.g., *Int'l Communication Material, Inc. v. Ricoh Co.*, 108 F.3d 316, 318 (Fed. Cir. 1997); *Sofamor Danek Group, Inc. v. DePuy-Motech, Inc.*, 74 F.3d 1216, 1221 (Fed. Cir. 1996) (“*Markman* does not obligate the trial court to conclusively interpret claims at an early stage in the case.”).

with the fact finding that the Seventh Amendment ultimately reserves for the American jury.”<sup>2158</sup>

### 33.225 Appeal

*Markman* implicates case management beyond when or how to conduct a hearing. One significant implication stems from the de novo standard of review applied on appeal to the court’s interpretation of the patent claim.<sup>2159</sup> The Federal Circuit has reversed a significant number of claim constructions since *Markman*.<sup>2160</sup> The parties can be assured of the certainty of the claim interpretation only after proceeding from the *Markman* hearing through discovery, trial, and posttrial motions to the Federal Circuit.<sup>2161</sup> Reversal of the district court’s claim construction may result in a new trial, efforts to reopen discovery and revise expert reports, and efforts by the parties to change their theory of infringement.<sup>2162</sup> The impact on judicial time and resources can be substantial. Although interlocutory appeal of the court’s claim construction is theoretically available, the Federal Circuit has been disinclined to grant such petitions. Another alternative is to submit claim construction issues to the jury through special verdicts or interrogatories for an “advisory determination,” which the court can either accept or reject.<sup>2163</sup> As discussed in section 33.223, however, delaying claim construction until after the trial can carry several disadvantages.

## 33.23 Defining the Issues in Patent Litigation

Patent cases often involve only one party, or a few interrelated parties, on each side of a case, but can involve more than one patent or claim and multiple allegedly infringing products, and can also include antitrust claims and con-

2158. *Control Res.*, 133 F. Supp. 2d at 126 (quoting *Amgen, Inc. v. Hoescht Marion Rousel, Inc.*, 126 F. Supp. 2d 69, 80 (D. Mass. 2001)).

2159. Although the issue of what standard of review applied on appeal was not addressed by the Supreme Court in *Markman*, the Federal Circuit in the appellate opinion held that the standard of review was de novo.

2160. *Cybor Corp. v. FAS Tech., Inc.*, 138 F.3d 1448, 1476 n.4 (Fed. Cir. 1998) (Rader, J., dissenting and concurring) (noting Federal Circuit’s rate of reversal of claim interpretations was high, reversing 53% of cases in whole or in part, and citing study reporting 40% rate of reversal of claim interpretations by Federal Circuit).

2161. *Id.* at 1476.

2162. See, e.g., *Cybor Corp.*, 138 F.3d at 1475 n.2.

2163. *Laitram Corp. v. NEC Corp.*, 62 F.3d 1388, 1394 (Fed. Cir. 1995) (treating jury’s decision on issue of claim construction, submitted by way of special interrogatories, as an advisory determination and finding that jury’s interpretation of claim was correct). See Fed. R. Civ. P. 39(c) (West 2003).

sumer class actions. The technical nature of the subject matter further complicates the action. Litigation over a patent or a series of related patents sometimes proliferates and leads to multiform federal litigation requiring coordination through MDL proceedings, the imposition of stays on redundant actions, or informal cooperative arrangements. Discovery delays can be lengthy without court management. Some of the obstacles in managing patent litigation can be avoided through consideration of the following issues before or at the initial pretrial conference:

- Is there any related litigation pending in other federal courts that would warrant transfer, dismissal, consolidation, or a stay of proceedings? In many cases, the owner of the patent has filed infringement suits against other defendants in other jurisdictions, or is defending challenges to the validity of the patent elsewhere. Piecemeal litigation in patent cases generally is disfavored.<sup>2164</sup> The initial case-management order should direct counsel to identify other cases relating to infringement of the patent, their status, and the judges to whom they are assigned. Consolidation often is warranted where more than one action involving or related to the patent is pending before the same court.<sup>2165</sup> The judge should review the cases to determine common questions of law,<sup>2166</sup> and also to ascertain whether to exercise the court's discretion to transfer pursuant to section 1404(a)<sup>2167</sup> or whether Judicial Panel on Multidistrict Litigation transfer is appropriate under 28 U.S.C. § 1407 for centralized pretrial proceedings. The MDL panel may decline to order such transfers, however, on the ground that coordination can be achieved through the cooperative efforts of the affected courts and counsel. Often the real parties in interest and the attorneys are the same, or at least related, in all of the cases.

The court also has the discretion to dismiss the case in favor of litigation pending in another jurisdiction “for reasons of wise judicial

2164. *Smiths Indus. Med. Sys., Inc. v. Ballard Med. Prods., Inc.*, 728 F. Supp. 6, 7 (D.D.C. 1989) (“Piecemeal litigation in the complex and technical area of patent and trademark law is especially undesirable. Rather, all of the parties’ related patent and trademark infringement claims should be decided in the same court.”).

2165. *See, e.g., Biochem Pharma, Inc. v. Emory Univ.*, 148 F. Supp. 2d 11, 12 (D.D.C. 2001) (separate actions filed in same court by both plaintiff and defendants challenging decision of Patent Appeal Board would be consolidated and then transferred).

2166. Fed. R. Civ. P. 42(a) (West 2003).

2167. *See Biochem Pharma*, 148 F. Supp. 2d at 13 (D.D.C. 2001) (transferring case to Georgia where “first-filed, well-advanced, related patent infringement action involving the same patent” was pending).

administration.”<sup>2168</sup> The general rule is that the first-filed suit will proceed while other pending litigation is dismissed or stayed.<sup>2169</sup> In some instances (such as where the identity of the parties is not the same or jurisdiction is unavailable over all necessary parties), the priority rule is not followed and other considerations take precedence.<sup>2170</sup> Related proceedings also may be pending before the Patent and Trademark Office, and a stay may be warranted while those proceedings are resolved.<sup>2171</sup>

- *Have there been any past decisions by other courts involving the same patent?* A final decision holding the patent invalid will preclude further efforts to enforce the patent against others, provided the patentee “had a full and fair chance to litigate” its validity<sup>2172</sup> and regardless of any earlier decisions upholding the patent.<sup>2173</sup> In such circumstances, however, the patentee must have the opportunity to demonstrate under the factors outlined in *Blonder-Tongue Laboratories v. University of Illinois Foundation*<sup>2174</sup> that “in justice and equity”<sup>2175</sup> it should not be

2168. *Schnadig Corp. v. Collezione Europa U.S.A.*, No. 01C1697, 2001 WL 766898, at \*1 (N.D. Ill. July 5, 2001); *see also* *Abbott Labs. v. Selfcare, Inc.*, No. 98C7102, 1999 WL 162805, at \*2 (N.D. Ill. 1999) (granting motion to transfer to district where related action pending).

2169. *See, e.g., Amersham Pharmacia Biotech, Inc. v. Perkin-Elmer Corp.*, 190 F.R.D. 644, 645 n.1 (N.D. Cal. 2000) (noting case had been stayed for six months pending resolution of arbitration demand in related litigation).

2170. *Genentech, Inc. v. Eli Lilly & Co.*, 998 F.2d 931, 938 (Fed. Cir. 1993) (“There must, however, be sound reason that would make it unjust or inefficient to continue the first-filed action. Such reason may be the convenience and availability of witnesses, or absence of jurisdiction over all necessary or desirable parties, or the possibility of consolidation with related litigation, or considerations relating to the real party in interest.”); *see also* *Kahn v. Gen. Motors Corp.*, 889 F.2d 1078, 1081–83 (Fed. Cir. 1989) (discussing exceptions to first-filed rule); *William Gluckin & Co. v. Int’l Playtex*, 407 F.2d 177, 178 (2d Cir. 1969) (priority given to second-filed suit where defendant in first suit was customer and balance favored letting second suit proceed); *Schnadig*, 2001 WL 766898, at \*1–2 (denying motion to transfer and staying action pending resolution of motion to dismiss for lack of jurisdiction and to transfer in related action filed in another jurisdiction).

2171. Reexamination and reissues are proceedings where stays may be sought pending resolution of the PTO proceedings.

2172. *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 333 (1971).

2173. *Miss. Chem. Corp. v. Swift Agric. Chems. Corp.*, 717 F.2d 1374, 1378 (Fed. Cir. 1983). Although a finding of validity does not preclude subsequent challenges to the patent, it is entitled to some weight. The rationale behind the rule that a single finding of invalidity is fatal to the patent but a finding upholding the patent does not rule the patent valid as against all others, is that although one challenger may be unable to introduce clear evidence of invalidity, another challenger may be able to do so.

2174. 402 U.S. 313, 334 (1971).

collaterally estopped by the adverse decision. On the other hand, a decision upholding the validity of the patent will not bar a new defendant from attacking the patent, and such a decision is not necessarily binding even on the same court under the doctrine of *stare decisis*.

- *Are there multiple patents or claims at issue in the case, and has the plaintiff identified all of the defendant's allegedly infringing products or processes?* Cases involving multiple patents, each with multiple claims, can be a source of confusion, resulting in unduly lengthened and expanded pretrial and trial proceedings. Consider encouraging the parties to agree to proceed on a limited number of representative claims and disputed models, so that findings regarding infringement on the representative claims will apply to all claims.<sup>2176</sup> This may simplify the action and reduce jury confusion.
- *Is venue appropriate?* Section 1400(b) of Title 28 of the U.S. Code governs venue determinations in patent infringement cases. A corporate defendant “is said to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.”<sup>2177</sup> Thus, in many cases the determination of proper venue and personal jurisdiction coalesce into a single inquiry.<sup>2178</sup> In cases involving multiple defendants, venue must be proper as to each defendant.<sup>2179</sup> Venue relating to other causes of action involving a patent are subject to the general venue statute.<sup>2180</sup>
- *Is the case subject to arbitration?* Section 294 of Title 35 provides for voluntary arbitration in patent cases. Agreements to arbitrate must be in writing and usually will be found in license agreements or technology transfer agreements. Issues that can arise include choice of law provisions, whether any arbitration award will be *res judicata* as to issues that were or could have been raised in arbitration, and whether

2175. *Id.*

2176. *See, e.g.,* Thomson, S.A. v. Quixote Corp., 166 F.3d 1172, 1173 (Fed. Cir. 1999) (parties agreed to base outcome of trial on three representative claims); Renishaw PLC v. Marposs Societa' Per Azioni, 974 F. Supp. 1056, 1061 (E.D. Mich. 1997) (parties agreed to try case on basis of representative claims, and resolution of those claims would “constitute a final resolution of all the asserted patents as if the case had been tried without representative claims”). *See also* James M. Amend, Patent Law: A Primer for Federal District Court Judges 21–22 (1998).

2177. 28 U.S.C. § 1391(c) (West 2003).

2178. *See, e.g.,* VE Holding Corp. v. Johnson Gas Appliance Co., 917 F.2d 1574, 1584 (Fed. Cir. 1990); Cook Group, Inc. v. Purdue Res. Found., No. IP02-0406-C-M/S, 2002 WL 1610951, at \*1, 2 (S.D. Ind. June 24, 2002).

2179. *Cook Group*, 2002 WL 1610951, at \*2 n.1.

2180. 28 U.S.C. § 1391 (West 2003).

collateral estoppel will apply (although section 294 may limit any preclusive effect against nonparties).

- *Is there a need for judicial education?* The judge often will need some general explanation of the substance and terminology of the science or technology addressed by the patent before dealing with the issues in the case or developing a plan for discovery and trial. Some judges ask counsel to provide a concise and objective overview—orally, in writing, or on tape or CD—of these technical matters, including a definition of key terms and concepts, at or before the initial conference. To encourage candor, consider directing that these statements not bind the parties and not be used later in the proceedings. Increasingly, judges are seeking additional pretrial briefing on relevant technological or scientific issues.<sup>2181</sup> Although experts will address those issues in their trial testimony, the court may find it more helpful to learn the fundamentals—the vocabulary and general intellectual framework of the subject matter—in a setting with less immediate time constraints in order to deal more intelligently with issues during the trial. Requesting that tutorials be videotaped will allow the court to review the technology behind the patent as often as necessary over the course of the litigation.
- *Is referral to a magistrate judge, special master, or court-appointed expert warranted?* Use of a magistrate judge or court-appointed expert may be warranted in handling discovery in patent cases or in assisting the judge in understanding the technology involved.<sup>2182</sup> Courts also have appointed special masters, with technological expertise in the area, to provide a report and recommendation on technical issues or claim construction in patent cases.<sup>2183</sup>

2181. See, e.g., *Affymetrix, Inc. v. Hyseq, Inc.*, 132 F. Supp. 2d 1212, 1216 (N.D. Cal. 2001) (tutorial and hearing to assist in claims construction); *Xilinx, Inc. v. Altera Corp.*, No. 93-20409SW, 1997 WL 581426, at \*1 (N.D. Cal. 1997) (scheduling order issued by court included dates for tutorial and claim-construction hearing).

2182. See, e.g., *TechSearch, L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1368 (Fed. Cir. 2002) (technical advisor); *In re Omerprazole Patent Litig.*, No. MDL 1291, 2001 WL 394843, at \*1 (S.D.N.Y. May 18, 2001) (referral to special master for scheduling discovery and protective orders).

2183. See, e.g., *Festo Corp v. Soketasu Kinsoku Kogyo Kabushiki Co.*, 72 F.3d 857, 865 (Fed. Cir. 1995) (noting district court found case “sufficiently complicated to be referred to a special master for hearing and recommendations on the issues of patent validity and infringement”), *vacated on other grounds*, 520 U.S. 1111 (1997); *Rohm & Haas Co. v. Lonza Inc.*, 997 F. Supp. 635, 638 n.1 (E.D. Pa. 1998) (retaining independent expert to act as technical adviser to

- *Has the plaintiff alleged willful infringement or is the defendant claiming inequitable conduct?* Whether the defendant engaged in willful infringement is an issue for the jury, while issues relating to the plaintiff's inequitable conduct usually require a separate bench trial. Assertions of the defendant's willful infringement or of the patentee's inequitable conduct or fraud on the PTO<sup>2184</sup> may further complicate discovery and trial by opening the door to discovery into matters otherwise protected by attorney–client privilege. Where these assertions have substance, discovery into matters normally protected by attorney–client privilege may be warranted and can undermine the effectiveness of litigation counsel.<sup>2185</sup> Relevant issues include whether litigation counsel was involved in the prosecution of the patent before the PTO or provided pre-litigation advice regarding validity in cases where the patentee is alleged to have acted with unclean hands. A willful infringement claim may require inquiry into whether the defendant continued to market a product after notice of a patent, and whether the defendant received advice of counsel.<sup>2186</sup>
- *Should the case be bifurcated?* Consider whether to bifurcate, or even trifurcate, issues for purposes of discovery and for trial. Federal Rule of Civil Procedure 42(b) states “[t]he Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial . . . of any issue . . . .” Bifurcation is appropriate where determination of one issue could wholly eliminate the need to try another complicated or time-consuming issue, where used to negate prejudice to a party, and where the need to examine the same witnesses in both phases of the sepa-

court); *Xilinx*, 1997 WL 581426, at \*1 (appointing independent technical advisor to assist in understanding the relevant technology).

2184. An assertion that the patentee acted with unclean hands, which is typically based on an alleged misrepresentation or failure to disclose pertinent prior art or test results, merits attention by the court. Fraud may be asserted not only as a defense to the infringement claim, but also as part of the foundation for an antitrust counterclaim. *See Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 173–74 (1965).

2185. *See, e.g., Clintec Nutrition Co. v. Baxa Corp.*, No. 94C7050, 1998 WL 560284, at \*4, 5 (N.D. Ill. Aug. 26, 1998) (granting protective order preventing defendant from calling plaintiff's lead trial counsel in proving willful infringement where other witnesses could testify to the meeting at issue).

2186. *Fromson v. W. Litho Plate & Supply Co.*, 853 F.2d 1568, 1572–73 (Fed. Cir. 1988); *Underwater Devices, Inc. v. Morrison-Knudsen Co.*, 717 F.2d 1380, 1389–90 (Fed. Cir. 1983).

rated trial would be minimal.<sup>2187</sup> The most common type of bifurcation in patent cases involves separating issues of liability from damages. In many patent cases, severing damages from other issues will simplify the fact-finder's task.<sup>2188</sup> Bifurcation of the damages issue may be particularly appropriate where multiple patents are involved.<sup>2189</sup> Issues of willfulness<sup>2190</sup> or equitable defenses<sup>2191</sup> are potential candidates for bifurcation,<sup>2192</sup> and separating antitrust counterclaims also is common. Deferral of claims asserting unfair competition or antitrust until resolution of the patent issues frequently results in the claims' voluntary dismissal or settlement. In determining whether bifurcation is appropriate, the judge in *THK America Inc. v. NSK Co.*<sup>2193</sup> cited these

2187. *HCC, Inc. v. R H & M Mach. Co.*, No. 96 CIV. 4920, 1998 WL 849417, at \*1 (S.D.N.Y. Dec. 4, 1998) (finding that bifurcation of liability and damages in case before it would result in duplicative testimony and would be inefficient) (citations omitted).

2188. *See, e.g., Pioneer Hi-Bred Int'l, Inc. v. Asgrow Seed Co.*, No. CIV. 4-98-CV-90577, 90578, 2000 WL 33363188, at \*3 (S.D. La. May 5, 2000) (concluding the bifurcation of patent and nonpatent issues was not appropriate "due to the complexity of, and inter-relationship among, the issues," but finding bifurcation of liability and damages warranted). Trifurcation of the statutory issues, equitable defenses, and damages may be advisable. *But see* T.S. Ellis, *Judicial Management of Patent Litigation in the United States: Expected Procedures and Their Effects*, 9 Fed. Cir. B.J. 541, 545 n.11 (2000) (commenting that "[i]n my experience, more often than not, bifurcating the liability and damages issues in the typical patent case does not result in the speedy and efficient resolution of the entire case").

2189. *See* Ellis, *supra* note 2188, at 545 n.11 ("In such cases bifurcation can lead to a more expeditious and efficient resolution of the case, especially where there are substantial validity and infringement issues and damages proof may vary depending on which, and how many, of a group of patents are held valid and infringed.").

2190. The Federal Circuit has recommended that the willfulness issue be bifurcated for later trial to avoid unfairness. *See, e.g., Quantum Corp. v. Tandon Corp.*, 940 F.2d 642, 643-44 (Fed. Cir. 1991). *But see* *Belmont Textile Mach. Co. v. Superba, S.A.*, 48 F. Supp. 2d 521, 526 (W.D.N.C. 1999) (stating that bifurcation of trial on issues of willfulness and liability "would cause greater delay and might complicate the proceedings by creating a piecemeal quality to the trial, making it harder for the trier of fact to see the case as a whole").

2191. *See, e.g., Herman v. William Brooks Shoe Co.*, No. 95 CIV. 1324, 1998 WL 832609, at \*1 (S.D.N.Y. Dec. 1, 1998) (granting motion to reconsider prior order bifurcating trial on issue of inequitable conduct from trial on issue of validity and infringement).

2192. *See, e.g., In re Recombinant DNA Tech. Patent & Contract Litig.*, 850 F. Supp. 769 (S.D. Ind. 1993, 1994) (bifurcation of liability and damages warranted where case involved "extremely complicated technology" in both patent and genetics); *Lemelson v. Apple Computer, Inc.*, 28 U.S.P.Q.2d (BNA) 1412, 1421-24 (D. Nev. June 3, 1993); *THK Am., Inc. v. NSK Co.*, 151 F.R.D. 625, 632-34 (N.D. Ill. 1993) (affirming magistrate order denying bifurcation, and noting defendant's motion seeking bifurcation with two separate trials and two discovery periods was too broad and bifurcation would be costly and duplicative).

2193. 151 F.R.D. 625 (N.D. Ill. 1993).

factors as relevant: “(1) convenience; (2) prejudice; (3) expedi-tion; (4) economy; (5) whether the issues sought to be tried separately are significantly different; (6) whether they are triable by jury or the court; (7) whether discovery has been directed to a single trial of all issues; (8) whether the evidence required for each issue is substantially differ-ent; (9) whether one party would gain some unfair advantage from separate trials; (10) whether a single trial of all issues would create the potential for jury bias or confusion; and (11) whether bifurcation would enhance or reduce the possibility of a pretrial settlement.”<sup>2194</sup>

Complaints in patent infringement usually consist of broadly drafted, gen-eralized claims of infringement sufficient to satisfy Federal Rule of Civil Proce-dure 8, but are otherwise of little assistance to the court or the parties. Rule 9(b) governs allegations of fraud and may afford a basis for early dismissal of inadequately pleaded fraud claims. Although an adequate basis for these alle-gations may exist for purposes of Rule 11, many may prove to be without merit. In addition, answers tend to be pleaded generally—for example, by al-leging noninfringement and invalidity without specifying more than the appli-cable statutory section. In many cases, defendants probably cannot provide an answer in substantial detail if the lawsuit is the first notice regarding alleged infringement of the patent. As a preliminary matter, the defendant will need to order the file history for the patent from the PTO, which often takes several weeks even if a request is made to expedite handling. The defendant also will need to search for prior art, which, depending on the technology, may take months of diligent searching.

Of course, the nature of a patent infringement claim or invalidity defense encourages strategies to delay producing information through discovery or otherwise until the opposing side has disclosed the basis for its claims, contrib-uting to lengthy delays and high costs. One approach is to require the parties to submit detailed statements of their claims and defenses early in the litigation, either at the outset of the case, as part of a discovery scheduling order, or, where the accused product is unavailable or otherwise not subject to examina-tion, following limited discovery.<sup>2195</sup> The plaintiff’s statement is generally ex-pected to contain a detailed explanation of the infringement contentions, per-haps through an element-by-element claims chart for each infringement claim asserted. The claims chart’s purpose is to specify how each element of a claim is present in or “reads on” the allegedly infringing product or process. The de-

<sup>2194</sup> *Id.* at 632.

<sup>2195</sup> *See, e.g.*, N.D. Cal. Patent L.R. 3.1 (2002) (Disclosure of Asserted Claims and Pre-liminary Infringement Conditions).

defendant similarly would be required to respond in a corresponding level of detail, including disclosures of all prior art relied upon to support challenges to the patent's validity.<sup>2196</sup> Because claims of infringement and validity are closely intertwined, the parties may seek to avoid disclosures, or they may provide disclosures that lack sufficient detail. "First, the plaintiff does not want to be pinned down to a claim construction until it knows what prior art exists . . . [T]he defendant does not want to disclose the prior art it knows of, or its contentions as to how this art invalidates the claims asserted against it, until after plaintiff announces its claim construction."<sup>2197</sup> Accordingly, the court should scrutinize actions by the parties that are designed to delay disclosures (such as requests for additional discovery); the court should also balance the competing interests in setting disclosure dates.

With judicial encouragement, counsel may be willing to drop marginal claims or defenses at the time of the initial conference, or at least agree that discovery on those issues should be deferred. Consider at the initial pretrial conference whether multi-staged discovery is appropriate, and then set a discovery schedule that affords sufficient time at each stage to permit the parties to obtain factual support for their claims. Depending on how discovery is structured, it may be helpful to set a date at the initial conference by which time the defendant will be required to state those defenses it expects to litigate. The court might also require disclosure of all prior art that the defendant will use to challenge the patent. Under 35 U.S.C. § 282, disclosure of prior art must be made "at least thirty days before the trial." In order to permit adequate time for trial preparation, however, generally it is wise to fix an earlier deadline.

### 33.24 Injunctive Relief

Intellectual property cases often are candidates for requests for injunctive relief.<sup>2198</sup> Preliminary injunctive relief in patent cases protects the value of the statutory right to exclude, which cannot always be compensated through money damages.<sup>2199</sup> Under the traditional test, followed by the Federal Circuit,<sup>2200</sup> a plaintiff seeking a preliminary injunction must demonstrate that

2196. *Id.* at 3.3.

2197. Amend, *supra* note 2176, at 19.

2198. 35 U.S.C. § 283 (2000) authorizes injunctive relief in patent cases.

2199. *See, e.g., Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1456–57 (Fed. Cir. 1988) ("[B]ecause the principal value of the patent is its statutory right to exclude, the nature of the patent grant weighs against holding that monetary damages will always suffice to make the patentee whole.").

2200. *See, e.g., High Tech. Med. Instrumentation Inc. v. New Image Indus., Inc.*, 49 F.3d 1551 (Fed. Cir. 1995).

(1) it will suffer irreparable injury absent the injunction, (2) its injury will outweigh the harm imposed upon the defendant if the injunction is granted,<sup>2201</sup> (3) it is likely to succeed on the merits of the case,<sup>2202</sup> and (4) issuance of an injunction will not adversely affect the public interest. This four-factor test applies to temporary restraining orders as well. To carry its burden of proving a likelihood of success at trial, the plaintiff must show that the patent is valid<sup>2203</sup> and that it has been infringed. A showing of reasonable likelihood of success and irreparable injury are crucial factors supporting issuance of an injunction in patent cases. Failure to meet either will result in an injunction's denial regardless of findings on the remaining factors,<sup>2204</sup> although the court must consider all four factors in granting an injunction.<sup>2205</sup> The Federal Circuit has held, however, that where the defendant raises a “substantial question of invalidity,” the plaintiff has not met its burden on the validity of the patent and a preliminary injunction will be denied.<sup>2206</sup> In addition, although irreparable injury will be presumed upon “a strong showing of likelihood of success on the merits coupled with continuing infringement,”<sup>2207</sup> this presumption can be rebutted

2201. See, e.g., *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1025 (9th Cir. 2001) (“Any destruction of Napster, Inc. by a preliminary injunction is speculative compared to the statistical evidence of massive, unauthorized downloading and uploading of plaintiffs’ copyrighted works—as many as 10,000 files per second by defendant’s own admission.”).

2202. Schwartz, *supra* note 2115, at 173 (“[A] patent owner will show a reasonable likelihood of success on the merits if, in light of the presumptions and burdens that apply during trial, the patent owner clearly shows that (a) it will likely prove infringement and (b) its claim will likely withstand a challenge to the validity and enforceability of the patent . . .”). As part of their burden of showing a likelihood of success on the merits, plaintiffs must show the likelihood that they will prevail against any affirmative defenses. See, e.g., *Dr. Seuss Enters. v. Penguin Books USA*, 924 F. Supp. 1559, 1562 (S.D. Cal. 1996) (“The plaintiff’s burden of showing a likelihood of success on the merits includes the burden of showing a likelihood that it would prevail against any affirmative defenses raised by the defendant.” (copyright/trademark case)), *aff’d*, 109 F.3d 1394 (9th Cir. 1997).

2203. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1359 (Fed. Cir. 2001) (“The patentee must, however, present a clear case supporting the validity of the patent in suit . . . Such a case might be supported, for example, by showing that the patent in suit had successfully withstood previous validity challenges in other proceedings. Further support for such a clear case might come from a long period of industry acquiescence in the patent’s validity.”) (citation omitted).

2204. *Reebok Int’l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1556 (Fed. Cir. 1994).

2205. *Id.* at 1556 (Fed. Cir. 1994) (“a district court must consider all four factors before granting a preliminary injunction to determine whether the moving party has carried its burden of establishing each of the four”).

2206. *Amazon.com*, 239 F.3d at 1362–63.

2207. *Reebok Int’l*, 32 F.3d at 1556.

by the defendant.<sup>2208</sup> For example, a showing that the plaintiff delayed in seeking an injunction is evidence that the plaintiff has not suffered irreparable harm.<sup>2209</sup>

*Markman* hearings are sometimes held in conjunction with preliminary injunction motions, because a determination of reasonable likelihood of success can require construction of the patent in order to assess whether the patent has been infringed by the defendant's product or process. Claims construction conducted at injunction proceedings is not always definitive, however, and the court might change its interpretation of the patent as the litigation progresses. In addition, the parties sometimes request expedited discovery prior to a hearing on injunctive relief.<sup>2210</sup> In some instances, granting a motion for expedited discovery may be appropriate: more developed records prior to the preliminary injunction hearing will better enable the court to judge the parties' interests and respective chances for success on the merits. In such cases, discovery should be limited in scope to information needed to respond to the motion for injunctive relief.<sup>2211</sup> The parties should be encouraged to reach an agreement prior to a hearing. To this end, consider requiring the parties to meet and confer to determine whether resolution of the issues raised in the motion for injunctive relief is feasible through a stipulated order, eliminating the need for court intervention.

Federal Rule of Civil Procedure 65(c) requires successful plaintiffs to post a bond for damages incurred by the enjoined party in the event that the injunction was wrongfully issued. The enjoined party also may request a stay of the

2208. *Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1272 (Fed. Cir. 1985). *See, e.g., Reebok Int'l*, 32 F.3d at 1557–58 (holding that defendant successfully rebutted presumption of irreparable harm by showing the product allegedly infringed is no longer produced or available for sale by plaintiff and money damages adequate to compensate); *Ill. Tool Works v. Grip-Pak, Inc.*, 906 F.2d 679, 681–82 (Fed. Cir. 1990).

2209. *See, e.g., Hybritech Inc. v. Abbott Labs*, 849 F.2d 1446, 1457 (Fed. Cir. 1988).

2210. *Phila. Newspapers, Inc. v. Gannett Satellite Info. Network, Inc.*, No. CIV.A. 98-CV-2782, 1998 WL 404820, at \*1–2 (E.D. Pa. July 15, 1998); *Jay's Custom Stringing, Inc. v. Yu*, No. 01CIV.1690, 2001 WL 761067, at \*1 (S.D.N.Y. July 6, 2001) (denying temporary restraining order (TRO) and granting expedited discovery and accelerated briefing on the motion for preliminary injunction (not an intellectual property case)); *Chere Amie, Inc. v. Windstar Apparel, Corp.*, 191 F. Supp. 2d 343, 344 (S.D.N.Y. 2001) (expedited discovery pursuant to motion for preliminary injunction). *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1516 (9th Cir. 1992); *Wallace Int'l Silversmiths, Inc. v. Godinger Silver Art Co.*, 916 F.2d 76, 78 (2d Cir. 1990) (declining to order expedited discovery). Motions for TROs are often accompanied by motions for expedited discovery.

2211. *See, e.g., Phila. Newspapers*, 1998 WL 404820, \*2 (E.D. Pa. 1998) (noting that “courts generally deny motions for expedited discovery when the movant's discovery requests are overly broad”).

injunction pending appellate review. (Appellate review of the grant or denial of a preliminary injunction is for abuse of discretion.) In such instances, the court may conclude that although a stay is not warranted, some additional time is appropriate before the injunction becomes effective.<sup>2212</sup>

### 33.25 Discovery

Discovery sometimes can be conducted according to a prescribed sequence of issues, particularly if severed trials are contemplated under Federal Rule of Civil Procedure 42(b).<sup>2213</sup> At the pretrial conference, however, it is helpful to discuss with the parties whether discovery on priority issues will involve examination of the same witnesses and exhibits as discovery on the subsequent issues, causing unnecessary expense and delay,<sup>2214</sup> and whether deferral of discovery regarding damages may complicate efforts to evaluate the litigation for settlement.

Limitations on the scope of discovery may be appropriate where the court already has construed the patent claims. Regardless of the timing of the claim construction, however, the parties should be prohibited from offering alternative constructions throughout the litigation and thereby expanding the scope of discovery. Where the court has determined that a *Markman* hearing will be held post-discovery, one option is to offer a window of additional and narrowly prescribed discovery post-claim construction, to take into account the judge's interpretation and minimize prejudice to one of the parties arising out of an unexpected interpretation of the claim.

The large number of motions to compel in patent cases may result from legitimate differences of opinion between the parties as to the interpretation to be given terms of art used in discovery requests, thereby causing disputes over whether information falls within the scope of the request. In other instances, the responding party may be using differing definitions to avoid producing information that may be harmful to its case. Instructing the parties that all terms of art used in discovery are to be read broadly, inclusive of all applicable

2212. See Schwartz, *supra* note 2115, at 176–78 (noting that four factors similar to those considered in granting or denying the injunction are considered in deciding whether the injunction should be stayed).

2213. See, e.g., *Pioneer Hi-Bred Int'l, Inc. v. Asgrow Seed Co.*, No. CIV. 4-98-CV-90577, 90578, 2000 WL 33363188, at \*1–3 (S.D. La. May 5, 2000) (considering whether discovery should be staged).

2214. *Pioneer*, 2000 WL 33363188, at \*3 (granting motion to stay discovery on issue of damages until after liability is determined).

definitions, will minimize motions to compel and accompanying requests for sanctions.<sup>2215</sup>

Allegations of willful infringement present thorny discovery disputes. It is best to ascertain at the initial pretrial conference the extent to which discovery will be sought of matters that may be protected by the attorney–client privilege or work-product doctrine and, if so, whether disclosure will be resisted. Reliance on opinions of counsel is the only prudent course for a defendant to follow in litigation. However, once the defendant asserts reliance on the advice of counsel, the defendant voluntarily waives privilege over the opinion itself, and straightforward application of the general case law regarding voluntary privilege waivers can lead to unanticipated results.<sup>2216</sup> For example, application of “subject–matter waiver” would require the defendant to disclose all privileged communications on the subject of the opinion—typically infringement and validity. On its face, this approach would require disclosure of all communications with counsel, including trial counsel, regarding infringement and validity.<sup>2217</sup> If treated also as a traditional waiver of work-product immunity, the waiver would result in disclosure of all of trial counsel’s internal communication and trial preparation materials. Recognizing this dilemma, courts have tended toward practical solutions that balance a plaintiff’s reasonable inquiry into the circumstances surrounding the opinion of counsel and the defendant’s right to mount a defense and maintain confidential communications with trial counsel.<sup>2218</sup> Consider whether the privilege has been waived and the need to control the scope of discovery from counsel or clients to ensure that the privilege is respected. Particularly in nonjury cases, the trial judge may conclude that it is feasible to call on another judicial officer to conduct any in camera inspections necessary to determine whether sufficient evidence of fraud exists for the privilege to be waived. Use of a special master may be warranted if such

2215. See Amend, *supra* note 2176, at 25–26.

2216. In *Novartis Pharm. Corp. v. Eon Labs. Mfg., Inc.*, 206 F.R.D. 396, 399 (D. Del. 2002), Judge Farnan held that the alleged infringer waived privilege to withhold from discovery any documents or material related to counsel’s noninfringement opinion, including work product.

2217. *VLT, Inc. v. Artesyn Tech., Inc.*, 198 F. Supp. 2d 56, 57 (D. Mass. 2002) (stating that “opinion of counsel letter as part of a defense to a claim of willful infringement operates as a subject matter waiver”).

2218. For example, in situations where the opinion of counsel was prepared by a lawyer at a firm different from trial counsel, courts will limit the waiver to communications with “opinion counsel.” Where the opinion of counsel was prepared by the same firm as the firm serving as trial counsel, but by a lawyer not actively involved in the litigation or a part of the litigation team, courts again often limit disclosure to communications between the opinion writer and the client representative who received the opinion. However, the thorniest issues arise where the opinion writer is an active part of the trial team, although this circumstance is becoming exceedingly rare, in part because of the potential for the opinion writer to be a witness at trial.

disputes will be extensive and cannot be resolved by considering a few specimen documents.

It is helpful to inquire early about use of out-of-court “tests” of allegedly infringing products (including software in copyright actions) or in-court demonstrations. If tests are contemplated, protocols should be established at an early conference with respect to whom may attend or observe, criteria to permit use of the results in court, and when to disclose the results. It is also advisable to set a deadline for pretrial disclosure of any such tests or proposed demonstrations and indicate when objections to the admissibility of such evidence will be considered.

Discovery delays may be eliminated by entering protective orders prior to initial discovery being served. Some courts have incorporated standing protective orders as part of the initial pretrial conference;<sup>2219</sup> however, the particular patent case may dictate a more tailored order. The parties may prefer restricting disclosure of particularly sensitive information—such as production processes and customer information—to counsel and their experts. This procedure is acceptable, but counsel should be cautioned to exercise restraint in designating materials as confidential.<sup>2220</sup> Issues may also arise where a party’s patent counsel or in-house counsel is also counsel of record in the litigation. In such cases, consider “the nature and extent of the risk involved and the efficacy of protective measures that have been or can be imposed”<sup>2221</sup> in determining whether to permit access to the opposing party’s confidential information. Relevant considerations might include whether counsel is in-house or at an outside firm, as well as his or her activities, including any involvement in matters relating to product design or related competitive decisions.<sup>2222</sup> To the extent access is permitted, also consider including a provision in the protective order that restricts any participation in the prosecution of patent applications in the technical area at issue for a designated period of time.<sup>2223</sup> It is best to address early the identification of experts who will review confidential materials.

2219. See *infra* section 40.25 for a sample order regarding preservation of documents, data, and tangible things.

2220. See also *In re Omerprazole Patent Litig.*, No. MDL 1291, 2001 WL 394843, at \*1 (S.D.N.Y. Apr. 18, 2001) (protective order would contain safeguards that avoided inadvertent disclosure of “attorney confidential” information).

2221. Pooley, *supra* note 2107, § 11.03[3] (“[T]hose who object to house counsel access will make an argument . . . [that] no matter the saintly good faith of the individual, there are circumstances in which one’s information is put in jeopardy because of influential, indirect use that may not only be undetectable after the fact by the owner, but may occur beyond the awareness of the person to whom it was entrusted.”).

2222. *Id.*

2223. *Id.* § 11.03[4].

In some cases the parties may prefer to have review of such information done by a court-appointed expert or special master, rather than by someone associated with their adversary. For further protection, filing of sensitive documents may either be waived under Federal Rule of Civil Procedure 5(d) or be made under seal. Finally, consider circumstances under which a party may seek modification of the order and whether, and to what extent, any protective orders should provide for the protection of confidential information that may be sought from third parties.

### 33.26 Experts

Expert witnesses in patent cases typically fall into one of two categories: (1) technical and damage experts; and (2) patent law experts. Technical experts are those whose special training or experience in the applicable technology or science qualifies them to express opinions bearing on

- the validity or invalidity of the patent, such as the scope and content of the prior art, the level of skill in the art, and the obviousness or nonobviousness of the claimed invention in view of the prior art; and
- whether with respect to the alleged infringement the elements of the claim are met by the accused product or process.

Technical experts include both experts retained by the parties, as well as experts appointed by the court pursuant to Federal Rule of Evidence 706. Damages experts usually have training in accounting, patent licensing, and economics, and will testify about such issues as reasonable royalty, lost profits, price erosion, convoyed sales, and the proper definition of the relevant market. Patent law experts—patent attorneys, patent law professors, or former officials of the PTO—are frequently offered to express background in the form of opinions on the patent process, the duty of disclosure to the PTO, and whether or not that duty has been violated by particular acts or omissions during the prosecution of the patent. The use of patent law experts is controversial and their acceptance varies widely from court to court.<sup>2224</sup>

<sup>2224</sup> See, e.g., *Endress + Hauser, Inc. v. Hawk Measurement Sys. Pty. Ltd.*, 122 F.3d 1040, 1042 (Fed. Cir. 1997) (stating “this court has on numerous occasions noted the impropriety of patent lawyers testifying as expert witnesses and giving their opinion regarding the proper interpretation of a claim as a matter of law, the ultimate issue for the court to decide”); *Talarico v. Marathon Shoe Co.*, 182 F. Supp. 2d 102, 113–14 (D. Me. 2002) (patent attorney’s testimony helped to articulate defendant’s defense); *Neupak, Inc. v. Ideal Mfg., Sales Corp.*, 168 F. Supp. 2d 1012, 1016–17 (D. Minn. 2001) (patent attorney allowed to testify); *Biomedical Polymers, Inc. v. Evergreen Indus., Inc.*, 976 F. Supp. 98, 100 (D. Mass. 1997) (noting court has discretion whether it will adopt expert legal opinion as own, use it for guidance, or ignore or exclude it).

The Supreme Court’s decision in *Markman* has affected the role of expert testimony in patent cases. Although expert testimony remains admissible in a *Markman* hearing—to aid the court’s understanding of the technology involved where the patent claim is ambiguous, or to explain the meaning of terms of art within the relevant field as one skilled in the art would understand them—the Court cautioned that the trial court is “not, however, obliged to blindly follow such testimony.”<sup>2225</sup> Accordingly, consider the purpose for which expert testimony is being offered and whether, in light of the claim language, such testimony is necessary or would aid in understanding the technology or terms of art as needed to construe the claim.<sup>2226</sup>

Setting rules to govern the scope of expert discovery is advisable. Expert reports in patent cases are often extremely complex, and a lengthy report typically will require significant back and forth between expert and counsel. Consider what types of expert material should be produced—for example, technical documents that the expert relied on in forming opinions—and whether draft reports should be excluded from production. At trial, expert testimony should be monitored to ensure that testimony regarding construction or interpretation of the claim is not offered. Expert testimony remains appropriate, however, to explain the technology to the jury. Expert testimony may be appropriate to assist the jury in assessing the accused product or process in light of the claim construction by the court, so that the jury can determine whether the accused product has infringed the claims, either literally or under the doctrine of equivalents. Examples of other areas where expert testimony may prove helpful include the patent examination process and the qualifications of a person of ordinary skill in the art.<sup>2227</sup> Testimony by patent law experts should be avoided where the testimony seeks to give legal opinions or attempts to address “reasonable reliance” by the client on advice of counsel.<sup>2228</sup>

The court may also conclude that an independent expert should be appointed under Federal Rule of Evidence 706, particularly if the subject matter is complex and the differences between the experts offered by the parties are

2225. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 387 (1996) (quoting A. Walker, *Patent Laws* § 189, at 173 (3d ed. 1895)).

2226. *See, e.g., Chad Indus., Inc. v. Automation Tooling Sys., Inc.*, 938 F. Supp. 601, 605 (C.D. Cal. 1996).

2227. Amend, *supra* note 2176, at 28. As this is usually stipulated to or established as a predicate fact in the *Markman* hearing, such testimony may be unnecessary.

2228. *See, e.g., Clintec Nutrition Co. v. Baxa Corp.*, No. 94C7050, 1998 WL 560284, at \*9 (N.D. Ill. Apr. 26, 1998) (rejecting proposed expert testimony during the *Markman* hearing “as to what the law is” and stating that the expert may only “help interpret the patent and the meaning of its claims, discuss scientific principles, and define terms”).

not attributable to factual disputes that a trial can readily resolve.<sup>2229</sup> For example, such an expert may be helpful if the parties' facilities or processes need to be inspected and they are reluctant to permit access by the opposing experts. A number of issues, including the timing, selection, discovery, and compensation of court-appointed experts, their specific duties, and the handling of expert communications, all require consideration by the court. Limiting the use of court-appointed experts to explaining the general subject matter, without becoming involved in the disputes of the parties, will make it easier to maintain neutrality. The court-appointed expert should generally have no ex parte communications with the judge. Finally, consideration may also be given to referral of the patent for reexamination by the PTO under 35 U.S.C. § 302, with citations of prior art furnished under 35 U.S.C. § 301. In some cases, the court may conclude that reference to a special master under Federal Rule of Civil Procedure 53 is warranted.

### 33.27 Trial

To ensure a fair trial, whether it is a bench trial or a jury trial, the fact-finder's comprehension of the issues and of the evidence is critical. Bifurcation of a patent jury trial or a phased trial considering major issues separately can sometimes assist in properly focusing the jury's attention.<sup>2230</sup> For example, issues of infringement can be tried prior to other issues in the case, with the issue of remedies, including damages, often deferred.<sup>2231</sup> On the other hand, bifurcation sometimes results in a "piecemeal" trial, making it harder for the jury to see the case as a whole.<sup>2232</sup> Additional techniques designed to improve juror comprehension, as well as to assist in reducing the complexity of patent trials, are discussed in *Patent Law & Practice*,<sup>2233</sup> published by the Federal Judicial Center. These techniques include

2229. See, e.g., *MediaCom Corp. v. Rates Tech., Inc.*, 4 F. Supp. 2d 17, 23–24 (D. Mass. 1998); *Genentech, Inc. v. Buehringer Mannheim GmbH*, 989 F. Supp. 359, 361 (D. Mass. 1997); *Rodime PLC v. Seagate Tech., Inc.*, No. CV92-6855, 1997 WL 813016, at \*1 (S.D. Cal. July 3, 1997) (using court-appointed expert and special master in assessing scope of patent under doctrine of equivalents).

2230. See also Schwartz, *supra* note 2115, at 217 (noting that "jurors may benefit from being able to: (a) consider different patents separately, (b) consider different claims of the same patent separately, or (c) separate method claims from apparatus claims").

2231. Even where infringement has not occurred, the court must still try the issue of the validity of the patent. See *Stevenson v. Sears, Roebuck & Co.*, 713 F.2d 705 (Fed. Cir. 1983).

2232. Schwartz, *supra* note 2115, at 216.

2233. *Id.*

§ 33.31

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- imposing reasonable time limits on the length of a trial;<sup>2234</sup>
- conducting a multiphase trial of the issues before the same jury;<sup>2235</sup>
- encouraging the use of juror tutorials at the outset of or during the trial;
- imposing limits on the number of expert witnesses and duplicative fact witnesses;
- encouraging the use of charts, diagrams, models, and other visual aids;
- providing the jurors with exhibit notebooks containing, in addition to the principal exhibits, the patent, any stipulations, preliminary instructions, claim construction (if done at the pretrial phase) and a glossary of technical terms; and
- allowing the parties to provide periodic nonargumentative summations to the jury.

### 33.3 Copyright and Trademark Law

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#### 33.31 Copyright

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Section 102 of the Copyright Act provides specifically that copyright protection is accorded to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”<sup>2236</sup> Under the Act, the work itself must originate with the author, even though the idea itself may have originated elsewhere. The

2234. *See, e.g.,* *Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 609 (3d Cir. 1995). Under Fed. R. Evid. 611(a) (West 2003), the court is to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . avoid needless consumption of time . . .” However, the court should avoid imposing rigid hour limits.

2235. *See, e.g.,* *Belmont Textile Mach. Co. v. Superba, S.A.*, 48 F. Supp. 2d 521, 526 (W.D.N.C. 1999).

2236. 17 U.S.C. § 102(a) (2000).

“originality” required is fairly minimal: There must be some element of creativity reflected in the work, and the work must be independently created by the author.<sup>2237</sup> Protected works include, although are not limited to, literary, dramatic, and musical works, audiovisuals, movies, recordings, and art, without regard to their level of value or subjective view of artistry.<sup>2238</sup> The Visual Artists Rights Act of 1990<sup>2239</sup> extends protection to single or limited editions of visual art, such as paintings, sculpture, and photography. The statutory rights accorded under the Copyright Act do not attach until the work has been “fixed,” at which point state common-law rights against copying and related injuries are preempted.<sup>2240</sup>

Copyright protection is limited to the expression of the idea, not the idea itself.<sup>2241</sup> “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”<sup>2242</sup> Copyright protection further will not extend to purely utilitarian works,<sup>2243</sup> or to forms,<sup>2244</sup> compilations such as ordinary telephone directories,<sup>2245</sup> or where the subject matter necessarily has limited forms of expression.<sup>2246</sup> The creative selection, coordi-

2237. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). For a further discussion of the originality requirement under section 102 of the Act, see Gorman, *supra* note 2108, at 9–15.

2238. Section 102(a) categorizes works of authorship to include literary, musical, and dramatic works, pantomime, choreographs, pictorials, graphics, sculpture, motion pictures, audiovisual works, sound recordings, and architectural works.

2239. 17 U.S.C. § 106A (2000). Authors of works of visual arts have rights to claim authorship and prevent the use of their names with works of visual arts they did not create, or with works of visual art that have been distorted, mutilated, or otherwise modified in a way that harms the author’s honor or reputation. They can also prevent certain intentional distortion, mutilation, or other prejudicial modification and intentional or grossly negligent destruction of their works.

2240. 17 U.S.C. § 102(a) (2000).

2241. Gorman, *supra* note 2108, at 15–23.

2242. 17 U.S.C. § 102(b) (2000).

2243. *See, e.g., Mazer v. Stein*, 347 U.S. 201, 218 (1954).

2244. *Baker v. Selden*, 101 U.S. 99, 101 (1879).

2245. *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 341 (1991). “In order to qualify for copyright protection, a compilation must meet three requirements: ‘(1) the collection and assembly of preexisting data; (2) the selection, coordination, or arrangement of that data; and (3) a resulting work that is original, by virtue of the selection, coordination, or arrangement of the data contained in the work.’” *Lynx Ventures, LLC v. Miller*, 190 F. Supp. 2d 652, 658 (D. Vt. 2002) (quoting *Key Publ’ns, Inc. v. Chinatown Today Publ’g Enters., Inc.*, 945 F.2d 509, 514 (2d Cir. 1991)).

2246. *Morrissey v. Proctor & Gamble Co.*, 379 F.2d 675, 678 (1st Cir. 1967).

nation, or arrangement of unprotected facts or ideas, however, can be protected as long as the work meets the “minimal degree of creativity” standard established by the Supreme Court in *Feist Publications, Inc. v. Rural Telephone Service Co.*<sup>2247</sup>

The Copyright Act confers certain protection on the owner of a copyright, whether such ownership is vested in the original author, joint authors, employers where the work was created pursuant to employment, or persons to whom a copyright has been transferred or licensed.<sup>2248</sup> The Act accords to copyright owners six exclusive rights, which are set forth in section 106: (1) reproduction; (2) derivative works; (3) distribution; (4) performance; (5) display; and (6) digital transmission.<sup>2249</sup> A copyright is infringed by the unauthorized exercise of any of these exclusive rights by another. Although the facts in many copyright cases are not necessarily complex, the legal analysis often involves subtle concepts regarding whether section 106 rights have been infringed and whether that infringement was direct or contributory.<sup>2250</sup> Infringement can be innocent or intentional, and a plaintiff is permitted under copyright law to assert a claim for contributory or vicarious infringement as long as the plaintiff can also demonstrate an underlying act of direct infringement.<sup>2251</sup>

To prevail in a copyright infringement claim, the plaintiff must prove (1) ownership of a valid copyright; and (2) that at least one of the exclusive rights under section 106 has been violated.<sup>2252</sup> The plaintiff must demonstrate either actual copying (as opposed to independent creation) or proof of access to the copyrighted work and that the copied work is “substantially similar” to the original, to prove a violation of section 106.<sup>2253</sup> Equitable remedies in the form of injunctive relief are available in addition to money damages, reflecting either actual damages or, at the plaintiff’s election, statutory damages.<sup>2254</sup> Reg-

2247. 499 U.S. at 348.

2248. See 17 U.S.C. § 201 (2000). Section 201(d) establishes rights upon transfer of a copyright. Where the right has been transferred, the person to whom it is transferred “is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.” *Id.* § 201(d)(2). Any such exclusive transfer or license can be terminated, *id.* § 203, and must be in writing. *Id.* § 204(a).

2249. *Id.* § 106.

2250. 17 U.S.C. § 501 (2000).

2251. *Gershwin Pub’lg Corp. v. Columbia Artists Mgmt., Inc.*, 443 F.2d 1159, 1161–62 (2d Cir. 1971).

2252. *Ellison v. Robertson*, 189 F. Supp. 2d 1051, 1056 (C.D. Cal. 2002).

2253. See, e.g., *Laureyssens v. Idea Group, Inc.*, 964 F.2d 131, 139–40 (2d Cir. 1992).

2254. 17 U.S.C. § 504 (2000); see also *Gorman*, *supra* note 2108, at 108 (discussing available damages and profits under 17 U.S.C. § 504).

istration is a prerequisite to maintaining a suit for infringement and in order to obtain statutory damages, the copyright must have been registered under the Act prior to infringement.<sup>2255</sup>

Among the defenses to an infringement claim is a common law doctrine commonly referred to as the “fair use” doctrine, which has now been codified in 17 U.S.C. § 107 to preserve the use of creative artistic works for purposes of teaching, research, criticism, and news reporting.<sup>2256</sup> Section 107 sets out several factors to be considered in assessing whether the defendant’s use was “fair,” which are then balanced against the interest in protecting the exclusive rights of copyright owners. These factors include (1) the purpose and character of the defendant’s use, such as whether the use is commercial or private; (2) the nature of the copyrighted work; (3) the amount and substance of the portion of the copyrighted work used in relation to the whole of the copyrighted work; and (4) the effect of the use on the market for the copyright owner’s rights.<sup>2257</sup> Congress also has created a statutory “safe harbor” for “providers of online services or network access, or the operator of facilities therefore”<sup>2258</sup> through the Digital Millennium Copyright Act (DMCA).<sup>2259</sup> The DMCA protects service providers who do not control the content transmitted via their servers, as well as search engines that merely provide links to allegedly infringing content.<sup>2260</sup> “The DMCA’s protection of an innocent service provider disappears ‘at the moment the service provider loses its innocence, i.e., at the moment it becomes aware that a third party is using its system to infringe.’”<sup>2261</sup>

2255. 17 U.S.C. §§ 411, 412 (2000).

2256. *Kelly v. Arriba Soft Corp.*, 280 F.3d 934, 942 (9th Cir. 2002).

2257. 17 U.S.C. § 107 (2000); *Harper & Row Publ’g Inc. v. Nation Enter.*, 105 S. Ct. 2218 (1986).

2258. 17 U.S.C. § 512(k)(1)(B) (2000); *see also* Semiconductor Chip Prot. Act of 1984, 17 U.S.C. § 901 (affording protection to computer chips and thereby their codes).

2259. 17 U.S.C. § 512 (2000); *see also* *Religious Tech. Ctr. v. Netcom On-Line Communication Serv., Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995).

2260. *See* *Ellison v. Robertson*, 189 F. Supp. 2d 1051, 1070–72 (C.D. Cal. 2002); *see also* *ALS Scan, Inc. v. RemarQ Communities, Inc.*, 239 F.3d 619, 622 (4th Cir. 2001) (“As to direct infringement, liability is ruled out for passive, automatic acts engaged in through a technological process initiated by another.” (discussing H.R. Rep. No. 105-551(I), at 11 (1998))). Although the DMCA protects service providers from money damages arising from posting or transmitting infringing content, in most cases injunctive relief will still be available. To avail themselves of the protection of the DMCA safe harbor, however, the defendant service providers must have, and communicate to users, a policy for removing allegedly infringing material. *ALS Scan*, 239 F.3d at 625.

2261. *In re Aimster Copyright Litig.*, 252 F. Supp. 2d 634, 657 (N.D. Ill. 2002) (quoting *ALS Scan*, 239 F.3d at 625).

“At that point, the Act then shifts responsibility to the service provider to disable the infringing matter . . . .”<sup>2262</sup>

Many of the complexities accompanying copyright litigation arise out of the growth and development of new technologies and transmissions, particularly on-line dissemination.<sup>2263</sup> Works can now be easily replicated and accessed by numerous users, and new categories of works (such as hypertext) have developed.<sup>2264</sup> On-line linking and framing can create the potential for copyright infringement, although the mere use of a copyrighted work in a search engine may be a fair use.<sup>2265</sup> The increasing use of the Internet as a means of communication, and the ease with which material can be copied, create difficulties in copyright application and protection not contemplated by the current Act and have spawned new legislation targeting these issues.<sup>2266</sup> Other developments in copyright law, many attributable to changing technology, are designed either to protect the right in the work itself, such as performance rights in digital transmissions, or to protect the measures used to prevent the copying of works available in digital and other advanced technologies, such as encryption and other programs.<sup>2267</sup> The courts have continued to struggle with the challenges presented by computer technologies and computer networks and the role that copyright protection should play. These complexities will vary from case to case, and inquiry into the following areas at the initial pretrial conference will help to assess the need for close supervision:

- *Has the copyright been registered?* Before an action for copyright infringement can be instituted, the copyright must have been registered

2262. *CoStar Group v. Loopnet Inc.*, 164 F. Supp. 2d 688, 700 (D. Md. 2001).

2263. The court in *eBay Inc. v. Bidder’s Edge, Inc.*, 100 F. Supp. 2d 1058, 1067 n.16 (N.D. Cal. 2000), noted that “applying traditional legal principles to the Internet can be troublesome . . . .” See also *ImOn, Inc. v. ImaginOn, Inc.*, 90 F. Supp. 2d 345, 346 (S.D.N.Y. 2000) (noting that the Internet “is one of the most fluid, rapidly developing, and virtually daily changing areas of commerce that the law has had to focus upon and endeavor to apply established principles to”).

2264. See, e.g., *ILOG, Inc. v. Bell Logic, LLC*, 181 F. Supp. 2d 3, 13–14 (D. Mass. 2002) (software programs).

2265. See, e.g., *Kelly v. Arriba Soft Corp.*, 280 F.3d 934, 945–47 (9th Cir. 2002) (finding on-line linking and framing violated copyright owner’s public display right). See *Ticketmaster Corp. v. Tickets.Com, Inc.*, No. CV99-7654, 2000 WL 5253909, at \*2 (C.D. Cal. Mar. 27, 2000) (hyper-linking did not constitute violation of Copyright Act).

2266. See, e.g., Digital Millenium & Copyright Act, 17 U.S.C. § 512 (2000); Visual Artists Rights Act of 1990, 17 U.S.C. § 106(A) (2000).

2267. See, e.g., Intellectual Prop. & Communications Omnibus Reform Act of 1999, 17 U.S.C. § 1201 (2000).

in the Copyright Office.<sup>2268</sup> Registration timing, however, affects the types of damages available. Where the copyright was not registered prior to the infringing activity or within ninety days of the date the work was first published, the plaintiff is precluded from seeking attorney fees or statutory damages.<sup>2269</sup>

- *Where did the activity take place?* Where the allegedly infringing activity takes place is an important question, in determining personal jurisdiction and venue, and also in determining whom the plaintiff can sue. Plaintiffs may base claims on actions by foreign defendants that occurred outside the United States, or interrelated activities involving both U.S. corporations and foreign affiliates.<sup>2270</sup> Foreign defendants add additional complexity to the management of discovery and other pretrial issues.<sup>2271</sup> Jurisdictional issues may be more complicated where the infringing activity took place over the Internet.<sup>2272</sup> The courts have held that where infringing material is posted on a Web site, the infringing acts occurred in the place where the Web site is created and maintained.<sup>2273</sup> Courts have looked to the “nature and quality of commercial activity that an entity conducts over the Internet” in assessing whether personal jurisdiction can be exercised.<sup>2274</sup> A relevant inquiry is whether the defendant’s activity was active or passive. “A passive Web site that does little more than make information available

2268. 17 U.S.C. § 411(a) (2000). The Act excepts from its requirements infringement actions “brought for a violation of the rights of the author under Section 106(A)(a) . . .” *Id.* However, if registration is refused, the plaintiff can bring an action for infringement and also challenge the propriety of the refusal to register in that action. *Id.*

2269. *Id.* § 412(2); *see also* Gerig v. Krause Publ’ns, Inc., 58 F. Supp. 2d 1261, 1268–69 (D. Kan. 1999).

2270. *See, e.g.*, Palmieri v. Estifan, 793 F. Supp. 1182 (S.D.N.Y. 1992).

2271. *See, e.g.*, Byrne v. British Broad. Corp., 132 F. Supp. 2d 229, 237–39 (S.D.N.Y. 2001) (denying motion to dismiss based on *forum non conveniens*).

2272. *See, e.g.*, Colt Studio, Inc. v. Badpuppy Enter., 75 F. Supp. 2d 1104, 1109–10 (C.D. Cal. 1999) (personal jurisdiction created from on-line membership subscriptions with consumers in California; subscriptions were continuing in nature); Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997); Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414 (9th Cir. 1997).

2273. Cable News Network, L.P. v. GoSMS.com, Inc., No. 00CIV.4812, 2000 WL 1678039, at \*3 (S.D.N.Y. Nov. 6, 2000) (noting that to find that the acts occurred where the Web site could be seen would include “literally anywhere the internet can be accessed”).

2274. *Zippo Mfg.*, 952 F. Supp. at 1124 (distinguishing cases of knowing and repeated transmission of files over the Internet from situations where the defendant has posted information on a Web site that is simply accessible to users in other jurisdictions); Citigroup Inc. v. City Holding Co., 97 F. Supp. 2d 549, 565 (S.D.N.Y. 2000).

to those who are interested in it is not grounds for the exercise of personal jurisdiction.”<sup>2275</sup>

- *Does the dispute raise issues of international law?* One or more of the various treaties that address copyright issues may become relevant if international components are involved.<sup>2276</sup> Plaintiffs may be alleging infringement of foreign copyrights, as well as infringement under the Copyright Act.<sup>2277</sup> In addition, conflicts may result in the application of foreign copyright law to resolve disputes.<sup>2278</sup>
- *Are there any other actions pending in the same or other jurisdictions?* Copyright cases rarely involve infringements sufficient to trigger multidistrict litigation or class actions,<sup>2279</sup> but the Internet has created the potential for multiple infringements in numerous jurisdictions. For example, in *In re Aimster Copyright Litigation*,<sup>2280</sup> nine actions involving whether the distribution of MP3 music files through a Web site operated by Aimster constituted copyright infringement were transferred for coordinated and consolidated pretrial proceedings by the Judicial Panel on Multidistrict Litigation. Declaratory judgment actions seeking a determination of noninfringement can raise questions of jurisdiction and whether the action should be transferred or stayed.<sup>2281</sup> In some instances, the action reflects simply a “race to the courthouse.”<sup>2282</sup> Finally, issues of collateral estoppel may arise where multiple infringements have occurred.<sup>2283</sup>

2275. *Zippo Mfg.*, 952 F. Supp. at 1124.

2276. See, e.g., Uniform Copyright Convention, NAFTA, Berne Convention for the Protection of Literary and Artistic Works, and the Trade Related Aspects of Intellectual Property Rights.

2277. *Boosey & Hawkes Music Publishers, Ltd. v. The Walt Disney Co.*, 145 F.3d 481, 485 (2d Cir. 1998); *Dam Things from Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 554 (3d Cir. 2002).

2278. See, e.g., *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 91–92 (2d Cir. 1998) (finding Russian law would apply to issues of copyright ownership and nature of copyright as to Russian plaintiffs, and U.S. copyright law would be applied to determine issue of whether copyrights were infringed in the U.S. by defendant Russian language newspaper which was published and available in New York).

2279. See, e.g., *In re Literary Works in Elec. Databases Copyright Litig.*, MDL No. 1379, 2001 WL 204212, at \*1 (S.D.N.Y. Mar. 1, 2001) (consolidated class action); *In re “The Exorcist” Copyright Infringement Litig.*, 411 F. Supp. 793 (J.P.M.L. 1976).

2280. 177 F. Supp. 2d 1380 (J.P.M.L. 2001).

2281. *MP3Board v. Recording Indus. Ass’n of Am.*, No. C-00-20606, 2001 WL 804502, at \*3 (N.D. Cal. Feb. 27, 2001) (staying action in light of similar action pending in New York).

2282. See *MP3Board*, 2001 WL 804502, at \*2 (stating “even if this action were deemed to have been filed first, this action was filed as an anticipatory suit and therefore MP3Board would

- *Are there any criminal proceedings pending or matters under criminal investigation?* The Copyright Act provides for criminal penalties, including imprisonment and a fine, for willful copyright infringement,<sup>2284</sup> as well as penalties if the defendant engaged in fraud.<sup>2285</sup> The Act provides additional remedies in the form of mandatory seizure and forfeiture or destruction.<sup>2286</sup> If there is a pending criminal investigation, a motion to stay the civil action pending resolution of the criminal case may occur.
- *Are there any agreements to arbitrate?* The Federal Arbitration Act requires parties to arbitration agreements to arbitrate all matters covered under the agreement “save upon such grounds as exist at law or in equity for the revocation of any contract.”<sup>2287</sup> Arbitration clauses are to be broadly construed and will be presumed to apply to all disputes arising under the contract, barring limiting language.<sup>2288</sup> Doubts are resolved in favor of arbitration. The courts have held that arbitration agreements arising out of the Copyright Act are enforceable. “Congress has not asserted any ‘policy against arbitration of [a] claim for the infringement of a valid copyright.’”<sup>2289</sup> Arbitration agreements are especially common in licensing agreements. The court should inquire into the existence of any agreement that may underlie the claims and whether any or all claims are subject to arbitration. In cases where a portion of the case may be subject to arbitration, consider whether the remainder of the action should be stayed.

not be entitled to rely on the first to file rule” (quoting *MP3Board v. Recording Indus. Ass’n of Am.*, No. C-00-20606, at 6:27 to 7:1 (N.D. Cal. Sept. 26, 2000) (unpublished court order denying plaintiff’s motion for preliminary injunction to prohibit defendants from proceeding in related action before another district court)); *Citigroup, Inc. v. City Holding Co.*, 97 F. Supp. 2d 549, 555 (S.D.N.Y. 2000) (discussing first-filed rule).

2283. *See, e.g., Teevee Toons v. MP3.Com, Inc.*, 134 F. Supp. 2d 546, 546–47 (S.D.N.Y. 2001).

2284. 17 U.S.C. § 506(a) (2000).

2285. *See id.* §§ 506(c)–506(e).

2286. *Id.* § 506(b).

2287. 9 U.S.C. § 2 (2000).

2288. *JVN Music, Inc. v. Rodriguez*, No. 99CIV.11889, 2000 WL 827702, at \*3 (S.D.N.Y. June 27, 2000) (“Where there is a broad contractual arbitration clause, it is presumed that all disputes under the agreement are arbitrable unless the clause is in no way susceptible to an interpretation that it covers the particular dispute.”).

2289. *JVN Music*, 2000 WL 827702, at \*4 (finding copyright infringement clause arising out of music contract to record exclusively for the plaintiff music company (quoting *Kamakazi Music Corp. v. Robbins Music Corp.*, 684 F.2d 228, 231 (2d Cir. 1982))).

- *Is the plaintiff seeking impoundment as one of the remedies sought?* The plaintiff may be seeking impoundment of the allegedly infringing material pursuant to section 503 of the Copyright Act.<sup>2290</sup> Seizure can be ex parte where the plaintiff shows a likelihood the allegedly infringing goods may be destroyed or hidden, although the defendant can request a post-seizure hearing.<sup>2291</sup> There is judicial discretion under section 503(b) to permanently dispose of the infringing material after final judgment, although destruction is not mandatory, as it is where the defendant is criminally convicted of willful infringement.<sup>2292</sup>
- *What is the duration of the copyright?* The 1976 Copyright Act extended the 1909 Copyright Act term from twenty-eight years with an additional renewal term if the author remained alive at the end of the first term to the life of the author plus fifty years.<sup>2293</sup> With the passage of the 1976 Act, “Congress altered the way the term of a copyright is computed so as to conform with the Berne Convention and with international practice.”<sup>2294</sup> The Copyright Term Extension Act of 1998<sup>2295</sup> extended the term for works created after 1978 an additional twenty years to the author’s life plus seventy years.<sup>2296</sup> For a work created before 1978, where the initial term was twenty-eight years, the renewal term was extended to sixty-seven years.<sup>2297</sup>
- *Has the plaintiff raised state causes of action that are preempted by the Copyright Act?* Jurisdiction is exclusively in the federal courts for actions arising under the Copyright Act.<sup>2298</sup> State law claims pertaining to the subject matter of copyrights are preempted,<sup>2299</sup> unless there is a qualitative difference between the causes of action and the rights ad-

2290. Section 503 provides for impoundment “of all copies or phonorecords . . . and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.”

2291. *Pepe (U.K.) Ltd. v. Ocean View Factory Outlet*, 770 F. Supp. 754, 760 (D.P.R. 1991) (ex parte seizure of allegedly counterfeit goods under section 1116(d)); *Paramount Pictures Corp. v. Doe*, 821 F. Supp. 82, 84 (E.D.N.Y. 1993) (impoundment of allegedly pirated films).

2292. 17 U.S.C. § 506(b) (2000).

2293. Gorman, *supra* note 2108, at 37.

2294. *Eldred v. Reno*, 239 F.3d 372 (D.C. Cir. 2001) (citing H.R. Rep. No. 94-1476, at 135 (1976) (reprinted in 1976 U.S.C.C.A.N. 5659, 5751)).

2295. 17 U.S.C. § 302(a) (2000).

2296. *See Eldred*, 239 F.3d at 373–74.

2297. 17 U.S.C. § 304(a) (2000).

2298. 28 U.S.C. § 1338(a) (West 2003).

2299. 17 U.S.C. § 301(a) (2000).

dressed by the Copyright Act.<sup>2300</sup> However, state law claims preempted by the Copyright Act are converted into copyright infringement claims under the federal statute.<sup>2301</sup>

- *Do the parties anticipate seeking protective orders?* Motions for protective orders are common in copyright actions.<sup>2302</sup>
- *Does the plaintiff assert vicarious or contributory infringement?* The scope of discovery will be affected by assertions of vicarious or contributory infringement.

### 33.311 Discovery

Two central issues in copyright cases are whether the copyright was infringed and the nature of the infringement. As a result, discovery may be merits based, looking at the infringement itself, or jurisdictional, seeking information on where and how the infringement occurred.<sup>2303</sup> Complex damages calculations often become necessary, and discovery into the defendant's finances, including costs of production, overhead, and cost and expense allocation, among other matters, can be extensive. Protective orders may be sought where discovery pertains to the parties' financial affairs.

Much of the information sought during discovery will be maintained in electronic form. Discovery orders may be necessary to ensure that the form in which information is maintained is not utilized by the parties to hinder or obstruct the discovery process.<sup>2304</sup> Consider whether the parties should be re-

2300. See *Tech. Based Solutions, Inc. v. The Elecs. Coll., Inc.*, 168 F. Supp. 2d 375, 380 n.3 (E.D. Pa. 2001) (holding allegations of misappropriation, unfair competition, and unjust enrichment preempted by the Copyright Act but breach of contract claim appeared qualitatively different and would not be preempted); *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1072 (N.D. Cal. 2000) (trespass); *Ticketmaster Corp. v. Tickets.Com., Inc.*, No. CV99-7654, 2000 WL 525390, at \*3-4 (C.D. Cal. Mar. 27, 2000) (contract, unfair business practices).

2301. 28 U.S.C. § 1338(b) (West 2003).

2302. *Damiano v. Sony Music Entm't, Inc.*, No. CIV.A. 95-4795, 2000 WL 1689081, at \*1 (D.N.J. Nov. 13, 2000) (entering protective orders protecting confidentiality over discovery and depositions); *David J. Frank Landscape Contracting, Inc. v. La Rosa Landscape*, 199 F.R.D. 314, 315 (E.D. Wis. 2001) (denying entry of broad protective order where parties failed to explain why materials should be protected from disclosure); *Apple Computer, Inc. v. Micro Team*, No. C98-20164, 2000 WL 1897354, at \*1 (N.D. Cal. Dec. 21, 2000) (stipulated protective order); *Kleiner v. Burns*, No. 00-2160, 2000 WL 1909470, at \*3-4 (D. Kan. Dec. 15, 2000) (stipulated protective order).

2303. *Nat'l Football League v. Miller*, 54 U.S.P.Q.2d (BNA) 1574 (S.D.N.Y. 2000); *Citigroup, Inc. v. City Holding Co.*, 97 F. Supp. 549 (S.D.N.Y. 2000).

2304. See, e.g., *Williams v. E.I. du Pont de Nemours & Co.*, 119 F.R.D. 648, 650-51 (W.D. Ky. 1987) (permitting discovery of computerized database and encoding in Title VII action).

quired to provide print versions of extensive databases as opposed to transmitting the data in an electronic format. To the extent that print versions are supplied from electronic data, the court should address whether a party will be permitted to provide print versions that contain less information than their electronic counterparts. Additional information available in electronic format may include, for example, hidden notations (metadata) indicating changes or authors. The expense of access or production is also a factor. For example, in cases where reconstruction of data or recovery from obsolete formats is at issue, allocating the costs of electronic discovery may be appropriate.<sup>2305</sup> The committee note to Federal Rule of Civil Procedure 34 recognizes that the burden “will vary from case to case, and the courts have ample power under Rule 26(c) to protect respondent against undue burden or expense, either by restricting discovery or requiring that the discovering party pay costs.”

Data retention (or destruction) policies can also be an issue, and different computer back-up procedures may affect the availability, as well as the expense, of discovery. It is advisable to prohibit the routine deletion of relevant documents, particularly E-mail,<sup>2306</sup> and determine whether forensic analysis or mirroring of computer hard drives is appropriate. Where the risk of spoliation is high, ex parte seizure and forensic analysis of the offending party’s computer equipment and data-storage facilities may be warranted. However, these measures should not be undertaken lightly, as the economic impact of such measures could be substantial. To the extent a party is permitted access to the source of the electronic information, the court should address how the hard drive contents and data storage facilities will be analyzed for relevant materials. Trade secret and other sensitive or confidential information that is either undiscoverable or otherwise not relevant should be protected from disclosure, and retained computer forensic experts should be closely supervised. One approach is to utilize a court-appointed computer expert, who would be subject to a protective order precluding the disclosure of confidential information and otherwise protecting the privacy rights of the parties. In one case, the court-appointed computer specialist provided a mirror image of the defendant’s hard drive to the defendant’s counsel, who was then to review all recovered documents and produce those that were responsive to prior discovery requests. The defendant’s attorney was to be the “sole custodian” of both the mirror image disk and copies of documents retrieved from it over the course of the litigation.<sup>2307</sup>

2305. See *Williams*, 119 F.R.D. at 651.

2306. *Playboy Enters., Inc. v. Welles*, 60 F. Supp. 2d 1050, 1053 (S.D. Cal. 1999) (granting plaintiff’s request to search hard drive for deleted E-mail).

2307. *Id.* at 1055.

## 33.312 Motions

Motions for injunctive relief are frequently sought in copyright cases. The Copyright Act provides for a preliminary injunction “to prevent or restrain infringement of a copyright”<sup>2308</sup> and, although not automatic, injunctions are commonly granted where infringement is found.<sup>2309</sup> In copyright cases, irreparable harm will be presumed where a likelihood of success in the copyright claim has been shown.<sup>2310</sup> The fact that money damages may be quantifiable will not, in itself, preclude a finding of irreparable harm.<sup>2311</sup> Similar to the analysis under patent law, however, a finding of delay or laches on the part of the party in seeking injunctive relief can rebut a showing of irreparable harm.<sup>2312</sup> In addition to enjoining further infringing conduct, the court may order the defendant to recall the infringing products as part of the injunction.<sup>2313</sup> The circuits have adopted varying tests in analyzing whether injunctive relief is appropriate.

Summary judgment may be appropriate in cases where copying is not in dispute. Many copyright infringement cases, however, turn on the issue of substantial similarity, which usually must be resolved by the fact-finder.<sup>2314</sup> Summary judgment is available where the works are “so dissimilar as to protectible elements that no reasonable jury could find for the plaintiff on the question of substantial similarity.”<sup>2315</sup> In other cases, the similarities relate to nonprotected portions of the work, precluding infringement.<sup>2316</sup> Summary judgment is also warranted where preliminary issues, unrelated to “substantial similarity,” are dispositive, such as whether the plaintiff obtained a valid copyright<sup>2317</sup> or the rights of a licensee.<sup>2318</sup>

2308. 17 U.S.C. § 502(a) (2000).

2309. *See, e.g.*, eBay, Inc. v. Bidder’s Edge, Inc., 100 F. Supp. 2d 1058 (N.D. Cal. 2000).

2310. *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 611 (1st Cir. 1988).

2311. *Id.* at 611 (“[C]opyright protects the unique and somewhat intangible interest of creative expression. Unlike most property rights, the value of this interest is often fleeting.”).

2312. *See, e.g.*, *Nutrition 21 v. United States*, 930 F.2d 867, 872 (Fed. Cir. 1991) (substantial delay in period of time before seeking injunction sufficient to negate finding of irreparable harm).

2313. *CyberMedia, Inc. v. Symantec Corp.*, 19 F. Supp. 2d 1070, 1079 (N.D. Cal. 1998).

2314. *Hoehling v. Universal City Studios, Inc.*, 618 F.2d 972, 977 (2d Cir. 1980).

2315. *Sturdza v. U.A.E.*, 281 F.3d 1287, 1297 (D.C. Cir. 2002).

2316. *See, e.g.*, *Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763 (9th Cir. 2003); *Cavalier v. Random House, Inc.*, 297 F.3d 815 (9th Cir. 2002).

2317. *Coles v. Wonder*, 283 F.3d 798, 801–02 (6th Cir. 2002).

2318. *Gardner v. Nike, Inc.*, 279 F.3d 774, 780–81 (9th Cir. 2002).

### 33.313 Experts

Expert testimony in copyright cases is primarily focused on whether actual copying has occurred. “Copying may be established either by direct evidence of copying or by indirect evidence, including access to the copyrighted works, similarities that are probative of copying between the works, and expert testimony.”<sup>2319</sup> Thus, for example, in *Repp v. Webber*,<sup>2320</sup> expert testimony was probative on the similarities between two musical works, although a determination of whether in light of those similarities infringement had occurred was a question for the fact-finder.<sup>2321</sup> Similarly, “the opinions of experts may be called upon in determining whether there is sufficient similarity between the works so as to conclude that the alleged infringer ‘copied’ the work.”<sup>2322</sup> Once actual copying is established, the inquiry turns to whether the copying was “actionable.”<sup>2323</sup> Expert testimony may also be appropriate to explain technology or related processes,<sup>2324</sup> but it is generally not admissible on liability.

### 33.32 Trademarks

Trademark claims are governed by the Lanham Act.<sup>2325</sup> A trademark is “any word, name, symbol or device” used to “identify and distinguish” goods.<sup>2326</sup> Trademarks identify the source or origin of a product. To be accorded protection, the trademark must be “distinctive” or have become identified with a particular source through its use in “commerce.”<sup>2327</sup> The protec-

2319. *Laureyssens v. Idea Group Inc.*, 964 F.2d 131, 140 (2d Cir. 1992).

2320. 132 F.3d 882 (2d Cir. 1997).

2321. *See also Laureyssens*, 964 F.2d at 141 n.9 (noting that there had been no expert testimony as to the ability to create the challenged puzzle based on a visual inspection of the copyrighted puzzle “which would help to resolve whether a question of actual copying has been shown”).

2322. *Dam Things from Denmark v. Russ Berrie & Co. Inc.*, 290 F.3d 548, 562 (3d Cir. 2002).

2323. *Id.*; *see also Segrets, Inc. v. Gillman Knitwear Co.*, 207 F.3d 56, 62 (1st Cir. 2000) (“The test is whether the accused work is so similar to the plaintiff’s work that an ordinary reasonable person would conclude that the defendant unlawfully appropriated the plaintiff’s protectible expression by taking material of substance and value.” (quoting *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 607 (1st Cir. 1988))).

2324. *See, e.g., ILOG, Inc. v. Bell Logic, LLC*, 181 F. Supp. 2d 3, 11 (D. Mass. 2002) (noting that expert testimony would be “helpful to organize a particular program into various levels of abstraction”).

2325. 15 U.S.C. § 1051 (2000). The Lanham Act also covers service marks, which distinguish services of one person from another, and trade names. *See id.* § 1127.

2326. *Id.* § 1127.

2327. *Id.* § 1052(f).

tions offered by trademark law are less than those accorded copyright or patents. For instance, unlike owners of patents or copyrights, trademark owners do not have exclusive use of a mark. Protection extends only to prevent the mark from being used by others in a manner likely to cause confusion, mistake, or deception among consumers as to the source of the goods or services. For a discussion of survey research methods applicable to trademark litigation, see section 11.493. Courts have applied a number of factors to assess whether an allegedly infringing use is likely to cause consumer confusion. These factors include the similarity of the marks, the similarity of the parties' products and services, the strength of the plaintiff's mark, evidence of actual consumer confusion, the markets involved, likelihood of confusion, and the sophistication of buyers.<sup>2328</sup>

Trademarks are valid and enforceable as long as the mark is used in commerce, the owner adequately seeks to protect its rights to the mark, and the mark has not been abandoned or become generic.<sup>2329</sup> A mark need not be registered with the Patent and Trademark Office, although registration can be considered conclusive evidence of validity and ownership. Where the owner has met the incontestability requirements of section 1065 of the Lanham Act, an allegedly infringing defendant is limited to the defenses set forth in section 1115(b) of the Act.<sup>2330</sup> In addition, a federal trademark registration also affords the owner nationwide rights, well beyond the local geographic market where the mark is used. This attribute of federal registration affords wider protection than state registration. To enforce a trademark in a foreign country, however, the owner must comply with the trademark requirements of that country.

Many of the case-management considerations in a copyright case also apply to trademark cases. Similar issues arise relating to arbitrability, remedies sought, and the scope and issuance of protective orders. Motions for injunctive relief are common in trademark litigation and can be accompanied by requests for seizure of the allegedly infringing goods.<sup>2331</sup> The owner of a mark can also seek to freeze the assets of the defendant under certain circumstances.<sup>2332</sup> Damage to the goodwill associated with a trademark will usually meet the require-

2328. *In re E.I. DuPont de Nemours Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).

2329. *See, e.g., Barcamerica Int'l USA Trust v. Tyfield Imps., Inc.*, 289 F.3d 589, 595–98 (9th Cir. 2002).

2330. *Id.* § 1115(b).

2331. *Id.* § 1116(a). Seizure is usually available only where the infringing goods are counterfeits, and the Act sets forth certain requirements that must be met before a seizure order will issue. *Id.* § 1116(d); *see also Ironclad, L.P. v. Poly Am., Inc.*, No. CIV.A. 3:98-CV-2600, 2000 WL 1400762, at \*10 (N.D. Tex. July 28, 2000) (courts “routinely grant injunctive relief in trademark infringement actions”).

2332. *See Reebok Int'l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 588–61 (1992).

ments for irreparable injury, and a showing of the likelihood of consumer confusion together with evidence of prior rights in the mark are significant factors in demonstrating a likelihood of success on the merits.

Technological advances also affect the application of trademark law. Infringement of trademarks in cyberspace complicate issues of origin, affiliation, or sponsorship, as well as the extent of protection accorded trademark use in metatags,<sup>2333</sup> hyperlinks, and caching. Other considerations include the following:

- Is foreign commerce involved and extraterritorial jurisdiction sought?<sup>2334</sup>
- Are the issues presented purely equitable or do they include distinct legal claims that will require a jury trial? For example, whether the plaintiff is entitled to money damages upon a finding of infringement is a jury question. Where the jury awards no damages, leaving only equitable issues, courts have considered whether the jury verdict may be treated as advisory and enter a contrary verdict.<sup>2335</sup>
- Where the Internet forms the vehicle for the infringing activity, is the defendant subject to personal jurisdiction? Personal jurisdiction over nonresident owners of Web sites often turns on whether the site is active or passive.
- If the action is *in rem* against an infringing domain name, has the plaintiff met the requirements to bring an *in rem* action pursuant to the Anticybersquatting Consumer Protection Act?<sup>2336</sup>
- Has there been a request for expedited discovery?<sup>2337</sup>

2333. Metatags are index words in Web pages that identify the page to browsers.

2334. *Reebok Int'l*, 970 F.2d at 554–55.

2335. *See, e.g., Ironclad*, 2000 WL 1400762, at \*2–3.

2336. 15 U.S.C. § 1125(d)(2)(A) (2000).

2337. *See, e.g., Phila. Newspapers, Inc. v. Gannett Satellite Info. Network, Inc.*, No. CIV.A. 98-CV-2782, 1998 WL 404820, at \*3 (E.D. Pa. 1998) (denying motion for expedited discovery filed in conjunction with preliminary injunction motion where discovery sought was broad and voluminous and “without reasonable boundaries”).

## 34. CERCLA (Superfund)

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### 34.1 Introduction

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In 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9626 (1994), to respond to the growing problem presented by abandoned or inactive hazardous waste sites.<sup>2338</sup> CERCLA, often referred to as the Superfund, is premised on the “polluter pays” principle.<sup>2339</sup> It permits quick government response to

2338. Estimates of clean-up costs just for sites that were candidates for listing on the Environmental Protection Agency’s National Priorities List (NPL), and excluding Department of Energy facilities, have ranged from \$500 billion to \$750 billion. *See, e.g., United States v. A & N Cleaners & Launderers, Inc.*, 854 F. Supp. 229, 236 (S.D.N.Y. 1994) (citing Office of Tech. Assessment, *Assessing Contractor Use in Superfund*, reprinted in 17 Chem. Waste Litig. Rep. (Law Reps.) 715 (1989)). “[A]ccording to a survey of state hazardous waste officials conducted in 1998 by the Environmental Law Institute, states identified 69,000 ‘known and suspected sites.’ GAO and others have estimated the number of contaminated sites in the country to range from 150,000 to 500,000, although only a small percentage of these sites are likely to warrant placement on the NPL.” Katherine Probst & David Konisky, *Superfund’s Future: What Will It Cost?: A Report to Congress* 85 (2001).

2339. S. Rep. No. 96-848, at 13 (1980) (reflecting adoption of the principle that the polluter should pay for hazardous waste remediation).

threats presented by hazardous contaminants and seeks to place the ultimate cost of cleanup of hazardous sites directly on those responsible for the contaminants.<sup>2340</sup>

CERCLA's primary goal is to address threats to human health and the environment from the release or threatened release of hazardous substances.<sup>2341</sup> CERCLA directs the Environmental Protection Agency (EPA) to create and maintain, based on certain criteria, a prioritized list<sup>2342</sup> of hazardous sites eligible for cleanup under the Superfund. These sites form the basis for most CERCLA claims. Once the site has been listed, EPA undertakes a Remedial Investigation/Feasibility Study (RI/FS) to develop, among other things, alternative cleanup strategies and determine the scope of the remedial action. In the remedial investigation phase, EPA conducts a detailed investigation at the site, seeking information regarding all site operations, and the extent of contamination at the site.<sup>2343</sup> The feasibility study looks at remedial goals and alterna-

2340. See, e.g., *Tippins Inc. v. USX Corp.*, 37 F.3d 87, 92 (3d Cir. 1994) (“CERCLA . . . has its ‘bite’ in holding responsible parties financially accountable for the costs associated with a remedial action at hazardous waste facilities.”).

2341. Although CERCLA authorizes the President to undertake response actions, much of this authority has been delegated to EPA to function as the lead federal agency with responsibility for site cleanup pursuant to Exec. Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987). The authority to conduct certain response actions at certain sites under the jurisdiction, custody, or control of other federal agencies, however, has been delegated to those agencies. *Id.*

2342. This list is referred to as the National Priorities List (NPL). See 42 U.S.C. § 9601 (West 2003). If a site is not listed on the NPL, EPA may only undertake removal, not remedial, efforts using the Superfund. See, e.g., *SCA Servs., Inc. v. Thomas*, 634 F. Supp. 1355, 1382 (N.D. Ind. 1986). A removal action is considered a short-term cleanup and typically is undertaken to deal with an imminent threatened release. Expenditures by EPA are “limited by law to \$2 million and a duration of one year (unless a waiver is issued).” Probst & Konisky, *supra* note 2338, at 33.

2343. Section 104(e) of CERCLA grants EPA broad information-gathering authority, including access to information from persons who might know about the presence of hazardous wastes at the site, and it permits imposition of a civil penalty against anyone who unreasonably fails to comply with a section 104(e) information request. 42 U.S.C. §§ 9604(e), 9604(e)(5) (West 2003). See *United States v. Martin*, No. 99 C 1130, 2000 WL 1029188, at \*10 (N.D. Ill. July 26, 2000) (assessing a civil penalty of “\$75 per day for each of the 607 days the defendant unreasonably delayed” in responding to government information requests under section 104); *United States v. Barkman*, 784 F. Supp. 1181, 1190 (E.D. Pa. 1992) (“[The defendant’s] delay of over 700 days in answering completely the Information Requests of the EPA constitutes, by virtue of the duration itself, an unreasonable delay.”); *United States v. Tannery*, No. 99 C 1130, 1992 WL 1458802, at \*1 (N.D. Tex. Dec. 7, 1992) (imposing maximum penalty of \$13,452,324 on the defendant who failed to comply with the government’s information request). EPA will also have done extensive sampling and testing and may, in some instances, have undertaken a removal action to remedy an immediate hazard. 42 U.S.C. § 9604 (West 2003).

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tives. EPA then prepares a record of decision (ROD), which sets forth the remedy selected and the anticipated costs.<sup>2344</sup>

The cleanup then moves into an engineering phase to design the remedy, called remedial design, and finally into the remedial action phase, where the remedy is actually implemented. Depending on the nature and extent of the contamination and the cleanup technology selected, it can take many years—an average of 11.4 years—to complete a cleanup at an NPL site, especially a site involving contaminated groundwater.<sup>2345</sup> Complicating this process, EPA often initially divides a site into more than one “operable unit” corresponding “to different physical areas at a site or different environmental media (such as soil or groundwater).”<sup>2346</sup> To the extent that the site includes more than one operable unit, each unit goes through the process described above, although multiple operable units sometimes proceed through the process simultaneously.

EPA can bring a CERCLA action at almost any point in the remedial process with respect to any operable unit or the site as a whole. Remediation need

2344. See 40 C.F.R. § 300.430(c)(5)(I), (f)(4), (f)(5) (1990). The selection of the remedy in the ROD is governed by the National Contingency Plan (NCP) and is solely determined by EPA. EPA is required to publish a proposed plan for remediation in the Federal Register for public comment and then issue a ROD selecting the response action once public comments on the proposed plan have been considered. *United States v. Rohm and Haas*, 721 F. Supp. 666, 674, n.8 (D.N.J. 1989) (“The ROD presents the remedy in general terms and an estimate of its costs. The figure may change during the remedial design phase when detailed engineering plans are developed to implement the general remedial concept.”). Remedies must be in compliance with all applicable or relevant and appropriate requirements (ARARs), which include any federal and state cleanup standards or laws relating to a hazardous substance or remedial action (where more stringent than any federal requirement or contained in a program authorized by EPA). Probst & Konisky, *supra* note 2338, at 34; 42 U.S.C. § 9621(d)(2)(A)(i), (ii) (West 2003).

2345. U.S. GAO Rep. 97-20, *Superfund Times to Complete the Assessment and Cleanup of Hazardous Waste Sites 3* (Mar. 31, 1997). Completion of the remedy is assessed as of the date of completion of construction. EPA considers “remedial action complete when a system for pumping and treating contaminated groundwater has been installed, even though the system may have to operate for years before the contamination is reduced to acceptable levels.” *Id.* at 7. However, “[r]egardless of whether a site is on the NPL, and regardless of whether the EPA undertakes to clean it up or to order the PRPs [potentially responsible parties] to clean it up, a CERCLA site may be cleaned up by *any* party, including but not limited to a state, a locality, a corporation or an individual, who may then sue the PRPs for reimbursement directly under CERCLA § 107(a)(4)(A) [for states] or (B) [any other party] and/or § 113(f).” Maxine Lipeles, *Hazardous Wastes 277* (3d ed. 1997).

2346. U.S. GAO Rep., *supra* note 2345, at 7, 8. See, e.g., *United States v. Occidental Chem. Corp.*, 200 F.3d 143 (3d Cir. 1999) (EPA divided remediation into two operable units); *Kalamazoo River Study Group v. Rockwell Int’l*, 107 F. Supp. 2d 817, 819 (W.D. Mich. 2000) (“four Operable Units consisting of five disposal areas”).

not be complete before EPA acts. CERCLA requires only that there be an imminent release or threatened release of hazardous contaminants to initiate a governmental response, or that the government (or a private plaintiff undertaking cleanup) has incurred response costs.<sup>2347</sup> Many of the general principles applicable to complex litigation apply to CERCLA actions.<sup>2348</sup> A CERCLA case demands “the attention of the judge as an administrator, adjudicator and mediator like no other civil litigation . . . [C]ourts are called upon to employ procedures in the multi-party Superfund site cases to foster economy and fairness in a process which cannot be economical and often cannot be fair to all participants.”<sup>2349</sup> This subsection addresses some of the special features of CERCLA and discusses issues and problems peculiar to this type of litigation.<sup>2350</sup>

### 34.11 Statutory Framework

CERCLA cases often arise differently from most other complex litigation and can take several forms. Typically, the process begins after the government (usually EPA) has determined the need for a response action at the site. As part of its investigation, EPA may seek information regarding the identity of all persons or entities that may have owned or operated the site, or generated or transported hazardous substances found at the site. These persons or entities are statutorily liable under CERCLA and considered potentially responsible parties, or PRPs.<sup>2351</sup> CERCLA affords EPA (and, to a limited extent, private parties that undertake a cleanup effort) several options, the choice of which can shape the subsequent action:

- *Section 107 cost recovery actions.* Section 104 of CERCLA authorizes EPA to conduct certain response actions using monies from the Superfund. Removal actions are considered interim actions and defined

2347. See, e.g., *Romeo v. Gen. Chem. Corp.*, 922 F. Supp. 287, 289 (N.D. Cal. 1994) (suit may be filed once a party has incurred some recoverable response cost).

2348. See *infra* section 10.

2349. Stanley S. Brotman & Jerome B. Simandle, *Superfund Case Management and Settlement Processes*, C352 ALI-ABA 175, 177 Superfund and Toxic Substances (Dec. 1, 1988). For an excellent overview, see Ridgway M. Hall, Jr., et al., *Superfund Response Cost Allocation: The Law, the Science, and the Practice*, 49 Bus. Law. 1489 (1994).

2350. A number of useful resources provide a good overview of CERCLA and how it has been interpreted and applied by the courts, as well as by EPA. See Lipeles, *supra* note 2345; Robert V. Percival et al., *Environmental Regulation: Law, Science, and Policy* (4th ed. 2003); William H. Rodgers, *Environmental Law* (2d ed. 1994); Allan J. Topol & Rebecca Snow, *Superfund Law & Procedure* (1992 & Supp. 2003).

2351. 42 U.S.C. § 9607(a)(2) (West 2003).

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as those necessary to prevent the release of a hazardous substance,<sup>2352</sup> while remedial actions are defined as actions consistent with a permanent remedy “taken instead of or in addition to removal actions.”<sup>2353</sup> After EPA has incurred costs at the site and remedial actions are completed, the government can file a cost-recovery action against the PRPs under section 107 to recover those costs. Section 107 also permits innocent plaintiffs, i.e., persons who are not also responsible or potentially responsible parties, to file a cost-recovery action against responsible parties to recover all monies expended in cleaning up a hazardous facility. Liability to the government (as well as to “innocent plaintiffs”) under section 107 is typically joint and several; the appropriate allocation of responsibility among PRPs is typically addressed in private actions for contribution under section 113. These claims for contribution are often asserted as cross-claims or third-party claims by defendants in section 107 actions initiated by the government.

- *Issuance of a section 106 administrative order.* CERCLA section 106(a) authorizes the government to seek injunctive relief or to issue an administrative order compelling responsible parties to clean up, abate, or otherwise remediate contamination at a site where EPA has determined that there is an “imminent and substantial endangerment to the public health or welfare.”<sup>2354</sup> Incentives for cooperation are fairly strong: Failure to comply with an administrative order carries civil penalties up to \$27,500 per day for each violation occurring on or after January 30, 1997.<sup>2355</sup> PRPs who incur response costs in complying with an administrative order may seek contribution from other liable parties pursuant to section 113(9f)(1) of CERCLA, described below. Section 106 orders issued by EPA can name as few as one and as many as all PRPs at a site, and PRPs who refuse to comply with a section 106 order without “sufficient cause”<sup>2356</sup> do so at their peril.

2352. *Id.* § 9601(23).

2353. *Id.* § 9601(24).

2354. *Id.* § 9406(a).

2355. *Id.* § 9604(e)(5), amended by Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, and Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360 (Dec. 31, 1996) (to be codified at 40 C.F.R. pts. 19, 27). Penalties for violation of a section 106 order and treble damages under section 107(c)(3) are cumulative. 42 U.S.C. § 9607(c)(3) (West 2003).

2356. 42 U.S.C. § 9606(b)(1) (West 2003); *see* United States v. LeCarreaux, Civ. No. 90-1672, 1991 WL 341191, at \*25–27 (D.N.J. July 30, 1991) (financial condition not sufficient cause for failure to comply).

CERCLA explicitly precludes jurisdiction to review section 106 orders, except in an action by EPA to enforce an order or to recover penalties for its violation, in an action for reimbursement by participating PRPs under section 106(b)(2), or pursuant to a cost recovery action under section 107.<sup>2357</sup> Typically, EPA will first notify all identified PRPs of its intent to issue a section 106 order in an effort to encourage the PRPs collectively to undertake a remedial action.<sup>2358</sup> CERCLA encourages EPA to minimize litigation by facilitating agreements with PRPs.<sup>2359</sup> To the extent that the PRPs agree to a cleanup effort, the government will enter into a consent decree with cooperating parties, setting forth the work to be performed and the liabilities assumed.<sup>2360</sup> Even in cases where agreement has been reached and a consent order signed, judicial review may nonetheless arise where the PRPs subsequently challenge EPA actions (such as the remedy selected<sup>2361</sup>), oversight costs, consistency with the National Contingency Plan (NCP),<sup>2362</sup> or proposed set-

2357. 42 U.S.C. § 9613(h) (West 2003).

2358. *See id.* § 9622(d)(1)(A), (B). In 1995, EPA issued a new model consent decree, which eliminated a provision in its predecessor that “required defendants to commit to performing additional remedy actions in the event the original remedy failed.” Press Release, Dept. of Justice, EPA Announces Model Superfund Consent Decree Designed to Improve Superfund Settlements and Cleanups (July 14, 1995), 1995 WL 414063, at \*1 [hereinafter Model Superfund Consent Decree].

2359. 42 U.S.C. § 9622(a) (West 2003). *See also id.* § 9622(g)(1) (EPA will also negotiate settlements with de minimis PRPs (PRPs with extremely small volumetric contributions)); *United States v. Occidental Chem. Corp.*, 200 F.3d 143, 147 (3d Cir. 1999) (“It is through § 122 that PRPs may agree, as opposed to being ordered under § 106(a), to do the remedial work at a site in the first instance.”). Any sums recovered will be applied to reduce cleanup costs at the site. *See United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 91 (1st Cir. 1990) (“The statute immunizes settling parties from liability for contribution and provides that only the amount of the settlement—not the pro rata share attributable to the settling party—shall be subtracted from the liability of the non-settlers.”).

2360. *See CERCLA* §§ 122(d)(1)(A) & (B). It is not unusual for EPA to have reached agreement with PRPs to conduct an RI/FS. However, the PRPs’ failure to agree to undertake any other additional work at the site presents a challenge for subsequent efforts at settlement negotiation during litigation, as well as uncertainty as to total cleanup costs. *See Model Superfund Consent Decree*, *supra* note 2358.

2361. *See, e.g., In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 904–05 (5th Cir. 1993) (holding EPA could not recover costs for implementation of interim measure found to be “arbitrary and capricious”).

2362. *United States v. N.E. Pharm. & Chem. Co.*, 810 F.2d 726, 747–48 (8th Cir. 1986), *cert. denied*, 484 U.S. 848 (1987); *United States v. Am. Cyanamid Co.*, 786 F. Supp. 152, 158 (D.R.I. 1992); *United States v. Kramer*, 757 F. Supp. 397, 436 (D.N.J. 1991). The NCP is codified at 40 C.F.R. § 300 and specifies the procedures and requirements that apply to removal and remedial actions under CERCLA. Response actions by the government under section 107 must be

tlement agreements between EPA and other PRPs.<sup>2363</sup> In some cases, the primary PRP group may have reached a settlement and entered into a consent decree with the government on removal or remediation efforts, but failed to agree on reimbursement of past costs, which may trigger an action under section 107 by the government on that unresolved portion. Those PRPs that refuse to participate in cleanup actions or otherwise settle with EPA face issuance of the section 106 order, a possible enforcement action, or, if EPA has expended any monies at the site, a cost-recovery action under section 107.<sup>2364</sup>

- *Section 113 contribution actions.* Private-party PRPs may themselves incur response costs a number of different ways, including by reimbursing the government for its response costs through a judgment or settlement of a section 107 cost-recovery action; by performing actions pursuant to a section 106(a) administrative order; by performing response actions pursuant to a settlement agreement with the government; or even by performing a voluntary cleanup. Private-party PRPs generally will seek to recover an equitable portion of such costs from other PRPs through a contribution action under section 113(f)(a) of

consistent with the NCP. *United States v. Hardage*, 982 F.2d 1436, 1444 (10th Cir. 1992) (“Costs, by themselves, cannot be inconsistent with the NCP . . . As long as the government’s choice of response action is not inconsistent with the NCP, its costs are presumed to be reasonable and therefore recoverable.”). Response costs must be “consistent with” the NCP, as well, for actions by private parties under section 113. *See* 42 U.S.C. §§ 9607(4)(A) & (B) (West 2003). *See also* *Trimble v. Asarco, Inc.*, 232 F.3d 946, 956–57 (8th Cir. 2000) (where plaintiffs had no existing obligation to reimburse attorneys for response costs incurred on their behalf, they did not have a viable cost recovery claim); *Romeo v. Gen. Chem. Corp.*, 922 F. Supp. 287 (N.D. Cal. 1994) (response costs must be cognizable under CERCLA in order to make out prima facie case (citing *Ascon Props., Inc. v. Mobil Co.*, 866 F.2d 1149, 1153–54 (9th Cir. 1989))).

2363. *See, e.g., United States v. Am. Cyanimid Co.*, No. 2:93-0654, 1997 U.S. Dist. LEXIS 4413 (S.D. W. Va. Jan. 27, 1997) (summary judgment granted in part and denied in part for claims against sole PRP who refused to sign on to consent decree). *See also* *United States v. Ot-tati & Goss, Inc.*, 900 F.2d 429, 443–45 (1st Cir. 1990) (raising issue of whether EPA overhead costs could be reduced because EPA was at fault in delaying the litigation).

2364. *See, e.g., Occidental Chem. Corp.*, 200 F.3d at 153 (issuing of a section 106 order against the defendant after settlement negotiations failed); *United States v. LeCarreaux*, Civ. No. 90-1672, 1991 WL 341191 (D.N.J. July 30, 1991) (recalcitrant PRPs held liable for EPA response costs and treble damages in EPA enforcement action). Often PRP groups that have agreed to undertake a cleanup and enter into a consent order will have negotiated with EPA an agreement that nonparticipating PRPs be named in a section 106 order. EPA further has determined that “one important measure to encourage settlement is to maintain aggressive use of Section 106 administrative and judicial enforcement authorities to compel private party response.” *Memorandum: Interim Guidance: Streamlining the CERCLA Settlement Decision Process*, 17 *Envtl. L. Rep. (Envtl. L. Inst.)* 35014 (1987) [hereinafter *Streamlining*].

CERCLA. These actions are brought either as original claims or, where the original PRPs are defendants in a cost-recovery action, as third-party claims.<sup>2365</sup> In addition, PRPs that have settled with the government (e.g., pursuant to a consent order) or have otherwise undertaken a removal or remedial effort can file an action for contribution or indemnity under section 113 against nonsettling or nonparticipating PRPs. Where EPA allegedly failed to follow regulations and to perform nondiscretionary acts, section 113(h)(4) also permits citizen suits brought pursuant to section 310.<sup>2366</sup>

### 34.12 The Three Phases of CERCLA Litigation

Generally, CERCLA litigation will comprise three interrelated phases, each of which have case-management implications: (1) liability; (2) determination of remedy and recoverable costs, including challenges to response actions for which costs were incurred; and (3) equitable allocation of response costs among defendants. Cases that also involve government claims for damages for destruction, injury, or loss of natural resources may require an additional phase or may considerably complicate the first and second phases. In practice, issues may cut across these phases:

1. *Liability.* CERCLA imposes liability on four classes of defendants for cleanup of a site or facility: (1) past or present owners; (2) past or present operators; (3) generators; and (4) transporters.<sup>2367</sup> In order to make out a prima facie case, a plaintiff must show only that the defendant is a responsible party under section 107(a) (i.e., owner, operator, generator, or transporter) and that there has been a release or threatened release of a hazardous substance<sup>2368</sup> from a “facility”<sup>2369</sup>

2365. *But see* Aviall Servs., Inc. v. Cooper Indus., Inc., 263 F.3d 134, 137–38 (5th Cir. 2001) (costs incurred for voluntary cleanup not recoverable in contribution action in the absence of a federal or state action under CERCLA § 106 or § 107(a)).

2366. 42 U.S.C. § 9613(h)(4) (West 2003). *See* Schalk v. Reilly, 900 F.2d 1091, 1095 (7th Cir. 1990) (in order to prevent unnecessary delay, a citizen suit may not challenge a cleanup prior to completion of the remedy); *Ala. v. United States EPA*, 871 F.2d 1548, 1557 (11th Cir. 1989).

2367. 42 U.S.C. § 9607(a) (West 2003).

2368. *Id.* § 9601(22) defines a “release” as “any spilling, leaking, pumping, pouring, emitting, emptying, discharge, injecting, escaping, leaching, dumping, or disposing into the environment.”

2369. *Id.* § 9601(9) defines a “facility” as

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment,

that has caused the plaintiff to incur “response costs.” It is not necessary for the plaintiff to prove that the defendant “caused” the release, improperly disposed of the waste, or was otherwise “at fault.”<sup>2370</sup> Indeed, the plaintiff need only prove that some amount of response cost has been incurred in response to a release or threatened release of a hazardous substance.<sup>2371</sup> Moreover, where hazardous substances from multiple parties are commingled, the government need not establish that a particular defendant’s release caused the incurrence of response costs.<sup>2372</sup> CERCLA defenses are limited and, although disputes about whether a particular defendant qualifies as a responsible party under section 107(a) may require factual development, defendants have usually found it difficult to avoid liability.<sup>2373</sup> Some equitable defenses do exist in an action for contribution under section 113, however, and defenses that negate an element of liability are occasionally successful.<sup>2374</sup> Resolution of a PRP’s liability as soon as practicable can facilitate negotiations on allocation and settlement.

Liability is joint and several in government actions under CERCLA unless the defendant can prove that the environmental

ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or in any vessel.

2370. *See, e.g., Acushnet Co. v. Mohasco Corp.*, 191 F.3d 69, 77 (1st Cir. 1999) (“To satisfy the causal element, it is usually enough to show that a defendant was a responsible party within the meaning of [section] 9607(a); that cleanup efforts were undertaken . . . and that reasonable costs were expended during the operation.”).

2371. *United States v. Kramer*, 757 F. Supp. 397, 417 (D.N.J. 1991); *United States v. W. Processing Co.*, 734 F. Supp. 930, 936–37 (W.D. Wash. 1990).

2372. *United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 721 (2d Cir. 1993); *United States v. Rohm & Haas Co.*, 939 F. Supp. 1142, 1150 (D.N.J. 1996). (“[F]inding a causal connection between [defendant’s] wastes and USA-EPA’s costs is not required by statute.”).

2373. CERCLA § 107(b) provides a defense to liability for releases caused solely by acts of God, acts of war, or certain acts or omissions of unrelated third parties. 42 U.S.C. § 9607 (West 2003).

2374. *See, e.g., Gould, Inc. v. A & M Battery & Tire Serv.*, 232 F.3d 162, 170 (3d Cir. 2000) (Under the Superfund Recycling Equity Act, section 107(a) liability will not attach to persons “who arranged for recycling of a recycling material.”); *RSR Corp. v. Avanti Dev., Inc.*, 69 F. Supp. 2d 1119, 1126 (S.D. Ind. 1999) (“[A]rranger liability may be defeated when a defendant . . . was not disposing of, or delivering for treatment, a hazardous substance, but was selling a useful product.”); *but see United States v. A & N Cleaners & Launderers, Inc.*, 854 F. Supp. 229 (S.D.N.Y. 1994) (third-party defense and innocent landowner defense unavailable to PRP defendants when they failed to show they satisfied due care and precautionary requirements).

harm is divisible.<sup>2375</sup> In determining divisibility of harms, many courts have looked to section 433A of the Restatement (Second) of Torts (1965), which provides that “[d]amages for harm are to be apportioned among two or more causes where (a) there are distinct harms; or (b) there is a reasonable basis for determining the contribution of each cause to a single harm.”<sup>2376</sup> This is a narrower inquiry than that undertaken in allocating costs in contribution claims. However, factual issues relating to the divisibility of harm or apportionment may be closely related to factual issues concerning allocation. Even where these issues prove insufficient to defeat joint and several liability, they may be of critical importance in allocation.

2. *Determination of remedy and damages.* Under section 121(a) and (b)(1), remedies must be “cost effective.”<sup>2377</sup> EPA administrative action in selecting a remedy is likely to be determinative in a cost-recovery action by the government seeking to recover “response costs” incurred in a full or partial remediation at the site. In fact, CERCLA precludes judicial challenge of a selected remedy prior to its implementation.<sup>2378</sup> Any judicial review of the government’s choice of remedy is limited to the administrative record.<sup>2379</sup> However, parties can and do challenge, among other things, whether the

2375. See, e.g., *Centerior Serv. Co. v. Acme Scrap Iron & Metal Co.*, 153 F.3d 344, 348 (6th Cir. 1998) (“Given the nature of hazardous waste disposal, rarely if ever will a PRP be able to demonstrate divisibility of harm, and therefore joint and several liability is the norm.”). The legislative history of the Superfund Amendments and Reauthorization Act (SARA) reflects that Congress intended liability under CERCLA to be joint and several where appropriate. H.R. Rep. No. 99-253(I) (1985), at 74–75, reprinted in 1986 U.S.C.C.A.N. 2835, 2856.

2376. Restatement (Second) of Torts § 433A (1965). See *In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 895 (5th Cir. 1993); *Alcan Aluminum Corp.*, 990 F.2d at 722. See also *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1507 (6th Cir. 1989) (discussing liability requirements under Restatement (Second) of Torts § 875.).

2377. 42 U.S.C. §§ 9621(a), (b)(1) (West 2003). See, e.g., *United States v. Am. Cyanamid Co.*, 786 F. Supp. 152, 161 (D.R.I. 1992) (“As long as the actions taken by the government fit within the NCP, the costs are presumed reasonable.”).

2378. 42 U.S.C. § 9613(h) (West 2003).

2379. *Id.* § 9613(j). See *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1423–34 (6th Cir. 1991); *In re Acushnet River & New Bedford Harbor*, 722 F. Supp. 888, 890–92 (D. Mass. 1989); *United States v. Wastecontrol of Fla., Inc.*, 730 F. Supp. 401, 404 (M.D. Fla. 1989) (“Limiting judicial review of response actions to the administrative record also expedites the process of review, avoids the need for time-consuming and burdensome discovery, reduces litigation costs and ensures that the reviewing court’s attention is focused on the information and criteria used in selecting the response . . . .” (quoting H.R. Rep. No. 99-253, at 81 (1985), reprinted in 1986 U.S.C.C.A.N. 2835, 2863)); *United States v. Rohm & Haas Co.*, 669 F. Supp. 672, 676–77 (D.N.J. 1987).

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costs sought by EPA were “response costs”<sup>2380</sup> and whether the remedy was consistent with the NCP.<sup>2381</sup> When a private party brings a cost-recovery action, the burden is on the plaintiff<sup>2382</sup> to prove that the costs incurred were “necessary” at the time the remedial effort was undertaken (i.e., an actual threat existed) and that the costs were consistent with the NCP.<sup>2383</sup> In an action brought by the government, the burden is on the defendant.

3. *Allocation of response costs.* Allocation issues center on equitably apportioning the costs of cleanup among the defendants. Section 113(f)(1) provides that the court “may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.” Because allocation decisions require the application of a host of factors to a complex factual record involving a

2380. Recoverable response costs include (1) the costs of investigating and monitoring releases of hazardous substances and costs incurred in planning and undertaking response actions, including health assessment costs incurred by the Agency for Toxic Substances and Disease Registry (*Folino v. Hampden Color & Chem. Co.*, 832 F. Supp. 757, 763 (D. Vt. 1993)); (2) the costs of administration, including the response agency’s indirect costs associated with cleanups and related enforcement efforts (*United States v. Am. Cyanamid Co.*, 786 F. Supp. 152, 157 (D.R.I. 1992)); (3) the costs of contractors that perform or support response actions on behalf of the response agency (*United States v. Lowe*, 118 F.3d 399, 404 (5th Cir. 1997)); (4) the costs of attorney time and other litigation expenses incurred by the response agency and the Department of Justice (DOJ) (*United States v. Gurley*, 43 F.3d 1188, 1200 (8th Cir. 1994)); (5) DOJ indirect costs (*United States v. Findett Corp.*, 75 F. Supp. 2d 982, 989–90 (E.D. Mo. 1999); and (6) prejudgment interest (*United States v. Mottolo*, 695 F. Supp. 615, 631 (D.N.H. 1988)). Oversight costs, site security costs and actual costs for implementing a remedy also are recoverable. *See United States v. Ottati & Goss, Inc.*, 900 F.2d 429, 443–45 (1st Cir. 1990) (challenging EPA overhead costs because EPA was at fault in delaying the litigation); *Kelley v. Thomas Solvent Co.*, 790 F. Supp. 719 (W.D. Mich. 1990). Response costs have also been held to include natural resource damages that result from a release. 42 U.S.C. § 9607(a)(4)(C) (West 2003). A private plaintiff cannot recover natural resource damages, and any monies recovered by the government for natural resource damages are to be used to “restore, replace, or acquire the equivalent of such natural resources.” 42 U.S.C. § 9607(f)(1) (West 2003). *But see Struhar v. City of Cleveland*, 7 F. Supp. 2d 948, 951 (N.D. Ohio 1998) (response costs did not include medical monitoring).

2381. *See, e.g., United States v. Chapman*, 146 F.3d 1166, 1169 (9th Cir. 1998) (government must show that it incurred response costs); *United States v. Hardage*, 982 F.2d 1436, 1443–44 (10th Cir. 1992) (PRP could not show costs were inconsistent with the NCP simply by showing individual costs were excessive or unreasonable); *United States v. N.E. Pharm. & Chem. Co.*, 810 F.2d 726, 747–48 (8th Cir. 1986) (holding that defendants could not dispute costs as unreasonable when they were consistent with the NCP).

2382. *See Carson Harbor Vill., Ltd. v. Unocal Corp.*, 990 F. Supp. 1188, 1193 (C.D. Cal. 1997), *aff’d in part and rev’d in part*, 227 F.3d 1196 (9th Cir. 2000).

2383. *See Mass. v. Blackstone Valley Elec. Co.*, 867 F. Supp. 76 (D. Mass. 1994).

large number of parties, such decisions often represent the most challenging aspects of CERCLA cases.

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CERCLA has been roundly criticized as being draconian, inefficient, and costly, with millions of dollars spent on litigation and attorney fees rather than site cleanup. CERCLA liability virtually ensures that litigation will be complex and protracted for a number of reasons. The scope of liability is extremely broad, reaching a wide range of affected parties, from individuals and corporations, both domestic and foreign, to federal, state, and municipal governments, among others.<sup>2384</sup> CERCLA draws within its net not only current and past owners and operators of a contaminated facility, but also generators and transporters of any hazardous material that was sent to the site. The quality and quantity of the waste are not factors in assessing CERCLA liability and provide no grounds for PRPs to avoid liability.<sup>2385</sup> In addition, the courts have consistently construed CERCLA provisions expansively to “avoid frustrating [its] legislative purposes.”<sup>2386</sup> For example, “owner” or “operator” liability under section 107(a) has been extended to include, among others, shareholders,

2384. 42 U.S.C. § 9601(21) defines “person” as an “individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.”

2385. See *Acushnet Co. v. Mohasco Corp.*, 191 F.3d 69, 76 (1st Cir. 1999) (CERCLA does not require that there be some minimal quantity of hazardous waste before liability will attach); *B.F. Goodrich v. Betkoski*, 99 F.3d 505, 517 (2d Cir. 1996) (CERCLA’s “‘hazardous substance’ definition includes even minimal amounts”). However, the *Acushnet* court, following in the footsteps of the Second Circuit, stated that, in apportioning costs, fairness and equity could allow “a defendant [to] avoid joint and several liability for response costs in a contribution action under § 9613(f) if it demonstrates that its share of hazardous waste . . . constitutes no more than background amounts of such substances in the environment and cannot concentrate with other wastes to produce higher amounts.” *Acushnet Co.*, 191 F.3d at 77.

2386. *Anspec Co. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1247 (6th Cir. 1991).

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officers, employees, easement holders, lenders, and contractors.<sup>2387</sup> Issues surrounding the liability of parent companies for activities of their subsidiaries<sup>2388</sup> and of the liability of successor corporations<sup>2389</sup> are still being vigorously contested,<sup>2390</sup> as are issues related to liability for passive contamination. The issue centers on whether there is a distinction between “release” and “disposal,” and whether passive movement of contaminants is sufficient for PRP liability to attach under section 107(a).<sup>2391</sup> Commonly the problem, many sites targeted by

2387. *See, e.g.*, *United States v. Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990). This decision imposed lender liability and subsequently led to the clarification of CERCLA applicability to lenders in the Superfund Amendments and Reauthorization Act (SARA) amendments and the Asset Conservation, Lender Liab., and Deposit Ins. Prot. Act of 1996. H.R. 3610, 104th Cong. (1996). *See also* *Minyard Enter., Inc. v. Southeastern Chem. & Solvent Co.*, 184 F.3d 373, 380–81 (4th Cir. 1999) (contractor liable under CERCLA for contamination caused after rupturing underground storage tank during the process of removing it); *Redwing Carriers, Inc. v. Saraland Apartments*, 94 F.3d 1489, 1512 (11th Cir. 1996) (“[A] ‘disposal’ may occur when a party disperses contaminated soil during the course of grading and filling a construction site.”); *United States v. USX Corp.*, 68 F.3d 811, 822 (3d Cir. 1995) (“[CERCLA] § 107(a)(4) plainly imposes liability on corporate officers and shareholders if they participate in the liability-creating conduct.”); *Sidney S. Arst Co. v. Pipefitters Welfare Educ. Fund*, 25 F.3d 417 (7th Cir. 1994) (officer or shareholder may be liable under CERCLA when actually participating in operation of the facility); *Kaiser Aluminum & Chem. Corp. v. Catellus Dev. Corp.*, 976 F.2d 1338 (9th Cir. 1992) (contractor who spread contaminated soil over uncontaminated portions of property “disposed” of hazardous waste under CERCLA); *Tanglewood E. Homeowners v. Charles-Thomas, Inc.*, 849 F.2d 1568 (5th Cir. 1988) (person who moves contaminated soil can be a responsible party under CERCLA).

2388. *See, e.g.*, *United States v. Bestfoods*, 524 U.S. 51 (1998) (limiting operator liability of parent company for subsidiary activity to active participation or control or misuse of corporate form); *United States v. Township of Brighton*, 153 F.3d 307 (6th Cir. 1998) (municipality may be operator of waste dump where it made repeated and substantial appropriations to fund maintenance and to remedy substandard conditions); *Schiavone v. Pearce*, 79 F.3d 248, 253 (2d Cir. 1996) (The imposition of operator liability on a corporate parent for a subsidiary’s activity based on the parent’s control is supported by CERCLA’s statutory scheme, even though it may be inconsistent with “traditional rules of corporate liability.”); *United States v. TIC Inv. Corp.*, 68 F.3d 1082, 1091 (8th Cir. 1995) (parent corporation independently liable for activities of subsidiary); *USX Corp.*, 68 F.3d at 822 (liability compatible with goals of CERCLA). *See also* Richard B. Stewart & Bradley M. Campbell, *Lessons from Parent Liability Under CERCLA*, 6 *Natural Res. & Env’t* 7, 9 (1992).

2389. *See* *United States v. Mex. Feed & Seed Co.*, 980 F.2d 478 (8th Cir. 1992).

2390. *See* *Burlington N. & Santa Fe R.R. Co. v. Consolidated Fibers, Inc.*, No. Civ. A. 5:97-CV-219-C, 1998 WL 460285, at \*2 (N.D. Tex. July 24, 1998) (addressing issue of whether corporation was “dead and buried” and not amenable to suit at time CERCLA action filed).

2391. *See* *United States v. 150 Acres of Land*, 204 F.3d 698, 705 (6th Cir. 2000) (“Although early CERCLA decisions interpreted ‘disposal’ to include passive movement of substances (i.e., with no human activity), two circuits have recently limited ‘disposal’ to spills occurring by human intervention.”). *Compare* *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 227 F.3d 1196,

CERCLA are former hazardous waste disposal sites to which numerous companies may have sent waste over many years. Liability under CERCLA has been held to be retroactive and will attach for disposal or contamination that may have occurred in years prior to the statute's 1980 enactment.<sup>2392</sup> Indeed, one case considered whether CERCLA applied to a plant that had operated from 1886 to 1954.<sup>2393</sup> Consequently, the number of PRPs at a given site, and involved in the litigation, can number in the hundreds. These parties usually will be geographically dispersed, although CERCLA provides for nationwide service of process to ensure that these parties do not avoid, on jurisdictional grounds, responsibility for cleanup costs.<sup>2394</sup>

A CERCLA case also can be complicated because liability is strict, and CERCLA imposes liability without fault, as well as joint and several liability.<sup>2395</sup>

1205–06, *and* *Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 844–47 (4th Cir. 1992), *with* *United States v. CDMG Realty*, 96 F.3d 706, 710–11 (3d Cir. 1996), *and* *United States v. Petersen Sand & Gravel, Inc.*, 806 F. Supp. 1346, 1350–52 (N.D. Ill. 1992). Also unsettled is whether the disruption or movement of contaminated earth constitutes a “disposal.” *Compare* *Tanglewood E. Homeowners v. Charles-Thomas, Inc.*, 849 F.2d 1568, 1573 (5th Cir. 1988) (landfilling and grading by developer constitutes disposal), *with* *Alcan-Toyo Am., Inc. v. N. Ill. Gas Co.*, 881 F. Supp. 342, 345–46 (N.D. Ill. 1995) (owners’ excavation and stockpiling, which did not contribute to the preexisting contamination, did not constitute disposal). *See also* *Geraghty & Miller, Inc. v. Conoco, Inc.*, 234 F.3d 917, 929 (5th Cir. 2000) (possibility that environmental contractors caused migration of hazardous substances precludes summary judgment that contractors are not liable as generators); *Blasland, Bouck & Lee, Inc. v. N. Miami*, 96 F. Supp. 2d 1375, 1380 (S.D. Fla. 2000) (absent negligence, response-action contractor cannot be held liable for failing to remedy contamination but not worsening it).

2392. *See, e.g.*, *Gould, Inc. v. A & M Battery & Tire Serv.*, 232 F.3d 162, 169 (3d Cir. 2000) (Superfund Recycling Equity Act applied retroactively); *In re Penn Cent. Transp. Co.*, 944 F.2d 164, 166 (3d Cir. 1991); *United States v. Monsanto Co.*, 858 F.2d 160, 166–74 (4th Cir. 1988); *United States v. N.E. Pharm. & Chem. Co.*, 810 F.2d 726, 734 (8th Cir. 1986); *HRW Sys. v. Wash. Gas Light Co.*, 823 F. Supp. 318, 329 (D. Md. 1993); *City of Phila. v. Stepan Chem. Co.*, 748 F. Supp. 283, 289 (E.D. Pa. 1990); *Kelley v. Thomas Solvent Co.*, 714 F. Supp. 1439, 1443–45 (W.D. Mich. 1989); *O’Neil v. Picillo*, 682 F. Supp. 706, 729 (D.R.I. 1988), *aff’d*, 883 F.2d 176 (1st Cir. 1989). *But see* *United States v. Olin*, 927 F. Supp. 1502 (S.D. Ala. 1996), *rev’d*, 107 F.3d 1506 (11th Cir. 1997) (the sole exception to a uniform holding by the courts that the purpose and history of CERCLA reflected Congress’s intent that it be applied retroactively; the decision was reversed on appeal by the Eleventh Circuit).

2393. *See* *Fishbein Family P’ship v. PPG Indus., Inc.*, 871 F. Supp. 764 (D.N.J. 1994). *See also* *Allied Corp. v. Acme Solvents Reclaiming, Inc.*, 691 F. Supp. 1100, 1103 (N.D. Ill. 1988) (the relevant conduct spans nearly thirty years, and the operation had been closed for over fifteen years before the court’s ruling).

2394. 42 U.S.C. § 9613(e) (West 2003). Section 9613(e), however, does not authorize service of process in foreign countries. *United States v. Ivey*, 747 F. Supp. 1235 (E.D. Mich. 1990).

2395. *See* *United States v. Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988); *O’Neil*, 682 F. Supp. at 724–26; *United States v. Chem-Dyne*, 572 F. Supp. 802 (S.D. Ohio 1983). *But see* *United*

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Often, in cost-recovery actions brought under section 107, the government will name a limited number of PRPs as defendants, usually targeting those considered to have been the largest volumetric contributors of waste to the site. A defendant can avoid the imposition of joint and several liability only where it is able to show that the harm is divisible and can be reasonably apportioned.<sup>2396</sup> Defendants seeking to avoid joint and several liability bear the burden of proof on both divisibility and apportionment.<sup>2397</sup> As CERCLA liability can be extremely expensive, with site remedial costs averaging over \$26 million,<sup>2398</sup> the

*States v. A & F Materials Co.*, 578 F. Supp. 1249, 1252–57 (S.D. Ill. 1984) (adopting moderate approach based on Restatement (Second) of Torts, § 443(A), § 881 (1976), but vesting the court with discretion to impose joint and several liability, even where injury is indivisible, if a fair apportionment method is available). In actions for contribution brought under CERCLA § 113, courts have held that there is no joint and several liability among defendants. Instead, the court is to equitably “allocate response costs among liable parties.” 42 U.S.C. § 9613(f)(1) (West 2003). See *Redwing Carriers, Inc. v. Saraland Apartments*, 94 F.3d 1489, 1514 (11th Cir. 1996).

2396. See *Redwing Carriers, Inc.*, 94 F.3d at 1513 (“Recognizing Congress’ intent that ‘traditional and evolving common law principles’ should define the scope of liability under CERCLA, courts have looked to the Restatement (Second) of Torts, particularly § 433A, for guidance.” (citing *In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 895 (5th Cir. 1993))); *United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 721–24 (2d Cir. 1993); *In re Bell Petroleum*, 3 F.3d at 894; *United States v. Alcan Aluminum Corp.*, 964 F.2d 252, 269 (3d Cir. 1992). In *Kamb v. U.S. Coast Guard*, 869 F. Supp. 793, 799 (N.D. Cal. 1994), the court held that CERCLA liability could be apportioned where lead contamination at the site was divided into two discrete sections, one of which had not been used by defendants. Other courts have found imposition of joint and several liability appropriate where the site was geographically divisible. See *Pneumo Abex Corp. v. Bessemer & Lake Erie R.R. Co.*, 936 F. Supp. 1250 (E.D. Va. 1996) (reasonable basis for apportionment); cf. *United States v. Broderick Inv. Co.*, 862 F. Supp. 272, 277 (D. Colo. 1994) (defendant not jointly and severally liable where the harm was geographically divisible, contamination from one area has not merged or migrated to others, and defendant had no ownership interest in the land associated with one portion of site). However, although defendants have had some limited success in showing divisibility, more commonly defendants, even if able to prove the exact amount of waste they contributed to the site, find it difficult to prove the resulting proportionate harm to soil or groundwater. See *O’Neil v. Picillo*, 883 F.2d 176, 182 (1st Cir. 1989) (where, of 10,000 barrels excavated, only 300–400 could be attributed to any given defendant, defendants had burden of accounting for uncertainty); *United States v. Ottati & Goss, Inc.*, 630 F. Supp. 1361, 1396 (D.N.H. 1985) (“the exact amount or quantity of deleterious chemicals or other noxious matter” couldn’t be pinpointed to each defendant); *Chem-Dyne Corp.*, 572 F. Supp. at 811 (defendants failed to meet burden as to divisibility of harm).

2397. *New Castle County v. Halliburton NUS Corp.*, 111 F.3d 1116, 1121 n.4 (3d Cir. 1997); *United States v. Colo. & E. R.R.*, 50 F.3d 1530, 1535 (10th Cir. 1995). See also *In re Bell Petroleum*, 3 F.3d at 903 (“[W]hether there is a reasonable basis for apportionment depends on whether there is sufficient evidence from which the court can determine the amount of harm caused by each defendant.”).

2398. See GAO Rep. 96-125, *Superfund—Barriers to Brownfield Redevelopment 3* (June 26, 1996) (“EPA estimates that the average cost to clean up a site on the [NPL] . . . is \$26 mil-

specter of joint and several liability spread among only the few named PRPs, and the inclusion in section 113 of a right to contribution, encourage named PRPs to search out all other potential defendants in order to reduce the PRPs' own portion of the response costs.<sup>2399</sup> As a result, CERCLA actions can involve scores of defendants and third-party defendants, as well as multiple claims for indemnification and contribution.<sup>2400</sup>

Although CERCLA affords a right to contribution and indemnity, there is no consensus as to the statutory provision under which PRPs must proceed or the method of determining each PRP's share of liability. Circuits have generally found that non-innocent PRPs (i.e., PRPs who have liability at the site) cannot proceed under section 107 for cost recovery but are limited to bringing an action for contribution under section 113.<sup>2401</sup> The distinction is significant. Whereas there is a six-year statute for cost-recovery actions under section 107,<sup>2402</sup> actions under section 113 are subject to a three-year limitation period. Further, under section 107 a defendant sued for cost recovery may be jointly and severally liable, but would be only severally liable under section 113 where costs would be apportioned equitably by the court.<sup>2403</sup> Under either provision, however, there is no specified method of fair apportionment or factors to be considered, and models of apportionment or allocation vary widely and can result in complex technical inquiries.

Some CERCLA cases brought by the government become complex because the action may have been filed at the early stages of cleanup while administra-

lion.”); Katherine Probst, *Footing the Bill for Superfund Cleanups: Who Pays and How?* 1 (1995) (citing the average cost at \$29.1 million). Some site remedial costs have exceeded \$100 million. William D. Evans, Jr., *CERCLA's Third-Party Practice: Its "Cape Fear" Features*, 9-4 Mealey's Litig. Rep. Superfund 14 (May 24, 1996).

2399. Evans, *supra* note 2398, at 14 (“In April, 1996, the U.S. Environmental Protection Agency (EPA) announced that 56 PRPs had agreed to pay up to \$109 million to settle cleanup claims at the Fike/Artel Superfund Site in Nitro, West Virginia.”).

2400. See, e.g., *New York v. Exxon Corp.*, 744 F. Supp. 474 (S.D.N.Y. 1990) (including 15 primary corporate defendants and approximately 300 third-party defendants); *United States v. Stringfellow*, 661 F. Supp. 1053 (C.D. Cal. 1987) (with more than 100 parties).

2401. See, e.g., *New Castle County*, 111 F.3d at 1121; *Pinal Creek Group v. Newmont Mining Corp.*, 118 F.3d 1298, 1301–06 (9th Cir. 1997); *Redwing Carriers, Inc.*, 94 F.3d at 1497 n.4; *Colo. & E. R.R. Co.*, 50 F.3d at 1535–37; *Akzo Coatings, Inc. v. Aigner Corp.*, 30 F.3d 761, 764 (7th Cir. 1994); *United Techs. Corp. v. Brown-Ferris Indus., Inc.*, 33 F.3d 96, 98 (1st Cir. 1994). *But see* *Town of Wallkill v. Tesa Tape, Inc.*, 891 F. Supp. 955, 959–60 (S.D.N.Y. 1995) (both private and governmental PRPs can maintain claims under both section 107 and section 113); *United States v. SCA Servs., Inc.*, 849 F. Supp. 1264 (N.D. Ind. 1994).

2402. 42 U.S.C. § 9613(g)(2) (West 2003).

2403. Hope Whitney, *Cities and Superfund: Encouraging Brownfield Redevelopment*, 30 Ecology L.Q. 59, 76–77 (2003).

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tive proceedings are still ongoing. In such instances, “the litigation in the courthouse proceeds in a clumsy pas de deux with the administrative process before the agency.”<sup>2404</sup> The status of the cleanup at the time the action is filed can significantly affect both the progress of the litigation and any settlement efforts. Full information regarding the extent of contamination, including scope as well as composition, may not be available. Similarly, estimates of the total cost of remediation, central to allocation and settlement decisions, will not have been made or may still be in the early stages of development, hindering the possibility of a global settlement. Where administrative proceedings are ongoing, it is imperative that the court be informed early on of the administrative status in order to assess its likely effect on the progress of the litigation and on allocation and settlement efforts.

Efficient management of CERCLA litigation helps prevent it from overwhelming the court and the parties and assists in reducing delay. Case-management strategies differ depending on whether the case is brought by the government or by private parties and under which provision of the statute. A critical factor is the number of PRPs. Fairly small sites with a small number of PRPs will not require the oversight necessary in actions arising from larger sites. Cost-recovery and contribution actions that involve numerous parties expand the factual and legal issues. PRPs look for any avenue of escape in an attempt to either avoid or minimize CERCLA exposure, and a court can expect challenges raising a variety of issues.<sup>2405</sup>

2404. Brotman & Simandle, *supra* note 2349, at 188. “Discovery is being taken in the courthouse to identify new parties while the agency propounds section 104 information requests. The Record of Decision (ROD) for Phase I of a cleanup may be under judicial review while the parties battle before the agency in the Phase II RI/FS process; settlement of Phase I issues in court may also depend on the Phase II administrative process coming into focus. Efforts by PRPs in court to allocate liability shares among themselves may deter the agency from preparing a ‘nonbinding preliminary allocation of responsibility’ (NBAR) under SARA § 122(e)(3).” *Id.*

2405. *See, e.g.*, *United States v. Alcan Aluminum*, 964 F.2d 252 (3d Cir. 1992) (also holding that CERCLA liability does not require the presence of a “threshold quantity of a hazardous substance”); *United States v. Alcan Aluminum*, 755 F. Supp. 531, 537 (N.D.N.Y. 1991) (presence of a hazardous substance in waste sufficient for CERCLA liability); *United States v. Carolawn Co.*, 21 *Env’t. Rep. (BNA)* 2124, 2126 (D.S.C. 1984) (rejecting defendant’s argument that hazardous constituents in waste in negligible amounts were not sufficient to meet CERCLA’s “hazardous waste” definition). *See also* *Textron, Inc. v. Barber-Coleman Co.*, 903 F. Supp. 1570, 1581 (W.D.N.C. 1995) (rejecting argument that hazardous substances had biodegraded over time and therefore did not cause contamination that required remediation); *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 238–41 (W.D. Mo. 1985) (rejecting defendants’ argument that their provision of lime slurry and fly ash for cleanup of an environmental site could not expose them to CERCLA liability); *New York v. Gen. Elec. Co.*, 592 F. Supp. 291, 297 (N.D.N.Y.

There are several questions that recur in CERCLA litigation:

- *What is the status of site cleanup and the impact on the litigation of the process?* For example, have any consent decrees been entered in the case, and what do they cover? Nonsettling PRPs may also challenge proposed settlement consent decrees between the government and other parties.<sup>2406</sup> Has the action been brought by the government to recover the costs of early response actions at the site, while remedial decisions remain pending?<sup>2407</sup> Is the remedy for the site appropriate and consistent with the NCP, eliminating those challenges from the litigation?<sup>2408</sup> What is the history of settlement negotiations and the best way to structure a settlement process?<sup>2409</sup> In cases where remedial decisions have yet to be made, is a stay of the litigation appropriate?

1984) (rejecting argument that used transformer oil, sold to control dust, was a product not subject to CERCLA); *United States v. A & F Materials Co.*, 582 F. Supp. 842, 844–45 (S.D. Ill. 1984) (sale of spent “caustic solution” could be a waste for purposes of CERCLA). *But see* 3550 *Stevens Creek Assoc. v. Barclays Bank*, 915 F.2d 1355 (9th Cir. 1990) (use of asbestos as a building material did not constitute hazardous waste for purposes of CERCLA).

2406. *See, e.g.*, *United States v. Kramer*, 19 F. Supp. 2d 273, 276 (D.N.J. 1998) (non-settling defendants raised numerous objections to a proposed consent decree between the government and settling defendants).

2407. *See, e.g., id.* (cost-recovery action filed by government because of imminent expiration of statute of limitations on an initial removal action, although remedy had not yet been implemented).

2408. In most cases the remedy (i.e., how the site is to be cleaned up) has been administratively selected by EPA. PRPs can and do raise challenges to the appropriateness of the remedy, as well as to costs that EPA (or private parties) are seeking to recover. An example of a challenge to the remedy might be that EPA is demanding the groundwater be made “drinking water” safe where the water table is not used for residential purposes. Challenges to costs being sought by EPA are typically based on the assertion that the costs were incurred pursuant to response actions inconsistent with the NCP. *United States v. Kramer*, 757 F. Supp. 397, 436 (D.N.J. 1991). However, arguments that costs are the result of response actions inconsistent with the NCP are not defenses to liability, but only to the recovery of specific costs. *Ill. v. Grigoleit Co.*, 104 F. Supp. 2d 967, 980 (C.D. Ill. 2000); *United States v. Cantrell*, 92 F. Supp. 2d 704, 717 (S.D. Ohio 2000). Where the action involves private parties seeking cost recovery, the burden is on the plaintiff to prove that the response actions for which the costs were incurred were “necessary” and “consistent with” the NCP. 42 U.S.C. § 9607(a)(4)(B) (West 2003); *City of Heath v. Ashland Oil, Inc.*, 834 F. Supp. 971, 976 (S.D. Ohio 1993). Response actions “carried out in compliance with the terms of an order issued by EPA pursuant to section 106 of CERCLA, or a consent decree entered into pursuant to section 122 of CERCLA will be considered ‘consistent with the NCP.’” 40 C.F.R. § 300.700(c)(3)(ii) (2003). Other response actions must be in “substantial compliance” with the NCP to allow for private cost recovery. *Id.* § 300.700(c)(3), (c)(5)–(6).

2409. Defendants may seek a global settlement of the litigation, which may be difficult to achieve where remedial decisions remain.

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- *What is the likely size and scope of the case?* Is referral to a magistrate judge, special master, or allocation consultant warranted in light of the likely size of the case? Are there sizeable groups of *de minimis* or *de micromis* litigants, and is it possible to settle these groups out early in the litigation? What is the feasibility of exercising supplemental jurisdiction over state law claims given the size and posture of the case? Can the case be segmented and phased and, if so, what sequence will best facilitate resolution?
- *What costs are being sought and what is the best structure for achieving a fair allocation among the PRPs?* Relevant to this inquiry is whether the plaintiff can prove causation and whether any PRP will be able to show divisibility of harm given the characteristics of the site and the contamination. Although CERCLA is a strict liability statute, PRPs nonetheless frequently challenge causation. Most courts have held that proof of liability under CERCLA requires only that the plaintiff prove the PRP deposited waste at a site from which there was a release or threatened release, and the government, particularly, is not required to “fingerprint” waste.<sup>2410</sup> Other factors that can affect the costs recovered by the government, or equitable allocation among the PRPs in contribution claims, include the size of the “orphan shares” and how they are handled. Orphan shares are the shares of companies that are out of business, bankrupt, or dissolved and therefore cannot be assigned a share of responsibility.

2410. See, e.g., *Kalamazoo River Study Group v. Menasha Corp.*, 228 F.3d 648, 654 (6th Cir. 2000); *Alcan Aluminum Corp.*, 964 F.2d at 266. *But see Idaho v. Bunker Hill Co.*, 635 F. Supp. 665, 674 (D. Idaho 1986) (finding damage for which recovery is sought must still be causally linked to the act of the defendant where plaintiff is seeking recovery for injury to natural resources). Actual contamination of the plaintiff's property is unnecessary. *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 889 F.2d 1146, 1154 (1st Cir. 1989). Moreover, a plaintiff is not required to prove either that the specific defendant's waste was “released” at the site or that it caused actual contamination, to establish liability. *United States v. Alcan Aluminum*, 990 F.2d 711, 721 (2d Cir. 1993); *United States v. Monsanto Co.*, 858 F.2d 160, 169 (4th Cir. 1988); *Artesian Water Co. v. New Castle County*, 659 F. Supp. 1269, 1281–82, *aff'd*, 851 F.2d 643 (3d Cir. 1988) (neighboring owners may recover response costs incurred as the result of the threat that wastes from a hazardous site could migrate into their wells). However, several courts have held that defendant's waste must have caused the plaintiff to incur response costs before liability can be imposed. See *Acushnet Co. v. Coaters, Inc.*, 937 F. Supp. 988, 994–96 (D. Mass. 1996) (where plaintiffs were unable to prove that the defendant's creosote-treated utility pole butts contributed to response costs incurred by the plaintiffs, defendant would be absolved of CERCLA liability); *Dedham Water Co.*, 889 F.2d at 1152–54 (defendant's waste must have caused the plaintiff to incur response costs through either release or threatened release before liability can be imposed). In addition, causation is a major player in pendent state tort claims for negligence.

### 34.21 Setting Up the Case

Early institution of an initial case-management order will help organize the case, provide a preliminary identification of legal and factual issues, and educate the court as to the potential size and complexity of the litigation. The case-management order can then be revised as the case progresses. Counsel will welcome a detailed agenda in advance of the conference. It is also helpful to caution the parties to anticipate schedules with firm deadlines for the filing of third-party claims or cross-claims for contribution and indemnity, amendment of the pleadings, the filing and hearing of motions, and the joinder of additional PRPs identified as the litigation progresses. Timely joinder of all PRPs is an important facet of judicial management in a CERCLA case. The court should closely monitor identification of PRPs as discovery progresses. Discuss with counsel the feasibility of an on-line depository for docket information, orders, opinions, or other information that the court or the parties may want to disseminate.

In addition to items recommended in section 11, the following actions are worth considering early on in the case and can be effected either through an order *sua sponte* or through a case-management order issued in conjunction with the initial Federal Rule of Civil Procedure 16 conference:

- consider whether the case is appropriate for liaison or joint counsel, soliciting views of the parties in the method of selecting such counsel, and establishing litigation committees or subcommittees to facilitate communications between various groups of parties, liaison counsel, and the court;
- consider whether the case should be bifurcated or trifurcated into two or more phases, such as liability, amount, and recoverability of response costs and allocation;
- order the early exchange of information between the parties regarding the identity of all known PRPs, including those documents reflecting a party's relationship with the site, and the production by the government to PRPs of all files relating to the site, including documents reflecting the history, operation, investigation, sampling, monitoring, and remedial actions at the site—where EPA is a party, it can be ordered to produce the data it has collected through its site investigation as well as the PRP responses to information requests under section 104(e), and its official record of decision created to determine the appropriate response under section 113(k);
- identify separate private party or government cases regarding the same site, and any pending state or administrative actions at the site, and

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- consider whether to consolidate private party and/or government cases;
- identify any other proceedings arguably related to the CERCLA case (e.g., toxic tort, insurance, bankruptcy);
  - require parties to disclose the settlement history, if any, and inquire into the existence of nonbinding allocation agreements or other preliminary allocation attempts—section 122(e)(3) encourages the government to provide a nonbinding preliminary allocation of responsibility (NBAR) to facilitate settlement negotiations (NBARs are not admissible);
  - if the action is based on a settlement consent decree, establish the type of consent decree, whether the decree includes all PRPs, and whether the parties anticipate objecting to or opposing the consent decree or the existence of any other procedural or substantive issue; persons or entities seeking to oppose the entry of the consent decree may seek leave to intervene during the public notice period triggered by the notice of lodging of the consent decree;
  - determine whether the case would benefit from a stay of litigation to allow the parties to engage in serious settlement negotiations or, alternatively, whether the use of alternative dispute resolution strategies would be helpful;<sup>2411</sup>
  - encourage early discussions for *de minimis* settlements to minimize the transaction costs incurred by small contributors—one commentator has estimated that “those costs can easily reach \$200,000–\$300,000 every six months for small groups of *de minimis* or mid-volume PRPs”;<sup>2412</sup>
  - create a schedule for the identification, discovery, and coordination of experts—a case-management order can promote cordial discussion, providing that discussions among groups of litigants will not constitute evidence of a conspiracy and that an expert’s inadvertent disclosure of confidential information during such discussion will not waive trade-secret or attorney work-product protections (in cases brought by the government, the nature and scope of permissible expert testimony may be more limited than expert testimony relevant in private party contribution actions. (For example, in government cost-recovery

2411. See, e.g., Lauren Stiller Rikleen, *Managing Complex Environmental Disputes: From Superfund to Brownfields—A Model Still Evolving*, 31 Urb. Law. 591, 598–99 (1999).

2412. Martin A. McCrory, *The Equitable Solution to Superfund Liability: Creating a Viable Allocation Procedure for Businesses at Superfund Sites*, 23 Vt. L. Rev. 59, 83 (1993).

cases, expert testimony might be limited to liability issues, divisibility questions, and cost-accounting matters. Consider the schedule of expert identification and discovery in conjunction with the various phases of the litigation. For example, expert testimony or allocation issues in private party contribution cases will not be necessary until the contribution claims are prepared and tried, which, in a case initiated by a government cost-recovery action, is often in the third phase of litigation.);

- establish a schedule for filing and hearing of motions;
- require each side to meet and agree on a statement of the factual and legal issues in dispute, including defenses being asserted to liability and any challenges to government action, particularly challenges to the selection of remedy; stipulations as to liability, or to elements of liability, are useful in streamlining the case, particularly where the parties can agree that such issues are not seriously in dispute; and
- determine the need for a document repository and other shared databases.

### 34.22 Special Masters and Magistrate Judges

Generally, the use of special masters in CERCLA cases has been approved only for limited pretrial purposes. Several circuits have specifically rejected reference to a special master to make recommendations on dispositive motions or to preside at trial in CERCLA cases.<sup>2413</sup> Circuits have approved reference where there is a need for extraordinary pretrial management as a result of the large number of parties and vast amounts of evidence, in light of the significant technical issues that pervade CERCLA litigation.<sup>2414</sup> Special masters may also prove helpful in analyzing the database and assisting in the development of an allocation model.<sup>2415</sup> Allocation inquiries typically involve technically complex

2413. *In re United States*, 816 F.2d 1083 (6th Cir. 1987) (reference rejected for dispositive motions and trial even though there were over 200 defendants and over 600 third-party defendants in the case); *In re Armco, Inc.*, 770 F.2d 103 (8th Cir. 1985). *But see* *Washington v. United States*, 930 F. Supp. 474 (W.D. Wash. 1996) (objections to the magistrate judge's report and recommendation sustained on summary-judgment motion).

2414. *See generally* Thomas E. Willging, Loral L. Hooper, Marie Leary, Dean Miletich, Robert Timothy Reagan & John Shapard, *Special Masters' Incidence and Activity: Report to the Judicial Conference's Advisory Committee on Civil Rules and Its Subcommittee on Special Masters* (Federal Judicial Center 2000).

2415. *See, e.g.*, *Chem-Nuclear Sys., Inc. v. Clinton*, No. CIV96-1233, 2000 WL 1898476, at \*1 (D.D.C. Sept. 18, 2000) (magistrate judge appointed as special master "for the purpose of recommending findings of fact and conclusions of law on all issues presented" to the court).

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issues and review of sampling data, waste synergies, migration, and toxicity, as well as the remedial measures proposed. Reference to a magistrate judge may be appropriate for discovery, particularly to ensure the identification of all necessary PRPs. Reference also may facilitate settlement negotiations, thereby limiting the district judge's involvement and preserving the ability to preside on dispositive motions and at trial.<sup>2416</sup>

### 34.23 Related Litigation

The court and parties may need to make special efforts to identify cases and claims that are related to the CERCLA case. Such proceedings may include actions under other federal environmental statutes, such as the Resource Conservation Recovery Act (RCRA) or the Clean Water Act (CWA), as well as state judicial or administrative proceedings to enforce CERCLA-type laws. The degree of federal–state cooperation will vary. In many instances, however, both federal and state agencies are involved in cleanup enforcement actions and will be working together. In addition, CERCLA requires that any remedies comply with “all applicable or relevant and appropriate requirements” of state environmental laws, potentially adding additional issues to the CERCLA suit.<sup>2417</sup> States also may proceed under state-administered RCRA programs.<sup>2418</sup> In some instances, state requirements may be more stringent than comparable RCRA provisions.<sup>2419</sup> CERCLA also provides for citizen suits under certain circumstances, which could arise in separate actions. Superfund Amendments and Reauthorization Act (SARA) § 310(a) allows citizen suits against any person (including the government) “alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective” or against the government where it has failed “to perform any act or duty [under CERCLA] . . . which is not discretionary.”<sup>2420</sup> Because SARA also contains provisions limiting preenforcement review, the courts have split over how to handle citizen enforcement, including enforcement of other federal laws.<sup>2421</sup>

<sup>2416</sup> For an example of a case where a magistrate judge was used both to manage discovery matters and to serve as settlement judge, see *United States v. Kramer*, 19 F. Supp. 2d 273, 278 nn.7 & 9 (D.N.J. 1998).

<sup>2417</sup> 42 U.S.C. § 9621(d)(2), (3) (West 2003).

<sup>2418</sup> See *id.* § 9626(b).

<sup>2419</sup> *Id.* See also Lipeles, *supra* note 2345, at 100.

<sup>2420</sup> 42 U.S.C. § 9659(a)(1) (West 2003).

<sup>2421</sup> See Topol & Snow, *supra* note 2350, § 2.7 and cases cited in supplement (“[C]ourts have shown a reluctance to permit the citizen suit provisions to serve as the basis for avoiding SARA’s prohibition against pre-enforcement review.”); Marianne Dugan, *Are Citizen Suits CERCLA § 113(h)’s Unintended Victims?*, 27 *Envtl. L. Rep.* (Envtl. L. Inst.) 10003 (Jan. 1997).

Further, although CERCLA cases are statutory and do not involve personal injuries, the same release of hazardous substances into the environment that triggers a statutory action may also be the basis for toxic tort cases, implicating the same defendants and raising similar issues. Other private state law claims, filed in state court or in federal court based on diversity, include insurance coverage disputes and tort claims for personal injury or property damage, typically based on negligence, nuisance, trespass, or strict liability. Finally, one or more PRPs may be in bankruptcy, introducing yet another layer of complexity.<sup>2422</sup>

If there is related litigation, consider whether coordination with the CERCLA litigation is feasible. For example, coordination of insurance coverage litigation with a CERCLA case could enhance the prospect of settlement of both groups of cases. Discovery of insurance information, however, should proceed as permitted under Rule 26(b). The same group of insurers often will have carried the policies for many of the PRPs. The court may want to avoid any formal consolidation, however, because the principal issues in these actions are distinct. Insurance litigation turns on contractual arrangements.<sup>2423</sup> Incorporating coverage questions into a larger CERCLA action can involve numerous insurers located across the country and can require application of the laws of different states. As noted by one jurist, not only are state courts “better prepared” to decide coverage cases, but “even if similar insureds were grouped together into ‘omnibus’ declaratory judgment motion practice, individual situations might not be congruent.”<sup>2424</sup> In addition, coverage litigation can involve more than one waste site at which the insured is a PRP, and therefore involve facts and issues not relevant to the CERCLA litigation at hand. Consider, however, whether an early order requiring production of documents and depositions produced during discovery in related cases would assist in streamlining discovery in the CERCLA case.<sup>2425</sup>

2422. Generally, governmental regulatory actions, such as EPA actions under CERCLA, are exempt from the automatic stay provisions of the Bankruptcy Act, but a money judgment obtained in a CERCLA proceeding cannot be executed without approval from the bankruptcy court. 11 U.S.C. § 362(b)(4) (West 2003). *See, e.g.*, *United States v. Nicolet, Inc.*, 857 F.2d 202, 209–10 (3d Cir. 1988). *See also* Topol & Snow, *supra* note 2350, § 7.7.

2423. *But see* *City of New Orleans v. Kernan*, 933 F. Supp. 565, 568 (E.D. La. 1996) (holding that the district court “can and should exercise” supplemental jurisdiction over state insurance claims arising out of CERCLA litigation to effect an orderly resolution of the case).

2424. Brotman & Simandle, *supra* note 2349, at 187.

2425. For a consideration of the factors involved in obtaining orders placing the case file under seal, *see infra* § 11.432.

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The court should also consider whether it is appropriate to exercise supplemental jurisdiction over state law claims<sup>2426</sup> or whether to reject such jurisdiction to avoid unduly complicating the litigation.<sup>2427</sup> In cases involving out-of-state defendants, typical in CERCLA actions, constitutional, statutory, and fairness issues arise when nationwide service of process is used to obtain personal jurisdiction over parties to supplemental state law claims lacking an independent basis for federal jurisdiction.<sup>2428</sup> Such issues include whether state law claims introduce a right to a jury trial in a case that otherwise would be a bench trial, and whether the jury's findings of fact affect the outcome of what would otherwise be nonjury issues.<sup>2429</sup>

### 34.24 Organizing Counsel<sup>2430</sup>

CERCLA cases are strong candidates for the appointment of liaison or lead counsel, in light of the number of parties usually involved in such cases. Counsel should (1) be sensitive to conflicts between their role as liaison counsel and the representation of their individual client; (2) keep all other counsel informed and encourage their participation in the direction of the group's strategy; and (3) ensure that a balance is maintained between the "common needs of the group and the divergent needs of an individual member . . . ."<sup>2431</sup>

Organization of counsel is essential in order for the court and the parties to be able to communicate effectively. It minimizes duplicative discovery and

2426. See 28 U.S.C. § 1367(a) (West 2003) (creating supplemental jurisdiction for claims related to federal question actions). See also *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1050 (2d Cir. 1985) (upholding supplemental jurisdiction over a state law nuisance claim in a CERCLA suit); *Kernan*, 933 F. Supp. at 568 (exercising supplemental jurisdiction over insurance claims); *N.J. Dep't of Env'tl. Prot. v. Gloucester Env'tl. Mgmt. Servs., Inc.*, 719 F. Supp. 325, 334–35 (D.N.J. 1989) (court exercised jurisdiction over state claims even after EPA, which had removed case from state court, was dismissed from the litigation).

2427. See, e.g., *Struhar v. Cleveland*, 7 F. Supp. 2d 948, 954 (N.D. Ohio 1998) (refusing to exercise pendent jurisdiction over plaintiff's state claims after granting summary judgment to defendant on the federal claims arising under CERCLA); *Commerce Holding Co. v. Buckstone*, 749 F. Supp. 441, 446–47 (E.D.N.Y. 1990) (differences in legal issues, standards of proof, a right to jury trial, and remedies warrant exercise of discretion to dismiss pendent state claims without prejudice). See generally *Topol & Snow*, *supra* note 2350, § 7.3, n.29.

2428. See Jon Heller, *Note, Pendent Personal Jurisdiction and Nationwide Service of Process*, 64 N.Y.U. L. Rev. 113 (1989); James J. Connors, *Note, Nationwide Service of Process Under the Comprehensive Environmental Response, Compensation, and Liability Act: The Need for Effective Fairness Constraints*, 73 Va. L. Rev. 631 (1987).

2429. *Lytte v. Household Mfg., Inc.*, 494 U.S. 545, 550–55 (1990); *Dollar Sys. v. Avcar Leasing Sys.*, 890 F.2d 165, 170–71 (9th Cir. 1989).

2430. See generally *supra* section 10.22.

2431. *Brotman & Simandle*, *supra* note 2349, at 182.

motion practice and provides the court with an individual liaison for each group to contact about scheduling and other nonsubstantive matters. It also limits the number of attorneys seeking to argue motions or file papers. Counsel should be advised of relevant guidelines, such as the avoidance of duplicative efforts (e.g., providing in a case-management order that a party waives its right to raise an issue unless it is first presented to a committee of counsel). Subject-matter subcommittees can be created to work on what are likely to be common issues relating to defenses, liability (e.g., standards for successor liability), joinder of parties, jurisdiction, discovery, remediation, and allocation. These committees can be delegated authority to represent the parties in that group for purposes of litigation, management, and trial preparation. To do this, the court will need to determine a fair and efficient grouping of the parties. Lead or liaison counsel then can be selected after consultation with the groups of parties as to method and manner of selection, as well as compensation.

At the outset, it is useful to become familiar with the parties' own efforts to organize themselves in response to EPA's prelitigation investigation at the site. Often the primary PRPs will have formed a group that was represented in negotiations with EPA by common or joint counsel, and this same counsel may also be representing the PRP group in the subsequent litigation. These PRPs are also likely to have grouped themselves (usually by size) in a manner they have already determined to be fair and effective—at least for administrative purposes and for remediating the site—and that may be effective for the litigation as well. In such cases, the primary PRPs also may have established a binding allocation agreement among themselves and reached agreement on how any monies will be distributed, thus minimizing conflicts and cross-claims. The focus would then shift to an effective organization of the remaining parties, usually third-party defendants. In these third-party matters and in cases where no agreement exists within the primary PRP group, conflicting interests are common, and the court and the parties will need to be sensitive to the problems that can arise from grouping parties that may have adverse claims.

The method of organization may vary. One approach is to allow the parties to organize themselves, nominate lead and liaison counsel, propose a mode of payment, define the authority of lead and liaison counsel, and define a committee structure. It may be sufficient for the court to suggest these topics as an agenda for a meeting of counsel. The judicial role would then be simply to evaluate any proposal to ensure that it meets the court's litigation management needs, and to issue an appropriate order for its implementation with any necessary modifications. The judge, of course, retains the final authority over whether to enter an order adopting the parties' recommendations.

Another alternative is to organize the parties based on similar interests with respect to the legal issues, such as using the statutory classifications for liability set out in section 107(a): owners, operators, generators, and transport-

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ers.<sup>2432</sup> A third approach is to organize the parties by volumetric share of waste sent to the site, thus separating large generators from small or *de minimis* participants.<sup>2433</sup> This is a particularly useful classification for settlement purposes. In fact, the court may establish a separate “settlement committee” of counsel that focuses solely on settlement.<sup>2434</sup> Other relevant communities of interest for facilitating settlement may be defined by the type of substance a group of PRPs sent to the site, its toxicity, or where it is located on the site.<sup>2435</sup> Regardless of how the parties are organized, the court should ensure that they have agreed to a method of funding (typically pro rata) of group activities or other joint services, as well as the method of compensation of liaison counsel, and that this agreement is put in writing. For example, the parties may undertake joint expert studies, retain an allocation consultant, or engage in private mediation.<sup>2436</sup>

### 34.25 Centralized Document Management

CERCLA litigation involves large numbers of documents. Consider the feasibility, in light of the number of parties typically involved, of a central document depository or shared database of documents produced during discovery. The document depository can be managed through an independent entity, with the costs shared pro rata among the parties. Alternatively, to avoid the costs of establishing and maintaining a separate and independent depository, the parties may be willing to vest lead counsel with the responsibility of establishing and maintaining a uniform system of organization for all documents produced. Counsel would also be responsible for providing access for the inspection and copying of documents to all parties, with the parties paying the cost through the agreed on fee arrangement. Document databases can significantly reduce the associated cost and expense of discovery. Large volumes of documents can be copied and distributed economically to the parties. They then can be inspected and copied by interested parties, reducing the burden of production on the producing party and the associated costs for all parties. However the depository is set up, its custodian should be charged with keeping

2432. See, e.g., *N.J. Dep’t of Env’tl. Prot. v. Gloucester Env’t Mgmt. Servs., Inc.*, 668 F. Supp. 404 (D.N.J. 1987) (case-management order appointing five liaison counsel for the plaintiff, the owner, the alleged operators, the alleged generators, and the alleged transporters); *United States v. Kramer*, 757 F. Supp. 397, 410 (D.N.J. 1991).

2433. See, e.g., *Denver v. Adolph Coors Co.*, 829 F. Supp. 340 (D. Colo. 1993) (order regarding approval of *de minimis* and mid-tier settlements).

2434. See *Brotman & Simandle*, *supra* note 2349, at 181 (suggesting negotiation process might benefit from choosing negotiators who are not also serving as lead counsel).

2435. See, e.g., *Kamb v. U.S. Coast Guard*, 869 F. Supp. 793, 799 (N.D. Cal. 1994).

2436. See *Brotman & Simandle*, *supra* note 2349, at 181.

a copy of all documents produced in the case, from whatever source, as well as other litigation documents (such as responses to interrogatories, document requests, and deposition transcripts). Creating a central document depository or a computerized document storage system can help ensure that newly joined parties have access to the product of prior discovery and can hold demands for additional discovery to a minimum. The benefits and detriments of using a document depository are explored more fully in section 11.444.

### 34.26 Narrowing the Issues<sup>2437</sup>

Parties often plead defenses that they do not intend to pursue seriously or that fly in the face of settled law. The initial conference can be designed to eliminate such unmeritorious arguments. Requiring each side or group to meet and develop an agreed-on statement of the factual and legal issues in dispute, as well as using the Rule 16 conference to clarify any ambiguities, should help identify the genuinely controverted issues and force abandonment, or quick disposition, of marginal issues. Pressing the lawyers to identify facts supporting each element of each claim or defense and to tie the claim or defense to the legal framework of CERCLA may also help reveal the strengths and weaknesses of parties' positions. Issues can then be outlined in a logical and practical sequence, to facilitate management of motions that might result, for example, in the dismissal of parties to the litigation (e.g., if a party falls within section 107(a) or if one of the narrow statutory defenses applies), or even of the entire litigation (e.g., if the government's remedy is consistent with the NCP). Secondary issues can then be identified and incorporated into the case-management plan, which may also include a proposed structure for settlement discussions and trial. Organizing issues in terms of the liability, the amount and recoverability of costs, and the allocation phases of CERCLA litigation is helpful.

Using the Rule 16 statements, the judge can group types of motions and schedule filing of consolidated motions on similar issues according to a time schedule to avoid duplicative and piecemeal motions. For example, the court may establish a brief window within which particular types of motions may be filed, such as motions under Rule 12 or Rule 56. Certain motions and third-party complaints can be deemed to include all defendants, and answers to third-party complaints can be deemed to include all cross-claims and counterclaims against the third-party plaintiffs. There is sometimes, however, an impact of deeming cross-claims and counterclaims to encompass parties whose

<sup>2437</sup>. See also *infra* section 11.33.

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liability is determined to be *de minimis*. Exempting such parties from a deeming order avoids imposing disproportionate risks of extensive liability on them. Another option is to defer the time for filing cross-claims until after *de minimis* parties have settled the claims against them and generally obtained the benefit of a bar against contribution claims as permitted under sections 122(g)(2) and (5).<sup>2438</sup>

Summary judgment is a particularly effective tool for eliminating tenuous claims and defenses in CERCLA cases.<sup>2439</sup> Over the years, many issues raised by defendants in CERCLA litigation have been resolved, including retroactivity, joint and several liability, and whether CERCLA violates the Commerce Clause or Due Process Clause.<sup>2440</sup> In addition, the courts have interpreted CERCLA broadly in order to effectuate the statute's remedial purpose,<sup>2441</sup> and well-settled case law, particularly on the scope of CERCLA liability, allows courts to dispose summarily of a number of challenges.<sup>2442</sup> Summary judgment on the issue of liability is common, often leaving only issues of allocation remaining

2438. See also *infra* section 40.42.

2439. E.g., whether a harm is capable of apportionment among multiple defendants. *In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 896 (5th Cir. 1993). See also *United States v. Wade*, 577 F. Supp. 1326, 1330 (E.D. Pa. 1983) (granting summary judgment on the liability under CERCLA of certain defendants, but requiring a trial on the issue of joint and several liability and allocation).

2440. See *Solid States Circuits, Inc. v. EPA*, 812 F.2d 383 (8th Cir. 1987); *United States v. Alcan Aluminum Corp.*, 49 F. Supp. 2d 96 (N.D.N.Y. 1999) (addressing challenges based on the Takings Clause, Due Process Clause, and Ex Post Facto Clause); *United States v. Dico*, 189 F.R.D. 536, 544 (S.D. Iowa 1999) (rejecting defendant's due process and takings arguments on motion for judgment on the pleadings).

2441. See, e.g., *Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 845 (4th Cir. 1992) (disposal not limited to "active participation" and includes passive migration). One commentator summarizes that federal courts "are shaping CERCLA by judicial interpretation to a degree rarely if ever seen for any other statute." In the first ten years after the enactment of the Superfund, more than 1,000 reported decisions were handed down that bear on Superfund issues. Topol & Snow, *supra* note 2350, § 3.8.E.2.

2442. However, some issues believed to have been resolved have been reexamined, while other cases have suggested a reluctance toward any further or continued expansion of CERCLA. See, e.g., *United States v. Bestfoods*, 524 U.S. 51 (1998) (nothing in CERCLA suggests "that the entire corpus of state corporation law is to be replaced" and holding parent corporation cannot be held liable unless corporate veil pierced); *ABB Indus. Sys., Inc. v. Prime Tech., Inc.*, 120 F.3d 351, 358 (2d Cir. 1997) (former owners and operators not liable for passive migration of contaminants); *Dico, Inc.*, 189 F.R.D. at 543 (finding that the Supreme Court decision in *E. Enters. v. Apfel*, 524 U.S. 498 (1998), had no impact on CERCLA retroactivity). See also *New York Court Rules CERCLA Can Be Applied Retroactively, Rejects Eastern Defense*, 12-9 Mealey's Litig. Rep. Superfund 5 (June 11, 1999) (citing *United States v. Alcan Aluminum*, 49 F. Supp. 2d 96 (N.D.N.Y. 1999)).

to be decided.<sup>2443</sup> Summary judgment may also be appropriate to determine the amount of the government's costs in government-initiated cost-recovery actions. Consider using evidentiary hearings under Rule 43(e) to determine the existence of a genuine issue of material fact. It may sometimes be appropriate not only to determine liability through summary judgment, but also to allocate responsibility for paying the response costs.<sup>2444</sup>

Particularly important in CERCLA litigation are prompt rulings on all motions, which can help clarify liability and clear the path for the parties to allocate damages among themselves. Where a primary party's liability turns on a legal issue of first impression, the court should balance the advantages of certifying the questions for interlocutory appeal before allocating damages against the disadvantages of delaying the progress of the case.<sup>2445</sup>

### 34.27 Joinder

Incentives for locating all possible PRPs can lead to a continuous parade of new parties. The pretrial conference can assist the court in assessing the likely number of additional PRPs that the parties may seek to add and help ensure control over the size and shape of the litigation.<sup>2446</sup> Where EPA's investigation

2443. *See, e.g.,* NutraSweet Co. v. X-L Eng'g Co., 227 F.3d 776 (7th Cir. 2000) (partial summary judgment granted on issue of liability, and trial ordered for amount for which defendant was responsible). The biggest statutory area in which liability is disputed, and which is often difficult to resolve on summary judgment, is "arranger" liability. *See, e.g.,* Mainline Contracting Corp. v. Chopra-Lee, Inc., 109 F. Supp. 2d 110, 188 (W.D.N.Y. 2000); RSR Corp. v. Avanti Dev., Inc., 69 F. Supp. 2d 1119, 1126 (S.D. Ind. 1999); Freeport-McMoran Res. Partners Ltd. P'ship v. B-B Paint Corp., 56 F. Supp. 823, 853 (E.D. Mich. 1999).

2444. *See* United States v. R.W. Meyer, Inc., 932 F.2d 568 (6th Cir. 1991) (affirming summary judgment allocating response costs among three entities). However, resolution of equitable allocation issues may not be possible where the court has yet to determine the criteria it will use for this process in order to permit the parties to determine what facts are relevant and not in dispute.

2445. *See* United States v. Fleet Factors Corp., 901 F.2d 1550 (11th Cir. 1990) (interlocutory appeal taken to obtain ruling on whether district court correctly interpreted and applied CERCLA provision in denying motion for summary judgment by holder of a security interest in contaminated real property). When the subject of the interlocutory appeal is not central to the entire case, the court may decide to continue with other aspects of the litigation while the appeal is pending. *See supra* section 15.12.

2446. *See, e.g.,* City of Wichita v. Aero Holdings, Inc., No. 98-1360-MLB, 2000 WL 1480490, at \*2 (D. Kan. Apr. 7, 2000) (allowing plaintiffs to add over 700 third-party defendants would cause case to "'mushroom' in all directions and greatly delay resolution of the principal case"). The court can guard against indiscriminate and fragmented joinder by requiring the parties to set forth in detail the factual basis for each joinder motion. *See, e.g.,* Brotman & Simandle, *supra* note 2349, at 183-84 (suggesting party seeking joinder be required to respond to a

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has been exhaustive, the number of unidentified PRPs remaining will be significantly less. Similarly, a primary PRP group that has undertaken remediation at the site will often have retained an outside investigator who will have identified most other locatable PRPs, again reducing the number of parties likely to be joined at a later date. The judge is advised to discourage joinder of insignificant parties, or parties with no more than *de micromis* liability. Discussions with counsel about the feasibility of joinder of very small or *de micromis* parties will also assist in ensuring that the parties and the court have a realistic view of the scope of the case. Each new party will likely want to catch up with discovery and motion practice, thereby delaying the progress of the action.<sup>2447</sup> Furthermore, entry of a new party may create a conflict of interest for counsel or grounds for recusal by the judge.<sup>2448</sup>

Targeting the first phase of discovery at identifying all PRPs and developing information about the quantity and quality of waste produced by each PRP during the history of the site can minimize complications arising from joinder issues. Moreover, discovery targeted at site owners and operators, and at transporters, often generates information concerning other PRPs. A reasonable but firm deadline, which might be as long as a year, is advisable for adding parties or cross-claims, absent special issues in individual instances. Once the deadline for joinder is reached, the parties and the court will have an overview of the size and scope of the litigation. At that point, pretrial, settlement, and trial plans can proceed, addressing issues relating to all the parties, while consideration of late presented claims is deferred. This approach may be conducive to a global disposition of the entire litigation. General discovery and other proceedings are sometimes stayed until the joinder deadline. In the interest of avoiding unnecessary paper, the case-management order can provide that all parties joined will be deemed to have denied the claim, obviating the need for a formal pleading. Rulings on Rule 12 motions can also be deemed to apply to new parties absent special circumstances.<sup>2449</sup>

standard set of interrogatories as to factual basis for joining new party as, among other things, “an augment to Rule 11 concerning the integrity of the pleading” and to reduce “the risk of misjoinder or baseless joinder”).

2447. See, e.g., *City of Wichita*, 2000 WL 1480490, at \*2 (where court stated that “[c]ase management of more than 700 parties would unequivocally require the implementation of new orders, some of which would necessarily impose arbitrary discovery limitations . . . [which] would be unfair . . . when the current defendants have enjoyed liberal discovery”).

2448. See *United States v. New Castle County*, 116 F.R.D. 19, 24 (D. Del. 1987) (denying motion to name and realign various parties; court noted that adding new parties after deadline would likely produce conflicts of interest for current counsel, would interfere with pretrial and trial case-management plans, and would likely disrupt settlement efforts).

2449. See *supra* section 11.32.

Another approach is to postpone or stay joinder issues, contribution claims, and other cross-claims until the litigation against the initial defendants has been resolved. In cases with large numbers of PRPs, this keeps the organization relatively simple while a plan to remedy the site or to determine the costs of the remedy is devised. The primary PRPs may also be more inclined to reach out-of-court settlements with third parties without the expense of litigation. The disadvantage is that parties joined later may wish to relitigate those issues or reopen discovery. This phased approach is more feasible where the government has initiated the case, or in some contested consent decrees, but it does not work well where the government is not involved in the litigation and the primary PRP group has filed a separate action for contribution.

A third approach is to schedule rolling joinder dates. Rather than permitting motions for joinder at any time, rolling dates give the parties windows within which to file joinder motions, permitting a consolidated hearing on all joinder motions filed during that window, and lessening the burden on the court as well as the parties. Similar orders regarding responsive pleadings and discovery would apply as well. Whatever the approach to the joinder of new parties, possible statute-of-limitations issues, both federal and state, should be considered.

### 34.28 Managing Discovery

The preservation of evidence is critical in CERCLA cases. In some instances, only a few invoices or the recollection of one or two persons can connect a company to a site, while other cases may involve over a million documents.<sup>2450</sup> Because relevant evidence may be decades old, PRPs may seek to preserve evidence before filing a complaint. In such cases, Federal Rule of Civil Procedure 27 authorizes prefilings depositions of percipient witnesses (and, when feasible, the production or preservation of documents and other tangible things).<sup>2451</sup>

2450. See, e.g., Fike Chemical Superfund Site, Panel Discussion and Perspectives on Multi-Party CERCLA Litigation, Federal Judicial Center, Conference on Environmental Law and Natural Resources at 2 (Oct. 7, 1997) (when operator of site went out of business there were over 1.2 million business records “reflecting tens, if not hundreds of thousands of transactions with dozens of customers”).

2451. See *In re Bay County Middlegrounds Landfill Site v. Kuhlman Elec. Corp.*, 171 F.3d 1044 (6th Cir. 1999) (district court did not abuse discretion in granting petition to take prefilings deposition); *In re Petition of Delta Quarries & Disposal Inc.*, 139 F.R.D. 68 (M.D. Pa. 1991) (granting petition to depose ailing witness alleged to have personal knowledge of identity of companies that disposed hazardous substances at landfill fifteen years earlier).

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Once the action has been initiated, CERCLA cases generally require a well-thought-out, structured discovery plan to avoid duplicative discovery, to minimize the burden to the litigants and to the court, and to create a credible database. Multiple, independent waves of discovery should be discouraged in favor of a coordinated approach. Initially, the parties can be required to engage in an informal exchange of information with appropriate protective orders for sensitive relevant information. A number of parties may have responded to EPA information requests under section 104(e), and EPA will have amassed a vast amount of documents, reports, studies, and other information regarding the site, all of which can proceed without a formal request if EPA is a party, or through a coordinated request if EPA is not a litigant. Similarly, the site owner and/or operator, almost always a party, can informally produce any records reflecting transportation and shipment of waste sent to the site, including volume and type of material.

Included among effective discovery tools, particularly in cases where joint or liaison counsel have been appointed, are the development and use of a master set of interrogatories and requests for production for each side or group. An early set of agreed-on interrogatories seeking information from PRPs as to where and how records relating to the generation and disposal of wastes were maintained, as well as identifying those persons with knowledge of generation and disposal practices, can streamline document production and make depositions more efficient. Potential areas of inquiry include the following: site investigations done by any party, including any statements taken; records of any sampling, testing, removal, or remediation conducted at the site; documents in the possession of the parties reflecting materials, hazardous and nonhazardous, shipped to the site; and contracts or other agreements relating to disposal of waste material. Depositions should also be coordinated to preclude multiple depositions of the same party, with designated counsel responsible for conducting the depositions representing their respective sides or groups of parties. One alternative is to require that all document discovery be completed prior to taking any depositions except custodial depositions. Efforts should be made to minimize discovery imposed on *de minimis* parties at the early stages, where it is highly likely that they will settle out of the litigation.

The need for data concerning the parties' respective contributions to the contamination at the site coincides with the need to identify PRPs promptly, but newly joined parties should not be permitted to delay the discovery process while they are getting up to speed in the case. Towards this end, the discovery plan can provide that, except upon a showing of good cause, new parties will be deemed to have accepted the discovery previously propounded or depositions by counsel on behalf of their "group." This would not preclude a party with an individual interest not addressed by previous discovery from obtaining this information. Further, coordinating deadlines for joinder of parties with

the schedule set forth in the discovery plan will help ensure that all parties, including those newly joined, have a fair opportunity to conduct adequate discovery. As discussed earlier, a centralized document repository and computerized data storage and retrieval can facilitate access to all available documents and reduce discovery disputes at the same time that it creates a credible database. Without a credible database, the parties and the court cannot determine whether the proposed remedy is based on faulty assumptions about the nature of the problems, and the parties are not likely to accept proposed settlement allocations. All phases of discovery should be coordinated with plans for resolving motions and for structuring the trial (e.g., on a bifurcated or trifurcated basis).

### 34.29 Scientific and Technical Expert Testimony

CERCLA cases are prone to battles of experts in highly technical areas, such as chemistry, hydrology, and geology. Environmental experts testify on aspects such as site conditions, migration of contaminants, geological conditions, and toxicity. Continuous testing and sampling of soil and groundwater at a given site, as well as analyzing the synergistic and migratory capacities of contaminants, are often necessary. At a minimum, procedures should be adopted to produce a common database for the experts to analyze. The judge, to reduce unproductive contentiousness and keep the focus on genuine issues, may also encourage creation of an experts' committee with responsibility for defining issues, testing soil and allegedly hazardous materials, creating joint databases, developing proposed factual stipulations, and splitting samples.<sup>2452</sup> Some judges have directed the parties to have their experts meet without counsel to identify and consider the technical issues relating to the proposed remedial design.<sup>2453</sup> Such a meeting can uncover erroneous assumptions and avoid wasting resources on a remedy that might be technically flawed. In addition, such expert assistance may prove helpful in the settlement or allocation process. Where the case appears to be headed for trial, or where motions for summary judgment rely in part on scientific evidence, consider how best to handle *Daubert* issues.<sup>2454</sup>

2452. See *United States v. Price*, 14 *Envtl. L. Rep.* (Envtl. L. Inst.) 20, 501 (D.N.J. 1984).

2453. See Jerome B. Simandle, *Resolving Multi-Party Hazardous Waste Litigation*, 2 *Vill. Env'tl. L.J.* 111 (1991).

2454. See *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and discussion *infra* section 23.2.

### 34.3 Settlement and Trial

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#### 34.31 Allocation

Allocation bears significantly on both settlement and trial. Once liability is established, allocation is usually the most hotly contested issue in CERCLA litigation. Defendants try to prove the harm is divisible in order to avert imposition of joint and several liability in cost-recovery cases by the government, as well as challenging the method for equitable apportionment in private party actions. Other arguments raised by PRPs seeking to avoid joint and several liability include (1) that the material was a product, not a waste; (2) that the amount of hazardous constituents in the waste was negligible; and (3) that the configuration of the waste was such that no hazardous constituents could escape.

A determination as to the divisibility of harm has been held to be “intensely factual,”<sup>2455</sup> raising technically complex issues, such as relative toxicity, migratory potential, synergistic capacities, and degree of migration of a particular waste, and these issues require the testimony of various technical experts. Apportionment based on equitable principles implicates these as well as other considerations.<sup>2456</sup> The statutory status of the PRP also can affect decisions on allocation. For example, under section 107(a), both generators and transporters are liable for waste sent to the site. In addition to the liability of the corporation, officers can be liable as individuals. This could mean that two parties are responsible for the same waste. Equity suggests that an apportionment scheme take this into account in assessing the amount to be paid by each.

One of the major stumbling blocks in the allocation process is determining the allocation method and the factors to consider. CERCLA § 113(f)(1) gives the court broad discretion in adopting factors to be weighed among PRPs.<sup>2457</sup>

2455. *United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 722 (2d Cir. 1993).

2456. For a discussion of some of the “equities” balanced by a court in rejecting toxicity as a basis for allocation, see *Akzo Nobel Coatings, Inc. v. Aigner Corp.*, 197 F.3d 302, 305 (7th Cir. 1999).

2457. CERCLA § 113(f)(1) provides that “in resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.” 42 U.S.C. § 96113(f)(1) (West 2003). See also *Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321, 326 (7th Cir. 1994) (court may consider factors such as the relative fault of the parties, relevant “Gore factors,” see *infra* note 2460, and any contracts

The simplest form of allocation is a volumetric allocation, basing apportionment on the amount of waste shipped to a site relative to the total amount of waste.<sup>2458</sup> Another basis for apportionment is to assign the parties to “tiers,” again typically determined by volume, and then apportion liability by tier, with each PRP in that tier assuming a pro rata share. The courts have also looked at factors such as the volume and toxicity of each party’s hazardous waste,<sup>2459</sup> the degree of involvement and the degree of care exercised by a party, and the extent to which a party cooperated with public officials to prevent harm to the public. These are known as the Gore factors<sup>2460</sup> and are perceived as providing a good but not exhaustive starting point for apportionment.<sup>2461</sup> Other relevant factors have included the economic status of the parties, traditional equitable defenses such as mitigation, and the expense of doing cleanup work, among

between the parties regarding allocation); *Env’t Transp. Sys. v. Enesco, Inc.*, 969 F.2d 503, 509 (7th Cir. 1992) (court has “power to weigh and consider relevant factors, including [relative] fault”).

2458. *Boeing Co. v. Cascade Corp.*, 207 F.3d 1177, 1187 (9th Cir. 2000) (allocation by volume is reasonable basis for allocation); *Acushnet Co. v. Mohasco Corp.*, 191 F.3d 69, 78 (1st Cir. 1999) (“[T]here is nothing to suggest that Congress intended to impose far-reaching liability on every party who is responsible for only trace levels of waste.”); *Bancamerica Commercial Corp. v. Mosher Steel, Inc.*, 100 F.3d 792 (10th Cir. 1996); *Kalamazoo River Study Group v. Rockwell Int’l*, 107 F. Supp. 2d 817, 840 (W.D. Mich. 2000) (finding quantity of PCBs released was most important Gore factor under circumstances). Although pro rata apportionment is also a very simple method of apportionment and may be appropriate in some cases, courts have held that it was “at the very least, Congress’s intent that courts should equitably allocate costs of cleanup according to the relative culpability of the parties rather than an automatic equal shares rule.” *Env’t Transp. Sys.*, 969 F.2d at 508.

2459. EPA considers toxicity to be “causally related to the cost of cleanup for only a few substances (e.g., PCBs, dioxin).” Superfund Program: Non-Binding Preliminary Allocations of Responsibility (NBAR), 52 Fed. Reg. 19,919, 19,920 (May 28, 1987) [hereinafter NBAR]. EPA has further noted that the scientific community disagrees about degrees of toxicity and synergistic effects. *Id.*

2460. These factors originally appeared in section 3071(a) of House Bill 7020, which was passed by the House in 1980 but not enacted as part of CERCLA. CERCLA, H.R. 7020, 96th Cong. § 3071(a) (2d Sess. 1980). *See* 126 Cong. Rec. 26, 781 (1980); *see also* *United States v. R.W. Meyer, Inc.*, 932 F.2d 568, 571 (6th Cir. 1991); *Amoco Oil Co. v. Borden, Inc.*, 889 F.2d 664, 672–73 (5th Cir. 1989).

2461. *See generally* *Centerior Serv. Co. v. Acme Scrap Iron & Metal Corp.*, 153 F.3d 344, 354 (6th Cir. 1998); *Control Data Corp. v. S.C.S.C. Corp.*, 53 F.3d 930, 935 (8th Cir. 1995); *Env’t Transp. Sys.*, 969 F.2d at 509 (noting that the “Gore factors are neither an exhaustive or exclusive list” of the factors to be considered); *Kalamazoo River Study Group*, 107 F. Supp. 2d at 822 (noting that the Gore factors are a non-exhaustive list enabling the court to “take into account more varying circumstances than common law contribution”).

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others.<sup>2462</sup> Several courts have also used a fault-based approach to apportionment.<sup>2463</sup> Sometimes, zero allocation might be appropriate with respect to certain PRPs, as where, for example, the PRP's disposal was "too inconsequential to affect the cost of cleaning up significantly."<sup>2464</sup> In short, the court can consider "several factors, a few factors, or only one determining factor . . . depending on the totality of the circumstances presented."<sup>2465</sup> A preliminary determination as to the relevant factors can streamline both discovery and trial. Alternatively, the court can permit the introduction of all evidence deemed relevant to the issue by the parties and then make a determination as to which factors have the most bearing on apportionment under the particular circumstances.

Orphan shares—shares of companies that are bankrupt or no longer in business—can complicate the allocation process. Related issues arising in conjunction with these now-defunct companies include whether or when a corporation is "dead and buried" for purposes of CERCLA, the liability of successor corporations, and the impact of a discharge in bankruptcy on a CERCLA claim. In the allocation process these shares must be borne by someone, and the "determination of who absorbs liability for orphan shares can have significant consequences for PRPs, because the unattributable amount of

2462. *Akzo Nobel Coatings, Inc. v. Aigner Corp.*, 197 F.3d 302 (7th Cir. 1999); *United States v. Davis*, 31 F. Supp. 2d 45, 63 (D.R.I. 1998). For example, EPA, in preparing an NBAR under CERCLA § 122(e), in addition to looking at volume and toxicity, also looks at criteria included in the interim settlement policy, such as the "strength of evidence tracing the wastes at a site to PRPs, ability of PRPs to pay, . . . public interest consideration, . . . [and] inequities and aggravating factors . . ." NBAR, *supra* note 2459, at 19,919. EPA rejected allocation models based on toxicity, concluding instead that the use of volume and settlement criteria was more desirable for "simplicity and other practical reasons." *Id.* at 19,920.

2463. *See, e.g., Browning-Ferris Indus. v. Ter Maat*, 195 F.3d 953 (7th Cir. 1999) (affirming an allocation by the district court that looked to the blameworthiness of the polluter as relevant to an equitable allocation); *United States v. Di Biase*, 45 F.3d 541, 545 (1st Cir. 1995) (although on notice of a potentially dangerous condition, PRP "twiddled his thumbs"); *Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co.*, 14 F.3d 321 (7th Cir. 1994); *Env't Transp. Sys.*, 969 F.2d at 510–12.

2464. *PMC, Inc. v. Sherwin-Williams Co.*, 151 F.3d 610, 616 (7th Cir. 1998). *See also Acushnet Co. v. Mohasco Corp.*, 191 F.3d 69, 78 (1st Cir. 1999) (zero liability may be appropriate in some circumstances); *Kalamazoo River Study Group v. Rockwell Int'l*, 107 F. Supp. 2d 817, 839 (W.D. Mich. 2000) (holding defendant's PCB contribution to total PCB was minimal and defendant would not be required to contribute to cleanup).

2465. *Akzo Nobel Coatings, Inc.*, 197 F.3d at 305 (rejecting toxicity as means for apportionment); *Env't Transp. Sys.*, 969 F.2d at 509; *United States v. Pesses*, 120 F. Supp. 2d 503 (W.D. Pa. 2000) (basing allocation on Gore factors).

liability . . . can be quite substantial.”<sup>2466</sup> A number of options are available, including apportionment among economically viable defendants only,<sup>2467</sup> allocation among all liable defendants,<sup>2468</sup> and apportionment among all viable parties, plaintiffs, and defendants.<sup>2469</sup>

Another allocation determination issue is how to account for partial settlements. Many CERCLA actions will involve multiple settlement agreements. Where the plaintiff is the government, the SARA amendments provide that any settlement received “reduces the potential liability of the others by the amount of the settlement.”<sup>2470</sup> In government-initiated actions, this translates into a dollar-for-dollar reduction in liability for nonsettlers.<sup>2471</sup> A *pro tanto* approach requires conducting a fairness hearing before the court approves a partial settlement.<sup>2472</sup> Unresolved is how partial settlements should be credited in private party actions. Some courts have applied the *pro tanto* approach to partial settlement credits in private CERCLA cases. A second method uses a “proportionate share” approach whereby nonsettlor liability is reduced by the proportionate share of fault of the settling defendants.<sup>2473</sup> Usually, this approach re-

2466. David Sive & Daniel Riesel, *Although Many Courts Provide for the Equitable Apportionment of Orphan Shares Under CERCLA, the Issue Is Not Yet Settled*, Nat’l L.J., Mar. 3, 1997, at B5.

2467. See, e.g., Unif. Comparative Fault Act § 2(d), 12 U.L.A. 37 (2002); Charter Township of Oshtemo v. Am. Cyanamid Co., 898 F. Supp. 506, 509 (W.D. Mich. 1995) (“Equity . . . dictates that the shares that would have been attributed to parties that are now insolvent should be apportioned among all the solvent PRPs.”).

2468. United States v. Kramer, 953 F. Supp. 592, 598 (D.N.J. 1997); Pneumo Abex Corp. v. Bessemer & Lake Erie R.R. Co., 921 F. Supp. 336, 348 (E.D. Va. 1996) (plaintiff would have no liability for orphan shares); *Charter Township of Oshtemo*, 898 F. Supp. at 509.

2469. See Allied Corp. v. ACME Solvent Reclaiming, Inc., 771 F. Supp. 219, 223 (N.D. Ill. 1990). See also Sive & Riesel, *supra* note 2466, at B5.

2470. 42 U.S.C. § 9613(f)(2) (West 2003). See United States v. Burlington N. R.R. Co., 200 F.3d 679, 697 (10th Cir. 2000) (PRP’s liability would be reduced by government settlement with other PRPs).

2471. This approach, called *pro tanto*, is codified in the Uniform Contribution Among Tortfeasors Act (UCATA), 12 U.L.A. 98 (2002). See *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 1019, 1027 (D. Mass. 1989) (“[T]he words of the statute are clear: the potential liability of the others is reduced ‘by the amount of settlement,’ not by the settlor’s proportionate share of . . . damages . . . .”); United States v. Cannons Eng’g Corp., 720 F. Supp. 1027, 1048 (D. Mass. 1989), *aff’d*, 899 F.2d 79 (1st Cir. 1990); United States v. Rohm & Haas Co., 721 F. Supp. 666, 675 (D.N.J. 1989).

2472. See *City of New York v. Exxon*, 697 F. Supp. 677, 691 (S.D.N.Y. 1988) (“Before approving a CERCLA settlement, the Court must be convinced that it is fair, adequate, and reasonable, and consistent with the Constitution.”).

2473. The proportionate share approach is found in the Uniform Comparative Fault Act (UCFA), 12 U.L.A. 57 (2002). For cases that have applied the proportionate approach in private

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quires the settling defendant's percentage of fault be determined at trial in order to reduce the total damages to be attributed to the nonsettlor.<sup>2474</sup> One practical advantage of a proportionate share approach over a *pro tanto* approach is that extensive fairness hearings are not required.<sup>2475</sup> The plaintiff, however, would still have to litigate the responsibility of the settling party in order to determine the amount recoverable from nonsettlers, arguably negating some of the benefits of settlement.<sup>2476</sup> The majority of courts considering the issue of partial settlement credits have adopted the proportionate share approach.<sup>2477</sup> Others have held that the choice of approaches is within the sound discretion of the court, to be determined on a case-by-case basis.<sup>2478</sup>

There are several alternatives to consider in approaching allocation. One is to encourage the retention of an allocation consultant or expert, with costs apportioned among the parties and with possible settlement as a goal.<sup>2479</sup> The use of allocation experts has grown in CERCLA cases, and their function is to assist in estimating PRP shares, taking into account volume, toxicity, contribution to the cost of remediation, and similar factors. Second, the court can encourage the use of joint experts to share data and information. Often, the original PRP group will have established a preliminary allocation among themselves in order to apportion the immediate costs of cleanup,<sup>2480</sup> may have agreed to a process to determine binding allocation and distribution of any

party actions, see, e.g., *United States v. W. Processing Co., Inc.*, 756 F. Supp. 1424, 1430 (W.D. Wash. 1990); *Lyncott Corp. v. Chem. Waste Mgmt.*, 690 F. Supp. 1409, 1419 (E.D. Pa. 1988).

2474. See *Atl. Richfield Co. v. Am. Airlines, Inc.*, 836 F. Supp. 763 (N.D. Okla. 1993).

2475. See, e.g., *Allied Corp. v. Acme Solvent Reclaiming Inc.*, 771 F. Supp. 219, 223 (N.D. Ill. 1990) (“In a complex case such as this one, a fairness hearing would be long and arduous.”). For a good discussion of the two approaches and their pros and cons from several perspectives, see Marc L. Frohman, *Rethinking the Partial Settlement Credit Rule in Private Party CERCLA Actions: An Argument in Support of the Pro Tanto Credit Rule*, 66 U. Colo. L. Rev. 711 (1995).

2476. See, e.g., *Rohm & Haas Co.*, 721 F. Supp. at 678.

2477. Frohman, *supra* note 2475, at 748. “The analysis underlying these decisions concludes that, notwithstanding the pro tanto rule’s potential advantage in promoting settlement, the proportionate rule is more consistent with CERCLA because of its incorporation of principles of comparative fault, with resultant greater equity, and its alleged greater judicial economy.” *Id.* at 748–49. See *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 207–08 (1994).

2478. *Atl. Richfield Co.*, 836 F. Supp. at 765.

2479. See *United States v. Kramer*, 19 F. Supp. 2d 273, 278 (D.N.J. 1998) (parties retained Clean Sites Inc., an outside environmental litigation support firm, as an allocation consultant). The allocation process may be appropriate for the appointment of a special master.

2480. See, e.g., *Kalamazoo River Study Group v. Rockwell Int’l*, 107 F. Supp. 2d 817, 821 (W.D. Mich. 2000) (“Plaintiff’s individual group members have allocated among themselves their percentage shares for response costs at the Site . . .”).

monies received from litigation,<sup>2481</sup> and may have already retained an independent consultant or arbiter. This process may be proceeding in tandem with the litigation. EPA may also have established an informal allocation, based on its investigation, or may have prepared a nonbinding allocation report (NBAR) under section 122(e)(3), either of which can provide a good starting point for a final allocation.<sup>2482</sup>

### 34.32 Settlement

CERCLA cases present unique settlement challenges, and settlement plays an ongoing role in most such cases, regardless of their posture. EPA has recognized the importance of locating as many PRPs as possible as the first step in the settlement process, noting that this step is “one of the most critical to success.”<sup>2483</sup> CERCLA expressly encourages settlement and was designed “so that the threat of disproportionate liability would encourage parties to settle early with the United States and discourage dilatory and strategic behavior.”<sup>2484</sup> The SARA amendments authorize EPA to pursue settlements, and section 122 provides specific procedures and provisions to encourage settlement.<sup>2485</sup> Section 122 also contains provisions governing the scope of the covenants that can be provided. For example, except in “extraordinary circumstances,” settlement agreements must include “reopeners” for future liability arising from “un-

2481. See *United States v. Amoco Chem. Co.*, 212 F.3d 274, 277 (5th Cir. 2000) (Although not previously obligated to execute a specific trust agreement, and having objected to trust agreement setting forth allocation, the defendant’s signature on amended consent decree, by its terms, created an obligation to “negotiate with the other settling defendants and agree to some system of allocation.”).

2482. An NBAR, once issued, acts in effect as an offer of settlement. If the NBAR is accepted by the PRPs, EPA must provide a written explanation for rejecting the PRPs’ offer. 42 U.S.C. § 9622(e)(3)(E) (West 2003).

2483. *Streamlining*, *supra* note 2364. See, e.g., *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 83 (1st Cir. 1990) (EPA notified 671 PRPs of possible liability).

2484. *United States v. BASF Corp.*, 990 F. Supp. 907, 912 (E.D. Mich. 1998).

2485. See 42 U.S.C. § 9622 (West 2003); *Streamlining*, *supra* note 2364 (“The new provisions [of SARA] related to special notice, information sharing and negotiating moratoria are particularly important. They attempt to strike a balance between the competing demands of prompting more settlements, conserving limited government resources, and minimizing the delay in the clean-up process.”). See, e.g., *United States v. SCA Servs., Inc.*, 827 F. Supp. 526, 530 (N.D. Ind. 1993); *Am. Cyanamid Co. v. King Indus., Inc.*, 814 F. Supp. 215, 218 (D.R.I. 1993); *Commercial Bank-Detroit v. Allen Indus., Inc.*, 769 F. Supp. 1408 (E.D. Mich. 1991). CERCLA § 122 includes, among others, provisions for mixed funding and *de minimis* settlements that seek to ameliorate the harshness of the Act’s strict joint and several liability. 42 U.S.C. §§ 9622(b)(1), 9622(g) (West 2003).

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known conditions.<sup>2486</sup> EPA has issued numerous policies and guidance documents to inform PRPs of its approach as to these settlement provisions. For example, EPA has issued guidelines to govern settlements with *de minimis* and *de micromis* parties and to offer those parties as much finality as possible.<sup>2487</sup> Where EPA has not identified *de minimis* parties or at least a *de minimis* volume of disposal, consider encouraging the agency or the parties to do so. Similarly, at a site where a significant amount of waste is attributable to PRPs that are insolvent or defunct, EPA can provide up to a specified amount of “orphan share” funding as a settlement incentive.<sup>2488</sup> EPA also enters into settlements with major PRPs (typically consent decrees with the United States), which can include agreements to perform all site cleanup, to undertake only certain work at the site, and to pay for all or only a part of past costs at the site, leaving the remaining issues for further negotiations.<sup>2489</sup> In virtually every instance, however, some form of allocation will have to be agreed to or developed by the PRPs for any real progress on settlement, whether in an enforcement action by the government or a private action for contribution.

2486. *Id.* §§ 9622(c)(1), 9622(f)(2)(6).

2487. *Id.* § 9622(g)(1). The statutory goal is to release such parties before transaction costs accumulate. *De minimis* settlement decrees can also include reopeners, although the DOJ rarely will include a reopener in a *de minimis* settlement. Typically, however, *de minimis* settlements include a premium to account for the possibility that costs were underestimated, and in case the *de minimis* parties have obtained finality. *See, e.g., Cannons Eng'g Corp.*, 899 F.2d 79, at 88.

2488. Orphan share funding is in effect a form of compromise that reflects the shares of defunct PRPs and results in the government recovering less than 100% of its claim from the settling defendants. *See* Office of Enforcement Compliance & Assurance, EPA, Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals (1996), *available at* <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/> (last visited Oct. 21, 2003); Office of Enforcement Compliance & Assurance, EPA, Addendum to the “Interim CERCLA Settlement Policy” Issued on Dec. 5, 1984 (1997), *available at* <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/> (last visited Oct. 21, 2003). EPA has also issued guidance interpreting section 122(b)(3), which allows EPA to set up “special accounts” to hold money that is collected from PRPs to be used at that site. This allows the government, for example, to settle with certain parties for money and to give some or all of that money, as appropriate, to other parties who will perform site cleanup. *See* EPA, Consolidated Guidance on the Establishment, Management and Use of CERCLA Special Accounts (2002), *available at* <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/congui-estmgt-specacct.pdf> (last visited Oct. 21, 2003). In addition to issuing these and other policies and guidance, EPA has developed numerous model consent decrees to streamline and speed up the settlement process. *See, e.g.,* Office of Solid Waste & Emergency Response, EPA, Model CERCLA RD/RA Consent Decree (2001), *available at* <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/mod-rdra-cd.pdf> (last visited Oct. 21, 2003).

2489. CERCLA § 122 and EPA’s Model CERCLA RD/RA Consent Decree largely guide the terms, and especially the covenants, of such consent decrees. 42 U.S.C. § 9722 (West 2003); Model CERCLA RD/RA Consent Decree, *supra* note 2488.

Judicial involvement may be desirable to structure cases for settlement. When organizing counsel, consider whether to create a committee solely for settlement issues, with the parties in agreement on the authority of the settlement representatives.<sup>2490</sup> Some courts have referred settlement negotiations to a magistrate judge or special master.<sup>2491</sup> The magnitude of these cases and the possibility that recusal would impose a serious hardship on the entire court suggest that the trial judge should not be directly involved in settlement negotiations.<sup>2492</sup> It is advisable to assess (1) whether a global settlement is possible, or whether the parties are willing to agree to settlement of only certain portions of liability; (2) which parties are interested in settlement; (3) the level at which *de minimis* and *de micromis* buyouts will occur; (4) which parties are willing to participate in good faith in settlement negotiations; and (5) what role the court should play.<sup>2493</sup> In some cases, the parties are very interested in initiating settlement discussions. Consider establishing a “settlement track,” with firm deadlines, followed by a “litigation track” if settlement efforts fail. Under such an approach the litigation aspects of the case would be stayed while the parties pursued settlement, letting the parties avoid substantial transaction costs while exploring resolution of the case. Although discovery may be necessary to further settlement negotiations and to undertake an allocation, it can occur on a less formal and narrower basis than if full-blown litigation were underway, and disagreements can be resolved without resort to motion practice. In enforcement cases brought by the government, where liability is not seriously disputed, settlements can often be achieved once the government produces its cost documents (which is often done in pre-filing negotiations) and after resolution of the validity of any asserted defenses on appropriate motions. Close supervision of the settlement process can be essential. In one case where the parties agreed to a settlement process protocol, the settlement judge found that monitoring the process through biweekly conferences, insisting on adherence to the protocol, and ensuring that the attorneys did their “homework” (e.g., submitting the names of consultants by a specific date) in accordance with timeframes set during conferences substantially contributed

2490. Simandle, *supra* note 2453, at 121 (1991). Judge Simandle suggests that the parties be “afforded the opportunity to consider whether they wish to use their existing liaison counsel as the settlement representative, or whether they wish to choose a new settlement liaison counsel whose roles and duties would be confined to the group’s settlement processes.” *Id.* at 122.

2491. *See, e.g.,* United States v. Kramer, 19 F. Supp. 2d 273 (D.N.J. 1998) (referral of settlement to magistrate judge).

2492. *See supra* section 13.11.

2493. *See generally* Brotman & Simandle, *supra* note 2349, at 190–91.

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to a global settlement of the action.<sup>2494</sup> In many CERCLA cases, however, the parties will also be actively involved in continuous settlement negotiations outside of any judicially structured schedule.

Pending administrative proceedings and the site's status may affect the settlement process, and the court may find it easier to conduct the settlement negotiations in phases (e.g., with the first phase addressing past costs). Settlement negotiations will falter without a credible scientific and technical database and a reliable estimate as to the total cost of remediation. The court may also consider having the parties' experts involved in the settlement negotiations.<sup>2495</sup> In addition, it may be helpful to explore with the parties the use of alternative dispute resolution (ADR) strategies and techniques in designing an approach to settlement.

One judge's settlement process for CERCLA cases includes four major elements:<sup>2496</sup>

1. *Setting the stage.* The initial question is whether the parties have sufficient interest in pursuing settlement. If the parties "agree to seek to agree," they can produce a written good-faith agreement to pursue settlement of specified issues.
2. *Organizing counsel and defining a timetable.* Groups are created along the lines discussed earlier under "Organizing Counsel" (see section 34.24) (i.e., by selecting a settlement liaison for each group of defendants and defining the authority of the liaisons). The initial task of the liaison and the groups is to define a timetable for the process. The timetable should be coordinated with the pretrial process and should adapt the discovery program to settlement needs. A threshold issue for the group is whether to participate in EPA's formulation of the remedial design or to devise an alternative design.
3. *Joining additional parties and creating a database.* The database would consist primarily of data about the contributions of each party to the site. Here, the emphasis is on identifying and joining parties who contributed substantially to the problems and can be expected to contribute substantially to a financial settlement. The parties would then provide necessary information and develop the structure of a database, perhaps with the help of consultants hired

2494. Telephone Interview with U.S. Magistrate Judge Mary Feinberg, Southern District of West Virginia (Nov. 14, 2000) (on file with the Federal Judicial Center) (discussing *United States v. Am. Cyanimid Co.*, No. 2:93-0654, 1997 U.S. Dist. LEXIS 4413 (D. W. Va. Jan. 27, 1997)).

2495. Simandle, *supra* note 2453, at 132.

2496. *Id.* at 119–32.

jointly by the parties. Generally, information about insurance would also be collected.

4. *Allocating responsibility.* This stage involves the hard negotiations and should rely on outside assistance—a special master, a court-appointed mediator, or a consultant hired by the parties—to analyze the data and recommend allocation models.

The role of the district court in the process is to rule promptly on those motions that define the liability of the parties and the contours of the issues. The district judge who remains insulated from settlement discussions can more appropriately preside at a bench trial, if necessary.

### 34.33 Approval of Consent Decrees

Consent decrees between the government and the parties must receive public notice and comment. The United States “lodges” the consent decree with the court, and notice of the decree’s availability is published in the Federal Register. The government must consider any comments received and may withdraw the decree if the comments disclose facts or considerations that indicate the proposed decree is “inappropriate, improper, or inadequate.”<sup>2497</sup> If the government continues to support the decree, it will file with the court any comments received, along with a motion for entry of the decree once the public comment period has concluded. Often, nonsettling parties will challenge entry of the consent decree because of the contribution protection it affords to settling parties. Other common challenges are that the settling parties are not bearing their proportionate share of the costs of remediation, that the remedy selected is arbitrary and capricious, or that it is substantively or procedurally unfair.<sup>2498</sup> Another issue tied to settlement is the manner in which settlement monies will be allocated.<sup>2499</sup>

The court must then decide whether it is necessary or appropriate to hold a hearing on the decree prior to making a decision to enter or reject it. Although it may be appropriate to hold an evidentiary hearing, the cost and expense of a hearing often obviate some of the benefits of settlement, particularly where the parties are *de minimis*. As a result, courts will usually review the administrative record and the papers submitted and determine whether the set-

2497. 42 U.S.C. § 9622(d)(2) (West 2003).

2498. See, e.g., Topol & Snow, *supra* note 2350, § 7.15. “Thus, according to these courts, in order for a settlement to be substantively fair, each settling party must be required to bear cleanup responsibility in an amount that has some relationship to its relative contribution to the adverse environmental conditions at the site.” *Id.* at 160.

2499. See *supra* section 34.12 at ¶ 3, “Allocation of response costs.”

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tlement is “fair, reasonable and consistent with the Constitution and the mandate of Congress.”<sup>2500</sup> Settlements of private contribution or cost-recovery actions are not subject to the same statutory constraints as settlements with the government, and they do not carry the same deferential standard of review.<sup>2501</sup> However, courts have made similar “fair and reasonable” evaluations prior to approving them, and it is good practice to look at various aspects of the settlement negotiations.

### 34.34 Structuring the Trial

CERCLA cases rarely go to trial, but when they do the trial is likely to be complicated.<sup>2502</sup> Most parties typically will have settled before trial, leaving only a few parties remaining. A number of third-party claims may also have been resolved.

Consider holding separate trials on liability, damages, and allocation of response costs pursuant to Federal Rule of Civil Procedure 42. Alternatively, consider bifurcating or trifurcating the trial into phases—liability, damages (remediation plans), and allocation.<sup>2503</sup> The order of trial (and of the corresponding settlement discussions) can be varied to address dispositive issues first. Addressing challenges to the proposed remedy may crystallize issues relating to response costs and how they should be allocated. EPA ordinarily has to determine the scope of proposed cleanup efforts before the court can allocate responsibility for remediation.

Except for natural resource damage claims, there is no right to a jury trial in CERCLA cases.<sup>2504</sup> One judge’s approach to a case involving damages to

2500. *New York v. Exxon*, 697 F. Supp. 677, 692 (S.D.N.Y. 1988); *Topol & Snow*, *supra* note 2350, § 7.15. See *Best Foods v. Aerojet-Gen. Corp.*, No. 1:89-CV-503, 961, 2000 WL 1238910 (W.D. Mich. Aug. 24, 2000) (evaluating whether settlement apportionment was fair). Accordingly, a court is not “empowered to rewrite the settlement agreed upon by the parties” or to “delete, modify, or substitute certain provisions of the consent decree.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 630 (9th Cir. 1982).

2501. *Topol & Snow*, *supra* note 2350, at 162.

2502. See, e.g., *United States v. Ottati & Goss, Inc.*, 694 F. Supp. 977 (D.N.H. 1988) (addressing the remedy and allocation), *aff’d in part, vacated in part*, 900 F.2d 429 (1st Cir. 1990); *United States v. Ottati & Goss, Inc.*, 630 F. Supp. 1361 (D.N.H. 1985) (dealing with liability); *Ottati & Goss, Inc.*, 694 F. Supp at 988–1000 (addressing the remedy and allocation).

2503. See, e.g., *Kalamazoo River Study Group v. Rockwell Int’l*, 107 F. Supp. 2d 817 (W.D. Mich. 2000) (liability and allocation); *United States v. Vertac Chem. Corp.*, 79 F. Supp. 2d 1034 (E.D. Ark. 1999) (liability and allocation).

2504. See *United States v. N.E. Pharm. & Chem. Co.*, 810 F.2d 726, 749 (8th Cir. 1986); *United States v. Northern Plating Co.*, 685 F. Supp. 1410, 1413 (W.D. Mich. 1988) (citing *N.E. Pharm. & Chem. Co.*).

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natural resources was to focus case management on preparing a single case involving a primary defendant for a jury trial.<sup>2505</sup> To ascertain the universe of facts at issue, the judge ordered the litigants to request admission of any fact on which they intended to offer evidence and they were precluded from offering any evidence that was not subject to such a request. Each request had to be detailed “to the level of specificity of a patent claim.”<sup>2506</sup>

Special verdict forms (see section 12.451), jury notebooks (see section 12.42), time limits for each side (see section 12.35), interim instructions (see section 12.433), and other jury aids may be appropriate. Setting firm trial dates and using other trial-management procedures are presumed.<sup>2507</sup>

2505. The district court in *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 994 (D. Mass. 1989), held that there is a right to trial by jury in cases involving recovery of damages to natural resources because such cases are a form of statutory tort.

2506. *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 1019, 1030–31 (D. Mass. 1989). As the case settled on the eve of trial, the degree to which this procedure would have simplified the trial was never tested. It did, however, lead some of the parties to propound innumerable requests for admission lest an important fact inadvertently be excluded from the “universe.” *Id.*

2507. See generally *supra* sections 11.212, 12.

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### 35.1 Introduction

Congress enacted the 1920 Racketeer Influenced and Corrupt Organizations Act<sup>2508</sup> (RICO) to respond to the “infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce.”<sup>2509</sup> Congress targeted organized crime through a broad statutory scheme that included severe criminal penalties, fines, imprisonment, asset forfeiture,<sup>2510</sup> and civil remedies in an effort to undermine the economic power of racketeering organizations.<sup>2511</sup> The statute further enabled private litigants to act, in effect, as private attorneys general<sup>2512</sup> to sue for injury to their businesses or property caused by a RICO violation.

Civil RICO claims have alleged wrongs actionable under state and common law, as well as other federal statutes.<sup>2513</sup> Although the statute was targeted

2508. 18 U.S.C. §§ 1961–1968 (West 2003).

2509. Comm’n on the Judiciary, U.S. Senate, Organized Crime Control Act of 1969, S. Rep. No. 91-617, at 76 (1969). In 1969, the President’s Commission on Law Enforcement and Administration of Justice reported that organized crime was extensively involved in legitimate business organizations and utilized tactics such as monopolization, terrorism, extortion, and tax evasion “to drive out and control lawful ownership and leadership.” President’s Comm’n on Law Enforcement & Admin. of Justice, *The Challenge of Crime in a Free Society* (1969).

2510. 18 U.S.C. § 1963(a) (West 2003).

2511. *Id.* § 1964(c). RICO also provides for equitable relief, including divestiture of defendant’s interest in the enterprise, restrictions on future activities, reorganization, or dissolution. *Id.* § 1964(a). See Paul B. O’Neill, “*Mother of Mercy, Is This the Beginning of RICO?*”: *The Proper Point of Accrual of a Private Civil RICO Action*, 65 N.Y.U. L. Rev. 172, 180 (1990).

2512. 18 U.S.C. § 1964(c) (West 2003). See *Rotella v. Wood*, 528 U.S. 549, 557 (2000) (“The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, ‘private attorneys general,’ dedicated to eliminating racketeering activity.”).

2513. For example, until the enactment of the Private Securities Litigation Reform Act, RICO claims were frequently asserted in cases alleging securities violations. See, e.g., *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258 (1992); *Powers v. British Vita*, 57 F.3d 176 (2d Cir. 1995).

at organized crime, courts have broadly construed RICO's provisions, and its scope has extended well beyond its original aim. Early efforts by lower courts to restrict claims that appeared to exceed RICO's original goals were overruled by Supreme Court decisions that broadened the statute's reach.<sup>2514</sup> RICO claims can now be found in a variety of contexts, including insurance and business disputes, antiabortion and other protests,<sup>2515</sup> consumer financial services litigation,<sup>2516</sup> family law,<sup>2517</sup> and whistle-blower actions.<sup>2518</sup> Although the nontraditional uses of RICO have continued to expand despite significant criticism by commentators and the courts, Congress has shown little inclination to narrow the statute's focus or reach.<sup>2519</sup>

2514. *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985). See *United States v. Turkette*, 452 U.S. 576, 581 (1981) (Congress intended RICO to reach criminal as well as legitimate organization and breadth of statute signaled congressional intent to supersede authority of courts to restrict its provisions). However, the Supreme Court has acknowledged that the statute does have some limits. See *Reves v. Ernst & Young*, 507 U.S. 170, 184 (1993) ("Congress did not intend to extend RICO liability under § 1962(c) beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity."); *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (continuity required).

2515. See, e.g., *NOW v. Scheidler*, 510 U.S. 249 (1994).

2516. Robert M. Hatch et al., *RICO Theories, Cases and Strategies in Consumer Litigation: Strategies for Defending Section 1962 Claims*, 53 *Consumer Fin. L. Q. Rep.* 140 (1999).

2517. See *DeMauro v. DeMauro*, 115 F.3d 94, 97 (1st Cir. 1997) (alleging RICO claims for fraudulent concealment of marital assets by wife against husband arising out of divorce proceedings); see also Erin Alexander, Comment, *The Honeymoon Is Definitely Over: The Use of Civil RICO in Divorce*, 37 *San Diego L. Rev.* 541 (2000).

2518. *Beck v. Prupis*, 162 F.3d 1090 (11th Cir. 1998), *aff'd*, 529 U.S. 494 (1999).

2519. "The 'extraordinary' uses to which civil RICO has been put appear to be primarily the result of the breadth of the predicate offenses, in particular the inclusion of wire, mail, and securities fraud, and the failure of Congress and the courts to develop a meaningful concept of 'pattern.'" *Sedima*, 473 U.S. at 500. The Private Securities Litigation Reform Act of 1995 (PSLRA) eliminated conduct actionable as securities fraud as a predicate act, reflecting the only time to date that Congress has restricted the reach of civil RICO. 15 U.S.C. § 78u-4(a) (2000). See, e.g., *Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, 330 (3d Cir. 1999) (A RICO plaintiff "cannot avoid the RICO Amendment's bar . . . if the conduct giving rise to [the] [RICO] predicate offenses amounts to securities fraud."); *Mathews v. Kidder, Peabody & Co., Inc.*, 161 F.3d 156, 164 (3d Cir. 1998) ("It is clear from the legislative history that the intention behind the RICO Amendment was 'to address a significant number of frivolous actions based on alleged securities law violations.'" (quoting 141 Cong. Rec. H2771 (daily ed. Mar. 7, 1995) (statement of Rep. Cox))); *Krear v. Malek*, 961 F. Supp. 1065, 1076 (E.D. Mich. 1997) (PSLRA applies retroactively to RICO claims). The PSLRA retains a narrow exception permitting RICO allegations against defendants who had been criminally convicted of securities fraud. See Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, § 107, 109 Stat. 737, 758 (codified as amended at 18 U.S.C. § 1964(c) (West 2003)).

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RICO has been called “arcane,”<sup>2520</sup> “tormented,”<sup>2521</sup> “complicated,”<sup>2522</sup> and “agonizingly difficult.”<sup>2523</sup> Litigation under the statute is often time-consuming and burdensome, both because RICO’s inadequately defined scope has resulted in conflicting legal doctrine and because of the breadth of the supporting allegations. RICO litigation can involve multiple defendants and multi-count complaints where each count alleges a separate enterprise and a multitude of predicate acts.<sup>2524</sup> In addition, RICO cases are often brought as class actions, which can introduce additional complexities.<sup>2525</sup>

2520. *Bryant v. Yellow Freight Sys.*, 989 F. Supp. 966, 968 (N.D. Ill. 1997) (RICO “fraught with arcane mysteries”); *Macy’s E., Inc. v. Emergency Envtl. Servs., Inc.*, 925 F. Supp. 191, 193 (S.D.N.Y. 1996) (“arcane eccentricities of RICO jurisprudence”).

2521. *Combs v. Bakker*, 886 F.2d 673, 677 (4th Cir. 1989) (characterizing RICO as a “tormented statute”); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 267 (D.S.C. 1999) (noting statute’s “torment” was evident in courts’ interpretations of section 1965).

2522. *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990); *Cent. Distrib. of Beer Inc. v. Conn.*, 5 F.3d 181, 184 (6th Cir. 1993) (stating that RICO is “one of the most complex statutes ever enacted by Congress”); *Jennings v. Emry*, 910 F.2d 1434, 1435 (7th Cir. 1990) (noting RICO is a complex statute); *Murray v. Midwest Real Estate Inv. Co.*, No. 98C1569, 1998 WL 919694, at \*2 (N.D. Ill. Dec. 30, 1998) (calling RICO “exceedingly complicated”); *Brooks v. Bank of Boulder*, 891 F. Supp. 1469, 1477 (D. Colo. 1995) (“complicated”).

2523. *Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 196 (9th Cir. 1987) (Burns, J., concurring).

2524. *Chapman & Cole v. Itel Container Int’l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) (“A RICO cause of action by definition involves complex litigation and high legal costs.”).

2525. *See Smith v. Berg*, 247 F.3d 532, 534 (3d Cir. 2001) (putative class action against real estate developer for misleading plaintiffs to purchase homes they couldn’t afford); *VanDenBroeck v. CommonPoint Mortgage Co.*, 210 F.3d 696, 698 (6th Cir. 2001) (class action by borrowers against lenders); *Maio v. Aetna Inc.*, 221 F.3d 472, 474 (3d Cir. 2000) (class action complaint alleging RICO violations against HMO); *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 674 (7th Cir. 2000) (class action suit against buying club); *Moore v. Am. Fed. of Television & Radio Artists*, 216 F.3d 1236, 1243 (11th Cir. 2000) (denying motion for class certification on RICO count where there were only a few common questions of law, and facts and plaintiffs could not satisfy the requirements of Rule 23); *Fogie v. Thorn Ams., Inc.*, 190 F.3d 889, 892 (8th Cir. 1999) (class action alleging violation of RICO in operation of rent-to-own business); *Hamm v. Rhone-Poulenc Rorer Pharms., Inc.*, 187 F.3d 941, 951 (8th Cir. 1999) (finding district court treated case as class action although no class had been certified at the time of ruling on the summary-judgment motion), *cert. denied*, 528 U.S. 1117 (2000); *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 604–05 (5th Cir. 1998) (class action alleging claims arising out of purchase of trading cards).

## 35.2 Statutory Framework

RICO liability hinges on whether the defendant “person”<sup>2526</sup> engaged in a pattern of racketeering activity through specific designated offenses, referred to as predicate acts. The specific elements necessary to state a claim vary according to whether the claim is brought under 18 U.S.C. § 1962(a), (b), (c) or (d). The plaintiff must show that the racketeering activity adversely affected an interstate enterprise,<sup>2527</sup> and that this adverse impact proximately caused injury to the plaintiff’s business or property.<sup>2528</sup> Racketeering activity is defined in section 1961 to include activities that could be charged under a broad array of federal and state criminal offenses.<sup>2529</sup> To establish a pattern of racketeering, a plaintiff must show that the defendant was responsible for at least two acts of racketeering within ten years of each other, and that the predicate acts had a common relationship and continuity.<sup>2530</sup> Further, to establish the requisite predicate acts, the plaintiff must plead and prove each element of the racketeering offense.<sup>2531</sup>

2526. “Person” is defined in section 1961(3) as including “any individual or entity capable of holding a legal or beneficial interest in property.” The term has been liberally construed. *See* *Jund v. Town of Hempstead*, 941 F.2d 1271, 1282 (2d Cir. 1991) (unincorporated political association); *Pine Ridge Recycling, Inc. v. Butts County*, 855 F. Supp. 1264, 1273 (M.D. Ga. 1994) (counties and solid waste authorities).

2527. RICO: Civil and Criminal Law and Strategy § 7.04[2][e], at 7-45 to 7-47 (Jed S. Rakoff & Howard W. Goldstein eds., 2002).

2528. *See id.* §§ 7.04[2][f], 7.04[2][g].

2529. Section 1961(1) defines “racketeering activity” as “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance which is chargeable under state law and punishable by imprisonment for more than one year,” or which is indictable under a wide variety of enumerated offenses under Title 18 of the U.S. Code. It also covers any act indictable under Title 29, any federal offense involving fraud in connection with Title 11, the sale of securities or controlled substances, as well as any acts indictable under the Currency and Foreign Transaction and Reporting Act or the Immigration and Naturalization Act.

2530. Section 1961(5) defines a “pattern of racketeering” as requiring “at least two acts of racketeering activity, one of which occurred after the effective date of this section and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.” Acts of terrorism were recently added to RICO under section 1961(1)(g), which provides for the inclusion of any act under 18 U.S.C. §§ 2332b(g)(5)(B) & 2332b(a)(1)(B) (“[A]ttempting or conspiring to destroy or damage any structure . . . within the United States . . .”).

2531. *See* Rakoff & Goldstein, *supra* note 2527, § 7.04[2][c], at 7-41 to 7-44.

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The following substantive provisions of RICO (18 U.S.C. § 1962) apply to any “person”:

- Section 1962(a) prohibits the investment of income or of the proceeds of income derived from a pattern of racketeering activity or through the collection of an unlawful debt, in an enterprise engaged in or whose activities affect interstate or foreign commerce. It specifically exempts from its scope the purchase of securities for purposes of investment and purchases “without the intention of controlling or participating in the control of the issuer,” as long as the securities do not exceed 1% of the outstanding shares of any one class of securities and do not confer the power to elect directors.
- Section 1962(b) makes it unlawful to acquire an interest in or control of an enterprise engaged in or whose activities affect interstate or foreign commerce through a pattern of racketeering activity or the collection of an unlawful debt.
- Section 1962(c) prohibits anyone employed by or associated with an enterprise engaged in or whose activities affect interstate or foreign commerce from participating in its affairs through a pattern of racketeering activity or the collection of an unlawful debt.
- Section 1962(d) prohibits conspiracies to violate section 1962(a), (b), or (c).<sup>2532</sup>

2532. To state a claim under section 1962(d), a plaintiff must plead that defendants agreed to join the conspiracy, agreed to commit predicate acts, and knew that those acts were part of a pattern of racketeering activity. *See* *United States v. Patrick*, 248 F.3d 11, 20 (1st Cir. 2001) (conspiracy can be shown by tacit agreement); *Tel-Phonic Servs., Inc. v. TBS Int’l, Inc.*, 975 F.2d 1134, 1140–41 (5th Cir. 1992); *Glessner v. Kenny*, 952 F.2d 702, 714 (3d Cir. 1991); *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 294–95 (9th Cir. 1990). Absent sufficient allegations of the substantive violation of subsection (a), (b), or (c), the plaintiff’s claim under section 1962(d) will be dismissed. *See Salinas v. United States*, 522 U.S. 52, 63 (1997). The circuits had split on the issue of whether the defendant must have personally participated in or agreed to participate in the commission of predicate acts. Some courts had required that a defendant agree to commit at least two predicate acts, *see, e.g., Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 47–48 (1st Cir. 1991), while others had held that it was sufficient if a defendant agreed that some member of the enterprise would commit the predicate acts, *see, e.g., United States v. Pryba*, 900 F.2d 748, 760 (4th Cir. 1990). *See also* *United States v. Kragness*, 830 F.2d 842, 860 (8th Cir. 1987). Following the Supreme Court’s decision in *Salinas*, however, the courts have held that a defendant does not need to personally commit predicate acts, or agree to commit them, in order to be liable under section 1962(d). *See, e.g., Patrick*, 248 F.3d at 20; *Smith v. Berg*, 247 F.3d 532, 538 (3d Cir. 2001); *Lachmund v. ADM Inv. Servs., Inc.*, 191 F.3d 777, 784–85 (7th Cir. 1999); *United States v. Frega*, 179 F.3d 793, 810 n.21 (9th Cir. 1999), *cert. denied*, 528 U.S. 1191 (2000).

There has been significant litigation over the proper interpretation of several of the statutory elements common across sections 1962(a), (b), (c), and (d)—such as “enterprise” or “pattern”—as well as conflicts among the circuits over the interpretation of certain elements peculiar to section 1962(c),<sup>2533</sup> such as “conduct or participate.”<sup>2534</sup> Although sometimes referred to as “terms of art,”<sup>2535</sup> their interpretation remains a matter of debate and has varied among the circuits. Despite the confusion as to the appropriate scope of these elements, a plaintiff’s failure to include factual allegations sufficient to satisfy basic components of each element, at least as that component has been interpreted within the relevant circuit, may result in dismissal.<sup>2536</sup> Some of the most litigated statutory terms are discussed below:

- *Enterprise*. Section 1961(4) broadly defines an enterprise as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”<sup>2537</sup> In *United States v. Turkette*,<sup>2538</sup> the Court held that RICO’s enterprise element encompassed both legitimate and illegitimate businesses. *Turkette* has been interpreted as establishing that an “enterprise” must exhibit several basic characteristics: (1) there must be a common or shared purpose among the members of the enterprise; (2) there must be some degree of continuity of organizational

2533. Section 1962(c) forms the basis for most of the civil RICO claims. In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the Supreme Court set out the four primary elements of a § 1962(c) claim. The plaintiff must show “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Id.* at 496 (footnote omitted).

2534. See Rakoff & Goldstein, *supra* note 2527, § 2.03[1], at 2-38 (“Post-*Sedima* RICO jurisprudence has been notable for confusion and inconsistency.”).

2535. Elliott v. Foufas, 867 F.2d 877, 880 (5th Cir. 1989) (each concept “is a term of art which carries its own inherent requirements of particularity”).

2536. Jennings v. Emry, 910 F.2d 1434 (7th Cir. 1990); Schmidt v. Fleet Bank, 16 F. Supp. 2d 340 (S.D.N.Y. 1998).

2537. The Supreme Court has noted in *United States v. Turkette* that “[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact.” 452 U.S. 576, 580 (1981). The courts generally have broadly construed the definition of “enterprise” to include various types of organizations, both legitimate and criminal, as well as combinations of different entities as “associations in fact.” See, e.g., DeFalco v. Bernas, 244 F.3d 286 (2d Cir. 2001) (town); United States v. Patrick, 248 F.3d 11, 17 (1st Cir. 2000) (gang); Bachman v. Bear, Stearns & Co., 178 F.3d 930, 931 (7th Cir. 1999) (“RICO statute reaches informal as well as formal organizations.”); United States v. Beasley, 72 F.3d 1518, 1525 (11th Cir. 1996) (religious cult); Cox v. Adm’r United States Steel & Carnegie, 30 F.3d 1347, 1349 (11th Cir.) (pension fund), *modifying on reh’g*, 17 F.3d 1386 (11th Cir. 1994); Am. Mfrs. Mut. Ins. Co. v. Townson, 912 F. Supp. 291, 295 (E.D. Tenn. 1995) (marriage as enterprise).

2538. 452 U.S. 576, 580–81 (1981).

structure and members; and (3) the enterprise must be separate from the pattern of racketeering activity.<sup>2539</sup> The Court further held that to satisfy the enterprise requirement, a plaintiff must show “evidence of an ongoing organization, formal or informal, and . . . that the various associates function as a continuing unit.”<sup>2540</sup> These requirements are easily met where the enterprise has a legal existence, such as a corporation or partnership.<sup>2541</sup> Where the enterprise is an “association in fact,” however, proof of the various elements becomes more difficult and proof that demonstrates continuity or organizational structure often overlaps with the proof relied on to show a pattern of racketeering activity. The courts have disagreed on the extent to which the same evidence used to prove a pattern of racketeering activity can also be

2539. *Id.* at 583.

2540. *Id.* See *VanDenBroeck v. CommonPoint Mortgage Co.*, 210 F.3d 696, 700 (6th Cir. 2001) (alleged enterprise of mortgage lender and secondary lender market “too unstable and fluid an entity to constitute a RICO enterprise”); *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 676 (7th Cir. 2000) (enterprise of defendant, its franchisees, officers, directors, members, participating wholesalers, and participating manufacturers lacked distinct structure and function); *United States v. Gray*, 137 F.3d 765, 772 (4th Cir. 1998) (government evidence showed defendant ran a drug distribution ring that had identifiable structure from the existence of a leader, an assistant, stash house workers, and a system of stash houses used to distribute drugs); *United States v. Parise*, 159 F.3d 790, 795 (3d Cir. 1998) (continuity requirement met even though each member of enterprise didn’t participate in it from beginning to end, and government needed only to show “alleged members who participated at one time or another were part of an ongoing enterprise with a shared ‘organizational pattern’ and ‘system of authority’”); *United States v. Davidson*, 122 F.3d 531, 535 (8th Cir. 1997) (The number and variety of crimes, defendant’s financial support of his “underlings,” and defendant’s continued leadership of the criminal organization, among other things, “demonstrate[d] an ongoing association with a common purpose to reap the economic rewards flowing from the crimes, rather than a series of ad hoc relationships.”); *Amsterdam Tobacco Inc. v. Philip Morris, Inc.*, 107 F. Supp. 2d 210, 215 (S.D.N.Y. 2000) (“The vertical group described by plaintiff here is merely a reiteration of the (alleged) racketeering activity.”). In addition, the RICO enterprise must be separate and distinct from the RICO “person.” See, e.g., *Brannon v. Boatmen’s First Nat’l Bank of Okla.*, 153 F.3d 1144, 1147–48 & n.4 (10th Cir. 1998).

2541. See, e.g., *United States v. Kirk*, 844 F.2d 660, 664 (9th Cir. 1988) (“Although the circuits are divided on the requirements for proof of an enterprise . . . under either test, the existence of a corporation fulfills the requirements of an ascertainable structure apart from the predicate racketeering activity.”) (citation omitted); *Bennett v. Berg*, 685 F.2d 1053, 1061 n.9 (8th Cir. 1982) (“Where a legal entity is alleged as the RICO enterprise, this entity is likely to be clearly distinct from the acts of racketeering.”), *aff’d in part, rev’d in part in reh’g en banc*, 710 F.2d 1361 (8th Cir. 1983).

used to prove the existence of an enterprise.<sup>2542</sup> Note, however, that evidence satisfying the requirement of “continuity” of the organization may also satisfy the continuity required to show a pattern of racketeering activity. The circuits have varied in whether a plaintiff may prove the existence of an enterprise through proof of a pattern of racketeering activity.<sup>2543</sup> Some circuits have interpreted the “separateness” criteria more strictly and have required varying degrees of proof that an organization has a structure independent from that inherent in the pattern of racketeering activity.<sup>2544</sup> These courts have expressed the concern that to permit proof of the enterprise to be inferred from the pattern of racketeering activity would essentially make “every pattern of racketeering activity [become] an enterprise whose affairs are conducted through the pattern of racketeering.”<sup>2545</sup>

In addition, to the extent that the claim is brought under section 1962(c), a plaintiff must also plead and prove that the “enterprise” is distinct from the defendant “person” against whom damages are sought.<sup>2546</sup> It is unclear whether this requirement exists for claims

2542. *Turkette*, 452 U.S. at 583 (1981) (“While the proof used to establish these separate elements may in particular cases coalesce, proof of one does not necessarily establish the other.”).

2543. See, e.g., *United States v. Indelicato*, 865 F.2d 1370, 1384 (2d Cir. 1989) (although “enterprise” and “pattern” requirements are distinct elements of the claim, same evidence could be used to prove both elements); *United States v. Perez*, No. 3:97CR48, 1999 WL 200696, at \*2 (D. Conn. Feb. 23, 1999) (elements of relatedness and continuity necessary to establish pattern can be proven through nature of RICO enterprise), *aff’d*, 242 F.3d 369 (2000), *cert. denied*, 532 U.S. 989 (2001).

2544. See, e.g., *United States v. Darden*, 70 F.3d 1507, 1521 (8th Cir. 1995) (proof must show enterprise has existence beyond the association necessary to commit the predicate acts); *Amsterdam Tobacco*, 107 F. Supp. 2d at 215 (enterprise would likely not exist were the predicate acts removed from the equation (citing *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 349 (S.D.N.Y. 1998))); *Zola v. Gordon*, 685 F. Supp. 354, 373 (S.D.N.Y. 1988) (enterprise must have an existence beyond that which is merely to commit each of the acts charged as predicated racketeering offenses); *United States v. Riccobene*, 709 F.2d 214, 223–24 (3d Cir. 1983) (same).

2545. *Chang v. Chen*, 80 F.3d 1293, 1298 (9th Cir. 1996) (quoting *Arlington v. Carpenter*, 619 F. Supp. 474, 479 (C.D. Cal. 1985)); see also *United States v. Bledsoe*, 674 F.2d 647, 664 (8th Cir.) (An enterprise cannot be proved absent “proof of some structure . . . separate from the racketeering activity and distinct from the organization which is a necessary incident to the racketeering. The Act simply punishes the commission of two of the specified crimes with a 10-year period.”), *cert. denied sub nom. Phillips v. United States*, 459 U.S. 1040 (1982).

2546. *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 158 (2001) (holding that RICO applies “when . . . a corporate employee unlawfully conducts the affairs of the corporation of which he is the sole owner—whether he conducts those affairs within the scope, or beyond the scope, of corporate authority”); see also *Fogie v. Thorn Americas, Inc.*, 190 F.3d 889, 898–99

brought under section 1962(a) or (b). Several cases have held that it is not necessary to show that the “enterprise” is separate and distinct from the “person” where the case arises under other provisions of section 1962.<sup>2547</sup> Similarly, the courts have disagreed on whether an intra-corporate conspiracy can be alleged under section 1962(d).<sup>2548</sup> Most courts have ruled that section 1962(c) was designed to punish only the persons who run an enterprise illegally and not the enterprise itself, which often will be an innocent victim of the racketeering activity.<sup>2549</sup> Plaintiffs have nonetheless attempted to circumvent this requirement by alleging, for example, that the defendant is an affiliate or parent corporation.<sup>2550</sup> Thus, in the situation where corporate employees are alleged to have conducted the affairs of the corporate enterprise through a pattern of racketeering activity, the courts generally have

(8th Cir. 1999) (finding parent and wholly owned subsidiary cannot be both the enterprise and person, and allegations failed to satisfy distinctiveness requirement); *Jaguar Cars, Inc. v. Royal Oaks Motor Car Co.*, 46 F.3d 258, 264 (3d Cir. 1995) (officers or employees of legitimate corporation properly named as “persons,” with corporation serving as the “enterprise”).

2547. *See, e.g.*, *New Beckley Mining Corp. v. Int’l Union, United Mine Workers*, 18 F.3d 1161, 1163 (4th Cir. 1994); *Landry v. Airline Pilots Ass’n Int’l*, 901 F.2d 404, 425–26 (5th Cir.), *cert. denied*, 498 U.S. 895 (1990); *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, 883 F.2d 132, 140 (D.C. Cir. 1989) (noting cases where courts have held corporation can be both person and enterprise under section 1962(a)), *rev’d in part on other grounds*, 913 F.2d 948 (D.C. Cir. 1990).

2548. *Compare Fogie*, 190 F.3d at 898–99 (no conspiracy can exist between a corporation and a wholly owned subsidiary), *with Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776, 787 (9th Cir.) (conspiracy under section 1962(d) could extend to intracorporate conspiracy), *cert. denied*, 519 U.S. 865 (1996).

2549. *See Hatch et al.*, *supra* note 2516, at 142–43.

2550. *See, e.g.*, *Bd. of County Comm’rs v. Liberty Group*, 965 F.2d 879, 885 (10th Cir. 1992); *Yellow Bus Lines*, 883 F.2d at 139–40; *Schofield v. First Commodity Corp.*, 793 F.2d 28, 29–30 (1st Cir. 1986); *Bennett v. United States Trust Co.*, 770 F.2d 308, 315 (2d Cir. 1985). *See Hatch et al.*, *supra* note 2516, at 143–44 and cases cited therein; *see also VanDenBroeck v. CommonPoint Mortgage Co.*, 210 F.3d 696, 701 (6th Cir. 2001) (sole shareholder of corporate “enterprise” can be “person” for purposes of RICO, and is sufficiently distinct from corporation to satisfy separateness requirement); *Brannon v. Boatmen’s First Nat’l Bank of Okla.*, 153 F.3d 1144, 1149 (10th Cir. 1998) (wholly owned subsidiary will be deemed distinct for purposes of section 1962(c) where parent and subsidiary had distinct roles in common course of wrongful conduct); *Emery v. Am. Gen. Fin., Inc.*, 134 F.3d 1321, 1324–25 (7th Cir. 1998) (plaintiff failed to state claim under RICO where parent corporation was alleged as “person” and its only involvement in racketeering scheme was limited to its status as parent of its subsidiary “enterprise”); *Yellow Bus Lines*, 883 F.2d at 141 (“[A]llowing plaintiffs to generate such ‘contrived partnerships’ consisting of an umbrella organization and its subsidiary parts, would render the non-identity requirements of section 1962(c) meaningless. We decline to permit such an ‘end run’ around the statutory requirements.”).

rejected plaintiffs' efforts to hold the corporation liable as a defendant, either directly or vicariously.<sup>2551</sup> Note, however, that some courts permit vicarious liability where an employer is benefited by its employee's section 1962(c) violations if the employer is distinct from the enterprise.<sup>2552</sup> Claims brought under other subsections have not been subject to similar limitations, and courts have applied general principles of vicarious liability depending on the circumstances and whether the corporation was a victim.<sup>2553</sup> Claims alleging association-in-fact enterprises have been dismissed on pretrial motions for failure to identify an enterprise that is more than a corporate entity and its agents conducting their regular business.<sup>2554</sup>

- *Pattern of racketeering activity.* Section 1961(5) defines "pattern" as "at least two acts of racketeering activity within a ten year period." In *H.J. Inc. v. Northwestern Bell Telephone Co.*,<sup>2555</sup> the Supreme Court addressed the meaning of the pattern requirement, holding a plaintiff must show that the predicate acts "are related and that they are or pose a threat of continued criminal activity."<sup>2556</sup> A pattern cannot be satis-

2551. See, e.g., *DeFalco v. Bernas*, 244 F.3d 286 (2d Cir. 2001); *Cedric Kushner Promotions, Ltd. v. King*, 219 F.3d 115, 116–17 (2d Cir. 2000) (affirming district court dismissal where defendant alleged as RICO person was an employee of the RICO enterprise acting within the scope of his authority); *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 584 (5th Cir. 1992); *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 45 (1st Cir. 1991). *Contra Cox v. Adm'r United States Steel & Carnegie*, 17 F.3d 1386, 1398 (11th Cir. 1994) (person and enterprise not required to be distinct under section 1962(c)), *modified*, 30 F.3d 1347 (11th Cir.), *cert. denied*, 513 U.S. 1110 (1995).

2552. See, e.g., *Brady v. Dairy Fresh Prods. Co.*, 974 F.2d 1149 (9th Cir. 1992).

2553. *Rakoff & Goldstein*, *supra* note 2527, § 1.03(2), at 1-13 to 1-18, and cases cited therein; *Quick v. Peoples Bank of Cullman County*, 993 F.2d 793, 797–98 (11th Cir. 1993) (section 1962(b)); *Brannon v. Boatmen's First Nat'l Bank of Okla.*, 153 F.3d 1144, 1149 (10th Cir. 1998) (section 1962(c)).

2554. See, e.g., *Parker & Parsley*, 972 F.2d at 583; *Brittingham v. Mobil Corp.*, 943 F.2d 297, 300–03 (3d Cir. 1991) ("[A] § 1962(c) enterprise must be more than an association of individuals or entities conducting the normal affairs of a defendant corporation."); *Yellow Bus Lines*, 883 F.2d at 141; *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 439 (5th Cir. 1987).

2555. 492 U.S. 229 (1989). *Northwestern Bell* resolved two conflicts among the circuits: (1) whether the pattern requirement could be met by a showing of only a single scheme, or whether separate multiple schemes must be alleged; and (2) whether a showing of two predicate acts, by themselves, would satisfy the pattern requirement.

2556. *Id.* at 239. As with other provisions of the statute, the Court noted that in defining a pattern of racketeering activity, Congress had intended "to take a flexible approach." *Id.* at 238; see also *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 n.14 (1985) (referring to the "continuity plus relationship" language of the Senate Report in attempting to describe a pattern). The circuit decisions following *Sedima* reflected differing views among the circuits as to when a pattern did

fied by sporadic and isolated activity.<sup>2557</sup> Rather, to satisfy the relatedness requirement, there must be some showing of acts with similar “purposes, results, participants, victims or methods of commission or [that] are otherwise interrelated . . . .”<sup>2558</sup> Continuity can be established where the predicate acts have extended over a substantial period of time (typically at least a year) or, alternatively, where the activity threatens to continue into the future.<sup>2559</sup> The Court offered examples of several ways in which the continuity prong of the pattern requirement could be satisfied, such as where the racketeering activity is a regular way of conducting an ongoing legitimate business, but emphasized that these were only illustrative of the innumerable possibilities and each case should be considered in light of its particular facts and circumstances.<sup>2560</sup> Circuit decisions following *Northwestern Bell* have developed varying tests for determining whether the relationship or continuity prongs have been established. For example, several circuits have adopted multifactor tests that consider such things as the nature, number, and temporal relationship of the predicate acts; whether the activity constituted a single scheme as opposed to several schemes; the number of putative victims; and the presence of distinct injuries to establish continuity.<sup>2561</sup> Other courts have broadly con-

or did not exist. *See, e.g.*, *United States v. Polanco*, 145 F.3d 536, 541 (2d Cir. 1998) (“Predicate acts ‘must be related to each other (‘horizontal relatedness’) and they must be related to the enterprise (‘vertical relatedness’).” (quoting *United States v. Minicone*, 960 F.2d 1099, 1106 (2d Cir. 1992))), *cert. denied*, 525 U.S. 1071 (1999); *Morgan v. Bank of Waukegan*, 804 F.2d 970, 975 (7th Cir. 1986) (pattern requires predicate acts involving separate transactions); *Superior Oil Co. v. Fulmer*, 785 F.2d 252, 257 (8th Cir. 1986) (pattern not met where all predicate acts are pursuant to one scheme); *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1355 (5th Cir. 1985) (single scheme sufficient).

2557. *Sedima*, 473 U.S. at 497 n.14.

2558. *Northwestern Bell*, 492 U.S. at 240. *See, e.g.*, *Combs v. Bakker*, 886 F.2d 673 (4th Cir. 1989) (vacating district court decision and holding that pattern requirement did not require different types of predicate acts, or objective).

2559. *Northwestern Bell*, 492 U.S. at 242.

2560. *Id.*

2561. *See, e.g.*, *W. Assocs. Ltd. P’ship v. Market Square Assocs.*, 235 F.3d 629, 634 (D.C. Cir. 2001) (six-factor test was “flexible guide for analyzing RICO allegations on a case by case basis”); *Tabas v. Tabas*, 47 F.3d 1280, 1296 (3d Cir. 1995) (noting that six factors established before decision in *Northwestern Bell* remained relevant in determining whether a pattern existed, although court was not required to apply them in every case); *Wade v. Hopper*, 993 F.2d 1246, 1251 (7th Cir.) (four-factor test), *cert. denied*, 510 U.S. 868 (1993); *Prof’ls, Inc. v. Berry*, 959 F.2d 231 (4th Cir. 1992); *420 East Ohio Ltd. P’ship v. Cocose*, 980 F.2d 1122, 1124 (7th Cir. 1992) (retaining five-factor test but assessing pattern requirement in light of *Northwestern Bell* and looking at the specific facts of each case).

strued *Northwestern Bell* to mean that isolated acts of criminal activity would not give rise to a RICO violation, rather than as establishing a “determinative two-pronged test.”<sup>2562</sup>

Conversely, several courts have dismissed RICO claims for failure to satisfy the pattern requirement where (1) the allegations involve completed or “close-ended” conduct lasting twelve months or less, where there is no threat of future criminal conduct;<sup>2563</sup> or (2) the claims involve only a single (or a few) victims, even though the conduct may have lasted for many months or even years.<sup>2564</sup> In the latter case, most courts have held that criminal activity directed at only a single victim does not pose a threat of long-term criminal conduct sufficient to satisfy the “continuity” requirement.<sup>2565</sup> Several courts have noted that particularly where the predicate acts of mail and wire fraud are alleged,

2562. *Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 192 (9th Cir. 1987). Still others focus on certain factors, such as duration. *Cofacredit v. Windsor Plumbing Supply Co.*, 187 F.3d 229, 241 (2d Cir. 1999) (“Although closed-ended continuity is primarily a temporal concept, other factors . . . are also relevant . . .”); *Tabas*, 47 F.3d at 1294; *Rakoff & Goldstein*, *supra* note 2527, § 1.04[2], at 1-35 to 1-48.

2563. *See, e.g., Efron v. Embassy Suites, Inc.*, 223 F.3d 12, 19 (1st Cir. 2000) (acts comprising single effort over period of twenty-one months was not a pattern), *cert. denied*, 532 U.S. 905 (2001); *Cofacredit*, 187 F.3d at 243–44 (noting closed-ended continuity is not met where conduct occurred over less than two years); *Word of Faith World Outreach Ctr. Church v. Sawyer*, 90 F.3d 118, 123 (5th Cir. 1996) (where alleged acts “were part of a single, lawful endeavor,” acts would not constitute continuing or threat of continued racketeering activity); *Tabas*, 47 F.3d. at 1294; *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1024 (7th Cir. 1992); *Uni\*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 922 (7th Cir. 1992); *Tel-Phonic Servs., Inc. v. TBS Int’l, Inc.*, 975 F.2d 1134, 1140 (5th Cir. 1992); *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1412–13 (3d Cir. 1991); *Am. Eagle Credit Corp. v. Gaskins*, 920 F.2d 352, 354 (6th Cir. 1990); *Emcore Corp. v. PricewaterhouseCoopers, LLP*, 102 F. Supp. 2d 237, 252 (D.N.J. 2000) (closed-ended continuity cannot exist where allegations relate to schemes lasting less than fourteen months); *KNK Medical-Dental Specialties, Ltd. v. Tanex*, No. CIV.A. 99-5265, 2000 WL 1470665, at \*7 (E.D. Pa. Sept. 28, 2000) (plaintiff failed to allege acts sufficient to show “closed-ended” continuity or threat of continued criminal activity).

2564. *See, e.g., Wade*, 993 F.2d at 1252; *Boone v. Carlsbad Bancorporation, Inc.*, 972 F.2d 1545, 1556 (10th Cir. 1992); *Hindes v. Castle*, 937 F.2d 868, 872–76 (3d Cir. 1991) (“[I]t remains an open question whether RICO liability is ever appropriate for a single-scheme, single-victim conduct threatening no future harm.”); *Lange v. Hocker*, 940 F.2d 359, 362 (8th Cir. 1991). *But see Tabas*, 47 F.3d at 1295 (inquiry is not whether there was only one victim or scheme but how long the scheme lasted, the frequency of predicate acts, and whether there is a threat of continuing racketeering activity).

2565. *But see Cocose*, 980 F.2d at 1124 (the fact that no more than a single scheme is present does not automatically bar the requisite continuity, but the presence of a single scheme is still relevant to our inquiry).

the pattern requirement “helps to prevent ordinary commercial fraud from being transformed into a federal RICO claim.”<sup>2566</sup>

- *Conducting or participating in the affairs of an enterprise.* Section 1962(c) prohibits participating in or conducting the affairs of an enterprise through a pattern of racketeering activity. The liability for participating in the conduct of the enterprise through a pattern of racketeering extends only to those who “play some part in directing the enterprise’s affairs.”<sup>2567</sup> The Supreme Court has made it clear that the defendant need not be in upper management, nor is liability limited only to those with primary responsibility for the affairs of the enterprise.<sup>2568</sup> The “operation or management” test is not easily satisfied. The courts have held that there is a “difference between actual control over an enterprise and association with an enterprise in ways that do not involve control.”<sup>2569</sup> For example, the provision of goods or services, including those by outside professionals such as accountants or lawyers, will not, in itself, satisfy the test even though the enterprise may benefit in some way.<sup>2570</sup> Liability may also extend to lower-level employees who play some material role under the direction of upper

2566. *Menasco, Inc. v. Wasserman*, 886 F.2d 681, 685 (4th Cir. 1989). *See also W. Assoc.*, 235 F.3d at 637.

2567. *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (“Once we understand the word ‘conduct’ to require some degree of direction and the word ‘participate’ to require some part in that direction, the meaning of § 1962(c) comes into focus.”).

2568. *See also United States v. Paris*, 159 F.3d 790, 796 (3d Cir. 1998) (where defendant participated in conduct of enterprise’s affairs and was deeply involved in its operation, fact that he held no formal title or role did not preclude finding that he participated within the meaning of section 1962(c)). *See Amsterdam Tobacco Inc. v. Philip Morris Inc.*, 107 F. Supp. 2d 210, 217 (S.D.N.Y. 2000) (the provision of goods subsequently illegally transported “does not constitute operation or management sufficient to establish a RICO enterprise”); *Bowdoin Constr. Corp. v. R.I. Hosp. Trust Nat’l Bank*, 869 F. Supp. 1004, 1009 (D. Mass. 1994) (dismissing claims against law firms, even though they had knowledge of fraud and counseled concealment, as insufficient to constitute control over operation and management), *aff’d*, 94 F.3d 721 (1st Cir. 1996). *But see DeFalco v. Bernas*, 244 F.3d 286, 311 (2d Cir. 2001) (even though defendant had no role in management of town, evidence reflected his influence over town’s affairs and that he exerted some control through threats and other actions); *In re Sumitomo Copper Litig.*, 104 F. Supp. 2d 314, 325 (S.D.N.Y. 2000) (finding allegations of reciprocal assistance between defendants sufficient to allege substantial assistance by defendant to satisfy operation and management test of *Reves*); *Clark v. Milam*, 847 F. Supp. 409, 418 (S.D. W. Va. 1994) (known concealment can constitute participation in control of enterprise).

2569. *Redtail Leasing, Inc. v. Bellezza*, No. 95 CIV. 5191, 2001 WL 863556, at \*4 (S.D.N.Y. July 31, 2001) (citing *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998)).

2570. *Univ. of Md. v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539 (3d Cir. 1993).

management,<sup>2571</sup> although it is unclear whether liability will attach to lower-level employees where they do not also play some management or “directing” role.<sup>2572</sup> The courts have differed in their approach to this issue.<sup>2573</sup> Finally, liability can extend to outsiders who are associated with the enterprise and exert control over it (for example, by bribery), or who participate in the operation or management of the enterprise; however, it generally will not extend to outside accountants and counsel who render assistance but no control.

## 35.3 Case Management

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### 35.31 Pleadings

Under Federal Rule of Civil Procedure 8(a)(2), the complaint is to contain “a short and plain statement of the claim showing the pleader is entitled to relief.” The allegations are to be “simple, concise, and direct”<sup>2574</sup> in order to assist the defendant in understanding the claims alleged against it and the court in conducting the litigation in an orderly fashion.<sup>2575</sup> Compliance with Rule 8 conserves judicial and party resources that otherwise would be expended in

2571. *Reves*, 507 U.S. at 179; *see, e.g.*, *United States v. Viola*, 35 F.3d 37, 43 (2d Cir. 1994) (noting that *Reves* attached liability to those down “ladder of operation” and defendant “was not on the ladder at all, but rather . . . was sweeping up the floor underneath it”).

2572. *See, e.g.*, *Goren v. New Vision Int’l, Inc.*, 156 F.3d 721, 728 (7th Cir. 1998) (“[S]imply performing services for an enterprise, even with knowledge of the enterprise’s illicit nature, is not enough to subject an individual to RICO liability under § 1962(c) . . . .” (referring to non-employees hired to perform specific tasks)).

2573. *See, e.g.*, *MCM Partners, Inc. v. Andrews-Bartlett & Assocs., Inc.* 62 F.3d 967, 978–79 (7th Cir. 1995) (“‘[D]irection’ requirement includes both those who direct, as well as those who take direction.”) (citation omitted); *Viola*, 35 F.3d at 41 (“[I]t is plain that the simple taking of directions and performance of tasks that are ‘necessary or helpful’ to the enterprise, without more, is insufficient . . . .”); *Peat*, 996 F.2d at 1538–39 (“[N]ot even action involving some degree of decision making constitutes participation in the affairs of an enterprise.”).

2574. Fed. R. Civ. P. 8(e)(1).

2575. *See, e.g.*, *Michaelis v. Neb. State Bar Ass’n*, 717 F.2d 437, 439 (8th Cir. 1983) (amended complaint with 98 pages and 144 numbered paragraphs justified dismissal with prejudice, where plaintiff repeatedly violated Rule 8 and “style and prolixity of pleadings would have made an orderly trial impossible”).

deciphering prolix or confusing allegations.<sup>2576</sup> The length and complexity of RICO complaints are sometimes related to the requirement to plead fraud with particularity in claims alleging mail and wire fraud as predicate acts, while in other circumstances they derive from an attempt to obscure non-compliance with Rule 8 and the inclusion of irrelevant or conclusory allegations.<sup>2577</sup> The court should consider reviewing a RICO complaint shortly after filing to determine whether it satisfies Rule 8. Some courts faced with a RICO complaint that is unintelligible, confusing, or otherwise violative of Rule 8 have dismissed the complaint *sua sponte* and required the plaintiff to file a “RICO case statement”<sup>2578</sup> along with an amended complaint.<sup>2579</sup> Such an approach conserves both judicial and party resources, and precludes the court, upon undertaking review of the sufficiency of a complaint, from having to “forever sift through its pages.”<sup>2580</sup> Consider also dismissal with prejudice where the plaintiff has been given the opportunity to file an amended complaint and persists in filing a lengthy and confusing document. Although dismissal of a complaint for failure to comply with Rule 8 ordinarily should be with leave to amend,<sup>2581</sup> where the party either fails or is unable to rectify the problem, dismissal with prejudice might be appropriate.<sup>2582</sup>

2576. See, e.g., *Nevigel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 675 (9th Cir. 1981) (affirming dismissal with prejudice, noting that appellees “had to spend a large amount of time and money” defending against poorly drafted proceedings and that proper consideration was the right of appellees to be free from “costly and harassing litigation and the rights of litigants awaiting their turns to have other matters resolved”); *Gordon v. Green*, 602 F.2d 743, 745 (5th Cir. 1979) (compliance with Rule 8 conserves judicial resources).

2577. See, e.g., *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 776 (7th Cir. 1994) (stating “although RICO complaints often might need to be somewhat longer than many complaints, RICO complaints must meet the requirements of Rule 8(a)(2) and Rule 8(e)(1)”).

2578. See *infra* section 40.44.

2579. *Bryant v. Yellow Freight Sys.*, 989 F. Supp. 966 app. 5 (N.D. Ill. 1997); *Richmond v. Nationwide Cassel L.P.*, No. 93 C 6107, 1993 WL 433794, at \*2 (N.D. Ill. Oct. 22, 1993).

2580. *Jennings v. Emry*, 910 F.2d 1434, 1436 (7th Cir. 1990); see also *Vicom*, 20 F.3d at 776 (“But given the fact that Vicom had already amended its complaint once, we think the district court should have given more serious consideration to dismissing Vicom’s amended complaint with prejudice” under Rule 8.); *Hartz v. Friedman*, 919 F.2d 469, 471 (7th Cir. 1990) (district court could properly have dismissed RICO complaint as “egregious” violation of Rule 8); *Gordon*, 602 F.2d at 745 (declining to “struggle” through 4,000 pages of pleadings to determine if dismissal for lack of jurisdiction was proper, court vacated and remanded for dismissal of complaint for violation of Rule 8).

2581. See, e.g., *Richmond*, 1993 WL 433794, at \*2; *Gould v. Nat’l Westminster Bank, U.S.A.*, No. 3:99-CV-01892, 2000 WL 1339292 at \*5 (D. Conn. Aug. 2, 2000) (“plaintiff is ordinarily allowed to replead his complaint following the granting of a motion to dismiss”).

2582. *Vicom, Inc.*, 20 F.3d at 776; *Michaelis v. Neb. State Bar Ass’n*, 717 F.2d 437, 439 (8th Cir. 1983).

Rule 9(b) also plays a prominent role in RICO cases that allege predicate acts of fraud. In such cases, Rule 9(b) governs the specificity required to plead both the overall RICO elements and the elements of the predicate offenses, as well as the elements of the RICO claim.<sup>2583</sup> The impact of RICO allegations on a defendant's reputation makes it important to ensure that the claim is solidly based.<sup>2584</sup> Courts have varied in the level of specificity the plaintiff must plead to survive a Rule 9(b) motion. Some judges have required the plaintiff to detail the specific fraudulent acts committed by each defendant, where multiple defendants are involved.<sup>2585</sup> Others insist that the plaintiff detail not only the specific fraudulent statements, but where, when, and how they were communicated.<sup>2586</sup> The goal is to ensure that complaints sounding in fraud entail more than general and vague statements of alleged misrepresentation, and plaintiffs who fail to plead the underlying predicate acts with the specificity demanded by Rule 9(b) risk dismissal of their RICO claims.<sup>2587</sup>

2583. *Brooks v. Bank of Boulder*, 891 F. Supp. 1469, 1476 (D. Colo. 1995). A number of courts have held that non-fraud RICO claims are governed by Rule 8. *See MCM v. Andrews-Bartlett & Assocs., Inc.*, 62 F.3d 967 (7th Cir. 1995); *McLaughlin v. Anderson*, 962 F.2d 187, 194 (2d Cir. 1992) (holding that the district court should have evaluated plaintiff's extortion claim against the "more lenient pleading standards" of Rule 8(a)); *Mendoza v. Zirkle Fruit Co.*, No. CS-00-3024, 2000 WL 33225470, at \*4 (E.D. Wa. Sept. 27, 2000); *see also Rakoff & Goldstein*, *supra* note 2527, § 1.04[1], at 1-32 to 1-35. Some question remains, however, as to whether the requirement of a RICO case statement effectively heightens the pleading standard of Rule 8. *See, e.g., Mendoza*, 2000 WL 33225470, at \*5 (noting that plaintiffs raised valid issue but its resolution was not necessary for purposes of court's ruling).

2584. *Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998); *see also Brooks*, 891 F. Supp. at 1477 ("A charge of racketeering, with its implications of links to organized crime [and attendant consequences to a person's reputation and goodwill], should not be easier to make than accusations of fraud.").

2585. *Rakoff & Goldstein*, *supra* note 2527, § 7.04[1] at 7-30 to 7-33.

2586. *Id. See Anatian v. Coutts Bank of Switz.*, 193 F.3d 85, 88 (2d Cir. 1999) (plaintiff failed to allege how communications were fraudulent), *cert. denied*, 528 U.S. 1188 (2000); *Moore v. PaineWebber, Inc.*, 189 F.3d 165, 173 (2d Cir. 1999) (plaintiff also must identify purpose of mailing within the fraudulent scheme, and facts showing fraudulent intent); *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997) (plaintiff required to state time, place, and content of allegedly fraudulent communications).

2587. *Allen v. New World Coffee, Inc.*, No. 00 CIV. 2610, 2001 WL 293683, at \*3-4 (S.D.N.Y. Mar. 27, 2001) (dismissing plaintiff's RICO claims where plaintiff failed to plead with specificity); *Poling v. K. Hovnanian Enters.*, 99 F. Supp. 2d 502, 509 (D.N.J. 2000) (dismissing RICO claims for repeated failure to meet Rule 9(b)); *Gottstein v. Nat'l Ass'n for the Self Employed*, 53 F. Supp. 2d 1212, 1218 (D. Kan. 1999) (dismissing RICO claim for failure to set out predicate acts with particularity); *Elliott v. Foufas*, 867 F.2d 877, 882 (5th Cir. 1989) (affirming dismissal of complaint where plaintiff failed to plead with sufficient specificity to state a RICO claim). The courts generally have relaxed Rule 9(b)'s strict pleading requirements where the information needed to plead with the requisite particularity is in the exclusive control of the

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The RICO case statement has proven useful in RICO litigation.<sup>2588</sup> This statement details both the factual and legal basis for the plaintiff's claim.<sup>2589</sup> One judge's order required, among other things, that the plaintiff do the following:<sup>2590</sup>

- state whether the alleged unlawful conduct violated 18 U.S.C. § 1962(a), (b), (c), or (d);
- list each defendant, and state the alleged misconduct as to each;
- list each victim and state the manner in which they were allegedly injured;
- describe in detail the pattern of racketeering activity (or collection of wrongful debt) alleged for each RICO claim, including the alleged predicate acts, the dates, the participants, and the surrounding facts;
- describe the time, place, and content of each alleged misrepresentation where the RICO claim is based on predicate offenses of mail or wire fraud, as well as the identity of the persons to whom and by whom it was made;
- state whether there had been a criminal conviction for violation of the predicate acts, or if civil litigation had resulted in a judgment with respect to the predicate acts;
- describe the manner in which the predicate acts formed a pattern of racketeering activity, whether they related to each other as part of a common plan, and if so, to describe the plan in detail;
- describe in detail the alleged enterprise, including the names of the persons or entities allegedly constituting the enterprise, its structure and purpose, and the relationship and association of the defendants to the enterprise;
- describe the relationship between the activities of the enterprise and the pattern of racketeering activity, whether the pattern of racketeering

defendant. *Ahmed*, 118 F.3d at 890 (holding the district court was not required to make a second determination of whether additional discovery was needed to permit the plaintiff to make the specific allegations needed to support fraud claim where plaintiff failed to show such information was in the exclusive possession of the defendant).

2588. *See, e.g.*, *Northland Ins. Co. v. Shell Oil Co.*, 930 F. Supp. 1069, 1076 (D.N.J. 1996) (RICO case statement is a case-management tool).

2589. *See, e.g.*, *Carne v. Dunn*, No. Civ. A. 99-2776, 2000 WL 1134394, at \*2 (E.D. La. Aug. 10, 2000) (plaintiff filed thirty-nine page RICO case statement).

2590. *See Bryant v. Yellow Freight Sys.*, 989 F. Supp. 966 app. 5 (N.D. Ill. 1997); *see also Int'l Bhd. of Teamsters v. Carey*, No. 00 CIV. 2952, 2001 WL 88210, at \*2-3 (S.D.N.Y. Oct. 1, 2001) (order detailing content to be included in case statement); *Darocha v. Crusader Sav. Bank*, No. CIV.A. 92-7264, 1995 WL 118208, at \*3-4 (E.D. Pa. May 10, 1995).

activity and the enterprise are separate or merged into one, and what benefits the enterprise receives from the pattern of racketeering;

- describe the direct causal relationship between the alleged injury and the violation of the RICO statute; and
- set forth the facts that support the elements with respect to claims under 18 U.S.C. §§ 1962(a), (b), (c), and (d).

Courts generally have considered the RICO case statement as part of the pleadings. Requiring the plaintiff to file a RICO case statement will assist the court when ruling on motions under Rule 12 and Rule 9(b), in addition to summary-judgment motions under Rule 56. In ruling on motions under Rule 12, courts have considered the facts stated in the RICO case statement in conjunction with the allegations of the complaint.<sup>2591</sup> The RICO case statement, together with a reading of the complaint, will help narrow the issues and identify claims that lack merit, which can then be dismissed (with or without prejudice) before significant time and effort is spent. Finally, these statements can also help to “focus discovery . . . and provide a blueprint for trial.”<sup>2592</sup>

Some districts have adopted standing orders requiring the filing of a RICO case statement within a certain period of time once the complaint is filed.<sup>2593</sup> Other districts, however, only require the plaintiff to file a case statement

2591. See, e.g., *McLaughlin v. Anderson*, 962 F.2d 187, 195 (2d Cir. 1992) (noting district court dismissed complaint after considering both complaint and RICO case statement); *Allen Neurosurgical Assocs., Inc. v. Lehigh Valley Health Network*, No. CIV.A. 99-4653, 2001 WL 41143, at \*3 n.1 (E.D. Pa. Jan. 18, 2001) (“The RICO case statement is a pleading that may be considered part of the operative complaint for purposes of a motion to dismiss.”); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 279, 288 (D.S.C. 1999) (considering both complaint and the second amended RICO case statement on motion to dismiss); *R.C.M. Executive Gallery Corp. v. Rols Capital Co.*, 901 F. Supp. 630, 639 n.8 (S.D.N.Y. 1995) (“On a motion to dismiss, the Court must take as true the allegations contained in the RICO case statements, along with those contained in the complaint.”). *But see Carne*, 2000 WL 1134394, at \*2 n.1 (“The case statement provides the plaintiff’s claims of fraud in even more detail than their complaint, though the Court does not rely on these allegations in its rulings.”).

2592. *Northland Ins. Co. v. Shell Oil Co.*, 930 F. Supp. 1069, 1075 (D.N.J. 1996) (citing *RICO Case Statements*, [Nov. 1988–June 1990] RICO Bus. Disputes Guide (CCH) ¶ 7453, at 10,273 (1990)).

2593. *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 605 (5th Cir. 1998) (noting plaintiffs had been ordered to file RICO case statement); *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989) (RICO standing order); *Carne*, 2000 WL 1134394, at \*2 n.1 (standing order); *Dixon v. Ford Motor Credit*, No. CIV.A. 98-2456, 2000 WL 713259, at \*2 (E.D. La. May, 31, 2000); *Poling v. K. Hounanian Enters.*, 99 F. Supp. 2d 502, 508 (D.N.J. 2000) (plaintiff failed to file adequate RICO case statement); *Northland Ins.*, 930 F. Supp. at 1073 (adopting RICO case statement as part of local rules); *Lui Ciro, Inc. v. Ciro Inc.*, 895 F. Supp. 1365, 1377 (D. Haw. 1995) (plaintiffs must file RICO case statement within thirty days of filing complaint).

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where he or she “has demonstrated a real lack of understanding of the elements [of RICO]”<sup>2594</sup> or where the court otherwise determines that such a statement is necessary.<sup>2595</sup> The failure to timely file a RICO case statement has been grounds for dismissal, as has the filing of a statement that is deficient or otherwise fails to provide the information requested.<sup>2596</sup> The authority of a court to order a RICO case statement has not been definitively established in most jurisdictions. Nonetheless, while there have been occasional challenges to orders requiring the filing of a RICO case statement as imposing heightened pleading requirements contrary to Federal Rule of Civil Procedure 8(a), these challenges generally have been rejected.<sup>2597</sup> The courts have found implicit authority for RICO case statements in federal and local rules, as well as federal statutes.<sup>2598</sup>

2594. *Bryant v. Yellow Freight Sys.*, 989 F. Supp. 966, 969 (N.D. Ill. 1997).

2595. *See, e.g., Int’l Bhd. of Teamsters v. Carey*, No. 00 CIV. 2952, 2001 WL 88210, at \*1 (S.D.N.Y. Feb. 1, 2001) (plaintiff required to file case statement upon amending complaint); *Office Outfitters, Inc. v. AB Dick Co., Inc.*, 83 F. Supp. 2d 772, 775 (E.D. Tex. 2000) (noting, after hearing on defendant’s motion to dismiss, magistrate judge recommended plaintiffs file RICO case statement and defendants be allowed to renew their motions once the statement was filed).

2596. *Pierce v. Ritter, Chusid, Bivonia & Cohen*, 133 F. Supp. 2d 1344, 1346 (S.D. Fla. 2001) (“[F]ailure to include a RICO statement as required by Local Rule 2.1 is grounds for dismissing both the Federal and State RICO counts.”); *Gould v. Nat’l Westminster Bank*, No. 3:99-CV-01892, 2000 WL 1339292, at \*5 (D. Conn. Aug. 2, 2000) (dismissing RICO claim “for complete non-compliance” with standing order); *Paddlewheel Props., Inc. v. Waste Mgmt. of Miss., Inc.*, 23 F. Supp. 2d 670, 674 (S.D. Miss. 1997) (plaintiff’s filing of RICO case statement two weeks after date due under court’s order did not warrant sanction of dismissal of complaint); *Lui Ciro*, 895 F. Supp. at 1377–78 (under circumstances where it appeared plaintiff had no notice of standing order requiring filing of RICO case statement, court would not dismiss complaint under Rule 41(b)).

2597. *See, e.g., Mendoza v. Zirkle Fruit Co.*, No. CS-00-3024–FVS, 2000 WL 33225470, at \*5 (E.D. Wash. Sept. 27, 2000) (declining to decide whether requiring RICO case statement conflicted with Rule 8(a)).

2598. *See, e.g., Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989) (RICO Standing Order was consistent with requirement of Rule 8 and highlighted for plaintiff particular requirements for pleading RICO claim); *Northland Ins. Co. v. Shell Oil Co.*, 930 F. Supp. 1069, 1071–75 (D.N.J. 1996) (finding support for RICO case statement in Judicial Improvements Act, the Civil Justice Reform Act of 1990, Fed. R. Civ. P. 83 and 16, and court local rules, and stating that it “does not constitute a heightened pleading standard”). *But see Rakoff & Goldstein, RICO, supra* note 2527, § 1.04[1], at 1-35 (“Going further still (although perhaps beyond their authority), some federal districts now require plaintiffs in private civil RICO actions to automatically file ‘RICO statements’ particularizing their allegations, regardless of whether or not the claims are predicated on fraud.”). One court has noted that the strongest authority for RICO case statements is afforded under Rule 16. *Northland Ins.*, 930 F. Supp. at 1075.

### 35.32 Initial Conference

Efficient management of RICO litigation requires early identification and narrowing of the disputed legal and factual issues and identification of the precise statutory violations alleged. For example, some categories of damages, such as claims for personal injury, usually are not allowed under RICO, and one issue that can be addressed at the initial conference is the propriety of the damage claims asserted by the plaintiff.<sup>2599</sup> The pleadings often will reveal jurisdictional issues that will need to be addressed at the outset. After notice and hearing, the complaint can be dismissed *sua sponte*, either in whole or in part, where jurisdiction is clearly improper.<sup>2600</sup> State and federal courts have concurrent jurisdiction over RICO claims,<sup>2601</sup> and the court may also find it appropriate in some circumstances (e.g. where the predicate acts involve issues of state law) to refrain from allowing the case to proceed in federal court. In addition, where RICO provides the only basis for subject-matter jurisdiction in federal court, the dismissal of the RICO claims may also warrant dismissal of supplemental state claims under 28 U.S.C. § 1367(a).<sup>2602</sup> Absent unusual circumstances warranting the exercise of jurisdiction over supplemental state law claims, they can be dismissed without prejudice.<sup>2603</sup>

Certain issues persistently appear in RICO litigation and can significantly affect the viability of the claim. Addressing these issues early in the case can reveal the presence of fatal flaws in the complaint before the court or the parties expend significant resources. Inquiry into the following areas either before or in conjunction with the initial Rule 16 conference will assist the court and the parties in identifying possible jurisdictional problems:

- *Does the plaintiff have standing?* In order to have standing to pursue a RICO claim, a plaintiff must have “been injured in his business or property by the conduct constituting the violation.”<sup>2604</sup> The injury to

2599. *Genty v. RTC*, 937 F.2d 899, 918 (3d Cir. 1991); *Grogan v. Platt*, 835 F.2d 844, 847 (11th Cir. 1988).

2600. *Bryant v. Yellow Freight Sys.*, 989 F. Supp. 966, 968 (N.D. Ill. 1997) (“[J]urisdiction is not called into play by a litigant’s mere thoughtless incantation of the RICO acronym.”). *See also Michaelis v. Neb. State Bar Ass’n*, 717 F.2d 437, 439 (8th Cir. 1983); Fed. R. Civ. P. 12(h)(3) (West 2003).

2601. *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990).

2602. *See, e.g., Camelio v. Am. Fed’n*, 137 F.3d 666, 672 (1st Cir. 1998).

2603. *See, e.g., id.* (the district court “erred in retaining jurisdiction over the state law claims after it dismissed the federal claims on which jurisdiction was based”).

2604. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985) (rejecting barriers to bringing a claim erected by lower courts as unsupported by the statutory language and contrary to the plain meaning of section 1964(c)); 18 U.S.C. § 1964(c) (West 2003); *see also LaBabera v. Angel*, 95 F. Supp. 656, 663 (E.D. Tex. 2000) (plaintiff’s cause of action will not accrue until the amount

business or property can be, but is not limited to, competitive injury.<sup>2605</sup> It does not, however, extend to personal injury, emotional distress or associated economic losses,<sup>2606</sup> nor can a plaintiff recover where, although injured, he or she ultimately suffered no pecuniary loss.<sup>2607</sup> In addition, the injury must arise from, and be proximately caused by, the unlawful conduct.<sup>2608</sup> Most courts have ruled that the only injury compensable under section 1962(a), for example, is that

of damages is clear and definite, and damage assessment is currently premature and speculative). There is some disagreement among the circuits on whether a plaintiff has standing under section 1962(a) only if he or she has been injured by the use or investment of racketeering income, as opposed to where the injuries simply flow from the predicate acts. *Compare* *Fogie v. Thorn Ams., Inc.*, 190 F.3d 889, 895 (8th Cir. 1999) (standing under section 1962(a) exists only for plaintiffs who are injured in the use or investment of racketeering income) *and* *Office Outfitters, Inc. v. AB Dick Co.*, 83 F. Supp. 2d 772, 778 (E.D. Tex. 2000) (plaintiff's injury must flow "from 'the investment of racketeering income into the [RICO] enterprise'" (quoting *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995))), *with* *Busby v. Crown Supply, Inc.*, 896 F.2d 833, 837 (4th Cir. 1990) (plaintiffs injured as a result of the predicate actions also have standing). The majority of courts limit standing to persons injured by the use or investment of racketeering proceeds. *See Fogie*, 190 F.3d at 895 (noting that seven of eight circuits addressing the issue limit standing to use and investment).

2605. *Sedima*, 473 U.S. at 497 n.15.

2606. *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990) (denying RICO recovery for personal injury, including emotional distress resulting in pecuniary losses, arising from cancellation of liability policy); *James v. Meow Media, Inc.*, 90 F. Supp. 2d 798, 814 (W.D. Ky. 2000) ("Personal injuries and mental suffering do not confer a person with standing to bring a RICO claim because those types of damages are not injuries to 'business or property.'"); *Iron Workers Local Union No. 17 Ins. Fund v. Philip Morris, Inc.*, 23 F. Supp. 2d 771, 790 (N.D. Ohio 1998) ("RICO excludes from its ambit damages for personal injury [and] [c]laims for personal property injuries."); *City and County of S.F. v. Philip Morris, Inc.*, 957 F. Supp. 1130, 1138 (N.D. Cal. 1997) (physical injuries not recoverable). The courts have imposed some limitations on when economic losses are compensable. *See, e.g.*, *Mario v. Aetna, Inc.*, 221 F.3d 472, 483–84 (3d Cir. 2000) (injury to business and property means financial loss); *Imagineering, Inc. v. Kiewit Pac. Co.*, 976 F.2d 1303, 1310 (9th Cir. 1992) (holding that "injury" requires proof of concrete financial loss); *Fleischhauer v. Feltner*, 879 F.2d 1290, 1300 (6th Cir. 1989) (plaintiffs could recover only their direct investment in a fraudulent scheme and were not entitled to expectancy damages or lost tax benefits); *Stationary Eng'rs Local 39 Health & Welfare Trust Fund v. Philip Morris, Inc.*, No. C-97-01519, 1998 WL 476265, at \*5 (N.D. Cal. Apr. 30, 1998) (financial losses flowing from personal injuries resulting from smoking are not recoverable under RICO).

2607. *Steele v. Hosp. Corp. of Am.*, 36 F.3d 69, 70–71 (9th Cir. 1994) (where plaintiffs did not pay excessive charges out of their own pockets, they did not suffer financial loss); *Dornberger v. Metro. Life Ins. Co.*, 961 F. Supp. 506, 521 (S.D.N.Y. 1997) (plaintiffs must have incurred some out-of-pocket financial loss).

2608. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 267–68 (1992).

resulting from a defendant's investment of racketeering income.<sup>2609</sup> Claims under section 1962(a) alleging injury resulting from racketeering activity alone, rather than from the use or investment of racketeering income, may thus be subject to early dismissal.<sup>2610</sup> Similar interpretations have been accorded the injury component under section 1962(b). Most courts have required that the alleged injury to the plaintiff proximately result from the defendant's interest in, or control over, an enterprise.<sup>2611</sup> On the other hand, a plaintiff suing under section 1962(c) need not prove any kind of special "racketeering injury" but only that at least one of the predicate acts proximately caused the requisite injury to the plaintiff.<sup>2612</sup> Still unclear is whether the plaintiff, to have standing under RICO, must also satisfy any special standing requirement that may relate to the underlying predicate acts.<sup>2613</sup> In *Beck v. Prupis*, the Supreme Court resolved whether a suit can be maintained under section 1962(d) for conspiracy where the alleged injury results from wrongful acts that do not fall within the offenses

2609. See, e.g., *Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055, 1063 (2d Cir. 1996) (plaintiff must "allege a 'use or investment' injury that is distinct from the injuries resulting from predicate acts"); *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 584 (5th Cir. 1992) ("[T]he causal language of section 1964(c) requires that the compensable injury stem from the violation of the RICO section in question, so any injury under section 1962(a) must flow from the use or investment of racketeering income."); *Danielsen v. Burnside-Ott Aviation Training Ctr., Inc.*, 941 F.2d 1220, 1229 (D.C. Cir. 1991) ("[A] plaintiff . . . must plead and prove that his injury flowed from the defendant's use or investment of racketeering income."); *Falise v. Am. Tobacco Co.*, 94 F. Supp. 2d 316, 349 (E.D.N.Y. 2000) (reinvestment of racketeering proceeds into same enterprise is insufficient to satisfy "use or investment" requirement of section 1962(a)). But see *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 279, 289 n.9 (D. S.C. 1999) ("[P]laintiffs have standing to allege a 1962(a) claim when their injuries were proximately caused by either the underlying predicate acts or the investment and use of the income derived from the predicate acts.") (citing *Busby v. Crown Supply, Inc.*, 896 F.2d 833, 837–40 (4th Cir. 1990)).

2610. *Hatch et al.*, *supra* note 2516, at 141–42.

2611. In claims under section 1962(b), see, e.g., *Danielsen*, 941 F.2d at 1229–30; *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1411 (3d Cir. 1991); *Airlines Reporting Corp v. Barry*, 666 F. Supp. 1311, 1315 (D. Minn. 1987). In *Beck v. Prupis*, 529 U.S. 494, 506 n.9 (2000), the Court noted "[a]lthough we express no view on this issue, arguably a plaintiff suing for a violation of 1962(d) based on an agreement to violate 1962(a) is required to allege injury from the 'use or invest[ment]' of illicit proceeds."

2612. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495–96 (1985).

2613. See, e.g., *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 275–76 (1992) (court declined to address issue); *Ford Motor Co. v. Summit Motor Prods., Inc.*, 930 F.2d 277, 286 (3d Cir. 1991) ("[T]he standing inquiry in any civil RICO case depends solely on demonstrating injury to business or property, and not on satisfying any standing requirement attached to the predicate act."); see also *Gregory P. Joseph, Civil RICO, A Definitive Guide* 40–43 (2d ed. 2000).

set forth in section 1961(1).<sup>2614</sup> Although some courts had held that a RICO conspiracy claim may be stated where a plaintiff is injured by any actions that further a RICO conspiracy,<sup>2615</sup> those circuits following the majority rule precluded a plaintiff from maintaining a section 1962(d) conspiracy claim where the overt acts causing the injury do not constitute racketeering activity.<sup>2616</sup> The decision in *Beck v. Prupis* clarified that “consistency with the common law requires that a RICO conspiracy plaintiff allege injury from an act that is analogous to an ‘ac[t] of a tortious character . . . .’”<sup>2617</sup>

- *Is the case barred by the statute of limitations?* Three Supreme Court decisions are relevant in this context. In *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*,<sup>2618</sup> the Court held that a private civil RICO action was subject to a four-year statute of limitations period, drawing largely on the limitations period governing the Clayton Act,<sup>2619</sup> upon which RICO’s civil enforcement provisions were modeled.<sup>2620</sup> The Court did not say, however, when a civil RICO claim would accrue. The circuits split on the issue, adopting three distinct rules: (1) the injury and pattern discovery rule;<sup>2621</sup> (2) the injury discovery rule;<sup>2622</sup> and (3) the “last predicate act” rule.<sup>2623</sup> In *Klehr v. A.O. Smith Corp.*,<sup>2624</sup> the Court

2614. 529 U.S. 494 (2000).

2615. *Schiffels v. Kemper Fin. Servs., Inc.*, 978 F.2d 344, 348–51 (7th Cir. 1992); *Shearin v. E.F. Hutton Group Inc.*, 885 F.2d 1162, 1169 (3d Cir. 1989) (abrogated by *Beck v. Prupis*, 529 U.S. 494 (2000)).

2616. *See, e.g.*, *Beck v. Prupis*, 162 F.3d 1090, 1098–99 (11th Cir. 1998); *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 48 (1st Cir. 1991); *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 294–95 (9th Cir. 1990), *cert. denied*, 502 U.S. 921 (1991).

2617. 529 U.S. 494, 505 (2000).

2618. 483 U.S. 143 (1987).

2619. 15 U.S.C. § 15 (2000).

2620. *Agency Holding*, 483 U.S. at 150. “Even a cursory comparison of the two statutes reveals that the civil action provision of RICO was patterned after the Clayton Act.” *Id.* The Court noted that criminal prosecutions would be subject to a five-year limitations period “only because Congress has provided such a criminal limitations period when no other period is specified.” *Id.* at 151–52.

2621. *See, e.g.*, *Annulli v. Panikkar*, 200 F.3d 189, 192 (3d Cir. 1998) (adopting injury and pattern discovery rule after *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997)).

2622. *See, e.g.*, *Grimmet v. Brown*, 75 F.3d 506, 512 (9th Cir. 1996); *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464 (7th Cir. 1992); *Rodriguez v. Banco Central*, 917 F.2d 664, 666 (1st Cir. 1990); *see also Joseph, supra* note 2613, at 175–76 for discussion and cases cited therein.

2623. *See Keystone Ins. Co. v. Houghton*, 863 F.2d 1125 (3d Cir. 1988) (claim accrued when plaintiff knew each element of RICO claim existed, and period began anew with each new injury and new predicate act that were part of the same pattern) (abrogated by *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997)).

rejected the last predicate act rule to determine when the statute was triggered, but did not resolve what accrual rule *did* apply to RICO claims.<sup>2625</sup> *Rotella v. Wood*<sup>2626</sup> eliminated the “injury and pattern discovery” rule (whereby “a civil RICO claim accrues only when the claimant discovers, or should discover, both an injury and a pattern of RICO activity”<sup>2627</sup>). The rejection of the “injury and pattern discovery” rule left intact the rule preferred by the majority of the circuits, under which the limitations period begins to run once the plaintiff knew or should have known of the injury.<sup>2628</sup> The Court warned, however, that its decision should not be read as establishing a final rule.<sup>2629</sup>

- *Are there any pending parallel state or federal civil actions involving the same parties and issues that would warrant consolidation, a stay of proceedings, or abstention?* The “pattern” pleaded in a RICO complaint can involve activities in several states, and related RICO actions may have been filed in other jurisdictions.<sup>2630</sup> The court is advised to require the parties to identify and report the status of any related civil

2624. 521 U.S. 179 (1997).

2625. *Id.* at 186–88 (under the “last predicate act” rule, a plaintiff would be able to recover for both the injury caused by the last predicate act and all the injuries caused by all of the racketeering activity, even where that activity fell outside the limitations period; the Supreme Court found that the last predicate act rule was inconsistent with the Clayton Act rule, whereby the statute begins to run when the defendant commits the injurious act).

2626. 528 U.S. 549 (2000).

2627. *Id.* at 553.

2628. *See, e.g.,* *Love v. Nat’l Med. Enters.*, 230 F.3d 765, 774 (5th Cir. 2000) (adopting “separate accrual” rule where separate cause of action accrues at the time of each injury); *The Lares Group, II v. Tobin*, 221 F.3d 41, 44 (1st Cir. 2000) (adopting injury discovery rule and holding cause of action accrued at the time of discovery of each violation of section 1962); *Forbes v. Eagleson*, 228 F.3d 471, 484 (3d Cir. 2000) (adopting injury discovery rule over injury occurrence rule following *Rotella*); *Poling v. K. Hovnanian Enters.*, 99 F. Supp. 2d 502, 511 (D.N.J. 2000) (cause of action does not accrue until all elements of RICO claim exist).

2629. *Rotella*, 528 U.S. at 554 n.2 (“In addition to the possibilities entertained in the Courts of Appeals, Justice Scalia has espoused an ‘injury occurrence’ rule, under which discovery would be irrelevant . . . and our decision in *Klehr* leaves open the possibility of a straight injury occurrence rule.”). *But see Forbes*, 228 F.3d at 484 (declining to adopt “injury occurrence” rule in favor of “injury discovery” rule).

2630. *See, e.g.,* *DeMauro v. DeMauro*, 115 F.3d 94, 95 (1st Cir. 1997) (RICO claim involved property that was subject of pending divorce); *Metro Riverboat Assocs., Inc. v. Bally’s La., Inc.*, 142 F. Supp. 2d 765, 766–67 (E.D. La. 2001) (state court and administrative proceeding also pending relating to gaming license dispute); *see also Slaney v. Int’l Amateur Athletic Fed’n*, 244 F.3d 580, 591–92 (7th Cir. 2000) (dismissal of RICO claims against one defendant appropriate where plaintiff participated in valid arbitration, which decision would be enforced under the New York Convention).

proceedings in state courts or other districts. In some instances, consolidation of these cases may be appropriate.<sup>2631</sup> In others, abstention or a stay of proceedings pending resolution of the related litigation may be warranted.<sup>2632</sup> In *Colorado River Water Conservation District v. United States*,<sup>2633</sup> the Supreme Court held that federal courts may stay proceedings in extraordinary circumstances in deference to duplicative parallel state actions. The Court set out several factors for determining whether abstention was appropriate, including (1) inconvenience of the federal forum; (2) avoiding piecemeal litigation; and (3) the order in which jurisdiction was obtained by the federal and state courts.<sup>2634</sup> Courts have considered additional criteria, such as whether the federal plaintiff's rights will be sufficiently protected by the state action and which court first assumed jurisdiction over relevant property.<sup>2635</sup> The *Colorado River Water* Court emphasized, however, that abstention "is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it."<sup>2636</sup> Other abstention doctrines may also come into play.<sup>2637</sup> For example, efficiency and

2631. See generally *supra* section 20.

2632. See, e.g., *Humana, Inc. v. Forsyth*, 525 U.S. 299, 307–08 (1999) (McCarran-Ferguson Act did not block suit under RICO by HMO beneficiaries, and RICO's application to beneficiaries' claims would not "invalidate, impair, or supersede" state regulation of insurance). See also Rakoff & Goldstein, *supra* note 2527, § 11.03[3] at 11-13 to 11-17.

2633. 424 U.S. 800 (1976).

2634. *Id.* at 818

2635. See *Rycoline Prod. Inc. v. C & W Unlimited*, 109 F.3d 883, 890 (3d Cir. 1997) ("The factors the court must consider are: which court first assumed jurisdiction over a relevant res, if any; whether the federal court is inconvenient; whether abstention would aid in avoiding piecemeal litigation; which court first obtained jurisdiction; whether federal or state law applies; and whether the state action is sufficient to protect the federal plaintiff's rights.>").

2636. *Colorado River Water*, 424 U.S. at 813 (citing *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188–89 (1959)). Other circumstances where abstention may be appropriate include where federal court intervention would have "an impermissibly disruptive effect on state policies." *Metro Riverboat Assocs.*, 142 F. Supp. 2d at 767. In addition, the constitutional issues involved might be "presented in a different posture by a state court determination of pertinent state law" or a "difficult question of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar." *Colorado River Water*, 424 U.S. at 814; see also *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 361 (1989); *In re Managed Care Litig.*, 135 F. Supp. 2d 1253, 1260 (S.D. Fla. 2001) ("Burford abstention, also known as the 'primary jurisdiction doctrine' is of dubious applicability where the claim is brought under federal law and the remedy would be left to a state agency.>").

2637. See, e.g., *Burford v. Sun Oil Co.*, 319 U.S. 315, 331–32 (1943); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727 (1996) (Burford abstention looks at whether plaintiff's claim

fairness considerations may warrant entry of a stay “pursuant to [the court’s] power to control its docket and to provide for a just determination of the cases pending before it.”<sup>2638</sup> In such cases the courts balance the benefits that might accrue from a stay, such as simplification and narrowing of the issues, against the possible burdens or hardships that would be suffered by the parties if the stay were granted.<sup>2639</sup>

- *Was the case removed from state court pursuant to 28 U.S.C. § 1441, and is remand appropriate?* Section 1441(c) affords the court discretion to remand cases “in which state law predominates.” Recent cases have interpreted section 1441(c) as permitting remand only where the state law claims are separate and independent of the federal claim, and then the court may remand only the state law claims.<sup>2640</sup>
- *Should the court exercise supplemental jurisdiction over state law claims?* Section 1367(a) of Title 28 of the U.S. Code gives federal courts exercising original jurisdiction over federal claims supplemental jurisdiction over claims “that are so related to the claims in the [federal] action that they form part of the same case or controversy . . . .” The court can decline to exercise supplemental jurisdiction over state law claims under certain circumstances.<sup>2641</sup>
- *Are there any pending criminal proceedings against one or more of the parties?* Criminal racketeering activity is an element of civil RICO liability, and civil RICO defendants often will be, or have been, the subject of criminal investigation or prosecution. The court should determine the existence and status of any related criminal proceedings,

may be “in any way entangled in a skein of state law that must be untangled before the federal case can proceed” (citing *New Orleans Pub. Serv.*, 491 U.S. at 361)).

2638. *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir.), *cert. denied*, 444 U.S. 827 (1979).

2639. *Morris v. Am. Fed. of State, County and Mun. Employees*, No. 99 CIV. 5125, 2001 WL 123886, at \*2 (discussing five factors to be considered by courts in deciding whether to grant stay); *Cohen v. Carreo*, 94 F. Supp. 2d 1112, 1118–19 (D. Or. 2000) (where claims in related cases were similar, where plaintiff would suffer little harm if stay was granted and defendant would be overly burdened if the case proceeded, and where stay would assist in narrowing issues, stay should be granted).

2640. *See, e.g., Mincy v. Staff Leasing, L.P.*, 100 F. Supp. 2d 1050, 1056 (D. Ariz. 2000); *Doll v. United States W. Communications, Inc.*, 85 F. Supp. 2d 1038, 1042 (D. Colo. 2000); *Friedman v. Bd. of Educ. Niles Township High Sch. Dist. 219*, No. 97 C 9001, 1998 WL 102698, at \*3 (N.D. Ill. Feb. 27, 1998).

2641. *See, e.g., Friedman*, 1998 WL 102698, at \*3 (declining to exercise supplemental jurisdiction where state law claims would require determination of novel issues of Illinois constitution).

as they may affect pretrial and trial planning. Where criminal and civil RICO cases are proceeding concurrently, the criminal charges ordinarily should be tried first. Although in some instances a stay of the civil litigation may be appropriate,<sup>2642</sup> in other cases major portions of discovery and other pretrial activity can proceed without prejudice to the criminal case.<sup>2643</sup> The judge should always consider the ongoing criminal proceedings in managing the civil litigation.<sup>2644</sup>

- *Are there any existing agreements to arbitrate that would preclude the case from proceeding in federal court?* Inquire into whether any arbitration agreement may govern the dispute, which would warrant referral of the case to arbitration. The Federal Arbitration Act<sup>2645</sup> provides that arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”<sup>2646</sup> The court can issue an order compelling arbitration where there has been a failure or refusal to comply with an arbitration agreement.<sup>2647</sup> The Act provides for a stay of proceedings in the district court where it determines that the case is subject to arbitration.<sup>2648</sup> In *Shearson/American Express, Inc. v. McMahon*,<sup>2649</sup> the Supreme Court held that nothing in the text of RICO or the statute’s legislative history “even arguably evinces congressional intent to ex-

2642. *Morris*, 2001 WL 123886, at \*2 (staying action on motion of district attorney pending disposition of criminal indictment). “Denying a stay motion may undermine a defendant’s Fifth Amendment privilege against self-incrimination[,] . . . expand the rights of criminal discovery beyond its limits, and expose the basis of the defense to the prosecution in advance of trial.” *Id.*

2643. *See supra* section 20.2. It may be appropriate in such instances to consider whether a protective order is warranted, protecting civil discovery from government prosecutors. *See Rakoff & Goldstein, supra* note 2527, § 8.03[2], at 8-8 to 8-9 (“However, there is no automatic protection from government prosecutors for testimony sealed pursuant to a civil lawsuit.”).

2644. *Madanes v. Madanes*, 199 F.R.D. 135, 140 (S.D.N.Y. 2001) (privilege against self-incrimination warranted protective order “to place tight restrictions on the dissemination of potentially incriminating information produced in discovery”).

2645. 9 U.S.C. § 1 (2000).

2646. *Id.* § 2.

2647. *Id.* § 4. “The Arbitration Act thus establishes a ‘federal policy favoring arbitration,’ . . . requiring that ‘we rigorously enforce agreements to arbitrate.’” *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (citations omitted).

2648. 9 U.S.C. § 3 (2000). Although the district court will still have jurisdiction over the claim, the scope of review of an arbitrator’s award may be very narrow. Arbitration clauses covering other claims, but excluding claims pursuant to RICO, may nonetheless also be subject to a stay. *See, e.g., Rakoff & Goldstein, supra* note 2527, § 8.03[1], at 8-5 to 8-7 and cases cited therein.

2649. 482 U.S. 220 (1987).

clude civil RICO claims from the dictates of the Arbitration Act,<sup>2650</sup> and the Court rejected any claim of irreconcilable conflict between arbitration and RICO's underlying purposes, which might have permitted overriding the provisions of the Arbitration Act.<sup>2651</sup> An "overlap" between the civil and criminal provisions does not preclude civil claims from being arbitrated.<sup>2652</sup>

- *Has the plaintiff adequately alleged proximate cause?* Frequently considered in tandem with the standing analysis, the plaintiff further must plead and prove that the injury suffered is direct, as opposed to derivative.<sup>2653</sup> Section 1964(c) requires that the injury to the plaintiff's business or property be "by reason of" the defendant's conduct, which requires that the plaintiff show the injuries were proximately caused by the misconduct of the defendant.<sup>2654</sup> In *Holmes v. Securities Investor Protection Corp.*, the Court found that the primary focus in assessing proximate cause was the directness of the relationship between the plaintiff's injury and the conduct alleged.<sup>2655</sup> The circuits have imposed

2650. *Id.* at 238.

2651. *Id.* at 239–42.

2652. Citing its decision in *Sedima, S.P.R.L. v. Imrex Co.*, wherein the Court had held that simply because the same conduct "can result in both criminal liability and treble damages does not mean that there is not a bona fide civil action." *McMahon*, 482 U.S. at 239–40. The Court also rejected arguments that the RICO statute was too complex or that public interest in RICO enforcement precluded arbitration. *Id.*; see also *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (noting that arbitration agreements were enforceable claims under RICO).

2653. See, e.g., *Amsterdam Tobacco, Inc. v. Philip Morris, Inc.*, 107 F. Supp. 2d 210, 219 (S.D.N.Y. 2000) (there is no standing for indirectly injured parties and here plaintiff's injuries were "secondary to the alleged primary purpose of tax avoidance"). Factors considered include whether the RICO offense targeted the plaintiff, whether there existed any intervening causes, whether the harm was a direct result of the racketeering activity, and whether the consequences were foreseeable and specifically intended. *In re Am. Express Co. S'holder Litig.*, 39 F.3d 395, 399–400 (2d Cir. 1994).

2654. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268–69 (1992); see also *BCCI Holdings, S.A. v. Khalil*, 214 F.3d 168, 174 (D.C. Cir. 2000); *Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 235 (2d Cir. 1999) (examining principles behind proximate cause); *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912, 920–21 (3d Cir. 1999). The Court reasoned that the "by reason of" language in RICO should be given the same construction applied by the Court in previously interpreting identical language in the Clayton Act, and that Congress had intended this construction in using the phrase in RICO. *Holmes*, 503 U.S. at 267–68.

2655. *Holmes*, 503 U.S. at 269.

varying requirements on plaintiffs' efforts to meet the proximate cause element.<sup>2656</sup>

- *Are the plaintiff's claims subject to issue or claim preclusion?* If related cases have been concluded, the trial judge must consider potential claim and issue preclusion. RICO provides that a final judgment in favor of the United States in a criminal proceeding estops the defendant from denying the essential allegations of the criminal offense in any civil proceeding brought by the United States.<sup>2657</sup> Although the statute is silent on the use of such convictions in cases brought by private parties, courts have applied claim and issue preclusion in civil RICO litigation.<sup>2658</sup> Preclusion may arise from prior civil litigation in federal or state court,<sup>2659</sup> as well as prior administrative proceedings<sup>2660</sup> or arbitration awards.<sup>2661</sup> Considerations common to RICO cases, however, may bar application of these doctrines in some cases, including differing burdens of proof,<sup>2662</sup> an inability to litigate the issue in the prior

2656. See, e.g., *Tex. Carpenters Health Benefit Fund v. Philip Morris, Inc.*, 199 F.3d 788, 789 (5th Cir. 2000) (injuries asserted by health maintenance organizations and insurance plans too attenuated to satisfy proximate cause requirement); *Newton v. Tyson Foods, Inc.*, 207 F.3d 444, 447 (8th Cir. 2000) (injuries alleged by cattle producers too attenuated to confer standing where there were "many intermediaries and many potential causes of the reduced demand for beef in the chain of causation"); *Moore v. PaineWebber, Inc.*, 189 F.3d 165, 169–70 (2d Cir. 1999) (where predicate acts based on fraud, plaintiff must prove transaction and loss causation); *Camelio v. Am. Fed'n*, 137 F.3d 666, 670 (1st Cir. 1998) (although plaintiff who was terminated from employment alleged defendant committed predicate acts, the connection between plaintiff's injury and the predicate offenses was too far removed from plaintiff's loss of employment); *Bieter Co. v. Blomquist*, 987 F.2d 1319, 1326 (8th Cir. 1993) (proximate cause requirement should not be interpreted as "too narrow").

2657. 18 U.S.C. § 1964(d) (West 2003).

2658. See, e.g., *Appley v. West*, 832 F.2d 1021, 1025–26 (7th Cir. 1987); *Anderson v. Jonovich*, 543 F. Supp. 1124, 1132 (W.D. Wa. 1982).

2659. See, e.g., *Saud v. Bank of N.Y.*, 929 F.2d 916, 919 (2d Cir. 1991); *Polur v. Raffe*, 912 F.2d 52, 56–57 (2d Cir. 1990); *Evans v. Dale*, 896 F.2d 975, 977–78 (5th Cir. 1990).

2660. See *Fry v. Gen. Motors Corp.*, 728 F. Supp. 455, 459–60 (E.D. Mich. 1989).

2661. See, e.g., *Cent. Transp., Inc. v. Four Phase Sys., Inc.*, 936 F.2d 256, 260 (6th Cir. 1991); *Benjamin v. Traffic Executive Ass'n E.R.R.*, 869 F.2d 107, 110–11 (2d Cir. 1989); *Rudell v. Comprehensive Acct. Corp.*, 802 F.2d 926, 931–32 (7th Cir. 1986). Some courts, however, have held that prior adjudications in bankruptcy court will not bar subsequent civil RICO actions based on claims which could have been raised in bankruptcy. *Barnett v. Stern*, 909 F.2d 973, 978–82 (7th Cir. 1990); *Howell Hydrocarbons, Inc. v. Adams*, 897 F.2d 183, 188–89 (5th Cir. 1990).

2662. See, e.g., *Wilcox v. First Interstate Bank*, 815 F.2d 522, 531 (9th Cir. 1987).

proceeding,<sup>2663</sup> and lack of knowledge regarding the facts required to allege a RICO violation.<sup>2664</sup>

- *Are there any other miscellaneous defenses that may warrant dismissal?* In addition to theories of abstention, and although not frequently raised, dismissal may be appropriate under doctrines of primary jurisdiction,<sup>2665</sup> act of state,<sup>2666</sup> or exclusive jurisdiction in the bankruptcy court.<sup>2667</sup>
- *Is the plaintiff seeking equitable relief?* The failure to allege an injury compensable under RICO may subject the claim to early dismissal. It is unclear whether equitable relief is available to private litigants under civil RICO.<sup>2668</sup> Although many courts have held that a private civil plaintiff is not entitled to injunctive relief, the right to seek other equitable remedies is less clear.<sup>2669</sup>

The pleadings play an important role in other ways as well. Where the underlying predicate offenses sound in fraud, Federal Rule of Civil Procedure 9(b)'s strict pleading requirements may result in extensive motion practice directed at dismissing all or parts of the complaint. Motions pursuant to Rule 12 are all but certain. The outcome of these motions can affect the scope of the litigation by obviating discovery and other proceedings related to dismissed

2663. See, e.g., *George v. United Ky. Bank, Inc.*, 753 F.2d 50, 53 (6th Cir. 1985).

2664. See, e.g., *Norris v. Wirtz*, 703 F. Supp. 1322, 1327 (N.D. Ill. 1989).

2665. See, e.g., *H.J., Inc. v. N.W. Bell Tel. Co.*, 734 F. Supp. 879, 882 (D. Minn. 1990) (finding agency had primary jurisdiction over reasonableness of rates, and holding it would undermine congressional scheme of uniform rate regulation if plaintiff could obtain damages based on a rate never found to be reasonable by agency), *aff'd*, 954 F.2d 485 (8th Cir.), *cert. denied*, 504 U.S. 957 (1992).

2666. *W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp., Int'l*, 493 U.S. 400 (1990).

2667. *Walls v. Wells Fargo Bank*, 255 B.R. 38, 46–47 (E.D. Cal. 2000) (dismissing plaintiff's RICO claims on basis that they were premised only on alleged violation of automatic stay provisions of Bankruptcy Code, which provides exclusive remedy for such violations); *Mendoza v. Zirkle Fruit Co.*, No. CS-00-3024, 2000 WL 33225470, at \*10 (E.D. Wash. Sept. 27, 2000) (noting Immigration Reform and Control Act did not preempt claims under RICO).

2668. See, e.g., *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 605 (5th Cir. 1998) (stating “[t]here is some question whether RICO affords private litigants the option of equitable remedies”); *Bennett v. Berg*, 685 F.2d 1053, 1064 (8th Cir. 1982) (noting injunctive relief might be available as a remedy), *aff'd in part, rev'd in part in reh'g en banc*, 710 F.2d 1361 (1983).

2669. *Johnson v. Collins Ent. Co.*, 199 F.3d 710, 726 (4th Cir. 1999) (“[T]here is substantial doubt whether RICO grants private parties . . . a cause of action for equitable relief.” (quoting *Dan River, Inc. v. Icahn*, 701 F.2d 278, 290 (4th Cir. 1983))). Compare *In re Fredeman Litig.*, 843 F.2d 821, 828 (5th Cir. 1988), and *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1082–83 (9th Cir. 1986), with *Aetna Cas. & Sur. Co. v. Liebowitz*, 570 F. Supp. 908, 910 (E.D.N.Y. 1983), *aff'd on other grounds*, 730 F.2d 905 (2d Cir. 1984).

claims and possibly by removing the jurisdictional predicate for supplemental state law claims, allowing for their dismissal as well.<sup>2670</sup> Consider procedures to test the sufficiency of the pleadings early on, before significant litigation activity commences. As in most complex litigation, early institution of an initial case-management order will help to organize the case, provide a preliminary identification of legal and factual issues, and educate the court as to the issues likely to increase the complexity of the litigation. Helpful strategies may include the following:

- Review the complaint upon assignment of the litigation to determine the existence of any jurisdictional or other defects apparent on its face.
- Require the plaintiff to file a RICO case statement, amplifying and clarifying the allegations in the complaint prior to receipt of responsive motions or pleadings. This case statement can require the plaintiff to detail the factual basis for each allegation with specificity, as well as the legal basis supporting the plaintiff's theory on various elements of the RICO claim.<sup>2671</sup>
- Require each side to develop an agreed-on statement of the factual and legal issues in dispute, including damages claimed by the plaintiff and defenses to liability being asserted.
- Require the defendant to advise the court and the opposing party of its intention to file a motion under Federal Rules of Civil Procedure 9(b) and 12, and whether the asserted defects can be cured through amendment of the complaint.
- Establish a firm schedule for the filing and hearing of responsive pleadings, including motions under Rules 9(b), 12, and 56.
- Stay formal discovery pending resolution of motions challenging jurisdiction and deficiencies in the complaint.

Where the complaint alleges additional claims not subject to a Rule 12 motion, consider whether discovery should proceed on those claims, pending resolution of any motions seeking dismissal of the RICO claims. The court may also assess whether such an approach would require duplicative discovery or impose additional costs on the parties should the RICO claims survive.

2670. See 28 U.S.C. § 1367 (West 2003); see also *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 584–90 (5th Cir. 1992); *Spiegel v. Cont'l Ill. Nat'l Bank*, 790 F.2d 638, 649–50 (7th Cir. 1986).

2671. See *Darocha v. Crusader Sav. Bank*, No. CIV.A. 94-7264 1995 WL 118208, at \*3 (E.D. Pa. May 10, 1995) (dismissing RICO counts and requiring plaintiff to file RICO case statement with any amended complaint). For an example of a RICO case statement used by the Northern District of Illinois, see *Bryant v. Yellow Freight Sys., Inc.*, 989 F. Supp. 966, app. 5 (N.D. Ill. 1997).

### 35.33 Discovery

The RICO case statement can help weed out transactions and allegations that are tangential or unrelated to alleged racketeering activity and can thereby reduce the scope of discovery. The court should remind the parties of limits on discovery found in the Federal Rules and require them to fully support any requests for additional discovery beyond that permitted by the rules. Consider also whether there is a need for limitations on the scope of discovery. Discovery issues may arise where related criminal proceedings are ongoing, triggering the defendant's Fifth Amendment privilege against self-incrimination and disputes regarding the discoverability of grand jury material. Unduly curtailing a plaintiff's discovery into alleged wrongdoing should be avoided. Ordinarily, discovery into unrelated alleged criminal acts is disallowed,<sup>2672</sup> but discovery that relates to other alleged victims of the same pattern of racketeering activity or to acts within the exclusive knowledge of the defendant may be warranted.<sup>2673</sup>

The specific elements necessary to prove a RICO violation can also pose special problems in discovery. For example, the "pattern" requirement often will involve discovery into a RICO defendant's conduct and practices over an extended period of time and with respect to numerous transactions. Similarly, a plaintiff seeking to show an association-in-fact enterprise will be seeking information on the relationships between the participants and also their communications, activities, and other contacts in an effort to show the structure and continuity of the enterprise. In some circuits, the plaintiff may be unable to use proof of the racketeering activity to prove also the structure and continuity of the enterprise, substantially increasing the plaintiff's discovery burden. In deciding whether to put any limits on discovery, consider the nature of the allegations and the complexity of the case. To the extent possible, it is best to address potential discovery issues early in the litigation, well before depositions begin, in order to avoid unnecessary conflict and discovery motions.

2672. See, e.g., *Jolley v. Welch*, 904 F.2d 988, 992–93 (5th Cir. 1990); *Olive Can Co. v. Martin*, 906 F.2d 1147, 1152–53 (7th Cir. 1990); *Zerman v. E.F. Hutton & Co.*, 628 F. Supp. 1509, 1512 (S.D.N.Y. 1986).

2673. See, e.g., *Michaels Bldg. Co. v. Ameritrust Co., N.A.*, 848 F.2d 674, 679–81 (6th Cir. 1988); *Halperin v. Berlandi*, 114 F.R.D. 8, 11–13 (D. Mass. 1986). However, the breadth of discovery permitted under Rule 26(b)(1) should be given careful consideration prior to any decision to limit areas of inquiry.

### 35.34 Motion Practice

The threat of treble damages and attorney fee awards, combined with the potential damage to reputation, usually spur a defendant aggressively to pursue early dismissal of RICO claims. Motions attacking the plaintiff's standing to bring the claim or other jurisdictional defects are common and often combined with motions challenging the sufficiency of the complaint on various grounds.<sup>2674</sup> In addition to Rule 12 and 9(b) motions, procedural motions often play a significant role. Typical procedural motions include motions (1) to stay discovery pending resolution of non-RICO claims, arbitration, or completion of criminal proceeding; (2) for a protective order; and (3) to sever.<sup>2675</sup> Also consider asking at the initial pretrial conference whether the defendant plans to file motions challenging jurisdiction and, if so, on what grounds. Depending on the length and complexity of the complaint, it may be more efficient to set a schedule that requires that these motions be filed and decided prior to the filing of motions challenging the sufficiency of the allegations.

It may be impossible to determine the sufficiency of some RICO claims until the parties have concluded discovery. Accordingly, consider scheduling a pretrial conference immediately following the close of discovery to determine what claims and defenses remain viable. One alternative is to require the parties to file statements setting out all claims and defenses together with their factual and legal bases. The judge may encourage the parties to reach stipulations. Moreover, in cases where disagreements remain, but where it appears that material facts may be undisputed or without adequate support, encourage the parties to file summary-judgment motions. Alternatively, the court can exercise its Rule 16 power to dispose summarily of a claim or claims as to which no facts remain in dispute.<sup>2676</sup> Prior to entry of summary judgment *sua sponte*, however, the parties should be given an opportunity to present arguments as to why judgment should not be entered.<sup>2677</sup> If the elimination of RICO removes the jurisdictional basis for supplemental state law claims, it is

2674. See, e.g., *Combs v. Baker*, 886 F.2d 673, 674 (4th Cir. 1989) (plaintiffs challenged personal jurisdiction as well as subject-matter jurisdiction, venue, sufficiency of the complaint and failure to join an indispensable party).

2675. *Rakoff & Goldstein*, *supra* note 2527, § 8.03[1]–[3], at 8-5 to 8-9.

2676. Cf. *Diaz v. Schwerman Trucking Co.*, 709 F.2d 1371, 1375 n.6 (11th Cir. 1983); *Holcomb v. Aetna Life Ins. Co.*, 255 F.2d 577, 580 (10th Cir. 1958) (“[T]he court has the power [at the pretrial conference] to compel the parties to agree to all facts concerning which there can be no real issue.”).

2677. See *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 435 (5th Cir. 2000) (“The district court may enter summary judgment *sua sponte* if the parties are provided with reasonable notice and an opportunity to present arguments opposing the judgment.”)

wise for the court to reevaluate whether it will retain jurisdiction over those claims.<sup>2678</sup> Factors to be considered in determining whether to retain jurisdiction include comity, judicial economy, convenience, and fairness.<sup>2679</sup>

### 35.35 Trial

RICO trials typically are not conducive to bifurcation. Moreover, some of the technical issues in civil RICO trials may be particularly confusing to lay jurors. Consider whether any or all of the following would assist the jury in understanding some of these complexities:

- allowing joint presentation by the attorneys of a preliminary statement, either during *voir dire* or prior to the opening statements, to explain the general nature of the claims and some of the characteristics and elements of a civil RICO case (e.g., that the case is a civil, not criminal action; that the burden of proof is by a preponderance of the evidence, not beyond a reasonable doubt; and that the use of the term “racketeer” does not mean that the defendant is associated with “organized crime”);
- explaining to the jury that although the plaintiff must prove that the defendant committed the underlying predicate act, proof of the commission of that act does not in itself constitute proof that the defendant violated RICO;
- permitting the parties to make mini-opening statements or summaries of the relevant portions of witnesses’ testimony—for example, capsulizing for the jury that certain witnesses are being called to establish the elements of a particular predicate act; and
- permitting the jurors to take notes.

2678. *Guidry v. Bank of La Place*, 954 F.2d 278, 285 (5th Cir. 1992) (in cases where federal claims have been dismissed and no basis exists for federal jurisdiction, district courts are “to decide whether to retain jurisdiction [over state claims] based on considerations of judicial economy, convenience, fairness and comity”); *Scottsdale Ins. Co. v. Dorman*, 153 F. Supp. 2d 852, 858 (E.D. La. 2001) (declining to retain jurisdiction over state law fraud claim after dismissal of RICO cause of action, because plaintiff would not be unduly prejudiced, matter had not proceeded past pleading stage, plaintiff could refile claim in state court, and activity to date in the case had focused on RICO).

2679. *Camelio v. Am. Fed’n*, 137 F.3d 666, 672 (1st Cir. 1998) (“[T]he balance of competing factors ordinarily will weigh strongly in favor of declining jurisdiction over state law claims where the foundational federal claims have been dismissed at an early stage of the litigation.”).

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Special verdicts or a general verdict with interrogatories may help avoid confusion. Consider directing the jurors' attention to the sufficiency of each separate statutory and common-law claim submitted for their decision. Issues may be submitted to the jury for decision sequentially, both to simplify deliberations and to obviate deliberation on issues rendered moot by an earlier verdict. Note that some courts have held that the jury should not be informed of the treble damages provision.<sup>2680</sup>

<sup>2680</sup>. See *Pollock & Riley, Inc. v. Pearl Brewing Co.*, 498 F.2d 1240, 1242 (5th Cir. 1974) (antitrust).

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*Part IV*

*Sample Orders*

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40. Sample Orders 727

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Complex litigation generally has its own unique demands, and it calls for counsel and the court to adapt any proposed order to those complexities. The orders and forms that follow represent only a starting point for the court to consider in structuring its approach to managing a particular set of complex cases. Judges generally expect that experienced counsel will propose forms that will deal with the unique features of the litigation at hand.

Although the orders presented below generally are composites of several orders or revisions of a single order, we have not attempted to document the origin of each provision of each order or the authority to issue such orders. While judges have used variations and portions of these orders to manage complex litigation, the authority to issue such orders may or may not have been tested.

Additional sample orders and forms may be found in the United States Judicial Conference's *Civil Litigation Management Manual* (2001) (available from the Federal Judicial Center), in the *Federal Rules of Civil Procedure Appendix of Forms*, and on various Internet sites created for specific complex cases or MDL proceedings, some of which are listed below:

- In re* BankAmerica Corp. Securities Litigation, MDL No. 1264 (E.D. Mo.), at <http://www.bankofamericasettlement.com/> (last visited Nov. 10, 2003)
- In re* Baycol Products Litigation, MDL No. 1431 (D. Minn.), at [http://www.mnd.uscourts.gov/Baycol\\_Mdl/](http://www.mnd.uscourts.gov/Baycol_Mdl/) (last visited Nov. 10, 2003)
- In re* Bridgestone/Firestone Tires, Inc., Products Liability Litigation, MDL No. 1373 (S.D. Ind.), at <http://www.insd.uscourts.gov/Firestone/default.htm> (last visited Nov. 10, 2003)
- In re* Diet Drugs Products Liability Litigation, MDL No. 1421 (E.D. Pa.), at <http://www.fenphen.verilaw.com/> (last visited Nov. 10, 2003)
- In re* Holocaust Victim Assets Litigation, No. CV 96-4849 (E.D.N.Y.), at [http://www.nyed.uscourts.gov/Decisions\\_of\\_Interest/DOI\\_Archive/doi\\_archive.html](http://www.nyed.uscourts.gov/Decisions_of_Interest/DOI_Archive/doi_archive.html) (decisions of interest archive, years 2000–2003) (last visited Nov. 10, 2003)
- In re* Holocaust Victim Assets Litigation, at <http://www.swissbankclaims.com/index.asp> (official settlement Web site) (last visited Nov. 10, 2003)
- In re* Inter-Op Hip Prosthesis Liability Litigation, MDL No. 1401 (N.D. Ohio), at [http://www.ohnd.uscourts.gov/Clerk\\_s\\_Office/Notable\\_Cases/index.html](http://www.ohnd.uscourts.gov/Clerk_s_Office/Notable_Cases/index.html) (last visited Nov. 10, 2003)
- In re* Latex Gloves Products Liability Litigation, MDL No. 1148 (E.D. Pa.), at <http://www.paed.uscourts.gov/usmdl.asp> (last visited Nov. 10, 2003)
- In re* Lorazepam & Clorazepate Antitrust Litigation, MDL No. 1290 (D.D.C.), at <http://www.dcd.uscourts.gov/district-court.html> (last visited Nov. 10, 2003)
- In re* Merrill Lynch & Co., Inc., Research Reports Securities Litigation, MDL No. 1484 (S.D.N.Y.), at <http://www.nysd.uscourts.gov/ConsolidatedCases.htm#15a> (last visited Dec. 2, 2003)
- In re* Microsoft Corp. Antitrust Litigation, MDL No. 1332 (D. Md.), at <http://www.mdd.uscourts.gov/Opinions152/DisplayMDLCom.asp> (last visited Nov. 10, 2003)
- In re* Norplant Contraceptive Products Liability Litigation, MDL No. 1038 (E.D. Tex.), at <http://www.txed.uscourts.gov/tableofc.htm> (last visited Nov. 10, 2003)
- In re* Phenylpropanolamine (PPA) Products Liability Litigation, MDL No. 1407 (W.D. Wash.), at <http://www.wawd.uscourts.gov/wawd/mdl.nsf/main/page> (last visited Nov. 10, 2003)
- In re* Propulsid Prod. Liability Litigation, MDL No. 1355 (E.D. La.), at <http://propulsid.laed.uscourts.gov> (last visited Nov. 10, 2003)

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- In re* Rezulin Products Liability Litigation, MDL No. 1348 (S.D.N.Y.), at <http://www.nysd.uscourts.gov/rezulin.htm> (last visited Nov. 10, 2003)
- In re* Serzone Products Liability Litigation, MDL No. 1477 (S.D. W. Va.), at <http://www.wvwd.uscourts.gov/serzone/> (last visited Nov. 10, 2003)
- In re* Silicone Gel Breast Implant Products Liability Litigation, MDL No. 926 (N.D. Ala.), at <http://www.fjc.gov/BREIMLIT/mdl926.htm> (last visited Nov. 10, 2003)
- In re* Simon II Litigation (E.D.N.Y.), at [http://www.nyed.uscourts.gov/Decisions\\_of\\_Interest/DOI\\_Archive/DOI\\_2002/doi\\_2002.html](http://www.nyed.uscourts.gov/Decisions_of_Interest/DOI_Archive/DOI_2002/doi_2002.html) (last visited Nov. 10, 2003)
- In re* St. Jude Med., Inc. Silzone Heart Valves Products Liability Litigation, MDL No. 01-1396 (D. Minn.), at [http://www.mnd.uscourts.gov/Tunheim\\_Mdl/index.htm](http://www.mnd.uscourts.gov/Tunheim_Mdl/index.htm) (last visited Nov. 10, 2003)
- In re* Vitamins Antitrust, MDL No. 1285 (D.D.C.), at <http://www.dcd.uscourts.gov/99ms197-2003.html> (last visited Dec. 2, 2003)
- In re* Wireless Telephone Radio Frequency Emissions Products Liability Litigation, MDL No. 1421 (D. Md.), at <http://www.mdd.uscourts.gov/Opinions152/DisplayMDLCom.asp> (last visited Nov. 10, 2003)
- In re* World Trade Center Disaster Site Litigation, (S.D.N.Y.), at <http://www.nysd.uscourts.gov/Sept11Litigation.htm> (last visited Nov. 10, 2003)

§ 40.1

Manual for Complex Litigation, Fourth

## 40.1 Order Setting Initial Conference

UNITED STATES DISTRICT COURT

DISTRICT OF \_\_\_\_\_

In re:	)	Master File No. _____ <sup>1</sup>
	)	
_____ <sup>2</sup> LITIGATION	)	
	)	This Document Relates To:
	)	[All Cases]

Order No. \_\_\_\_\_<sup>3</sup>

*Preamble.*<sup>4</sup> The court wishes to express clearly its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. The *Manual for Complex Litigation, Fourth* at section 10.21 captures the spirit in these terms:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the court is confident that this objective will be achieved without judicial intervention.

It appearing that [the above styled case(s)] [the cases listed on Attachment \_\_\_\_\_] may merit special attention as complex litigation, the court ORDERS:

1. *Initial Conference.* All parties shall appear for a conference with the undersigned on the \_\_\_\_ day of \_\_\_\_ [date] \_\_\_\_\_, at \_\_\_\_ a.m./p.m. in [Court]room \_\_\_\_\_, United States Courthouse \_\_\_\_\_.
- (a) *Attendance.* To minimize costs and facilitate a manageable conference, parties are not required to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue, or service.<sup>5</sup>
- (b) *Service List.* This order is being mailed to the persons shown on Attachment \_\_\_\_\_, which has been prepared from the list of counsel making appearances with the Judicial Panel on Multidistrict Litigation. Counsel on this list are requested to forward a copy of the order to other attorneys who should be

notified of the conference. A corrected service list will be prepared after the conference.

- (c) *Other Participants.* Persons who are not named as parties in this litigation but may later be joined as parties or are parties in related litigation pending in other federal and state courts are invited to attend in person or by counsel.
2. *Purposes and Agenda.* The conference will be held for the purposes specified in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f) and subject to the sanctions prescribed in Rule 16(f). A tentative agenda is appended as Attachment \_\_\_\_.<sup>6</sup> Counsel are encouraged to advise the court as soon as possible of any items that should be added to the agenda.
3. *Preparations for Conference*
- (a) *Procedures for Complex Litigation.* Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* and be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.
- (b) *Initial Conference of Counsel.* Before the conference, counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of any class action allegations, motions, and trial. [The court designates \_\_\_\_\_ and \_\_\_\_\_ to arrange the initial meetings of plaintiffs' and defendants' counsel, respectively.]<sup>7</sup>
- (c) *Preliminary Reports.* Counsel will submit to the court by \_\_\_\_ [date] \_\_\_\_, a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings.
- (d) *List of Affiliated Companies and Counsel.* To assist the court in identifying any problems of recusal or disqualification, counsel will submit to the court by \_\_\_\_ [date] \_\_\_\_, a list of all companies affiliated with the parties and all counsel associated in the litigation.
- (e) *List of Pending Motions.* Counsel's statement shall list all pending motions.
- (f) *List of Related Cases.* Counsel's statement shall list all related cases pending in state or federal court and their current status, to the extent known.
4. *Interim Measures.* Until otherwise ordered by the court:
- (a) *Admission of Counsel.* Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local cocounsel is not required.
- (b) *Pleadings.* Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set at the conference.

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*Manual for Complex Litigation, Fourth*

- (c) *Pending and New Discovery.* Pending the conference, all outstanding disclosure and discovery proceedings are stayed and no further discovery shall be initiated. This order does not (1) preclude voluntary informal discovery regarding the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request under Federal Rule of Civil Procedure 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Rule 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.
- (d) *Preservation of Records.* [See section 40.25.]
- (e) *Motions.* No motion shall be filed under Rule 11, 12, or 56 without leave of court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without court action.
- [(f) *Orders of Transferor Courts.* All orders by transferor courts imposing dates for pleading or discovery are vacated.]
5. *Later Filed Cases.* This order shall also apply to related cases later filed in, removed to, or transferred to this court.
6. *Applications for Lead and Liaison Counsel Appointments.* The court intends to appoint plaintiffs' lead counsel and/or a plaintiffs' steering committee, as well as plaintiffs' liaison counsel. Applications for these positions must be filed with the clerk's office on or before [insert date in advance of initial pretrial conference]. The court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. [Applications should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.]
7. *Other Provisions.* [Include any special instructions, such as procedures for presenting emergency matters prior to conference.]

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District JudgeAttachments<sup>8</sup>*Notes:*

1. In its order establishing a master case file—a decision that is frequently deferred until the initial conference—the court should include provisions such as those contained in *infra* section 40.21, ¶ 1, and specify a master file number. The multidistrict litigation (MDL) number is used

*Sample Orders*

§ 40.1

if the litigation includes cases transferred under 28 U.S.C. § 1407. Documents that apply generally to all constituent cases are so identified; those that apply only to particular cases should specify in their captions or by a separate list the style of case or case number that they apply to.

2. Courts frequently assign multiple litigation a descriptive name, both to serve as an abbreviated caption in orders, pleadings, and other documents, and to minimize confusion if parties are changed or cases are dismissed. In multidistrict proceedings under 28 U.S.C. § 1407, the name given by the Judicial Panel on Multidistrict Litigation is used.

3. If many orders may be entered during the litigation, the court should number its major orders sequentially for convenient reference. An explanatory description of the nature of the order is often added in parentheses. Transcripts of conferences at which rulings are made should be included in the numerical sequence if no separate order incorporating these rulings will be prepared.

4. The court may wish to use these or similar words to set a tone for the litigation. *Supra* section 10.21 may provide further ideas along these lines.

5. In some cases the court may decide that the parties themselves should attend the conference with their counsel. *See supra* section 11.23.

6. As an alternative, the clause might read, “The items listed in the *MCL 4th*, section 11.21, shall, to the extent applicable, constitute a tentative agenda.”

7. Designation of attorneys to organize these initial meetings may be useful both to fix responsibility and to reduce early factionalism among those interested in becoming lead or liaison counsel. The attorneys designated by the court need not be persons who would be considered for appointment as lead or liaison counsel.

8. For ease of drafting, as well as reference, append lists and lengthy directives (e.g., a protective order for confidential documents) as attachments rather than include them within the body of an order. Sample orders and other materials from the *MCL 4th* may be incorporated by reference.

## 40.2 Sample Case-Management Orders

- .21 General 734
- .22 Responsibilities of Designated Counsel 741
- .23 Attorneys' Time and Expense Records 743
- .24 Scheduling Order 744
- .25 Preservation of Documents, Data, and Tangible Things 746
- .26 Document Depositories 749
  - .261 Order to Meet and Confer to Establish Joint Document Depository 749
  - .262 Order to Establish Separate Document Depositories 751
- .27 Confidentiality Order 752
- .28 Referral of Privilege Claims to Special Master 754
- .29 Deposition Guidelines 756

### 40.21 General

[caption]

Order No. \_\_\_\_\_  
(Initial Case-Management Order)

Having considered the comments and proposals of the parties presented at the initial conference held \_\_\_\_\_ [date] \_\_\_\_\_, the court ORDERS:

1. *Pretrial Consolidation.* The cases listed on Attachment \_\_\_\_\_ are, until further order, consolidated for pretrial purposes. This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.
  - (a) *Master Docket and File.* The clerk will maintain a master docket and case file under the style "*In re* \_\_\_\_\_ LITIGATION," master file number \_\_\_\_\_. All orders, pleadings, motions, and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable.
  - (b) *Captions; Separate Filing.* Orders, pleadings, motions, and other documents will bear a caption similar to that of this order.<sup>1</sup> If generally applicable to all consolidated actions, they shall include in their caption the notation that they relate to "ALL CASES" and be filed and docketed only in the master file. Documents intended to apply only to particular cases will indicate in their caption the case number of the case(s) to which they apply, and extra copies shall be provided to the clerk to facilitate filing and docketing both in the master case file and the specified individual case files.
  - (c) *Discovery Requests and Responses.* Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the court except when specifically ordered by the court or to the extent offered in connection with a motion.<sup>2</sup>

[(d) *Coordinated Actions*. The actions listed on Attachment \_\_\_\_\_ are not consolidated for pretrial purposes at the present time, but discovery in such cases shall be coordinated with that in the consolidated actions to prevent duplication and conflicts.<sup>3</sup>]

2. *Organization of Counsel*<sup>4</sup>

(a) *Plaintiffs*. To act on behalf of plaintiffs with the responsibilities prescribed in [Attachment \_\_\_\_\_] [see section 40.22], the court designates—

(1) as Liaison Counsel: \_\_\_\_\_ [name, address, telephone number]

(2) as Lead Counsel: \_\_\_\_\_ [name, address, telephone number]

(3) as additional members of Plaintiffs’ Steering Committee:  
 \_\_\_\_\_ [names, addresses, telephone numbers]  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) *Defendants*. To act as liaison counsel on behalf of all defendants [except defendant(s) \_\_\_\_\_] with the responsibilities prescribed in [Attachment \_\_\_\_\_] [see section 40.22, ¶4], the court designates \_\_\_\_\_ [name, address, telephone number].

(c) *Reimbursement*. If agreement cannot be reached on a method for periodically reimbursing attorneys for expenses incurred and paying them for services rendered as lead or liaison counsel, the matter will be presented to the court for resolution.

(d) *Time Records*. Counsel who anticipate seeking an award of attorney fees from the court shall comply with the directives contained in [Attachment \_\_\_\_\_] [see section 40.23] regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred.

3. *Service of Documents*

(a) *Orders*. A copy of each order will be provided to plaintiffs’ liaison counsel and defendants’ liaison counsel for distribution as appropriate to other counsel and parties. [A copy shall also be provided to counsel for defendant(s) \_\_\_\_\_.]

(b) *Pleadings, Motions, and Other Documents*. Plaintiffs’ liaison counsel will be provided with \_\_\_\_\_ copies of each pleading, motion, or other document filed by a party; defendants’ liaison counsel will be provided with \_\_\_\_\_ copies of each such document. [Pursuant to Fed. R. Civ. P. 5(b), service on liaison counsel constitutes service on other attorneys and parties for whom liaison counsel is acting.<sup>5</sup>]

[(c) *Service of Original Complaints; Amendments Adding Parties*. To eliminate disputes about service of process and to reduce the expense of such service, defendants \_\_\_\_\_ [name] and \_\_\_\_\_ [name] have agreed to waive service of process for claims filed in federal court that fall within the scope of the \_\_\_\_\_ [above-captioned] litigation, subject to the provisions of Rule 4(d). The

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notice required by Rule 4(d) should be sent to \_\_\_\_\_ [name and address of representative/counsel to receive service] and \_\_\_\_\_ [name and address of representative/counsel to receive service]. Plaintiffs have 30 days from the date of this order or the date of filing, whichever is later, to provide notice of the original complaint or an amendment adding one or more of the above defendants to the complaint.<sup>6]</sup>

4. *Status Conferences*

- (a) *Regularly Scheduled Conferences.* The court will convene a status conference in this litigation every \_\_\_\_\_ [insert scheduled time], subject to the court's calendar. Except for emergencies, motions should not be brought for hearing at any time other than a regularly scheduled status conference. To be heard at a status conference, motions must be fully briefed at least \_\_\_\_\_ [insert time period]. Lead counsel for the parties shall (1) confer at least \_\_\_\_\_ [insert time period] before each scheduled conference and attempt to resolve outstanding disputes and (2) provide the court at least \_\_\_\_\_ [insert time period] prior to the hearing a joint letter listing all motions and other matters the parties anticipate addressing at the conference. Parties should make every effort not to notice depositions for days on which status conferences are scheduled, and no deposition shall go forward on such days without prior leave of court.
- (b) *Telephone Conferences.* Telephone conferences may be scheduled at the court's discretion by prior arrangement through the court's chambers, if all necessary parties are available and receive at least 24 hours notice.

5. *Refinement of Issues*

- (a) *General Briefing Requirements.* Briefs in support of, or in opposition to, any motions may not exceed \_\_\_\_\_ [number of] pages without leave of court. Reply briefs must be limited to \_\_\_\_\_ [number of] pages without leave of court.
- (b) *Rule 12 Motions.* [Include rulings on pending Rule 12 motions if appropriate, or establish dates for filing, briefs, and arguments. For example, "The motions of defendants A.B. and C.D. to dismiss the complaint of plaintiff E.F. for failure to state a claim on which relief may be granted are, upon consideration, DENIED. A similar motion is hereby deemed filed by each other defendant, and the same order deemed made on each such motion."]
- (c) *Pleadings.* Each defendant shall have until \_\_\_\_\_ [date], to file its answer to the complaint, including any cross-claims or counterclaims. Answers to any cross-claims or counterclaims will be filed by \_\_\_\_\_ [date]. Except for good cause shown, no additional parties may be joined as plaintiff, defendant, or third-party defendant after \_\_\_\_\_ [date].
- (d) *Summary Judgment.* The following issues may be submitted for early resolution on motions under Fed. R. Civ. P. 56: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Subject to further order of the court, motions seeking summary judgment on these issues will be filed with supporting affidavits and briefs by \_\_\_\_\_ [date].

Opposing affidavits and briefs will be filed by \_\_\_\_ [date] \_\_\_\_, and any reply briefs by \_\_\_\_ [date] \_\_\_\_.

- (e) *Class Action.* Attorney \_\_\_\_ [name] \_\_\_\_ will serve as interim counsel to represent the proposed class until the court determines whether to certify the action as a class action. To pursue class action treatment, plaintiffs must file by \_\_\_\_ [date] \_\_\_\_, a single, consolidated, special master amended complaint.

[Note: In an MDL proceeding, the consolidated class action complaints should ordinarily be filed in the transferee district.] The parties shall meet and confer to determine what, if any, expedited discovery needs to be conducted to address the class issues and specify the date by which plaintiffs will file a motion seeking class certification.<sup>7</sup>

A motion for class certification must do the following: identify the class(es) and any subclass(es) for which they seek certification; detail the facts that show satisfaction of the requirements of Fed. R. Civ. P. 23(a) and (b), including the identity of named plaintiff(s) to represent each class and subclass, the qualifications of counsel for each class and subclass, and the rate, percentage, or other formula for calculating the amount of attorney fees counsel expect to request for representing the proposed class; present a plan for managing the litigation for trial; describe the forms, methods, and financing to be used to give notice to class members; and identify and include reports and affidavits of any experts to be used to support class certification.

Defendants will file by \_\_\_\_ [date] \_\_\_\_, any objections to class certification, specifying with particularity the factual and legal basis of their objection and identifying any facts on which an evidentiary dispute exists. Defendants must identify and include reports and affidavits of any experts to be used in opposition to class certification.

[Optional] A hearing will be conducted by the court, under Rule 23(c), on \_\_\_\_ [date] \_\_\_\_, at which time the parties may present affidavits and declarations, extracts of depositions, responses to interrogatories, and documentary evidence relevant to any factual disputes. Only on a showing of good cause will a party be permitted to call a witness to testify in person at the hearing. In any event, only an expert whose report has been provided in the motion or opposition will be permitted to testify.

## 6. *Discovery*

- (a) *Approval of Expedited Discovery.* Permission to take expedited discovery of a plaintiff and a plaintiff's health care provider is granted if all of the following conditions are present:
- (1) plaintiff or a member of plaintiff's family is terminally ill;
  - (2) there is an urgent need to record and preserve the testimony because of the gravity of the illness; and
  - (3) [if applicable] plaintiff has completed the Plaintiff Fact Sheet and provided the medical authorizations required by the fact sheet and defen-

dants have had an opportunity to conduct a reasonable amount of informal discovery prior to the taking of any deposition.

- (b) *Initial Disclosures.* Initial disclosures under Rule 26(a) shall be made unless a party objects prior to or during the Rule 26(f) conference that disclosures are inappropriate in the context of the litigation and the court reviews the objection and agrees not to require such disclosure. [Alternative, if agreed or the court orders: The parties have agreed:/The court orders: that in light of the discovery plan set forth below, the parties are relieved of the responsibility to provide initial disclosures under Rule 26(a)(1).]
- (c) *Schedule.* Discovery shall be conducted according to the schedule at Attachment \_\_\_\_\_ [see section 40.24]. All discovery [other than on the issue(s) of \_\_\_\_\_] shall be completed by \_\_\_ [date]\_\_.
- (d) *General Limitations.* All discovery requests and responses are subject to the requirements of Fed. R. Civ. P. 26(b)(1), 26(b)(2), and 26(g). Discovery shall not, without prior approval of the court, be taken of members of the proposed class or of persons in countries outside the United States; and any request for such discovery shall indicate why the discovery is needed and the specific information or documents sought.
- (e) *Confidentiality Order.* See Attachment \_\_\_\_\_ [see section 40.27].
- (f) *Documents*
  - (1) *Preservation.* See Attachment \_\_\_\_\_ [see section 40.25].
  - (2) *Numbering System.* Counsel shall develop and use a system for identifying by a unique number or symbol each document produced or referred to during the course of this litigation. All copies of the same document should ordinarily be assigned the same identification number.
  - (3) *Rolling Production.* The parties must produce documents to which they have not raised an objection on a rolling basis rather than waiting until all documents responsive to a request have been gathered. The parties must meet and confer regarding a schedule for the orderly production of different categories of documents.
  - (4) *Document Depositories.* See Attachment \_\_\_\_\_ [see section 40.26].
  - (5) *Avoidance of Multiple Requests and Coordination of Document Production with Other Courts.* Counsel shall, to the extent possible, coordinate and consolidate their requests for production and examination of documents to eliminate duplicative requests from the same party in this proceeding or in similar proceedings in other courts. No party shall request documents available to it at a document depository or from its own liaison counsel.

[Alternative: Defendants have agreed [or “The court orders the parties”] to produce in these proceedings all documents and information that they produce in related litigation dealing with the same \_\_\_ [insert the product, event, or set of transactions that define the litigation] \_\_\_ in other state and

federal courts, on the same schedule or as close to the same schedule as practicable. Plaintiffs have agreed [or “The court orders”] that the sequence in which defendants produce the documents need not conform to the requirements of Rule 34(b).]

- (6) *Privilege*. A party who, relying on any privilege or on the work product doctrine, does not produce all relevant or requested documents in response to a request for production of documents or a subpoena must state that it is invoking a privilege and must specify which privilege or doctrine it is invoking. The parties are to confer to determine the format and time for production of privilege logs.

Where courts in other jurisdictions have ordered the production of any document initially withheld by defendant as privileged or work product, the party shall either produce the document in these proceedings or timely move for a protective order.

- (g) *Interrogatories*. Counsel shall, to the extent possible, combine their interrogatories to any party into a single set of questions. No question shall be asked that has already been answered in response to interrogatories filed by another party [or in response to a “fact sheet” submitted by the same party (as provided in section 40.52)] unless there is reason to believe that a different answer will be given. [Without leave of court, interrogatories shall not include more than \_\_\_\_\_ separate questions, including subparts.] Pursuant to Rule 26(e)(2), the parties must promptly amend answers to interrogatories to provide complete additional or corrective information.
- (h) *Depositions*. See Attachment \_\_\_\_\_ [see section 40.29].
- (i) *Special Agreements*. All parties shall be under a continuing duty to make prompt disclosure to the court (and, unless excused by the court for good cause shown, to other parties) of the existence and terms of all agreements and understandings, formal or informal, absolute or conditional, settling or limiting their rights or liabilities in this litigation. This obligation includes not only settlements, but also such matters as “loan receipt” and “Mary Carter” agreements, and insurance, indemnification, contribution, and damage-sharing agreements.
7. *Trial*. Subject to further order of the court, the parties are directed to be ready for trial on all issues [except \_\_\_\_\_] by \_\_\_\_\_ [date].  
[Counsel are advised that the court will require a listing in advance of trial of the factual contentions each party expects to prove at the trial, identifying the witnesses and documents to be presented in support of each such contention, and the court may preclude the presentation of any contention, witness, or document not so identified.]
8. [Optional: *Next Conference*. The next pretrial conference is [tentatively] scheduled for \_\_\_\_\_ [date]. See ¶ 4(a) above.]
9. *Later Filed Cases*. The terms of this order, including pretrial consolidation, shall apply automatically to actions later instituted in, removed to, or transferred to this

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court (including cases transferred for pretrial purposes under 28 U.S.C. § 1407) that involve claims of \_\_\_\_\_.

Objections to such consolidation or other terms of this order shall promptly be filed, with a copy served on liaison counsel for plaintiffs and defendants.

Dated: \_\_\_\_\_  
United States District Judge

Attachments: [Attachments to this order can be found from sections 40.22 to 40.3.]

*Notes:*

1. See *supra* section 40.1.
2. As a means of keeping advised of the progress of discovery without unnecessarily burdening the clerks' offices, the court may wish to add this provision: "At the time of requesting or responding to discovery, the parties shall file with the clerk a one-page notice indicating the nature of the discovery request or response."
3. Coordination of discovery, including use of joint notices for common depositions, is often appropriate even if consolidation is not warranted.
4. This order provides for appointment of only liaison counsel for defendants while providing for appointment of liaison counsel, lead counsel, and a steering committee for plaintiffs. In many cases, of course, the same organizational structure for both plaintiffs and defendants will be appropriate.
5. To ensure that each liaison counsel has a complete file, copies of all documents should be served on both liaison counsel even if individual service is also to be made on other attorneys and parties. If the court directs under Fed. R. Civ. P. 5 that service on all opposing counsel may be made by serving liaison counsel, some additional time should be provided for liaison counsel to make distribution among those counsel and parties interested in a particular document.
6. The court should encourage the parties to discuss waiver of service of process as contemplated by Rule 4(d). If the parties agree, the court should include a version of the bracketed clause in an order.
7. Note that Rule 23(c)(1) provides that the class certification decision need only be made at "an early practicable time." The revised rule contemplates that the decision may come after rulings on Rule 12 motions and early motions for summary judgment.

## 40.22 Responsibilities of Designated Counsel

It is ORDERED:

1. *Plaintiffs' Lead Counsel.* Plaintiffs' lead counsel<sup>1</sup> shall be generally responsible for coordinating the activities of plaintiffs during pretrial proceedings and shall
  - (a) determine (after such consultation with other members of Plaintiffs' Steering Committee and other cocounsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;
  - (b) coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(2), and 26(g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;
  - (c) conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;
  - (d) delegate specific tasks to other counsel or committees of counsel,<sup>2</sup> as authorized by the court, in a manner to ensure that pretrial preparation for the plaintiffs is conducted efficiently and effectively;
  - (e) enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
  - (f) prepare and distribute periodic status reports to the parties;
  - (g) maintain adequate time and disbursement records covering services as lead counsel;
  - (h) monitor the activities of cocounsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided; and
  - (i) perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the court.

Counsel for plaintiffs who disagree with lead counsel (or those acting on behalf of lead counsel) or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their clients as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of lead counsel.

2. *Plaintiffs' Liaison Counsel.* Plaintiffs' liaison counsel shall
  - (a) maintain and distribute to cocounsel and to defendants' liaison counsel an up-to-date service list;
  - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];

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- (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository]; and
  - (d) establish and maintain a document depository [see section 40.261].
3. *Plaintiffs' Steering Committee.* The other members of plaintiffs' steering committee shall from time to time consult with plaintiffs' lead and liaison counsel in coordinating the plaintiffs' pretrial activities and in planning for trial.
  4. *Defendants' Liaison Counsel.* Defendants' liaison counsel shall
    - (a) maintain and distribute to cocounsel and to plaintiffs' liaison counsel an up-to-date service list;
    - (b) receive and, as appropriate, distribute to cocounsel orders from the court [and documents from opposing parties and counsel];
    - (c) maintain and make available to cocounsel at reasonable hours a complete file of all documents served by or upon each party [except such documents as may be available at a document depository];
    - (d) establish and maintain a document depository [see section 40.261]; and
    - (e) call meetings of cocounsel for the purpose of coordinating discovery, presentations at pretrial conferences, and other pretrial activities.
  5. *Privileges Preserved.* No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

Dated: \_\_\_\_\_  
United States District Judge

*Notes:*

1. In litigation involving different types of claims, such as economic injury and personal injury claims, the court and counsel may wish to create parallel structures for the cases.
2. In litigation involving cases in state and federal courts, the court and counsel should consider appointing a state–federal liaison committee to coordinate pretrial and trial activity, particularly discovery.

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## 40.23 Attorneys' Time and Expense Records

It is ORDERED:

1. *Maintenance of Contemporaneous Records.* All counsel shall keep a daily record of their time spent and expenses incurred in connection with this litigation, indicating with specificity the hours, location, and particular activity (such as “conduct of deposition of A.B.”). The failure to maintain such records will be grounds for denying court-awarded attorney fees, as will an insufficient description of the activity (such as “research” or “review of correspondence”).<sup>1</sup>
2. *Filing.*<sup>2</sup> By the fifteenth day of each month, each firm that may seek an award (or approval) of a fee by the court shall file [under seal with the clerk] [with lead counsel or a budget/record/compensation committee established by lead counsel and the court] a report summarizing, according to each separate activity, the time and expenses spent by its members or associates during the preceding month (and the ordinary billing rates of such attorneys in effect during the month) and the accumulated total of the firm’s time, hourly rates, and expenses to date. [Lead Counsel shall file under seal with the clerk by the last day of the month a report summarizing, for all participating counsel, such time and expenses reports, arranged according to the particular activities.]

Dated: \_\_\_\_\_  
United States District Judge

*Notes:*

1. The court may wish to include more specific guidelines concerning staffing, hourly rates, reimbursable expenses, and required documentation. *See supra* sections 14.21–14.22.
2. In cases in which the court may award fees, time and expense records should ordinarily be submitted through lead counsel, if one has been appointed, in order to assist lead counsel in monitoring the activities of cocounsel and in preparing a single, consolidated report for filing with the court. *See supra* section 14.212.

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### 40.24 Scheduling Order

It is ORDERED:

1. Discovery<sup>1</sup> shall be conducted according to the following schedule:

Discovery	Time <sup>2</sup>
Interrogatories by all parties to ascertain identity and location of witnesses and documents, including computerized records	_____
Document production by all parties	_____
Lay-witness depositions	
• noticed by plaintiffs	_____
• noticed by defendants	_____
Expert(s):	
• plaintiffs:	
– submission of reports	_____
– depositions	_____
• defendants:	
– submission of reports	_____
– depositions	_____
Production of proposed computerized summaries and samples:	
• by plaintiffs	_____
• by defendants	_____

2. Except for good cause shown—
  - (a) relief from the above schedule shall not be granted and all discovery shall be completed by \_\_\_\_\_ [date] \_\_\_\_\_;<sup>3</sup>
  - (b) discovery shall be limited to matters occurring after \_\_\_\_\_ [date] \_\_\_\_\_ [and before \_\_\_\_\_ [date] \_\_\_\_\_];
  - (c) no more than \_\_\_\_\_ interrogatories (including subparts) may be propounded to any party (exclusive of interrogatories seeking the identity and location of witnesses and documents);
  - [(d) no more than \_\_\_\_\_ depositions may be taken by either plaintiffs or defendants, and no single deposition (other than of \_\_\_\_\_) may take more than \_\_\_\_\_ hours/days;<sup>4</sup>] and

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- (e) no amendment of pleadings may be made after \_\_\_\_\_ [date]\_\_\_\_\_, and no additional parties may be joined as plaintiff, defendant, or third-party defendant after \_\_\_\_\_ [date]\_\_\_\_\_.
3. The parties are expected to be prepared for trial on all issues [except \_\_\_\_\_] by \_\_\_\_\_ [date]\_\_\_\_\_.

Dated: \_\_\_\_\_  
United States District Judge

*Notes:*

1. Where initial disclosure is appropriate, provision should be made in the order. *See also supra* section 40.21, ¶ 6(b). Note that the 2000 amendments to Rule 26(a)(1) contemplate that a party in a complex case may object during the Rule 26(f) conference that initial disclosures are “not appropriate in the circumstances of the action” and by such objection call for a judicial ruling on the question.

2. The time for undertaking or completing some aspect of discovery may be stated either by using specific dates or by reference to completion of discovery that should precede it. The listing in this sample order of certain forms of discovery is not intended to suggest that they should be undertaken in this sequence or that each item should be completed before other discovery is undertaken. For example, in many cases, depositions should be conducted by both sides during the same period of time, during which the parties may also be involved in preparing answers to interrogatories and responses to requests for admission.

3. The extent to which a schedule for all discovery can be established at the initial conference will depend on the circumstances of the litigation. In some complex cases it may be feasible to establish a timetable only for certain portions of discovery, leaving for subsequent conferences the setting of a schedule for other discovery and a final cutoff date for all discovery. In other cases, a comprehensive discovery schedule—which may even include dates for preparation and submission of a joint statement of contested and uncontested facts, and for identification of trial witnesses and documents—can be established at the initial conference.

4. Other restrictions on discovery may be added.

## 40.25 Preservation of Documents, Data, and Tangible Things

[Caption]

### Interim Order Regarding Preservation

[The primary purpose of this order is to have the parties meet and confer to develop their own preservation plan. If the court determines that such a conference is unnecessary or undesirable, paragraph 3, Duty to Preserve, may be modified to serve as a stand-alone preservation order.]

#### 1. Order to Meet and Confer

To further the just, speedy, and economical management of discovery, the parties are ORDERED to meet and confer as soon as practicable, no later than 30 days after the date of this order, to develop a plan for the preservation of documents, data, and tangible things reasonably anticipated to be subject to discovery in this action. The parties may conduct this conference as part of the Rule 26(f) conference if it is scheduled to take place within 30 days of the date of this order. The resulting preservation plan may be submitted to this Court as a proposed order under Rule 16(e).

#### 2. Subjects for Consideration

The parties should attempt to reach agreement on all issues regarding the preservation of documents, data, and tangible things. These issues include, but are not necessarily limited to:

- (a) the extent of the preservation obligation, identifying the types of material to be preserved, the subject matter, time frame, the authors and addressees, and key words to be used in identifying responsive materials;
- (b) the identification of persons responsible for carrying out preservation obligations on behalf of each party;
- (c) the form and method of providing notice of the duty to preserve to persons identified as custodians of documents, data, and tangible things;
- (d) mechanisms for monitoring, certifying, or auditing custodian compliance with preservation obligations;
- (e) whether preservation will require suspending or modifying any routine business processes or procedures, with special attention to document-management programs and the recycling of computer data storage media;
- (f) the methods to preserve any volatile but potentially discoverable material, such as voicemail, active data in databases, or electronic messages;
- (g) the anticipated costs of preservation and ways to reduce or share these costs; and

- (h) a mechanism to review and modify the preservation obligation as discovery proceeds, eliminating or adding particular categories of documents, data, and tangible things.

### 3. Duty to Preserve

- (a) Until the parties reach agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel is under an obligation to exercise reasonable efforts to identify and notify such nonparties, including employees of corporate or institutional parties.
- (b) “Documents, data, and tangible things” is to be interpreted broadly to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; E-mail; telephone message records or logs; computer and network activity logs; hard drives; backup data; removable computer storage media such as tapes, disks, and cards; printouts; document image files; Web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition.
- (c) “Preservation” is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery under Fed. R. Civ. P. 26, 45, and 56(e) in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible.
- (d) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must, to the extent practicable for the pendency of this order, either
  - (1) halt such business processes;
  - (2) sequester or remove such material from the business process; or
  - (3) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

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- (e) Before the conference to develop a preservation plan, a party may apply to the court for further instructions regarding the duty to preserve specific categories of documents, data, or tangible things. A party may seek permission to resume routine business processes relating to the storage or destruction of specific categories of documents, data, or tangible things, upon a showing of undue cost, burden, or overbreadth.

#### 4. Procedure in the Event No Agreement Is Reached

If, after conferring to develop a preservation plan, counsel do not reach agreement on the subjects listed under paragraph 2 of this order or on other material aspects of preservation, the parties are to submit to the court within three days of the conference a statement of the unresolved issues together with each party's proposal for their resolution of the issues. In framing an order regarding the preservation of documents, data, and tangible things, the court will consider those statements as well as any statements made in any applications under paragraph 3(e) of this order.

Entered this \_\_\_\_ day of \_\_\_\_, 20\_\_

\_\_\_\_\_  
United States District Court Judge

## 40.26 Document Depositories

.261 Order to Meet and Confer to Establish Joint Document Depository 749

.262 Order to Establish Separate Document Depositories 751

### 40.261 Order to Meet and Confer to Establish Joint Document Depository

[Caption]

It is ORDERED:<sup>1</sup>

1. Defendants, in consultation with plaintiffs, shall establish and maintain a document depository program (a “depository”) in a manner to be agreed on by the parties and/or ordered by the Court. The parties will propose to the court a formula for sharing the cost of maintaining the facility. The depository shall store all materials produced by parties and third-parties in this proceeding that may be needed for more than a single case, including documents, interrogatories, requests for admission, requests for production of documents, deposition transcripts, and similar materials. These materials shall be made available to any litigants in any case in the above-captioned litigation [and to any litigants in any related state court litigation].
2. Counsel must agree on computer hardware and software systems for scanning, viewing, downloading, and printing documents from remote locations. The parties must agree about allocating fees to operate the depository. The document depository must not be operated as a profit center. Each attorney/party seeking access to the depository must sign the agreement regarding rules of usage, protection of confidential documents, and payment of fees.
3. A party fully satisfies its obligation to produce documents to the parties in all cases in this litigation by placing those documents in the depository and serving notice of this placement on counsel in all affected cases. Such notice shall identify the documents produced, using a unique alphanumeric identifier, and notice shall be produced as documents are kept in the usual course of business or documents shall be organized and labeled to correspond with the categories in the request set forth in Fed. R. Civ. P. 34(b). This provision may be revised based on the parties’ submissions pursuant to paragraph 4 below.
4. Within \_\_\_\_\_ days of this order, plaintiffs’ lead counsel (or a designated representative) shall meet with defendants’ lead counsel (or a designated representative) to confer about the creation, financing, design, and operation of the depository and shall endeavor to present to the court a stipulation outlining a protocol for the depository, as well as the organization, categorization, and/or indexing of the defendants’ responses to plaintiffs’ document requests. The parties shall present to the

court by \_\_\_\_\_ [date] \_\_\_\_\_ a proposed stipulation regarding the depository protocol and, if necessary, a statement of any matters on which they disagree. In developing this protocol, the parties shall consider potential protocols that would efficiently use technologies (such as CD-ROM or Internet-based production) and that would facilitate the parties' prompt and effective access to the contents of the depository and reduce parties' need to travel to examine documents. Any technology used must permit a hard copy of the document to be produced by the recipient.

5. Each party shall be responsible for delivering to the depository any documents produced in this proceeding pursuant to Fed. R. Civ. P. 45. The party noticing a deposition shall be responsible for delivering to the depository any transcription (including videotape) of any deposition taken in any of the consolidated cases. The party serving any objection, answer, or response to an interrogatory, Rule 34 request, or request for admission in any of the consolidated cases shall be responsible for delivering a copy to the depository.
6. Plaintiffs' liaison counsel (or a designated representative) shall be responsible for monitoring the content of the depository and shall provide periodic notification to all plaintiffs' counsel of the addition of materials to the depository, with a basic description of the newly added materials.
7. Parties to the litigation may establish at their own expense private document depositories at other locations and make arrangements for obtaining documents for inclusion in those depositories as they see fit. The depository established pursuant to this order, however, shall be the official document depository for all consolidated cases.

*Notes:*

1. This order is derived primarily from an order issued in *In re Bridgestone/Firestone, Inc. ATX, ATX II, & Wilderness Tires Products Liability Litigation*, MDL No. 1373 (S.D. Ind. Jan. 2001). Paragraph 2 is derived from an order issued in *In re Serzone Products Liability Litigation*, MDL No. 1477 (S.D. W. Va. Oct. 17, 2002).

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## 40.262 Order to Establish Separate Document Depositories

It is ORDERED:

1. *Establishment of Depositories.*<sup>1</sup> Document depositories shall be established in \_\_\_\_\_ [specify city] \_\_\_\_\_ at such locations as the parties may agree on. In the absence of agreement, the court upon motion shall designate such locations. Documents produced by plaintiffs pursuant to formal or informal request shall be placed in a plaintiff's depository maintained at the expense of plaintiffs; those produced by defendants pursuant to formal or informal request shall be placed in a defendant's depository maintained at the expense of defendants. Each depository will contain equipment for producing copies and separately counting the copies that are made for each party.
2. *Filing System.* The filing party shall place the documents in the depository in sequential order according to the document numbers, and the documents shall be organized in groups in accordance with the document identification prefixes. Documents without identification numbers shall be organized in an orderly and logical fashion. Existing English translations of all foreign-language documents shall be filed with the documents.<sup>2</sup>
3. *Access, Copying, Log.* Counsel appearing for any party in this litigation and the staffs of their respective law firms working on these cases shall have reasonable access during business hours to each document in any such depository and may copy or obtain copies at the inspecting party's expense. Such inspection shall not be subject to monitoring by any party. A log will be kept of all persons who enter and leave the depository, and only duplicate copies of documents may be removed from the depository except by leave of court. [Access to, and copying of, confidential documents is subject to the limitations and requirements of the order protecting against unauthorized disclosure of such documents.]
4. *Subsequent Filings.* After the initial deposit of documents in the depository, notice of all subsequent deposits shall be given to both liaison counsel.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge*Notes:*

1. This order contemplates creation of separate depositories for each side of the litigation. Consider whether the needs of the parties for separate facilities can also be accomplished through electronic means within a single facility. *See* order at *supra* section 40.261.

2. Provision may be made for use of the most appropriate technology for storage, retrieval, and distribution of the documents, including electronic materials. *See supra* section 11.444.

## 40.27 Confidentiality Order

It is hereby ordered that the following provisions shall govern claims of confidentiality in these proceedings:

- (a) Review of the confidential documents and information by counsel, experts, or consultants for the litigants in the litigation shall not waive the confidentiality of the documents or objections to production.
- (b) The inadvertent, unintentional, or *in camera* disclosure of a confidential document and information shall not generally be deemed a waiver, in whole or in part, of any party's claims of confidentiality.
- (c) Only documents containing trade secrets, special formulas, company security matters, customer lists, financial data, projected sales data, production data, matters relating to mergers and acquisitions, and data which touch upon the topic of price may be designated confidential, provided such documents have not previously been disclosed by the producing party to anyone except those in its employment or those retained by it. Such documents or parts thereof will be designated after review by an attorney for the producing party by stamping the word confidential on each page. [Alternative for an MDL relating to product liability litigation: Discovery material containing trade secrets, or other confidential or proprietary research, development, manufacturing, or commercial or business information, may be designated as confidential. Without prejudice to a party's right to seek production of the following information or of a party to object to its production, the information subject to a confidentiality designation may include the following: customer names; proprietary licensing, distribution, marketing, design, development, research, and manufacturing information—not publicly filed with any federal or state regulatory authority—regarding products and medicines, whether currently marketed or under development; clinical studies not publicly filed with any federal or state regulatory authority; information concerning competitors; production information; personnel records and information; and financial information not publicly filed with any federal or state regulatory authority.]
- (d) If any party believes a document not described in the above paragraph should nevertheless be considered confidential, it may make application to the court or special master. Such application shall only be granted for reasons shown and for extraordinary grounds.
- (e) Documents designated confidential shall be shown only to the attorneys, the parties, parties' experts, actual or proposed witnesses, and other persons whom the attorneys deem necessary to review the documents for the prosecution or defense of this lawsuit. Each person who is permitted to see confidential documents shall first be shown a copy of this order and shall further be advised of the obligation to honor the confidentiality designation. The parties agree that any discovery material produced in this litigation may be used in all actions encompassed by this insert product or other litigation

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name] [MDL/class action] litigation and in any other action brought by or on behalf of any other [insert product name] user who agrees to be bound by the terms of this order.

- (f) If a party believes that a document designated or sought to be designated confidential by the producing party does not warrant such designation, the party shall first make a good-faith effort to resolve such a dispute with opposing counsel. In the event that such a dispute cannot be resolved by the parties, either party may apply to the court or special master for a determination as to whether the designation is appropriate. The burden rests on the party seeking confidentiality to demonstrate that such designation is proper.
- (g) At the time of deposition or within 10 days after receipt of the deposition transcript, a party may designate as confidential specific portions of the transcript which contain confidential matters under the standards set forth in paragraph (a) above. This designation shall be in writing and served upon all counsel. No objection shall be interposed at deposition that an answer would elicit confidential information. Transcripts will be treated as confidential for this 10-day period. Any portions of a transcript designated confidential shall thereafter be treated as confidential in accordance with this order. In filing materials with the court in pretrial proceedings, counsel shall file under seal only those specific documents and that deposition testimony designated confidential, and only those specific portions of briefs, applications, and other filings that contain verbatim confidential data, or that set forth the substance of such confidential information.
- (h) In any application to the court or special master referred to or permitted by this order, the court or special master may exercise discretion in determining whether the prevailing party in such a dispute may recover the costs incurred by it and, if so, the amount to be awarded.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

## 40.28 Referral of Privilege Claims to Special Master

It appearing that submission of claims of privilege to a special master<sup>1</sup> appointed under Fed. R. Civ. P. 53 is warranted by the expected volume of such claims and by the likelihood that *in camera* inspection may be needed to rule on these claims and should be accomplished, to the extent possible, by someone other than the judge to whom this litigation has been assigned, the court hereby [“with the consent of the parties” or “having notified the parties and provided an opportunity to be heard”] ORDERS:

1. *Appointment.* \_\_\_\_\_ is appointed under Rule 53 as special master for the purpose of considering all claims of privilege (including claims of protection against disclosure for trial preparation materials) that may be asserted during the course of discovery in this litigation and for such other matters as may be referred to such special master by the court, such as resolution of disputes under the Confidentiality Order.
2. *Procedures.* The special master shall have the rights, powers, and duties provided in Rule 53 and may adopt such procedures as are not inconsistent with that rule or with this or other orders of the court. Until directed otherwise by the special master or the court, any person asserting a privilege shall create a privilege log that will specifically identify the document or other communication sought to be protected from disclosure, including the date, the person making the statement, the persons to whom or in whose presence the statement was made, other persons to whom the contents were or have been revealed, the general subject matter of the communication (unless itself claimed to be privileged), the particular privilege(s) or doctrine(s) upon which protection against disclosure is based, and any other circumstances affecting the existence, extent, or waiver of the privilege. When appropriate, the special master may require that this documentation of claims of privilege be verified.
3. *Reports.* The special master shall make findings of fact and conclusions of law with respect to the matters presented by the parties and shall report expeditiously to the court pursuant to Rule 53(f) as applicable in nonjury actions. Unless directed by the court or believed advisable by the special master, the report shall not be accompanied by a transcript of the proceedings, the evidence, or the exhibits. Such parts of the report, if any, that may be confidential shall be filed under seal pending further order of the court.
4. *Fees and Expenses.* Compensation, at rates mutually agreeable to the special master and the parties, shall be paid to the special master on a periodic basis by the parties, together with reimbursement for reasonable expenses incurred by the special master. The special master may employ other persons to provide clerical and secretarial assistance; such persons shall be under the supervision and control of the special master, who shall take appropriate action to ensure that such persons preserve the confidentiality of matters submitted to the special master for review. Fi-

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nal allocation of these amounts shall be subject to taxation as costs at the conclusion of the case at the discretion of the court.<sup>2</sup>

5. *Distribution.* A copy of this order shall be mailed by the clerk to the special master and to liaison counsel for the parties.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

*Notes:*

1. *See supra* section 11.52.
2. The order may provide the specific compensation payable to the special master and specify the reimbursable expenses.

## 40.29 Deposition Guidelines

It is ORDERED<sup>1</sup> that depositions be conducted in accordance with the following rules:

1. *Cooperation.* Counsel are expected to cooperate with, and be courteous to, each other and deponents.
2. *Stipulations.* Unless contrary to an order of the court, the parties (and when appropriate, a nonparty witness) may stipulate in any suitable writing to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for the extension of discovery cutoffs set by the court are not valid, however, until approved by the court.
3. *Scheduling.* All depositions in this litigation may be cross-noticed in any related action pending in state court. Liaison counsel representing the side initiating a deposition shall provide to all known state liaison counsel at least \_\_\_ days notice of all depositions filed by plaintiffs and defendants, respectively. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and unrepresented-proposed deponents in an effort to schedule depositions at mutually convenient times and places. [That some counsel may be unavailable shall not, however, in view of the number of attorneys involved in this litigation, be grounds for deferring or postponing a deposition if another attorney from the same firm or who represents a party with similar interests is able to attend.]

Scheduling should take into account (a) the availability of documents from among those produced by the parties and third parties, (b) the objective of avoiding the need to subject any person to repeated depositions, and (c) the need to preserve relevant testimony. As a general rule, no witness should be deposed on the same subject more than once in this litigation. A party seeking to take a second deposition of a witness shall provide the opposing party its basis for an exception and a listing of the subjects for which it seeks to depose the witness. Second depositions on new subject matter shall be permitted only upon consent of the parties or an order of this Court issued for good cause shown.

4. *Location.* The location of depositions should be as consistent as possible within each city so that any videotape, videoconferencing, or other equipment can be left in place.
5. *Attendance*
  - (a) *Who May Be Present.* Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party, counsel for the deponent, and potential witnesses. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order shall be excluded.

- (b) *Unnecessary Attendance.* Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the court. Counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel may elect not to attend and to conduct, pursuant to paragraph 13 of this order, supplemental interrogation of the deponent should a review of the deposition reveal the need for such examination.
- (c) *Notice of Intent to Attend a Deposition.* To allow counsel to make arrangements for adequate deposition space, counsel who intend to attend a deposition noticed in the above-captioned litigation should advise counsel for the noticing party at least three days prior to the deposition, if feasible.

#### 6. *Conduct*

- (a) *Examination.* Each side should ordinarily designate one attorney to conduct the principal examination of the deponent, and examination by other attorneys should be limited to matters not previously covered. Counsel should cooperate so examinations by multiple attorneys do not exceed the allotted time.
- (b) *Transmittal of Copies.* The attorney who conducts the principal examination for the noticing party is responsible for assuring that a copy of the deposition transcript, diskettes, and any videotapes are provided to the document depository and to liaison counsel.
- (c) *Objections and Directions Not to Answer.* Counsel shall comply with Fed. R. Civ. P. 30(d)(1). When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged.

*Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those relating to form and foundation, are preserved.*

- (d) *Private Consultation.* Private conferences between deponents and their attorneys in the course of interrogation are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, such conferences may be held during normal recesses and adjournments.
- (e) *Continuation of Deposition.* If a deposition is not finished on Friday of a deposition week, it will continue on the following Monday, subject to the availability of the witness. If the witness is unavailable, it will resume on a newly noticed date.

#### 7. *Documents*

- (a) *Production of Documents.* Witnesses subpoenaed to produce documents should ordinarily be served at least 30 days before the scheduled deposition.

Arrangements should be made to permit inspection of the documents before the interrogation commences.

- (b) *Confidentiality Order.* A copy of the confidentiality order shall be provided to the deponent before the deposition commences if the deponent is to produce or may be asked about documents that may contain confidential information. [Counsel shall comply with the provisions of the confidentiality order when examining a deponent about confidential information.]
  - (c) *Copies.* Extra copies of documents about which counsel expect to examine the deponent should ordinarily be provided to opposing counsel and the deponent. Deponents should be shown a document before being examined about it except when counsel seek to impeach or test the deponent's recollection.
  - (d) *Marking of Deposition Exhibits.* Documents shall be referred to by the unique alpha-numeric identifier assigned by the document depository.
8. *Depositions of Witnesses Who Have No Knowledge of the Facts.* An officer, director, or managing agent of a corporation or a government official served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge may submit to the noticing party, a reasonable time before the date noticed, an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order.
9. *Recording Depositions by Nonstenographic Means*
- (a) *Tape-Recorded Depositions.* By so indicating in its notice of a deposition, a party may record the deposition by tape recording in lieu of stenographic recording pursuant to Fed. R. Civ. P. 30(b)(2) and (3). Other parties may at their own expense arrange for stenographic recording of the deposition, may obtain a copy of the tape and transcript upon payment of a pro rata share of the noticing party's actual costs, and may prepare and file their own version of the transcript of the tape recording.
  - (b) *Videotaped Depositions.* By so indicating in its notice of a deposition, a party may record the deposition by videotape pursuant to Fed. R. Civ. P. 30(b)(2) and (3).
    - (1) *Rules for Videotaped Reporting*
      - (i) *Video Operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.
      - (ii) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

- (iii) *Standards.* The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.
- (iv) *Interruptions.* [The videotape shall run continuously throughout the active conduct of the deposition.] [Videotape recording will be suspended during all “off the record” discussions.]<sup>2</sup>
- (v) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, objections are made and examination resumes at which exhibits are identified, and any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussions, mechanical failure, or otherwise.
- (vi) *Filing.* [The operator shall preserve custody of the original videotape in its original condition until further order of the court.] [Subject to the provisions of paragraph 10 of this order, the original of the tape recording, together with the operator’s log index and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the clerk.] No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the court.
- (vii) *Objections.* Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If needed for an informed ruling, a copy of the videotape and equipment for viewing the tape shall also be provided to the court.
- (viii) *Use at Trial; Purged Tapes.* A party desiring to offer a videotape deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at trial, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), [may] [shall] be pre-

pared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least \_\_\_\_ days before it is used, and the unedited original of the tape shall also be available at the trial.

10. *Telephonic Depositions.* By indicating in its notice of a deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(7). Unless an objection is filed and served within \_\_\_\_ days after such notice is received, the court shall be deemed to have granted the motion. Other parties may examine the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not, by word, sign, or otherwise, coach or suggest answers to the deponent.
11. *Waiver of Transcription and Filing.* The parties and deponents are authorized and encouraged to waive transcription and filing of depositions that prove to be of little or no usefulness in the litigation or to agree to defer transcription and filing until the need for using the deposition arises.
12. *Use.* Depositions conducted in this litigation may be used in related cases in any state court to the extent permitted by that state's laws and rules. Depositions may, under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)–(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court as part of this litigation):
  - (a) who was present or represented at the deposition;
  - (b) who had reasonable notice thereof; or
  - (c) who, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party in this court in any action that is a part of this litigation), fails to show just cause why such deposition should not be usable against such party.
13. *Supplemental Depositions.* Each party not present or represented at a deposition (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this court) may, within 30 days after the filing of the deposition (or, if later, within 60 days after becoming a party in this court in any action that is a part of this litigation), request permission to conduct a supplemental deposition of the deponent, including the right to take such deposition telephonically and by nonstenographic means. If permitted, the deposition shall be treated as the resumption of the deposition originally noticed; and each deponent shall, at the conclusion of the initial deposition, be advised of the opportunity of nonattending parties to request a resumption of such deposition, subject to the right of the deponent to seek a protective order. Such examination shall not be repetitive of the prior interrogation.
14. *Disputes During Depositions*
  - (a) Disputes between the parties that arise during a deposition should be addressed to this [MDL] court rather than the district court in which the depo-

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sition is being conducted. The undersigned will exercise by telephone the authority granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken.<sup>2</sup>

- (b) *Immediate Presentation.* Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, should be presented by telephone to the court. If the judge is not available during the period while the deposition is being conducted, the dispute may be submitted to Magistrate Judge \_\_\_\_\_ by telephone or as the judge may direct.<sup>3</sup> The presentation of the issue and the court's ruling will be recorded as part of the deposition.<sup>4</sup>

Dated: \_\_\_\_\_  
United States District Judge

*Notes:*

1. See *supra* section 11.45.
2. The power to exercise authority over nonparty deponents outside the district is available only in multidistrict litigation, unless the judge has been given an intracircuit or intercircuit assignment.
3. See *supra* section 11.456.
4. If a simultaneous stenographic transcript is being made, the court may prefer that "off the record" discussions be eliminated from the videotape.

## 40.3 Order Creating a Web Site

Order No. \_\_\_\_\_

[Lead and Liaison Counsel for Plaintiffs and Defendants are directed to meet and confer for the purpose of establishing] [The Court will create and maintain] a Web site devoted solely to the [insert MDL name or caption] litigation. The site will contain sections through which the parties, counsel, and the public may access court orders, court opinions, court minutes, court calendars, frequently asked questions, court transcripts, court docket, current developments, information about plaintiffs' and defendants' lead and liaison counsel, and other information to be identified by the parties or the court and its staff.

Plaintiffs' and defendants' lead and liaison counsel should meet and confer to identify other information that might be included on the Web site, including

- documents stored in a document depository, or electronic links to such documents;
- notices and schedules of depositions and other discovery requests;
- announcements relating to proceedings and events in this litigation;
- listings of related cases in the state courts and information about how to contact judges and attorneys involved in such cases;
- documents, orders, or opinions in related cases that are of significant importance in this litigation; and
- any other materials the parties find to be important to facilitating the fair and efficient conduct of this litigation.

Counsel need to ensure that the Web site is compatible with the Case Management/Electronic Case Filing (CM/ECF) system in place [or to be developed] in this court. The Web site should contain appropriate linkages to information available through the CM/ECF system.

Counsel may recommend, by motion, that a portion of the Web site be accessible only to counsel for plaintiffs, counsel for defendants, or both. Any limitations, however, should be restricted to (1) matters that represent the work product of attorneys for plaintiffs or defendants and are not otherwise available to other persons, and (2) matters that are confidential under a protective order issued by this court. The Web site should be established so that it is compatible with most communications software, with a view toward making it publicly available.

Counsel are expected to use computers to prepare documents sent to the clerk or to the judge's chambers and to provide electronic versions of all documents.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

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## 40.4 Class Actions Orders

- .41 Order Certifying Class 763
- .42 Order Setting Hearing on Proposed Class Settlement 765
- .43 Combined Certification and Proposed Settlement Order 766
- .44 Order Approving Settlement/Claims Procedure 768

*Note:* These class action forms have been adapted from antitrust litigation for illustrative purposes and may be adapted for other litigation by appropriate changes.

### 40.41 Order Certifying Class

[caption]

Order No. \_\_\_\_\_

In accordance with the findings and conclusions contained in the Opinion [omitted] filed concurrently with this order, it is, ORDERED:

1. *Class Certification.* Civil Action No. \_\_\_\_\_, styled \_\_\_\_\_ shall be maintained as a class action on behalf of the following class of plaintiffs:

[Describe class in objective terms to the extent possible. For example, “All persons and entities throughout the United States and its territories (other than widget manufacturers and entities owned or controlled by them) that, since \_\_\_\_ [date] \_\_\_\_, have purchased widgets directly from any of the defendants or from any other widget manufacturer.”]

with respect to the following cause(s) of action:

[Describe class claims as precisely as possible. For example, “Any claims for damages or injunctive relief under federal antitrust laws premised upon an alleged conspiracy among the defendants and other widget manufacturers to restrict competition in the manufacture, distribution, and sale of widgets by setting the minimum prices charged for widgets after \_\_\_\_ [date] \_\_\_\_.”]

2. *Class Representative; Class Counsel.* Subject to further order of the court, [A.B. Co.] is designated as class representative and [X.Y.] is designated as counsel for the class.
3. *Notice.*<sup>1</sup>
  - (a) Class counsel shall by \_\_\_\_\_ [date] \_\_\_\_\_, cause to be mailed in the name of the clerk by first class mail, postage prepaid, to all class members who can be identified through reasonable efforts, a notice written in

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plain language and approved by the court. For illustrative examples of the form of such notices, see the Federal Judicial Center's Web site ([www.fjc.gov](http://www.fjc.gov)) and go to the "Class Action Notices" page. In addition to class members identified through an examination of defendants' records, this notice will also be mailed to persons who are members of [National Widget Dealers Trade Association].

- (b) Class counsel shall cause to be published in the \_\_\_\_\_ by \_\_\_\_\_ [date], a notice in substantially the same style and format as the illustrative summary notices posted on the "Class Action Notices" page of the Federal Judicial Center's Web site ([www.fjc.gov](http://www.fjc.gov)).
4. *Exclusion.* The notice to class members must inform them as to how they may exclude themselves from the class.
  5. *List of Class Members.* Class counsel will file with the clerk by \_\_\_\_\_ [date], an affidavit identifying the persons to whom notice has been mailed and who have not timely requested exclusion.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

*Note:*

1. *See supra* section 21.311.

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### 40.42 Order Setting Hearing on Proposed Class Settlement

[caption]

Order No. \_\_\_\_\_

The court having preliminarily reviewed the proposed settlement of this action, it is ORDERED:

1. *Proposed Settlement.* The proposed settlement between the plaintiff class and the defendants appears to be within the range of reasonableness and accordingly shall be submitted to the class members for their consideration and for a hearing under Fed. R. Civ. P. 23(e).
2. *Hearing.* A hearing shall be held in Courtroom \_\_\_\_\_, United States Courthouse, \_\_\_\_\_ [address] \_\_\_\_\_, at \_\_\_\_ a.m./p.m., on \_\_\_\_ [date] \_\_\_\_, to consider whether the settlement is fair, reasonable, and adequate and should receive the court’s final approval.
  - (a) Objections by class members to the proposed settlement will be considered if filed in writing with the clerk on or before \_\_\_\_ [date] \_\_\_\_.
  - (b) At the hearing, class members may be heard orally in support of or in opposition to the settlement, provided such persons file with the clerk by \_\_\_\_ [date] \_\_\_\_, a written notification of their desire to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.
  - (c) Counsel for the class and for the defendants should be prepared at the hearing to respond to objections filed by class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.
3. *Notice.* The parties to the proposed settlement shall by \_\_\_\_ [date] \_\_\_\_, cause to be mailed in the name of the clerk, by first class mail, postage prepaid, to members of the class [who did not timely elect to be excluded from litigation] a notice in plain language and in substantially the form of the Federal Judicial Center’s Illustrative Notices, which can be found on the Class Action Notices page of the Center’s Web site (www.fjc.gov). [Notice of the proposed settlement (and of the rights of class members to object to or opt out of the proposed settlement) shall also be given by publication in a summary form as illustrated on the Class Action Notices page of the Center’s Web site.

The notice should include information about attorney fees sought by attorneys for the class.<sup>1</sup>

Dated: \_\_\_\_\_  
\_\_\_\_\_ United States District Judge

Note:

1. See Fed. R. Civ. P. 23(h)(1).

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### 40.43 Combined Certification and Proposed Settlement Order

[caption]

Order No. \_\_\_\_\_

In accordance with the findings and conclusions contained in the Opinion [omitted] filed concurrently, it is ORDERED:

1. *Class Certification.*<sup>1</sup> Civil Action No. \_\_\_\_\_, styled \_\_\_\_\_, shall be maintained as a class action on behalf of the following class of plaintiffs:

[Describe class in objective terms to the extent possible. For example, “All persons and entities throughout the United States and its territories (other than [widget] manufacturers and entities owned or controlled by them) that, between \_\_\_\_\_ [date] \_\_\_\_\_, and \_\_\_\_\_ [date] \_\_\_\_\_, have purchased [widgets] directly from any of the defendants or any other [widget] manufacturer.”]

with respect to the following cause(s) of action:

[Describe class claims as precisely as possible. For example, “Any claims for damages or injunctive relief under federal antitrust laws premised upon an alleged conspiracy among [widget] manufacturers to restrict competition in the manufacture, distribution, and sale of [widgets] by setting the minimum prices charged for [widgets] between \_\_\_\_\_ [date] \_\_\_\_\_, and \_\_\_\_\_ [date] \_\_\_\_\_.”]

2. *Class Representative; Class Counsel.* [A.B. Co.] is designated as class representative and [X.Y.] is designated as counsel for the class.
3. *Exclusion.* The notice to class members must inform them as to how they may exclude themselves from the class.
4. *Proposed Settlement.* The proposed settlement between the plaintiff class and the defendants appears, upon preliminary review, to be within the range of reasonableness and accordingly shall be submitted to the class members for their consideration and for a hearing under Federal Rule of Civil Procedure 23(e). The terms of the settlement are as follows:

\_\_\_\_\_ [describe terms in clear, nontechnical manner] \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.

5. *Hearing.* A hearing shall be held in Courtroom \_\_\_\_\_, United States Courthouse \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., on \_\_\_\_\_ [date] \_\_\_\_\_, to consider whether the settlement should be given final approval.

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- (a) Objections by class members (who do not timely elect to exclude themselves from the class) to the proposed settlement should be considered if filed in writing with the clerk on or before \_\_\_\_\_ [date]\_\_\_\_\_.
- (b) At the hearing, class members (who do not timely elect to exclude themselves from the class) may be heard orally in support of or in opposition to the settlement, provided such persons file with the clerk by \_\_\_\_\_ [date]\_\_\_\_\_, a written notification of the desire to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.
- (c) Counsel for the class and for the defendants should be prepared at the hearing to respond to objections filed by such class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.

6. *Notice*

- (a) Class counsel shall by \_\_\_\_\_ [date]\_\_\_\_\_, cause to be mailed in the name of the clerk by first class mail, postage prepaid, to all class members who can be identified through reasonable efforts, a notice written in plain language and approved by the court. For illustrative examples of the form of such notices, see the Federal Judicial Center's Web site ([www.fjc.gov](http://www.fjc.gov)) and go to the Class Action Notices page. A copy of a full notice combining certification and a proposed settlement and using asbestos litigation as an example (as it appeared on May 5, 2003) is reproduced as Attachment A.

In addition to class members identified through an examination of defendants' records, this notice will also be mailed to persons who are members of [National Widget Dealers Trade Association].

- (b) Class counsel shall cause to be published in the \_\_\_\_\_ [publication]\_\_\_\_\_ by \_\_\_\_\_ [date]\_\_\_\_\_, a notice in substantially the same style and format as the illustrative summary notices posted on the Class Action Notices page of the Federal Judicial Center's Web site ([www.fjc.gov](http://www.fjc.gov)). A copy of a summary publication notice using asbestos litigation as an example (as it appeared on May 5, 2003) is reproduced as Attachment B.

- 7. *List of Class Members.* Class counsel will file with the clerk by \_\_\_\_\_ [date]\_\_\_\_\_, an affidavit identifying the persons to whom notice has been mailed and who have not timely requested exclusion.

Dated: \_\_\_\_\_  
 \_\_\_\_\_  
 United States District Judge

Attachments A & B: [See full asbestos notice and publication notice on the FJC Web page ([www.fjc.gov](http://www.fjc.gov)).]

*Notes:*

- 1. When the parties propose a settlement before a class has been certified, the court should ordinarily determine whether the proposed class satisfies the requirements of Federal Rules of Civil Procedure 23(a) and (b) before directing notice to be sent to the class. *See supra* section 21.632.

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## 40.44 Order Approving Settlement/Claims Procedure

[caption]

Order No. \_\_\_\_\_

In accordance with the findings and conclusions contained in the Opinion [omitted] filed concurrently, it is ORDERED:

1. *Approval of Settlement.* The settlement is, after hearing, determined to be fair, reasonable, and adequate. It is, therefore, approved.
2. *Award of Fees and Expenses.* In accordance with the findings and conclusions contained in the Opinion [omitted], [X.Y.] is awarded \$\_\_\_\_\_ as compensation and \$\_\_\_\_\_ as reimbursement for expenses, to be paid [from the settlement fund] [by the defendants].<sup>1</sup> [Application for an award from the settlement fund of additional fees and expenses in connection with further proceedings, including administration and distribution of the settlement fund, may be made to the court.]
3. *Administration and Distribution of Settlement Fund*
  - (a) *Investment.* [After payment of counsel fees and expenses as awarded by the court,] the settlement fund shall, pending distribution to class members, be held in interest-bearing investments to be approved by the court from time to time.
  - (b) *Allocation.* The [net] settlement fund shall be allocated among the class members in proportion to their “qualified purchase,” which means the net price (after discounts and allowances) paid by them to [widget] manufacturers for [widgets] from \_\_\_\_ [date] \_\_\_\_, to \_\_\_\_ [date] \_\_\_\_.
  - (c) *Claims; proof of purchases.* Unless extended by the court (or the special master) class members shall have until \_\_\_\_ [date] \_\_\_\_, to submit claims detailing, with appropriate supporting proof, their “qualified purchases.”
  - (d) *Special master.*<sup>2</sup> \_\_\_\_\_ is appointed as special master under Fed. R. Civ. P. 53 to review, tabulate, and (as appropriate) audit claims made by class members. The special master shall establish procedures to resolve disputes regarding eligibility of persons to be members of the class and regarding the amount of “qualified purchases” by such persons. The findings and conclusions of the special master identifying the class members, their respective “qualified purchases,” and their allocable shares of the settlement fund shall be reported to the court under Fed. R. Civ. P. 53(f) as soon as is practicable. Compensation and expenses of the special master will be paid from the settlement fund in such amount as the court may determine to be fair and reasonable.
  - (e) *Distribution.* The net settlement fund, with interest, shall be distributed to class members as soon as practicable after the amount to which each member

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is entitled has been determined. Any funds remaining after distribution has been completed may be distributed as the court directs.

- 4. *Notice.* Class counsel shall by \_\_\_\_\_ [date] \_\_\_\_\_, cause to be mailed in the name of the clerk by first class mail, postage prepaid, to members of the class [who did not timely elect to be excluded from litigation] a notice in plain language and in substantially the form of the Federal Judicial Center’s Illustrative Notices, which can be found on the Class Action Notices page of the Center’s Web site (www.fjc.gov). [Notice of the proposed settlement (and of the rights of class members to object to or opt out of the proposed settlement) shall also be given by publication in a summary form as illustrated on the Class Action Notices page of the Center’s Web site.

The notice should include information about attorney fees sought by attorneys for the class.

- 5. *Reserved Jurisdiction of Court.* The court retains jurisdiction over the settlement of this case and may enter additional orders to effectuate the fair and orderly administration of the settlement as may from time to time be appropriate, including the determination of persons to whom payment should be made in the event of death or dissolution and the right to set aside a portion of the net settlement fund not exceeding [\$ \_\_\_\_\_] [ \_\_\_\_\_% of the net fund] as a reserve for late claims and other contingencies and to determine the appropriate disposition of any portion of the reserve not distributed to the class members.

Dated: \_\_\_\_\_  
United States District Judge

*Notes:*

- 1. This assumes that an application for attorneys’ fees was heard concurrently with the hearing on approval of the settlement. A joint hearing is recommended as an efficient and economical way to satisfy the notice requirement of Fed. R. Civ. P. 23(h)(1).
- 2. These sample forms contain provisions generally suitable if a special master is appointed to administer the settlement. In other cases, use of a claims committee or magistrate judge may be appropriate.

## 40.5 Orders in Special Cases

- .51 Coordinating Proceedings in Different Courts 770
- .52 Mass Tort Case-Management Order 773
- .53 CERCLA Case-Management Order 779
- .54 Civil RICO Case-Statement Order 783

### 40.51 Coordinating Proceedings in Different Courts

[caption]

Order No. \_\_\_\_\_

It appearing that [the above-styled cases] [the cases listed on Attachment \_\_\_\_\_] share common issues with, and will involve common discovery with, certain cases pending in \_\_\_\_\_ [list other court(s)] (the “related actions”), and that pretrial proceedings in all these cases should be coordinated to avoid unnecessary conflicts and expense, conserve judicial resources, and expedite the disposition of all the cases, this court, after having consulted with counsel [and being advised that similar orders will be entered in such other court(s)<sup>1</sup>], ORDERS:

#### 1. Designated Counsel<sup>2</sup>

- (a) *Plaintiffs’ Lead and Liaison Counsel.* \_\_\_\_\_ and \_\_\_\_\_ are designated as plaintiffs’ lead counsel and plaintiffs’ liaison counsel, respectively, in this court, with the responsibilities prescribed in [Attachment \_\_\_\_\_] [see section 40.21, paragraphs 1 and 2]. They may serve in similar capacities in the related cases if so authorized or permitted by the courts in which such cases are pending and, in any event, shall endeavor to coordinate activities in these cases with those in the related cases.
- (b) *Defendants’ Liaison Counsel.* \_\_\_\_\_ is designated to serve as defendants’ liaison counsel with the responsibilities prescribed in [Attachment \_\_\_\_\_] [see section 40.21, paragraph 4]. Defendants’ liaison counsel may serve in a similar capacity in the related cases if so authorized or permitted by such courts and, in any event, shall endeavor to coordinate activities in these cases with those in the related cases.
- (c) *Compensation.* Attorneys designated as lead or liaison counsel by this court and the other courts shall be entitled to reasonable compensation and reimbursement of expenses for services performed in such capacities, equitably apportioned among the parties in these and the related cases benefiting from such services. This court will cooperate with the other courts in making appropriate orders for such compensation and reimbursement if agreement

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cannot be reached between such counsel and the parties for whom they are acting.

2. Discovery<sup>3</sup>

- (a) *Joint Document Depositories.* The document depositories prescribed in [Exhibit \_\_\_\_\_] [see section 40.261] shall be established for the joint use of parties in these related cases. [Subject to agreement regarding the sharing of expenses,] counsel in the related cases shall have access to the documents in such depositories to the same extent as counsel in the cases in this court. Parties will not make new requests for production of documents in these proceedings if such documents have already been produced and are available to them in the related cases.
- (b) *Confidential Documents.* Counsel in the related cases shall have access to confidential documents produced under the confidentiality order entered in this court [see, e.g., section 40.27] on the same terms and conditions as counsel in the cases in this court. Counsel in the cases in this court obtaining access to documents marked confidential under similar orders entered in other courts shall be subject to the terms and conditions of such orders.
- (c) *Depositions.* Depositions of persons whose testimony will likely be relevant both in these cases and in the related cases should ordinarily be cross-noticed for use in all such cases. [The parties in the cases before this court are directed to show cause within 60 days why the depositions previously taken in the related cases should not be usable in this court, subject to the right to conduct supplemental examination on a showing of need.]

3. *Consistency of Rulings.* To avoid unnecessary conflicts and inconsistencies in the rulings of this and the other courts on matters such as discovery disputes and scheduling conflicts,

[Alternate 1—Deferral to Prior Rulings]

This court will adopt a ruling already made on such matters by another court in a related case unless a different ruling is shown to be mandated by the laws and rules governing this court or justified by particular circumstances of the cases before this court.

[Alternate 2—Lead Case]

Such disputes will initially be presented in case no. \_\_\_\_\_, pending in \_\_\_\_\_ [name of court] \_\_\_\_\_, and the ruling made in that case will be given effect in all [other] cases in this court unless a different ruling is shown to be [mandated by the laws and rules governing this court or] justified by particular circumstances of such cases.

[Alternate 3—Joint Special Master]

\_\_\_\_\_ is appointed under Fed. R. Civ. P. 53(a)(1)(C) to serve as Special Master in these cases (and, under similar appointments by the other courts, in the related cases) (1) to assist the respective courts in preparing and monitoring schedules and plans for coordinated conduct of discovery and

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other pretrial proceedings; (2) to recommend to the respective courts appropriate resolution of discovery disputes, including controversies regarding limitations on the scope or form of discovery and questions regarding claims of privilege and confidentiality; and (3) to facilitate proper cooperation and coordination among counsel.

[Alternate 4—Joint Hearings]

This court will be prepared to conduct consolidated hearings and pretrial conferences with judges of the courts where related cases are pending and to enter joint rulings (except to the extent differences may be mandated by different laws or rules governing the courts or justified by special circumstances in the various cases).

4. *Other Litigation.* Upon application, these provisions may be ordered applicable to cases involving the same common issues subsequently filed in other courts.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

Attachments [omitted]

*Notes:*

1. The terms of coordination between the affected courts should ordinarily be arranged—either by direct consultation between the judges of the courts or indirectly through counsel—before this type of order is entered, and, if feasible, parallel orders should be entered by the various courts. See *supra* sections 20.14, 20.31. References to coordinated proceedings have also been incorporated in several forms. See, e.g., *supra* sections 40.29 and 40.3.

2. This form provides for appointment of lead counsel and liaison counsel for plaintiffs, but only liaison counsel for defendants. In some cases, the same organizational structure will be appropriate both for plaintiffs and for defendants.

3. Depending on the circumstances, it may be appropriate to condition access to discovery materials either on a reciprocal obligation or on payment of fair compensation for a share of the services involved in gathering the information. See section 20.312 for a discussion of mechanisms for allocating compensation among federal and state litigants. For examples of orders allocating fees among federal and state attorneys based on a coordinated approach, see *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, Pretrial Order No. 467 (E.D. Pa. Feb. 10, 1999). See also *In re Baycol Prods. Liab. Litig.*, MDL No. 1431, Pretrial Order No. 25 (D. Minn. June 5, 2002).

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## 40.52 Mass Tort Case-Management Order

[caption]

Order No. \_\_\_\_\_  
(Standard Procedures)<sup>1</sup>

It appearing that [the above-styled cases] [cases listed in Attachment \_\_\_\_\_] involve claims of death, personal injury, economic damages, punitive damages, and other claims of damage arising as a result of [exposure to] [use of] [\_\_\_\_\_ products] [the incident occurring at \_\_\_\_\_ on \_\_\_\_ [date] \_\_\_\_] and that other similar actions may be filed in or transferred to this court in the future, the court ORDERS:

1. *Filing of Order.* A copy of this order shall be filed in each such case. In cases subsequently filed, a copy will be provided by the clerk to each plaintiff at the time of the filing of the complaint and will be served with the complaint on any defendant not previously a party in these cases. [In cases subsequently removed or transferred to this court, a copy will be provided by the clerk to each new party upon removal or transfer.]
2. *Pretrial Consolidation.* All cases in this litigation are consolidated for pretrial purposes. This is not a determination that any of these actions should be consolidated for trial.
3. *Types of Cases.* By order of the Judicial Panel on Multidistrict Litigation (MDL Panel), numerous proposed class actions to remedy economic injuries alleged to have been caused by \_\_ [insert product name] \_\_ have been transferred to this court for coordinated pretrial proceedings. These cases and any proposed class actions that are subsequently filed or transferred to or filed in this proceeding are referenced as Class Action Cases.  
 Numerous individual personal injury and wrongful death cases have also been transferred to this court for coordinated pretrial proceedings. These cases and any additional personal injury/wrongful death cases, brought on behalf of individual claimants, filed in or transferred to this court are referenced as “Personal Injury Cases.” [Insert and define any additional types of cases that are distinct and may call for separate management.]
4. *Presentation of Test Case Remand Motions.* Plaintiffs’ liaison counsel in personal injury cases shall consult with plaintiffs’ counsel and identify for the court no more than \_\_\_\_\_ [e.g., five] cases in which motions for remand to state court based on an arguable absence of federal subject-matter jurisdiction have been filed or are expected to be filed. These remand motions should, as nearly as possible, be representative of the various remand issues raised in the personal injury cases in this MDL litigation. In addition, plaintiffs’ counsel may identify one case in which a motion to remand the case to the transferor court for trial has been made. Plaintiffs’ Liaison Counsel shall submit to the court by \_\_\_\_ [date] \_\_\_\_ the names and indi-

vidual case docket numbers of the cases identified as representative of the remand issues in this MDL proceeding. The court will set a schedule for briefing or supplemental briefing of the remand motions in those cases and place these motions on an expedited schedule for decision.

5. *Filing Papers with the Court.* The purpose of the following instructions is to reduce the time and expense of duplicate filings of documents through use of a master case file, while at the same time not congesting the master case with miscellaneous pleadings and orders that are of interest only to the parties directly affected by them. It is not intended that a party lose any rights based on a failure to follow these instructions.
  - (a) *Master Docket and File.* The clerk will maintain a master docket and case file under the style “*In re* \_\_\_\_\_ Product Liability Litigation (MDL-XXXX)” as master file number [CV NN-1000-X]. Orders, pleadings, motions, and other documents bearing a caption similar to that of this order will, when docketed and filed in the master case, be deemed to have been docketed and filed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in such individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases.
  - (b) *Separate Filing.* A document that relates only to a specific case and would not be of interest except to the parties directly affected by it—such as an amended complaint adding a party or a motion to dismiss a party—should bear the caption and case number of that case rather than of the master case file. Such a document will be docketed and filed in that case and not in the master case file. Please note that cases removed or transferred to this court are assigned a new case number in this court.
  - (c) *Leave to Add Parties.* Until otherwise directed, plaintiffs are granted leave, without need for any special motion or order, to add other plaintiffs to any pending (or subsequently filed, removed, or transferred) case if all plaintiffs in the case (1) will be represented by the same counsel (or if counsel for existing plaintiffs consent to the intervention), (2) are suing the same defendants, and (3) [were exposed to defendants’ products] in the same state. The purpose of this authorization is to avoid unnecessary filing fees and the delays inherent in 28 U.S.C. § 1407 transfers. The joinder of such parties will not be viewed as affecting subsequent motions by either plaintiffs or defendants for separate trials under Federal Rule of Civil Procedure 42(b).
6. *Master Pleadings, Motions, and Orders*
  - (a) *Master/Sample Complaints.* Plaintiffs’ steering committee has filed in this district [CV NN-10000-X]:
    - (1) a master complaint containing allegations that would be suitable for adoption by reference in individual cases,
    - (2) a sample complaint illustrating how allegations from the master complaint can be incorporated into an individual case, and

- (3) a master class action complaint containing allegations that encompass the entire range of allegations and types of proposed class actions contained in individual cases filed in this court or transferred to this court by the MDL panel.

The allegations of the master complaint and the master class action complaint are not deemed automatically included in any particular case. However, in order to avoid possible problems with statutes of limitations or doctrines of repose, it shall be deemed (except to the extent a plaintiff thereafter files an amended complaint disavowing such claims and theories or limits its claims and theories to those contained in an amended complaint) that, as of this date, for cases now pending in this court (or as of the date other cases are filed in, removed to, or transferred to this court) a motion is filed in each such case to amend the complaint to add any potentially applicable claims and theories from the master complaint not contained in the complaint actually filed in that case.

- (b) *Master Answers.* By \_\_\_\_\_, each entity listed below will file in [CV NN-1000-X] a master answer that incorporates its defenses in law or fact to claims made against it in the various actions that are presently pending in this litigation, including any cross-claims it makes against other defendants. The answer will not attempt to provide a cross-reference to particular paragraphs or counts of the various complaints. The answer will, however, in a “generic” manner admit or deny (including denials based on lack of information and belief) the allegations typically included in claims or cross-claims made against it as well as make such additional allegations as are appropriate to its defenses or cross-claims. This may be done through allegations such as “It alleges that it is incorporated in State A; that it has its principal place of business in State B; that during the period from (date) to (date) it manufactured, sold, and distributed products intended to be used in \_\_\_\_\_; that these products were intended to be used only by trained, knowledgeable \_\_\_\_\_ and were accompanied by warnings and instructions that adequately explained such risks as were inherent and unavoidable in the products; that these products were not unreasonably dangerous, were suitable for the purposes for which they were intended, and were distributed with adequate and sufficient warnings; that it is without knowledge or information at this time sufficient to form a belief as to any averment that one of its products was used in the procedure on which the plaintiff’s complaint is based; that to the extent the plaintiff makes a claim for X (or under statute Y) it is not liable because \_\_\_\_\_; etc.”
- (1) When so filed in [CV NN-1000-X], these answers constitute an answer in each constituent case now pending or when hereafter filed in, removed to, or transferred to this court except to the extent the defendant later files a separate answer in an individual case.

- (2) A defendant not listed below may also file a master answer in [CV NN-1000-X] by \_\_\_[date]\_\_\_, or within 45 days after the first case in which it is named as a defendant is filed in, removed to, or transferred to this court.
- (c) *Refinement of Pleadings.* It is anticipated that an amended, more specific complaint and answer may be required before a case is scheduled for trial or remanded to a transferor court, but amendments of pleadings prior to that time should generally be avoided.
- (d) *Motions; Orders.* A motion, brief, or response that has a potential effect on multiple parties (e.g., documents submitted in connection with a motion for partial summary judgment asserting that punitive damages are not recoverable with respect to [the product’s use] in State A) will be deemed made in all similar cases on behalf of, and against, all parties similarly situated except to the extent such other parties timely disavow such a position. Additional motions, briefs, or responses addressed to such issues should not be filed or submitted by other parties except to the extent needed because of inadequacy of the original papers, to present unique facts, or because of a difference in positions. Orders resolving such motions will likewise be deemed as made with respect to all parties similarly situated unless the order indicates otherwise.
7. *Service of Original Complaints; Amendments Adding Parties*
- (a) *Acceptable Service.* Exhibit \_\_\_\_\_ is a list of the “National Defendants”—that is, those entities that have frequently been named as defendants in these cases filed throughout the United States—with the name and address of their national counsel and information provided by national counsel indicating the state(s) in which they are incorporated, in which they have their principal place of doing business, and in which they will or may contest personal jurisdiction. To eliminate disputes over service of process and reduce the expense of such service, these defendants [have agreed] [shall inform the court within \_\_\_ days as to whether or not they agree] to accept service of process in these cases (without, however, waiving any objections to personal jurisdiction or venue) if a copy of the summons and complaint is sent, by certified mail, return receipt requested, to the person or address shown in Exhibit \_\_\_\_\_. Defendants’ agreement [report to the court] should indicate whether it applies to any case involving \_\_\_[insert product]\_\_\_ claims filed in any federal district court or in any state court of general jurisdiction.
- (b) *Extension of Time to Serve.* Notwithstanding Fed. R. Civ. P. 4(m), plaintiffs shall have thirty days after the date of this order (or, if later, thirty days after the date a case is subsequently filed in, removed to, or transferred to this court) in which to effect service on defendants.
8. *Motions*
- (a) *Meet and Confer.* To avoid unnecessary litigation concerning motions, including motions relating to discovery disputes, counsel are directed to meet and confer before filing a motion. In any motion filed, counsel for the moving party must certify that a good-faith effort was made to resolve the dispute.

(b) *Motions Under Federal Rules of Civil Procedure 11, 12, and 56.* No motion shall be filed under Rule 11, 12, or 56 without leave of court.

9. *Inactive [Product] [Incident] Docket.* The purpose of this paragraph is to establish a procedure for separating cases in which the plaintiff has little or no physical impairment from cases with more serious impairments to assist the court in establishing priorities for managing its docket. The intent is to toll the operation of any applicable statutes of limitation or repose while a case is listed as inactive. The clerk shall establish a separate file called the “Inactive [product] [incident] Docket,” which shall consist of (1) cases voluntarily dismissed pursuant to a general stipulation prepared by plaintiffs and defendants that sets forth their agreement that such cases can be revived if specific conditions are met, and (2) claims initiated by a “Notice of Claim” procedure. To invoke the notice procedure, a claimant must file an “Affidavit of Notice of Claim” that includes (1) the name(s), address(es), and marital status of the claimant(s); (2) a brief statement of circumstances of claimant’s exposure(s) to the [product] [incident] giving rise to the common claims; (3) a statement of the nature of the injury, disease, or condition alleged to have been caused by the [product] [incident]; and (4) the names of the entities to be given notice and whom the claimant proposes to serve.

Upon certification of the claimant(s) that notices have been sent to all listed defendants in the manner set forth in the stipulation of agreement signed by plaintiffs’ and defendants’ representatives, the claims shall be recorded on the inactive docket.

The filing of the Notice of Claim or the voluntary dismissal pursuant to the stipulation shall toll all applicable statutes of limitation or repose regarding any claims of the plaintiff or plaintiff’s spouse, children, dependents, heirs, or estates arising relating to the exposure to [product] [incident]. Claims may be removed from the inactive docket at any time by the filing and serving of a complaint. Signing the stipulation referred to above signifies the consent of each signing party to this procedure and to the tolling of the statutes of limitations or repose as described above.

10. *Settlement*

[Insert any special provisions to facilitate settlement, such as appointment of a settlement judge or special master to assist the parties, a timetable for scheduling settlement conferences, or procedures for using arbitration, minitrials, or summary jury trials. Also include any provision for contributions by later-settling parties to compensate designated counsel for services previously rendered.]

11. *Discovery*

[In addition to the orders presented below, see separate discovery orders in section 40.25 through 40.29.]

- (a) *Plaintiff Fact Sheets.*<sup>2</sup> Each plaintiff whose case has been transferred to this court shall have \_\_\_\_ days from the entry of this order to complete and serve on defendants a plaintiff fact sheet and an authorization for release of medical records. Counsel shall meet and confer to agree on an electronic format for completion of the Fact Sheet. Transferred plaintiffs shall have \_\_\_\_ days from

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the date of this order to produce all documents requested in the fact sheet. When defendants notify the MDL panel of additional cases for transfer to this court, defendants shall serve plaintiffs in those cases with a copy of this order. The information contained in the plaintiff fact sheet must be verified under oath. Plaintiffs' responses will be treated as answers to interrogatories under Fed. R. Civ. P. 33 and requests for production of documents under Fed. R. Civ. P. 34 and must be supplemented in accordance with Fed. R. Civ. P. 26.

- (b) *Document Requests.* Within \_\_\_\_ days of entry of this order, plaintiffs must serve on defendants a master set of requests for production of documents. Any objections [that have not been dealt with in other cases in this litigation] to those document requests must be served within \_\_\_\_ days after receipt of the requests. Defendants will begin producing documents not subject to objection on a rolling basis upon entry of this order. The parties will meet and confer regarding a schedule for the orderly production of different categories of documents. The parties will seek to coordinate this schedule with document productions in pending state court proceedings.
- (c) *Expedited Discovery.* Expedited discovery of plaintiffs and plaintiffs' health care providers will be allowed when all of the following condition exist:
1. the plaintiff or a member of plaintiff's immediate family is terminally ill;
  2. there is an urgent need to record and preserve the testimony because of the gravity of the illness; and
  3. plaintiff has fully completed the plaintiff fact sheet and provided the execution of medical authorizations required in the fact sheet and defendants have had a reasonable opportunity to conduct informal discovery prior to the taking of a deposition.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge*Notes:*

1. See *supra* section 22.2.
2. For examples of plaintiff fact sheets, see *In re Baycol Products Litigation*, MDL 1431, Pre-trial Order No. 10 (D. Minn. Mar. 18, 2002) and *In re Phenylpropanolamine (PPA) Products Liability Litigation*, MDL No. 1407, Case Management Order No. 6 (W.D. Wash. Mar. 21, 2002).

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## 40.53 CERCLA Case-Management Order

[caption]

Order No. \_\_\_\_\_

It is ORDERED:

1. *Limited Consolidation.* Until further order of the court, the above-captioned actions, Civil Action No. \_\_\_\_\_ and Civil Action No. \_\_\_\_\_ (collectively, the “Actions”), are consolidated before the undersigned for the limited purposes of coordinated case management and discovery.
2. *Lodging of the Administrative Record; Stay of Administrative Record Discovery.* On or before \_\_\_\_ [date] \_\_\_\_, plaintiff, the United States of America, will lodge with the court the administrative record developed by the Environmental Protection Agency (“EPA”) in connection with the initial Remedial Investigations and Feasibility Studies (RI/FS) for the \_\_\_\_\_ Landfill (the “Landfill”); on or before \_\_\_\_ [date] \_\_\_\_, \_\_\_\_\_ plaintiff, the United States of America, will lodge with the court the administrative record developed by the EPA in connection with the record of decision (including the Supplemental Feasibility Study). No discovery shall be permitted at this time as to what documents constitute or will constitute these administrative records until further Order of the court.
3. *Temporary Stay of Counterclaims, Cross-Claims, and Third-Party Claims.* Until \_\_\_\_ [date] \_\_\_\_, the date established herein for the second case-management conference, no counterclaims, cross-claims, or third-party claims in either of the Actions, and no claims related to the Landfill by defendants in one of the Actions against defendants in the other of the Actions, shall be filed. The stay as to counterclaims and third-party claims shall be addressed at the second case-management conference. All counterclaims, cross-claims, or third-party claims filed prior to the entry of this order are stayed until the second case-management conference.
4. *Filing of Claims.* At the second case-management conference, scheduled herein, the court will establish a schedule for filing of the claims referred to in paragraph 3. Nothing in this order shall prejudice the right of any defendant in either of the Actions to assert any such claims, nor shall any such claims be barred by laches or by any statute of limitations by virtue of the delay in filing such claims required by this order.
5. *Realignment of Pleadings.* The United States of America, in Civil No. \_\_\_\_\_, and the State Department of Environmental Protection, in Civil No. \_\_\_\_\_, are hereby granted leave to file amended complaints, not later than \_\_\_\_ [date] \_\_\_\_, without the necessity of a motion. The purposes of these amended complaints are to cure misnomer problems; to add defendants; to dismiss defendants already named, without prejudice; to conform the defendants named in the two amended com-

plaints to the degree that the plaintiffs deem appropriate; and to clarify the causes of action, demands, and relief sought in the amended complaints to the degree that the plaintiffs deem appropriate. Existing defendants who have already answered or otherwise responded to the complaint need not answer or otherwise respond to the amended complaint unless they choose to do so. All other defendants shall answer or otherwise respond within the time provided in the Rules.

6. *Joinder of New Parties.* Except as provided herein or by subsequent order, no party may join an additional party in this case. The joinder of new parties may occur through the amendment of the complaints (see \_\_\_\_ above), or by the coordinated efforts of the defense litigation committee to be formalized by the defendants. The defense litigation committee will serve as a clearinghouse for information pertinent to identifying new parties through coordinated discovery efforts. Discovery with respect to joining new parties is discussed in paragraphs \_\_\_\_\_ below. No later than \_\_\_\_ [date] \_\_\_\_, the defense litigation committee shall have assembled a list of new parties whose joinder will be considered at the second case-management conference on \_\_\_\_ [date] \_\_\_\_.

To the extent feasible, this listing shall be selective, seeking joinder of parties with a relatively higher degree of alleged responsibility and continuing viability, and avoiding joinder of parties with a relatively lower degree of alleged responsibility or which are of doubtful viability. It is anticipated that leave to file a consolidated third-party complaint joining the new parties in an orderly fashion, and leave for individual defendants to file contractual indemnification claims, will be granted at the second case-management conference. [There will be an additional opportunity to join further new parties in the future as the cases unfold.]

7. *Amendments.* The goal of the amended complaints and the consolidated third-party complaint is to have a more unified and orderly set of pleadings and joinders so that these Actions may go forward expeditiously.
8. *Scope of Discovery.* Discovery shall be limited at present to the following issues:
- (a) Identification of new parties.
  - (b) Quantity, quality, and nexus of parties' wastes to the \_\_\_\_\_  
\_\_\_\_\_ Landfill.

[It is anticipated that parties providing full discovery on these issues and believing themselves to have no nexus of hazardous wastes to the Landfill will be permitted to seek summary judgment in the near future.]

No discovery is permitted at this time regarding issues of “release or threatened release” at the Landfill, or of “the incurring of response costs consistent with the NCP at the Landfill.” Enlarging discovery to these issues, and the precise extent, timing, and appropriateness of summary judgment motion practice relating to some or all liability issues, will be considered at the second case-management conference, following lodging of the administrative records under \_\_\_\_\_, above.

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## Forms of Discovery

9. *Document Production.* Production of documents shall be coordinated and go forward promptly and responses shall be served within \_\_\_\_\_ days of service. The deposition of representatives of the EPA, the DEP [State Department of Environmental Protection], or a defendant shall not go forward until that party has responded to the document production request upon it.
10. *Depositions.* Depositions are permitted at this time only with respect to the issues of identification of new parties and quantity, quality, and nexus. Such depositions may be taken, on these issues, of existing parties and nonparties, except that no depositions of representatives of the EPA or the DEP or of a defendant are permitted until that party has timely responded to the document production request upon it. Scheduling of depositions on behalf of defendants will be coordinated between the plaintiffs and the defense litigation committee, endeavoring to conduct not more than one deposition at a time.
11. *Procedure for Scheduling Depositions*  
\*\*\*
12. *Interrogatories to Plaintiffs.* The plaintiffs shall serve certified responses to a common set of interrogatories, derived from the set of interrogatories served by \_\_\_\_\_ on behalf of fourteen defendants, pertaining to quantity, quality, nexus, and identification of additional parties, within \_\_\_\_\_ days after service, to the same extent as if served on behalf of all \_\_\_\_\_ defendants in the United States case and all \_\_\_\_\_ defendants in the state case. All other interrogatories are stricken, without prejudice, and need not be answered.
13. *Interrogatories to Defendants.* The plaintiffs may propound a set of common interrogatories on the above issues upon each of the defendants, each of whom shall serve certified responses to same within \_\_\_\_\_ days after service.
14. *Requests for Admission.* Requests for admission shall not be served until further order of the court, to be discussed at the second case-management conference.
15. *Liaison Counsel for Defendants.* The court recognizes the defendants' selection of \_\_\_\_\_, \_\_\_\_\_, as liaison counsel for defendants with respect to communications from the court to the defendants.
16. *Service List.* Liaison counsel for the defendants shall prepare and promptly file with the clerk the service list containing the names, addresses, and telephone and facsimile numbers of attorneys appearing in this case and of unrepresented parties.
17. *Cooperation Among Defendants; Defense Litigation Committee.* Cooperation efforts among defendants in the Actions for the purpose of coordinating discovery, trial, counsel, or otherwise minimizing expenses in the Actions are being conducted at the direction of the court for its convenience in the resolution of the Actions and they shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct in this or any other proceeding. The defendants are hereby directed to take reasonable steps to eliminate duplication of effort and redundant

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discovery. The defendants have also informed the court that they have selected and will continue to organize a defense litigation committee, the duties of which shall be better defined before the interim status conference on \_\_\_\_\_ [date] \_\_\_\_\_ at \_\_\_\_\_.

18. *Privileges Preserved.* All information and/or documents exchanged among the defendants in the Actions shall be communicated for the limited purpose of assisting in a common defense in this litigation only, and such exchange shall not constitute a waiver of any attorney–client work product, trade secret, or other privilege. All discussions will be treated as not admissible into evidence in accordance with the terms of Fed. R. Evid. 408.
19. *Cooperation Between Plaintiffs and Exchange of Information.* Exchange of information and/or documents between the plaintiffs relating to the prosecution of these actions is communication for the limited purpose of assisting in a common cause and shall not constitute a waiver of whatever attorney–client, work product, enforcement-sensitive, or any other privilege, if any, may apply.
20. *Preservation of Documents.* All parties and their counsel are hereby directed to preserve any information in their possession, custody, or control that constitutes or contains material or information that may be relevant in these Actions. All parties and their counsel are directed to take all reasonable steps to communicate the requirements of this provision to the individuals employed by that party who must know of this provision in order for it to be effective. Plaintiffs shall instruct their RI/FS contractors and subcontractors (and any other of plaintiffs’ contractors and subcontractors) to preserve all such information.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

Sample Orders

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## 40.54 Civil RICO Case-Statement Order<sup>1</sup>

[caption]

Order No. \_\_\_\_\_

It is ORDERED:

The proponent of the civil RICO claim shall file and serve [within \_\_\_\_\_ days of \_\_\_\_\_] a case statement that shall include the facts relied on to initiate the RICO claim. In particular, the statement shall use the numbers and letters set forth below, unless filed as part of an amended and restated pleading (in which latter case, the allegations of the amended and restated pleading shall reasonably follow the organization set out below), and shall state in detail and with specificity the following information:

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d). If you allege violations of more than one section 1962 subsection, treat each as a separate RICO claim.
2. List each defendant, and state the alleged misconduct and basis of alleged liability of each defendant.
3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
4. List the alleged victims, and state how each victim allegedly was injured.
5. Describe in detail the pattern of racketeering activity or collection of an unlawful debt alleged for each RICO claim. A description of the pattern of racketeering activity shall:
  - (a) list the alleged predicate acts and the specific statutes allegedly violated by each predicate act;
  - (b) state the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding each predicate act;
  - (c) if the RICO claim is based on the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, or fraud in connection with a case under Title 11 of the U.S. Code, the “circumstances constituting fraud or mistake shall be stated with particularity,” Fed. R. Civ. P. 9(b) (identify the time, place, and contents of the alleged misrepresentation or omissions, and the identity of persons to whom and by whom the alleged misrepresentations or omissions were made);
  - (d) describe in detail the perceived relationship that the predicate acts bear to each other or to some external organizing principle that renders them “ordered” or “arranged” or “part of a common plan”; and

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- (e) explain how the predicate acts amount to or pose a threat of continued criminal activity.
6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall
    - (a) state the names of the individuals, partnerships, corporations, associations, or other entities allegedly constituting the enterprise;
    - (b) describe the structure, purpose, roles, function, and course of conduct of the enterprise;
    - (c) state whether any defendants are employees, officers, or directors of the alleged enterprise;
    - (d) state whether any defendants are associated with the alleged enterprise, and, if so, how;
    - (e) explain how each defendant participated in the direction of the affairs of the enterprise;
    - (f) state whether you allege [(i) that the defendants are individuals or entities separate from the alleged enterprise, or (ii) that the defendants are the enterprise itself, or (iii) that the defendants are members of the enterprise]; and
    - (g) explain, if you allege any defendants to be the enterprise itself or members of the enterprise, whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.
  7. State whether you allege, and describe in detail, how the pattern of racketeering activity and the enterprise are separate or have merged into one entity.
  8. Describe the alleged relationship between the activities and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
  9. Describe what benefits, if any, the alleged enterprise and each defendant received from the alleged pattern of racketeering activity.
  10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.
  11. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:
    - (a) state who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
    - (b) describe the use or investment of such income.
  12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), provide the following information:
    - (a) describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise; and
    - (b) state whether the same entity is both the liable “person” and the “enterprise” under section 1962(b).

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13. If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:
  - (a) state who is employed by or associated with the enterprise; and
  - (b) state whether the same entity is both the liable “person” and the “enterprise” under section 1962(c).
14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.
15. Describe the alleged injury to business or property.
16. Describe the relationship between the alleged injury and violation of the RICO statute.
17. List the damages sustained by reason of the violation of section 1962, indicating the amount for which each defendant allegedly is liable.
18. Provide any additional information you feel would be helpful to the court in processing your RICO claim.

Dated: \_\_\_\_\_  
United States District Judge

*Note:*

1. This order has been designed to establish a uniform and efficient procedure for deciding civil actions containing claims made pursuant to 18 U.S.C. §§ 1961–1968 (“civil RICO”).

## 40.6 Sample Final Pretrial Orders

For examples of comprehensive pretrial orders and final pretrial orders, see Judicial Conference of the United States, *Civil Litigation Management Manual* 188–207 (Sample Form 9); 257–68 (Sample Form 25); 299–357 (Sample Forms 35–41; and 361–75 (Sample Form 44) (2001). The *Civil Litigation Management Manual* and all of the forms are available at <http://www.fjc.gov> (last visited Nov. 10, 2003).

## 40.7 Jury Questionnaire

For examples of jury questionnaires and orders relating to jury management, see Judicial Conference of the United States, *Civil Litigation Management Manual* 358–60 (Sample Forms 42 & 43) and 376–82 (Sample Forms 45 & 46) (2001). The *Civil Litigation Management Manual* and all of the forms are available at <http://www.fjc.gov> (last visited Nov. 10, 2003).

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## **The Federal Judicial Center**

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## **About the Federal Judicial Center**

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The Director's Office is responsible for the Center's overall management and its relations with other organizations. Its Systems Innovation & Development Office provides technical support for Center education and research. Communications Policy & Design edits, produces, and distributes all Center print and electronic publications, operates the Federal Judicial Television Network, and through the Information Services Office maintains a specialized library collection of materials on judicial administration.

The Judicial Education Division develops and administers education programs and services for judges, career court attorneys, and federal defender office personnel. These include orientation seminars, continuing education programs, and special-focus workshops.

The Court Education Division develops and administers education and training programs and services for nonjudicial court personnel, such as those in clerks' offices and probation and pretrial services offices, and management training programs for court teams of judges and managers.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system.

The Federal Judicial History Office develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs.

The Interjudicial Affairs Office provides information about judicial improvement to judges and others from foreign countries and identifies international legal developments of importance to personnel of the federal courts.

# **EX. 249**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,	)	
	)	No. 11-cv-10230 MLW
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	
<hr/>		
ARNOLD HENRIQUEZ, <i>et al.</i> ,	)	
	)	No. 11-cv-12049 MLW
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20,	)	
	)	
Defendants.	)	
<hr/>		
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, <i>et al.</i> ,	)	
	)	No. 12-cv-11698 MLW
Plaintiffs,	)	
	)	
v.	)	
	)	
STATE STREET BANK AND TRUST COMPANY,	)	
	)	
Defendant.	)	
<hr/>		

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER  
HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES TO  
LABATON SUCHAROW LLP – JUNE 1 RESPONSE

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

Labaton Sucharow LLP (“Labaton Sucharow” or the “Firm”) responds as follows to the Special Master Honorable Gerald E. Rosen’s (Ret.) First Set of Interrogatories to Labaton Sucharow LLP (“First Interrogatories”). This response addresses those interrogatories that, following conferral with counsel to the Special Master, are to be provided on June 1, 2017. The remaining interrogatories that have not been stricken will be answered on later, applicable due dates (June 9 and July 10).

Labaton Sucharow’s answers are based solely on the facts and contentions presently known. To the extent Labaton Sucharow answers any Interrogatory, it does so without waiving any rights or objections and expressly reserves all rights and objections. Labaton Sucharow’s answers to the Interrogatories are made without waiving the right to: (i) amend, modify or supplement the answers and objections stated herein, if necessary; (ii) rely on any facts, documents or other evidence which may develop or come to Labaton Sucharow’s attention at a later date; and (iii) rely upon, reference or put into evidence additional expert information, testimony or reports.

#### **GENERAL OBJECTIONS**

The following General Objections are incorporated by reference into each response to the First Interrogatories, whether or not they are referenced in a specific response below.

1. Labaton Sucharow objects to Definition No. 1 as overbroad, irrelevant, and lacking in proportionality. Per agreement of counsel to the Special Master, Labaton Sucharow will construe the term “you”, “your”, “the Firm”, and “the Law Firm” to refer to Labaton Sucharow, LLP, and its employees.

2. Labaton Sucharow objects to the First Interrogatories to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or information

that otherwise is privileged, protected or exempt from discovery. To the extent that Labaton Sucharow has provided any answers below that may include information that is privileged or protected as work product, the Firm provides such answers pursuant to the Limited Protective Order of the Special Master Relating to Attorney/Client Privileged and Work Product Documents and Information Being Provided to the Special Master (ECF No. 191). Pursuant to this protective order, the provision of information to the Special Master does not constitute a waiver of the attorney-client privilege or work product protection.

3. Labaton Sucharow objects to the First Interrogatories to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 33, and by any court decisions interpreting those Rules.

4. Labaton Sucharow objects to the First Interrogatories to the extent they seek information beyond the scope of, or not relevant to, the Courts' February 6, 2017 Memorandum and Order in the above-referenced cases.

5. In responding to the First Interrogatories, Labaton Sucharow has made reasonable efforts to respond based on its understanding and interpretation of each Interrogatory. If the Special Master subsequently asserts a reasonable interpretation of an Interrogatory which differs from that of Labaton Sucharow, Labaton Sucharow reserves the right to supplement its responses.

6. Labaton Sucharow reserves the right to supplement its answers should additional responsive information be discovered following the designated dates for responses.

7. Capitalized terms shall have the meanings set forth in the First Interrogatories, subject to any objections asserted herein. All other capitalized but undefined terms used in this

response have the same meanings as set forth in the Stipulation and Agreement of Settlement (ECF No. 89).

**LABATON SUCHAROW'S OBJECTIONS AND ANSWERS**

**INTERROGATORY 1:**

Describe each of the Law Firm's practice area(s), including areas of specialty, special services offered, the total number of attorneys and staff, and a brief description of any representative matters.

**RESPONSE TO INTERROGATORY 1:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that its primary area of practice is securities class action litigation. Since a year after the passage of the Private Securities Litigation Reform Act of 1995, the Firm has specialized in assisting institutional investors with every phase of securities litigation, from monitoring and investigating fraud-related losses in client portfolios to prosecuting claims through trial and on appeal. The Firm also prosecutes securities opt-out and direct actions as well as sophisticated financial, transactional, derivative, and antitrust litigation. In addition, the Firm represents whistleblowers who report securities fraud.

The Firm currently has 66 attorneys, 44 staff attorneys, and 75 other staff, which includes a number of professional investigators and other professional staff to assist in complex litigation matters. The following is a representative list of cases the Firm has litigated:

***In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 13-cv-07789 (S.D.N.Y.)***

Labaton Sucharow represents a plaintiff, Boston Retirement System, in this action against major foreign exchange (FX) dealer banks for anticompetitive conduct in setting key FX benchmark rates. By engaging in these improprieties, the dealer banks enhanced their profits and reduced the value of their customers' FX transactions. The FX dealers, including Barclays Bank plc, Citigroup, Inc., Deutsche Bank AG, HSBC Holdings plc, JPMorgan Chase & Co., Royal Bank of Scotland Group plc, and UBS AG, are alleged to have coordinated their trading strategies through the use of online, electronic chat-rooms where they discussed client orders and aligned their trading strategies in order to effectuate the manipulation of the FX benchmarks. To date,

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

this action has recovered more than \$2 billion as a result of partial settlements, all of which have included cooperation agreements.

***In re Air Cargo Shipping Services Antitrust Litigation, No. 06-md-01775 (E.D.N.Y.)***

Labaton Sucharow served as co-lead counsel in this antitrust litigation for a nationwide class of direct purchasers of air freight shipping services. The action alleged violations of the Sherman Antitrust Act through a global price-fixing conspiracy for shipping goods by air among major U.S. and international airlines that persisted for more than five years. The Firm prosecuted more than 40 defendants across six continents, prosecuting this action for a decade, and recovered more than \$1.2 billion for class members.

***In re American International Group, Inc. Securities Litigation, No. 04-cv-8141 (S.D.N.Y.)***

Labaton Sucharow served as co-lead counsel and prosecuted this action with assistance from the Attorney General of the State of Ohio on behalf of lead plaintiff the Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio, and the Ohio Police and Fire Pension Fund. The case alleged numerous securities violations against AIG and 21 other defendants, including PricewaterhouseCoopers, the Company's outside auditor, and General Reinsurance Corp. ("Gen Re"), a Berkshire Hathaway subsidiary. The case focused on AIG's involvement in a market division scheme that included payment of allegedly improper contingent commissions, illegal insurance bid-rigging, and accounting fraud, and alleged numerous securities violations against the defendants. The Firm recovered more than \$1 billion for investors through this litigation, which included a \$725 million settlement resolving claims against AIG and certain individual AIG directors and officers, a \$97.5 million settlement with AIG's outside auditor, PricewaterhouseCoopers, a \$115 million settlement with former AIG officers and related defendants, and a \$72 million settlement with Gen Re.

***In re Countrywide Financial Corp. Securities Litigation, No. 07-cv-5295 (C.D. Cal.)***

Labaton Sucharow served as sole lead counsel representing lead plaintiffs the New York State Common Retirement Fund and the five New York City public pension funds and the class in this action. Lead plaintiffs alleged that the defendants made false and misleading statements concerning Countrywide's business as an issuer of residential mortgages, the creditworthiness of borrowers, underwriting and loan origination practices, and loan loss and other accounting provisions, and misrepresented high-risk low documentation loans as being "prime." During the period that the price of Countrywide stock was artificially inflated by the defendants' false representations, insiders received millions of dollars from Countrywide stock sales. The Firm recovered \$624 million for the class.

***In re Schering-Plough Corp./ENHANCE Securities Litigation, No. 08-cv-397 (D.N.J.)***

Labaton Sucharow served as co-lead counsel representing the Commonwealth of Massachusetts Pension Reserves Investment Management Board and the class. The action alleged that the defendants published a series of materially false and misleading statements concerning the commercial viability of two prescription drug products, ZETIA and VYTORIN, during the period July 24, 2006 to March 28, 2008. The case survived motions to dismiss and motions for summary judgment. The Firm secured a \$473 million recovery for investors.

***In re Bear Stearns Cos., Inc. Securities, Derivative & ERISA Litigation, No. 08-cv-2793 (S.D.N.Y.)***

Labaton Sucharow served as co-lead counsel, representing lead plaintiff, the State of Michigan Retirement System, and the class. The action alleged that Bear Stearns and certain officers and directors made misstatements and omissions in connection with Bear Stearns' financial condition, including losses in the value of its mortgage-backed assets and Bear Stearns' risk profile and liquidity. The action further claimed that Bear Stearns' outside auditor, Deloitte & Touche LLP, made misstatements and omissions in connection with its audits of Bear Stearns' financial statements for fiscal years 2006 and 2007. After surviving motions to dismiss, Labaton Sucharow secured a recovery of \$294.9 million from the company and related defendants and Deloitte.

***In re Massey Energy Co. Securities Litigation, No. 10-cv-0689 (S.D.W. Va.)***

Labaton Sucharow served as co-lead counsel representing lead plaintiff the Commonwealth of Massachusetts Pension Reserves Investment Management Board and the class in this action against the fourth largest producer of coal in the United States at the time. The case arose from one of the most egregious mining disasters in U.S. history, the April 2010 explosion at West Virginia's Upper Big Branch Mine, which killed 29 miners. The action alleged that Massey had misrepresented to investors its commitment to safety and compliance with safety regulations, and falsely claimed that it had embarked on safety improvement initiatives in the months leading up to the explosion. Following four years of litigation, Labaton Sucharow achieved a \$265 million recovery for investors.

***In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (S.D.N.Y.)***

Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Boston Retirement System and the class in this securities class action against Fannie Mae and certain of its current and former senior officers. The action alleged that the defendants made false and misleading statements concerning the company's internal controls and risk management with respect to Alt-A and subprime mortgages, as well as misstatements with respect to its core capital, deferred tax assets, other-than-temporary losses, and loss reserves. Although the Second Circuit Court of Appeals affirmed dismissal of a very similar securities class action against Fannie Mae's sibling company, Freddie Mac, on loss causation grounds, the Firm was able to demonstrate that that the materialization of the undisclosed risks concealed by the alleged fraud—rather than the 2008 housing and credit crisis—caused shareholders' alleged damages. Labaton Sucharow secured a \$170 million recovery following seven years of litigation.

**INTERROGATORY 4:**

Explain how and when the Law Firm became involved in the SST Litigation, including any conversations between and among the Firm and ARTRS, the Plaintiffs' Law Firms, and/or the ERISA firms.

**RESPONSE TO INTERROGATORY 4:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The SST Litigation has its origin in a *qui tam* complaint filed under seal on April 14, 2008 by Associates Against FX Insider Trading, a Relator represented by Thornton and Lieff Cabraser, on behalf of California public pension funds. That lawsuit was unsealed on October 20, 2009, when the Attorney General of California filed a Complaint-in-Intervention charging State Street with misappropriating more than \$56 million from California's two largest public pension funds, the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS). The Complaint-in-Intervention was the first public indication of State Street's allegedly unfair and deceptive acts and practices concerning Indirect FX.

Because ARTRS has been a custodial client of State Street since 1998, and commencing litigation against one's custodian is not a routine matter, ARTRS undertook a great deal of due diligence before commencing any litigation.

On September 9, 2010, ARTRS met with Ennis Knupp & Associates ("Ennis Knupp"), a consultant engaged by ARTRS to oversee its investment managers and the performance of its investment portfolios, to discuss FX issues and potential claims against State Street.

ARTRS also sought to meet with State Street before filing an action. On December 20, 2010, the Firm, Thornton, and George Hopkins, the Executive Director of ARTRS, met in Boston with State Street's outside counsel and in-house legal and business personnel. The meeting was ultimately unproductive, and ARTRS, after considering several potential firms, authorized the Firm to commence this action. ARTRS selected Labaton Sucharow to pursue the

case specifically because it believed that it had the resources and experience to produce a good result for the Class.

ARTRS retained the Firm to investigate potential class and individual claims against State Street shortly thereafter. With ARTRS's approval, the Firm chose to associate with Thornton and Lieff Cabraser, two firms with whom it has had long relationships, and began an investigation. The decision to associate these additional firms was based on, among other considerations, their unique knowledge arising from their representation of the relator in the California public pension fund case described above. Thornton and Lieff Cabraser also represented the relator in an unrelated *qui tam* action filed under seal in or about October 2009 against The Bank of New York Mellon ("BNYM"), a major U.S. custody bank and State Street's primary competitor, concerning similar Indirect FX issues. The first government intervention and unsealing in connection with BNYM occurred in January 2011.

The Class Action Complaint (ECF No. 1), commencing the SST Litigation, was filed by the Firm, Thornton, and Lieff Cabraser on behalf of ARTRS and a proposed Class on February 10, 2011. The operative Amended Class Action Complaint (ECF No. 10) was filed on April 15, 2011. On January 12, 2012, the Court issued an order appointing the Firm as Interim Lead Counsel and designating Thornton and Lieff Cabraser as liaison and additional counsel. ECF No. 28.

The *Henriquez* and *Andover Companies* actions (together, the "ERISA Actions"), which asserted claims under ERISA on behalf of a class of State Street custody clients that were ERISA plans, were filed in the U.S. District Court for the District of Massachusetts on November 18, 2011 and September 12, 2012, respectively, and ultimately assigned to Judge Wolf. On November 2, 2012, ARTRS and State Street filed a Joint Status Report advising that they had

attended a mediation with a private mediator on October 22-23, 2012, and were unable to settle the case. ARTRS and State Street further advised that they agreed, subject to the Court's approval, on a framework for conducting discovery and managing the case, and requested a status conference to discuss their proposed plan. ECF No. 50. The Firm arranged for ERISA Counsel to attend this October 2012 mediation session and to be included in the mediation process generally. State Street's transmittal letter filed with the Joint Status Report accordingly requested that a status conference include the ERISA Plaintiffs as well as ARTRS (ECF No. 50). The Court granted this request, and following a status conference held jointly in the *ARTRS* and ERISA Actions on November 13, 2012, the Court issued several orders consolidating the three Actions for pretrial purposes and approving the Parties' framework for discovery and mediation going forward. ECF Nos. 61-63.

**INTERROGATORY 5:**

Describe the role played by the Law Firm in filing the substantive claims alleged in the SST Litigation, including the filing of the Complaint (Docket #1) and/or the Amended Complaint (Docket #10), a description of any legal or factual research performed, consultations with State Street, legal drafting and/or review of pleadings.

**RESPONSE TO INTERROGATORY 5:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The Firm had a leading role in investigating ARTRS's potential individual and class claims and researching and drafting the original and amended Complaints (ECF Nos. 1 and 10), as explained in detail in the Fee Petition, and other filings in connection with the Settlement.

These activities, which broadly took place between October 2009 and April 2011, comprised numerous tasks. The Firm had to educate itself about the essentials of currency

trading, and the nature of negotiated (or direct) and non-negotiated (or standing-instruction or indirect) FX trades, and how they work in the context of custody banking.

FX Transparency LLC (“FX Transparency”), a Massachusetts-based currency trading expert, was engaged to consult regarding the FX markets and to assist in extracting and analyzing ARTRS’s global trading data. FX Transparency conducted several preliminary and final analyses as counsel’s investigation proceeded. Ultimately, FX Transparency identified more than 4,200 indirect FX trades executed by State Street for ARTRS’s account during 2000-2010, with an aggregate trading volume of more than \$1.2 billion. FX Transparency compared these trades to other FX trades logged and tracked in a comprehensive database of more than 2 million buy-side currency trades. By comparing ARTRS’s trades in certain currencies with the same currency pair trades in the database, FX Transparency estimated the trading cost of ARTRS’s indirect FX trades in relation to trades made worldwide.

Further, the Firm, together with Thornton and Lieff Cabraser, reviewed an array of pertinent documents, including ARTRS’s Custodian Contracts and Fee Schedules, monthly custodial reports and invoices received from State Street, other communications from State Street, and State Street’s periodically updated Investment Manager Guides.

Additionally, the Firm, together with Thornton and Lieff Cabraser, researched the applicable law on Chapter 93A of the Massachusetts Consumer Protection Act, fiduciary duty, and negligent misrepresentation, and also reviewed various *qui tam* lawsuits that had been unsealed against BNYM concerning BNYM’s indirect FX practices.

**INTERROGATORY 7:**

Describe the Firm’s theory of damages, including an estimate of total damages to the customer and/or ERISA classes, whether this theory changed throughout the course of the SST Litigation, and if so, what factors affected the Firm’s theory and total calculation of estimated damages.

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

**RESPONSE TO INTERROGATORY 7:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: The essential theory of damages was that Class Members were damaged when they were overcharged on Indirect FX Trades that State Street executed on their behalf, such that Class Members were entitled to pricing at exchange rates that were no less advantageous than those State Street itself received (*i.e.*, interbank rates) or, at a minimum, those they would have received on comparable Direct FX Trades. This essential damages theory did not change during the course of the SST Litigation.

Plaintiffs' Counsel used the following basic methodology to estimate aggregate classwide damages. There were two types of Indirect FX Trades during the Class Period: Securities Settlement and Handling ("SSH") and Automated Income Repatriation ("AIR"). SSH trades converted U.S. Dollars (USD) to foreign currency to facilitate purchases of foreign-denominated securities, or repatriated foreign currency to USD when foreign-denominated securities were sold. AIR trades repatriated periodic dividend and income payments to USD.

State Street applied fixed markups or markdowns, measured by basis points, to its SSH and AIR Indirect FX Trades during the Class Period. The application of the fixed spreads was limited in two circumstances. *First*, State Street would "net" all of a given Investment Manager's SSH trades in a given currency prior to execution, reducing the amount of currency traded, and, therefore, the total markup or markdown applied to that Investment Manager's clients' trades. *Second*, for SSH trades, the fixed spread markups and markdowns were limited by the high or low of the range of the day. (The "range of the day" is the difference between the high and low trades in a given currency pair during the course of the FX trading day by FX market participants worldwide.) Thus, if the difference between the starting point of the indirect

pricing process and the high or low of the day was less than the fixed spread, State Street only applied a markup or markdown to the extent of the high or low rate and not beyond. State Street referred to the spread achieved on Indirect FX Trades after the application of such “netting” and “capping” as the “effective” spread.

In assessing damages, Plaintiffs’ Counsel began with the dollar volume of SSH Indirect FX Trades for each year for 1998 through 2009. The average effective markup across all currency pairs for SSH trades for 2009 was a narrow basis point range. Plaintiffs’ Counsel multiplied the sum total of SSH volume for 1998-2009 by the high end of State Street’s stated range of effective markups, to estimate damages on SSH trades at approximately \$1.177 billion.

Plaintiffs’ Counsel then took the dollar volume of AIR Indirect FX Trades for each year for 1998 through 2009. The volume is a small fraction of the SSH volume. Plaintiffs’ Counsel multiplied the annual AIR volume for 1998-2009 by the known markups for each year to estimate damages on AIR trades at approximately \$314.49 million.

Plaintiffs’ Counsel thus estimated the maximum total damages, assuming all of Plaintiffs’ contentions with respect to not allowing State Street any effective markup on SSH trades and no markup on AIR Indirect FX Trades were to be accepted by a jury, at approximately \$1.49 billion. Throughout the litigation, State Street contended that the total damages was zero and that they were entitled to a reasonable markup on FX Trades.

**INTERROGATORY 8:**

Identify and describe all risk factors you considered prior to getting involved in the SST Litigation, including any “bad facts,” meritorious defenses and/or unsettled legal issues, or other circumstances that affected the potential outcome and total damages recoverable in the case.

**RESPONSE TO INTERROGATORY 8:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm identifies and describes the following principal “risk factors” considered by the Firm when deciding to commence the SST Litigation on behalf of ARTRS and a proposed Class and, later, in deciding to enter into the Settlement on behalf of Plaintiffs and the Class:

The Firm undertook the SST Litigation with no assurance of compensation or recovery of costs, and faced substantial risk from the outset. This case was atypical with respect to the nature of the defendant, the subject matter, and the application of the statutory claims, and was in many respects a hybrid between a consumer, securities, and ERISA action.

The case was also complex. State Street’s alleged unfair and deceptive acts and practices, breaches of fiduciary duty, negligent misrepresentations, and violations of ERISA occurred over a 12-year Class Period in multiple locations, and concerned an opaque market and a little-understood area of the financial services industry.

ARTRS’s initial Complaint was the first complaint publicly filed against a custody bank concerning Indirect FX. Besides State Street, there are only four major U.S. custody banks: BNYM, JPMorgan Chase, Citibank, and Northern Trust. These banks were rarely, if ever, sued in relation to their custody businesses before these Indirect FX pricing issues first began to surface. Accordingly, when the Firm, Thornton, and Lieff Cabraser investigated ARTRS’s claims and commenced the action, they were working essentially from a clean slate in terms of analyzing ARTRS’s FX trades for prima facie evidence of excessive markups, researching the applicability of Chapter 93A to State Street’s Indirect FX Methods, analyzing whether a custody bank owes a fiduciary duty to its clients in connection with Indirect FX services, and analyzing

whether a nationwide class of custody clients can be certified and on what claims.

Further, neither the litigation nor the Settlement received any benefit from preexisting government enforcement actions or investigations. Private plaintiffs led the charge against State Street. The SEC, DOL, and DOJ have not issued any public allegations, factual findings, or consent orders.

The Firm and other Plaintiffs' Counsel brought about this Settlement in the face of an array of litigation risks. For example, the Court could have found at summary judgment or at trial that Chapter 93A does not reach the Indirect FX conduct at issue. State Street would have argued that the facts do not show that Plaintiffs or other Class Members were deceived by the alleged misconduct, and would have pointed to, among other things, the fact that ARTRS and other Class Members continued to engage in Indirect FX Transactions with State Street after its allegedly improper Indirect FX Methods were publicly revealed. Indeed, while this litigation was pending, a district court dismissed a similar action challenging JPMorgan's automated FX practices. *See Louisiana Mun. Police Emps. Ret. Sys. v. JPMorgan Chase & Co.*, No. 12 Civ. 6659 (DLC), 2013 WL 3357173, at \*17 (S.D.N.Y. July 3, 2013) ("It distorts the [New York consumer-protection] law beyond recognition . . . to suggest that an ancillary service that is provided in connection with a contract for custodial banking services offered to institutional investors and that explicitly gives clients the option to negotiate specific rates or to issue 'Standing Instructions' for automated FX transactions is a 'consumer-oriented' service.").

State Street also would have pointed to the fact that ARTRS, and presumably many other Class Members, continued to use State Street as their sole custody bank after its allegedly improper Indirect FX Methods were publicly revealed and throughout the pendency of the SST Litigation.

In ruling on State Street's motion to dismiss, the Court reserved judgment as to whether ARTRS's Chapter 93A claims could proceed under Section 9 or Section 11, pending development of a factual record as to whether ARTRS was a "consumer" or a "business" for purposes of the statute. Section 11, which would apply in a "business-to-business" context, likely requires a greater showing to establish a violation. Had the Court ruled that Section 11 applied, ARTRS and the Class would have faced greater risk on the Chapter 93A claims.

Plaintiffs' common law fiduciary-duty claim, arising from an agent's duty of trust or obligation to provide full disclosure to its beneficiaries, raised challenging questions of law. Plaintiffs would have had to prove both that State Street served as a fiduciary to its custody clients, and that in its fiduciary capacity, State Street had a duty to fully disclose its Indirect FX practices to them. Those prerequisites to liability carried risk for Plaintiffs and other Class Members.

With respect to negligent misrepresentation, State Street no doubt would have asserted that Plaintiffs could not prove that (1) State Street made any actionable misrepresentations, (2) they relied on any alleged misrepresentations, or (3) the alleged misrepresentations were material. State Street likely would have further contended that Plaintiffs could not prove they suffered any injury, because (in State Street's view) they could have used information readily available to them to determine at any time during the Class Period how much they were allegedly being overcharged for Indirect FX Transactions. State Street also would have likely challenged Plaintiffs' negligent misrepresentation and other claims on statute of limitations grounds.

Likewise, litigation of Plaintiffs' ERISA claims presented certain risks. State Street does business using numerous wholly owned subsidiaries and operating entities, allowing it to argue that even if one State Street entity is an ERISA fiduciary, other State Street entities are not. Even

within a single entity, State Street sometimes offers different products and services, allowing it to argue that even if it acts as a fiduciary for certain purposes, it is not a fiduciary for other purposes. These different corporate relationships can lead to confusion and litigation risk. In addition, State Street's liability depends on a number of highly technical theories, including prohibited transactions under ERISA § 406(b), 29 U.S.C. § 1106(b), prohibited party-in-interest transactions under ERISA § 406(a), 29 U.S.C. § 1106(a), exceptions to the prohibited transaction rules under ERISA § 408(18), 29 U.S.C. § 1108(18), Prohibited Transaction Exemptions 94-20 and 98-54, and basic fiduciary obligations of loyalty, care, prudence, diligence, and monitoring under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

Class certification also presented complexities, which would have entailed a more extensive Rule 23 inquiry—and thus greater uncertainty and risk—than cases brought, for example, under the federal securities laws. In fact, in mediation, State Street contended that Plaintiffs would face insuperable hurdles to class certification because, in State Street's view, among other things, (1) Massachusetts law, in particular Chapter 93A, could not be applied to a nationwide class; and (2) State Street would be able to demonstrate that Class Members possessed varying levels of knowledge with respect to the Indirect FX Methods, precluding a showing of predominance under Rule 23(b)(3). Regarding the first point, Plaintiffs would have to show either that (i) Massachusetts law should generally apply to Class Members' claims, or (ii) if the laws of various states were to apply, a trial would be manageable. Presenting sufficient evidence to demonstrate the manageability of a trial under the laws of several states would have required Plaintiffs to detail the relevant states' laws, including any material differences among them, and prepare a trial plan. While Plaintiffs believed a multistate class or subclasses could have been certified, obtaining certification would have been challenging and time-consuming.

Additionally, Plaintiffs would have devoted significant time and resources to refuting State Street's argument that individual issues predominated because (in State Street's view) Class Members had disparate levels of knowledge regarding the Indirect FX Methods. State Street likely would have sought to depose numerous Class Members and their agents, as BNYM did in the BNYM FX customer class cases. The parties also likely would present conflicting expert analysis on customer expectations within the FX market, heightening the costs and risks of litigation. Class certification is often granted in ERISA litigation, but State Street certainly would have waged a vigorous opposition. Success could never be assumed, and certification of the ERISA claims alone would have provided no relief to a majority of Class Members. Even were Plaintiffs to obtain class certification in whole or in part, the class might have been decertified before or during trial, or on appeal. The risk of decertification was real where, as here, the Court might have needed to assess the manageability of a trial involving the laws of at least several states.

Further contributing to the risks Plaintiffs faced, the appropriate measure of damages was contested during the Parties' lengthy mediation process and would have been a focus of the litigation. Plaintiffs thus faced the risk that the damages now forming the basis of Class Members' recovery through this Settlement could never be proven at trial or would be greatly offset. State Street no doubt would have disputed Plaintiffs' Counsel's \$1.49 billion damages estimate (the basis for which is described in the Answer to Interrogatory No. 7 above), contending, among other things, that it (a) materially overstates the effective spread for each year during a long Class Period, (b) assumes that every fraction of penny of markup is an improper overcharge where custody clients willingly pay a spread on direct FX trades, and (c) ignores the actual costs to State Street of providing Indirect FX services.

These risks did not evaporate once Plaintiffs entered into mediation. To the contrary, State Street brought these arguments to bear throughout the extended mediation process, pressing its contentions on, for example, the individualized nature of Class Members' written agreements and oral communications with State Street; the implicit (and sometimes explicit) awareness and acceptance of indirect FX pricing practices by Class Members and their IMs; cost accounting issues that supported the markups applied to Indirect FX Transactions; and the changing "real" interbank FX rates on a given currency pair at a given point in time.

In sum, the complexities relating to liability, class certification, and damages, as well as the sheer volume of evidence, virtually ensured that continuing to litigate would have entailed millions more dollars in lodestar and expenses for the Firm and other Plaintiffs' Counsel, with an uncertain outcome for Plaintiffs and the Class.

**INTERROGATORY 17:**

Describe in detail the nature and the scope of the SST Document Review, including the total number of pages and/or size of the productions, the nature and date of each document production(s) received from State Street, all other document production(s) received in connection with the Litigation, and a general description of the information contained in each production.

**RESPONSE TO INTERROGATORY 17:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that the document review in this case related both to productions by ARTRS and productions by State Street.

On December 26, 2012, ARTRS made an initial production to defendants totaling 15,591 pages of documents. On March 1, 2013, Lead Plaintiff followed with four additional productions totaling 46,571 pages of documents. Two additional productions were made by ARTRS on March 15, 2013, amounting to 7,469 pages of documents. On March 26, 2013, ARTRS produced an additional 2,301 pages of documents to defendants. Finally, on November

17, 2013, ARTRS produced 1,631 pages of documents to defendants. Lead Plaintiff's entire production to defendants totaled 73,563 pages of documents. Documents within this production included investment management agreements and professional services contracts entered into between ARTRS and its investment managers and outside consultants as well as amendments thereto; responses to ARTRS's Requests for Proposals; internal and external emails in which ARTRS discussed its investment philosophies and results; spreadsheets containing data compilations reflecting Lead Plaintiff's investments; monthly portfolio reviews; and trade notifications.

In connection with all five of these productions, the Firm's Staff Attorneys reviewed ARTRS documents for responsiveness and privilege. Todd Kussin conducted a second level review of those materials that the Staff Attorneys had culled (via applying search terms and selected names). Finally, both Mr. Rogers and Mr. Goldsmith personally reviewed a sample of the documents Mr. Kussin had proposed be produced (*i.e.*, reviewed small sets of representative documents, such as RFPs, spreadsheets, or emails).

As to those documents produced by State Street, the Firm's Staff Attorneys (including those for which the cost was invoiced to Thornton) reviewed approximately 210,809 documents, amounting to 3,340,701 pages. These totals reflect documents from both the California and Hill<sup>1</sup>

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<sup>1</sup> The "Hill" action is *Hill v. State Street Corp.*, Master Dkt. No. 09 CV 12146-NG (D. Mass.), a consolidated securities and ERISA class action. The Securities Act and Exchange Act claims, brought on behalf of a class of purchasers of State Street stock, asserted essentially that State Street made false and misleading statements about its FX practices. The ERISA claims, brought on behalf of all participants in the State Street Corp. Salary Savings Plan, asserted essentially that the fiduciaries of the Plan breached their fiduciary duties by offering State Street stock as an investment option, because the stock was artificially inflated and overvalued by reason of the misstatements concerning FX. The case settled for \$60 million.

The "California" action is *California ex rel. Brown v. State Street Corp.*, No. 34-2008-00008457-CU-MC-GDS (Cal. Super. Ct. Sacramento Cnty.). This is the Complaint-in-Intervention filed by

matters, produced to Plaintiff in January 2013 and approximately September 2013, respectively. Among the documents contained in these productions were: RFP Responses; fee schedules; foreign exchange pricing reports; client profiles; internal and external emails discussing matters such as foreign exchange rate calculations, custody services, pricing arrangements, customer complaints, and automated income repatriation; excel documents reflecting pending payments for sale proceeds; trading data; client pitch presentations; State Street investment manager guidelines; and periodic consultant reports.

In October of 2013, Lead Plaintiff received a CD containing 4,053 pages of documents originally produced to the SEC by State Street on May 6, 2011. This production consisted of custodial contracts entered into between ARTRS and State Street, ARTRS pro forma fee analyses, ARTRS and State Street fee schedules and fee agreements, State Street investment management guides, and email exchanges discussing State street's foreign exchange services.

**INTERROGATORY 18:**

Describe in detail how the Law Firm conducted the SST Document Review, including how it selected and/or staffed Staff Attorneys, a description of all training binders/protocols or search terms used for Document Review, and a brief description of the tasks assigned to Staff Attorneys and any other individuals who participated, and how those tasks furthered the Firm's overall litigation strategy.

**RESPONSE TO INTERROGATORY 18:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that in February, 2013, five initial Staff Attorneys were transferred to State Street from another class action case upon completion of

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the California Attorney General on October 20, 2009, unsealing the Thornton/Lieff qui tam complaint against State Street, which is discussed in the Answer to Interrogatory No. 4. *supra*. This action was the first public "news" of State Street's improper FX practices, and has now settled for an undisclosed amount.



[REDACTED]

On April 18, 2013, a conference call was held among attorneys from the Plaintiffs' Law Firms to discuss some of the most relevant documents identified as of that date. Partners, associates, and the Initial Labaton Staff Attorney Team participated in this call.

On January 15, 2015, when the Initial Labaton Staff Attorney Team was expanded by approximately ten Staff Attorneys (this group of Staff Attorneys now included five Staff Attorneys for which the cost was invoiced to Thornton; this group of fifteen, and the group after subsequent additions, is referred to as the "140 Broadway Labaton-Supervised Staff Attorney Team"), Mr. Goldsmith, Mr. Rogers, and Mr. Kussin held a meeting with the new members similar in nature and substance to that held with the initial review team in February, 2013. As

additional Staff Attorneys joined the 140 Broadway Labaton-Supervised Staff Attorney Team in smaller groups, Mr. Kussin took the lead in holding such meetings, providing an overview of the issues in the case. In Spring of 2015, [REDACTED]

[REDACTED]

Staff Attorneys conducted initial analyses of documents provided to Plaintiffs by State Street in both the Hill and California productions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**INTERROGATORY 19:**

Describe how the Law Firm utilized the Catalyst database, including all persons who had access to the database, any electronic and/or technical training provided to those individuals, and a description of the information maintained in the Catalyst database during the course of the SST Document Review.

**RESPONSE TO INTERROGATORY 19:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that in the initial stages of the SST Document Review in February of 2013, Catalyst login credentials were supplied to Partner David Goldsmith, then Associate (now Partner) Michael Rogers, Case Manager Stacy Auer, Staff Attorney Team Leader Todd Kussin, and the five initial Staff Attorneys assigned to the litigation. As the case expanded in size and scope, additional Staff Attorneys joining the review were provided such credentials.

On February 13, 2013, Catalyst Technical Trainer Raquel Guzman hosted a web conference to provide initial training on the technical uses of the Catalyst review platform to Mr. Kussin and the Staff Attorneys. Catalyst Project Manager and Senior Consultant Chris Lisciandro helped organize this training and made himself available for any follow-up questions from the Labaton Sucharow review team as it began its review of documents. On March 13, 2013, after an initial set of documents had been batched out to each of the five Staff Attorneys by Mr. Lisciandro, another training session was held to review the technical aspects of the platform.

The following day, Mr. Lisciandro provided answers via email to a number of questions posed by the reviewers during this second training session but not initially answered, generally pertaining to the system of electronic folders to be used by each reviewer as well as the recognition of documents produced as native files. The following day, the reviewers compiled via email another list of specific questions for Mr. Lisciandro regarding the organization of the platform and its documents, pertaining to topics such as beginning and ending control numbers, related documents, and the organization of document families. These questions were promptly answered by Mr. Lisciandro the same day.

As the review progressed, Mr. Lisciandro also provided the reviewers guidance, when requested, on such issues as printing tiff images, tracking the totals of documents and pages coded during a given period, and saving searches. As additional Staff Attorneys joined the review team, existing members, including Mr. Kussin, given their familiarity with Catalyst, were able to quickly advise them on the platform's use.

**INTERROGATORY 20:**

Describe in detail all documents destroyed and/or deleted from the Catalyst database, including the date, and explain why each document was deleted/destroyed.

**RESPONSE TO INTERROGATORY 20:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that approximately at the end of July, 2015, all materials that had been hosted on Catalyst were exported to an external drive for archiving (*i.e.*, rendered not-readily-accessible, but available for retrieval, if needed). Included in the material exported was metadata and all Staff Attorney coding (from all three Plaintiffs' Law Firms) with a load file, comprising about 500 gigabytes of data. These documents were archived so as to save monthly expenses incurred by full-time hosting of documents.

**INTERROGATORY 21:**

Identify and describe any training the Firm provided to Staff Attorneys relating to the substantive allegations in the SST Litigation/SST Document Review, including addressing all legal issues, key witnesses, theories of liability, damages, and critical topics raised in the case.

**RESPONSE TO INTERROGATORY 21:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm incorporates by reference the Objections and Answers to Interrogatory No. 18.

**INTERROGATORY 25:**

Identify any other individuals who worked on the SST Document review who were not Staff Attorneys and explain their affiliation with the Law Firm, their employment status, and how they were compensated for their time.

**RESPONSE TO INTERROGATORY 25:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: David Goldsmith and Michael Rogers, partners of the Firm, supervised the SST Document Review and reviewed relevant or “hot” documents provided to them from time to time by the Staff Attorneys. They also communicated regularly with Todd Kussin regarding hot documents, substantive factual memoranda drafting, preparing presentations for mediation sessions, and the review and production of ARTRS documents. In the beginning of the litigation, Mr. Rogers was compensated according to his full-time employment status at the Firm; Mr. Goldsmith and Mr. Rogers (once elevated to partner) were compensated pursuant to the Firm’s partnership agreement.

At various times, Case Manager, Stacy Auer, and paralegals Reka Vizcian and Shella Mundo engaged in short-term administrative tasks associated with printing and binding of hot

docs selected by the Staff Attorneys. Ms. Auer, Ms. Vizcian, and Ms. Mundo were also compensated according to their full-time employment status at the Firm.

**INTERROGATORY 27:**

Explain how the Firm supervised and/or performed quality control of the work performed by the Staff Attorneys and others who participated in the SST Document Review, including the name, title, and tasks performed by any supervising individual.

**RESPONSE TO INTERROGATORY 27:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states the following: Throughout the SST Document Review, Staff Attorney Team Leader Todd Kussin periodically logged onto the Catalyst review platform and performed a secondary review/quality check of the documents reviewed by the Staff Attorneys, assessing not only their productivity in terms of quantity of documents reviewed over a certain period of time, but also their accuracy with respect to identifying both document types and facts supportive of the allegations in the operative complaint. In addition, Mr. Kussin performed a review to ensure that the Staff Attorneys followed the guidelines in the SST coding protocol as they pertained to such issues as the requirement that attorneys' comments accompany any document designated "hot," as well as the requirement that all members of a document family be coded consistently regarding designations of relevancy.

Mr. Kussin regularly conferred with Staff Attorneys when he observed any patterns of questionable coding, whether it be for logistical reasons such as providing inconsistent priority designations for documents contained in the same family, or for substantive reasons such as designating a document not relevant when it appeared, in Mr. Kussin's view, to rise to the level of "relevant" or even "hot." Explanations were given to the Staff Attorneys as to why their decisions needed to be addressed, and Mr. Kussin followed up by paying specific attention to the

designations provided by specific Staff Attorneys in the reporting periods following such conferences. It was Mr. Kussin's goal to make sure that the Staff Attorneys provided an accurate picture as to whether or not, and how each document they reviewed lent support to the allegations in the operative complaint, and therefore whether such documents added value to lead plaintiff's information base.

Each week, Mr. Kussin then prepared a productivity report outlining the number of documents and pages reviewed by each Staff Attorney over the previous reporting period, also detailing any issues with the accuracy of their designations. Mr. Kussin additionally identified both the "high" and "low" productivity reviewers for the week in terms of both documents and pages, and particular attention was paid to the quality of the coding of these individuals for the given period. In each report, Mr. Kussin further provided a running total of the number of documents and pages reviewed by the team to date, as well as a total of the remaining number of documents and pages yet to be reviewed. The productivity reports were provided to Danette McKenzie-Moreau, HR Administrator for Staff Attorneys, and copied to Chief Operating Officer Ray Politano, Partner David Goldsmith, and then Associate, now Partner, Michael Rogers.

**INTERROGATORY 28:**

Explain in detail the job responsibilities and tasks performed by the Staff Attorneys assigned to the SST Document Review, including those Staff Attorneys allocated to Thornton, including but not limited to, coding, deposition preparation, creation of witness kits and similar work.

**RESPONSE TO INTERROGATORY 28:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm incorporates its Answers and Objections to Interrogatory No. 18.

**INTERROGATORY 29:**

Describe the process for assigning and reviewing factual, legal, and/or discursive memoranda prepared by Staff Attorneys, including how such memoranda were relevant to, used as part of the SST Litigation, and/or shared among counsel.

**RESPONSE TO INTERROGATORY 29:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that the partners and associates from each of the three Plaintiffs' Law Firms developed a composite list of factual research and analysis topics narrowly-designed to address the issues involved in the SST litigation. Such topics were reflective of the allegations contained in the operative complaint. Throughout the litigation and mediation process, State Street's attorneys raised a number of defenses, each asserted to undercut, if not undermine, Plaintiff's claims. Counsel from all three of the Plaintiffs' Law Firms felt it was important in assessing any proposed settlement number that they knew the true strengths (and weaknesses) of defendants' arguments. The factual research and analysis memoranda were intended to supply a greater level of factual granularity and support (or lack of support) in making these assessments.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



and Lief host staff attorneys sponsored by Thornton began with an oral discussion between Eric Belfi and Garrett Bradley in late 2014 or early 2015. That discussion is referenced in an email that has been produced. *See* LBS001367.

While Belfi does not recall the conversation specifically, he believes it may have been on a business trip he and Bradley were on together. The existence of this hosting arrangement (but not the precise nature of any underlying agreement) was also known to Mike Rogers and David Goldsmith. *See* LBS001367.

The concept was that there would be 15 staff attorneys at Labaton Sucharow’s office in New York and another 15 at Lief Cabreser’s office in New York. At both locations, the cost of ten attorneys would be paid by the host firm and the cost of five attorneys would be paid by Thornton, such that each firm would have a total of ten staff attorneys working on the review. Mike Rogers recalls that the arrangement “made sense” to him because it was a fair way to share costs associated with the review.

The Firm has identified the following other matters in which costs for Staff Attorneys employed by Labaton Sucharow were paid for by another Plaintiffs’ firm).

Matter Name	Type of Matter
[REDACTED]	[REDACTED]

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Matter Name	Type of Matter
[REDACTED]	[REDACTED]

**INTERROGATORY 33:**

Describe the Firm’s understanding, in or about early 2015, as to how Thornton would account for the allocation/sharing of costs for certain of the Firm’s Staff Attorneys in its Fee Petition, including the Firm’s understanding as to which firm was responsible for reporting the total number of hours worked by those Staff Attorneys on its Fee Petition and/or Lodestar calculation.

**RESPONSE TO INTERROGATORY 33:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that there was notable ambiguity among Labaton Sucharow lawyers as to how the hours attributed to Thornton staff attorneys would ultimately be accounted for and reported. David Goldsmith does not know if it was even decided early on whether, in the event of a successful result in the litigation, Thornton would claim the time spent for Staff Attorneys on its own lodestar. Mr. Goldsmith explained that it would surprise him if such an issue were decided three years in advance. Michael Rodgers does not recall a specific discussion, at the time it was agreed that the cost of some Staff Attorneys would be paid by Thornton, regarding how their hours would be reported. He assumed, however, that Thornton would take credit for the hours spent by the Staff Attorneys for which it paid on its own lodestar. Eric Belfi explained that at the time he and Garret Bradley had the initial

conversation about allocating Staff Attorneys to Thornton, he did not consider how the time spent by the Staff Attorneys would be accounted for in any fee petition. If he had been asked at the time, however, he likely would have assumed that Thornton would report the time spent by Staff Attorneys for whom it was paying on a Thornton lodestar.

**INTERROGATORY 37:**

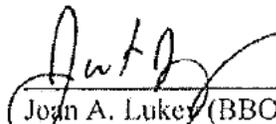
Describe in detail the process through which the Law Firm invoiced or otherwise sought reimbursement from Thornton for costs of those Staff Attorneys allocated to Thornton as part of the SST Litigation/Document Review.

**RESPONSE TO INTERROGATORY 37:**

The Firm incorporates the General Objections set forth above. Subject to and without waiving the foregoing objections, the Firm states that beginning in February of 2015 and continuing through July of 2015, Cindy Ng forwarded on approximately a monthly basis invoices to Garrett Bradley of Thornton & Naumes reflecting fees and expenses associated with the staff attorneys allocated to Thornton & Naumes. These invoices were promptly paid by the Thornton & Naumes Firm to Labaton Sucharow.

The amount invoiced to Thornton represented the cost associated with the wages for each of the Thornton document reviewers plus an amount representing a pro-rata share of other overhead costs associated with their employment.

Dated: June 1, 2017

  
Joan A. Lukey (BBO No. 307340)  
Justin J. Wolosz (BBO No. 643543)  
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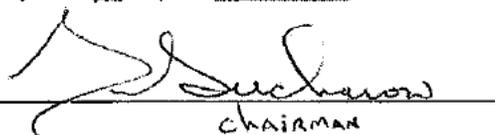
*Attorneys for Labaton Sucharow LLP*

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VERIFICATION

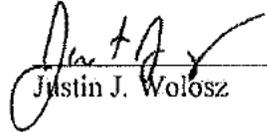
On behalf of Labaton Sucharow LLP, I have read Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 1 Response. The Response was prepared with the assistance of the employees, representatives, and counsel of Labaton Sucharow LLP, and the information provided is not fully within my personal knowledge. I reserve the right to make changes or additions to these responses if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent that these responses are within my personal knowledge, I certify them to be true. To the extent that these responses are not within my personal knowledge, I have no reason to believe that they are not true.

Signed under oath under the penalties of perjury this 31 day of June, 2017.

  
\_\_\_\_\_  
chairman

**CERTIFICATE OF SERVICE**

I, Justin J. Wolosz, hereby certify that on this First day of June I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – June 1 Response to be served via email and overnight mail upon William F. Sinnott, Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, MA 02108.

  
Justin J. Wolosz

# **EX. 250**

WILMERHALE

May 4, 2018

William H. Paine

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+1 617 526 5000 (f)  
william.paine@wilmerhale.com

By E-mail

William Sinnott, Esq.  
Barrett & Singal  
One Beacon Street, Suite 1320  
Boston, MA 02110

Re: *Arkansas Teachers v. State Street*

Dear Mr. Sinnott:

I am writing in response to Judge Rosen's request for information about the fee rates for professional services provided to State Street in 2016, with respect to the above-referenced case.

*Document Review Services*

With respect to the *Arkansas Teachers* case, State Street obtained first-level document review services over a period of years from a vendor [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] In 2016, the vendor charged \$36.40 per hour to State Street for first-level document review. In the *Arkansas Teachers* case, State Street also obtained first-level document review services from attorneys in WilmerHale's Discovery Services department. The fee rate for those services in 2016 was \$75 per hour. [REDACTED]

[REDACTED] In 2016, the rate for the staff attorney assigned to the *Arkansas Teachers* matter was [REDACTED] per hour.

In the *Arkansas Teachers* case, State Street received second-level document review services from WilmerHale. [REDACTED]

[REDACTED] Our 2016 rates for associates assigned to the *Arkansas Teachers* matter is set forth below. Attorneys from the Discovery Services department in 2016 provided [REDACTED] services to State Street at [REDACTED] per hour.

WILMERHALE

William Sinnott  
May 4, 2018  
Page 2

*Legal Services*

WilmerHale provided legal services to State Street in 2016 in the *Arkansas Teachers* matter by partners and employees for which WilmerHale charged the approximate rates set forth below.

Partner	██████████
Senior Counsel	██████████
Special Counsel	██████████
Counsel	████
Senior Associate	██████████
Associate	██████████

Very truly yours,



William H. Paine

cc: Joan A. Lukey, Esq.

# **EX. 251**

## Massachusetts Statutes Annotated - 2011

Massachusetts Rules of Professional Conduct (Mass.R.Prof.C.), Rule 1.4

Massachusetts General Laws Annotated Currentness

Rules of the Supreme Judicial Court (Refs & Annos)

Chapter Three. Ethical Requirements and Rules Concerning the Practice of Law

Rule 3:07. Massachusetts Rules of Professional Conduct and Comments (Refs & Annos)

Client-Lawyer Relationship

### **Rule 1.4. Communication**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

CREDIT(S)

Adopted June 9, 1997, effective January 1, 1998.

COMMENT

2006 Main Volume

[1] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

[2] Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is set forth in the comment to Rule 1.2(a).

[3] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consideration.

*Withholding Information*

[4] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of

a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

*Alternate Dispute Resolution*

[5] There will be circumstances in which a lawyer should advise a client concerning the advantages and disadvantages of available dispute resolution options in order to permit the client to make informed decisions concerning the representation.

Corresponding ABA Model Rule. Identical to Model Rule 1.4.

Corresponding Former Massachusetts Rule. None.

LIBRARY REFERENCES

2006 Main Volume

- Attorney and Client ☞ 32(2), 44(1).
- Westlaw Topic No. 45.
- C.J.S. Attorney and Client §§ 42 to 43, 79 to 80, 88.

NOTES OF DECISIONS

Duty to inform 1

1. Duty to inform

Attorney's refusal to respond to requests from client's successor lawyer for an accounting of the attorney's time and expenses in client's personal injury action in order to determine the appropriate fee to which the attorney would be entitled did not provide a basis for discipline, where another disciplinary case stating that better practice in such instances was to respond to such a request was decided after attorney's representation of client had ended and after successor counsel achieved a settlement. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client ☞ 44(2)

Attorney's unilateral decision to pay client's medical providers with personal injury protection (PIP) funds that he had received on client's behalf violated professional conduct rule governing communications with clients; attorney's action prevented client from understanding the distribution of funds that were intended for his benefit, and precluded him from at least asserting a claim to receive a greater portion of the PIP funds for his undisputed lost wages. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client ☞ 44(2)

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

Attorney's failure to explain to clients the portions of contingent fee agreement addressing compensation after discharge of the attorney, a contractual lien as security for payment of fees and expenses, and mandatory arbitration of any fee disputes did not violate professional conduct rule requiring a lawyer to explain a matter to extent necessary to permit client to make reasonably informed decisions about the representation. In re Discipline of an Attorney (2008) 884 N.E.2d 450, 451 Mass. 131. Attorney And Client ☞ 44(1)

Current with amendments received through 3/15/11.

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# **EX. 252**

**Camille Sarrouf**

1

Volume: 1

Pages: 1-163

Exhibits: 1-3

**JAMS**

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

-----  
In Re: STATE STREET ATTORNEYS FEES  
-----

BEFORE: Special Master Honorable Gerald Rosen,  
United States District Court, Retired

DEPOSITION of CAMILLE F. SARROUF

March 21, 2018, 8:44 a.m.-12:38 p.m.

**JAMS**

One Beacon Street

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

Page 2

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 15 **ALSO PRESENT:** Professor Stephen Gillers  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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 23  
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1 I N D E X  
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 4 CAMILLE F. SARROUF  
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 9 E X H I B I T S  
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 11 Exhibit 1 Camille F. Sarrouf 93  
 12 Curriculum Vitae  
 13 Exhibit 2 Expert Declaration of 95  
 14 Camille F. Sarrouf  
 15 Exhibit 3 Document TLF-SST-012272 114  
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 24

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1 PROCEEDINGS  
2  
3 **MR. SINNOTT:** For the record, this is  
4 the special master's investigation, and the case  
5 number for this is number 11-CV-10230-MLW.  
6 My name is William Sinnott,  
7 S-I-N-N-O-T-T, from the firm of Donoghue, Barrett &  
8 Singal. I'm counsel to the special master, Gerald  
9 T. Rosen, who is present and to my left. He's  
10 retired from the United States District Court in  
11 Detroit.  
12 To my right is Attorney Elizabeth McEvoy  
13 also of Donoghue, Barrett & Singal, and also to my  
14 left is Professor Stephen Gillers of New York  
15 University Law School who testified for, I think,  
16 nine-and-a-half hours yesterday, and we'll resume  
17 his testimony today but not just yet.  
18 Professor -- Attorney Camille Sarrouf is  
19 present, and he will be testifying, and we're going  
20 to start with him for reasons that have been  
21 disclosed to all parties, and all parties are in  
22 agreement that we will interrupt the testimony of  
23 Professor Gillers in order to start with Attorney  
24 Sarrouf, and that's the plan. And, hopefully, we

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1 can finish with him and get him on his way in a  
2 reasonably prompt fashion.  
3 If I could ask the other attorneys in  
4 the room to identify themselves beginning with Josh.  
5 **MR. SHARP:** Joshua Sharp of Nixon  
6 Peabody for Thornton Law Firm.  
7 **MR. KELLY:** Good morning. Brian Kelly  
8 of Nixon Peabody for the Thornton Law Firm as well.  
9 **MS. LUKEY:** Joan Lukey from Choate Hall  
10 for Labaton Sucharow.  
11 **MR. FINNERTY:** And Kevin Finnerty from  
12 Choate Hall for Labaton.  
13 **MR. HEIMMAN:** Richard Heimann for Lief  
14 Cabraser.  
15 **MR. SINNOTT:** Okay, thank you. And if  
16 the witness could be sworn, Madam Court Reporter.  
17 (Witness sworn.)  
18 **DIRECT EXAMINATION**  
19 **BY MR. SINNOTT:**  
20  
21 Q. Good morning, sir.  
22 A. **Good morning.**  
23 Q. Sir, as you heard, my name is Bill Sinnott  
24 and I represent -- I'm counsel to the special

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1 master, and I will be conducting most of the  
2 examination.  
3 The special master, of course, will ask  
4 questions as well, but thank you for being here.  
5 And I understand you've got some things of an  
6 emergency nature going on. So we appreciate your  
7 patience and your willingness to stay here and be  
8 examined.  
9 Professor -- Attorney Sarrouf --  
10 **A. I was a professor once.**  
11 Q. You were?  
12 **A. Adjunct.**  
13 Q. So if I stumble again, I won't feel bad  
14 about it. It'll be somewhat accurate.  
15 Sir, we've received a CV that was  
16 attached to your expert declaration, and it was  
17 signed on October 31, 2017. I believe that's been  
18 premarked as Exhibit 1 for our convenience.  
19 **MR. SINNOTT:** Do you have that yet?  
20 **THE REPORTER:** I don't.  
21 Q. We'll get that to you in a moment.  
22 Ms. McEvoy has it. Sir, you have your CV in front  
23 of you?  
24 **A. I do.**

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1 Q. All right, sir. If I could direct your  
2 attention to that. Sir, looking at your CV, are  
3 there any positions or roles that you've had not  
4 appearing on this CV that qualify you to render  
5 opinions in your -- the opinions in your expert  
6 declaration?  
7 **A. I don't believe there is.**  
8 Q. All right.  
9 **A. I may have forgotten, as I do from time to**  
10 **time, but I think it's complete as I could make it**  
11 **at the time.**  
12 Q. All right, sir. Thank you.  
13 And, sir, just to touch on a few things,  
14 you served as president of the Massachusetts Bar  
15 Association from 1998 to 1999; is that correct?  
16 **A. It is.**  
17 Q. And as president of the MBA, did you have  
18 occasion to review or comment on the Rules of  
19 Professional Conduct in Massachusetts in effect at  
20 the time?  
21 **A. I did.**  
22 Q. All right. And specifically did you --  
23 **PHONE LINE CONFERENCE:** The following  
24 participant has entered the conference? Hylenski.

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1 **MR. SINNOTT:** Good morning, Linda.  
2 **THE SPECIAL MASTER:** Good morning,  
3 Linda.  
4 **MS. HYLENSKI:** Good morning. I was --  
5 **THE SPECIAL MASTER:** Okay, we're  
6 started.  
7 **MR. SINNOTT:** We're examining Linda.  
8 **MS. HYLENSKI:** Okay.  
9 **BY MR. SINNOTT:**  
10 Q. Specifically, sir, did you comment on Rule  
11 1.5(e)?  
12 **A. I believe I did at the time.**  
13 Q. All right.  
14 **A. That is within the scope of the committee**  
15 **from the MBA that was involved.**  
16 Q. All right. And what was the committee --  
17 and I would imagine by extension -- what were you  
18 asked to do with respect to Rule 1.5(e)?  
19 **A. I think we discussed the rule and expressed**  
20 **our opinion with regard to it.**  
21 Q. All right. And do you recall specifically  
22 what your comments or opinion were with respect to  
23 1.5(e)?  
24 **A. I don't.**

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1 Q. All right. And, sir, you were part of a  
2 committee.  
3 Was this an official role in your  
4 capacity as president of the Mass. Bar Association,  
5 or was this a committee that you had formed?  
6 How did you end up being part of this  
7 committee that was commenting on --  
8 **A. The president of the MBA at anytime is**  
9 **really a part of every committee that the MBA has**  
10 **and looks in on matters.**  
11 **This was a particular interest to me**  
12 **because I know that when it was previously a matter**  
13 **of changes, I was also president back in the**  
14 **eighties of the Massachusetts Academy of Trial**  
15 **Attorneys, and at that time I had filed -- when**  
16 **there was a proposal with regards to the particular**  
17 **rule, I did file with the Supreme Judicial Court a**  
18 **motion that if they were to consider the -- at that**  
19 **time it was that referring attorneys would be paid**  
20 **only upon the basis of the effort or hours they put**  
21 **into the case and not on the basis of a percentage,**  
22 **and I had filed a motion to be heard in the Supreme**  
23 **Judicial Court on behalf of the Mass. Academy, and**  
24 **it stated that with -- if any rule was to be in**

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1 **force, that it ought to include the origination**  
2 **credits that a lawyer gets in the big firms for**  
3 **simply bringing a case in, and then it's turned over**  
4 **to someone else.**  
5 Q. All right, sir. And what year was that?  
6 **A. I believe -- I think in the mid eighties.**  
7 Q. All right. And, sir, did you have any role  
8 in reviewing the Rules of Professional Conduct in  
9 2005?  
10 **A. No.**  
11 Q. Do you recall the Saggese --  
12 **A. Well, other than Arnie Rosenfeld did, and we**  
13 **may have talked about it. But I had no --**  
14 Q. All right. And you recall the Saggese case,  
15 correct?  
16 **A. Yes.**  
17 Q. All right. And --  
18 **A. That's Judge Spina's opinion?**  
19 Q. The SJC opinion.  
20 **A. Yes.**  
21 Q. And that case didn't prompt any comment or  
22 activity on your part, did it, with respect to the  
23 professional rules?  
24 **A. No.**

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1 Q. Do you have any knowledge outside of what's  
2 written in Saggese as to what the intent of the SJC  
3 was in rendering their opinion?  
4 **A. I believe that they set it out very**  
5 **carefully, and I think -- and I was in full**  
6 **agreement with it. I know Judge Spina very well. I**  
7 **knew him before he was on the court out in**  
8 **Pittsfield because I used to go out there often, and**  
9 **he was involved in some of the cases I did try.**  
10 **And I thought that the statements that**  
11 **were made with regards to the rule and the**  
12 **protection of the client were appropriate.**  
13 Q. All right. But outside of the opinion  
14 itself, did you have any other resources from which  
15 you discerned the intent of the Supreme Judicial  
16 Court?  
17 **A. No.**  
18 Q. And, Attorney Sarrouf, did you have any role  
19 in December 2010 when the Supreme Judicial Court  
20 adopted changes to Rule 1.5(e)?  
21 **A. I had no role.**  
22 Q. And is it fair to say that you did not have  
23 any firsthand involvement in the revision of the  
24 Mass. Rules of Professional Conduct?

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1 MS. LUKEY: At that time?  
2 MR. SINNOTT: At that time.  
3 A. In 2010?  
4 Q. Yes, sir.  
5 A. No.  
6 MS. LUKEY: Objection. It was actually  
7 2011.  
8 Q. All right. In 2011 did you?  
9 A. No.  
10 Q. And I'm referring with respect to Rule  
11 1.5(e).  
12 A. (Nods head.)  
13 Q. But your answer is you did not?  
14 A. I do not -- I did not at that time.  
15 Q. You did not. All right, sir.  
16 And, counsel, your CV lists several  
17 positions relating to reviewing the conduct of  
18 judges in Massachusetts, correct?  
19 A. Are you talking about Judicial Conduct  
20 Commission?  
21 Q. Yes, sir.  
22 A. Yes. I was on that by appointment of the  
23 chief justices of the trial court for six years.  
24 Q. All right. And that was from 1990 to 1996?

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1 A. I believe so, yes.  
2 Q. And that's the Massachusetts Commission on  
3 Judicial Conduct, correct?  
4 A. Yes, it is.  
5 Q. And what was your role in that capacity?  
6 A. Well, the commission is made up of three  
7 appointments, usually civilians by the governor,  
8 three judges by appointment of the Supreme Judicial  
9 Court and three lawyers by appointment of the chief  
10 justice of the trial court.  
11 Q. All right, sir.  
12 A. And for the most part everyone was given at  
13 different times certain investigatory  
14 responsibilities and then discussions, and then,  
15 where necessary, the judge who might be the subject  
16 of an investigation or a hearing is given a hearing;  
17 and then it depended upon the vote of the nine  
18 members together with advice from the then  
19 administrator, and you were given different roles  
20 very often to go speak to the judge, sometimes to go  
21 with a judge to recommend a retirement or things  
22 like that.  
23 Q. All right, sir.  
24 And in the course of those duties, were

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1 you ever asked to address issues relating to  
2 disclosure of fee agreements?  
3 A. Never.  
4 Q. And were you ever asked to address the scope  
5 of information that should be disclosed to a judge  
6 in a proceeding in which the payment of a fee was  
7 being awarded in a class action case?  
8 A. I have no memory of that issue ever coming  
9 before -- in the six years that I served coming  
10 before the commission.  
11 Q. During your service on that commission were  
12 you ever asked to review Federal Rule of Civil  
13 Procedure 23?  
14 A. I have no memory of that.  
15 Q. Okay. Were you ever asked to review the  
16 obligations of attorneys under Federal Rule of Civil  
17 Procedure 54?  
18 A. Within the scope of the board?  
19 Q. Yes, sir.  
20 A. No.  
21 Q. And is it fair to say that while on that  
22 board -- that your experience while on that board  
23 had no bearing on your opinions in your declaration  
24 in this case?

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1 A. I can remember none.  
2 Q. All right, sir. Do you consider yourself an  
3 expert in legal ethics?  
4 A. I consider myself a very ethical lawyer who  
5 has really been I believe very attentive to the  
6 rules that are applied to lawyers in this  
7 Commonwealth, and when I felt necessary would  
8 express my opinion.  
9 Q. I'd like to think all of the counsel in this  
10 room would consider themselves to be ethical lawyers  
11 and attentive to the rules, but let me ask you again  
12 do you consider yourself to be an expert in legal  
13 ethics?  
14 A. Yes.  
15 Q. And what do you base that on?  
16 A. Fifty-seven years of practicing law in this  
17 Commonwealth, and in the positions that I've held in  
18 various leadership positions and in accordance with  
19 the various cases that I've brought before the  
20 courts -- hundreds of them that I've tried, I think  
21 that I have certainly a knowledge of what has been  
22 and is today the rules by which lawyers should  
23 conduct themselves from.  
24 Q. All right, sir. And it would be fair to say

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1 that every practicing attorney is operating in court  
2 in trying to be ethical and observing ethical  
3 conduct and sometimes, unfortunately, unethical  
4 conduct, correct?  
5 **A. Unfortunately, yes.**  
6 Q. And many of those attorneys have long and  
7 distinguished careers like yourself, correct?  
8 **A. I believe so.**  
9 Q. Would you consider all of those attorneys to  
10 be experts on ethics?  
11 **MS. LUKEY: Objection.**  
12 **A. I don't know what you mean by that.**  
13 Q. Well, by virtue of the years of experience  
14 and their practices in the courts of the  
15 Commonwealth, do they become experts?  
16 **MS. LUKEY: Objection.**  
17 **A. It would have to be looked at on a**  
18 **case-by-case basis.**  
19 Q. All right, sir.  
20 **A. What cases they had tried, what was their**  
21 **experience before the courts. That's what counts I**  
22 **believe in establishing whether or not you have some**  
23 **expertise that would be helpful to any tribunal.**  
24 Q. What was your most recent case where ethics

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1 were the issue before the Court?  
2 **A. I don't think it was a question of ethics,**  
3 **but I believe the Patriots case from time to time,**  
4 **depending on which one -- there were three -- I was**  
5 **involved with all three of them, the two in the**  
6 **state courts and the one in the federal court.**  
7 Q. And what were the Patriots cases?  
8 **A. The three of them were there was a case**  
9 **under the rules of Massachusetts under the statutes**  
10 **for an appraisal of the value of shares of stock**  
11 **that were being claimed in a reorganization of a**  
12 **corporation.**  
13 **There was the Coggins case. That was a**  
14 **Sarrouf -- well, the Sarrouf case versus New England**  
15 **Patriots under the statute was the leading case**  
16 **chosen by the Court to go forward. There were ten**  
17 **other cases that were brought by various lawyers**  
18 **throughout the state.**  
19 **MS. LUKEY: He's not a plaintiff. That**  
20 **was how the Court was designating him among the**  
21 **cases so no confusion. So different lawyers.**  
22 **MR. SINNOTT: All right.**  
23 **BY MR. SINNOTT:**  
24 Q. What was the specific legal ethical point

Page 20

1 that was being litigated in that matter?  
2 **A. The ethical point I think was more in the**  
3 **federal court case because in the -- it was a -- the**  
4 **Sarrouf case, which is my case in which I**  
5 **represented myself, my wife and my four children,**  
6 **each of them had a hundred shares, I had filed**  
7 **simply a re-appraisal. There were ten other cases.**  
8 **Then the superior court had to choose**  
9 **which one of the eleven would go forward, and the**  
10 **others would simply -- the Court chose my case.**  
11 **There was also a case brought known as**  
12 **the Coggins --**  
13 Q. Can I ask you about that case though? What  
14 was the ethical issue at issue in the Sarrouf versus  
15 the New England Patriots?  
16 **A. There was no ethical issue.**  
17 Q. My question was what was the last case  
18 that --  
19 **A. Well --**  
20 Q. -- you worked on where ethics were the issue  
21 at hand, and it sounds like that that case was not  
22 it. Can you recall --  
23 **A. No.**  
24 Q. -- the last case you worked on?

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1 **A. There was a question that arose in the**  
2 **federal case that I later came into before the**  
3 **ethical question or after the ethical questions may**  
4 **have been answered, and I was asked to come in.**  
5 **That was the case before Judge Skinner, and that was**  
6 **the -- let's see. Sarrouf, Coggins. Pavledis case.**  
7 Q. What was the ethical issue being decided in  
8 that case?  
9 **A. There were two I think. One was who had the**  
10 **capability of representing a class then undetermined**  
11 **of non-voting shareholders, and the second point was**  
12 **in the allocation of fees how that should be**  
13 **handled.**  
14 **And, again, those were decisions that**  
15 **eventually were made by Judge Skinner. I think**  
16 **there were three of them. And they are in the**  
17 **federal supplement.**  
18 Q. And you were the advocate for -- on one side  
19 of those ethical issues?  
20 **A. I was the lawyer involved -- the lead lawyer**  
21 **after the other lawyers had dropped out.**  
22 Q. Okay.  
23 **A. And then the case went up to the first**  
24 **circuit. It was -- the Court's rulings were**

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1 approved as to the federal SEC claims, and it was  
 2 then remanded as to the evaluations to be applied to  
 3 the other shareholders -- non-voting shareholders,  
 4 and the direction by the first circuit that the  
 5 Court must await the rulings in the cases in the  
 6 state court.  
 7 **THE SPECIAL MASTER:** Mr. Sarrouf, could  
 8 I -- I'm trying to understand your answer. I think  
 9 Mr. Sinnott's questions, to put a finer point on it,  
 10 goes to the issue of cases that you were involved in  
 11 which required or raised the issues of conduct of  
 12 lawyers under the Massachusetts Rules of  
 13 Professional Conduct.  
 14 I'm not hearing in your answer that I --  
 15 **THE WITNESS:** Then I misunderstood his  
 16 question.  
 17 **THE SPECIAL MASTER:** Yeah, that's why  
 18 I'd like to just sharpen the question a little bit  
 19 and limit it to your involvement in cases which  
 20 raised questions under either the Massachusetts  
 21 Rules of Professional Conduct or perhaps other  
 22 state's Rules of Professional Conduct or, by an  
 23 analogy, the ABA model rules.  
 24 **MS. LUKEY:** May I ask a clarifying

Page 23

1 question? Are you asking him whether he was  
 2 litigating ethical issues or --  
 3 **THE SPECIAL MASTER:** Either litigating,  
 4 consulting. Any involvement that he's had in those  
 5 cases, Joan.  
 6 **MS. LUKEY:** Would that include the cases  
 7 where there were issues that are at issue here like  
 8 1.5(e) divisions, even if he wasn't litigating the  
 9 issue per se, but he was there as counsel --  
 10 **THE SPECIAL MASTER:** Well, if he was  
 11 involved in it. If he was consulting. If he served  
 12 as an expert.  
 13 Any involvement -- what we're looking  
 14 for here is his background either as an expert, as a  
 15 consultant or as an attorney in cases in which the  
 16 conduct of lawyers under the Massachusetts Rules of  
 17 Professional Conduct were at issue.  
 18 **MS. LUKEY:** Okay.  
 19 **BY MR. SINNOTT:**  
 20 Q. With that clarification, sir, can you answer  
 21 that question?  
 22 **A. I have never been asked by any Court in all**  
 23 **the cases that I've tried in this state, in Federal**  
 24 **Court of Vermont, in the Federal Court of Maine ever**

Page 24

1 a question on a matter of ethics.  
 2 **THE SPECIAL MASTER:** Have you ever --  
 3 **A. Nobody's ever asked me what my referral fee**  
 4 **was in any case ever. Never became an issue.**  
 5 Q. Well, we weren't asking about whether your  
 6 conduct was an issue, sir.  
 7 The question was whether in your  
 8 professional experience you've litigated or  
 9 participated in proceedings where that was the issue  
 10 in the case?  
 11 **THE SPECIAL MASTER:** Well, broader  
 12 still, whether the Massachusetts Rules of  
 13 Professional Conduct or any other Rules of  
 14 Professional Conduct were raised in the case and the  
 15 extent of your involvement in those.  
 16 **A. None.**  
 17 Q. Do you consider yourself --  
 18 **A. The Court has never asked ever -- any of the**  
 19 **courts -- as to what was the division of fees.**  
 20 **MS. LUKEY:** The problem is what he's  
 21 offered on, the standard of practice. He's not an  
 22 academic.  
 23 **THE SPECIAL MASTER:** I will get there,  
 24 Joan. Can I ask my questions? I will get there I

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1 promise.  
 2 **MS. LUKEY:** I don't want there to be  
 3 confusion or him to be embarrassed. We didn't  
 4 tender him to rebut Professor Gillers. He's on the  
 5 standard of practice in Massachusetts.  
 6 **THE SPECIAL MASTER:** I understand, Joan.  
 7 **MS. LUKEY:** Thank you.  
 8 **THE SPECIAL MASTER:** We're entitled to  
 9 inquire -- I need to know -- if I'm being asked to  
 10 consider his opinion, I need to know the extent of  
 11 his expertise and involvement with cases, writings,  
 12 opinions, comments on the Massachusetts Rules of  
 13 Professional Conduct. That's all. That's all.  
 14 Mr. Sarrouf, if I could, please, if you  
 15 could tell us the extent of your involvement in  
 16 cases or in commenting upon outside of cases  
 17 attorney conduct under the Massachusetts Rules of  
 18 Professional Conduct -- it's a very broad  
 19 question --  
 20 **THE WITNESS:** It is very broad.  
 21 **THE SPECIAL MASTER:** It's a very broad  
 22 question.  
 23 So we'd like to know the extent of your  
 24 involvement in the Rules of Professional Conduct as

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1 they are applied in the state courts, as they are  
2 applied in the federal courts, any professional  
3 views you may have offered on the Rules of  
4 Professional Conduct, and then we will come to  
5 Joan's question on the issues of division of fees.  
6 **THE WITNESS:** I have been involved with  
7 the rule making when I was president of the Mass.  
8 Academy of Trial Attorneys. I was involved with the  
9 rule making --  
10 **THE SPECIAL MASTER:** Could I ask -- I'm  
11 not from Massachusetts.  
12 **THE WITNESS:** Okay.  
13 **THE SPECIAL MASTER:** So could you tell  
14 me what the Massachusetts Academy of Trial Lawyers  
15 is?  
16 **THE WITNESS:** It was the successor to  
17 what was referred to as the American -- the big  
18 fight was the American College of Trial Lawyers is  
19 the --  
20 **THE SPECIAL MASTER:** Yes.  
21 **THE WITNESS:** -- there was a -- I'm  
22 trying to remember. It changed its name a couple of  
23 times. It used to be centered here in  
24 Massachusetts. It was the one involving, um --

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1 (Pause.)  
2 **THE WITNESS:** I think today it's called  
3 AAJ?  
4 **THE SPECIAL MASTER:** The American  
5 Association of Justices.  
6 **MS. LUKEY:** Replacing ATLA.  
7 **THE SPECIAL MASTER:** Okay, I see. Okay.  
8 So the Massachusetts Academy of Trial  
9 Lawyers is the predecessor to the Massachusetts  
10 chapter of the American Association of Trial --  
11 of --  
12 **MS. LUKEY:** It was then the American  
13 Trial Lawyers Academy.  
14 **THE WITNESS:** Yes.  
15 **THE SPECIAL MASTER:** Just so that I  
16 understand -- I'm familiar with the Michigan version  
17 of that.  
18 **THE WITNESS:** Okay.  
19 **THE SPECIAL MASTER:** I attend their  
20 events.  
21 **THE WITNESS:** I may have attended one of  
22 their events.  
23 **THE SPECIAL MASTER:** Yeah, great  
24 organization. That's not an endorsement.

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1 **THE WITNESS:** All right.  
2 **THE SPECIAL MASTER:** That's basically a  
3 plaintiffs' bar.  
4 **THE WITNESS:** Yes, it is.  
5 **THE SPECIAL MASTER:** I interrupted you,  
6 I'm sorry, but I wasn't sure what the Massachusetts  
7 Academy of Trial Lawyers was.  
8 **THE WITNESS:** In answer to the broad  
9 question you posed, I have appeared before the  
10 Massachusetts Board of Bar Overseers who have been  
11 accused of violations, and I've done that on several  
12 occasions.  
13 I was called in once to testify to the  
14 -- there was a change that I appeared before a  
15 committee that had been formed by my dear friend and  
16 now partner, Arnie Rosenfeld, when we were -- when  
17 he was seeking to develop a finer definition I think  
18 when the matter of IOLTA accounts was being formed  
19 and where there were a lot of, unfortunately,  
20 misinterpretation by many lawyers as to how that was  
21 to be handled, especially with regard to their  
22 banking.  
23 And I did work with him on that. And I  
24 believe that was -- it may have been when I was the

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1 president of the bar association -- the  
2 Massachusetts Bar Association and requested him to  
3 spend, if he could, on a monthly basis in the  
4 newspaper -- in the weekly to apprise lawyers of  
5 their mistakes that get them into trouble, and that  
6 they should be doing certain things.  
7 And I think that went a long way to  
8 resolving those issues.  
9 **THE SPECIAL MASTER:** In your --  
10 **THE WITNESS:** That's a very -- in the  
11 broader sense.  
12 **THE SPECIAL MASTER:** Okay, good. And in  
13 your practice have you been involved in representing  
14 attorneys who have professional conduct issues  
15 before either a Court or a Massachusetts Bar  
16 tribunal or -- I don't know if you have a -- we call  
17 it a grievance process, Michigan Attorney Grievance  
18 Board.  
19 I don't know -- I'm sure you have a  
20 corollary.  
21 **THE WITNESS:** Yes.  
22 **THE SPECIAL MASTER:** Have you been  
23 involved in representing attorneys either in court  
24 or before grievance authorities that involved or

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1 raised issues arising out of the Massachusetts Rules  
2 of Professional Conduct?  
3 **THE WITNESS:** Yes.  
4 **THE SPECIAL MASTER:** Okay. Could you  
5 tell us about those, please?  
6 **THE WITNESS:** Let me start with those  
7 that have been referred to me by a Court.  
8 When there have been issues and  
9 certainly that involve a lawyer who may have been  
10 testifying in a matter, I have been asked by  
11 superior court judges to, if I would, come up and  
12 make sure that I was offering legal advice to that  
13 particular witness in a case, and I would come up  
14 and do it pro bono.  
15 I'd sit to make sure that the lawyer  
16 understands the parameters of what he can say and  
17 cannot say, especially in attorney/client relations.  
18 There were two of those that I remember.  
19 And in most instances when I've been  
20 retained by attorneys I have tried to keep the  
21 matter out of court and to bring it into some form  
22 of mediation before -- the last one I had was before  
23 a judge who was Judge Lynch who was a part of JAMS  
24 at the time, and we were able to dispose of that.

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1 If that answers your question, I don't  
2 know. I've been required -- asked by lawyers often  
3 through the course of my 56 years and have tried to  
4 accommodate both requests of Courts and request of  
5 lawyers to step in and see what could be done to  
6 resolve issues.  
7 **THE SPECIAL MASTER:** So is it fair to  
8 say then that your involvement with cases -- in  
9 either cases or public comment before boards has  
10 been as a practicing lawyer?  
11 **THE WITNESS:** Yes.  
12 **THE SPECIAL MASTER:** Okay. All right.  
13 **BY MR. SINNOTT:**  
14 Q. And, counsel, how many of those cases have  
15 involved specifically Rule 1.5(a)?  
16 **MS. LUKEY:** Do you want the rule? Could  
17 he see the rule --  
18 **MR. SINNOTT:** Of course.  
19 **THE SPECIAL MASTER:** I was going to  
20 actually suggest it, Joan.  
21 **MS. LUKEY:** Yeah. (Indicating).  
22 **THE WITNESS:** Yes.  
23 (Pause.)  
24 **MS. LUKEY:** For the record, I'm not

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1 objecting to the question, but I had never asked him  
2 to look at Rule 1.5(a) because it wasn't in  
3 Professor Gillers' --  
4 **MR. SINNOTT:** I'll be asking him about  
5 1.5(e) if it makes you feel any better, Joan.  
6 **MS. LUKEY:** It does. He's not asking  
7 about E. He's asking you about A. I know you  
8 didn't look at that before, but that's what he's  
9 asking about.  
10 (Pause.)  
11 **A. I have represented clients who had a  
12 argument or disagreement with their lawyers with  
13 regards to the amount of monies that were charged to  
14 the client. I have done that.**  
15 Q. You have done that?  
16 **A. Yes. And I was an expert in a case that had  
17 something to do with this. The case is -- it's  
18 referred to in some of the other cases. I was the  
19 expert in Fishman versus -- I can't think of the  
20 last --**  
21 **PROFESSOR GILLERS:** Brooks.  
22 **THE WITNESS:** Brooks.  
23 **A. Brooks. I was the expert referred to as an  
24 experienced tort lawyer.**

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1 Q. All right.  
2 **A. By the Court.**  
3 **THE SPECIAL MASTER:** Were you the  
4 Court-appointed expert, or were you an expert for a  
5 party?  
6 **THE WITNESS:** No. I had -- it was the  
7 first case I came into as an expert. A very fine  
8 lawyer here, Paul Sugarman, had called me.  
9 I had first turned it down, and Paul  
10 called me and said, Camille, we don't have a  
11 conspiracy of silence in the legal profession, and  
12 you should be -- take this case.  
13 **MS. LUKEY:** The judge asked you if it  
14 was a Court appointment, or was it by the party --  
15 **THE WITNESS:** No. I was hired by the  
16 young lawyer who was representing -- in fact, the  
17 defendant who then brought a cross action.  
18 **THE SPECIAL MASTER:** Was the charge --  
19 did the charge involve claims of an excessive fee  
20 under 1.5(a)?  
21 **THE WITNESS:** No. What it involved was  
22 the failure of the client -- of the lawyer to send  
23 the case to a more qualified lawyer and went ahead  
24 and settled for a figure that was way out of line

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1 with what the settlement value of that case was.  
2 And that's when the Court came down and  
3 said there can be cases such as that, poor  
4 settlement value. The difference I think in the  
5 case I had opined that it was between 450 and 550  
6 and not 129. And the Court sent it to the jury, and  
7 then upheld the verdict of 500 and something  
8 thousand.  
9 **BY MR. SINNOTT:**  
10 Q. Did you opine on an ethical issue in the  
11 course of the Fishman case?  
12 A. Yeah, I opined that the lawyer who was  
13 representing the client had a duty to provide the  
14 best representation he could. And if he didn't feel  
15 appropriately either by experience or otherwise that  
16 he should go forward with it, he should have sent it  
17 to someone and agreed to a referral fee rather than  
18 to feel I'm not going to share my fee with anyone  
19 else and go forward to the detriment of the client;  
20 that the clients come first.  
21 **THE SPECIAL MASTER:** So it doesn't sound  
22 like that case arose under 1.5(a) or E -- or 1.5(e);  
23 is that right?  
24 **THE WITNESS:** Well, I think it falls

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1 within the scope of what a lawyer owes to a client  
2 in representation under any circumstances. And that  
3 is if he can't handle it, he ought to find a lawyer  
4 who can.  
5 **THE SPECIAL MASTER:** Nobody can quarrel  
6 with that.  
7 But I'm -- sir, with all due respect,  
8 you understand my role? I'm the special master  
9 appointed by the Court, and I have to make judgments  
10 about weight to be given to testimony, weight to be  
11 given to expert opinion.  
12 So what I'm trying to understand is the  
13 scope, extent, nature, depth of your involvement  
14 with cases or commenting upon rules that are at  
15 issue here in this case.  
16 **THE WITNESS:** Okay.  
17 **THE SPECIAL MASTER:** And there are a  
18 number of rules that have been raised, and I just  
19 want to focus on those rules or any other Rules --  
20 **THE WITNESS:** Your Honor --  
21 **THE SPECIAL MASTER:** -- of Professional  
22 Conduct that have relevance to this case.  
23 **THE WITNESS:** I have -- 90 percent of my  
24 law practice over the last 56 years -- and certainly

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1 it's dropped off in certainly the last five or six,  
2 maybe a little longer -- have been referral cases.  
3 **THE SPECIAL MASTER:** Fee referral cases?  
4 **THE WITNESS:** Yes. Every one of them.  
5 And in the hundreds that I've tried, I have never  
6 had a Court ask me what is your referral fee.  
7 Never. It never comes up.  
8 **THE SPECIAL MASTER:** I'm sorry. Were  
9 you paying referral fees, or were you receiving  
10 referral fees?  
11 **THE WITNESS:** No, I was the trial  
12 lawyer. I received the -- whatever the judgments  
13 were or in the middle of a trial settlements, and I  
14 made the referral to the lawyer who brought me the  
15 case.  
16 **MS. LUKEY:** You made the referral  
17 payment?  
18 **THE SPECIAL MASTER:** You made the  
19 referral fee --  
20 **THE WITNESS:** The referral payment to  
21 that lawyer.  
22 **THE SPECIAL MASTER:** Okay.  
23 **THE WITNESS:** From lawyers throughout  
24 this state.

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1 **THE SPECIAL MASTER:** And you've never  
2 had an issue raised under the Rules of Professional  
3 Conduct about referral fee payments?  
4 **THE WITNESS:** In Massachusetts referral  
5 fee payments are appropriate.  
6 **THE SPECIAL MASTER:** Well, that's what  
7 we're trying to determine in this case and the  
8 circumstances under which they are appropriate.  
9 That's what we're trying to determine.  
10 So, again, my questions to you are  
11 trying to understand the extent of your expertise in  
12 the application of the rules -- any rules that you  
13 have expertise in, but in this case the application  
14 of the rules involving referral fees which include  
15 Rule 1.5(e), may include Rule 1.5(a), may include  
16 Rule 7.2(b) and perhaps even other rules.  
17 So we're trying to make a judgment here,  
18 sir, about the extent of your experience in the  
19 application of these rules and how these rules are  
20 handled by courts, by bar -- I'll use the term bar  
21 grievance authorities.  
22 Bill, Joan, somebody correct me -- let  
23 me use the appropriate Massachusetts --  
24 **MS. LUKEY:** The Board of Bar Overseers.

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1     **THE SPECIAL MASTER:** The Board of Bar  
2     Overseers.  
3     We're trying to make a judgment about  
4     the application of the rules -- the Massachusetts  
5     Rules of Professional Conduct as regards referral  
6     fees. I understand that you've never had a problem  
7     with it. I accept that.  
8     You would agree, I hope, that the fact  
9     that you've never had a problem doesn't make you an  
10    expert?  
11    **MS. LUKEY:** Objection.  
12    **THE WITNESS:** Well, if I tried the  
13    number of referral fee cases in the hundreds in my  
14    career, I think I have a pretty good understanding  
15    and add to that my work before the BBO, my work as a  
16    president of the Massachusetts Bar Association, my  
17    work as a president for two years and my other  
18    commitments to the practice of law in Massachusetts,  
19    I'm of the opinion that it never is an issue in  
20    Massachusetts; that is, the referral of cases.  
21    When there is a disagreement, the  
22    lawyers take it to a separate case and try it before  
23    a Court, or in many instances we try it before a  
24    arbitration board or in other instances just an

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1    agreement to meet at JAMS or whatever to get -- to  
2    handle the matter.  
3    **THE SPECIAL MASTER:** So when you --  
4    **THE WITNESS:** But in Massachusetts our  
5    concern in all of these rules are the clients.  
6    **THE SPECIAL MASTER:** So let me  
7    understand.  
8    When you say you've had hundreds of  
9    referral cases, you are referring to the cases that  
10   you've had as a lawyer in which you have either paid  
11   or received a referral fee?  
12   **THE WITNESS:** Yes.  
13   **THE SPECIAL MASTER:** Okay. My question  
14   is a little different.  
15   **THE WITNESS:** Okay.  
16   **THE SPECIAL MASTER:** My question is have  
17   you had cases in which the issue of whether a  
18   referral fee was appropriate under Rule 1.5, either  
19   A or E, or any other Massachusetts Rule of  
20   Professional Conduct in which that was the issue in  
21   which the Court had to make a decision or perhaps a  
22   tribunal -- the Massachusetts Board of Bar Overseers  
23   had to make a determination as to whether the  
24   referral fee was appropriate?

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1     **THE WITNESS:** Never in the manner in  
2     which you've expressed it. Whether a fee is  
3     appropriate has been an issue in many cases. But  
4     it's the fee that was charged to the client that  
5     becomes the issue. In Massachusetts.  
6     I don't know of any case otherwise in  
7     Massachusetts.  
8     **THE SPECIAL MASTER:** Is your testimony  
9     then that any referral fee, no matter what the  
10    circumstances, is appropriate under the  
11    Massachusetts Rules of Professional Conduct?  
12    **THE WITNESS:** If it complies that it's  
13    in -- today in writing and that the client knows  
14    that there is to be a sharing of the fees between  
15    counsel; that is, the referring counsel and the  
16    trial counsel, those don't end up that I know of in  
17    courts.  
18    **THE SPECIAL MASTER:** And if the fee is  
19    not excessive, the referral fee is not excessive  
20    under Rule 1.5(a), does that -- is that also part of  
21    the consideration that if it were an issue, a Court  
22    would have to decide whether the referral fee was  
23    excessive, 1.5(a) -- I think you have it in front of  
24    you; you can look --

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1     **THE WITNESS:** Yes. The case would be --  
2     this is a complaint brought by a client?  
3     **THE SPECIAL MASTER:** I'm not trying to  
4     limit you to that. I'm trying -- sir, I'm just  
5     trying to understand your expertise in the  
6     application of these rules. That's all I'm trying  
7     to understand.  
8     And I don't want you to limit yourself  
9     to cases. You can include cases, but I don't want  
10    you to limit yourself to cases.  
11    So when we talk -- the question I want  
12    to know is is it your opinion that a referral fee,  
13    no matter what, is appropriate under the  
14    Massachusetts Rules of Professional Conduct? You  
15    answered it in part because you said it had to  
16    comply with 1.5(e), and that I understand.  
17    But is that where the scrutiny of a  
18    Court ends if the issue is raised?  
19    **THE WITNESS:** But the raising of the  
20    issues of fees is an issue separate and apart from  
21    the case that is being -- the subject matter of the  
22    complaint --  
23    **THE SPECIAL MASTER:** Yes.  
24    **THE WITNESS:** -- and the complaint must

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1 come from the client. In Massachusetts.  
2 **THE SPECIAL MASTER:** Well, let me  
3 suggest another potential. In a class action there  
4 could be an objector.  
5 There wasn't in this case, but there  
6 could be an objector to a referral fee that the fee  
7 is excessive. There could be an objector, and a  
8 Court would have to rule on that objection.  
9 **THE WITNESS:** If it's brought before the  
10 Court at that time and before the actual conclusion  
11 of the case, yes.  
12 **THE SPECIAL MASTER:** Okay. So I'm  
13 trying to understand your expertise in cases raising  
14 the issue of the appropriateness of referral fees.  
15 **THE WITNESS:** In Massachusetts I know of  
16 no case with regards to the appropriateness of a  
17 referral fee. Referral fees are acceptable in  
18 Massachusetts.  
19 If there is a question about the  
20 referral fee, that is not -- that is between the  
21 lawyers that are involved with that referral  
22 arrangement.  
23 **THE SPECIAL MASTER:** So in your view  
24 neither a Court, nor the Massachusetts Board of Bar

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1 Overseers has a role to play if there is a complaint  
2 raised?  
3 **THE WITNESS:** If a complaint is raised  
4 by a client, no, they absolutely have a rule -- a  
5 role to play.  
6 I assume what you're asking is if there  
7 is a complaint between the lawyers --  
8 **THE SPECIAL MASTER:** Well, I --  
9 **THE WITNESS:** -- that has to be taken  
10 out as a separate matter.  
11 **THE SPECIAL MASTER:** I don't want you to  
12 limit yourself to that.  
13 You can -- any issues that raise  
14 questions of the appropriateness of a referral fee  
15 under the Massachusetts Rules of Professional  
16 Conduct, those are the cases I'd like to know the  
17 extent of your experience and whether they're cases  
18 in court or cases before the Board of Bar Overseers.  
19 (Pause.)  
20 **THE WITNESS:** I don't know how to  
21 otherwise express this. In Massachusetts, unlike  
22 many -- most other states, referral fees are  
23 acceptable. It's a part of our rules. It's a  
24 part of --

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1 **THE SPECIAL MASTER:** I'm not  
2 questioning --  
3 **THE WITNESS:** -- what we try cases with.  
4 **THE SPECIAL MASTER:** Sir.  
5 **THE WITNESS:** It's the equalizer that  
6 exists.  
7 **THE SPECIAL MASTER:** Sir, I'm not  
8 questioning that.  
9 I'm only questioning the extent of your  
10 involvement in cases in which these issues were  
11 either cases or bar overseer -- Board of Bar  
12 Overseer proceedings, anything in which the question  
13 of the appropriateness of a referral fee or a  
14 division of fees was an issue in either the case or  
15 the proceeding.  
16 **THE WITNESS:** As you pose that question,  
17 I don't know.  
18 **THE SPECIAL MASTER:** Thank you.  
19 **CONTINUED EXAMINATION BY MR. SINNOTT:**  
20 Q. So, sir, let me ask the question this way:  
21 Have you ever briefed a Court on how it should  
22 interpret Rule 1.5(e)?  
23 **A. No. It's never been raised in any case I've**  
24 **ever been involved with.**

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1 Q. Have you ever briefed a Court on how it  
2 should interpret Rule 7.2(b)?  
3 **MS. LUKEY:** Sorry, flipped too far.  
4 7.2(b) (indicating). This is just for context. And  
5 there's the B (indicating).  
6 (Pause.)  
7 **A. The question again is? I've read it.**  
8 Q. Have you ever briefed a Court on how it  
9 should interpret that rule?  
10 **A. No.**  
11 Q. And have you ever briefed a Court on how it  
12 should interpret Rule 1.5(a)?  
13 **A. No.**  
14 Q. Now, sir, I know that you taught at New  
15 England School of Law for 19 years; is that correct?  
16 **A. Roughly. Nineteen or 20, yeah.**  
17 Q. Did you ever teach legal ethics?  
18 **A. I taught it as a part of the legal**  
19 **practice --**  
20 Q. What was the name --  
21 **A. -- portion.**  
22 Q. What was the name of the course you taught?  
23 **A. Actually, imposed the old NITA, the National**  
24 **Institute of Trial Advocacy, of which I was a part**

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1 **for several, several years, and I really put it in**  
2 **place at the New England School of Law with four**  
3 **others.**  
4 **There was Judge Mazzone of the federal**  
5 **court, Judge Barton, and Abner Sisson who was really**  
6 **my mentor at the law.**  
7 Q. But that was a trial advocacy course,  
8 correct?  
9 **A. Yes, it was.**  
10 Q. I understand it was a pretty good one, too,  
11 but --  
12 **A. I hope so.**  
13 Q. You did not teach a legal ethics course,  
14 correct?  
15 **A. That was a separate course, but I did teach**  
16 **ethics as to, you know, the extent to which you can**  
17 **work with the facts when you're addressing a jury --**  
18 Q. Sure.  
19 **A. -- what is necessary in your presentations**  
20 **to a Court; the ethical rules all apply, and you**  
21 **must be aware of them.**  
22 **THE SPECIAL MASTER:** Would that include  
23 the duty of candor under Rule 3.3 that a lawyer has  
24 to the Court?

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1 **THE WITNESS:** Absolutely.  
2 **BY MR. SINNOTT:**  
3 Q. So, sir, you don't consider yourself to be  
4 an expert on Rule 1.5(e), do you?  
5 **A. An expert on?**  
6 **MS. LUKEY:** Go back one. It's right  
7 here (indicating).  
8 **A. I do consider myself an expert on that rule.**  
9 Q. And why is that, sir?  
10 **A. Because I've done almost -- in all the cases**  
11 **I've tried been involved in a referral matter.**  
12 Q. And your testimony is that that makes you an  
13 expert in that area?  
14 **A. It certainly makes me an expert in how it's**  
15 **been handled here in the Commonwealth of**  
16 **Massachusetts both in the --**  
17 **THE SPECIAL MASTER:** Could I -- I'm  
18 sorry, please continue.  
19 **A. -- state court and adoption of the same**  
20 **rules by the federal court.**  
21 **THE SPECIAL MASTER:** Does that include  
22 class actions?  
23 **THE WITNESS:** The only class action I  
24 was involved with in terms -- to the extent that it

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1 was -- was the Patriots litigation. All others,  
2 frankly, I refer out.  
3 **THE SPECIAL MASTER:** So -- I won't ask  
4 you if you receive a fee when you refer them out.  
5 **THE WITNESS:** I do. Sometimes a very  
6 small one, but I do receive --  
7 **THE SPECIAL MASTER:** Okay.  
8 **THE WITNESS:** And in many cases I simply  
9 send them over to the client; that is, the referral  
10 fee.  
11 **THE SPECIAL MASTER:** So is it fair to  
12 say then that your expertise does not include  
13 referral fees or division of fees in class actions?  
14 **THE WITNESS:** Other than my own  
15 experience in referring matters to whoever the class  
16 counsel are and how I receive or my office receives  
17 the referral that we agreed upon, no.  
18 **BY MR. SINNOTT:**  
19 Q. So, sir, would it be your testimony that any  
20 lawyer that engages in referrals is an expert on  
21 Rule 1.5(e)?  
22 **MS. LUKEY:** Objection.  
23 **A. Any lawyer who does referral work better**  
24 **acquaint themselves with this.**

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1 **THE SPECIAL MASTER:** Would they be  
2 competent to offer expert testimony on the rules  
3 under the governing standards of Rule 702?  
4 **THE WITNESS:** Yes.  
5 **THE SPECIAL MASTER:** Do you know Rule  
6 702? I assume it's the same in Massachusetts. It's  
7 the rule that governs the admission of expert  
8 opinion testimony.  
9 Is it your view that any lawyer who  
10 engages in the receipt of referral fees or who pays  
11 referral fees would qualify as an expert under Rule  
12 702?  
13 **THE WITNESS:** With the extent of  
14 experience that I've had, I believe that I should be  
15 considered by a Court. I think a Court has been --  
16 has accepted my --  
17 (Pause.)  
18 **THE SPECIAL MASTER:** While you're  
19 thinking, I would be very interested in any cases in  
20 which a Court has recognized you as an expert,  
21 offered by a party or appointed by the Court under  
22 Rule 706.  
23 I'd be very interested in which you've  
24 been recognized as an expert on these issues.

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1 **THE WITNESS:** Well, I can only put it  
2 this way 'cause I can't remember them all: I've  
3 never been disqualified by a Court when I appeared  
4 as an expert.  
5 The only time --  
6 **THE SPECIAL MASTER:** Have you appeared  
7 as an expert and been recognized by a Court as an  
8 expert, either for a party or by the Court, as to  
9 Rules 1.5 or Rule 7.2(b)?  
10 **THE WITNESS:** Yes, I was recognized in  
11 the case of -- I think it's listed in this.  
12 (Pause.)  
13 **THE WITNESS:** Zabin versus Picciotto.  
14 **THE SPECIAL MASTER:** Zabin.  
15 **THE WITNESS:** Zabin.  
16 **THE SPECIAL MASTER:** Okay, yes, that's  
17 listed. Yep.  
18 **BY MR. SINNOTT:**  
19 Q. Wasn't that a case, sir, where the issue was  
20 whether your client was entitled to quantum meruit?  
21 **A. It also became an issue as to which of the**  
22 **clients -- and there were several if you read the**  
23 **case; I don't know how many different lawyers there**  
24 **were. And I ended up really being sort of the**

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1 **expert for each of the lawyers during the -- I was**  
2 **on for two days.**  
3 Q. And what was your testimony specifically  
4 with respect to --  
5 **A. How you divide the -- my testimony was you**  
6 **divide the issues that were being addressed at the**  
7 **particular time that that lawyer was involved,**  
8 **either in the initial case or in the subsequent**  
9 **appeals, and I expressed my opinions as to how --**  
10 **well, the way they should be assessed and presented**  
11 **to the jury in this particular case -- in that case.**  
12 **THE SPECIAL MASTER:** And was your view  
13 in that case, the Zabin case, that a lawyer could  
14 receive -- as I understand the case -- and that was  
15 listed. So we looked at the cases.  
16 As I understand the case, a lawyer had  
17 been discharged from his representation, or he  
18 withdrew, he got out of the case, and then he sued  
19 his former client for a recovery of some attorneys'  
20 fees.  
21 And you in that case opined to the jury  
22 on your view of what was an appropriate fee that  
23 this lawyer should have gotten. And what was the  
24 basis of your view as to the amount of the fee?

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1 **THE WITNESS:** It was in accordance with  
2 the fee agreement that had been entered into between  
3 the party and the lawyer.  
4 In that case it was --  
5 **THE SPECIAL MASTER:** And do you recall  
6 what the appeals court ultimately ruled in that case  
7 as to the basis of a fee to which that lawyer should  
8 have received?  
9 **THE WITNESS:** I don't remember exactly  
10 that, no.  
11 **THE SPECIAL MASTER:** Would it help your  
12 recollection -- and I'll just try to distill this --  
13 to say that the appeals court ruled that the basis  
14 of recovery for that attorney was quantum meruit?  
15 Does that help your recollection?  
16 **THE WITNESS:** There were several  
17 lawyers. I don't know which one they were referring  
18 to at that time, but I believe as to Mr. Zabin --  
19 Attorney Zabin it was in accordance with the  
20 agreement that had been -- the contingent fee  
21 agreement signed between Mr. Zabin and the client.  
22 **THE SPECIAL MASTER:** And the basis was  
23 not quantum meruit?  
24 **THE WITNESS:** There was quantum meruit

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1 to be determined at various stages with regards to  
2 other of the lawyers 'cause there were several of  
3 them. He went through lawyers --  
4 **THE SPECIAL MASTER:** Were you offered by  
5 Mr. Zabin?  
6 **THE WITNESS:** Huh --  
7 **THE SPECIAL MASTER:** Were you offered as  
8 the expert for Mr. Zabin?  
9 **THE WITNESS:** Yes. And then suddenly  
10 became the expert for everybody else in the case.  
11 **BY MR. SINNOTT:**  
12 Q. And how did Rule 1.5(e) figure into that  
13 expert testimony of yours? How did you cite that?  
14 **A. I didn't cite it.**  
15 **MS. LUKEY:** I don't think that was the  
16 question that elicited that case answer.  
17 **MR. SINNOTT:** Okay, but I'm asking that  
18 question.  
19 **MS. LUKEY:** Okay.  
20 Q. So 1.5(e) was not cited in your advocacy on  
21 behalf of Mr. Zabin, correct?  
22 **A. No.**  
23 Q. Do you consider yourself an expert on the  
24 Massachusetts Rules of Professional Conduct?

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1 **A. I know them to the extent that I have been**  
2 **in the practice for as long as I have and have been**  
3 **in the courts of the Commonwealth for as many times**  
4 **as I have, and I'm well acquainted with the rules of**  
5 **ethics.**  
6 Q. As is any long-term practitioner, correct?  
7 **A. Yes.**  
8 Q. Are you prepared to go before Judge Wolf in  
9 federal court and testify as an expert on the  
10 Massachusetts Rules of Professional Conduct?  
11 **A. Yes, I will.**  
12 Q. You will?  
13 **A. Yes.**  
14 Q. Let me ask you about class actions, sir. I  
15 know you mentioned the Patriots case.  
16 Have you ever entered into an  
17 attorney/client relationship with a plaintiff in a  
18 class action matter other than yourself?  
19 **MS. LUKEY:** I'm sorry, could you --  
20 Q. Have you ever entered into an  
21 attorney/client relationship with a plaintiff in a  
22 class action matter?  
23 **A. Yes.**  
24 Q. And who was that?

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1 **A. Oh, my God. Several. They come up. I**  
2 **refer them out if the class action is already in**  
3 **place.**  
4 Q. All right.  
5 **A. But people have come to me in many of the**  
6 **class actions that are out there, especially the**  
7 **asbestos cases. Not only some -- some of them came**  
8 **-- close friends and family came with regards to**  
9 **their claims.**  
10 **I would take down the information, and**  
11 **I'd find out who are the class representatives, and**  
12 **I'd send the matter over to them.**  
13 **THE SPECIAL MASTER:** So in those cases  
14 you were the referring attorney?  
15 **THE WITNESS:** Yes.  
16 **THE SPECIAL MASTER:** Yep. I think  
17 Bill's question was a little --  
18 Q. Let me be a little more specific.  
19 **THE SPECIAL MASTER:** -- specific.  
20 **BY MR. SINNOTT:**  
21 Q. Have you ever acted as class counsel in a  
22 class action?  
23 **A. Only in the Patriots cases to the extent**  
24 **that you would take those three cases, the federal**

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1 **case and the two in the state court. I was involved**  
2 **in each of those.**  
3 Q. And you were class counsel in those cases?  
4 **A. Yes. I was the lead case that went forward**  
5 **in the appraisal actions, and then at the request of**  
6 **Judge Young -- William Young, I -- he asked me to**  
7 **intervene in the Coggins case, and then at the**  
8 **request of other lawyers I went into the Pavledis**  
9 **case in the federal court.**  
10 Q. How many other firms were involved in those  
11 cases?  
12 **A. How many firms?**  
13 Q. Yes, sir.  
14 **A. I think there were nine other firms in the**  
15 **appraisal actions. The Coggins, that firm was**  
16 **Nutter McClennen. And in Pavledis, the professor**  
17 **from Suffolk. One other from the firm -- the firm**  
18 **that entered the lawsuit and then the whole class**  
19 **that was expanded to include every person whether**  
20 **they agreed with the proposals of Mr. Sullivan or**  
21 **not, the Court expanded those who would be**  
22 **beneficiaries to every holder of a non-voting share**  
23 **at the time that it was taken private.**  
24 Q. And what was the recovery for the class in

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1 those matters?  
2 **A. Well, the offer was \$15 a share. The**  
3 **finding by Judge Young in the appraisal action was**  
4 **that it was \$80 a share. And then we moved that it**  
5 **be taken as to interest as though the matter was**  
6 **being held as a trustee 'cause that was one of the**  
7 **findings.**  
8 **And, in fact, Sullivan and the voting**  
9 **shareholders were, in effect, trustees of the**  
10 **valuation at the time of liquidation of -- and**  
11 **should have been more faithful to their**  
12 **responsibilities as trustees.**  
13 **And that -- we prevailed upon the Court**  
14 **to utilize not the statutory interest rate of 1**  
15 **percent a month but as trustees utilizing the**  
16 **federal and then -- and, in fact, it would -- I**  
17 **forget how it was -- and a monthly -- so it was --**  
18 **the interest rate was upon -- applied every month.**  
19 **So it took it from \$80 to \$186 and some odd cents**  
20 **per share to be attributed.**  
21 **So then there was the determination in**  
22 **Judge Skinner's finding that even those who had**  
23 **agreed and taken that \$15, they were eligible for**  
24 **the remainder starting with the date upon which they**

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1 had already received their first submission for the  
2 \$15.  
3 Q. Was there a fee award in that case?  
4 A. Yes.  
5 Q. And how many attorneys received a portion of  
6 that fee award?  
7 A. Well, I received a fee for my case. I  
8 didn't charge anybody in my family. I sent a  
9 hundred shares off to Bowdoin College that was mine,  
10 and the rest went to my wife and four children.  
11 In the Coggins case I don't think I  
12 asked for a fee from Nutter McClennen. In the  
13 Pavledis cases the Court awarded the fee after  
14 hearings including a -- in one of the Fed Supp cases  
15 the judge accepted that he should consider for the  
16 lodestar to also include or consider a percentage  
17 fee like ordinarily would be in a -- you know, a  
18 third. I think he came to 25 percent.  
19 THE SPECIAL MASTER: Do you --  
20 A. But it's in those cases.  
21 THE SPECIAL MASTER: Do you have  
22 experience beyond the Patriots case in class  
23 actions --  
24 THE WITNESS: Only to the extent that I

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1 have sent cases to the class action lawyers and, of  
2 course, stayed apprised of what's going on and what  
3 would the client -- my client of course -- can  
4 expect, especially in those instances when I've  
5 represented much older people, many retired, in  
6 which the money was very much a part of their  
7 existence.  
8 THE SPECIAL MASTER: Do you have  
9 experience as lead counsel --  
10 THE WITNESS: No.  
11 THE SPECIAL MASTER: -- in class  
12 actions?  
13 THE WITNESS: Other than the Patriots  
14 matter, no.  
15 THE SPECIAL MASTER: All right. Do you  
16 have experience in the obligations of disclosure to  
17 the Court in class actions of attorney fee  
18 agreements?  
19 THE WITNESS: Here in Massachusetts?  
20 THE SPECIAL MASTER: Anywhere but  
21 certainly Massachusetts.  
22 THE WITNESS: Well, I know in some  
23 instances in talking to the lawyers who are the  
24 class counsel that they follow the Massachusetts

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1 rule. I mean federal court here has adopted our  
2 rules.  
3 THE SPECIAL MASTER: Let me ask again do  
4 you have experience with the Massachusetts rules in  
5 class actions as to the obligations of disclosure  
6 that counsel have to the Court in seeking fees?  
7 THE WITNESS: I know they would be bound  
8 by our rules. The Massachusetts rules.  
9 THE SPECIAL MASTER: Hopefully, they're  
10 bound by all the rules, but my -- my question again  
11 is your experience. Do you have experience  
12 personally in --  
13 THE WITNESS: No --  
14 THE SPECIAL MASTER: -- not what the  
15 lawyers tell you, but do you personally have  
16 experience in your practice as to the obligations  
17 that class lawyers have in disclosing fees to the  
18 Court?  
19 THE WITNESS: I have never experienced  
20 myself, other than the Patriots matter, as a class  
21 action lawyer. But I can tell you that I certainly  
22 monitor the cases on behalf of my clients.  
23 THE SPECIAL MASTER: Bill.  
24 BY MR. SINNOTT:

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1 Q. So, sir, with respect to those cases that  
2 you monitored, is it fair to say that -- can you  
3 tell me if any of those were national class action  
4 cases?  
5 A. I believe certainly asbestos cases would  
6 fall into that category. There was one other having  
7 to do with a particular drug. I don't remember what  
8 it was, but that certainly was an action cases.  
9 Other than that, no.  
10 Q. And who were the firms you referred those  
11 cases to that you monitored?  
12 A. One was the Cetrulo firm I believe. Another  
13 was the -- can I just ask -- can I ask her what --  
14 THE SPECIAL MASTER: She can refresh  
15 your recollection.  
16 THE WITNESS: Yes, thank you.  
17 (Witness and counsel confer.)  
18 BY MR. SINNOTT:  
19 Q. Sir, you can go ahead and answer.  
20 MS. LUKEY: So the name of the person at  
21 Manion Gaynor that you wanted to give them. Gaynor.  
22 A. Gaynor.  
23 MS. LUKEY: Marty Gaynor.  
24 Q. All right, sir.

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1 **A. There's another -- I forgot the name of the**  
2 **firm. I can't think of his name, but I know -- he**  
3 **was in my office for a short time.**  
4 **MS. LUKEY:** What kind of case?  
5 **THE WITNESS:** Another part of the  
6 asbestos matters. A different type of asbestos.  
7 Q. That's all right, sir. We can move on.  
8 **A. All right. I'll get it sooner or later --**  
9 Q. Do you have any experience --  
10 **A. There is one other matter --**  
11 Q. Yes.  
12 **A. -- that she did remind me of when I was**  
13 **accepted as a lawyer as to fees --**  
14 **MS. LUKEY:** The expert.  
15 **A. -- the expert, I was pro bono for the**  
16 **Commonwealth of Massachusetts in the case in which**  
17 **they opposed the further distribution of fees on the**  
18 **second payment arising out of the tobacco cases.**  
19 **And I agreed -- I think it was Attorney**  
20 **General Tom Riley -- that I would myself, Mike Mone,**  
21 **I forget who the third one was, but Mike Mone and I**  
22 **did it pro bono for the Commonwealth and appeared in**  
23 **the case in front of -- I think it was Judge van**  
24 **Gestel who's still sitting.**

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1 Q. All right.  
2 **THE SPECIAL MASTER:** May I follow up?  
3 **MR. SINNOTT:** Yes.  
4 **THE SPECIAL MASTER:** I'm looking at the  
5 Zabin case which you referred us to in which you  
6 served as Mr. Zabin's expert.  
7 **THE WITNESS:** I was.  
8 **THE SPECIAL MASTER:** And apparently were  
9 recognized by the Court as such 'cause he let you  
10 testify, right?  
11 **THE WITNESS:** I don't know why I was.  
12 Usually -- they don't usually put names in, but they  
13 did there.  
14 **THE SPECIAL MASTER:** Well, you are  
15 referred to in the Massachusetts Appeals Court  
16 opinion as Mr. Zabin's expert.  
17 **THE WITNESS:** I was then examined by  
18 every other plaintiff's counsel with regards to  
19 their case --  
20 **THE SPECIAL MASTER:** Well, that's what  
21 happens to experts.  
22 **THE WITNESS:** I was on for two days.  
23 **THE SPECIAL MASTER:** Okay.  
24 Your testimony as characterized in the

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1 appeals opinion, you testified that Mr. Zabin was  
2 entitled to receive 40 percent of the 2.2 million  
3 dollars which was the highest offer he had received  
4 in settlement negotiations plus expenses.  
5 And you further testified, according  
6 again to the court of appeals opinion, that  
7 Mr. Zabin's success was the foundation of the  
8 ultimate settlement and that his efforts following  
9 the completion of the trial at issue contributed to  
10 the ultimate result. Correct?  
11 **THE WITNESS:** Yes.  
12 **THE SPECIAL MASTER:** That was the basis  
13 of your testimony as to the basis of his award; that  
14 the award should recognize the value of his  
15 contribution to the ultimate recovery of his client,  
16 correct?  
17 **THE WITNESS:** Yes.  
18 **THE SPECIAL MASTER:** Or his former  
19 client maybe. Is that correct?  
20 **THE WITNESS:** Yes.  
21 **THE SPECIAL MASTER:** And the jury  
22 apparently agreed with you --  
23 **THE WITNESS:** Yeah.  
24 **THE SPECIAL MASTER:** -- because they

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1 awarded him a million ten thousand dollars. Right?  
2 That's close to 40 percent.  
3 I didn't do the math but something like  
4 that, right?  
5 **THE WITNESS:** Yeah, I didn't check on it  
6 later, you know. I mean --  
7 **THE SPECIAL MASTER:** So is it fair to  
8 say that your testimony in this case, the Zabin  
9 case, supported the award to Mr. Zabin as a result  
10 of the value of his contribution to the result of  
11 the case?  
12 **THE WITNESS:** Yes, that was the initial  
13 amount. Remembering that later it comes up to about  
14 8 or 9 million.  
15 **THE SPECIAL MASTER:** Understand. Let me  
16 ask the question again maybe a little sharper,  
17 clearer, okay?  
18 Is it accurate to say that your  
19 testimony in the Zabin case was that Mr. Zabin was  
20 entitled to this fee of 40 percent as a result of  
21 the value that he contributed to the ultimate award  
22 in the case?  
23 **THE WITNESS:** Yes.  
24 **THE SPECIAL MASTER:** Thank you.

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1 **BY MR. SINNOTT:**  
2 Q. All right. Now, Attorney Sarrouf, do you  
3 have any experience in class actions involving  
4 securities?  
5 **A. Other than the Patriots case?**  
6 Q. Yeah, other than that.  
7 **A. No.**  
8 Q. And do you have, other than the Patriots  
9 case which might arguably fall into this, any  
10 experience in class actions involving financial  
11 fraud?  
12 **A. I don't clearly remember. I think I was an**  
13 **expert. The case never got very -- got settled**  
14 **rather quickly. Involving a bank matter concerning**  
15 **-- no, it wasn't a bank.**  
16 **I think it had to do with -- the firm is**  
17 **no longer -- Tucker Anthony & RL Day. They are no**  
18 **longer in existence. I know I was brought in as an**  
19 **expert in the matter. I think it was Gordon Dugan**  
20 **that had hired me.**  
21 **But I think I gave a deposition, and**  
22 **then soon thereafter everything got settled.**  
23 Q. All right.  
24 **A. That's the only time I think that I -- and I**

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1 **know it had to do with a trust and the investments**  
2 **in that trust.**  
3 Q. And what was the gist of your expert  
4 testimony, if you recall?  
5 **A. The extent to which a trustee and in my**  
6 **opinion that -- I forget what it was in that**  
7 **particular situation -- their responsibilities to**  
8 **the monitoring of investments on behalf of the**  
9 **beneficiaries.**  
10 Q. All right, sir. Have you ever been paid,  
11 received a referral fee in a class action matter in  
12 which you did not perform any substantive work?  
13 **A. I don't know what you really mean by**  
14 **substantive. In each instance in which we have**  
15 **referred the case over we have gathered the**  
16 **medicals. To the extent that there were physician**  
17 **reports that we felt were appropriate and necessary,**  
18 **we always obtained those and then usually put**  
19 **everything together in a package and sent them**  
20 **along.**  
21 **THE SPECIAL MASTER:** So you did the --  
22 is it accurate to say you did the initial  
23 preparation of the case?  
24 **THE WITNESS:** To the extent that we

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1 thought the matters and the material that we did  
2 gather would be supportive of the claim, then we  
3 would send it along to the class counsel.  
4 **THE SPECIAL MASTER:** Did you also do any  
5 valuation of the case --  
6 **THE WITNESS:** No.  
7 **THE SPECIAL MASTER:** -- of some sort?  
8 **THE WITNESS:** No. We couldn't tell -- I  
9 didn't have the experience. That's why I would send  
10 it over is that those lawyers have a better  
11 understanding, especially after they gather whatever  
12 information they need as to the loss and what the  
13 claim was worth.  
14 I think, I suppose, in some of those  
15 instances you have limited funds, and you have to  
16 appropriately percentage what the clients would  
17 receive. I left all of that to the class counsels.  
18 But we did always gather our information, send it  
19 in.  
20 **BY MR. SINNOTT:**  
21 Q. And typically how many plaintiffs were you  
22 representing in these referral cases?  
23 **MS. LUKEY:** You mean the class action?  
24 **THE SPECIAL MASTER:** Yes.

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1 **MS. LUKEY:** Referral of the class  
2 actions?  
3 **MR. SINNOTT:** Yes.  
4 **A. The ones that I -- you know, my son takes**  
5 **over most of this stuff now, not me. I would say**  
6 **maybe 20, 30.**  
7 Q. In a typical --  
8 **A. -- referrals.**  
9 Q. -- case you represent 20, 30 persons?  
10 **A. Yeah. Some of them are gone now, but in the**  
11 **very beginning I think we put 'em altogether over**  
12 **the years, there would be that much. Maybe more.**  
13 Q. All right. So in an individual class action  
14 referral you're already representing 20 or 30  
15 parties, correct?  
16 **A. Yeah.**  
17 Q. All right. And is it fair to say that those  
18 20 or 30 plaintiffs, or however many there were  
19 whose case you were referring, knew that you were  
20 going to receive a payment for this referral?  
21 **A. I'd -- that I would receive back from --**  
22 **yes, I think I told them, and sometimes I just gave**  
23 **them the money that I had as a referral 'cause some**  
24 **of them were -- I know one in particular is a widow.**

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1 **We still get a little from her. And whatever we get**  
2 **we send it along. It's not fair.**  
3 Q. Aside from any award to the class, these  
4 plaintiffs knew that you were going to receive a fee  
5 for your referral, correct?  
6 **A. I don't think I ever sat down with my client**  
7 **and said I'm going to get a fee. I developed with**  
8 **most of these people a personal relationship, and I**  
9 **say we'll do the very best, and we're sending this**  
10 **off to the people now that are -- and you'll get --**  
11 **you'll get a distribution.**  
12 Q. But you --  
13 **A. And I know in one case why are you sending**  
14 **this to me if it's for you. And I said because I**  
15 **think you need it better than I do. That's all.**  
16 Q. Well, in some of those cases did you keep a  
17 fee, or did you hand all of the money over to the  
18 plaintiffs?  
19 **A. No, I think there were some that we did a**  
20 **lot of work in the very beginning, and I think we**  
21 **wanted to -- you know, we paid for hospital records.**  
22 **We asked doctors to send us a report if they could**  
23 **go back and find their records, would they please**  
24 **send those, and whatever costs there were with that.**

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1 **THE SPECIAL MASTER:** Do you know if --  
2 **A. I don't think of any other --**  
3 **THE SPECIAL MASTER:** Sorry.  
4 **A. Some of them I'm sure we did keep.**  
5 **THE SPECIAL MASTER:** Do you know if in  
6 those cases the clients consented to the division of  
7 fees that would be made under Rule 1.5(e) and signed  
8 a writing agreeing to that?  
9 **THE WITNESS:** Is the question did I  
10 require them to sign a contingent fee agreement?  
11 **THE SPECIAL MASTER:** Um, well, I'm  
12 asking you the question under Rule 1.5(e) 'cause  
13 where there is under Rule 1.5(e) -- we talked about  
14 this earlier -- where there is a division of a fee  
15 agreement between lawyers who are not in the same  
16 firm, the client has to be notified of the division  
17 of the fee and has to consent in writing.  
18 So do you know if in those cases the  
19 client consented in writing to the division of the  
20 fee?  
21 **THE WITNESS:** They would have signed the  
22 forms that we had. Now --  
23 **THE SPECIAL MASTER:** And do those forms  
24 include a consent to -- if you know, do those forms

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1 include a consent to the division of fees such that  
2 you might be receiving a fee and that the client  
3 then signed that agreement to the division of the  
4 fee?  
5 **THE WITNESS:** I'd have to go back and  
6 look because I don't -- I can remember no client --  
7 and I've had clients, some of them now 50 years --  
8 ever -- anything I hand over to them, they don't  
9 even bother to read it. They just sign it.  
10 I've had long relationships with my  
11 clients, especially -- although there aren't many  
12 left anymore. I'm getting too old. They don't  
13 always even understand when you try to explain to  
14 them how the division is going to be.  
15 **THE SPECIAL MASTER:** But --  
16 **THE WITNESS:** They just say, look, I've  
17 been coming here enough times, just take care of me.  
18 **THE SPECIAL MASTER:** I understand, but  
19 you understand the rule requires -- we talked about  
20 this earlier --  
21 **THE WITNESS:** Yes.  
22 **THE SPECIAL MASTER:** -- the rule  
23 requires that the clients consent to a division of a  
24 fee in writing, right?

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1 **THE WITNESS:** Yes, okay.  
2 **THE SPECIAL MASTER:** So can we assume  
3 that in those cases in which you referred cases out  
4 to the class lawyers, that at some point those  
5 clients agreed to the division of the fee in writing  
6 with your firm?  
7 **THE WITNESS:** Yes, I think you can  
8 assume that.  
9 **BY MR. SINNOTT:**  
10 Q. Now earlier -- just a moment ago you  
11 testified that many of those clients don't want to  
12 know. Does that make any difference?  
13 **MS. LUKEY:** Objection.  
14 **A. Any difference to what?**  
15 Q. In whether or not you would feel obliged to  
16 get their written consent.  
17 **A. If I understand the question --**  
18 Q. Yes, sir.  
19 **A. -- the concern in all cases that I have**  
20 **handled, and most of the lawyers that I know, is the**  
21 **welfare of their client. Many clients do not wish**  
22 **to get into a legal argument. They're there because**  
23 **they have some faith in you.**  
24 **And you can explain things, and they're**

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1 not going to understand it. They'll very quickly  
2 shut you off and say, look, I've been coming here  
3 enough times, take care of my wants. If I find a  
4 difference, I'll come to you and say, look, this is  
5 better. Is that fair enough? And I'll say yes.  
6 **THE SPECIAL MASTER:** Would you say to  
7 them under those circumstances, Mr. Smith or  
8 Mrs. Smith, I'm required by law to have you -- to  
9 inform you that there's a possibility that there  
10 will be a division of a fee which I will receive and  
11 to have you agree to that in writing? Would you say  
12 that to them?  
13 When they say I trust you, I love you,  
14 have been coming here for years, wouldn't you say to  
15 them I appreciate that, but I'm required by law to  
16 get your consent in writing?  
17 **THE WITNESS:** They've never -- as soon  
18 as I give it to them -- they don't even ask for  
19 it -- they've already signed it.  
20 **THE SPECIAL MASTER:** Oh, all right.  
21 **BY MR. SINNOTT:**  
22 Q. So it's not your testimony that a lawyer's  
23 perception that a client would agree to such a  
24 division of fees excuses the attorney from carrying

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1 out his duties under 1.5(e)?  
2 **A. The only time you will get a question is**  
3 **does the -- does that referral come from my portion**  
4 **of the recovery, and I always say and start it this**  
5 **has nothing to do with the proportion that's**  
6 **allotted to you in this matter.**  
7 **This is a proportion that comes between**  
8 **a lawyer and me. Or if I'm doing it and they send**  
9 **it and the client hasn't already signed one, I tell**  
10 **them that this is what you're going to sign. This**  
11 **has nothing to do with what you ultimately will**  
12 **receive. There'll be a fee. This is the amount of**  
13 **the fee. You will pay for some of the expenses that**  
14 **we're putting out for you until there's a recovery.**  
15 **And I can tell you now if we don't get a**  
16 **recovery you will not be required to pay any of**  
17 **those expenses either. We make sure we tell them**  
18 **that.**  
19 **But at no time anything between me and**  
20 **your counsel -- your original lawyer -- we have an**  
21 **agreement, and part of what I may -- the fee that is**  
22 **set forth in this agreement, part of it I may send**  
23 **to him or her.**  
24 Q. And it's your testimony you tell every

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1 plaintiff client that you're referring in a class  
2 action case this colloquy as to what might happen,  
3 correct?  
4 **A. Yes.**  
5 Q. Now --  
6 **A. Because they don't understand what class**  
7 **actions are. We're not dealing for the most part --**  
8 **and it's the simple person that very often is the**  
9 **injured party -- doesn't always want to know.**  
10 **They've got enough problems of their own simply**  
11 **trying to exist.**  
12 Q. But you tell them anyway?  
13 **A. I tell them that there is a requirement that**  
14 **I tell them, and they say I don't want to hear about**  
15 **it. It's not coming from me; is that right? I say,**  
16 **that's right, it's not coming from you.**  
17 Q. But you scrupulously tell every client that  
18 -- in such a case that a division of fees may result  
19 in you getting money from the case, correct?  
20 **A. When I send it out to a --**  
21 Q. Yes, sir.  
22 **A. Yes.**  
23 Q. Okay. And you're not saying, am I correct,  
24 that if an attorney perceives that that client whose

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1 case he's referring to another firm doesn't care;  
2 that doesn't excuse him from going through that same  
3 colloquy that you religiously go through, does it?  
4 **MS. LUKEY:** Objection.  
5 **A. I just don't understand the question.**  
6 Q. Well, let me see if I can ask it another  
7 way.  
8 A practitioner is referring -- about to  
9 refer a case to a national class action law firm,  
10 and the practitioner knows that he may get a  
11 substantial portion of the fee for himself for  
12 having made that referral.  
13 The practitioner considers telling his  
14 client about this but then says, jeez, Mrs. Jones,  
15 she doesn't care; every time I try to raise  
16 something of legal nature with her, she says that's  
17 all lawyer talk, I don't want to know about it so  
18 I'm not going to tell her this because it's just  
19 going to aggravate her, or she's just going to give  
20 me the same line.  
21 So the practitioner keeps his mouth  
22 shut, and the practitioner pockets his portion of  
23 the award, and Mrs. Jones gets her settlement amount  
24 and doesn't know that the practitioner has received

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1 a fee from that case.  
2 You're not saying that's appropriate,  
3 are you?  
4 **MS. LUKEY:** Objection.  
5 **A. That he receives a fee? And that's the**  
6 **agreement he has with the other counsel?**  
7 **Q.** Yes. Without notifying his client.  
8 **A. Who's --**  
9 **MS. LUKEY:** The recipient or sender?  
10 I'm confused, too.  
11 Is the lawyer in your hypothetical the  
12 recipient of the referral fee or the person sending  
13 it out to someone else -- I'm sorry, the person  
14 getting it in?  
15 **MR. SINNOTT:** The practitioner's the  
16 recipient of the referral fee.  
17 **MS. LUKEY:** The recipient of the  
18 referral fee.  
19 (Pause.)  
20 **A. I --**  
21 **THE SPECIAL MASTER:** Maybe it would help  
22 if I simplified the question and broke it down.  
23 You've told us what your practice is,  
24 and it sounds like your practice is that when you

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1 refer clients out to national class counsel, you go  
2 through with them the fact and you have them sign --  
3 you go through with them the fact that if there is  
4 an award, that you may get a division of a fee, and  
5 you tell them that.  
6 And they may say I don't want to know;  
7 this is lawyer talk, but you go through that with  
8 them, and you have them sign, or they've already  
9 signed when they get to you the consent.  
10 **THE WITNESS:** Yeah, most of the times  
11 they've already --  
12 **THE SPECIAL MASTER:** -- signed it.  
13 **THE WITNESS:** -- signed it.  
14 **THE SPECIAL MASTER:** I think what  
15 Mr. Sinnott is asking is it in your view appropriate  
16 for a lawyer not to go through with the client what  
17 you've described that you go through in explaining  
18 that there will be a division of fees if there's an  
19 award; that I may get a division of that fee and  
20 that you have to consent to it in writing. I think  
21 Mr. Sinnott's question is simply is it ever  
22 appropriate not to go through that with the client,  
23 even if the client says I don't want to know?  
24 **THE WITNESS:** It may not be appropriate,

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1 but there has been no -- I don't know how I should  
2 state it?  
3 The client has never lost anything if  
4 there is someone misses putting the thing together  
5 in writing. The client hasn't been in any way at  
6 risk of any further -- if our concern is the client,  
7 if the person to whom most of these rules are set to  
8 help, the client doesn't suffer anything.  
9 And someone misses a -- maybe just  
10 forgets to do it, that person shouldn't be --  
11 **THE SPECIAL MASTER:** We're talking about  
12 the attorney, not the client now.  
13 **THE WITNESS:** I know but the attorney --  
14 **THE SPECIAL MASTER:** It sounds like  
15 you're explaining --  
16 **THE WITNESS:** If the client hasn't been  
17 damaged in any way, hasn't suffered any decreased  
18 monies that would have been due to him and somehow  
19 there is a paper glitch or whatever it may be that  
20 occurs with regards to something being put in  
21 writing but it doesn't harm the client, these rules  
22 don't say you got to -- you got to in some way  
23 penalize the lawyer.  
24 **THE SPECIAL MASTER:** Not my question.

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1 Not Bill's question with all due respect,  
2 Mr. Sarrouf.  
3 **MS. LUKEY:** Objection. I think he  
4 answered your question, your Honor.  
5 **MR. HEIMANN:** I hate to pipe in here,  
6 but I do, too.  
7 **MS. LUKEY:** He answered your question.  
8 **THE SPECIAL MASTER:** Let's start with  
9 the rule.  
10 **THE WITNESS:** I know the rule.  
11 **THE SPECIAL MASTER:** Well, maybe --  
12 maybe you did answer it.  
13 Is your answer that if the client is not  
14 harmed the lawyer does not have to comply with the  
15 rule? Maybe you did answer it. Is that your  
16 answer?  
17 **THE WITNESS:** No, he should comply, but  
18 if he fails to, he shouldn't be penalized for it  
19 when the client has suffered no damage, no loss of  
20 what her or his rights are.  
21 **THE SPECIAL MASTER:** Does that relieve  
22 the lawyer of the obligation to notify the client of  
23 the division of fee and seek the client's consent in  
24 writing?

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1 **THE WITNESS:** If he wants to get a  
2 letter from someone that says, look, don't mess up  
3 anymore, but you don't penalize him. That's the  
4 rule here in Massachusetts.  
5 **THE SPECIAL MASTER:** Mr. Sarrouf, I  
6 think it would be helpful if we go through the rule.  
7 **THE WITNESS:** Okay.  
8 **THE SPECIAL MASTER:** Joan, could you put  
9 1.5(e) in front of him? Just the rule.  
10 **MS. LUKEY:** Yeah. I have current  
11 versions the one that came into effect in 2015. Do  
12 you want the one that came into effect --  
13 **THE SPECIAL MASTER:** The current version  
14 reflects Saggese.  
15 **MS. LUKEY:** That came into effect in  
16 2011.  
17 **THE SPECIAL MASTER:** Correct.  
18 **MS. LUKEY:** I don't have that one except  
19 in -- well, in fact, I don't have that one. I think  
20 that's substantially similar to 15.  
21 **THE SPECIAL MASTER:** It is.  
22 **MS. LUKEY:** The one before that is in  
23 the footnote of Saggese. The one before March of  
24 11. He has the one that's 15 --

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1 **THE SPECIAL MASTER:** Can we agree we can  
2 use this as to the issues of notice to the client  
3 and the need to seek consent from the client in  
4 writing?  
5 **MS. LUKEY:** Currently. Yes.  
6 **THE SPECIAL MASTER:** Well, but also the  
7 Saggese rule.  
8 **MS. LUKEY:** That's where I have a  
9 problem. Saggese didn't actually get implemented  
10 until March 15, 2011.  
11 **THE SPECIAL MASTER:** I understand, but  
12 it was -- after the rescript in 2005 it was the law.  
13 Correct?  
14 **MS. LUKEY:** Yes, although I think there  
15 has been some -- I think there were some cases that  
16 would suggest when the rule hasn't been amended, if  
17 there's an inadvertent reliance on the existing  
18 rule, that that's not sanctionable.  
19 **THE SPECIAL MASTER:** I'm just trying to  
20 understand Mr. Sarrouf's --  
21 **MS. LUKEY:** So he's got the 2015 version  
22 in front of him which is substantially similar to  
23 the one that came into effect in March 15, 2011.  
24 **THE SPECIAL MASTER:** Correct. At least

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1 on the points I want to ask him about --  
2 **MS. LUKEY:** I don't necessarily agree  
3 that's the applicable rule to what happened here  
4 because the client letter was signed before March  
5 15, 2011, but I would agree that he can look at the  
6 current one.  
7 **THE SPECIAL MASTER:** All right. I  
8 understand that.  
9 The rule says, "A division of a fee  
10 between lawyers who are not in the same firm may be  
11 made only if the client is notified before or at the  
12 time the client enters into a fee agreement for the  
13 matter, that a division of fees will be made and  
14 consents to the joint participation in writing."  
15 It also says, "and the total fee is  
16 reasonable," but we'll put that aside for the  
17 moment.  
18 So the question is if a lawyer -- if a  
19 client comes into the lawyer and says I don't want  
20 to know about it; I don't want to hear about it; you  
21 just do whatever you're going to do, is it  
22 appropriate for the lawyer not to notify the client  
23 of the potential for the division fees and to seek  
24 the client's consent in writing?

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1 (Pause.)  
2 **THE WITNESS:** Is it appropriate? It's  
3 not appropriate not to put it in writing.  
4 **THE SPECIAL MASTER:** And to notify the  
5 client of the possibility of a division of a fee,  
6 yes?  
7 **THE WITNESS:** It would be to notify the  
8 client -- if he's going to sign the agreement, the  
9 agreement ought to have in it that there will be a  
10 division of the fee.  
11 **THE SPECIAL MASTER:** And that will serve  
12 as notice to the client?  
13 **THE WITNESS:** Notice to the client, and  
14 most likely you talked about it. And most clients  
15 who certainly come from someone that they've been  
16 dealing with as their -- as their family lawyer or  
17 whatever know that there's going to be -- his family  
18 lawyer's going to be taken care of from the fee, not  
19 from anything else. Most clients come into you  
20 knowing that.  
21 But you're insisting that it's got to be  
22 on paper and that if somehow it isn't on paper that  
23 the lawyer doesn't get anything.  
24 **THE SPECIAL MASTER:** We don't know that.

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1 That's a different question.  
2 That's a question of what happens if  
3 there's an objection to the fee, if somebody raises  
4 an objection, that's a different question.  
5 **THE WITNESS:** And it's a different  
6 matter because the objection, if there is an  
7 objection, will be something that goes back to --  
8 that is the plaintiff -- the client takes up and  
9 becomes a plaintiff against the lawyer.  
10 **THE SPECIAL MASTER:** Or if there's an  
11 objection in a class action by an objector.  
12 **THE WITNESS:** If there's a client in a  
13 class action and the objection comes from the  
14 client, that's appropriate.  
15 But if it's coming from someone other  
16 than the client, it's not appropriate.  
17 **THE SPECIAL MASTER:** That's an  
18 astounding statement.  
19 **MS. LUKEY:** Objection, your Honor. It's  
20 not astounding at all.  
21 **THE SPECIAL MASTER:** Just a minute,  
22 Joan. Whether the objection is appropriate or not  
23 would be decided by the judge.  
24 **THE WITNESS:** Yes.

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1 **THE SPECIAL MASTER:** There are  
2 objections in class actions all the time. Some are  
3 not founded at all, and some are found to be well  
4 founded.  
5 The objections may come from people on  
6 behalf of class members including lawyers where  
7 absent class members hire lawyers and those lawyers  
8 come in and make objections to the judge about a  
9 settlement.  
10 **MS. LUKEY:** But your question assumed --  
11 I'm sorry -- was under 1.5(e), and that's not  
12 established at all --  
13 **THE SPECIAL MASTER:** Objectors can  
14 object to anything.  
15 **MS. LUKEY:** I understand that. But it's  
16 not under 1.5(e). It's under Rule 23.  
17 **THE SPECIAL MASTER:** Well, you would  
18 also look to any governing rules. We don't have to  
19 debate this.  
20 My only point is that these issues can  
21 be brought to a Court in any number of forms, don't  
22 have to be necessarily brought by the client. They  
23 could be brought by the client, but they don't have  
24 to be.

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1 **THE WITNESS:** Well, isn't it brought by  
2 -- to the Court when there has been harm to the  
3 party? The plaintiff?  
4 **THE SPECIAL MASTER:** Or to the class.  
5 **THE WITNESS:** And there hasn't -- I mean  
6 as I understand this matter, a client in this  
7 instance has said I have no objections.  
8 **THE SPECIAL MASTER:** The class  
9 representative have said that.  
10 **THE WITNESS:** Yes. And he -- he was the  
11 plaintiff, was he not? Or he speaks for the  
12 plaintiff.  
13 **THE SPECIAL MASTER:** A judge's  
14 obligation is to the class, not just the class  
15 representative. We can debate this, but the judge's  
16 obligation is as a fiduciary to the class.  
17 Some courts have referred to this as a  
18 gatekeeper. Other courts have referred to this as a  
19 fiduciary, but the judge's obligation in ensuring  
20 the appropriateness of a settlement and the  
21 appropriateness of the fees paid to lawyers under  
22 the settlement is an obligation that the Court has  
23 to the class.  
24 **THE WITNESS:** Does that require that

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1 every member of the class undertakes to vote on the  
2 matter?  
3 **THE SPECIAL MASTER:** Well, they -- they  
4 may opt out if they don't like the settlement, but  
5 -- at least in some classes.  
6 Look, this is a long discussion, and  
7 it's involved, but it's a very real discussion about  
8 the issues here. And that is one of the issues is  
9 what is the role that the Court has to oversee and  
10 be a fiduciary to class members in approving a  
11 settlement and making an award of fees.  
12 That's one of the issues that are in  
13 this case. Bill, go ahead.  
14 **BY MR. SINNOTT:**  
15 Q. Counsel, you have a predominantly contingent  
16 practice, correct?  
17 **A. It is for the most part.**  
18 Q. And, you know, typically a client will bring  
19 you their case, and you'll say, all right, we're  
20 willing to take this on a contingent basis, and my  
21 fee will be one third of any recovery.  
22 Now that client has the right to say  
23 jeez, Camille, sounds great, really want to have you  
24 on board, but I'll only hire you if you agree to 25

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1 percent of the recovery.  
2 And that's something that clients do on  
3 occasion, isn't it?  
4 **A. Yes.**  
5 Q. Why is the client whose case is being  
6 referred to that major class action firm not  
7 entitled to that same ability to say to you, no, I  
8 don't want you getting that referral fee; or if you  
9 get that referral fee, I want a portion of it?  
10 So it's not all about, you know, no harm  
11 to the client in the perception of the attorney.  
12 The client has rights to be informed and to act on  
13 that information, doesn't she?  
14 **MS. LUKEY:** Objection.  
15 **MR. HEIMANN:** I object to that multiple  
16 compound. There's about five questions there.  
17 **THE SPECIAL MASTER:** I think it is,  
18 Bill.  
19 **MR. SINNOTT:** It is, it is but -- I got  
20 carried away.  
21 **BY MR. SINNOTT:**  
22 Q. Excuse me.  
23 **A. It's all right.**  
24 Q. Isn't that client in a class action referral

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1 situation entitled to that same prerogative as the  
2 person that walks in off the street and hires you on  
3 a contingent basis?  
4 **MS. LUKEY:** Objection.  
5 **A. Well, I think that when they join the class**  
6 **they are authorizing whoever's representing the**  
7 **class to proceed. Wouldn't that be the case?**  
8 **Now if it's going to be -- if you got a**  
9 **class of 300,000 but you don't have -- does each**  
10 **person have the right to negotiate what the fee is**  
11 **going to be? How do you proceed with something like**  
12 **that?**  
13 Q. Well, let me just back up and ask you the  
14 same question.  
15 Doesn't that client have that same  
16 prerogative to bargain --  
17 **A. Whoever is the representative of the class**  
18 **certainly has the right to bargain.**  
19 Q. All right. And there's nothing that you've  
20 said, is there, that obviates Rule 1.5(e)? I mean  
21 that's the rule, correct?  
22 **MS. LUKEY:** Objection. We'll stipulate  
23 that that's the rule.  
24 **MR. SINNOTT:** Right.

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1 **MS. LUKEY:** Is that the question?  
2 Q. You don't think that there's -- strike that.  
3 Strike it.  
4 **MR. SINNOTT:** Let me move on, unless you  
5 have something else on this, judge.  
6 **THE SPECIAL MASTER:** No.  
7 **MR. SINNOTT:** I looked at my watch a  
8 second ago.  
9 **THE SPECIAL MASTER:** It's quarter of 11.  
10 Are you doing okay, Mr. Sarrouf?  
11 **THE WITNESS:** I am.  
12 **THE SPECIAL MASTER:** Do you need a  
13 break? You've been going for two hours.  
14 **MS. LUKEY:** Your texts have been dinging  
15 I think. Are those yours? I want to make sure it's  
16 not Joyce. Do you have a phone? I thought it was  
17 coming from you. It may have been coming from down  
18 there.  
19 **MR. KELLY:** Not me. I turned my off.  
20 **MS. LUKEY:** Are you okay?  
21 (Pause.)  
22 (Off the record.)  
23 **MR. SINNOTT:** Joan, do you want to take  
24 five?

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1 **MS. LUKEY:** It's fine with me.  
2 **THE SPECIAL MASTER:** We're okay. We're  
3 asking Mr. Sarrouf --  
4 **MS. LUKEY:** Are you okay?  
5 **THE WITNESS:** No, let's go. Let's see  
6 if we can get it done by 1:30.  
7 **MS. LUKEY:** They know.  
8 **MR. SINNOTT:** If we could, madam court  
9 reporter, have Mr. Sarrouf's CV marked as an  
10 exhibit, that would be Exhibit 1 for this  
11 deposition.  
12 (Exhibit 1 marked  
13 for identification.)  
14 **BY MR. SINNOTT:**  
15 Q. So for the record, Attorney Sarrouf's CV has  
16 been marked as Exhibit 1.  
17 Counsel, you've been retained to provide  
18 expert services in this case, correct?  
19 **A. I have.**  
20 Q. And what's your rate of compensation  
21 currently?  
22 **A. I think it was 750 an hour. Seven hundred**  
23 **and fifty.**  
24 **MS. LUKEY:** Not \$7.50? I was hoping.

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1 **MR. SINNOTT:** I would have advocated for  
2 a raise if it was \$7.50.  
3 Q. And how many hours do you estimate you've  
4 worked on this case so far?  
5 **A. I think initially it was maybe 14 hours or**  
6 **something like that. It was -- I think the only**  
7 **bill I've sent out was for \$10,750, something like**  
8 **that.**  
9 Q. How many -- up to --  
10 **A. I haven't billed at all for -- since that**  
11 **time.**  
12 Q. Okay. So how much additional -- how many  
13 additional hours do you think you've worked since  
14 you submitted that bill?  
15 **A. Part of it is going to depend how long I'm**  
16 **here, I suppose. Up to now, I would think -- let's**  
17 **see. Probably another seven to ten hours. I don't**  
18 **know.**  
19 Q. All right. So approximately --  
20 **A. I'm not very good -- I'm sure I don't get it**  
21 **all down 'cause I don't...**  
22 Q. Okay.  
23 **A. I'm old fashioned. A lot of times in the**  
24 **old days when it wasn't going to be a contingencies,**

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1 **you said 5,000, 10,000, whatever it was going to be.**  
2 **You didn't worry about, you know, keeping time.**  
3 Q. It's one of the nice things about a  
4 contingent practice, isn't it?  
5 **A. Yep.**  
6 Q. So \$10,000 you've billed, and beyond that  
7 you believe seven to ten additional hours?  
8 **A. I would think about that.**  
9 Q. All right. And if I could direct your  
10 attention to your declaration.  
11 **MR. SINNOTT:** And if we could provide a  
12 copy for the court reporter. I'm going to ask  
13 Paulette mark this as Exhibit 2.  
14 (Exhibit 2 marked  
15 for identification.)  
16 Q. Let me direct your attention, if I might --  
17 **MR. SINNOTT:** Paulette, are you ready?  
18 **THE REPORTER:** I'm all set. Thanks.  
19 Q. -- to paragraph 9. And that's page 4. And  
20 just to read it out loud.  
21 In analyzing these issues -- under the  
22 heading of summary of facts relevant to opinions.  
23 Number 9. "In analyzing these issues,  
24 I've discussed the case with the counsel who

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1 retained me and reviewed certain documents produced  
2 in this case as well as the applicable law and  
3 secondary sources relevant to my opinion. I  
4 understand and assume the accuracy of the following  
5 background facts relevant to the opinions I offer."  
6 When you say you reviewed certain  
7 documents produced in this case, what are you  
8 referring to?  
9 **A. A pile --**  
10 Q. Okay.  
11 **A. -- of documents that were provided that I**  
12 **went through.**  
13 Q. Okay.  
14 **A. And then asked questions.**  
15 Q. Can you identify what those documents were?  
16 **A. Oh, boy. There were copies of --**  
17 Q. Say that again. Sorry, sir?  
18 **A. I think copies of retainer agreements.**  
19 **There were -- golly.**  
20 **MS. LUKEY:** Bill, I think you're  
21 entitled if you want us to do that -- because you  
22 did it for your expert, I think you're entitled to  
23 have -- I didn't compile the materials; Justin did  
24 -- but to have us pull those together in a format

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1 and provide those --  
2 **MR. SINNOTT:** Let me just see whether he  
3 recalls and --  
4 **MS. LUKEY:** Okay. Well, if you decide  
5 you want that, let me know.  
6 **MR. HEIMANN:** Well, I don't agree with  
7 your statement. Sorry. Professor Gillers did not  
8 provide us with a comprehensive list of the  
9 materials he reviewed as far as I know.  
10 **MS. LUKEY:** I thought that -- they gave  
11 us the exhibits which I understood was everything --  
12 **MR. HEIMANN:** No, it was not. Not even  
13 close.  
14 **MS. LUKEY:** Oh, if that's accurate, then  
15 I withdraw what I so woefully suggested.  
16 **MR. SINNOTT:** Thank you for trying to be  
17 helpful.  
18 **BY MR. SINNOTT:**  
19 Q. So what do you recall having looked at with  
20 respect to the documents?  
21 **A. The agreements. There were -- I have the**  
22 **declaration of George Hopkins. I think the proposal**  
23 **that was initially made by the two firms back in --**  
24 **what was it? -- December or -- 2008 was it I think?**

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1 MS. LUKEY: Yep.  
2 A. And then the agreement that was entered  
3 into, I think, on the 29th of December of 2008.  
4 There were documents that I think were introduced.  
5 There were the negotiations between the various  
6 counsel, the three customer, and then I think the  
7 others were the ERISA documents. There were a few  
8 of those.  
9 Then I had a copy of -- no, that's  
10 not...  
11 THE WITNESS: This is yours, right?  
12 MS. LUKEY: Yeah, this one's mine.  
13 THE WITNESS: Let me pull mine.  
14 A. I received a copy of the response by Labaton  
15 to special master's request for supplemental  
16 submissions. I received the ethical report for  
17 special master, Judge Rosen, by Professor Gillers.  
18 I pulled a copy of the Rules of  
19 Professional Conduct 7.2. All the other papers are  
20 back in the office so...  
21 Q. All right. Now let me just -- without going  
22 into each of those seven or eight --  
23 A. Then there were a lot of questions and  
24 answers that I had with counsel.

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1 Q. Okay. So let me back you up then.  
2 So initially you received a package; is  
3 that correct?  
4 A. Yes.  
5 Q. And was it in that binder in front of you?  
6 A. This (indicating)?  
7 Q. Yes, sir.  
8 A. No, this came later.  
9 Q. Okay.  
10 A. Initially what came was an explanation of  
11 what was going on. And then I -- then there was a  
12 phone call I had with Attorney Lukey.  
13 Then I had her assistant was Attorney  
14 Justin Wolosz, and I had discussions with him. And  
15 I tried to keep a -- I had questions; I wanted  
16 answers. Back and forth until we worked through  
17 what I thought was a pretty good understanding of  
18 what this matter was about.  
19 And then I began to develop my opinions  
20 of what were the issues, and I had some difficulty  
21 in understanding the role of all of the number of  
22 counsel that were involved and where different  
23 things occurred. And then I made a few phone calls.  
24 I --

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1 Q. When you say you made a few phone calls, who  
2 did you call?  
3 A. Well, I brought in Arnie Rosenfeld, and we  
4 sat down and discussed the matter at length when I  
5 learned that -- or when we were advised that the  
6 professor was going to render an opinion, I asked  
7 Arnie if he knew him, and Arnie did.  
8 And I think Arnie knows his wife as  
9 well. She's chairman of a committee of the ABA.  
10 And Arnie had, you know, interchange with both of  
11 them I guess from time to time.  
12 I spoke to certain lawyers who had  
13 matters with the Labaton, and I understood that they  
14 were -- that that was a fine firm. And I think I  
15 had learned that they had some fellows of the  
16 American College which I inquired about.  
17 And then the rest of it I think were  
18 just exchanges that I had with the counsel who  
19 retained me.  
20 Q. Now in formulating your opinions in the  
21 case, did you consult with other people?  
22 A. I would from time to time because I have  
23 great respect for Arnie Rosenfeld. He'd been bar  
24 counsel here for many, many years, one of the very

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1 best. And he's a dear friend. He's in the office  
2 with me. I did with him.  
3 Q. And he helped you with your opinions?  
4 A. He helped me understand some of the matters  
5 that we thought might be critical, and then I  
6 discussed other matters with Joan and with her  
7 assistant, Justin.  
8 Q. All right, thank you.  
9 In the course of reviewing documents and  
10 the documents you listed, I notice you didn't  
11 mention the Damon Chargois deposition. Were you  
12 ever shown that?  
13 A. Shown the deposition --  
14 Q. Yes, sir. Of Mr. Chargois.  
15 A. -- itself? No.  
16 Q. And outside of the facts that you cite in  
17 your declaration, did you receive any other  
18 documents or information? Let me put it another  
19 way.  
20 Outside of the facts that are cited  
21 here, were there any other resources or references  
22 that you did not cite in your report?  
23 A. I don't think so. Of course, you know, this  
24 is in a report that was -- what's the date of this

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1 thing?  
2 (Pause.)  
3 A. October of 2017. And, you know, there have  
4 been a lot that has happened since -- since then.  
5 Q. When did you first see the George Hopkins'  
6 declaration?  
7 A. I'm not --  
8 (Pause.)  
9 MS. LUKEY: I think the date's on the  
10 last page, Camille.  
11 THE WITNESS: On the last page?  
12 MS. LUKEY: The last page I think. Is  
13 it there?  
14 THE WITNESS: Oh, that's the 15th.  
15 A. When I got back here, I think the first time  
16 I would have seen it was Monday.  
17 Q. All right. So this is the most recent  
18 Hopkins declaration that was signed by him on March  
19 15th, correct?  
20 A. Is that? Yes.  
21 Q. And --  
22 A. Yeah, that's the first -- the first time I  
23 saw this was Monday afternoon.  
24 Q. Okay.

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1 A. But I had been -- I don't know if I received  
2 a call while we were traveling back from Florida.  
3 We left on the 15th.  
4 Q. Okay. But that's the first time that you  
5 saw it?  
6 A. Yes.  
7 Q. All right. And what significance did you  
8 attach to that document?  
9 A. Insofar as the agreement of the client  
10 without any objection to the relationship between  
11 the firms, I think it's vital.  
12 Q. You think it's vital?  
13 A. Yes.  
14 Q. But it wasn't --  
15 A. 'Cause this is the client speaking as far as  
16 I'm concerned.  
17 Q. It wasn't vital enough for you to have not  
18 previously issued opinions in the fall of 2017,  
19 correct?  
20 MS. LUKEY: Objection. It didn't exist  
21 in the fall.  
22 MR. SINNOTT: No. I'm saying --  
23 THE SPECIAL MASTER: That's the  
24 question.

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1 BY MR. SINNOTT:  
2 Q. The question is that document was not in  
3 existence when you issued your opinions in the fall  
4 of 2017, was it?  
5 A. The document wasn't, but I understood that  
6 the substance of the document had been expressed  
7 before I signed this.  
8 Q. So you didn't need that declaration in order  
9 to formulate your opinions?  
10 A. It was provided to me that the client had  
11 agreed that they had no objections to the matter.  
12 Q. All right. In advance of this declaration  
13 being drafted?  
14 A. Of this declaration? Mine?  
15 Q. No, of Mr. Hopkins' declaration.  
16 A. Well, I understood there had been  
17 conversations with Mr. Hopkins throughout the course  
18 of the representation, and he was in full agreement  
19 with the settlement and in full agreement with the  
20 -- I believe the final agreed-upon fees to be  
21 charged.  
22 Q. Are you aware that he knew nothing of Damon  
23 Chargois?  
24 MS. LUKEY: Objection.

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1 A. That he didn't know Damon Chargois?  
2 THE SPECIAL MASTER: Didn't know he  
3 existed.  
4 MR. HEIMANN: I think you got to put a  
5 timeline and not keep it open ended when he knew.  
6 THE SPECIAL MASTER: You're right. His  
7 deposition testimony was that he found out and  
8 learned about Damon Chargois in the course of this  
9 investigation.  
10 (Telephone interruption.)  
11 THE SPECIAL MASTER: Joan, I wouldn't  
12 confiscate your phone.  
13 MS. LUKEY: That wouldn't be your wife?  
14 Could I take a moment? It's a Belmont exchange.  
15 THE SPECIAL MASTER: Why don't we give  
16 Mr. Sarrouf a break. He's been sitting, by my  
17 watch, for two-and-a-half hours.  
18 MR. SINNOTT: I think he has more  
19 endurance than all the rest of us.  
20 THE SPECIAL MASTER: Yeah, why don't we  
21 take a break.  
22 (A recess was taken.)  
23 CONTINUED EXAMINATION BY MR. SINNOTT:  
24 Q. Attorney Sarrouf, before the break I had

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1 asked you about Mr. Hopkins' declaration which was  
2 signed on March 15th.  
3 Do you recall that, sir?  
4 **A. Yes, sir.**  
5 Q. And you described it as vital.  
6 Is it your testimony that that  
7 declaration substituted for -- or satisfied the  
8 requirement under 1.5(e) for a writing of consent by  
9 the client?  
10 **A. I think it certainly satisfied the knowledge**  
11 **of the plaintiff in the case and an acknowledgement**  
12 **of as far as the client -- that is, the customer I**  
13 **guess it is that's referred to -- was satisfied with**  
14 **the result. And as our courts have held here in**  
15 **Massachusetts, it's ultimately the responsibility --**  
16 **these rules are to protect the client.**  
17 **And since the referral amounts to other**  
18 **lawyers were entirely out of the agreed-upon fees**  
19 **they would receive and do not come from any -- in**  
20 **any part from the customer or the client's funds,**  
21 **that our -- the intent of our rules has been**  
22 **complied with in Massachusetts, and the courts have**  
23 **repeatedly stated that, especially in the Saggese**  
24 **case. I know it well.**

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1 Q. But, sir, my question was whether that  
2 declaration constituted the notification and consent  
3 required under 1.5(e). Did it?  
4 **A. I believe it does. In the final analysis of**  
5 **the matter it does.**  
6 Q. And --  
7 **A. A lot of the matters were, I assume, oral**  
8 **conversations that the client had with the lawyer in**  
9 **this case, and now he put it in writing for you.**  
10 Q. When was the agreement between Arkansas or  
11 ARTRS as you refer to them in your declaration and  
12 the law firms?  
13 **A. Well, the first submission was I believe**  
14 **December the 8th or in early December.**  
15 Q. Of what year?  
16 **A. I think it's way back. Was it 2008? I**  
17 **believe so.**  
18 Q. It's not February 8, 2011?  
19 **MS. LUKEY: I think he's talking about a**  
20 **different submission.**  
21 **MR. SINNOTT: Okay.**  
22 **BY MR. SINNOTT:**  
23 Q. What are you referring to, sir?  
24 **A. The initial submission to the client of**

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1 **their proposal to represent their interest in the**  
2 **matter.**  
3 Q. And that was in 2008?  
4 **A. Yes.**  
5 Q. Approximately ten years ago?  
6 **A. Yes. Well, not quite but almost.**  
7 Q. Now 1.5(e) says, "A division of a fee  
8 between lawyers who are not in the same firm may be  
9 made only if the client is notified before or at the  
10 time the client enters into a fee agreement for the  
11 matter."  
12 **MS. LUKEY: Objection. Could I just**  
13 **have a standing objection on the point I made**  
14 **earlier about which 1.5(e) was in effect at the time**  
15 **the engagement letter was entered?**  
16 **THE SPECIAL MASTER: Yeah.**  
17 **MS. LUKEY: Thank you.**  
18 **BY MR. SINNOTT:**  
19 Q. So, sir, you don't consider nine to ten  
20 years ago to be before or at the time the client,  
21 Arkansas, entered into the fee agreement, do you?  
22 **A. No. I believe they entered into the fee**  
23 **agreement in December the 29th of two -- of 2008.**  
24 Q. I believe it was February 8th of 2011, but I

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1 may be wrong.  
2 **THE SPECIAL MASTER: We're talking about**  
3 **two different agreements.**  
4 **MS. LUKEY: Two different things. He's**  
5 **talking about the panel monitoring, and you're**  
6 **talking about the fee --**  
7 **BY MR. SINNOTT:**  
8 Q. In any case, sir, those are not -- the  
9 declaration of Mr. Hopkins cannot be considered  
10 before or at the time the client enters into the fee  
11 agreement, can it?  
12 **A. The client entered into the fee agreement --**  
13 **I think George Hopkins was the representative, was**  
14 **he not?**  
15 **MS. LUKEY: I think he's asking about**  
16 **this declaration. Is this one later than the fee**  
17 **agreement, the new declaration?**  
18 **THE WITNESS: Oh, this declaration?**  
19 **A. Yes. It's November -- March -- March 15 of**  
20 **this year.**  
21 Q. All right. So to the extent that you  
22 consider that to be consent by Mr. Hopkins, that  
23 consent certainly isn't before or at the time the  
24 client enters into a fee agreement, is it?

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1 **A. If you count this date, no. But if you look**  
2 **at all of the statements that he makes, I think it**  
3 **relates back to when this matter was entered into --**  
4 **the agreement of representation back whenever it was**  
5 **that they produced the final contract.**  
6 Q. Well, what if you were to learn that  
7 Mr. Hopkins was never told about Damon Chargois and  
8 his arrangement? Would that change your opinion?  
9 **MS. LUKEY:** Objection.  
10 **A. No, it does not change -- it does not change**  
11 **my opinion as rendered in this matter.**  
12 Q. But you testified that this declaration by  
13 Mr. Hopkins approximately a week ago was vital to  
14 your opinions, correct?  
15 **A. Oh, I don't think it was vital. I think it**  
16 **-- I had it in writing what I understood to have**  
17 **been what he has said all along.**  
18 Q. Even though he knew nothing about  
19 Mr. Chargois?  
20 **MS. LUKEY:** Objection.  
21 Q. Until approximately September of 2017.  
22 **A. I don't know that, and I don't know that --**  
23 **THE SPECIAL MASTER:** That was his  
24 testimony.

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1 **MS. LUKEY:** It's actually in the  
2 declaration, too.  
3 **THE SPECIAL MASTER:** Yeah, and it's in  
4 the declaration.  
5 **MS. LUKEY:** As to when he knew about  
6 Mr. Chargois.  
7 **THE SPECIAL MASTER:** As to when he knew  
8 about Mr. Chargois. Thank you for reminding me.  
9 **MS. LUKEY:** Simpler than looking for the  
10 testimony.  
11 **THE SPECIAL MASTER:** Right.  
12 **BY MR. SINNOTT:**  
13 Q. And as far as the documents beyond that and  
14 the other documents that you mentioned, do you  
15 recall seeing an e-mail dated April 23, 2013  
16 sometimes referred to as the Dublin e-mail in this  
17 case in which Labaton described -- in which it was  
18 described that Labaton had an obligation to pay the  
19 local counsel who assists Labaton in matters  
20 involving Arkansas? Did you ever see that e-mail?  
21 **A. An e-mail?**  
22 Q. Yes, sir.  
23 **A. I have no memory of it.**  
24 Q. Okay.

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1 **A. I may have. I just have no memory of it.**  
2 Q. Did you see a letter from November 22nd --  
3 I'm sorry -- an e-mail, and I believe there was an  
4 attached letter November 22, 2016 from Larry  
5 Sucharow to David Goldsmith, Garrett Bradley, Eric  
6 Belfi and Mr. Keller in which the following  
7 statement appeared: Class co-counsel get one with  
8 ERISA 10 percent off the top; Damon's percentage  
9 also off the top. And then Sucharow says no reason  
10 for ERISA to see Damon's split. They only need to  
11 see their 10 percent and then split three ways.  
12 Do you recall seeing that?  
13 **MS. LUKEY:** Well, it's obviously hard to  
14 do it without seeing the document. I'm not saying  
15 you have to show it to him.  
16 **MR. SINNOTT:** I'm happy to provide it.  
17 **MS. LUKEY:** I'm just saying it may be  
18 difficult.  
19 **THE SPECIAL MASTER:** Does that ring a  
20 bell --  
21 **MS. LUKEY:** Does that ring a bell?  
22 **THE SPECIAL MASTER:** -- as to anything  
23 you've seen?  
24 **A. I know that there was an increase. That's**

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1 **the one that started -- I think the first agreement**  
2 **was 9 percent, and then they moved it up to 10**  
3 **percent.**  
4 Q. No, but you did see that document; is that  
5 correct?  
6 **A. Yeah, I did.**  
7 Q. Okay. And --  
8 **A. And it explained who the three parties were**  
9 **that contributed to the 10 percent from their**  
10 **portion of the fees.**  
11 Q. Yes, but I don't believe that was in this  
12 document. But would you like to see the document?  
13 **A. It's up to you. You're the interrogator.**  
14 Q. I'm just the examiner.  
15 **A. I see.**  
16 **MR. HEIMANN:** The witness is not going  
17 to tell the interrogator how to conduct his  
18 interrogation.  
19 **MS. LUKEY:** Exactly.  
20 **MR. SINNOTT:** Mark that as Exhibit 3.  
21 **MS. McEVOY:** It's also Exhibit 42.  
22 **MR. SINNOTT:** Yes, previous Exhibit 42.  
23 And, for the record, this is TLF-SST 0022172 through  
24 74 previously marked as Exhibit 42.

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1 (Exhibit 3 marked  
2 for identification.)  
3 **BY MR. SINNOTT:**  
4 Q. So, counsel, have you seen this document  
5 before?  
6 **A. I do not recall it.**  
7 Q. Thank you. We may come back to that later  
8 on.  
9 In Exhibit 2, your declaration,  
10 paragraph 9 you also refer to secondary sources  
11 relevant to your opinions.  
12 Do you see that, sir?  
13 **A. Page 9?**  
14 **MS. LUKEY:** Paragraph 9.  
15 Q. Paragraph 9, page 4. The first sentence --  
16 end of the first sentence.  
17 **A. Yes, I see the statement.**  
18 Q. All right. And do you recall which  
19 secondary sources you consulted?  
20 **A. No, but I think I asked at some -- somewhere**  
21 **for --**  
22 **(Pause.)**  
23 **A. I think -- I think it was -- relating it**  
24 **from time to time as I was drafting my initial**

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1 **report, I would call Justin and ask him if he could,**  
2 **you know, look to something and just tell me if I'm**  
3 **getting some things right as to dates I think were**  
4 **important for me and the identity of the parties --**  
5 **'cause there were so many -- and I would sometimes**  
6 **go, wait a minute, which party are we talking about.**  
7 **That's what I mean by that.**  
8 Q. So you're not referring to Mass. practice or  
9 Newburg or class actions? When you refer to  
10 secondary sources or secondary sources, you're  
11 referring to Justin?  
12 **A. I'm referring to Justin; and, as you remind**  
13 **me, there were a couple of matters that Arnie found**  
14 **for me that I should read.**  
15 Q. Okay. All of us consider Justin to be a  
16 secondary source --  
17 **MS. LUKEY:** I consider him a primary  
18 source personally.  
19 Q. Sometimes the primary source.  
20 But you're not referring to any  
21 publications or practice guides or anything of that  
22 nature, correct?  
23 **A. To the extent that Arnie may have been**  
24 **looking at it -- as I say, Arnie Rosenberg --**

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1 **MS. LUKEY:** Rosenfeld.  
2 **A. -- Rosenfeld, because we'd sit as I was**  
3 **writing even matter of fact, and he'd -- you know,**  
4 **he'd offer. I have a great respect, first of all,**  
5 **for his experience especially as, you know, bar**  
6 **counsel.**  
7 Q. And did Attorney Rosenfeld provide to you  
8 legal framework for formulating your opinions?  
9 **A. No.**  
10 Q. All right. What did he do for you?  
11 **A. Answer my questions.**  
12 Q. What kinds of questions would you ask him?  
13 **A. I'd ask him if he had any -- do you recall**  
14 **anything when you were bar counsel with regards to**  
15 **certain -- which I thought similar issues.**  
16 **And then most of it was in the review of**  
17 **the professor's statement after we were provided**  
18 **with it.**  
19 Q. Did you look at the local rules --  
20 **A. But that didn't have anything to do with it**  
21 **because that came later. No, what I said about**  
22 **Arnie was as I would write something, I wanted him**  
23 **sort of to be my editor, and then I sent along --**  
24 **and really in the final analysis, you know, I went**

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1 **back and forth with Justin 'til we got it. There**  
2 **were other drafts. And Justin helped as well very**  
3 **much so.**  
4 Q. What did Justin do for you with respect to  
5 the drafts?  
6 **A. Well, when I was hired, I said that we were**  
7 **short one secretary already, and you're going to --**  
8 **you people are going to have to do a lot of this**  
9 **stuff for me.**  
10 Q. All right.  
11 **A. We had one of our secretaries was out --**  
12 **cancer.**  
13 Q. So Justin did some work for you, secretarial  
14 work?  
15 **A. Well, the firm did it.**  
16 Q. All right. What else did they do?  
17 **A. I'd express opinions and ask him, you know,**  
18 **if I've stated it right and stuff.**  
19 Q. So he helped you frame your opinions?  
20 **A. He helped. Joan helped. And then I just**  
21 **had to review it in my own mind as to the -- what I**  
22 **felt very comfortable in expressing, and on the**  
23 **basis of my experience I could back up what I was**  
24 **saying.**

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1 Q. Did you or the firm -- by that I mean Justin  
2 and Joan and others at the firm -- draft the  
3 opinions in your declaration?  
4 **A. In my declaration?**  
5 Q. Yes, sir. The one we're looking at right  
6 now.  
7 **A. This is a result of what I had submitted as**  
8 **we went over these things.**  
9 Q. Yep. But who --  
10 **A. They --**  
11 Q. -- who first came up with these opinions?  
12 **A. Me.**  
13 Q. So you didn't just ratify what they had  
14 drafted. You -- you were the, quote, President  
15 Bush; you were the decider; you were the one who --  
16 **A. Oh, absolutely. I'm not going to sign**  
17 **something that I'm not.**  
18 Q. All right. And I'm not saying that you'd  
19 sign something you weren't comfortable with, but did  
20 you draft these opinions initially or did someone  
21 else?  
22 **A. No, I drafted -- I stated the opinions**  
23 **initially. In terms of how it got typed up and**  
24 **whatnot, they did it for me because I did not have a**

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1 **secretary.**  
2 Q. So their assistance was strictly clerical?  
3 **A. Yes -- well, no. You know, they had a --**  
4 **they're good lawyers. They knew a lot more I would**  
5 **think than I had about the case 'cause they'd been**  
6 **involved with it since it began.**  
7 **So I wouldn't just call them**  
8 **secretarial, no. They were most helpful in my**  
9 **expressing -- in my reaching the expression of my**  
10 **opinion that appears here.**  
11 Q. How so? Can you give me an example of that  
12 interaction?  
13 **A. I would go back and forth with Justin 'cause**  
14 **I know we were nearing a time when it was due. And**  
15 **I'd yet -- he'd finish up or the secretary, she was**  
16 **also helpful. Get something over to me. I'd go**  
17 **through it. I'd scratch out certain things.**  
18 **If I had a question about who this**  
19 **person was or that person, I'd pick up, and Justin**  
20 **would explain to me who they were. You know, the**  
21 **ERISA people and then the -- all the different**  
22 **parties that became involved. Those were questions**  
23 **I sometimes wanted to make sure I had everybody**  
24 **right.**

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1 **And then the format, I insisted on this**  
2 **format.**  
3 Q. But their assistance beyond the clerical,  
4 the secondary sources --  
5 **A. Yeah, because they knew a lot more than I**  
6 **did.**  
7 Q. Okay. Did they --  
8 **A. And they answered my questions.**  
9 Q. Did you question them about the applicable  
10 law?  
11 **A. I knew the applicable law in Massachusetts.**  
12 Q. All right. Did you consult any sources to  
13 verify your knowledge of the applicable law?  
14 **A. Well, I went back and looked at some of my**  
15 **own work when I was at the MBA. I looked up --**  
16 **couldn't find it, but I knew the filing of the**  
17 **motion in the supreme judicial court back in the**  
18 **eighties.**  
19 **Then I called a friend who was a party**  
20 **to it, Mike Mone. He was very ill, and I didn't**  
21 **really push it. But things like that.**  
22 **I tried to be as -- especially with the**  
23 **development of the rule through the years -- be as**  
24 **accurate as I could be.**

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1 Q. All right. Did you look at the local rules  
2 for the Massachusetts Federal Court?  
3 **A. Yes, I -- we went to the federal to get 52**  
4 **something I think that adopts the Massachusetts**  
5 **rules.**  
6 Q. So you looked at that. Did you look at  
7 federal common law at all?  
8 **A. I didn't look up any cases.**  
9 Q. All right. Are you familiar with the Agent  
10 Orange case?  
11 **A. No.**  
12 Q. And --  
13 **A. Well, I'm familiar with it because of a dear**  
14 **friend who was subjected to it in Vietnam.**  
15 Q. You're familiar with a victim, but you  
16 didn't look that case up with respect to your  
17 formulation of your opinions?  
18 **MR. HEIMANN:** That's really vague.  
19 There are so many Agent Oranges.  
20 **MS. LUKEY:** That's vague. There's so  
21 many Agent Orange. There's dozens.  
22 **MR. SINNOTT:** Yeah, that's true.  
23 **A. Well, I have a son who's a marine beret.**  
24 Q. Let me just back up. Just for the record,

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1 in re Agent Orange case that we've been discussing  
2 or that we discussed yesterday was a second circuit  
3 case from 1985 in re Agent Orange 611 F Supp 1267  
4 affirm 818 F.2d 187 in the second circuit.  
5 But you're not familiar with that case,  
6 correct?  
7 **A. No.**  
8 Q. I'm sorry, sir. I cut you off. Were you  
9 about to add something?  
10 **A. No.**  
11 Q. Now in your declaration in the following  
12 paragraph, paragraph 10, in that first sentence it  
13 says: "In mid 2008 Arkansas..." -- and I'll stick  
14 with that shorthand as I read through it --  
15 "...issued a request for qualifications, an RFQ,  
16 which invited firms to submit qualifications to  
17 become additional securities monitoring counsel for  
18 the retirement fund."  
19 And then it goes on to say, Chargois &  
20 Herron partner, Tim Herron, had previously  
21 facilitated the introduction of Labaton partners to  
22 certain officials in Arkansas who played a role with  
23 respect to ARTRS or Arkansas.  
24 Do you see that, sir?

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1 **A. Yes, sir.**  
2 Q. Now are you aware that Chargois testified in  
3 his deposition that Herron had told Chargois about  
4 Hopkins' predecessor, Paul Doane, and that Chargois  
5 then cold called him? Are you familiar with that  
6 fact?  
7 **A. Yes.**  
8 Q. All right. And how are you familiar with  
9 that?  
10 **A. I was told that that's what happened.**  
11 Q. All right. But you weren't shown Chargois'  
12 deposition?  
13 **A. No, I don't believe I did.**  
14 Q. All right. So you're aware that Chargois &  
15 Herron did not have a previous relationship with  
16 Arkansas, are you not?  
17 **A. I don't understand the question.**  
18 Q. Did Arkansas have a prior relationship with  
19 Chargois & Herron?  
20 **A. You mean on a different case? I don't know**  
21 **that.**  
22 Q. All right. In any capacity?  
23 **A. I don't know.**  
24 Q. Then it goes on to say in 10 that the plan

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1 was that Labaton would serve as the monitoring  
2 counsel and lead counsel on any litigation matters  
3 and Chargois & Herron with its Arkansas connections  
4 and presence would work with the client. Do you see  
5 that?  
6 **A. Yes.**  
7 Q. Are you aware that Chargois & Herron did not  
8 retain a local presence at anytime during the State  
9 Street case after 2009 or 2010?  
10 **A. I knew that at some time they had abandoned**  
11 **their Arkansas office, and I gather they -- I think**  
12 **the other office is in Texas.**  
13 Q. Yes, sir. All right. So you were aware of  
14 that?  
15 **A. Yes.**  
16 Q. All right. So you're aware that Arkansas --  
17 that Chargois & Herron was not in a position to do  
18 any local counsel work in Arkansas for Labaton,  
19 correct?  
20 **MS. LUKEY: Objection.**  
21 **A. Well, I was aware --**  
22 Q. After 2009 or 10.  
23 **MS. LUKEY: Objection.**  
24 **A. I was aware that the relationship was**

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1 **between Mr. Hopkins and Labaton, and it continued**  
2 **throughout the course of this.**  
3 Q. All right. And you've testified that you  
4 were not aware that until you saw the declaration of  
5 Mr. Hopkins that he did not know about Mr. Chargois,  
6 correct?  
7 **A. I don't know what you mean by he did not**  
8 **know of them. They submitted a joint proposal. So**  
9 **the papers must have been there that included**  
10 **Chargois as well.**  
11 Q. Well, and you saw -- and why do you say it  
12 must have been there? Have you seen his name in  
13 there?  
14 **A. No. I was advised that the initial**  
15 **submission was a submission by both firms.**  
16 Q. Oh, the submission to Arkansas --  
17 **A. Yes.**  
18 Q. -- the RFQ.  
19 **A. Yes. So it must be in their records.**  
20 Q. All right. And that was knowledge as far as  
21 you were concerned?  
22 **A. That was knowledge I assumed.**  
23 Q. Even though -- go ahead, sir.  
24 **A. And if in fact they did do it, they**

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1 submitted it. There was a change-over -- I forget  
 2 the papers I saw on that -- between -- it may have  
 3 occurred with -- oh, it's Mr. Hopkins I think who  
 4 succeeded the previous person that was there.  
 5 But the submission is to the  
 6 institution, and that first submission included  
 7 Chargois and Labaton.  
 8 MR. SINNOTT: Go ahead, judge.  
 9 THE SPECIAL MASTER: You understand that  
 10 that submission dealt with the possibility that  
 11 Chargois & Herron would be included as monitoring  
 12 counsel, not as a substantive lawyer in -- or local  
 13 counsel -- in cases? You understand that?  
 14 THE WITNESS: Yes. As they submitted,  
 15 both firms were identified.  
 16 THE SPECIAL MASTER: As prospective  
 17 monitoring counsels, right?  
 18 THE WITNESS: 'Cause there has to be  
 19 monitoring at the beginning, right?  
 20 THE SPECIAL MASTER: But that this  
 21 submission did not relate to a specific matter. You  
 22 understand that?  
 23 THE WITNESS: Yes.  
 24 THE SPECIAL MASTER: And you also

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1 understand that the general counsel for Arkansas  
 2 Teachers rejected in an e-mail or a letter  
 3 Mr. Chargois' firm as monitoring counsel --  
 4 MS. LUKEY: Objection.  
 5 THE WITNESS: That they --  
 6 THE SPECIAL MASTER: You understand  
 7 that?  
 8 MS. LUKEY: Objection.  
 9 THE WITNESS: I didn't understand it as  
 10 a rejection. I understood it as they wanted to sign  
 11 a contract with one firm, and that firm was to be  
 12 Labaton.  
 13 I did not -- and I don't know that there  
 14 ever was a rejection. They just wanted to deal with  
 15 one.  
 16 BY MR. SINNOTT:  
 17 Q. Well, let me just quote Christa Clark's  
 18 e-mail in part to Labaton.  
 19 "Your firm may affiliate that firm or  
 20 use them as independent contractors if you deem..."  
 21 -- and it says if; it should be it --  
 22 "...appropriate on a case-by-case basis. There  
 23 would be no requirement that you use them if it was  
 24 not a necessary and appropriate expense of a case."

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1 So that statement, does it not,  
 2 indicates that essentially Labaton's as free to hire  
 3 them if it's necessary and appropriate as anyone  
 4 else, correct?  
 5 A. Yes.  
 6 Q. But it's your testimony that that  
 7 constituted knowledge on the part of Arkansas as to  
 8 Damon Chargois' role or Chargois & Herron's role in  
 9 this case?  
 10 MS. LUKEY: Objection.  
 11 A. It signifies to me that it was up to Labaton  
 12 to do what it thought best in the representation of  
 13 Arkansas retirement. And I gather that they did in  
 14 fact maintain Chargois in some form.  
 15 Q. That's your conclusion?  
 16 A. Yes, that is my conclusion.  
 17 THE SPECIAL MASTER: Let me -- let me  
 18 put a finer point on it.  
 19 Is it your testimony that that complies  
 20 with the requirements of Rule 1.5(e)?  
 21 THE WITNESS: I don't see a -- let me  
 22 put it this way. There's no violation of that rule.  
 23 THE SPECIAL MASTER: Not my question,  
 24 Mr. Sarrouf. I'm sorry.

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1 THE WITNESS: Well, it's the violation  
 2 of the rule that we're talking about.  
 3 THE SPECIAL MASTER: Mr. Sarrouf, please  
 4 answer my question.  
 5 THE WITNESS: I will.  
 6 THE SPECIAL MASTER: Please.  
 7 THE WITNESS: Yes.  
 8 THE SPECIAL MASTER: The question is is  
 9 it your testimony that that complies with Rule  
 10 1.5(e)?  
 11 MS. LUKEY: Objection.  
 12 THE WITNESS: It's my testimony that  
 13 with the intent of 1.5-2 --  
 14 THE SPECIAL MASTER: I'm sorry?  
 15 THE WITNESS: -- there is no violation  
 16 of it.  
 17 THE SPECIAL MASTER: 1.5-2?  
 18 THE WITNESS: Is that what you asked me?  
 19 THE SPECIAL MASTER: No, 1.5(e).  
 20 MS. LUKEY: 1.5(e).  
 21 THE WITNESS: 1.5(e).  
 22 THE SPECIAL MASTER: I'm sorry, did you  
 23 finish your answer?  
 24 THE WITNESS: Yes.

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1 **THE SPECIAL MASTER:** I didn't hear the  
2 finish of it. Could you have that read back for me?  
3 (Reporter read back.)  
4 **THE SPECIAL MASTER:** Is that the same as  
5 saying that what you are relying upon there in the  
6 joint application for the monitoring and Christa  
7 Clark's response to that, that complies with the  
8 requirements of Rule 1.5(e)?  
9 **MS. LUKEY:** Objection.  
10 **THE WITNESS:** In the form of the  
11 response, I do not believe there's been a violation  
12 of the rule.  
13 **THE SPECIAL MASTER:** All right. Let's  
14 go through the rule. Okay?  
15 **THE WITNESS:** Okay.  
16 **MS. LUKEY:** Can I ask a question? Are  
17 you asking him whether it complies for purposes of  
18 State Street?  
19 **THE SPECIAL MASTER:** For State Street.  
20 **MS. LUKEY:** I'm not sure --  
21 **THE SPECIAL MASTER:** You're right, Joan.  
22 I better rephrase my question.  
23 Is it your testimony that what you are  
24 referring to here -- and by that I mean the

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1 application for the joint application for the  
2 monitoring and Christa Clark's letter, whether it's  
3 characterized as a rejection of Chargois & Herron or  
4 some other construction, complies with the  
5 requirements of Rule 1.5(e) as it relates to  
6 Chargois' receipt of a fee in the State Street case?  
7 **THE WITNESS:** The answer's yes.  
8 **THE SPECIAL MASTER:** Let's go through  
9 the rule.  
10 **THE WITNESS:** Okay.  
11 **THE SPECIAL MASTER:** And I understand  
12 that this is not the rule that was in effect at the  
13 time --  
14 **MS. LUKEY:** Standing objection.  
15 **THE SPECIAL MASTER:** And I'll give you  
16 the standing objection.  
17 But the Saggese case was in effect at  
18 the time, and I think all of us can all agree that  
19 Saggese at least governed the conduct of lawyers as  
20 to referral fees.  
21 Is there any objection to that?  
22 Once the rescript was handed down in  
23 2005.  
24 **MS. LUKEY:** My point was that I think

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1 there's case law that suggests if it's not yet  
2 incorporated in the rule that's a mitigating  
3 factor --  
4 **THE SPECIAL MASTER:** It can be a  
5 mitigating factor, but the question is whether or  
6 not it complies with the rule, the Saggese rule or  
7 the rule. Okay?  
8 **MR. HEIMANN:** Can I just ask for a point  
9 of clarification? I understand the question you're  
10 asking about his opinion, but I didn't understand he  
11 was expressing an opinion about the matter you're  
12 questioning him in his report. He's not proposing  
13 to testify about that.  
14 **THE SPECIAL MASTER:** Let's not have  
15 testimony for him, please.  
16 **MR. HEIMANN:** Well --  
17 **THE SPECIAL MASTER:** I just want him to  
18 answer my question, Richard.  
19 **MR. HEIMANN:** Okay.  
20 **THE SPECIAL MASTER:** Just answer my  
21 question. That's all I want.  
22 **MR. HEIMANN:** Okay, judge, but I just  
23 want to make clear as I read the report, he's not  
24 opining on the question you're asking.

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1 **THE SPECIAL MASTER:** He's offered as an  
2 expert.  
3 **MS. LUKEY:** His opinions are a little  
4 more narrower, your Honor.  
5 **THE SPECIAL MASTER:** All right. My  
6 question --  
7 **PHONE LINE CONFERENCE:** The following  
8 participant has entered the conference: Sarko.  
9 **THE SPECIAL MASTER:** My question is is  
10 it your view that the application for the monitoring  
11 agreement coupled with Christa Clark's response to  
12 it constitutes compliance with Saggese -- the rule  
13 of the Saggese case and Rule 1.5(e) for purposes of  
14 the fee that Mr. Chargois received in the State  
15 Street case?  
16 **THE WITNESS:** The fee Chargois was to  
17 receive came, did it not, from the fee that was  
18 awarded custom -- for the so-called customers'  
19 attorneys, right?  
20 It did not come from the customer. It  
21 did not get paid by the --  
22 **THE SPECIAL MASTER:** That's a much more  
23 complicated question than you think. So my -- my  
24 question to you is --

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1     **THE WITNESS:** It did not -- well, what I  
2     want to make sure is I am assuming that that fee  
3     came from the fee that was awarded Labaton, right?  
4     The customers' counsel.  
5     **THE SPECIAL MASTER:** That is something  
6     that --  
7     **THE WITNESS:** And that it did not come  
8     from the customer. And then to the extent that that  
9     is --  
10    **THE SPECIAL MASTER:** This was a --  
11    **THE WITNESS:** What?  
12    **THE SPECIAL MASTER:** This was a class  
13    action.  
14    **THE WITNESS:** Yep but --  
15    **THE SPECIAL MASTER:** There was class  
16    fees from which the attorneys' fees came from which  
17    Mr. Chargois was paid.  
18    **THE WITNESS:** From which, that's fine.  
19    Yes, that's my understanding.  
20    **THE SPECIAL MASTER:** Okay.  
21    With that understanding, do you believe  
22    that the monitoring agreement and Christa Clark's  
23    e-mail response to it constitutes compliance with  
24    the Saggese case and compliance with Rule 1.5(e)

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1     for --  
2     **THE WITNESS:** That is my --  
3     **THE SPECIAL MASTER:** -- for purposes --  
4     **PHONE LINE CONFERENCE:** The following  
5     participant has entered the conference: Bob Lieff.  
6     **THE SPECIAL MASTER:** -- for purposes of  
7     the fee that Mr. Chargois received in the State  
8     Street case?  
9     **THE WITNESS:** That is in compliance with  
10    the rule. The fee did not come from the client.  
11    And that's what the Saggese case focuses on.  
12    **THE SPECIAL MASTER:** You understand that  
13    this is a class action?  
14    **THE WITNESS:** I do understand that.  
15    **THE SPECIAL MASTER:** And there is no fee  
16    period until a judge awards a fee period.  
17    **THE WITNESS:** But the judge did in this  
18    instance.  
19    **THE SPECIAL MASTER:** All right. The  
20    judge was not advised of the Chargois relationship  
21    at all --  
22    **THE WITNESS:** I never provided a judge,  
23    unless they asked, with that knowledge in any case  
24    I've ever --

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1     **MR. HEIMANN:** Hey, guys on the phone.  
2     **THE SPECIAL MASTER:** Guys on the  
3     phone --  
4     **MR. SINNOTT:** Hello on the phone?  
5     **MS. LUKEY:** On the phone.  
6     **THE REPORTER:** Off the record?  
7     **MR. HEIMANN:** Let's go off the record.  
8     (Off the record.)  
9     **THE SPECIAL MASTER:** We're talking about  
10    Rule 1.5(e). I now have in front of me the March  
11    15, 2011 rule which looks to be substantially the  
12    same as the rule we've been looking at.  
13    **MS. McEVOY:** Judge, just give me a  
14    sec --  
15    **MS. LUKEY:** The previous one, if anyone  
16    wants it, is footnoted in the Saggese case. That's  
17    the only way I could find it.  
18    **THE SPECIAL MASTER:** The question I was  
19    going to ask is can we treat the rule that was  
20    adopted March 15, 2011 as encompassing the Saggese  
21    case?  
22    **MS. LUKEY:** Yes. My understanding is  
23    that that was what that rule was meant to do.  
24    **MS. McEVOY:** Excuse me, judge.

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1     **MS. LUKEY:** Which one did you give him?  
2     **MS. McEVOY:** Until 2011. So this is the  
3     one --  
4     **THE SPECIAL MASTER:** Oh, this is the one  
5     until 2011.  
6     **MS. McEVOY:** Let me print out the other  
7     one.  
8     **MS. LUKEY:** If you found that, can I get  
9     a copy of it? Because all I have is a footnote.  
10    Just e-mail it to me.  
11    **MS. McEVOY:** Yeah, I think the  
12    difficulty is that -- well, definitely, yes, I will  
13    work on getting a copy for everybody.  
14    (Pause.)  
15    **THE SPECIAL MASTER:** I don't think  
16    there's much difference in substance between the  
17    March 15 Saggese rule -- March 15, 2011 Saggese rule  
18    and the rule we've been using here. Is there?  
19    **MS. LUKEY:** The March 11, 2015 rule and  
20    the current rule are, as I understand it, extremely  
21    close. I don't think there's a material difference.  
22    The difference was the prior one didn't  
23    have the writing requirement or the timing  
24    requirement.

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1     **THE SPECIAL MASTER:** So I've been handed  
2 a rule that says text of rule effective until March  
3 15, 2011. There was an interim rule I think because  
4 this one does have the writing requirement in it.  
5     **MS. LUKEY:** If the -- that I don't -- my  
6 understanding is until March 11 -- I'm sorry -- 'til  
7 March 15, 2011 the rule was the one that Saggese was  
8 addressing before they changed it --  
9     **THE SPECIAL MASTER:** Yeah.  
10    **MS. LUKEY:** -- with the text. I  
11 couldn't find it.  
12    **THE SPECIAL MASTER:** There must have  
13 been an interim rule because -- let me just read it  
14 into the record.  
15    It is largely the Saggese rule. It's  
16 got a little bit of a language difference, and it's  
17 largely the rule that we've been talking about post  
18 March 15th.  
19    **MS. LUKEY:** You can read it because I  
20 have not been able to get the text.  
21    **THE SPECIAL MASTER:** Here it is -- I  
22 think we just got it.  
23    "A division of a fee, including a  
24 referral fee, between lawyers who are not in the

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1 same firm may be made only if the client is notified  
2 before or at the time the client enters into a fee  
3 agreement for the matter that a division of fees  
4 will be made and consents to the joint participation  
5 in writing, and the total fee is reasonable."  
6    **MS. LUKEY:** Yeah, I don't know when  
7 writing came in because I thought that was not in  
8 there until March 15, 2011.  
9    **THE SPECIAL MASTER:** Well, here. You'll  
10 have to ask Elizabeth what the source is but --  
11    **MS. McEVOY:** These are historical.  
12    **MS. LUKEY:** I'll have to look. I  
13 thought what the Saggese rule said which didn't have  
14 the writing --  
15    **THE SPECIAL MASTER:** That was in 2005.  
16    **MS. LUKEY:** Right.  
17    **THE SPECIAL MASTER:** And I think there  
18 was -- Mr. Sarrouf may know this -- there was an  
19 interim rule to cover Saggese until it was finalized  
20 which was then adopted in December by the supreme  
21 court --  
22    **MS. LUKEY:** -- to be effective --  
23    **THE SPECIAL MASTER:** -- to be effective  
24 March 15th.

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1     At any rate, going to your question,  
2 sir, or my question to you -- your answer -- that  
3 the monitoring agreement complied -- the monitoring  
4 agreement and Christa Clark's e-mail response  
5 complied with the rule, let's go through each piece  
6 of the rule.  
7     **THE WITNESS:** Okay.  
8     **THE SPECIAL MASTER:** And I'm going to  
9 use the rule -- yeah. I'll use -- since the witness  
10 has that in front of him, I'll use that rule because  
11 it's substantially the same.  
12    **MS. LUKEY:** Right.  
13    **THE SPECIAL MASTER:** A division of a fee  
14 between lawyers who are not in the same firm.  
15 That's what we have here, correct?  
16    **THE WITNESS:** Yes, it is.  
17    **THE SPECIAL MASTER:** May be made only if  
18 the client is notified before or at the time the  
19 client enters into a fee agreement for the matter  
20 that a division of fees will be made.  
21    You're not trying to testify that this  
22 was -- that the monitoring agreement and the Christa  
23 Clark e-mail was for the matter that the division of  
24 fees will be made, are you?

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1     **THE WITNESS:** What is the question now?  
2 What is the question you're putting to me with  
3 regards to that?  
4     **THE SPECIAL MASTER:** Very simply,  
5 whether or not the monitoring agreement and the  
6 Christa Clark e-mail --  
7     **THE WITNESS:** Yes?  
8     **THE SPECIAL MASTER:** -- constitutes  
9 compliance with the rule and specifically now the  
10 notification requirement which requires that it be  
11 entered into for the matter that the division of fee  
12 will be made.  
13    **THE WITNESS:** Yes?  
14    **THE SPECIAL MASTER:** The matter that the  
15 division of fee will be made would have to be the  
16 State Street case?  
17    **THE WITNESS:** Yes?  
18    **THE SPECIAL MASTER:** Your view --  
19    **THE WITNESS:** What you have --  
20    **THE SPECIAL MASTER:** There was no State  
21 Street case at that point.  
22    **THE WITNESS:** There certainly was the  
23 attempt to create one, right? They were there for  
24 that purpose, were they not?

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1 **THE SPECIAL MASTER:** No. They were  
2 there to be considered as monitoring counsel --  
3 **THE WITNESS:** Yes.  
4 **THE SPECIAL MASTER:** -- which is  
5 different than acting as a lawyer in a class action  
6 to represent a class representative.  
7 **THE WITNESS:** But that was what was  
8 ultimately going to happen was to bring such a case,  
9 was it not?  
10 **THE SPECIAL MASTER:** The role of  
11 monitoring -- are you aware that ATRS had, I  
12 believe, five different monitoring counsel? Did you  
13 know that?  
14 **THE WITNESS:** No, I'm not aware of that.  
15 **THE SPECIAL MASTER:** The testimony -- I  
16 think Mr. Hopkins testified that Labaton was I  
17 believe the fifth monitoring counsel.  
18 **THE WITNESS:** (Nods head.)  
19 **THE SPECIAL MASTER:** And that they were  
20 -- the RFP -- you know what an RFP is?  
21 **THE WITNESS:** Yes, I do. Request for  
22 proposals. Yes.  
23 **THE SPECIAL MASTER:** The RFP that went  
24 out, which was jointly applied to by Labaton and the

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1 Chargois & Herron firm, was for monitoring counsel.  
2 **THE WITNESS:** Yes.  
3 **THE SPECIAL MASTER:** So how could that  
4 be an appropriate compliance for the division of the  
5 fee that the client enters into for the matter that  
6 the division of fee would be made?  
7 **THE WITNESS:** What was the purpose of  
8 the monitoring?  
9 The monitoring purpose was, look, we  
10 have a problem, and we want to recoup monies. You  
11 monitor -- when you finish your monitoring, you then  
12 enter into a lawsuit, do you not? The class action  
13 was certified thereafter?  
14 **THE SPECIAL MASTER:** The testimony was  
15 that the role that monitoring counsel played was to  
16 monitor the various investments the funds had to  
17 ensure that there was compliance and to determine  
18 whether or not the fund and its members were in any  
19 way being cheated.  
20 **THE WITNESS:** And they came to that  
21 conclusion, did they not?  
22 **THE SPECIAL MASTER:** You're saying that  
23 that's the same as being entered into as a fee  
24 agreement for the matter that a division of fees

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1 will be made?  
2 **THE WITNESS:** Yes.  
3 **THE SPECIAL MASTER:** Okay. And are you  
4 saying that Christa Clark's response, the e-mail  
5 response, constitute consents -- consent to the  
6 joint participation in writing?  
7 **THE WITNESS:** And you're still talking  
8 about a time period immediately after the joint  
9 submission, right?  
10 **THE SPECIAL MASTER:** I'm talking  
11 about --  
12 **THE WITNESS:** I think that is --  
13 **THE SPECIAL MASTER:** -- to narrow it  
14 down.  
15 **THE WITNESS:** It is sufficient.  
16 **THE SPECIAL MASTER:** Christa Clark's  
17 e-mail was sufficient to constitute consent?  
18 **THE WITNESS:** Yes.  
19 **THE SPECIAL MASTER:** For the State  
20 Street matter and the Chargois fee arrangement  
21 itself?  
22 **THE WITNESS:** With the subsequent  
23 there's some other communications back and forth,  
24 the answer is yes.

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1 **THE SPECIAL MASTER:** Okay.  
2 **BY MR. SINNOTT:**  
3 Q. All right. Counsel, let me direct your  
4 attention to your declaration again and ask you to  
5 go to paragraph 14.  
6 The second sentence I believe or the  
7 third after the parentheses reads: "Labaton  
8 informed Lieff and Thornton that it had a  
9 fee-sharing obligation to Chargois & Herron. All  
10 three firms agreed to share the burden equally for  
11 that obligation."  
12 Do you see that, sir?  
13 **A. I do.**  
14 Q. What was your understanding as to what  
15 information was provided by Labaton to Lieff and  
16 Thornton regarding Chargois?  
17 **A. You mean beyond the fact that they felt they  
18 had an obligation?**  
19 Q. Yes. What were the facts that were shared?  
20 If you know of any.  
21 **A. I do not know, but I don't think it was  
22 necessary for my expression as an expert in this  
23 case.**  
24 Q. So you don't believe that the communications

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1 from Labaton to Lieff and Thornton were relevant as  
2 to Labaton's obligations or their obligations?  
3 **A. No. My concern was was there any situation**  
4 **in which the fee that would go to Chargois would**  
5 **come from any part of the plaintiffs or their**  
6 **clients' funds due them, and it did not.**  
7 Q. And with respect to that relationship,  
8 that's the only thing that mattered as far as you  
9 were concerned?  
10 **A. As far as the rule as I understand it and**  
11 **the reasonings behind the rule, it is to protect the**  
12 **plaintiff or the customer here. And the customer**  
13 **was protected under these circumstances.**  
14 Q. And would those customers include the class  
15 members?  
16 **A. It would include the retirement fund.**  
17 Q. All right.  
18 **A. The entire process of it.**  
19 Q. Were the class members protected?  
20 **A. You're talking about each member of the**  
21 **teacher retirement program? I think each one was**  
22 **protected --**  
23 Q. All right.  
24 **A. -- adequately represented by their -- by**

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1 **Mr. Hopkins who was their administrator.**  
2 Q. Now were you aware that Labaton and others  
3 in the customer class represented to Judge Wolf that  
4 they were representing the ERISA class as well?  
5 **MR. HEIMANN:** Objection.  
6 **MS. LUKEY:** Objection.  
7 Q. Are you aware of that?  
8 **A. You mean subsequent to the agreement they**  
9 **had reached with the ERISA attorneys?**  
10 Q. Prior to and subsequent.  
11 **MS. LUKEY:** Objection.  
12 **A. I don't understand the question. I'm sorry.**  
13 Q. Would it make a difference in your opinion  
14 if the customer class counsel had claimed that they  
15 represented the ERISA class members?  
16 **MS. LUKEY:** Objection.  
17 **MR. HEIMANN:** Objection. There was no  
18 ERISA class. There was no ERISA class counsel.  
19 Q. ERISA class members.  
20 **MS. LUKEY:** Objection.  
21 Q. Would that make a difference to you?  
22 **A. No.**  
23 Q. And why not?  
24 **A. Because the concern here is the protection**

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1 **of the customer or here the agreement that had been**  
2 **reached with the customer as to what the fee would**  
3 **be.**  
4 Q. And you're limiting the customer to Arkansas  
5 Retired Teachers Fund?  
6 **A. That's who they were representing.**  
7 Q. All right. And you're not -- your concern  
8 is not with ERISA, correct?  
9 **A. I don't know what you mean by "my concern**  
10 **with ERISA." ERISA --**  
11 Q. As far as protecting members.  
12 **A. Well, their lawyers had come to an agreement**  
13 **in the initial I assume collaboration on what was**  
14 **going to -- how they were going to handle this**  
15 **matter, was it at 9 percent, sometime later they had**  
16 **further discussions, and they moved it up to 10**  
17 **percent. All the lawyers agreed to it.**  
18 **They were operating within the confines**  
19 **of what was provided to be the fee. And they shared**  
20 **them properly with them.**  
21 **THE SPECIAL MASTER:** Are you saying that  
22 Arkansas Teachers Retirement System represented the  
23 ERISA members as well and that Mr. Hopkins could  
24 speak for the ERISA members?

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1 **THE WITNESS:** No. What I'm saying is  
2 the ERISA lawyers had a right and a responsibility  
3 to represent the ERISA clients that they had, and  
4 they entered into negotiations with the other  
5 lawyers as to how they were going to handle the  
6 fees.  
7 **THE SPECIAL MASTER:** Okay. So --  
8 **THE WITNESS:** And it didn't apply to  
9 either the ERISA clients, nor did it apply to the  
10 Arkansas clients. That had already been determined.  
11 **THE SPECIAL MASTER:** And determined by  
12 the lawyers amongst themselves, yes?  
13 **THE WITNESS:** Yes, as to their fees was  
14 what was being distributed.  
15 **THE SPECIAL MASTER:** Mr. Sarrouf, you  
16 understand there is no fee until the Court says  
17 there is a fee? You understand that?  
18 **THE WITNESS:** Well, I understand that  
19 that is in finality, but when they were agreeing  
20 with each other and discussing it with each other,  
21 they had an understanding of what they were talking  
22 about.  
23 **THE SPECIAL MASTER:** Do you think that  
24 the ERISA lawyers were fully informed such that they

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1 could in the first instance agree to their fee and  
2 in the second instance inform their ERISA clients  
3 who were named plaintiffs in these two other  
4 lawsuits that were consolidated for purposes of  
5 discovery and mediation?  
6 **MS. LUKEY:** Objection.  
7 **THE WITNESS:** When they undertook their  
8 negotiations, each representing their own clients, a  
9 determination had been made, had it not, as to what  
10 was going to be the subject matter of the  
11 distributions between counsel. Isn't that correct?  
12 **THE SPECIAL MASTER:** Well, that's a  
13 question in the case as to what the ERISA -- as to  
14 what the ERISA lawyers knew, when they knew it, what  
15 they could inform their clients of, what they could  
16 inform -- you may not know this, but there were  
17 other actors in the settlement, the Department of  
18 Labor, the Securities & Exchange Commission and the  
19 Department of Justice.  
20 **THE WITNESS:** Yep.  
21 **THE SPECIAL MASTER:** So a question in  
22 the case is what the ERISA lawyers knew, when they  
23 knew it and what they could inform their clients of  
24 and also the Department of Labor which had a

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1 responsibility for overseeing the "ERISA-fied" funds  
2 and plans.  
3 **THE WITNESS:** But at that time everyone  
4 knew what was the fees allocated to the  
5 representatives of the Arkansas retirement, right?  
6 **THE SPECIAL MASTER:** Well, let's talk  
7 about what "at that time" means.  
8 At the time they negotiated their fee  
9 they did not know of the existence of Mr. Chargois;  
10 they did not know of the obligation to pay  
11 Mr. Chargois some percentage of the ultimate fee;  
12 they did not know that Mr. Chargois had a  
13 long-standing arrangement with the Labaton firm to  
14 receive a percentage of all fees that Labaton  
15 received as lead counsel in which Arkansas was lead  
16 plaintiff. They did not know any of those things.  
17 And, by the way, Mr. Lieff testified he  
18 didn't know either. He knew some of them I suppose,  
19 but he did not -- he testified he did not know  
20 either.  
21 So at the time the fee was negotiated,  
22 the ERISA lawyers did not know any of these things  
23 and were not in a position to inform their clients.  
24 Did you know that?

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1 **MS. LUKEY:** Objection.  
2 **THE WITNESS:** All right. I know that.  
3 Okay?  
4 **THE SPECIAL MASTER:** Okay. So how could  
5 they have made a knowing decision on an appropriate  
6 size of their fee, and how could they have informed  
7 their clients, one of which was a trust, the others  
8 of which as class representatives were individual  
9 members of ERISA-fied pension plans -- if they  
10 didn't know, how could they have informed their  
11 clients?  
12 **MR. HEIMANN:** Objection.  
13 **MS. LUKEY:** Objection.  
14 **THE SPECIAL MASTER:** Okay.  
15 **THE WITNESS:** They did know the amount  
16 that had been assigned to Labaton, right?  
17 **THE SPECIAL MASTER:** Well, even that  
18 they didn't know because the Court hadn't approved  
19 it. But actually --  
20 **THE WITNESS:** But in their discussions?  
21 **THE SPECIAL MASTER:** I think the facts  
22 show that at the time that the ERISA lawyers made  
23 their agreement for first the 9 percent, nobody knew  
24 how much the fees were going to be.

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1 **THE WITNESS:** Okay.  
2 **THE SPECIAL MASTER:** It was not at all  
3 resolved. It wasn't even resolved between the  
4 customer class lawyers.  
5 My question to you is twofold, and I'll  
6 ask it one at a time.  
7 **THE WITNESS:** Okay.  
8 **THE SPECIAL MASTER:** How could the ERISA  
9 lawyers have made a knowing decision as to what an  
10 appropriate attorney fee was for them if they did  
11 not know about the existence of a fee that was going  
12 to be paid to Mr. Chargois who had never appeared in  
13 the case and done no -- had done no work in the  
14 case?  
15 **MS. LUKEY:** Objection.  
16 **THE WITNESS:** Because the amount of  
17 money that was to go to Chargois only came from what  
18 they knew --  
19 **PHONE LINE CONFERENCE:** The following  
20 participant has entered the conference.  
21 **THE SPECIAL MASTER:** I'm sorry.  
22 **THE WITNESS:** All right. Can I just  
23 have that part read back?  
24 (Reporter read back.)

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1 **THE WITNESS:** -- already was the amount  
2 assigned through Labaton for the other two --  
3 **THE SPECIAL MASTER:** Sir, there is  
4 absolutely --  
5 **THE WITNESS:** It's only coming from  
6 Labaton, nobody else. So if they knew what was  
7 coming to Labaton, it didn't matter what Labaton was  
8 going to do with that money.  
9 **THE SPECIAL MASTER:** I'm afraid, sir --  
10 **THE WITNESS:** So far as it affects  
11 anyone else in the case.  
12 **THE SPECIAL MASTER:** Your answer is  
13 assuming facts contrary to the evidence -- all of  
14 the evidence in the case.  
15 **MS. LUKEY:** Objection.  
16 **THE SPECIAL MASTER:** The evidence in the  
17 case is that at the time -- we're focusing only now  
18 at the time the original ERISA agreement was made.  
19 **THE WITNESS:** That's before they came to  
20 the next -- from 9 to 10.  
21 **THE SPECIAL MASTER:** To 10. But even at  
22 that time -- even at that time there had been no  
23 agreement as to how much the fee was going to be.  
24 There had been no agreement that it was going to

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1 just come from Labaton.  
2 In fact, the testimony is that at some  
3 time in 2013 the customer class lawyers agreed to  
4 share --  
5 **THE WITNESS:** That's my understanding as  
6 well.  
7 **MS. LUKEY:** Objection.  
8 **THE SPECIAL MASTER:** -- the obligation  
9 for Mr. Chargois as well.  
10 **MS. LUKEY:** Wait 'til he finishes so I  
11 can object.  
12 **THE WITNESS:** Okay.  
13 **MS. LUKEY:** Objection.  
14 **THE SPECIAL MASTER:** So how could the  
15 ERISA lawyers have made a knowing decision as to  
16 whether or not their slice of the whole fee when  
17 looked at in the context of the total fee of which  
18 Mr. Chargois was going to get some piece was  
19 reasonable?  
20 **MS. LUKEY:** Objection.  
21 **THE WITNESS:** Simply because the only  
22 place it was coming from was from Labaton. And they  
23 already knew or would know what was Labaton going to  
24 get.

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1 **THE SPECIAL MASTER:** Okay. Let me ask  
2 another question.  
3 You would agree --  
4 **THE WITNESS:** I hope.  
5 **THE SPECIAL MASTER:** I hope. -- that  
6 the ERISA lawyers had an obligation to their clients  
7 to keep them informed, correct?  
8 **THE WITNESS:** Absolutely.  
9 **THE SPECIAL MASTER:** Absolutely. And  
10 that would include, as set forth in Rule 1.5(e), the  
11 division of fees made to the lawyers in the case,  
12 correct?  
13 **THE WITNESS:** No.  
14 **MS. LUKEY:** No.  
15 **THE SPECIAL MASTER:** Who spoke for the  
16 ERISA lawyers -- I'm sorry -- for the members of the  
17 ERISA class?  
18 **THE WITNESS:** Their lawyers.  
19 **MR. HEIMANN:** Excuse me. Objection.  
20 There is no ERISA class.  
21 **MS. LUKEY:** There is no ERISA class.  
22 **THE SPECIAL MASTER:** Fine. Who spoke  
23 for the ERISA class members?  
24 **MR. HEIMANN:** The class lawyers. I'm

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1 sorry. I apologize.  
2 **THE SPECIAL MASTER:** Did you want to be  
3 put under oath, Richard?  
4 **MR. HEIMANN:** No, I just know the answer  
5 to the question. I'm sorry. I -- I --  
6 **THE WITNESS:** That would be my answer.  
7 **THE SPECIAL MASTER:** I'm not surprised  
8 after hearing it which is the problem but --  
9 **THE WITNESS:** I doubt very much --  
10 **THE SPECIAL MASTER:** -- at any rate...  
11 **THE WITNESS:** -- that anyone would speak  
12 for any client except the lawyers.  
13 **THE SPECIAL MASTER:** So who was the  
14 class representative for the ERISA members of the  
15 class?  
16 **THE WITNESS:** I have no idea.  
17 **THE SPECIAL MASTER:** Was Arkansas  
18 Teachers the class representative for members of the  
19 ERISA class?  
20 **MS. LUKEY:** Objection.  
21 **MR. HEIMANN:** There's no ERISA class,  
22 judge. I mean really.  
23 **MS. McEVOY:** The plan participants.  
24 **THE SPECIAL MASTER:** The plan

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1 participants.  
2 **THE WITNESS:** Were represented by  
3 counsel, were they not?  
4 **THE SPECIAL MASTER:** They were.  
5 **THE WITNESS:** And they were not the same  
6 people who are the representatives for Arkansas,  
7 were they?  
8 **THE SPECIAL MASTER:** Well, I'd like your  
9 view on whether or not Arkansas Teachers was the  
10 representative for the ERISA -- named ERISA  
11 representatives in the other two lawsuits and the  
12 ERISA members of the settlement class.  
13 **MR. HEIMANN:** Objection. Compound.  
14 **MS. LUKEY:** Objection.  
15 **THE SPECIAL MASTER:** Please answer the  
16 question.  
17 **THE WITNESS:** I can't.  
18 **THE SPECIAL MASTER:** Let me break it  
19 down for you.  
20 We've agreed that the ERISA members of  
21 the class had separate lawyers. Correct?  
22 **THE WITNESS:** Yes.  
23 **MS. LUKEY:** Actually --  
24 **MR. HEIMANN:** That's not true.

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1 **THE WITNESS:** Well, they don't have a  
2 class but whoever was representing --  
3 **THE SPECIAL MASTER:** I said the  
4 settlement class.  
5 **THE WITNESS:** Okay.  
6 **THE SPECIAL MASTER:** The ERISA members  
7 of the class had separate lawyers, correct?  
8 **MS. LUKEY:** Objection.  
9 **MR. HEIMANN:** Objection.  
10 **THE SPECIAL MASTER:** Correct?  
11 **MR. HEIMANN:** Objection.  
12 **THE WITNESS:** I don't know that as a  
13 fact. I would assume that each party has a lawyer.  
14 **THE SPECIAL MASTER:** Who was the class  
15 representative for the ERISA members of the class?  
16 **THE WITNESS:** I don't know.  
17 **THE SPECIAL MASTER:** Do you believe that  
18 Arkansas Teachers represented the ERISA members of  
19 the class?  
20 **THE WITNESS:** In what capacity?  
21 **THE SPECIAL MASTER:** Do you believe that  
22 Arkansas Teachers was the representative of the  
23 ERISA members of the class for purposes of approving  
24 a division of fees?

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1 **MS. LUKEY:** Objection.  
2 **THE WITNESS:** At what juncture in the  
3 process are we talking about? Is this after the  
4 settlement had been agreed upon?  
5 **THE SPECIAL MASTER:** It could be after  
6 the settlement was agreed upon. It could be at the  
7 time the class was certified in August of 2016.  
8 **THE WITNESS:** And they had filed their  
9 appearance in the case?  
10 **THE SPECIAL MASTER:** They had.  
11 **MR. HEIMANN:** Who's the they? I'm  
12 sorry.  
13 **THE SPECIAL MASTER:** I assume by they  
14 you meant the ERISA lawyers?  
15 **THE WITNESS:** Yes.  
16 **THE SPECIAL MASTER:** They had filed  
17 appearances in both -- there had been three  
18 different cases that had been consolidated for  
19 mediation and discovery --  
20 **MR. HEIMANN:** Your Honor, I don't think  
21 that's true. I don't think there's any formal  
22 consolidation of the ERISA case --  
23 **THE SPECIAL MASTER:** There's a  
24 consolidation order.

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1 **MR. HEIMANN:** If I'm mistaken, I'm  
2 mistaken, but I don't believe that's the case.  
3 **THE SPECIAL MASTER:** There's a  
4 consolidation.  
5 **MR. HEIMANN:** All right.  
6 **MS. LUKEY:** I'm not sure that it's  
7 relevant. I think technically the order may have  
8 read only in terms of the pretrial discovery that  
9 the mediation was absorbed.  
10 **THE SPECIAL MASTER:** Yeah, the pretrial  
11 discovery.  
12 **MR. HEIMANN:** Well, you know, pretrial  
13 discovery is different from mediation.  
14 **MS. LUKEY:** I don't think the mediation  
15 was in the order, but I could be wrong.  
16 **MR. HEIMANN:** Well, I've been told in no  
17 uncertain terms that the cases were not consolidated  
18 for mediation.  
19 In fact, that's even been mentioned  
20 indirectly --  
21 **MS. LUKEY:** Right.  
22 **MR. HEIMANN:** -- in your statement of  
23 facts, but, if I'm wrong, I'm wrong.  
24 **THE SPECIAL MASTER:** They were

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1 consolidated at least for purposes of discovery and  
2 at least for purposes of pretrial.  
3 At any rate --  
4 **THE WITNESS:** I don't mean to interrupt,  
5 but may I --  
6 **THE SPECIAL MASTER:** I'm sorry?  
7 **THE WITNESS:** May I make a phone call,  
8 please?  
9 **THE SPECIAL MASTER:** Sure. This would  
10 be a good time to --  
11 **MS. LUKEY:** -- take the lunch break?  
12 **THE SPECIAL MASTER:** -- break for lunch.  
13 (A lunch recess was taken.)  
14 (Whereupon the proceedings  
15 adjourned at 12:38 p.m.)  
16  
17  
18  
19  
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21  
22  
23  
24

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1 C E R T I F I C A T E  
2  
3 I, Paulette M. Cook, Registered Merit Reporter,  
4 do hereby certify that the foregoing transcript,  
5 Volume 1, is a true and accurate transcription of my  
6 stenographic notes taken to the best of my ability  
7 on Wednesday, March 21, 2018.  
8  
9  
10  
11  
12  
13 Paulette M. Cook  
14 Registered Merit Reporter  
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# **EX. 253**

**Professor Stephen Gillers**

1

Volume: 1

Pages: 1-373

Exhibits: 1-24

**JAMS**

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

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In Re: STATE STREET ATTORNEYS FEES

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**BEFORE: Special Master Honorable Gerald Rosen,  
United States District Court, Retired**

**DEPOSITION of PROFESSOR STEPHEN GILLERS**

**March 20, 2018, 9:03 a.m.-6:30 p.m.**

**JAMS**

**One Beacon Street**

**Boston, Massachusetts**

**Court Reporter: Paulette Cook, RPR/RMR**

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[REDACTED]

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[REDACTED]

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[REDACTED]

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1 an advocate?  
2 **A. I never have.**  
3 Q. Have you ever made a written submission to  
4 the board?  
5 **A. I never have.**  
6 Q. Did you research Board of Bar Overseers  
7 decisions?  
8 **A. I did.**  
9 Q. Did you find any Board of Bar Overseers  
10 decision that indicated that if written consent of  
11 the client was not obtained under Rule 1.5(e) the  
12 applicable rule would become 7.2?  
13 **A. Not an overseers' opinion, no, I did not.**  
14 Q. And are you aware, sir, that there's another  
15 mechanism by which lawyers in Massachusetts can  
16 obtain advisory opinions relating to ethics?  
17 **A. Yes, every state bar association provides**  
18 **advisory opinions, and Massachusetts, does, too.**  
19 Q. Are you referring to the Massachusetts Bar  
20 Association's advisory opinions?  
21 **A. Hm hm.**  
22 Q. Yes?  
23 **A. I don't know the name of the body that**  
24 **provides advisory opinions.**

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1 Q. Is there more than one body in  
2 Massachusetts?  
3 **A. I do not know.**  
4 Q. Are you aware that both the Massachusetts  
5 Bar Association and the Boston Bar Association  
6 Ethics Committee provide advisory opinions to  
7 lawyers?  
8 **A. Am I aware?**  
9 Q. Yes, sir.  
10 **A. I'm not sure as part of my consciousness I**  
11 **would -- if you would ask me, I would assume that**  
12 **they do.**  
13 Q. Did you search the advisory opinions of the  
14 MBA and the BBA Ethics Committees?  
15 **A. I did.**  
16 Q. Did you find any opinion of the MBA or BBA  
17 Ethics Committee that opined that in the event that  
18 consent was not perfected under 1.5(e) the  
19 applicable rule would become 7.2(b)?  
20 **A. No.**  
21 Q. How many hours did you spend researching the  
22 Massachusetts Rules of Professional Conduct, sir?  
23 **A. I could not quantify it.**  
24 Q. Can you give us a best estimate?

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1 **A. No.**  
2 Q. In the course of that research did you find  
3 any case, decision or opinion that says in the event  
4 of a failure to perfect client consent under Rule  
5 1.5(e), the analysis shifts to the advertising Rule  
6 7.2(b)?  
7 **A. Are we limiting our discussion now to the**  
8 **Massachusetts ethics opinions?**  
9 Q. No. We're talking about any case, any  
10 opinion or any decision of the Board of Bar  
11 Overseers interpreting Massachusetts Rule 1.5(e),  
12 did you find any instance in which if the consent  
13 was not perfected under 1.5(e) the analysis shifted  
14 to Rule 7.2(b) the advertising rule?  
15 **A. The Saggese opinion cited in Illinois**  
16 **Intermediate Appellate Court opinion says that if**  
17 **the jurisdiction's division of fee rule is not**  
18 **honored, then it simply becomes a payment for a**  
19 **recommendation of a client.**  
20 Q. Did the Saggese case say anything at all  
21 about Rule 7.2?  
22 **A. No.**  
23 Q. So what are you referring to?  
24 I asked you whether there was a decision

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1 anywhere that indicated the failure to obtain client  
2 consent caused the analysis to shift from 1.5(e) to  
3 7.2(b) if 7.2(b) isn't mentioned in Saggese?  
4 **A. Of course, the problem with your question is**  
5 **you're framing it in terms of a statement that**  
6 **actually mentions the number 7.2(b) rather than the**  
7 **concept that's involved.**  
8 Q. So you're saying that -- what is the concept  
9 that you claim is mentioned in Saggese, sir, that  
10 you say is the equivalent of 7.2(b)?  
11 **A. A lawyer can take himself out of 7.2(b) by**  
12 **complying with 1.5(e). Otherwise, he's in 7.2(b).**  
13 **That's syllogistic. That's what the rule says.**  
14 **So the concept is if you don't do X,**  
15 **then Y -- look, you want to shake your head at me**  
16 **you can but...**  
17 Q. Please go ahead. We'll follow up.  
18 **A. All right. You either comply with 1.5(e) to**  
19 **avoid the prohibition in Rule 7.2 or you don't. And**  
20 **if you don't, you're within the prohibition of Rule**  
21 **7.2.**  
22 Q. Can you cite me to any case, advisory  
23 opinion or decision of the Board of Bar Overseers  
24 that says the failure to comply with obtaining

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1 perfected consent from the client under 1.5(e) means  
2 that you are governed by 7.2(b)?  
3 **A. I can't cite you to any if you're insistent**  
4 **on the words or numbers 7.2(b) being in the opinion.**  
5 Q. That's correct, sir, I am insisting that you  
6 tell me any case, decision, opinion, whatever you  
7 want to call it, that supports your position that  
8 the analysis is under Rule 7.2(b) if the lawyer or  
9 law firms fail to perfect client consent under  
10 1.5(e)?  
11 **A. Does your question ask me to assume that the**  
12 **opinion or whatever I want to call it contains the**  
13 **number 7.2(b)?**  
14 Q. Yes, sir. I'm asking you for anything that  
15 says if consent isn't perfected under 1.5(e) the  
16 analysis by the lawyers involved -- the analysis  
17 switches to 7.2(b)?  
18 **A. Let me answer -- let me -- maybe this cuts**  
19 **through it.**  
20 **I know of no case from any authority in**  
21 **Massachusetts that says that a failure to comply**  
22 **with 1.5(e) constitutes a violation of, quote,**  
23 **7.2(b), closed quote.**  
24 Q. How about any case outside Massachusetts,

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1 sir, even states that have the Model Rule that  
2 requires that the attorney -- the referring attorney  
3 perform some work or assumes some liability?  
4 Can you point us to any case in any  
5 jurisdiction that says the failure to perfect client  
6 consent on the part of the referring or receiving  
7 attorney causes the analysis to shift to 7.2(b)  
8 which is also a Model Rule?  
9 **A. Saggese itself cites an Illinois**  
10 **Intermediate Appellate Court opinion that says that,**  
11 **although it may not use a number.**  
12 Q. I was just going to say, sir, that Illinois  
13 intermediate opinion doesn't reference 7.2(b), does  
14 it?  
15 **A. I just said although it may not use a**  
16 **number.**  
17 Q. So what you're saying is you believe it  
18 refers to a principle but not to an existing  
19 explicit rule under both the Model Rules and the  
20 Massachusetts Rules of Professional Conduct,  
21 correct?  
22 **A. Can you repeat that?**  
23 Q. What you're saying to us is that you're  
24 relying on your interpretation of the principle

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1 underlying Rule 7.2(b), but you agree that there's  
2 no case anywhere in the country that says the  
3 failure of the lawyers to perfect client consent  
4 under 1.5(e) switches the analysis to 7.2(b),  
5 correct?  
6 **A. No.**  
7 Q. What's incorrect about that, sir?  
8 **A. Well, I'm relying on the language of 7.2(b)**  
9 **and the language of 1.5(e).**  
10 **So my argument is that the text of the**  
11 **rules self evidently bring the lawyer within 7.2(b),**  
12 **unless the lawyer does something. And if the lawyer**  
13 **doesn't do anything, doesn't do that something, then**  
14 **it is a payment for a recommendation in violation of**  
15 **7.2.**  
16 **As I said before, I see this**  
17 **sylogistically. It logically follows that you**  
18 **cannot do X unless you do Y; and if you do not do Y,**  
19 **you're -- you've violated X.**  
20 **Now I don't have to go outside the text**  
21 **of the rule to come to that conclusion, but it is**  
22 **also true that the Saggese Court recognizes that**  
23 **principle and cites the Illinois opinion for that**  
24 **principle.**

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1 **If you're asking me, well, does the**  
2 **Illinois opinion use the number 7.2(b), it may; it**  
3 **may not. I don't know. It may not be the same**  
4 **number in Illinois.**  
5 Q. Does Illinois follow the Model Rules?  
6 **A. I'm sorry?**  
7 Q. Did Illinois follow the ABA Model Rules?  
8 **A. No, no jurisdiction does exactly. And**  
9 **whether it follows the Model Rules on 1.5(e), I'm**  
10 **not sure.**  
11 Q. So if I'm understanding you correctly, what  
12 you're saying, sir, is that the basis for your  
13 opinion that the failure to perfect client consent  
14 under 1.5(e) causes the analysis to switch to 7.2(b)  
15 is premised in significant part on how you read the  
16 language of those two rules; is that correct?  
17 **A. I would say that the failure to -- the**  
18 **analysis doesn't shift to 7.2(b); it begins there,**  
19 **and then you can exit 7.2(b)'s prohibition by**  
20 **complying with 1.5(e). And if you don't, you don't.**  
21 Q. So in your view even when you're talking  
22 about a circumstance where two law firms enter into  
23 a fee division agreement, the analysis still starts  
24 at 7.2(b); is that right?

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1 **A. Until they satisfy Rule 1.5(e).**  
2 Q. Can you cite us to a single case that says  
3 that?  
4 **A. Haven't we been over this?**  
5 Q. No. I'm now taking your position that we  
6 start with 7.2(b) as opposed to moving to 7.2(b)  
7 after the lawyers fail to perfect consent under  
8 1.5(e).  
9 Tell me any case anywhere that says when  
10 you have two law firms that enter into a fee  
11 division agreement the analysis of the propriety of  
12 their conduct starts with the advertising Rule  
13 7.2(b).  
14 **A. Other than the reference in Saggese to the**  
15 **Illinois case and the language in Saggese that leads**  
16 **to the citation to the Illinois case, I don't know**  
17 **of any Massachusetts authority that has that**  
18 **description.**  
19 Q. All right. So we're clear, sir, there's no  
20 case that you've found anywhere in Massachusetts  
21 that deals with the concept of 7.2(b) being the  
22 beginning of the analysis when two law firms enter  
23 into a fee division agreement, and no case anywhere  
24 in Massachusetts that suggests that one switches the

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1 analysis to 7.2(b) if the law firms fail to perfect  
2 client consent under 1.5(e), correct?  
3 **A. I'm not buying into your characterization.**  
4 **I say it the way I said it.**  
5 Q. All right. Just tell me if there's any case  
6 you know of anywhere that talks about 1.5(e) and  
7 7.2(b) in the same case.  
8 **A. No.**  
9 Q. Okay. Did you come up with that theory on  
10 the basis of your reading of the two rules?  
11 **A. Yes.**  
12 Q. Are you aware of any discipline that's ever  
13 been taken against a lawyer or a law firm under  
14 7.2(b) for failure to perfect client consent under  
15 1.5(e)?  
16 **A. I didn't look anywhere. I looked in**  
17 **Massachusetts. And I'm not.**  
18 Q. All right. So you only looked in  
19 Massachusetts, but beyond Massachusetts, you're not  
20 aware of any case anywhere that imposes a sanction  
21 or disciplinary action under 7.2(b) for failure to  
22 perfect client consent under 1.5(e)?  
23 **A. I did not research that question outside**  
24 **Massachusetts.**

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[REDACTED]

Page 63

[REDACTED]

Page 65

[REDACTED]

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[REDACTED]

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1 **doesn't use those numbers, correct.**  
2 Q. It also doesn't quote the language, does it?  
3 **A. No, I don't think it does.**  
4 Q. What is the language that you are relying on  
5 from Saggese?  
6 **A. I want the rule in front of me if I'm going**  
7 **to --**  
8 Q. You want the rule in front of you?  
9 **A. Yeah.**  
10 Q. Rule 7.2 in front of you? Or you want  
11 Saggese in front of you?  
12 **A. No, the rule. You're asking me what is the**  
13 **language in 7.2 --**  
14 Q. No, no, no.  
15 I'm asking you what is the language in  
16 Saggese that you say is tantamount to a reference to  
17 Rule 7.2?  
18 I could give you a copy, but mine is  
19 heavily marked up in ways that Mr. Sinnott would not  
20 appreciate.  
21 (Pause.)  
22 **A. The language -- the reference is actually in**  
23 **Daynard, D-A-Y-N-A-R-D. And the language is Daynard**  
24 **is nothing like the plaintiffs in many cases or**

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[REDACTED]

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1 **denied enforcement of their, quote, fee splitting**  
2 **closed quote, contracts which are in reality fee**  
3 **referral contracts; see, e.g., Holstein versus**  
4 **Grossman, and there's a citation.**  
5 **And then there's a parenthetical**  
6 **reference, quote, holding that a fee-sharing --**  
7 **sorry.**  
8 **"Holding that a 'fee-sharing agreement**  
9 **which is primarily based on a client referral is**  
10 **unenforceable as a matter of public policy where the**  
11 **undisputed facts show that the referred client never**  
12 **consented in writing to the attorneys'**  
13 **arrangement."**  
14 Q. Where are you in Daynard, sir?  
15 **MS. McEVOY: 131.**  
16 **MS. LUKEY: 131?**  
17 **THE SPECIAL MASTER: Citing Holstein at**  
18 **616 N.E.2d page 1229.**  
19 **MS. LUKEY: Just need a minute to try to**  
20 **locate it because we have a different version.**  
21 **A. And actually that -- that reference in**  
22 **Daynard is quoted at page 61 of my opinion.**  
23 Q. It refers to fee referral, correct?  
24 What you just read to us is

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1 distinguishing between a fee-splitting contract and  
2 a fee referral contract, correct?  
3 **A. The Illinois Court uses both the terms**  
4 **fee-sharing agreement and client referral.**  
5 Q. All right. But the distinction that Judge  
6 Young was making in Daynard is between a fee --  
7 well, let me go back to the language again and make  
8 sure I get it right.  
9 (Pause.)  
10 **BY MS. LUKEY:**  
11 Q. The distinction is between a fee-splitting  
12 contract and a fee referral contract, right?  
13 **A. I don't think that the labels matter here,**  
14 **whether you call it a referral or a recommendation.**  
15 **Massachusetts uses the word "recommendation" in 7.2**  
16 **and referral as the keyword in Rule 1.5(e) and in**  
17 **one of the exceptions to the prohibition in Rule**  
18 **7.2.**  
19 **So the principle is the same. The**  
20 **principle is that you can't pay for recommendations**  
21 **unless you comply with another rule; that you can**  
22 **call -- you can change the word "recommendation" to**  
23 **referral; you can change the word "recommendation"**  
24 **to forwarding fee.**

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[REDACTED]

Page 87

[REDACTED]

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[REDACTED]

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1 Q. And that was because of Mr. Hopkins'  
2 preference to work only directly with Labaton  
3 Sucharow and not through any local counsel, correct?  
4 A. Yes.  
5 THE REPORTER: I'm sorry, I didn't hear  
6 the answer.  
7 THE WITNESS: Yes.  
8 MS. LUKEY: Right.  
9 MS. McEVOY: I have an extra copy of the  
10 February 11, 2008. Who needs it --  
11 MS. LUKEY: I don't need it right now.  
12 I would suggest that we have it marked at some point  
13 on the break or have it marked right now as  
14 Exhibit 5.  
15 (Exhibit 5 marked  
16 for identification.)  
17 BY MS. LUKEY:  
18 Q. Sir, does the ratification declaration that  
19 you have seen now from Mr. Hopkins constitute  
20 consent on behalf of Arkansas Teacher Retirement  
21 System to the fee referral to Chargois & Herron?  
22 A. On behalf of Arkansas alone.  
23 Q. And, again, as we discussed, there was no  
24 class at the time that the engagement was entered

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[REDACTED]

Page 107

[REDACTED]

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[REDACTED]

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1 duty under Rules 23 and 54 to disclose the division  
2 of fees among those lawyers whom the Court knew  
3 about and so could inquire, the Court could not be  
4 expected to ask counsel about a division of fees  
5 with Chargois, a lawyer who had not appeared in the  
6 case and whom it did not know about."  
7 Did I read that correctly?  
8 **A. Yes.**  
9 Q. All right. Do you agree -- well, let me ask  
10 you this first: Are you saying that under Rules 54  
11 and 23 there is something in the language that  
12 distinguishes between lawyers who have appeared in  
13 the case and lawyers who have not appeared in the  
14 case --  
15 **A. No.**  
16 Q. -- in terms of disclosure?  
17 **A. Sorry. No.**  
18 Q. All right. Are you saying here in the  
19 opening phrase that you agree as a general  
20 proposition that there is no duty under Rules 23 and  
21 54 to disclose the division of fees?  
22 **A. That's part of the sentence.**  
23 Q. All right. What are the circumstances under  
24 Rule 54 which specifically says under (d)(2)(b) that

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1 disclosure is only required if the Court orders it  
2 -- what are the circumstances, if any, in which you  
3 say that disclosure is required even if the Court  
4 didn't order it?  
5 **A. I'm not relying on Rule 54 as the source of**  
6 **authority or obligation to disclose participation of**  
7 **a lawyer whom the Court does not know about.**  
8 Q. Are you familiar -- well, you read  
9 Mr. Sarrouf's affidavit?  
10 **A. Yes. I did, yes.**  
11 Q. Or report. Do you have any understanding as  
12 to what the standard of practice is in Massachusetts  
13 about whether counsel disclose to the Court without  
14 an order the existence of fee agreements for  
15 attorneys who aren't appearing in the case?  
16 **A. No.**  
17 Q. Do you understand that Mr. Sarrouf takes the  
18 position that it is not the practice in  
19 Massachusetts in the absence of a Court order to  
20 disclose a referral fee agreement even if one of the  
21 firms hasn't appeared in a case?  
22 **A. Yes.**  
23 Q. Do you have any reason to dispute his  
24 position that the standard of practice does not

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[REDACTED]

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[REDACTED]

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[REDACTED]

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1 **A. -- I'm aware of that.**  
2 Q. Your final question presented, sir, on page  
3 54 -- oh, no, wait. Sorry, missed one here. Before  
4 we get to that one.  
5 You do offer the opinion at page 71 of  
6 your report that the omission -- I'll quote. "The  
7 omission of the Chargois payment from the fee  
8 application violated Rules 3.3(a) and Rule 8.4(c)."  
9 **A. Right.**  
10 Q. Now, sir, you would agree with me, I assume,  
11 that accusing lawyers of violating ethical rules is  
12 a very serious matter, isn't it?  
13 **A. It is.**  
14 Q. You are making that accusation with no case  
15 support for the notion that Rule 54(d) would be  
16 overridden by 3.3 or 8.4 of the Massachusetts Rules  
17 of Professional Conduct?  
18 **A. I don't believe it is overridden. These are**  
19 **two parallel methods of analysis.**  
20 Q. Do you have any case authority, sir, for the  
21 proposition that Massachusetts Rule of Professional  
22 Conduct 3.3(a) requires disclosure of fee agreements  
23 in cases where no rule or order requires disclosure?  
24 **A. I have -- I know of no authority that**

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[REDACTED]

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1 **applies 3.3 to the duty to disclose a fee agreement.**  
2 Q. All right.  
3 **A. I think that's what you're asking.**  
4 Q. It is, sir.  
5 Do you have any authority for the  
6 proposition that Rule 8.4 which deals with  
7 dishonesty, fraud, deceit and misrepresentation --  
8 well, first let me ask you this: Do you have any  
9 basis for saying that counsel in this case acted  
10 dishonestly, fraudulently, deceitfully or by  
11 misrepresentation?  
12 **A. I think the -- on the record here, given**  
13 **what Judge Wolf knew and did not know and said, that**  
14 **the failure to disclose the Chargois Arrangement in**  
15 **light of what was disclosed was misrepresentation.**  
16 Q. I'm sorry, I didn't follow that. Would you  
17 mind saying it again?  
18 **A. No, I do not mind.**  
19 **I think that given what Judge Wolf knew**  
20 **and did not know and given what was said by the**  
21 **lawyers to Judge Wolf, the failure to disclose the**  
22 **Chargois Arrangement to Judge Wolf was a**  
23 **misrepresentation; that an omission can be a**  
24 **misrepresentation.**

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1 Q. -- that also was not disclosed?  
2 **A. Yes, that's right.**  
3 Q. Sir, you list some cases in this section,  
4 but none of the cases you cite hold that counsel  
5 must disclose fee allocations to class members, do  
6 they?  
7 **A. No.**  
8 Q. Do you have any authority for the  
9 proposition that class counsel must disclose fee  
10 allocations to class members?  
11 **A. I think the authority is -- there were rules**  
12 **governing the attorney/client relationship and the**  
13 **duty to inform your client. And I think I addressed**  
14 **that somewhere in there.**  
15 Q. So you're basing this on the attorney/client  
16 relationship in a Rule 23 class situation?  
17 **A. Yes.**  
18 Q. Are you familiar with the cases that  
19 distinguish the nature of the duties that class  
20 counsel have to unnamed class members as contrasted  
21 with the duties that attorneys have to their clients  
22 more generally including named class members?  
23 **A. Different proceedings before --**  
24 **THE REPORTER:** I'm sorry, I can't hear

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1 you.  
2 **THE WITNESS:** I'm sorry.  
3 **A. At what point?**  
4 Q. Well, it would have to be after the class  
5 certification, or it wouldn't be an issue.  
6 Are you familiar with the fact that  
7 cases distinguish between the nature of the duty  
8 that class counsel has to the unnamed class members  
9 as contrasted with the nature of the duty that class  
10 counsel has to its own direct client, the named  
11 plaintiff?  
12 **A. I'm -- no.**  
13 Q. You're not aware of a difference?  
14 **A. Not -- I'm not aware of the difference as**  
15 **regards the duty I'm talking about here, the duty to**  
16 **inform.**  
17 Q. Can you cite us to a case that says that  
18 class counsel has the obligation to notify the  
19 unnamed class members; that is, the non-named  
20 plaintiffs, of a referral fee that's going to come  
21 out of class counsel's fee?  
22 **A. No.**  
23 Q. Isn't it the case, sir, that any right that  
24 -- never mind. I withdraw that.

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[REDACTED]

Page 153

[REDACTED]

Page 154

[REDACTED]

Page 156

1 Q. All right. Give me a case that supports the  
2 notion that in an attorneys' fee award case of any  
3 kind -- not a class -- that there was an -- well,  
4 never mind. That wouldn't work because that's not  
5 the obligation you're talking about so forget that.  
6 So basically we have no support for the  
7 concept that in a class action a Court has said you,  
8 class counsel, must disclose the existence of a  
9 referral fee to the class members, right?  
10 **A. Could you start that again?**  
11 Q. There's no case that supports the  
12 proposition that class counsel has been ordered --  
13 that a Court has said that class counsel is  
14 obligated to inform the class members of a referral  
15 fee?  
16 **A. Right. Or contradicts it.**  
17 Q. You are seeking to impose a duty of  
18 disclosure of a fee division -- well, let me  
19 rephrase it.  
20 You're seeking to impose a duty of  
21 disclosure of a fee division that no Court has yet  
22 imposed in any written decision, right?  
23 **A. So far as I know, but it's not -- it's an**  
24 **analysis under the Massachusetts rules. It's not an**

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[REDACTED]

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1 **analysis under Rule 23.**  
2 Q. And what Massachusetts rule?  
3 **A. The one cited in the point you're talking**  
4 **about.**  
5 Q. The one cited where?  
6 **A. In the point you're talking about. A duty**  
7 **to inform a client of -- 1.4 duty to inform a client**  
8 **completely especially when you're inviting the**  
9 **client to accept and not object to a prospect of fee**  
10 **application.**  
11 Q. Well, 1.5(e)'s duty is to get the consent of  
12 the client --  
13 **A. Right.**  
14 Q. -- who retains you at the time of retention?  
15 **A. Yes.**  
16 Q. That can't happen here because the class  
17 becomes a class years after the retention, correct?  
18 **A. I said 1.4. Maybe you miss -- I said 1.4,**  
19 **not 1.5.**  
20 Q. I'm sorry. Rule 1.4?  
21 **A. Yes.**  
22 Q. What is it that Rule 1.4 says?  
23 **A. It's a duty to keep a client informed about**  
24 **matters and especially matters within the client's**

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[REDACTED]

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1 right?  
2 **A. Right.**  
3 Q. All right. Let me go to page 76 of your  
4 report, please. Are you with me?  
5 **A. I am.**  
6 Q. About halfway down the page you'll pick up  
7 with the sentence that reads: "Recipients are also  
8 told..." -- are you with me there?  
9 **A. Yes.**  
10 Q. And this is with respect to the class  
11 notice, correct?  
12 **A. Correct.**  
13 Q. You write there: "Recipients are also told  
14 that attorneys' fees for ERISA counsel will not  
15 exceed 10.9 million dollars, and they are told how  
16 fees for the other counsel will be computed." And  
17 then the sentence goes on. Do you see that?  
18 **A. Right.**  
19 Q. Who were you referring to when you used the  
20 phrase "other counsel"?  
21 **A. The class counsel.**  
22 Q. All right. That means the firms of Labaton,  
23 Thornton and Lief Cabraser?  
24 **A. Yes.**

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1 Q. Did you read any portion of the deposition  
2 of Mr. Chiplock?  
3 **A. No.**  
4 Q. Mr. Lief who's sitting just to the right of  
5 Mr. Chiplock --  
6 **A. No.**  
7 Q. -- did you read any portion of his  
8 deposition?  
9 **A. No.**  
10 Q. Mr. Fineman -- Steve Fineman, did you read  
11 any portion of his deposition?  
12 **A. No.**  
13 Q. My deposition, did you read any portion of  
14 my deposition?  
15 **A. No.**  
16 Q. Is there any list or any documentation in  
17 existence of the materials that you did review in  
18 the course of your work?  
19 **A. No, there is not a list. The statement of**  
20 **facts is my universe.**  
21 Q. But you weren't confined just to the  
22 statement of facts, were you?  
23 You reviewed some materials other than  
24 materials that appear in the statement of facts,

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1 Q. And you got this language I gather -- strike  
2 that.  
3 This statement is based on your review  
4 of the class notice itself at page 9; is that right?  
5 **A. The class notice?**  
6 Q. I'm going to give you the class notice if  
7 you don't have it, but I'm looking at your report.  
8 It says -- with respect to that sentence, it's cited  
9 at Id. at 9.  
10 **A. Right. So that quote is Id. at 9.**  
11 Q. That's something you took upon yourself to  
12 determine, not something that's in the statement of  
13 facts that was written by Mr. Sinnott, right?  
14 **A. What's the antecedent of "that"?**  
15 Q. The statement that you made here that the  
16 ERISA counsel's fees were capped at 10.9 million  
17 dollars and that the fees for the other counsel were  
18 to be computed according to what you write here.  
19 **A. I think that that is in the statement of**  
20 **facts -- in the -- maybe in the statement of facts**  
21 **but in the notice.**  
22 Q. I agree it's in the notice. I disagree it's  
23 in the statement of facts --  
24 **A. Okay.**

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1 Q. -- all right?  
2 Of what importance, if any, was this to  
3 your opinion that the attorneys' fees -- that the  
4 notice reported that the attorneys' fees for ERISA  
5 counsel would not exceed 10.9 million dollars?  
6 **A. It's not important in itself. It's**  
7 **important insofar as there is disclosure of**  
8 **attorneys' fees -- some information about the fee**  
9 **application in the notice and in the subsequent fee**  
10 **application posted on the website in which others**  
11 **than Chargois are named, the point being that there**  
12 **is some detail given and then more detail given, and**  
13 **the recipients to the notice are invited, if they so**  
14 **chose, to object not only to the settlement but to**  
15 **the attorneys' fees and how to do so.**  
16 **So they are being given information**  
17 **about those fees. They need that information**  
18 **presumably to decide whether or not they want to**  
19 **object, but they're not given complete information**  
20 **because they're not given the Chargois information.**  
21 **So to answer your question, this is a**  
22 **lead-up to the fact of what I'm claiming is**  
23 **incompleteness by failure to disclose Chargois**  
24 **either in the notice or in the website.**

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1 Q. All right. So it didn't matter to you what  
2 the specifics of the information were. As long as  
3 there was some information about fees set forth in  
4 the notice, your position is that it had to also  
5 include the details about the Chargois Arrangement?  
6 Is that fair?  
7 **A. It didn't matter to me who's getting what as**  
8 **described in the notice. It mattered to me that**  
9 **there was an invitation or a right to object coupled**  
10 **with information that purportedly gave the recipient**  
11 **a basis to decide whether or not he or she wished to**  
12 **object.**  
13 **Now I want to come back to a subtle**  
14 **point in your question because it's a legitimate**  
15 **point, and that is could that have happened other**  
16 **than in the notice. Could that have happened in the**  
17 **fee petition? And I think it could have happened in**  
18 **the fee petition.**  
19 Q. What could have? What is the "it"?  
20 **A. Notice of Chargois.**  
21 Q. All right. So if it turns out that once  
22 again you're dead wrong here, when you say that the  
23 attorneys' fees for ERISA counsel would not exceed  
24 10.9 million, that doesn't affect your opinion?

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1 **A. Well, depending on how I'm dead wrong. If**  
2 **you said it was 10.8 million, it wouldn't affect my**  
3 **opinion.**  
4 Q. The 10.9's right; it just wasn't -- it  
5 wasn't a cap on ERISA counsels' fees as you say it  
6 was?  
7 **A. And as the notice says it is.**  
8 Q. Show me where in the notice it says that.  
9 **A. Or in the statement of facts. I didn't make**  
10 **up the number 10.9 million.**  
11 Q. No, but you did cite to the notice when you  
12 say -- and you quote from it apparently here -- when  
13 you say that the ERISA counsel fees were capped at  
14 10.9.  
15 I want you to show me where it says that  
16 in the notice at page 9.  
17 **A. Well, if it doesn't, it doesn't. I will**  
18 **look.**  
19 **(Pause.)**  
20 **A. So no more than 10.9 million in fees can be**  
21 **paid out of the ERISA settlement allocation. Is**  
22 **that -- am I missing something?**  
23 Q. Apparently. Because it doesn't say that the  
24 ERISA counsels' fees would not exceed 10.9; it says

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1 the class fees would not exceed 10.9 out of the  
2 ERISA portion of the class settlement.  
3 **MR. HEIMANN:** Do you think that's funny,  
4 Judge Rosen?  
5 **THE SPECIAL MASTER:** I think it's --  
6 I'll not respond.  
7 **A. The opinion says recipients are told that**  
8 **attorneys' fees for ERISA counsel will not exceed**  
9 **10.9 million dollars. And then it goes on to other**  
10 **counsel.**  
11 Q. That's your report. I gotcha.  
12 **A. Okay. And that information -- I don't know**  
13 **whether or not that information is in the statement**  
14 **of facts or not. We can look at that if we want.**  
15 **On page 9 it says the ERISA settlement allocation --**  
16 **sorry.**  
17 **Because no more than 10.9 million in**  
18 **fees can be paid out of the ERISA settlement. So**  
19 **your point is that -- and maybe you want to tell me**  
20 **your point, but do I understand that your point is**  
21 **that my opinion says that attorneys' fees for ERISA**  
22 **counsel will not exceed 10.9 whereas the notice says**  
23 **that no more than 10.9 can be paid out of the**  
24 **settlement?**

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1 Q. Out of the ERISA portion of the settlement.  
2 **A. Out of the ERISA settlement. So your point**  
3 **is that it could be more, but it can't come from**  
4 **there.**  
5 Q. No. My point is that it wasn't a lid on the  
6 fees that would be paid to ERISA counsel; it was a  
7 cap on what could be taken out of the ERISA portion  
8 of the settlement for purposes of paying all  
9 counsel, not just ERISA counsel.  
10 **A. For purposes of paying all counsel for the**  
11 **ERISA recovery because counsel are being paid --**  
12 Q. Correct.  
13 **A. All right.**  
14 **(Pause.)**  
15 **A. You know, I don't -- I take your point, but**  
16 **I'm not quite sure what the consequence is.**  
17 Q. Well, that was my question.  
18 My first question is why you would have  
19 phrased this incorrectly in your report; and in  
20 learning that it's incorrect, does it make any  
21 difference to your opinion?  
22 **A. So it's incorrect -- just to be clear 'cause**  
23 **we're getting very much into the weeds here --**  
24 Q. Well, it's weeds that have been pretty tall

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1 so far in this litigation --  
2 **A. Okay.**  
3 Q. -- and I know you don't recognize that --  
4 **A. All right.**  
5 Q. -- but others of us do.  
6 **A. Okay. Recipients are told that attorneys'**  
7 **fees for ERISA counsel will not exceed 10.9, and**  
8 **your point is that that only refers to fees from the**  
9 **ERISA settlement.**  
10 Q. Correct.  
11 **A. So that ERISA counsel could get more than**  
12 **10.9, but that extra amount could not come from the**  
13 **ERISA settlement.**  
14 Q. Correct. Except, of course, that ERISA  
15 counsel had already agreed to a set percentage out  
16 of the total settlement amount to be paid to ERISA  
17 counsel.  
18 **A. To be paid to?**  
19 Q. To ERISA counsel.  
20 **A. Counsel?**  
21 Q. ERISA counsel.  
22 **A. ERISA counsel?**  
23 Q. (Nods head.)  
24 **A. Yeah, okay. Because that's the 9 percent/10**

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1 **percent issue, right?**  
2 Q. Exactly.  
3 **A. Right. So now your question to me is since**  
4 **the notice and the agreement allows ERISA counsel to**  
5 **get more than 10.9 but for the side agreement, the**  
6 **statement in the notice only limits it to 10.9 if**  
7 **the money comes from the ERISA settlement.**  
8 **To put it more bluntly, ERISA counsel**  
9 **could look for more money but not from the ERISA**  
10 **settlement.**  
11 **Is that what you're telling me?**  
12 Q. I think to simplify this, the question  
13 really is this: The statement in your report that  
14 ERISA counsel's fees could not exceed 10.9 million  
15 dollars does not appear in the notice, the fact --  
16 **A. Okay.**  
17 Q. -- despite the fact you cite to the notice  
18 for that proposition.  
19 **A. Right, okay.**  
20 Q. Does that make any difference in terms of  
21 your opinions in this case?  
22 **A. No.**  
23 Q. Okay, thank you.  
24 **A. I guess we could have started there.**

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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[REDACTED]

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1 **A. No.**  
2 Q. Okay. If we could go to page 33 of your  
3 report. You with me?  
4 **A. I am.**  
5 Q. All right. The term "the Chargois  
6 Arrangement" appears towards the top in bold letters  
7 here.  
8 **A. Right.**  
9 Q. The Chargois Arrangement was a defined term  
10 according to the report, correct?  
11 **A. It's a defined term.**  
12 Q. And that's why it appears with a capital A  
13 Chargois Arrangement to show that it's a defined  
14 term?  
15 **A. I don't know -- you could have a defined  
16 term without a capital. So I'm not sure if the  
17 capital explains a defined term or vice versa.**  
18 Q. In this instance you understand it's a  
19 defined term as used in the report?  
20 **A. That's what the report does. A defined term  
21 is a -- may be a term of art. It may simply be a  
22 shorthand, right. So you might say -- let's say you  
23 had the name Lieff Cabraser blah and blah, right?  
24 Paren, quote, Lieff, closed quote. It's not a**

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[REDACTED]

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1 **defined term; it's just a shorthand.**  
2 **So whether or not it's a shorthand or a  
3 defined term is open to question.**  
4 Q. Well, in this instance the Chargois  
5 Arrangement when it's used in the report has a  
6 number of elements that are spelled out in the  
7 report itself, does it not?  
8 **A. Are you referring to something in  
9 particular?**  
10 Q. Sure. I can walk you right through it.  
11 So under the subheading the Chargois  
12 Arrangement in caps in quotation marks, the  
13 following appears -- the first sentence: "As  
14 consideration for Chargois' efforts Belfi and Keller  
15 agreed to pay Chargois' firm, Chargois & Herron, a  
16 maximum 20 percent of any attorneys' fees received  
17 by Labaton in any litigation involving an  
18 institutional investor for whom Chargois facilitated  
19 the introduction including ATRS, hereinafter the  
20 Chargois Arrangement." Do you see that?  
21 **A. Could I just read it to myself?**  
22 Q. Of course.  
23 (Pause.)  
24 **A. Yes.**

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1 Q. The very next sentence goes on to further  
2 define the Chargois Arrangement in these terms:  
3 "Both Chargois and Belfi understood it was the mere  
4 introduction to Chargois to potential institutional  
5 investors or potential antitrust clients that was  
6 the basis of the agreement to pay Chargois 20  
7 percent of any legal fee Labaton earned on any cases  
8 in which Labaton was lead counsel or co-lead counsel  
9 and the client was lead or co-lead plaintiff."  
10 So that's a second aspect of the  
11 Chargois Arrangement, correct?  
12 **A. Right.**  
13 Q. It goes in the very next sentence to say  
14 under this arrangement Chargois was not expected to  
15 file an appearance.  
16 So that's a third aspect of the Chargois  
17 Arrangement, correct?  
18 **A. Finish the sentence.**  
19 Q. Well, I'm going -- I'm going to. But the  
20 third aspect is --  
21 **A. Right.**  
22 Q. -- not expected to file an appearance,  
23 right?  
24 **A. Yes.**

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1 Q. Or assume a substantive role in any of the  
2 resulting litigation. So that was another aspect of  
3 the Chargois Arrangement, correct?  
4 **A. Correct.**  
5 Q. Or even interface with the client. Yet  
6 another aspect of the Chargois Arrangement, correct?  
7 **A. I'm with you.**  
8 Q. Okay. And, by the way, although it's not  
9 spelled out here, it's also your understanding that  
10 in the case of the State Street case the Arkansas  
11 Fund wasn't even aware of Chargois' existence let  
12 alone his role, correct?  
13 **MS. LUKEY: Objection.**  
14 **A. That's correct.**  
15 Q. And as a corollary of the other aspects of  
16 the arrangement here about not expected to file an  
17 appearance or play any substantive role, it would  
18 follow as part of the Chargois Arrangement that  
19 there was no expectation that Chargois would  
20 participate in any meaningful way to the outcome of  
21 the case or to the benefit of the class, correct?  
22 **A. It would not -- the firm would not**  
23 **participate in any meaningful way in the outcome of**  
24 **the case or to the benefit of the class, right.**

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1 **That's correct.**  
2 Q. And that's your understanding again of the  
3 Chargois Arrangement as it's used in your report?  
4 **A. Correct.**  
5 Q. All right. And if we could go just to -- I  
6 want to add one other aspect to the Chargois  
7 Arrangement as you use that term. And that's at  
8 page 76.  
9 **A. The statement of facts uses that term.**  
10 Q. And so do you in your opinion portion,  
11 right?  
12 **A. That's right, I use -- I didn't -- I don't**  
13 **think I created it but...**  
14 Q. I agree.  
15 We're just looking at the statement of  
16 fact section, but now there's one other aspect of  
17 the Chargois Arrangement that does appear in your  
18 section of the report that I want to point out to  
19 you, and that's at page 76 --  
20 **A. Hm hm.**  
21 Q. -- towards the bottom of the page --  
22 **A. Right.**  
23 Q. -- where you write recipients of the notice  
24 were not told about the Chargois Arrangement,

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1 although this information that a lawyer who did no  
2 work to produce the class recovery and who accepted  
3 no legal responsibility for the work of others --  
4 let me stop there.  
5 So that's another aspect of the Chargois  
6 Arrangement as you use the term, a lawyer who  
7 accepted no legal responsibility for the work on the  
8 case.  
9 **A. I think that's already been covered.**  
10 Q. In other terms -- in other terms meaning --  
11 **A. Yes, in other terms.**  
12 Q. All right, sir.  
13 Now in your section of the report you  
14 use the Chargois Arrangement any number of times.  
15 In fact, by my count, over 30 times in your section  
16 of the report that phrase or that term appears.  
17 Right?  
18 **A. I take -- I will accept your number.**  
19 Q. All right. And you used it -- when you used  
20 it, you meant to use it as it is defined as  
21 described in the factual section of the report and  
22 in your section of the report?  
23 **A. I did, and maybe I used it that way all 30**  
24 **times, but I'm not excluding the possibility of a**

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1 **different syntax one or two of the times.**  
2 Q. Well, let's see. So let's go to page 54 of  
3 your report.  
4 **A. Okay.**  
5 Q. And let's focus on the issues or questions  
6 that you presented in answer.  
7 **A. Right.**  
8 Q. So first Roman numeral two --  
9 **A. Right.**  
10 Q. -- you say -- the question is was the  
11 arrangement with Chargois, paren, the Chargois,  
12 capital, arrangement, closed quotation marks and  
13 closed paren, a valid division of a fee agreement  
14 under Massachusetts law. And you answer that no.  
15 Right?  
16 **A. Right.**  
17 Q. So there you're using the Chargois  
18 Arrangement as it's been gone through, right?  
19 **A. That's right.**  
20 Q. Question Roman three, did class counsel have  
21 a duty to inform the Court of the Chargois  
22 Arrangement, whether or not the Chargois Arrangement  
23 was a valid division of fee agreement. Do you see  
24 that?

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1 **A. Yes, I do.**  
2 Q. And, again, you're using the Chargois  
3 Arrangement as we've just gone through it, right?  
4 **A. Right.**  
5 Q. And your answer to that question is, yes,  
6 federal case law and the Massachusetts Rules of  
7 Professional Conduct both required class counsel to  
8 inform the Court of the Chargois Arrangement.  
9 Correct?  
10 **A. Correct.**  
11 Q. And you're using it again in the way we've  
12 been describing -- it's been described here?  
13 **A. Yes.**  
14 Q. Roman numeral four, did class counsel have a  
15 duty to inform the certified settlement class of the  
16 Chargois Arrangement whether or not it was a valid  
17 division of fee agreement. Correct?  
18 **A. Yes.**  
19 Q. Again you're using the Chargois Arrangement  
20 as we've described, correct?  
21 **A. Yes.**  
22 Q. And, finally, your answer to that question  
23 is, yes, their fiduciary duty and the Massachusetts  
24 Rules of Professional Conduct required class counsel

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1 to inform the certified settlement class of the  
2 Chargois Arrangement. See that?  
3 **A. Yes.**  
4 Q. And again you're using it as it was  
5 described, the Chargois Arrangement, right?  
6 **A. Yes. Yes.**  
7 Q. All right, sir.  
8 Is it your opinion that class counsel  
9 were ethically required to disclose the allocation  
10 of fees or fee-splitting agreements among the  
11 plaintiffs' counsel of record to the Court?  
12 **A. No.**  
13 Q. Is it your opinion that they were not  
14 required ethically to disclose those fee  
15 arrangements or fee split agreements?  
16 **A. It is my opinion they were not required to,**  
17 **yes.**  
18 Q. All right. Same questions with respect to  
19 disclosure to the class.  
20 Is it your opinion that class counsel  
21 were required to disclose the fee arrangements or  
22 fee splits among plaintiffs' counsel of record to  
23 the class in the notice?  
24 **A. No.**

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1 Q. So you have an affirmative opinion they were  
2 not obliged ethically to disclose that, correct?  
3 **A. Correct.**  
4 Q. All right. What is the difference, sir,  
5 between the disclosure to the Court or -- strike  
6 that.  
7 What is the difference between your  
8 opinion that the counsel were not required to  
9 disclose to the Court those fee arrangements or fee  
10 splits, but they were required to disclose the  
11 Chargois Arrangement to the Court? What's the  
12 difference?  
13 **A. To the Court, not to the class.**  
14 Q. I'll come to the class in a minute. First  
15 starting with the Court.  
16 **A. The difference is that the Court knew who**  
17 **class counsel were, and I would assume they have a**  
18 **division of fee agreement or would in any event**  
19 **eventually. And because the Court knew the identity**  
20 **of class counsel, it could, if it wished, ask to be**  
21 **told what the division of fee agreement is among**  
22 **counsel, or it could simply defer to whatever**  
23 **private agreement it reached.**  
24 **But nothing in the record -- nothing**

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED] t

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1 **known to the Court.**  
2 Q. Have you finished?  
3 **A. Yes.**  
4 Q. So I gather the key is that Chargois wasn't  
5 counsel of record in terms of your opinion that  
6 there's a difference between the duty on the part of  
7 counsel to disclose him as opposed to disclosing fee  
8 splits or fee arrangements among counsel of report;  
9 is that right?  
10 **A. No, it's not right.**  
11 Q. What's wrong with that?  
12 **A. Counsel of record is not the trigger; that**  
13 **is, the Court could have learned about Chargois**  
14 **other than by having him be counsel of record. It's**  
15 **not the only way to bring his existence to the**  
16 **attention of the Court.**  
17 Q. The key then is the fact that the identity  
18 of this person was not made known to the Court; that  
19 makes the difference in your mind?  
20 **A. That's right.**  
21 Q. All right.  
22 So let's assume that contrary to the  
23 Chargois Arrangement which you're using, there  
24 wasn't any Chargois Arrangement. In fact, Chargois

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1 was local counsel, had performed valuable work for  
2 the case, work that was commensurate in terms of the  
3 benefit conferred on the class with the amount being  
4 paid to him, and therefore the only thing the Court  
5 didn't know about the Chargois participation was the  
6 existence of the fact that he was going to get a  
7 fair and reasonable portion of the fee.  
8 Is it still your opinion that counsel  
9 violated their ethical obligations in failing to  
10 disclose Chargois' existence to the Court?  
11 **A. My -- so just to be clear what the -- what**  
12 **the assumptions are. Counsel have a basis to**  
13 **believe -- reasonably believe that Chargois has**  
14 **performed -- I think you used the word**  
15 **"substantial" --**  
16 Q. Valuable would be as good a term, but that's  
17 fine. Valuable services.  
18 **A. -- valuable services to the class --**  
19 Q. And to -- and to the class representative,  
20 Arkansas.  
21 **A. And therefore to the class.**  
22 Q. (Nods head.)  
23 **A. And that counsel have a reasonable basis to**  
24 **believe -- and presumably do believe -- that these**

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1 **valuable services are -- justify the fee that by**  
2 **August or September they know that they will be**  
3 **seeking for all counsel, and they also know the**  
4 **portion that will go to Chargois, 4.1 million**  
5 **dollars as it turns out --**  
6 Q. Five percent more or less?  
7 **A. Sorry?**  
8 Q. Five percent more or less.  
9 **A. Five point five percent of the counsel fees,**  
10 **4.1 million dollars I think, right?**  
11 Q. As it turned out.  
12 **A. As it turned out. But we knew what ballpark**  
13 **we were in, even if we didn't know the digit in the**  
14 **third column, right?**  
15 Q. Fair enough.  
16 **A. All right.**  
17 Q. And let me go on. And that Arkansas was  
18 fully aware of the existence of the lawyer, had  
19 approved of the lawyer, had consented in writing to  
20 the lawyer, all that requires that is otherwise the  
21 facts as we now know them, but I'm asking you to  
22 assume otherwise.  
23 **A. Okay. And I'm going to assume one thing**  
24 **more which I think you want me to assume, and that**

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1 is that what customer class counsel knew about  
2 Chargois' work for the benefit of the class  
3 justified a fee in the neighborhood of four million  
4 dollars as not clearly excessive within the meaning  
5 of Rule 1.5(a).  
6 Q. Correct.  
7 A. Fine. If all that is true, then I -- then  
8 my opinion is not that there was a need to disclose  
9 it.  
10 THE SPECIAL MASTER: Is "not" -- that  
11 there was not a need to disclose it?  
12 THE WITNESS: Not a need to disclose it.  
13 MR. HEIMANN: Can we take five minutes?  
14 THE SPECIAL MASTER: (Nods head.)  
15 (A recess was taken.)  
16 PHONE LINE CONFERENCE: The following  
17 participant has joined the conference: Lynn Sarko  
18 rejoining.  
19 MR. SINNOTT: Lynn, we're on a really  
20 quick break.  
21 (A recess was taken.)  
22 CONTINUED EXAMINATION BY MR. HEIMANN:  
23 Q. Professor, could you go now to page 78 of  
24 your opinion? Or your report. I'm sorry.

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[REDACTED]

Page 223

[REDACTED]

Page 225

[REDACTED]

Page 238

[REDACTED]

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1 **A. Yes, we've been through that.**  
2 Q. All right. And, of course, that the client  
3 was fully aware of Chargois and the work that he did  
4 and the value of the work that he did to the case --  
5 to the class and to the Arkansas firm itself?  
6 **A. I have the same opinion.**  
7 Q. At page 67 of your report at the bottom of  
8 the page you write: "The Court itself dispelled any  
9 uncertainty about what it expected just before  
10 approving lead counsel's fee request in full, the  
11 Court said, 'I'm relying heavily on the submissions  
12 and what's been said today.'"  
13 Do you see that?  
14 **A. I do.**  
15 Q. Is the fact that the Court said that at that  
16 hearing important --  
17 **A. Yes.**  
18 Q. -- to your opinion?  
19 **A. Yes.**  
20 Q. Why?  
21 **A. Because the Court signaled to the lawyers in**  
22 **the room that he was relying heavily on the**  
23 **submissions and what's been said here today, that**  
24 **this was important to the Court.**

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1 **A. Right.**  
2 Q. And I'm saying to you assume that based on  
3 long experience, 25, 40 years in Mr. Lieff's case --  
4 **MR. LIEFF: Fifty.**  
5 Q. -- 5 percent to a local counsel under these  
6 types of circumstances is not at all unusual?  
7 **A. Even if he does no work?**  
8 Q. Even if he does no work.  
9 **A. Right. So I'm saying that even in that**  
10 **instance where the lawyers have no reason to believe**  
11 **he's doing work -- he's doing no work, that the**  
12 **judge should be informed.**  
13 Q. And is it your opinion that these lawyers  
14 here violated their ethical obligations when they  
15 didn't tell the judge about Mr. Chargois under those  
16 circumstances?  
17 **A. It is my opinion that their duty to the**  
18 **client and the Court required them to disclose to**  
19 **the client and the Court the Chargois fee**  
20 **arrangement of which they knew assuming Chargois was**  
21 **doing no work.**  
22 Q. All right. And if they thought, as they had  
23 been told, that Chargois had done valuable work,  
24 does that change your opinion?

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[REDACTED]

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[REDACTED]

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1 Let me ask you to assume the following  
2 about the Lief Cabraser lawyers and what they  
3 understood or believed about Mr. Chargois and the  
4 role that he played in the State Street litigation.  
5 One, the Lief Cabraser lawyers  
6 understood that Chargois served as legitimate local  
7 counsel to the Arkansas Teachers Fund.  
8 **A. Hold on. I'm going to --**  
9 Q. I'll give you plenty of time.  
10 **MS. LUKEY:** Are you doing a whole series  
11 so I can object once, or do I have to object each  
12 time you say it?  
13 **MR. HEIMANN:** You can have a standing  
14 objection to everything I say.  
15 **THE SPECIAL MASTER:** You can have a  
16 standing objection.  
17 **BY MR. HEIMANN:**  
18 Q. Lief Cabraser understood that Chargois was  
19 the legitimate bona fide local counsel to the  
20 Arkansas Fund.  
21 **A. Okay.**  
22 Q. That he served as such with the express  
23 knowledge and written approval of the Arkansas Fund.  
24 (Pause.)

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[REDACTED]

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1 **A. Okay.**  
2 Q. That he provided valuable legal services to  
3 the fund and to the class in his role as local  
4 counsel.  
5 **A. On this case?**  
6 Q. On this case, yes, specifically.  
7 **A. Okay.**  
8 Q. That both Labaton as lead counsel and the  
9 Arkansas Fund as the lead class representative  
10 regarded the fees to be paid to Chargois as fair and  
11 reasonable and consistent with the value that  
12 Chargois' services provided to the class and to the  
13 benefits obtained on behalf of the class.  
14 **A. And consistent?**  
15 Q. With the value of his services and the value  
16 of those services to the class and to the benefits  
17 obtained for the class.  
18 **A. Okay.**  
19 Q. Now based on those assumptions --  
20 **A. Right.**  
21 Q. -- is it your opinion that the Lief  
22 Cabraser lawyers violated their fiduciary or ethical  
23 obligations in failing to proactively disclose to  
24 the Court what they knew about Mr. Chargois?

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1 **THE SPECIAL MASTER:** May I just -- do we  
2 have the deposition of Mr. Lieff available here?  
3 **MR. HEIMANN:** The transcript?  
4 **THE SPECIAL MASTER:** Correct.  
5 **MR. HEIMANN:** I don't.  
6 **MS. McEVOY:** I do.  
7 **THE SPECIAL MASTER:** There was -- I  
8 believe it might be helpful for Professor Gillers in  
9 answering your question to know what Mr. Lieff's  
10 view of "local counsel" was.  
11 I believe I specifically asked him that,  
12 and he gave a view. Because, as everybody will  
13 remember, there was a lot of loose reference to  
14 terms to identify Mr. Chargois. We had at least  
15 five or six different terms --  
16 **MR. HEIMANN:** Yeah, but those were not  
17 terms that were related to us.  
18 **THE SPECIAL MASTER:** I understand that  
19 which is why I'm asking to find -- Mr. Lieff did  
20 give his understanding of what local counsel meant  
21 in his deposition, I believe.  
22 **MS. McEVOY:** You just want those pages  
23 are --  
24 **MR. HEIMANN:** Well, I think there's a

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1 reference to it in the report that we've already  
2 covered.  
3 **MR. LIEFF:** I think you read it,  
4 Richard. I'll try to find it.  
5 **THE SPECIAL MASTER:** I may have asked  
6 him if he understood now -- what I may have asked  
7 him is understanding now what Mr. Chargois' role was  
8 was that local counsel -- that may have been what I  
9 may have asked him, and I thought he gave an answer  
10 illumination on what thought local counsel was.  
11 **MR. HEIMANN:** Well, and I don't have any  
12 problem if we can dig it out, but I think the way I  
13 characterized it is consistent with the testimony of  
14 Mr. Lieff and Mr. Chiplock and is consistent with  
15 what the written record reflects about what they  
16 were told about Mr. Chargois.  
17 **MS. LUKEY:** Objection.  
18 **THE SPECIAL MASTER:** Let me just refresh  
19 myself, okay?  
20 **MR. HEIMANN:** Sure.  
21 **THE SPECIAL MASTER:** Because the  
22 definition that everybody is referring to for  
23 purposes of your question, Richard, might be helpful  
24 to Professor Gillers in determining --

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1 **MR. HEIMANN:** Well, it may be, but I'm  
2 not limiting the Lieff Cabraser understanding of  
3 Mr. Chargois to what -- to a snippet of what  
4 Mr. Lieff may have said about that subject.  
5 You have Mr. Chiplock testifying about  
6 it. You have me testifying about it. You've got  
7 Mr. Fineman testifying about it, among others.  
8 (Pause.)  
9 **MR. LIEFF:** Page 67 of the deposition.  
10 **MS. LUKEY:** The deposition or in the  
11 report?  
12 **MR. LIEFF:** In the deposition 67. In  
13 the report 44.  
14 **MS. LUKEY:** Thank you.  
15 (Pause.)  
16 **THE SPECIAL MASTER:** There are a number  
17 of times in the deposition when Mr. Lieff refers to  
18 his understanding of local counsel, one of which is  
19 when I asked him what was your understanding of what  
20 the relationship between Mr. Chargois and Labaton,  
21 Mr. Lieff said, "I thought he was local counsel for  
22 Labaton in this particular case I assumed dealing  
23 with Arkansas Fund because that's what local counsel  
24 will do. That was my understanding."

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1 **MR. HEIMANN:** That's what I read earlier  
2 in the examination.  
3 **MR. LIEFF:** Yes.  
4 **MR. HEIMANN:** I know this is in the  
5 nature of argument so I don't want to go down this  
6 road too far, but we have testimony from a number of  
7 people about local counsel and the practice of local  
8 counsel --  
9 **THE SPECIAL MASTER:** We do.  
10 **BY MR. HEIMANN:**  
11 Q. I want to stick to the hypothetical that I  
12 gave to you --  
13 **A. Fine.**  
14 Q. -- Professor Gillers.  
15 **A. So can I ask a clarification on the**  
16 **hypothetical?**  
17 Q. Of course.  
18 **A. In the first assumption began "Lieff**  
19 **understood that Chargois was." Right? Could we add**  
20 **Lieff had a reasonable good faith understanding that**  
21 **Chargois was?**  
22 Q. You may augment all of my proposed  
23 assumptions with that clarifier.  
24 **A. Okay. And then ask me the final question**

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1 again.  
2 Q. In your opinion under those circumstances  
3 did the Loeff Cabraser lawyers violate their ethical  
4 duties in the way that they dealt with the Court,  
5 first of all?  
6 MS. LUKEY: Objection.  
7 (Pause.)  
8 A. Just to be clear, each of the assumptions is  
9 made with regard to the State Street litigation?  
10 Q. Yes indeed.  
11 A. Yes. So the answer is no.  
12 Q. Same question with respect to the Loeff  
13 Cabraser lawyers' ethical obligation with respect to  
14 disclosure in the notice to the class?  
15 A. No.  
16 MS. LUKEY: Objection.  
17 MR. HEIMANN: I have nothing further.  
18 Thank you.  
19 THE SPECIAL MASTER: Brian, I think  
20 you're next up. Anybody want to break first?  
21 Paulette, I'm looking at you.  
22 THE REPORTER: Just for a minute, that  
23 would be great.  
24 (A recess was taken.)

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[REDACTED]

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[REDACTED]

Page 257

[REDACTED]

Page 266

[REDACTED]

Page 268

[REDACTED]

Page 267

[REDACTED]

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1 You yourself don't personally know  
2 whether or not Garrett Bradley knowingly made any  
3 false representations, do you?  
4 **A. That's correct.**  
5 Q. Okay. And a careless mistake does not equal  
6 a knowing misrepresentation to a Court, does it?  
7 **A. It does not.**  
8 Q. And you've been quoted as saying -- and I  
9 think it's in one of these exhibits we've already  
10 seen -- "As law teachers we should not testify that  
11 a lawyer's conduct did or did not transgress ethical  
12 rules, unless we firmly believe that our opinion is  
13 correct."  
14 **A. Are you quoting?**  
15 Q. I'm quoting from you, Stephen Gillers, "More  
16 About Us: Another Take on the Abusive Use of Legal  
17 Ethics Rules."  
18 **A. I accept your quote.**  
19 Q. Okay. So you have not concluded anything  
20 about Garrett Bradley's mental state.  
21 You're only relying upon an assumption  
22 that was provided to you?  
23 **A. Correct.**  
24 Q. All right. So at the end of this report on

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[REDACTED]

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1 Q. -- from that case back in 2012.  
2 A. **Right.**  
3 Q. So --  
4 A. **So the mens rea in the New York version of**  
5 **3.3(a) and (b) and (d) is knowledge.**  
6 Q. Right. And that means actual knowledge.  
7 It's a subjective test?  
8 A. **That's right.**  
9 Q. And that's what the equivalent of what the  
10 Mass. Rules are, correct?  
11 A. **Yes.**  
12 Q. So in order for somebody to violate that,  
13 that person himself or herself has to know in his  
14 own mind at the time he was doing something that he  
15 was submitting false information to the Court?  
16 A. **He has to know that the information**  
17 **submitted is false, right.**  
18 Q. So you agree then that a person's state of  
19 mind is crucial to determining whether an attorney  
20 is violating Rule 3.3?  
21 A. **Yes.**  
22 Q. And you've commented in the past that this  
23 state of mind is very difficult to determine from a  
24 paper record, right?

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[REDACTED]

Page 273

[REDACTED]

Page 274

[REDACTED]

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1 information provided to the Court for the exercise  
2 of its discretion is true.  
3 **A. Yes.**  
4 Q. I assume what you're referring to is Rule  
5 11? Is that a fair assumption?  
6 **A. It says Rule 11.**  
7 Q. Okay. So I guess then that's a pretty fair  
8 assumption?  
9 **A. Yes, it is.**  
10 Q. All right. So now you'd agree, sir, that  
11 not every mistake a lawyer makes should be subject  
12 to a Rule 11 sanction, correct?  
13 **A. Yes, I agree. Yes.**  
14 Q. All right. And are you aware that the first  
15 circuit has in fact reversed a Rule 11 finding, even  
16 though there were factually inaccurate and dubious  
17 statements in an affidavit in a case that was  
18 published in 2005 called Obert, O-B-E-R-T?  
19 **A. No.**  
20 Q. Are you aware of that case?  
21 **A. I'm not. I haven't heard of that case.**  
22 Q. Okay, I'll just cite it. 398 F.3d 138,  
23 again the first circuit 2005, where the first  
24 circuit reversed a Rule 11 finding, even though

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1 **You're talking about under any**  
2 **circumstances whatsoever. So I'm not prepared to**  
3 **say yes. I would say ordinarily that would be yes,**  
4 **but there are rules in the rules that actually don't**  
5 **have a mens rea requirement.**  
6 Q. All right. Let's go to Rule 8.4. You cite  
7 that as well in your opinion.  
8 **A. Right.**  
9 Q. Is the same mental state in your view  
10 required for a violation of Rule 8.4; that is,  
11 actual knowledge, and it's a subjective test?  
12 **A. The authorities are divided on that, and in**  
13 **my view there should be actual knowledge of the**  
14 **inaccuracy of the wrongness of a statement of fact**  
15 **going forward.**  
16 Q. All right. In your view this particular  
17 Rule 8.4 should not be read to expand or lower Rule  
18 3.3's mens rea requirement --  
19 **A. Right.**  
20 Q. -- right?  
21 **A. Correct.**  
22 Q. All right. Now also on page 84 at the end  
23 of your report you make a reference to federal law  
24 separately requiring reasonable care to ensure the

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[REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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1 counsel may be paid for having referred the case to  
2 Labaton or for having recommended Labaton alone.  
3 Q. Is it sufficient to alert Arkansas that  
4 other counsel may be paid for doing no work on the  
5 case?  
6 MS. LUKEY: Objection.  
7 A. It does not -- it does not do that.  
8 Q. My next question involves your testimony  
9 about Rule 1.5(e), and I just want to read the first  
10 sentence of it and get your understanding.  
11 "A division of a fee between lawyers who  
12 are not in the same firm may be made only if the  
13 client is notified before or at the time the client  
14 enters into a fee agreement for the matter that a  
15 division of fees will be made and consents to the  
16 joint participation in writing and the total fee is  
17 reasonable."  
18 My question to you is the conjunctive  
19 piece of that at the end -- "and the total fee is  
20 reasonable" -- does that read into the rule a  
21 reasonableness requirement of the total fee relating  
22 to the division of fees or something else?  
23 MS. LUKEY: Objection.  
24 A. I think it says that the total fee of the

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

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1 lawyers who are dividing the fee has to be  
2 reasonable, and that is simply an echo, I suppose,  
3 of Rule 1.5(a) which says fees cannot be clearly  
4 excessive. Any one lawyer's fee cannot be clearly  
5 excessive.  
6 So to answer your question, the total --  
7 the word "total" means when you add both lawyers'  
8 fees together, it cannot be unreasonable for the  
9 work performed. And if you want to look at any  
10 single lawyer's fee vis-a-vis that lawyer's work to  
11 determine whether it is a valid fee, you go to Rule  
12 1.5(a).  
13 Q. So the piece of the total fee covered by a  
14 division of fee and the reasonableness read into the  
15 rule is read not in one 1.5(e) but in 1.5(a)? Is  
16 that your understanding?  
17 MS. LUKEY: Objection.  
18 A. 1.5(a) concerns any single lawyer or law  
19 firm's fee. 1.5(e) may result in two lawyers  
20 working on a matter.  
21 There are two requirements. One is that  
22 their fee -- the fee of both of them when added  
23 together has to be reasonable for that matter.  
24 The second requirement is that the fee

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1 for each of them has to satisfy the "not clearly  
2 unreasonable" requirement at 1.5(a) -- "clearly  
3 excessive" requirement of 1.5(a).  
4 Q. So which of those rules, if either, as to  
5 the reasonableness or not clearly excessiveness  
6 would apply to Mr. Chargois -- the Chargois  
7 Arrangement, if either of them?  
8 **A. They both do. Rule 1.5(e) applies to the  
9 Chargois Arrangement if there were a valid division  
10 of fee agreement, and then you look at the total  
11 fee. Now --**  
12 Q. And I think you testified that -- so the  
13 total fee, would that be the total 75 million  
14 dollars in this case?  
15 **A. That's right.**  
16 Q. And I think you testified in response to a  
17 number of questions that that total fee itself was  
18 not unreasonable based upon what you knew?  
19 **A. Right. Actually, the total fee -- since  
20 some of that 75 million dollars went to other than  
21 class counsel, the total is probably less than 75  
22 million.**  
23 **So that -- that will be an application  
24 of Rule 1.5(e). And then separately you would look**

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1 **at 1.5(a) for any individual lawyer.**  
2 Q. So are you saying then that Rule 1.5(a) and  
3 the requirement that there not be an excessive -- a  
4 clearly excessive fee applies to the Chargois  
5 Arrangement and the payment under that arrangement  
6 to Mr. Chargois of 4.1 million dollars?  
7 **MS. LUKEY: Objection.**  
8 **A. Yes, because you don't -- you don't escape  
9 the constraints of 1.5(a) by bundling multiple  
10 lawyers into a division of fee agreement, even if  
11 the total is not unreasonable.**  
12 Q. Okay. I think I understand your opinion and  
13 your testimony.  
14 **A. You will when you read it.**  
15 Q. All right. I think I understand it. But  
16 let me try to summarize it --  
17 **A. You want an example?**  
18 Q. Sure.  
19 **A. Okay. So Jane and June have a valid  
20 division of fee agreement under Rule 1.5(e) in  
21 Massachusetts. Together they're going to get a  
22 hundred dollars for their work. A hundred dollars  
23 is a reasonable amount for that work.  
24 1.5(e) is satisfied.**

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1 **However, Jane is going -- Jane who did 4  
2 percent of the work is going to get 95 percent of  
3 the fee. And so she has to satisfy Rule 1.5(a)  
4 prohibition against clearly excessive fees.**  
5 Q. Okay. So I'm going to take it piece by  
6 piece just to make sure I understand it and  
7 everybody understands your opinion.  
8 **A. Okay.**  
9 Q. Rule 1.5(a) and Rule 1.5(e) should be read  
10 in tandem?  
11 **A. Absolutely.**  
12 Q. And the reasonableness of the fee in Rule  
13 1.5(e) applies to the total fee; is that right?  
14 **A. Yes.**  
15 Q. And in looking at individual fees within the  
16 total fee, we look to 1.5(a) to determine if that  
17 fee is clearly excessive?  
18 **A. Correct.**  
19 Q. And then 1.5(a) sets out eight different  
20 factors for a factfinder or a judge or, I suppose a  
21 special master, to look at to determine if the fee  
22 in question is excessive?  
23 **A. That's right. There's a list of factors  
24 that's been around for a very long time that inform**

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1 **the standard of clearly excessive.**  
2 **Clearly excessive is a term in 1.5(a)  
3 that varies from jurisdiction to jurisdiction. Some  
4 say reasonable or excessive without "clearly."**  
5 Q. Okay. I'm going to ask you the obvious  
6 question that I think the lawyers will want to ask  
7 you, and I'm building here upon Mr. Heimann's  
8 questions that it is standard practice in the class  
9 action field --  
10 **THE SPECIAL MASTER: I'm not sure,  
11 Richard, if you qualified it further by saying  
12 securities litigation. I'll accept that if you  
13 want.**  
14 Q. -- for lawyers to receive so-called referral  
15 fees of as much as 20 percent for not doing any  
16 work.  
17 Does that call into question in any way  
18 whether or not Rule 1.5(a) is implicated where it's  
19 a class action and the fees are coming from the  
20 common fund?  
21 **A. Standard practice cannot change the meaning  
22 of a rule. So it doesn't call into question 1.5(a).**  
23 Q. I'm not sure I understood your answer --  
24 **A. You asked --**

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1 Q. Well, let me -- are you saying just because  
2 it might be standard practice doesn't mean that  
3 1.5(a) and a potential violation is not implicated?  
4 Is that what you're stating?  
5 **A. Yes, that's what I'm saying.**  
6 Q. Putting it another way, if Mr. Heimann is  
7 correct and this is standard practice for a 20  
8 percent fee to be paid to a lawyer who did no work  
9 as a "referral fee," what would your opinion be as  
10 to whether or not that implicates the prohibitions  
11 on rule -- in Rule 1.5(a) and clearly excessive  
12 fees?  
13 **A. Given the amounts involved in successful**  
14 **class actions resulting in Court-awarded fees, it's**  
15 **hard to imagine that a judge would conclude that a**  
16 **sizable fee for -- for me a referral or**  
17 **recommendation would not be clearly excessive.**  
18 **But we would need the facts of the case.**  
19 Q. Would a judge be able to make that  
20 determination if it was not disclosed to him or her?  
21 **MS. LUKEY: Objection.**  
22 **A. Um, well, of course, you cannot -- you**  
23 **cannot adjudicate an issue that you do not know**  
24 **about. So the answer is no.**

Page 372

1 [REDACTED]  
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Page 371

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Page 373

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24 [REDACTED]

# **EX. 254**



December 19, 2016

By Facsimile 718-248-3425

[Redacted]

Re: Wire Transfer

POSTED

Dear Victoria:

Please process the following wire transfer:

From: Labaton Sucharow LLP  
Account Number: [Redacted] 3289

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

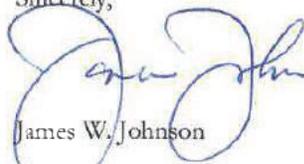
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Further Credit: Goldman Scarlato & Penny, PC  
Account #: [Redacted] 2499

Amount: \$363,158.33

Thank you.

Sincerely,

  
James W. Johnson  
Partner

# **EX. 255**

LABATON SUCHAROW LLP

Account Redacted 6543 Page 10 of 14  
Statement Period: Dec 1 - Dec 31, 2016

000/R1/21F000

**CHECKING ACTIVITY**

**Continued**

Date	Description	Debits	Credits	Balance
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**Redacted**

12/19	OTHER WITHDRAWAL/ADJ DOMESTIC WIRE TRANSFER REF.# 20161219B1Q8021C04046	363,158.33		1,002,212.01
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**Redacted**

# **EX. 256**

# Exhibit 13

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others similarly situated, ) No. 11-cv-10230 MLW  
) )  
Plaintiffs, ) )  
) )  
v. ) )  
) )  
STATE STREET BANK AND TRUST COMPANY, ) )  
) )  
Defendants. ) )

---

ARNOLD HENRIQUEZ, MICHAEL T. COHN, )  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, ) No. 11-cv-12049 MLW  
and those similarly situated, ) )  
) )  
Plaintiffs, ) )  
) )  
v. ) )  
) )  
STATE STREET BANK AND TRUST COMPANY, ) )  
STATE STREET GLOBAL MARKETS, LLC and ) )  
DOES 1-20, ) )  
) )  
Defendants. ) )

---

THE ANDOVER COMPANIES EMPLOYEE SAVINGS )  
AND PROFIT SHARING PLAN, on behalf of itself, and ) No. 12-cv-11698 MLW  
JAMES PEHOUSHEK STANGELAND, and all others ) )  
similarly situated, ) )  
) )  
Plaintiffs, ) )  
) )  
v. ) )  
) )  
STATE STREET BANK AND TRUST COMPANY, ) )  
) )  
Defendants. ) )

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**DECLARATION OF ERIC J. MILLER ON BEHALF OF A.B. DATA, LTD.  
REGARDING MAILING OF NOTICE TO SETTLEMENT CLASS MEMBERS  
AND PUBLICATION OF SUMMARY NOTICE**

I, Eric J. Miller, declare as follows, pursuant to 28 U.S.C. §1746:

1. I am a Vice President of A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered on August 11, 2016 (the "Preliminary Approval Order"),<sup>1</sup> A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement in the above-captioned actions. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

#### **MAILING OF THE NOTICE**

2. Pursuant to the Preliminary Approval Order, A.B. Data mailed the Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and Any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (the "Notice"), along with a cover letter, to Settlement Class Members identified as such by counsel for State Street Bank and Trust Company. Class Members categorized as a "Group Trust" received a cover letter concerning their identification as such and non-Group Trusts received a generic cover letter. Copies of the cover letters and Notice are attached hereto as **Exhibit A**.

3. On July 27, 2016, A.B. Data received 9,610 records of names and address information for Settlement Class Members identified by counsel for State Street Bank and Trust Company, some which represented multiple funds.

4. Once received, the data was processed by A.B. Data to ensure adequate address formatting and aggregated to identify overlapping addresses, of which 7,689 were identified,

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<sup>1</sup> All capitalized terms used herein that are not defined have the same meaning as that provided in the Stipulation and Agreement of Settlement, dated July 26, 2016.

resulting in 1,921 distinct records for mailing (the “Mailing List”). A.B. Data also standardized and updated the Mailing List addresses using NCOALink<sup>®</sup>, a national database of address changes that is compiled by the United States Postal Service.

5. On August 22, 2016, A.B. Data caused the Notice to be mailed by first class mail to the Settlement Class Members included on the Mailing List.

6. As of the date of this Declaration, 380 Notices were returned by the United States Postal Service to A.B. Data as undeliverable as addressed (“UAA”). Of those returned UAA, 2 had forwarding addresses and were promptly re-mailed to the updated address. The remaining 378 UAAs were processed through LexisNexis to obtain an updated address. Of these, 47 new addresses were obtained and A.B. Data promptly re-mailed to these Settlement Class Members.

7. As of the date of this Declaration, a total of 1,970 Notices have been mailed to Settlement Class Members.

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

8. In accordance with Paragraph 9 of the Preliminary Approval Order, on September 6, 2016, A.B. Data caused the Summary Notice of Pendency of Class Actions, Proposed Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (“Publication Notice”) to be published in *The Wall Street Journal* and to be disseminated over the internet via *PR Newswire*. Proof of this publication is attached hereto as **Exhibits B** and **C**, respectively.

#### **TELEPHONE HOTLINE**

9. On or about August 22, 2016, a case-specific toll-free number, 877-240-3540, was established with an Interactive Voice Response system and live operators. An automated attendant answers all calls initially and presents callers with a series of choices to respond to

basic questions. If callers need further help, they have the option to be transferred to a live operator during business hours.

10. Through the date of this Declaration, A.B. Data has received 51 telephone calls.

#### WEBSITE

11. On or about August 22, 2016, A.B. Data established a case-specific website, [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com), which includes general information regarding the cases and their current status, downloadable copies of the Notice and other court documents, including the Stipulation and Agreement of Settlement. The settlement website is accessible 24 hours a day, 7 days a week. To date, there have been 435 visitors to the website.

#### REPORT ON EXCLUSIONS AND OBJECTIONS

12. The Notice informed Settlement Class Members that requests for exclusion are to be sent to A.B. Data, such that they are received no later than October 7, 2016. As of the date of this Declaration, A.B. Data has received no requests for exclusion.

13. The Notice also informed Settlement Class Members that objections are to be filed with the Court and mailed to Lead Counsel, such that they are received no later than October 7, 2016. As of the date of this Declaration, A.B. Data has received no objections.

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

Executed this 14<sup>th</sup> day of September, 2016.

  
Eric J. Miller

# EXHIBIT A

## Important and Time Sensitive

**NOTICE TO “GROUP TRUST” CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY (“SSBT”)  
State Street Indirect FX Trading Class Action,  
Case No. 11-cv-10230 MLW (D. Mass.)**

A proposed Settlement of the above-noted class action (the “Class Action”) has been reached and enclosed is a copy of the Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (“Notice”). PLEASE READ THE NOTICE CAREFULLY.

You have been identified by SSBT as, or as representing, the entity (entities) listed below, each of which has been identified as a “**Group Trust**” customer of SSBT.

The Court has ordered Group Trust customers to provide a certification: (1) reporting the average proportion of the Group Trust’s SSBT custodied assets that were held by an ERISA Plan or Plans during the period from January 2, 1998 through December 31, 2009, inclusive (the “Class Period”) and/or (2) reporting the average volume of Indirect FX Trades made by the ERISA Plan(s) during the Class Period, and (3) identifying by name each ERISA Plan within the Group Trust.

The certification must be signed by a plan fiduciary or administrator and state that he, she, or it certifies that the information contained within the certification is accurate based on reasonably available information. The certification must be mailed or delivered so that it is **postmarked or received no later than December 20, 2016**, to:

*State Street Indirect FX Trading Class Action*  
Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173000  
Milwaukee, WI 53217

Upon request from the Claims Administrator, a Group Trust must promptly provide sufficient information to explain and confirm its certification. **Pages 10-11 of the Notice contain more information about the certification process.** The certifications are needed so that the Claims Administrator can properly allocate the Class Settlement and calculate individual recoveries. There is no claim process.

If you have any questions, you may contact the Claims Administrator at 877-240-3540, or by email at [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com). Thank you for your cooperation.

Fund Code      Fund Name

Fund Code      Fund Name

**For Questions, Please Call 877-240-3540.**

## Important and Time Sensitive

<p><b>NOTICE TO CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY (“SSBT”) <i>State Street Indirect FX Trading Class Action,</i> Case No. 11-cv-10230 MLW (D. Mass.)</b></p>
---

A proposed Settlement of the above-noted class action (the “Class Action”) has been reached and enclosed is a copy of the Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys’ Fees, Litigation Expenses, and Service Awards (“Notice”).

You have been identified by SSBT as, or as representing, the entity (entities) listed below.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

If you have any questions, you may contact the Claims Administrator at 877-240-3540, or by email at [info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com). Thank you for your cooperation.

Fund Code    Fund Name

Fund Code    Fund Name

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v.</i>	)	No. 11-cv-10230 MLW
<i>STATE STREET BANK AND TRUST COMPANY</i>	)	
	)	
<i>ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND</i>	)	No. 11-cv-12049 MLW
<i>TRUST COMPANY, et al.</i>	)	
	)	
<i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS</i>	)	No. 12-cv-11698 MLW
<i>AND PROFIT SHARING PLAN, et al. v. STATE STREET</i>	)	
<i>BANK AND TRUST COMPANY</i>	)	
	)	

**NOTICE OF PENDENCY OF CLASS ACTIONS, PROPOSED CLASS SETTLEMENT, SETTLEMENT HEARING, PLAN OF ALLOCATION, AND ANY MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

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

**You Are Receiving this Notice Because Available Information Indicates that You Are a Member of the Settlement Class Defined Below.**

**If this Is Incorrect, Please Contact the Claims Administrator and Lead Counsel Immediately.**

This notice (“Notice”) is being sent to advise you of the pendency of the above-captioned class action lawsuits (collectively, the “Class Actions”) and the proposed settlement of the Class Actions for \$300,000,000 (the “Class Settlement Amount”) on the terms discussed below (the “Class Settlement”).<sup>1</sup> The Class Settlement resolves claims arising from the alleged unfair and deceptive practice of State Street Bank and Trust Company (“SSBT”) of charging custody and trust customers of SSBT excessive rates and spreads in connection with certain foreign exchange transactions known as “Indirect FX Transactions”<sup>2</sup> during the period from January 2, 1998 through December 31, 2009, inclusive (the “Class Period”), in violation of SSBT’s statutory, contractual, and fiduciary obligations. The Class Actions sought to recover losses on behalf of SSBT’s custodial clients based on this alleged unfair and deceptive practice. If approved, the Class Settlement will resolve all claims asserted in the Class Actions.

The Class Settlement is entered into by and among (i) plaintiffs Arkansas Teacher Retirement System (“ARTRS”), Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangeland (collectively, “Plaintiffs”), on behalf of themselves and each Settlement Class Member, by and through their counsel, and (ii) State Street Bank and Trust Company (the “Settling Defendant” or “SSBT”). Plaintiffs and SSBT are referred to collectively herein as the “Parties.”

The Honorable Mark L. Wolf of the United States District Court for the District of Massachusetts (the “Court”) is presiding over the Class Actions. Judge Wolf has provisionally certified the proposed Settlement Class (as defined below) for purposes of settlement only, has directed that this Notice be mailed to members of the Settlement Class, and has scheduled a Final Approval Hearing (“Final Approval Hearing” or “Settlement Hearing”) at which the Court will consider Plaintiffs’ motion for final approval of the Class Settlement and approval of the proposed plan for allocating the settlement proceeds to the Settlement Class (“Plan of Allocation”), and Lead Counsel’s motion, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys’ fees, payment of Litigation Expenses, and payment of any Service Awards for Plaintiffs. **The Final Approval Hearing will be held on November 2, 2016, at 2:00 p.m. in Courtroom 10 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts**

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein have the meanings provided in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the “Settlement Agreement”). The Settlement Agreement is available on the website for this Settlement, [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com).

<sup>2</sup> “Indirect FX Transactions/Trading” means Foreign exchange transactions executed with SSBT or SSBT’s subcustodians at any time using Indirect FX Methods, including all foreign exchange transactions submitted using Indirect Methods. A transaction submitted or processed using an Indirect Method is an Indirect FX Transaction regardless whether the rate at which the transaction was executed differed from the rates at which other transactions submitted using Indirect Methods were executed. Settlement Agreement ¶ 1(ff).

~~Case 1:11-cv-10230-MJW Document 104-267 Filed 09/25/16 Page 10 of 32~~  
**02210.** The Class Settlement will become effective once it reaches its Effective Date, which is after the opportunity to appeal the Court’s Judgment has expired or, if there are any appeals, approval of the Class Settlement is upheld; after the Court approves the proposed Plan of Allocation and the order has become Final; and certain other conditions are met.

Additional information regarding the Class Settlement and this Notice may be obtained by contacting the Claims Administrator: *State Street Indirect FX Trading Class Action*, c/o A.B. Data, Ltd., P.O. Box 173000, Milwaukee, WI 53217, 877-240-3540, info@StateStreetIndirectFXClassSettlement.com, www.StateStreetIndirectFXClassSettlement.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 CLASS SETTLEMENT.**

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE CLASS SETTLEMENT</b>	
<p><b>YOU DO NOT NEED TO TAKE ANY ACTION TO PARTICIPATE IN THE CLASS SETTLEMENT AND RECEIVE A PAYMENT</b></p> <p><b>(If you represent a Group Trust,<sup>3</sup> see pages 10-11 below.)</b></p>	<p>If the Class Settlement is approved and you are a member of the Settlement Class, you do not need to take any action to receive a payment. You will be bound by the settlement, unless you take steps to exclude yourself as explained below, and you cannot bring or be part of any other lawsuit or arbitration against Defendants or any of the other Released Defendant Parties based on any Released Class Claim.</p> <p>Your portion of the Net Class Settlement Fund will be calculated as part of the administration of the Class Settlement. An explanation of the manner in which payments to Settlement Class Members will be determined is set forth in the Plan of Allocation, below. However, Group Trusts, which may include plans or assets governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), need to provide certain information so that their recovery can be properly determined. SSBT has agreed to undertake reasonable efforts to provide the information necessary to determine each Settlement Class Member’s portion of the Net Class Settlement Fund. See the Plan of Allocation in the answer to Question 8 below for important information.</p>
<p><b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION (WHICH MUST BE RECEIVED NO LATER THAN OCTOBER 7, 2016)</b></p>	<p>If you do not wish to be a member of the Settlement Class, you <i>must</i> exclude yourself (as described below in Question 10). If you exclude yourself, you <i>will not</i> receive any payment from the Class Settlement. You cannot bring or be part of any other lawsuit or arbitration against Defendants or any of the other Released Defendant Parties based on any Released Class Claim unless you exclude yourself from the Settlement Class.</p>
<p><b>OBJECT TO THE CLASS SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION (WHICH MUST BE RECEIVED NO LATER THAN OCTOBER 7, 2016)</b></p>	<p>If you wish to object to any part of the Class Settlement, the Plan of Allocation, or the requests for attorneys’ fees, Litigation Expenses, and/or Service Awards, and do not exclude yourself from the Settlement Class, you can write to the Court and counsel and explain what you do not agree with.</p>
<p><b>ATTEND THE FINAL APPROVAL HEARING (NOVEMBER 2, 2016 AT 2:00 p.m.)</b></p>	<p>If you have submitted a written objection to the Court and counsel and notice to appear, as explained below, you may (but do not have to) attend the hearing and speak to the Court about your objection.</p>

**Please note:** The Court has the authority to change any of the above deadlines, for good cause shown.

<sup>3</sup> “Group Trusts” are group trusts that are exempt from tax pursuant to Internal Revenue Service Revenue Ruling 81-100, as amended, that were custody or trust customers of SSBT during any part of the Class Period. See Settlement Agreement ¶ 1(bb).

As described in more detail below, and in the complaints filed with the Court, the Class Actions allege that Plaintiffs (or the plans they represent) and/or their investment managers entered into agreements authorizing Defendants to engage in Indirect FX Transactions with their custodial accounts under certain circumstances. Plaintiffs alleged that SSBT priced Indirect FX Transactions in a manner advantageous to Defendants and disadvantageous to Plaintiffs, near or outside the high and low of the daily range of interbank rates, contrary to SSBT's contractual obligations and representations and Defendants' fiduciary and statutory responsibilities. Copies of the operative complaints in the Class Actions are available at [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com).

Pursuant to the Settlement Agreement, a Class Settlement Fund consisting of \$300 million in cash, plus any accrued interest, has been established, in exchange for the Settlement Class's release of the Released Class Claims (defined below). Payment by or on behalf of SSBT of the \$300 million Class Settlement Amount, and the allocations discussed below in the Plan of Allocation, will also satisfy conditions in two separate settlements with federal government agencies.<sup>4</sup> SSBT anticipates reaching a settlement with the U.S. Securities and Exchange Commission ("SEC") concerning Indirect FX that relates to Settlement Class Members that are Registered Investment Companies (the "SEC Settlement").<sup>5</sup> SSBT has also reached a settlement with the U.S. Department of Labor ("DOL") concerning Indirect FX that relates to Settlement Class Members that are ERISA Plans (the "DOL Settlement").<sup>6</sup>

Based on information provided by SSBT, the average gross recovery for a class member from the Class Settlement is approximately \$200,000 before the deduction of Court-approved fees and expenses. A Settlement Class Member's actual "Recognized Claim" will be calculated in accordance with the Plan of Allocation, explained below, and will depend on, among other things, the Settlement Class Member's volume of Indirect FX Transactions, and whether or not the Settlement Class Member is an ERISA Plan, a Group Trust, a Registered Investment Company, or none of these. A Settlement Class Member's payment will be a portion of the Net Class Settlement Fund, which consists of the Class Settlement Fund, less fees and expenses associated with providing notice to the Settlement Class and administering the Class Settlement ("Notice and Administration Expenses"), Taxes and Tax Expenses, Court-approved attorneys' fees, Litigation Expenses, and any Service Awards to Plaintiffs for the effort and time spent by them in connection with the prosecution of the Class Actions. (See Questions 6 and 8 below for details about the Plan of Allocation).

The Settlement Class is defined as follows:

**All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT's records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.**

**Please Note:** There are exceptions to being included in the Settlement Class. A description of those Persons excluded by definition from the Settlement Class is provided below in Question 4.

As with any litigation, the Parties face an uncertain outcome if the Class Actions do not settle and litigation continues. Absent the Class Settlement, orders and appeals on class certification, summary judgment and a trial could result in a judgment or verdict greater or less than the recovery under the Class Settlement, or no recovery at all. Throughout the Class Actions, the Plaintiffs and Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Plaintiffs were to prevail at trial. Defendants, among other things: (1) have

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<sup>4</sup> SSBT has separately reached a settlement with the U.S. Department of Justice ("DOJ") concerning Indirect FX (the "DOJ Settlement"). The DOJ Settlement requires SSBT to pay money to the federal government.

<sup>5</sup> "Registered Investment Company(ies)" means a mutual fund, closed-end fund, unit investment trust or other entity that is registered with the SEC as an investment company under the Investment Company Act. Settlement Agreement ¶ 1(ww).

<sup>6</sup> "ERISA Plans" means the employee benefit plans as defined in 29 U.S.C. § 1002(3) (also referred to as Section 3(3) of ERISA), that are subject to Part 4 of Subtitle B of Title I of ERISA (including master trusts with respect to multiple such plans within the meaning of Department of Labor Regulation § 2520.103-1(e)), and that were custody or trust customers of SSBT during any part of the Class Period. Settlement Agreement ¶ 1(w).

denied the material allegations of the Complaints; (2) have denied any wrongdoing or liability whatsoever; (3) have contested the propriety of class certification; (4) believe that they acted at all times reasonably and prudently, in full compliance with their contractual obligations, and in accordance with applicable law; and (5) would assert certain other defenses if this Class Settlement is not consummated. SSBT is entering into the Class Settlement solely to avoid the cost, disruption, and uncertainty of continued litigation. The Parties have taken into account the uncertainty and risks inherent in these litigations, particularly their complex natures, and have concluded that it is desirable that the Class Actions be fully and finally settled on the terms and conditions set forth in the Class Settlement.

Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an order awarding attorneys' fees in an amount not to exceed \$74,541,250.00 and payment of Litigation Expenses in an amount not to exceed \$1,750,000.00, plus interest earned on these amounts. As explained further in the Plan of Allocation set forth in Question 8 below, no more than \$10,900,000.00 of the attorneys' fees awarded will be paid out of the ERISA Settlement Allocation (as defined below). The remainder of attorneys' fees awarded will be paid out from the RIC Settlement Allocation and the Public and Other Settlement Allocation (both as defined below). If the Court awards attorneys' fees at an overall percentage rate of more than 18.17%, the RIC Settlement Allocation and the Public and Other Settlement Allocation will each bear fees at a higher percentage rate than the ERISA Settlement Allocation. If the Court awards attorneys' fees at an overall percentage rate of 18.17% or less, the three Settlement Allocations (ERISA, RIC, and Public and Other) will each bear fees at the same rate.

Plaintiffs will share in the allocation of the money paid to members of the Settlement Class on the same basis and to the same extent as all other members of the Settlement Class, except that, in addition thereto, Plaintiffs may apply to the Court for Service Awards of up to \$85,000.00 in the aggregate. Any Service Awards granted to Plaintiffs by the Court will be payable from the Class Settlement Fund, and will compensate Plaintiffs for their effort and time spent in connection with the prosecution of the Class Actions.

## BASIC INFORMATION

### 1. Why did I receive this Notice?

You received this Notice because records provided by SSBT indicate that during the Class Period you were a domestic custody customer of SSBT that executed one or more Indirect FX Transactions during the Class Period. The Court has directed that this Notice be sent to you. If the Court approves the Class Settlement, and it becomes effective, the Released Defendant Parties and Released Plaintiff Parties will be released from all Released Class Claims and Released Prosecution Claims, respectively, as explained below. In exchange, the Net Class Settlement Fund will be distributed to Settlement Class Members according to the Court-approved Plan of Allocation.

This Notice explains the Class Actions, the Class Settlement, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion of the Net Class Settlement Fund. The Final Approval Hearing will be held on November 2, 2016 at 2:00 p.m., before the Hon. Mark L. Wolf in the United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, Courtroom 10, 1 Courthouse Way, Boston, Massachusetts 02210, to determine:

- whether the Class Settlement should be approved as fair, reasonable, and adequate;
- whether the complaints should be dismissed with prejudice pursuant to the terms of the Class Settlement;
- whether the proposed Plan of Allocation for the proceeds of the Class Settlement should be approved; and
- whether the applications for attorneys' fees, payment of Litigation Expenses, and payment of Service Awards to Plaintiffs should be approved.

The issuance of this Notice is not an expression of the Court's opinion of the merits of any claim in the Class Actions, and the Court has not decided whether to approve the Class Settlement. If the Court approves the Class Settlement, payment to Settlement Class Members will be made after all related appeals, if any, are favorably resolved and the regulatory settlements have become final. Please be patient.

## 2. What are the Class Actions about? What has happened so far?

The Class Actions were commenced in 2011 and 2012 by the filing of three class action complaints. In the Class Actions, Plaintiffs allege, among other things, that Defendants charged custody and trust customers of SSBT excessive rates and spreads in connection with Indirect FX Transactions between January 2, 1998 and December 31, 2009. Plaintiffs allege that by employing this unfair and deceptive practice, Defendants earned higher spreads on Indirect FX Transactions than they should have. Further, Plaintiffs allege that Defendants failed to disclose this pricing. Plaintiffs assert that this alleged unfair and deceptive practice and nondisclosure thereof constituted violations of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A, §§ 2, 9 and 11 (“Chapter 93A”), breach of an alleged fiduciary duty, and negligent misrepresentation, and, with respect to the ERISA Funds, violations of ERISA, 29 U.S.C. § 1106, for engaging in self-interested prohibited transactions and by causing the plans to engage in party in interest prohibited transactions, violations of ERISA, 29 U.S.C. § 1104, for breaching duties of prudence and loyalty, and pursuant to ERISA, 29 U.S.C. § 1105, liability for breaches of co-fiduciary obligations.

Defendants have denied Plaintiffs’ allegations. If the Class Actions were to continue, Defendants would raise numerous defenses to liability, including without limitation:

- Defendants acted in accordance with the custody and trust and Indirect FX agreements and did not breach them.
- Defendants either did not owe fiduciary duties or did not breach fiduciary duties owed to certain Settlement Class Members based on state law and the plain language of the agreements that governed Defendants’ custodial obligations.
- Defendants made no actionable misrepresentations or omissions, and did not engage in any Chapter 93A violations.
- All of the FX transactions executed with ERISA customers satisfy statutory or regulatory exemptions for FX transactions.
- Plaintiffs and the Settlement Class knew, or should have known, that Defendants were engaged in the Indirect FX pricing practice alleged in the Complaints.
- Plaintiffs and the Settlement Class were not damaged by Defendants’ conduct and received the benefit of the bargain for the services that were provided.

On June 3, 2011, Defendants State Street Corporation, SSBT, and SSGM LLC moved to dismiss the amended class action complaint in the ARTRS Action. The motion to dismiss was fully briefed as of February 28, 2012. On April 9, 2012, SSBT and SSGM LLC moved to dismiss the amended class action complaint in the Henriquez Action.

On May 8, 2012, the Court heard oral argument on Defendants’ motion to dismiss the ARTRS Action. By order issued from the bench dated the same day, the Court denied the motion in its entirety with regard to the claims against SSBT, but granted the motion with respect to the claims against State Street Corporation. By agreement of the parties, the claims against SSGM LLC were dismissed without prejudice.

On November 16, 2012, the Parties in the Class Actions filed a Stipulation, Joint Motion, and Proposed Order for the Production and Exchange of Confidential Information, which the Court entered on November 20, 2012. Pursuant to the order, the Class Actions were consolidated for pre-trial purposes. Additionally, the order provided that the Parties could engage in formal document discovery until December 1, 2013. The Class Actions were stayed in all other respects until December 1, 2013 and certain motions were withdrawn. At the Parties’ request, the stay of proceedings, other than discovery, was subsequently extended by orders of the Court, while the Parties pursued mediation.

The Class Settlement is the product of protracted, arm’s-length negotiations between Plaintiffs’ Counsel and Defendants’ Counsel, facilitated by a nationally recognized mediator with substantial experience mediating complex litigations of this type. Between October 2012 and June 2015, the Parties engaged in sixteen (16) in-person mediation sessions in Boston, New York City, and Washington, D.C. In addition, the Parties met without the mediator and had numerous arm’s-length discussions among themselves.

Pursuant to agreements concerning the exchange of formal document discovery, informal material to facilitate the mediation process, and managing the Class Actions, the Parties exchanged more than nine million pages of relevant documents. SSBT also provided a significant amount of data and other information relevant to liability, class certification and damages issues, and Plaintiffs and SSBT each made multiple, detailed presentations (including a presentation by an accounting expert) during the mediation process concerning such issues.

On June 30, 2015, Plaintiffs and SSBT reached an agreement-in-principle to settle the Class Actions, which was memorialized in a term sheet on September 11, 2015, and the Settlement Agreement, dated July 26, 2016.

### 3. Why is this case a class action?

In a class action, one or more individuals or entities, referred to as “Plaintiffs,” sue on behalf of others who have similar claims. All of the Persons on whose behalf Plaintiffs in the Class Actions are suing are members of the “class” referred to in this Notice, and are “Settlement Class Members” or “members of the Settlement Class.” Bringing a case as a class action allows the adjudication of many similar claims that might be economically too small to bring individually. 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 the Settlement Class at the Final Approval Hearing.

### 4. How do I know whether I am part of the Settlement Class?

The Court has provisionally certified the following Settlement Class:

**All custody and trust customers of SSBT (including customers for which SSBT served as directed trustee, ERISA Plans, and Group Trusts), reflected in SSBT’s records as having a United States tax address at any time during the period from January 2, 1998 through December 31, 2009, inclusive, and that executed one or more Indirect FX Transactions with SSBT and/or its subcustodians during the period from January 2, 1998 through December 31, 2009, inclusive.**

The “Settlement Class” does not include: Defendants; California Public Employees’ Retirement System (CalPERS), California State Teachers’ Retirement System (CalSTRS), and the State of Washington Investment Board; the predecessors and affiliates of the foregoing, or any entity in which they have a controlling interest; and the officers, directors, legal representatives, heirs, successors, subsidiaries and/or assigns of any such excluded individual or entity in their capacities as such. For the avoidance of doubt, the Parties have agreed that this definition of the “Settlement Class” is intended to supersede the class definitions in the complaints in the Class Actions.

The “Settlement Class” also does not include any Person who submits a timely and valid request for exclusion meeting the requirements in this Notice (see Question 10 below).

If you are not sure whether you are included, you can ask for assistance. You can call 877-240-3540 or visit [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) for more information.

### 5. Why is there a Class Settlement?

The Court did not finally decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. Plaintiffs and Plaintiffs’ Counsel believe that the claims asserted in the Class Actions have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. They have considered the uncertain outcome and the risk of any litigation, especially in complex lawsuits like this one, as well as the unique risks here. Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) that could limit or result in the dismissal of the claims and a reduction in any recovery. In the absence of a Settlement, the Parties would present factual and expert testimony on such issues, and there is considerable risk that the Court or jury would resolve the inevitable “battle of the experts” against Plaintiffs and the Settlement Class.

As stated above, the Class Settlement is the product of extensive arm’s-length negotiations between Plaintiffs’ Counsel and Defendants’ Counsel, all of whom are very experienced with respect to complex litigation of this type. The Class

Settlement provides substantial benefits now as compared to the risk that a similar or smaller recovery would be achieved after trial and appeals, years in the future, or that no recovery would be achieved at all. In light of the amount of the Class Settlement and the immediate recovery to the Settlement Class, Plaintiffs and Plaintiffs' Counsel believe that the proposed Class Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class.

## 6. What does the Class Settlement provide?

In exchange for the Class Settlement and the release of the Released Class Claims (defined below) against the Released Defendant Parties (defined below), SSBT agreed to create a \$300,000,000 cash fund. The \$300,000,000, plus any interest that accrues on this amount, will be distributed to the Settlement Class after costs, expenses and fees are deducted, as described herein. The Class Settlement provides for cash payments to Settlement Class Members who do not exclude themselves from the Settlement Class, as explained in the Plan of Allocation in Question 8 below.

The description of the Class Settlement in this Notice is only a summary. The complete terms are set forth in the Settlement Agreement (including its exhibits), which may be obtained at the Class Settlement website, [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com), or Lead Counsel's website, [www.labaton.com](http://www.labaton.com).

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

Unless you exclude yourself, you will stay in the Settlement Class, which means that upon the "Effective Date" of the Class Settlement, you will release all "Released Class Claims" (as defined below) against the "Released Defendant Parties" (as defined below) and be subject to a covenant not to sue and a permanent injunction against prosecuting Released Class Claims against Released Defendant Parties.

**"Released Class Claims"** means any and all claims, demands, losses, costs, interest, penalties, fees, attorneys' fees, expenses, rights, rights of recovery, causes of action, duties, obligations, judgments, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including Unknown Claims, whether known or unknown, direct, representative, class, individual or indirect, asserted or unasserted, matured or unmatured, accrued or unaccrued, foreseen or unforeseen, disclosed or undisclosed, contingent or fixed or vested, accrued or not accrued, at law or equity, whether arising under federal, state, local, foreign, statutory, common, administrative or any other law, statute, rule or regulation that any Releasing Plaintiff: (i) asserted in the Class Actions; (ii) could have asserted in the Class Actions or any other action or in any forum, that arise from or out of, relate to, or are in connection with the claims, allegations, transactions, alleged or actual prohibited transactions or breaches of duty (including fiduciary duty), facts, events, acts, disclosures, matters or occurrences, statements, representations or omissions or failures to act involved, described, set forth, or referred to in the complaints filed in the Class Actions or that arise from or out of, relate to, or are in connection with Indirect FX Methods, Indirect FX Transactions/Trading, StreetFX Methods, StreetFX Transactions, or Rate Comparisons; and (iii) asserted or could assert that arise from or out of, relate to, or are in connection with the defense or settlement of the Class Actions, except for claims relating to enforcement of the Settlement.

**"Released Defendant Parties"** means SSBT and Defendants; their past, present and future parents, subsidiaries, divisions, and affiliates; the respective past and present officers, directors, trustees, employees, agents, trustees, managers, servants, accountants, auditors, underwriters, financial and investment advisors, consultants, representatives, insurers, co-insurers and reinsurers of each of them; and the heirs, successors and assigns of the foregoing.

**"Unknown Claims"** means any and all Released Class Claims, which one or more Releasing Plaintiffs 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 Prosecution Claims that SSBT or any other Released Defendant Party does 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 to him, her, or it might have affected his, her, or its decision(s) with respect to the Class Settlement. With respect to any and all Released Class Claims and Released Prosecution Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs and SSBT shall expressly, and each Releasing Plaintiff and SSBT shall be deemed to have, and by operation of the Judgment or any 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 any other jurisdiction, or principle of common law that is, or is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Releasing Plaintiffs, SSBT, or the other Released Defendant Parties may hereafter discover facts, legal theories, or authorities 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 Class Claims and the Released Prosecution Claims, but Plaintiffs and SSBT shall expressly, fully, finally, and forever settle and release, and each other Releasing Plaintiff and each other Released Defendant Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or any Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Class Claims and Released Prosecution Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Parties acknowledge, and each other Releasing Plaintiff and Released Defendant Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Class Claims and Released Prosecution Claims was separately bargained for and was a key and material element of the Class Settlement.

The “Effective Date” will occur when, among other things, an Order by the Court approving the Class Settlement becomes Final and is not subject to appeal and when an Order by the Court approving the proposed Plan of Allocation becomes Final and is not subject to appeal, as set out more fully in the Settlement Agreement on file with the Court and available at [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) or [www.labaton.com](http://www.labaton.com).

If you remain a member of the Settlement Class, all of the Court’s orders about the Class Settlement in the Class Actions will apply to you and legally bind you.

## **8. What will be my share of the Net Class Settlement Fund? How can I get my portion of the recovery?**

At the Final Approval Hearing, Lead Counsel will request the Court approve the Plan of Allocation set forth below. The Plan of Allocation describes the manner by which the Net Class Settlement Fund will be allocated among Settlement Class Members. Assuming you do not exclude yourself from the Settlement Class pursuant to Question 10 below, you do not need to take any further action to receive your portion of the recovery. However, as explained on pages 10-11 below, if you represent a Group Trust, you must provide a certification in order to receive a portion of the ERISA Settlement Allocation, rather than a portion of the balance of the Net Class Settlement Fund.

You are not responsible for calculating the amount you may be entitled to receive under the Class Settlement. This calculation will be done by the Claims Administrator as part of the implementation of the Class Settlement, and will be based on reasonably available information obtained from SSBT. You will be notified of your calculated recovery after the Class Settlement is approved and prior to Lead Counsel’s motion to the Court requesting approval of a distribution of the Class Settlement proceeds.

### **PLAN OF ALLOCATION**

This Plan of Allocation describes steps that the Claims Administrator will take in order to allocate funds in connection with the Class Settlement, including determining distribution amounts. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website at: [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) and at [www.labaton.com](http://www.labaton.com). Distributions in the manner set forth herein will be deemed conclusive against all claimants. Each Settlement Class Member is deemed to have submitted to the jurisdiction of the United States District Court for the District of Massachusetts with respect to his, her, or its recovery from the Class Settlement.

Distributions to Authorized Claimants will be based on Recognized Claims (defined below). It is important to understand that the Recognized Claims under this Plan of Allocation are not provable damages but rather are amounts derived from a fair and reasonable methodology (described below) to evaluate each Settlement Class Member’s relative stake in the Class Settlement.

The defined terms used herein relate to this Plan of Allocation, and not necessarily to other agreements executed by SSBT or its affiliates with third parties, including governmental agencies, in connection with the Class Settlement. Capitalized terms that are not otherwise defined herein have the same meaning as set forth in the Settlement Agreement.

The Net Class Settlement Fund, which shall consist of Three Hundred Million U.S. Dollars (\$300,000,000.00), plus any accrued interest, minus all costs and expenses incurred with respect to the fund, including Taxes and Tax Expenses, Notice and Administration Expenses, attorneys' fees, Litigation Expenses, and Service Awards paid from the Class Settlement Fund with the permission of the Court, will be distributed to eligible Settlement Class Members.

After approval by the Court of the Class Settlement, the Class Settlement Fund shall be allocated as set forth below for the benefit of Settlement Class Members.

The ERISA Settlement Allocation (which shall be the source of distributions to ERISA Plans and certain Group Trusts, as set forth below) shall be at least Sixty Million Dollars (\$60,000,000.00) of the Class Settlement Fund (twenty percent of the Class Settlement Fund), plus twenty percent (20%) of any interest accrued on the Class Settlement Fund, minus twenty percent (20%) of any Taxes and Tax Expenses, Notice and Administration Expenses, Service Awards, and Litigation Expenses, and minus attorneys' fees, if awarded by the Court, in an amount not to exceed Ten Million Nine Hundred Thousand Dollars (\$10,900,000.00).

The remainder of attorneys' fees will be paid out from the RIC Settlement Allocation and the Public and Other Settlement Allocation (both defined below). Because no more than \$10,900,000 in fees can be paid out from the ERISA Settlement Allocation, if the Court awards fees at an overall percentage rate of more than 18.17%, then the RIC Settlement Allocation and the Public and Other Settlement Allocation will bear fees at a higher percentage rate than the ERISA Settlement Allocation. For example, if the Court awards the total amount of fees that Lead Counsel intends to request, the RIC Settlement Allocation and the Public and Other Settlement Allocation will each bear fees at a higher percentage rate (26.52%) than the ERISA Settlement Allocation (18.17%). If the Court awards fees at an overall percentage rate of 18.17% or less, the three Settlement Allocations (ERISA, RIC, and Public and Other) will each bear fees at the same percentage rate.

The ERISA Settlement Allocation was negotiated directly among Lead Counsel, ERISA Counsel, and representatives of the DOL. The ERISA Settlement Allocation, even without the \$10,900,000 cap on attorneys' fees described above, provides a premium per dollar of Indirect FX Trading Volume for ERISA Plans and eligible Group Trusts in comparison to the allocations to other Settlement Class Members. The precise size of the premium is not known at this time because the amount of ERISA assets within Group Trusts is currently undetermined, as is the amount of attorneys' fees the Court may award. The premium recognizes the relative strength of the fiduciary duty and other claims available to ERISA Plans and eligible Group Trusts under the federal ERISA laws, as ERISA Counsel and the DOL have contended and as described in Question 2 above. The \$10,900,000 cap on attorneys' fees was agreed-to by Lead Counsel and ERISA Counsel separately with the DOL after the Class Settlement Amount was agreed-to by the Parties. The ERISA Settlement Allocation of \$60,000,000 and the \$10,900,000 cap on attorneys' fees were final, essential conditions for the DOL's support of the Settlement and the conclusion of its own investigation of SSBT. These conditions must be met for the Settlement to be concluded.

The balance of the Class Settlement Fund will be allocated in proportion to the Indirect FX Trading Volume of class members that are not ERISA Plans or eligible Group Trusts (as explained below), specifically to class members that are Registered Investment Companies ("RICs") and class members that are non-ERISA public pension funds, private entities, and other customers ("Public and Other").

After allocation of the ERISA Settlement Allocation, based on information supplied by SSBT, the "RIC Settlement Allocation" will be approximately \$142,000,000, on a gross basis before the addition of a proportional amount of any accrued interest and the deduction of proportional attorneys' fees, Litigation Expenses, Service Awards, Notice and Administration Expenses, Taxes and Tax Expenses, and the "Public and Other Settlement Allocation" will be approximately \$98,000,000, on a gross basis before interest and the deductions above. These allocations will be adjusted to the extent Indirect FX Trading Volume of Group Trusts is applied to the ERISA Settlement Allocation, as described below.

The Parties have relied on Indirect FX Trading Volume information provided by State Street to develop this Plan of Allocation. The ERISA Settlement Allocation and payment of the Registered Investment Company Minimum Distribution are essential conditions of the Class Settlement, which may be terminated by the Settling Defendant if the minimum allocations set forth in this Plan are not made. The amount of the ERISA Settlement Allocation has been set based on the Indirect FX Trading Volume information provided, including information concerning the total amount of Indirect FX Trading Volume executed during the Class Period by ERISA Plans and Group Trusts. As part of the

settlement administration process described below, the Claims Administrator will request information from Group Trusts concerning their ERISA Volume (explained below) during the Class Period.

In light of the fact that the amount of ERISA assets within Group Trusts is currently undetermined, the Parties, with input from the DOL, have agreed that the Plan of Allocation will be modified in the event that the total amount of Group Trusts' ERISA Volume is in excess of 2/3 of the total amount of Group Trusts' Indirect FX Trading Volume, as reported by State Street on July 25, 2016. In that event, the Claims Administrator will use the Indirect FX Trading Volume equal to such excess volume to calculate the net payment amount that would be due with respect to such volume if paid from the Public and Other Settlement Allocation, and will transfer half of that amount to the ERISA Settlement Allocation from each of the RIC Settlement Allocation and the Public and Other Settlement Allocation. (Accordingly, no such modification will be made if actual Group Trusts' ERISA Volume is 2/3 or less of the reported Group Trusts' Indirect FX Trading Volume.)

In the event that the actual total percentage of Indirect FX Trading Volume executed by ERISA Plans and Group Trust exceeds 15.25% of the overall Indirect FX Trading Volume for the Settlement as reported on July 25, 2016, the Claims Administrator will provide notice of the total such percentage to Plaintiffs' Counsel, State Street, and the DOL, and Plaintiffs' Counsel may apply to the Court for modification of this Plan of Allocation, without further notice to the Settlement Class. If the DOL wishes to be heard by the Court on a modification of the Plan of Allocation for this reason, regardless of whether Plaintiffs' Counsel seeks modification, neither State Street nor Plaintiffs' Counsel will object to the DOL's standing to do so.

## **B. ALLOCATION AMONG SETTLEMENT CLASS MEMBERS**

For each Settlement Class Member, the Claims Administrator shall determine that Settlement Class Member's Indirect FX Trading Volume(s) (in U.S. Dollars) during the Class Period, calculate that Settlement Class Member's Recognized Claim, and use those calculations to distribute the Settlement Allocations as set forth herein.

To facilitate this procedure, SSBT has provided the Claims Administrator with: (i) the total Indirect FX Trading Volume (in U.S. Dollars) for each Settlement Class Member during the Class Period; (ii) information concerning whether each Settlement Class Member was an ERISA Plan during the Class Period; (iii) information concerning whether each Settlement Class Member was a Registered Investment Company during the Class Period; and (iv) information concerning whether each Settlement Class Member was a group trust that is exempt from tax pursuant to Internal Revenue Service Revenue Ruling 81-100 ("Group Trust") during the Class Period.

### **1. Determination of Indirect FX Trading Volumes**

The Claims Administrator shall divide each Settlement Class Member's total Indirect FX Trading Volume (in U.S. Dollars) during the Class Period into three parts: (i) Registered Investment Company Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("RIC Volume"); (ii) ERISA Plan Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("ERISA Volume"); and (iii) their remaining Indirect FX Trading Volume (in U.S. Dollars) during the Class Period ("Public and Other Volume"). The division shall be determined as follows.

#### **a) Registered Investment Company Settlement Class Members**

For each Settlement Class Member that, based on the records supplied by SSBT, was a Registered Investment Company during the Class Period, the RIC Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's ERISA Volume and Public and Other Volume shall be zero.

#### **b) ERISA Plan Settlement Class Members**

For each Settlement Class Member that, based on the records supplied by SSBT, was solely an ERISA Plan (not including Group Trusts) during the Class Period, the ERISA Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's RIC Volume and Public and Other Volume shall be zero.

#### **c) Group Trust Settlement Class Members**

SSBT has notified Plaintiffs' Counsel that fifty-five (55) Settlement Class Members represent Group Trusts. For each such Settlement Class Member identified as a Group Trust, *a letter concerning the Settlement Class Member's identification as a Group Trust accompanies this Notice*. The Indirect FX Trading Volume during the Class Period (in

Each Group Trust shall provide the Claims Administrator with a certification that reports the average proportion of the Group Trust's SSBT custodied assets that were held by an ERISA Plan or Plans during the Class Period and/or the average volume of Indirect FX Trades made by the ERISA Plan(s) during the Class Period, and identifies by name each ERISA Plan within the Group Trust. If a Group Trust does not have the foregoing information for each year of the Class Period, but has a reasonable belief that ERISA assets were held by the Group Trust during those years, the years for which data is available should be reported and the results will be averaged by applying the average proportion of the years with known ERISA assets and/or Indirect FX Trading Volume to the years with unknown ERISA assets and/or Indirect FX Trading Volume.

The certification must be signed by a plan fiduciary or administrator and state that he, she, or it certifies that the information contained within the certification is accurate based on reasonably available information. The certification must be mailed or delivered so that it is **postmarked or received no later than December 20, 2016**, to:

*State Street Indirect FX Trading Class Action*  
Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173000  
Milwaukee, WI 53217

Upon request from the Claims Administrator, a Group Trust must promptly provide sufficient information to explain and confirm the certification in order to remain eligible for a share of the ERISA Settlement Allocation as set forth herein.

Using the information provided through the certification process, a Group Trust's ERISA Volume shall equal the volume of Indirect FX Trades made by the ERISA Plan(s) in the Group Trust or, if the information concerning the volume of Indirect FX Trades is insufficient, the proportion of assets that were held by the ERISA Plan(s) in a particular Group Trust. Any Indirect FX Trading Volume of a Group Trust that is not categorized by the Claims Administrator as ERISA Volume shall be categorized as Public and Other Volume. In all instances, the RIC Volume of a Settlement Class Member that is a Group Trust shall be zero.

If a Group Trust does not provide a certification by December 20, 2016, it shall be treated for purposes of an allocation as if it held no ERISA Plan assets and it shall not be entitled to a recovery from the ERISA Settlement Allocation. Instead, its Public and Other Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. In that instance, the Settlement Class Member's RIC Volume and ERISA Volume shall be zero.

However, in instances where a Group Trust is known by the Parties to have ERISA assets based on previous consultations with the U.S. Department of Labor, but a certification is not submitted or the Group Trust does not provide a certification by December 20, 2016, then the trust's ERISA Volume may be calculated utilizing a methodology at Plaintiffs' Counsel's discretion based on discussions with the U.S. Department of Labor or with the Group Trust in response to any informal inquiry from the Claims Administrator or Plaintiffs' Counsel.

Group Trust Settlement Class Members who claim and receive distributions from the ERISA Settlement Allocation must distribute the ERISA Settlement Allocation only to the ERISA Plans identified in the certification submitted to the Claims Administrator and in the same proportion as set forth in the certification. Such distributions are subject to confirmation by the U.S. Department of Labor and/or Plaintiffs' Counsel.

**d) Public and Other Settlement Class Members**

For each Settlement Class Member that, based on the records supplied by SSBT, was not an ERISA Plan, Group Trust, or Registered Investment Company during the Class Period, the Public and Other Volume shall equal that Settlement Class Member's total Indirect FX Trading Volume during the Class Period. The Settlement Class Member's ERISA Volume and RIC Volume shall be zero.

**2. Methodology for Calculation of Recognized Claims**

After calculating the ERISA Volume, RIC Volume, and Public and Other Volume for each Settlement Class Member, the Claims Administrator will sum the ERISA Volumes for the Settlement Class in order to derive the classwide ERISA Volume, will sum the RIC Volume for the Settlement Class, in order to derive the classwide RIC Volume, and will sum the Public and Other Volume for the Settlement Class, in order to derive the classwide Public and Other Volume.

A Settlement Class Member's ERISA Recognized Claim equals that class member's ERISA Volume, divided by the classwide ERISA Volume, multiplied by the amount of the ERISA Settlement Allocation. The result of these calculations will be that a Settlement Class Member having no ERISA Volume will have an ERISA Recognized Claim of zero.

A Settlement Class Member's RIC Recognized Claim equals that class member's RIC Volume, divided by the classwide RIC Volume, multiplied by the amount of the RIC Settlement Allocation. The result of these calculations will be that a Settlement Class Member having no RIC Volume will have a RIC Recognized Claim of zero.

A Settlement Class Member's Public and Other Recognized Claim equals that class member's Public and Other Volume, divided by the classwide Public and Other Volume, multiplied by the amount of the Public and Other Settlement Allocation. The result of these calculations will be that a Settlement Class Member having no Public and Other Volume will have a Public and Other Recognized Claim of zero.

Settlement Class Members shall receive distributions from the ERISA Settlement Allocation on a *pro rata* basis based on their ERISA Recognized Claim amounts, distributions from the RIC Settlement Allocation on a *pro rata* basis based on their RIC Recognized Claim amounts, and distributions from the Public and Other Settlement Allocation on a *pro rata* basis based on their Public and Other Recognized Claim amounts.

A Settlement Class Member's total Recognized Claim equals the sum of that Settlement Class member's ERISA Recognized Claim, RIC Recognized Claim, and/or Public and Other Recognized Claim.

**C. DISTRIBUTION OF NET CLASS SETTLEMENT FUND**

Prior to the Effective Date, the Net Class Settlement Fund shall remain in an interest-bearing escrow account, except as otherwise provided in the Settlement Agreement. After the Class Settlement reaches its Effective Date, distributions to eligible Settlement Class Members will be made after Settlement Class Members have been notified of their ERISA Recognized Claim, RIC Recognized Claim, and Public and Other Recognized Claim amounts, and the Court has approved the Claims Administrator's determinations.

The Parties will use best efforts to seek Court approval to authorize an initial distribution of the Net Class Settlement Fund, including the RIC Settlement Allocation, within one year following the Effective Date of the Class Settlement. If a judgment is entered in the Class Action approving the Class Settlement, but an appeal is taken relating solely to approval of the requested attorneys' fees, Litigation Expenses, and/or Service Awards, Plaintiffs' Counsel will, subject to Court approval, proceed with an initial distribution of the Net Class Settlement Fund, including the RIC Settlement Allocation.

The Net Class Settlement Fund will be allocated among Class Members whose pro-rated distributions would be \$10.00 or greater, given the fees and expenses associated with printing and mailing payments. If the prorated distribution to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

Defendants, their counsel, and all other Released Defendant Parties will have no liability whatsoever for the investment of the Class Settlement Fund, the distribution, or the payment of any claim consistent with the Settlement Agreement and the Court-approved Plan of Allocation. Plaintiffs and Plaintiffs' Counsel likewise will have no liability for their reasonable efforts to execute, administer, and distribute funds consistent with the Settlement Agreement and the Court-approved Plan of Allocation.

After initial distribution(s) of the Net Class Settlement Fund, if there is any balance remaining (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of prior distribution of the Net Class Settlement Fund, Lead Counsel shall, if feasible and economical, redistribute such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion until it is no longer economically feasible to do so. Any balance that still remains in the Net Class Settlement Fund after redistribution(s) that is not feasible or economical to reallocate, after payment of Notice and Administration Expenses, Taxes and Tax Expenses, and any other fees and costs approved by the Court, shall be contributed to one or more nonsectarian, not-for-profit, 501(c)(3) organizations serving the public interest approved by the Court.

**9. When will I receive a payment?**

Payment is conditioned on several matters, including the Court's approval of the Class Settlement (and the Judgment becoming Final), approval of the proposed Plan of Allocation (and that order becoming Final), approval of a distribution, and the DOL, and DOJ Settlements becoming final according to their terms. (They do not require court approval.) It is anticipated that at least a partial distribution will be made within one year of the Effective Date of the Class Settlement.

However, a full distribution could take more than a year. Interest accrued on the Class Settlement Fund will be included in the amount allocated and paid to Settlement Class Members.

The Class Settlement may be terminated on several grounds, including if the Court does not approve the Class Settlement or the proposed Plan of Allocation. If the Class Settlement is terminated, there will be no distribution and the Class Actions will proceed as if the Class Settlement had not been reached.

## 10. Can I exclude myself from the Settlement Class?

If you do not want a payment from this Class Settlement, but you want to keep any right you may have to sue or continue to sue the Defendants and other Released Defendant Parties on your own about the Released Class Claims, then you must take steps to exclude yourself from the Settlement Class. This is called “opting out” of the class. Please note: SSBT may withdraw from and terminate the Class Settlement if Settlement Class Members who have a certain amount of Indirect FX Transactions exclude themselves from the Settlement Class, or a certain number of Settlement Class Members request exclusion.

To exclude yourself from the Settlement Class, you must send a signed letter by mail stating that you request to be “excluded from the Settlement Class in the *State Street Indirect FX Trading Class Action*, No. 11-CV-10230 (D. Mass.)” Your letter must include the following information: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is requesting exclusion; (ii) the Person’s address; (iii) the Person’s telephone number; (iv) the Person’s e-mail address; (v) the approximate date(s) of the agreement(s) referenced in (i) above; (vi) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (vii) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above; and (viii) identification (including by case name, court name, and docket number) of all legal actions and claims (if any) that the Person requesting exclusion has brought against any of the Defendants relating to Indirect FX.

You must mail your exclusion request so that it is **received no later than October 7, 2016**, to:

*State Street Indirect FX Trading Class Action*  
Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173000  
Milwaukee, WI 53217

You cannot exclude yourself by telephone or by e-mail. Your exclusion request must comply with these requirements in order to be valid, provided, however, that a request for exclusion shall not be invalid for failing to include the foregoing (i) - (vii) if SSBT determines it has sufficient information to determine that such Person is a Settlement Class Member and provides that information promptly to Lead Counsel.

If you request to be excluded in accordance with these requirements, you will not get any payment from the Net Class Settlement Fund, and you cannot object to the Class Settlement. However, you will not be legally bound by anything that happens in the Class Actions, and you may be able to sue Defendants and the other Released Defendant Parties in the future.

## 11. Do I have a lawyer in this case? How will the lawyers be paid?

Labaton Sucharow LLP has been appointed Lead Counsel for the Settlement Class. Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, will apply to the Court for an award of attorneys’ fees and payment of Litigation Expenses incurred during the prosecution and resolution of the Class Actions. The application for attorneys’ fees will not exceed \$74,541,250 (plus any accrued interest), which represents 25% of the \$300,000,000 Class Settlement Fund, after first deducting Court-awarded Litigation Expenses (that will not exceed \$1,750,000.00) and Court-awarded Service Awards for the seven Plaintiffs (that will not exceed \$85,000.00 in the aggregate). You will not be charged directly by Plaintiffs’ counsel. However, if you want to be represented by your own lawyer, you may hire one at your own expense.

The written applications for attorneys’ fees, Litigation Expenses, and Service Awards of Plaintiffs will be filed with the Court by September 15, 2016, and the Court will consider these applications at the Final Approval Hearing. A copy of the applications will be available at [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) and [www.labaton.com](http://www.labaton.com) or by requesting a copy from Lead Counsel.

To date, none of the Plaintiffs' attorneys have received any payment for their services in prosecuting the Class Actions on behalf of the Settlement Class, nor have counsel been paid for their substantial expenses incurred in connection with litigating the Class Actions. The fee requested by Lead Counsel, on behalf of ERISA Counsel and Customer Counsel, would compensate counsel for their efforts in achieving the Class Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amounts of any awards.

By following the procedures described in the answer to Question 12 below, you can tell the Court if you do not agree with the fees and expenses the attorneys and Plaintiffs intend to seek.

**OBJECTIONS**

**12. How do I tell the Court if I do not like the Class Settlement, the Plan of Allocation, or something about the requests for attorneys' fees and expenses?**

Any Settlement Class Member may appear at the Final Approval Hearing and explain why it thinks the Class Settlement should not be approved as fair, reasonable and adequate, why a judgment should not be entered, why the proposed Plan of Allocation should not be approved, why the attorneys' fees and expenses of Plaintiffs' counsel should not be awarded, in whole or in part, or why Plaintiffs should not be awarded Service Awards, in whole or in part. However, no Settlement Class Member shall be heard or entitled to contest these matters unless such Settlement Class Member has filed a written objection with the Court and served it on counsel.

To object, you must send a written statement saying that you object to the Class Settlement, the Plan of Allocation, the attorneys' fee request, expenses, and/or the Service Awards in *State Street Indirect FX Trading Class Action*, No. 11-CV-10230 (D. Mass.). Be sure to include your name, address, telephone number, e-mail address, signature, and a full explanation of all reasons why you object. You must also include the following information in order to confirm your membership in the Settlement Class: (i) the name of the Person that entered into one or more custody or trust agreements with SSBT and is objecting; (ii) the approximate date(s) of the agreement(s) referenced in (i) above; (iii) the SSBT entity that was the counterparty to the agreement(s) referenced in (i) above; (iv) a list of all current and former accounts, including both the name and account number of such accounts, that held foreign (non-U.S.) assets and were related to the agreement(s) referenced in (i) above.

If you cannot provide any of the information required under (i) - (iv), you may still object if you provide a written statement certifying that have undertaken best efforts to provide the missing information and your membership in the Settlement Class can otherwise be confirmed by the Parties.

**Your written objection must be filed with the Court, and received by counsel listed below by no later than October 7, 2016:**

**File with the Clerk of the Court:**

**Clerk of the Court**  
 United States District Court for the District of Massachusetts  
 John Joseph Moakley United States Courthouse  
 1 Courthouse Way  
 Boston, Massachusetts 02210

**Serve copies of all such papers by mail to each of the following:**

<b>Lead Counsel</b>	<b>Defendants' Counsel</b>
Lawrence A. Sucharow, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005	William H. Paine, Esq. Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109

Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Class Settlement and the applications for attorneys' fees, Litigation Expenses, and any Service Awards.

## COURT'S FINAL APPROVAL HEARING

### 13. When and where will the Court decide whether to approve the Class Settlement?

The Court will hold a Final Approval Hearing at 2:00 p.m. on November 2, 2016, before the Hon. Mark L. Wolf, at the United States District Court for the District of Massachusetts, John Joseph Moakley United States Courthouse, Courtroom 10, 1 Courthouse Way, Boston, Massachusetts 02210.

At the hearing, the Court will consider whether the Class Settlement is fair, reasonable and adequate. The Court will also consider any motions for attorneys' fees, expenses of Plaintiffs and Plaintiffs' Counsel, and Service Awards for Plaintiffs, as well as for approval of the proposed Plan of Allocation. If there are timely and valid objections, the Court will consider them. We do not know how long decisions on the motions will take.

### 14. Do I have to come to the hearing?

Lead Counsel will answer any questions that the Court may have about the Class Settlement and related relief at the Final Approval Hearing. You are not required to attend but are welcome to come at your own expense. If you send an objection, you do not have to come to Court to discuss it. As long as you filed your written objection on time, it will be before the Court when the Court considers whether to approve the Class Settlement, the Plan of Allocation, and/or the fee and expense requests. You may also have your own lawyer attend the Final Approval Hearing at your expense, but such attendance is not mandatory.

### 15. May I speak at the hearing?

If you are a Settlement Class Member and you have filed a timely objection, if you wish to speak, present evidence or present testimony at the Final Approval Hearing, you must state in your objection your intention to appear, and must identify any witnesses you intend to call or evidence you intend to present.

The Final Approval Hearing may be rescheduled by the Court without further notice to the Settlement Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

## IF YOU DO NOTHING

### 16. What happens if I do nothing at all?

If you do nothing and the Class Settlement is approved, you will be bound by the terms of the Class Settlement, will be deemed to have released all Released Class Claims against all of the Released Defendant Parties, and will receive your *pro rata* payment as described in Questions 7 and 8 above.

## GETTING MORE INFORMATION

### 17. How do I get more information?

This Notice summarizes the proposed Class Settlement. Full details of the Class Settlement are set forth in the Settlement Agreement. Copies of the Settlement Agreement, as well as other litigation and settlement-related documents, may also be viewed at [www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) and [www.labaton.com](http://www.labaton.com).

You may also contact Lead Counsel at the contact information listed above, or the Claims Administrator toll-free at 877-240-3540.

Dated: August 22, 2016

BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

# EXHIBIT B

DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 11-cv-10230 MLW
	)	
ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.	)	No. 11-cv-12049 MLW
	)	
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY	)	No. 12-cv-11698 MLW
	)	

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTIONS, PROPOSED SETTLEMENT, SETTLEMENT HEARING, PLAN OF ALLOCATION, AND ANY MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

**TO: ALL CUSTODY AND TRUST CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY ("SSBT") (INCLUDING CUSTOMERS FOR WHICH SSBT SERVED AS DIRECTED TRUSTEE, ERISA PLANS, AND GROUP TRUSTS), REFLECTED IN SSBT'S RECORDS AS HAVING A UNITED STATES TAX ADDRESS AT ANY TIME DURING THE PERIOD FROM JANUARY 2, 1998 THROUGH DECEMBER 31, 2009, INCLUSIVE, AND THAT EXECUTED ONE OR MORE INDIRECT FX TRANSACTIONS WITH SSBT AND/OR ITS SUBCUSTODIANS DURING THE PERIOD FROM JANUARY 2, 1998 THROUGH DECEMBER 31, 2009, INCLUSIVE (THE "SETTLEMENT CLASS")**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Massachusetts, that Plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangeland (collectively, "Plaintiffs"), on behalf of themselves and each Settlement Class Member, by and through their counsel, and State Street Bank and Trust Company have reached a proposed settlement of the above-captioned actions (the "Class Actions") in the amount of \$300,000,000 in cash (the "Class Settlement Amount") that, if approved by the Court, will resolve the Class Actions in their entirety (the "Class Settlement").

A hearing will be held before the Honorable Mark L. Wolf of the United States District Court for the District of Massachusetts, Eastern Division in Courtroom 10 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210 at 2:00 p.m. on November 2, 2016 to, among other things, determine whether: (1) the proposed Class Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Class Actions should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated as of July 26, 2016; (3) the proposed Plan of Allocation for distribution of the Class Settlement Amount, and any accrued interest, less Court-awarded attorneys' fees, Litigation Expenses, Service Awards, Notice and Administration Expenses, Taxes, Tax Expenses and any other costs, fees, or expenses approved by the Court (the "Net Class Settlement Fund") should be approved as fair and reasonable; and (4) Lead Counsel's application, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees and payment of Litigation Expenses and Service Awards should be approved. The Court may change the date and/or time of the Final Approval Hearing without providing another notice. You do NOT need to attend the hearing in order to receive a distribution from the Net Class Settlement Fund. Additionally, the Court has the authority to change any of the deadlines below for good cause shown.

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO SHARE IN THE NET CLASS SETTLEMENT FUND.** If you have not yet received the full mailed Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (the "Notice"), you may obtain a copy by contacting the Claims Administrator or visiting the settlement website:

*State Street Indirect FX Trading Class Action*  
 Claims Administrator  
 c/o A.B. Data, Ltd.  
 P.O. Box 173000  
 Milwaukee, WI 53217  
 877-240-3540  
[www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com)  
[info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com)

Inquiries may also be made to Lead Counsel:

LABATON SUCHAROW LLP  
 Lawrence A. Sucharow, Esq.  
 140 Broadway  
 New York, NY 10005  
 Tel: (888) 219-6877  
[www.labaton.com](http://www.labaton.com)  
[settlementquestions@labaton.com](mailto:settlementquestions@labaton.com)

Settlement Class Members do not need to submit a claim form in order to be eligible to share in the distribution of the Net Class Settlement Fund. Your recovery will be calculated by the Claims Administrator as part of the implementation of the Class Settlement, and will be based on information obtained from SSBT. However, as explained in the Notice, if you represent a Group Trust, you must provide a certification *postmarked or received on or before December 20, 2016* in order to receive a portion of the ERISA Settlement Allocation, rather than a portion of the balance of the Net Class Settlement Fund.

To exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions in the Notice such that it is *received on or before October 7, 2016*. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by all judgments and orders entered in the Class Actions.

Any objection to the proposed Class Settlement, Plan of Allocation, and/or application for attorneys' fees and payment of Litigation Expenses and/or Service Awards must be filed with the Court in accordance with the instructions in the Notice such that it is *received on or before October 7, 2016*. If you submit an objection, you have the right, but are not required, to attend the Final Approval Hearing; if you wish to speak at the Final Approval Hearing, you must include in your written objection a statement that you intend to appear and speak at the Final Approval Hearing.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: September 6, 2016

BY ORDER OF THE UNITED STATES  
 DISTRICT COURT FOR THE  
 DISTRICT OF MASSACHUSETTS

**AFFIDAVIT**

**STATE OF TEXAS** )  
 ) **ss:**  
**CITY AND COUNTY OF DALLAS)**

I, Jeb Smith, being duly sworn, depose and say that I am the Advertising Clerk of the Publisher of THE WALL STREET JOURNAL, a daily national newspaper of general circulation throughout the United States, and that the notice attached to this Affidavit has been regularly published in THE WALL STREET JOURNAL for National distribution for

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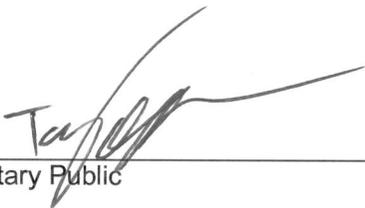
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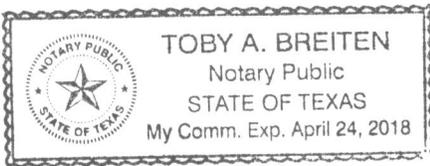
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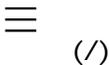
  
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Sworn to before me this  
6 day of September 2016

  
\_\_\_\_\_  
Notary Public



# EXHIBIT C



SEP 06, 2016, 11:00 ET

News provided by

Labaton Sucharow LLP → (<http://www.prnewswire.com/news/labaton+sucharow+llp>)



# Labaton Sucharow LLP Announces Notice Of Pendency Of Class Actions and Proposed Settlement In The State Street Indirect FX Class Actions

BOSTON, Sept. 6, 2016 /PRNewswire/ --

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<i>ARKANSAS TEACHER RETIREMENT SYSTEM, et al. v. STATE STREET BANK AND TRUST COMPANY</i>	)
	) No. 11-cv-10230 MLW
	)
<i>ARNOLD HENRIQUEZ, et al. v. STATE STREET BANK AND TRUST COMPANY, et al.</i>	)
	) No. 11-cv-12049 MLW
	)
<i>THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, et al. v. STATE STREET BANK AND TRUST COMPANY</i>	) No. 12-cv-11698 MLW
	)

## **SUMMARY NOTICE OF PENDENCY OF CLASS ACTIONS, PROPOSED SETTLEMENT, SETTLEMENT HEARING, PLAN OF ALLOCATION, AND ANY MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

**TO: ALL CUSTODY AND TRUST CUSTOMERS OF STATE STREET BANK AND TRUST COMPANY ("SSBT") (INCLUDING CUSTOMERS FOR WHICH SSBT SERVED AS DIRECTED TRUSTEE, ERISA PLANS, AND GROUP TRUSTS), REFLECTED IN SSBT'S RECORDS AS HAVING A UNITED STATES TAX ADDRESS AT ANY TIME DURING THE PERIOD FROM JANUARY 2, 1998 THROUGH DECEMBER 31, 2009, INCLUSIVE, AND THAT EXECUTED ONE OR MORE INDIRECT FX TRANSACTIONS WITH SSBT AND/OR ITS SUBCUSTODIANS DURING THE PERIOD FROM JANUARY 2, 1998 THROUGH DECEMBER 31, 2009, INCLUSIVE (THE "SETTLEMENT CLASS")**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Massachusetts, that Plaintiffs Arkansas Teacher Retirement System, Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employees Savings and Profit Sharing Plan, and James Pehoushek-Stangeland (collectively, "Plaintiffs"), on behalf of themselves and each Settlement Class Member, by and through their counsel, and State Street Bank and Trust Company have reached a proposed settlement of the above-captioned actions (the "Class Actions") in the amount of \$300,000,000 in cash (the "Class Settlement Amount") that, if approved by the Court, will resolve the Class Actions in their entirety (the "Class Settlement").

A hearing will be held before the Honorable Mark L. Wolf of the United States District Court for the District of Massachusetts, Eastern Division in Courtroom 10 of the John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210 at 2:00 p.m. on November 2, 2016 to, among other things, determine whether: (1) the proposed Class Settlement should be approved by the Court as fair, reasonable, and adequate; (2) the Class Actions should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated as of July 26, 2016; (3) the proposed Plan of Allocation for distribution of the Class Settlement Amount, and any accrued interest, less Court-awarded attorneys' fees, Litigation Expenses, Service Awards, Notice and Administration Expenses, Taxes, Tax Expenses and any other costs, fees, or expenses approved by the Court (the "Net Class Settlement Fund") should be approved as fair and reasonable; and (4) Lead Counsel's application, on behalf of ERISA Counsel and Customer Counsel, for an award of attorneys' fees and payment of Litigation Expenses and Service Awards should be approved. The Court may change the date and/or time of the Final Approval Hearing without providing another notice. You do NOT need to attend the hearing in order to receive a distribution from the Net Class Settlement Fund. Additionally, the Court has the authority to change any of the deadlines below for good cause shown.

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO SHARE IN THE NET CLASS SETTLEMENT FUND.** If you have not yet received the full mailed Notice of Pendency of Class Actions, Proposed Class Settlement, Settlement Hearing, Plan of Allocation, and any Motion for Attorneys' Fees, Litigation Expenses, and Service Awards (the "Notice"), you may obtain a copy by contacting the Claims Administrator or visiting the settlement website:

*State Street Indirect FX Trading Class Action*

Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173000  
Milwaukee, WI 53217  
877-240-3540

[www.StateStreetIndirectFXClassSettlement.com](http://www.StateStreetIndirectFXClassSettlement.com) (<http://www.statestreetindirectfxclasssettlement.com/>)  
[info@StateStreetIndirectFXClassSettlement.com](mailto:info@StateStreetIndirectFXClassSettlement.com) (<mailto:info@StateStreetIndirectFXClassSettlement.com>)

Inquiries may also be made to Lead Counsel:

LABATON SUCHAROW LLP

Lawrence A. Sucharow, Esq.  
140 Broadway  
New York, NY 10005  
Tel: (888) 219-6877

[www.labaton.com](http://www.labaton.com) (<http://www.labaton.com/>)  
[settlementquestions@labaton.com](mailto:settlementquestions@labaton.com) (<mailto:settlementquestions@labaton.com>)

Settlement Class Members do not need to submit a claim form in order to be eligible to share in the distribution of the Net Class Settlement Fund. Your recovery will be calculated by the Claims Administrator as part of the implementation of the Class Settlement, and will be based on information obtained from SSBT. However, as explained in the Notice, if you represent a Group Trust, you must provide a certification **postmarked or received on or before December 20, 2016** in order to receive a portion of the ERISA Settlement Allocation, rather than a portion of the balance of the Net Class Settlement Fund.

To exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions in the Notice such that it is **received on or before October 7, 2016**. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you will be bound by all judgments and orders entered in the Class Actions.

Any objection to the proposed Class Settlement, Plan of Allocation, and/or application for attorneys' fees and payment of Litigation Expenses and/or Service Awards must be filed with the Court in accordance with the instructions in the Notice such that it is **received on or before October 7, 2016**. If you submit an objection, you have the right, but are not required, to attend the Final Approval Hearing; if you wish to speak at the Final Approval Hearing, you must include in your written objection a statement that you intend to appear and speak at the Final Approval Hearing.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS REGARDING THIS NOTICE.

Dated: September 6, 2016 BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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# Labaton Sucharow LLP Announces Notice Of Pendency Of Class Actions and Proposed Settlement In The State Street Indirect FX Class Actions

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## Big Banks Face Wider Treasury Auction-Fixing Suit

By **Dunstan Priol**

Law360, New York (November 16, 2017, 9:58 PM EST) -- A lawsuit accusing 20 of the biggest Wall Street banks of rigging the \$13 trillion market for securities sold by the U.S. Department of the Treasury was expanded late Wednesday night with the filing of an amended complaint that alleges two interrelated conspiracies.

The revised suit, filed in the Southern District of New York and brought by an array of large institutional investors, including union, state and municipal pension funds, includes allegations that bankers at competing banks "routinely" shared sensitive client information with each other in chat rooms, allowing them to profit at their clients' expense.

In addition, the new complaint outlines an alleged scheme by a smaller group of seven banks, including JPMorgan, Citigroup, Barclays and Goldman Sachs, to thwart competition in the bidding process in the U.S. Treasury market by blocking their clients' access to electronic trading platforms where better prices were available.

"This complaint is the culmination of a lengthy, multiyear investigation into the Treasury market and alleges facts and claims that heretofore have never been disclosed," said Daniel Blockett, a partner at Quinn Emanuel Urquhart & Sullivan LLP, one of the three BigLaw firms appointed as lead counsel in the case.

The 17 plaintiffs listed include the Atlanta Firefighters Pension Plan, the City of Pontiac, Michigan Police & Fire Retirement System, the American Federation of Teachers and the Employees Retirement System of Rhode Island.

Quinn Emanuel Urquhart & Sullivan LLP, Cohen Milstein Sellers & Toll PLLC and Labaton Sucharow LLP were **selected** in August to lead class actions that have been centralized in New York's Southern District before U.S. District Judge Paul G. Gardephe. To date, more than 48 putative class action complaints have been filed that allege banks conspired to manipulate auction prices in order to boost their own profits, according to the law firms.

The U.S. Treasury borrows money by selling various debt instruments, known as Treasury bonds or Treasury securities. These sales take place in market auctions conducted throughout the year, and a select group of banks — known as primary dealers — bid in the auctions.

In the suit filed late Wednesday, the plaintiffs' attorneys, citing recent reports in the media, included claims that bankers, including ones from Goldman Sachs, shared information with bankers at other institutions related to clients' orders for bids on the securities ahead of Treasury auctions.

The bankers then allegedly used this information to trade ahead of their clients' orders to obtain better prices for the bank. The "defendants did not tell customers that their bidding information was being shared as part of a bid-rigging conspiracy to benefit themselves to the detriment of their customers," the complaint said.

The banks, according to the suit, illegally boosted their profits by using the information to lower the prices of securities that they bought in auctions, and then raise the prices at which they sold them to other clients.

In addition, the suit claims that the banks pooled their information to gain a further competitive edge.

"The informational advantage is magnified when a group pools their resources, so each conspiracy member has more information than they would have in isolation," the suit said. "Collectively, they can then leverage this information against the less-informed market participants."

Through these alleged acts, the defendants "generated profits for themselves both in the auction and in the related markets before and after the auction."

The second part of the conspiracy alleges that seven of the banks included in the original complaint colluded with a trading platform called Tradeweb to block the plaintiffs from trading on platforms where better prices could be obtained.

The suit claims that the defendants allegedly tried to enforce a two-tiered marketplace in which the big banks, or dealers, could obtain lower prices on some trading systems known as interdealer platforms, and nonbank investors, including the plaintiffs, were relegated to other trading platforms where prices tend to be higher.

The banks allegedly pressured some interdealer platforms not to allow the nonbank investors to use those platforms by threatening to boycott the systems, which would have a significant financial impact on the platforms.

Tradeweb allegedly conspired with the banks and was also named as a defendant in the new complaint. It is owned by a consortium of the seven banks named as defendants. A Tradeweb spokesman declined to comment.

Goldman Sachs is represented by Maya Krugman, Penny Shane, Stephen Ehrenberg and Jonathan Lucas Shapiro of Sullivan & Cromwell LLP, and Elizabeth P. Papez, Robert Y. Sperling and Susannah Providence Torpey of Winston & Strawn LLP.

Barclays is represented by David Harold Braff, Kathleen Suzanne McArthur, Matthew Alexander Schwartz and Stephanie Szaro Heglund of Sullivan & Cromwell LLP.

Citigroup is represented by Jay B. Kasner, Paul Madison Eckles and Shepard Goldfein of Skadden Arps Slate Meagher & Flom LLP.

JPMorgan is represented by Mark Putnam Gimbel, Henry Liu and Robert D. Wick of Covington & Burling LLP.

Counsel information for Tradeweb couldn't be determined Thursday.

The plaintiffs are represented by Faith Gay, Daniel Brockett, Steig Olson, Sascha Rand, Christine Chung, Jordan A. Goldstein, Jeremy D. Anderson, Christopher Barker and Daniel P. Cunningham of Quinn Emanuel Urquhart & Sullivan LLP, J. Douglas Richards, Michael B. Eisenkraft, David A. Young, Carol V. Gilden and Alison Deich of Cohen Milstein Sellers & Toll PLLC, and Jay Himes, Greg Ascioia, Christopher J. McDonald, Robin A. Van Der Meulen and Matthew J. Perez of Labaton Sucharow LLP.

The case is In re: Treasury Securities Auction Antitrust Litigation, case number 1:15-md-02673, before the U.S. District Court for the Southern District of New York.

--Editing by Dipti Coorg.

# **EX. 258**

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**From:** William Sinnott  
**Sent:** Tuesday, May 23, 2017 5:06 PM  
**To:** Heimann, Richard M.  
**Cc:** Fineman, Steven E.; Lukey, Joan; Kelly, Brian; Fuller, Anthony E.; Elizabeth McEvoy  
**Subject:** Revised RFPs & Ints. for Lieff  
**Attachments:** Rev. First Set of RFPs to Lieff- ANNOTATED (5-23-17).DOCX; Rev. First Set of Ints to Lieff- ANNOTATED (5-23-17).DOCX

Richard:

As Joan Lukey likely informed you, we had a very productive meeting with Joan and Justin yesterday in which we significantly narrowed the scope of the written discovery served on May 18, 2017. In an effort to alleviate the burden on the firms and prioritize the information we need in advance of the depositions (as scheduled) in June, we've adjusted the "due date" for several of the requests—reflecting a new, tiered schedule—as well as eliminated a significant amount of interrogatories and requests for production altogether. As indicated in the attached annotated version of the May 18 Interrogatories and Requests for Production, we've categorized the requests into those due on June 1, 2017, those due on June 9, 2017, and those due on July 10, 2017. Please see below additional clarification based on our discussion yesterday with Labaton's counsel.

In the event that the Firm objects to any of the revised interrogatories and/or RFPs, for any reason, please send us an email detailing the nature of each request and corresponding Ints/RFP by no later than **Friday, May 26, 2017**. We will consider all timely objections and do our best to further narrow the scope of eliminate extraneous information, if appropriate.

Finally, if the Firm has already produced information requested as part of its prior document productions, please respond in writing with the specific date(s) or production and Bates nos. of all responsive documents. Such information need not be produced a second time.

#### Interrogatories

No. 2- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address the subject matter, experience and/or expertise of the Law Firm prior to its involvement in the SST Litigation, involving FX-based claims.

No. 4- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address potential double-billing of Staff Attorney and attorney time between the SST Litigation and other, concurrent litigations in which the Firm was involved.

Nos. 10-11, 13- Strike the portion of each interrogatory seeking a description of the "basic substance" of certain communications referenced therein.

No. 10- Please describe the Firm's understanding of the role played by the listed government agencies.

No. 14- Please provide an overview of the litigation strategy throughout the course of the litigation. To the extent that strategy changed, please identify generally the time period or relevant event (i.e. Lobby Conference, Motion to Dismiss, access to State Street production) that caused a change in said strategy.

Nos. 15-16- If the answer is “none,” so state in your response.

No. 18- Figures need not be exact; approximations or ranges for the total number of pages or GB are acceptable. The reference to “general description of the information contained in the production” may include brief descriptions for the various categories of documents, such as “real time trading transactions”; “internal State Street emails between traders and compliance”; and/or “foreign exchange market spreadsheets of exchange rates.”

Nos. 19/22/29- To the extent these interrogatories overlap in substance, the Firm need not answer twice. However, insofar as one or more interrogatories seeks information that is not included in the other two, please respond to all sub-questions presented.

No. 33- Reference to “all other matters in which the Firm entered into a similar arrangement [] to share costs with other firms” refers to any other matters in which the firm agreed to share the costs of the time spent/billed by the Firm’s staff attorneys with another firm, and sought reimbursement directly or indirectly from that firm for staff attorney time. If none, so state in your response.

No. 46- Relates to any situation, whether or not arising to a true “dispute,” in which the Firm ended representation of a client/class representative prematurely or otherwise before the anticipated conclusion of a matter, whether due to insistence of the client/class representative or the Firm, and where the Firm sought payment from the client or the client paid for the work already performed by the Firm. If an hourly rate was paid, please identify that rate. If another sum was paid, please provide that figure and the basis for that payment.

No. 47- Relates principally to hourly rates listed on the Firm’s fee petitions, and also includes any other instance in which the Firm has represented a client/class representative on a non-hourly basis, and then sought reimbursement from another party or the Court that is not captured in a fee petition.

No. 54- Interrogatory seeks identification/description only of those instances in the State Street Litigation where the Firm billed an attorney at a higher or lesser rate than the rate determined by the Firm. Please explain the deviation in any such instance.

No. 56/60- To the extent these interrogatories overlap in substance, the Firm need not answer twice. However, to the extent No. 60, seeking information specifically relating to the Firm’s review or involvement in Thornton’s Fee Petition, goes beyond the scope of No. 56, please answer all sub-questions presented.

#### RFPs

No. 1- A hard drive containing the database is acceptable. If you contend such production is barred under the terms of the protective order entered into with State Street’s counsel during the State Street Litigation, please respond stating with specificity the nature of such an objection.

No. 2- As discussed yesterday, production of all documents marked “hot” or “smoking hot” in the Catalyst database is sufficient; the phrase “bearing on material issues” is, therefore, stricken.

No. 3: Request seeks documents relating to representation of class representatives in the State Street Litigation only. The reference to all documents “referring to, relating to, or evidencing terms of the law Firm’s representation of class representatives” relates to any written communications, emails, notes that set out the terms of an agreement that is not otherwise reflected in a formal written agreement previously produced, or any documents that contain terms that amend a formal agreement and is not otherwise contained in another written agreement produced therein.

Nos. 4-5: Requests seek only those documents referenced therein from 2009-2011, representing the general timeframe with Lieff first became involved in the State Street Litigation.

Nos. 8-9: Requests seeks only those documents referenced therein from 2010-2011 and 2015-2016. To the extent you object to producing communications relating to the review and adjustment of annual billing rates during this time frame, please respond stating with specificity the nature of such objection.

No. 10- The Firm need only produce those emails and/or other communications or documents soliciting opinions and/or retaining an expert to provide an opinion as described therein, as well as the opinions or work product received.

No. 15- To the extent that a single 1099 or W-2 captures all compensation paid by the Firm to a Staff Attorney, the Firm need not produce the individual paystubs reflected on those documents. However, in the event a Staff Attorney received individual or intermittent payments that are not reflected on a 1099 and/or W-2, please produce both the appropriate 1099/W-2 and all records of payment made, in order to provide a complete record of all payments made in connection with that staff attorney's work on the State Street Litigation.

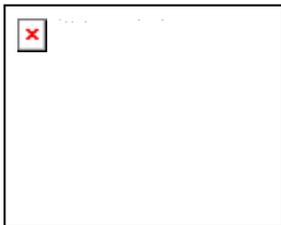
No. 16- If the Firm is unable to complete the search due to a large volume of responsive documents, please respond with the proposed search terms and total number of "hits." Should this be the case, we can provide a list of timekeepers and/or narrowed search terms.

No. 19- If Lieff did not retain an expert, so state in your response.

No. 21- If the Firm is unable to complete the search due to a large volume of responsive documents, please respond with the proposed search terms and total number of "hits." Should this be the case, we can provide a list of timekeepers and/or narrowed search terms.

No. 32- Please search and produce all responsive documents for the attorney deponents (excluding staff attorneys) who will testify on June 5, 14, or 16 by June 9. All other responsive documents located should be produced no later than July 10.

Bill



**William Sinnott, Esq.**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others similarly situated, ) No. 11-cv-10230 MLW  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
)  
Defendant. )

\_\_\_\_\_  
ARNOLD HENRIQUEZ, MICHAEL T. COHN, )  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, ) No. 11-cv-12049 MLW  
and those similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
STATE STREET GLOBAL MARKETS, LLC and )  
DOES 1-20, )  
)  
Defendants. )

\_\_\_\_\_  
THE ANDOVER COMPANIES EMPLOYEE SAVINGS )  
AND PROFIT SHARING PLAN, on behalf of itself, and ) No. 12-cv-11698 MLW  
JAMES PEHOUSHEK-STANGELAND, and all others )  
similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
)  
Defendant. )

**SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST  
FOR THE PRODUCTION OF DOCUMENTS TO LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP**

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Lieff Cabraser Heimann & Bernstein, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

### **DEFINITIONS**

1. The terms "you", "your", "the Firm", and "the Law Firm" refer to Lieff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.

3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.

4. The term "Plaintiffs' Law Firms" refers to Labaton Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.

5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.

6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term “State Street Litigation”, “SST Litigation” or “Litigation” refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term “State Street Document Review”, “SST Document Review” or “Document Review” refers to the Law Firm’s review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term “State Street” refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term “settlement in principle” refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term “Court” refers to the United States District Court for the District of Massachusetts.

12. The term “Fee Petition” or “Fee Application” refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs’ Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel’s Motion for An Award of Attorneys’ Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, “Fee Petition” in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term “Motion for Attorneys’ Fees” refers to Lead Counsel’s Motion for An Award of Attorneys’ Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term “Final Settlement” refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term “Fee Award” refers to a certain award of attorneys’ fees of \$74,541,250.00 and expenses and costs of \$1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term “November 10, 2016 Letter” refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term “December 17, 2016 Article” refers to the Boston Globe article entitled *Critics hit law firms’ bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term “hourly rates charged” refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term “Staff Attorneys” refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed “associates” or otherwise on a traditional partnership track.

20. The term “hourly clients” refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term “non-hourly clients” refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.

24. The term “any” and the term “all” are intended to mean “any and all.”

25. As used herein, the term “or” and the term “and” shall mean “and/or” and vice-versa.

26. As used herein, the terms “relating to” or “referring to” or “concerning” or “constituting” or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, t h a t undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term “date” means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term “communication” as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term “document” shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms “document” and “documents” are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate “document.” The word “document” also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term “draft” shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

### **INSTRUCTIONS**

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request (“Request”) requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

- (i) The date of the document;
- (ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;
- (iii) The name and title of the recipient of the document;
- (iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;
- (v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;
- (vi) The specific basis upon which the privilege is claimed;

- (vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and
- (viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information (“ESI”) shall be produced in electronic form (the “production set”). Each document will have its own unique identifier (“Bates number”), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., “PREFIX0000001”).

The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (“.tif” or “.tiff”) images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (“.jpg” or “.jpeg”) format. Endorsements must follow these guidelines:
  - a. Bates numbers must be stamped on the lower right hand corner of all images.
  - b. Confidentiality must be stamped on the lower left hand corner of all images.
  - c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.
2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.
  - a. A Concordance delimited ASCII text file (“.dat”).

- i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.
- ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is not acceptable):

ASCII 020 [¶] for the comma character;  
ASCII 254 [b] for the quote character; and  
ASCII 174 [®] for new line.

- iii. All attachments, or *child* records, should sequentially follow the *parent* record.
- iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

- b. Image cross-reference files, *Opticon* image file (“*.opt*”) and *IPRO View Load* file (“*.lfp*”), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

### **DOCUMENTS REQUESTED**

1. The Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein. **[JULY 10]**

2. All so-called “hot docs,” as understood or identified by the Law Firm, ~~and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages.~~ **[JUNE 9]**

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. **[JUNE 9]**

4. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of hourly clients, from ~~2008 to the present~~ **2009-2011**. **[JULY 10]**

5. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of non-hourly clients, from ~~2008 to the present~~ **2009-2011**. **[JULY 10]**

~~6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.~~

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm's Managing Partner or Executive Committee during meetings to determine annual billing rates, from ~~2008 to the present~~ **2010-2011 and 2015-2016**. **[JUNE 9]**

9. All documents and/or communications between and among the Firm's Managing Partner and the Firm's Executive Committee relating to review and adjustment of annual billing rates, from ~~2008 to the present~~ **2010-2011 and 2015-2016**. **[JUNE 9]**

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. **[JUNE 1]**

~~11. A complete set of time records for all attorneys, including Staff Attorneys, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.~~

~~12. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered in connection with the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.~~

~~13. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.~~

~~14. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.~~

15. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm's Staff Attorneys assigned to or who contributed to the SST Litigation, for work performed on the Litigation. **[JUNE 1]**

16. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses associated with conducting voluminous document review. **[JUNE 9]**

17. All agreements, contracts, and/or memorialization of an arrangement to allocate and/or share the cost of certain of the Law Firm's Staff Attorneys to Thornton, including the compensation, reimbursement, and/or invoicing of costs associated with the same. **[JUNE 9]**

18. All documents referring to, relating to, evidencing or constituting discussions with Thornton regarding Thornton's plan or intention to include Staff Attorney time as part of Thornton's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

19. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. **[JULY 10]**

~~20. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.~~

21. All documents and/or communications relating to discussions between and among the Plaintiffs' Law Firms and ARTRS/George Hopkins regarding the substantive allegations and progress of the SST litigation, including but not limited to the filing of the complaint/amended complaint, court orders, mediation, and/or the agreement to settlement in principle. **[JULY 10]**

~~22. All documents and/or communications with ARTRS/George Hopkins regarding the Final Settlement, including but not limited to the fairness of the total award for the class, payment of service award, and the Fee Award, including any allocation of those fees among counsel.~~

23. Current CVs or resumes for all Staff Attorneys who worked on or contributed to the SST Litigation/Document Review. **[JUNE 1]**

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided to the Firm's Staff Attorneys relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. **[JUNE 1]**

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to its Staff Attorneys, including but not limited to case pleadings, mediation reports, legal memoranda. **[JUNE 1]**

26. All written work product produced by Staff Attorneys assigned to the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 1]**

27. A complete copy of the binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. **[JUNE 1]**

~~28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.~~

~~29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.~~

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. **[JULY 10]**

31. All documents and/or communications relating to the selection and staffing of Staff Attorneys on the SST Litigation/SST Document Review. **[JUNE 1]**

32. All documents and/or communications relating to the allocation of certain Staff Attorneys to Thornton under the cost-sharing agreement entered into by the Firm in or about 2014 or 2015. **[JUNE 9/JULY 10]**

~~33. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by the Law Firm.~~

34. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom Thornton had agreed to share the costs. **[JUNE 1]**

35. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs. **[JUNE 1]**

~~36. All documents and/or communications between and among the Law Firm and accounting and/or billing staff requesting nullification of or requesting removal from the Fee Petition of certain hours worked by Staff Attorneys for whom another firm or Company had agreed to share the costs in other class action or litigation matters.~~

~~37. All invoices, requests for payment, and/or similar documents sent to or requested by Thornton pursuant to the cost-sharing agreement between the Firm and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

38. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. **[JUNE 9]**

39. All documents, other than those requested in Request No. 38 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. **[JUNE 9]**

40. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. **[JUNE 9]**

~~41. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.~~

~~42. All documents relied upon by the Law Firm in preparing and filing the Motion for Attorneys' Fees.~~

~~43. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.~~

44. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

~~45. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).~~

~~46. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).~~

47. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. **[JUNE 9]**

~~48. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.~~

49. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

50. All documents relating to Michael Bradley's involvement in the SST Litigation/SST Document Review, including but not limited to communications with Mr. Bradley and all documents relating to or referring to an agreement between Mr. Bradley and Thornton to participate in the SST Document Review. **[JUNE 9]**

51. All documents relating to, referring to or evidencing payments made to Michael Bradley in connection with his work on the SST Litigation/SST Document Review. **[JUNE 9]**

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 9]**

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. **[JUNE 9]**

Date: May 18, 2017

**SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),**

By his Attorneys,

---

William F. Sinnott (BBO #547423)  
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**CERTIFICATE OF SERVICE**

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lief Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29<sup>th</sup> Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18<sup>th</sup> day of May, 2017.

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William F. Sinnott

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others similarly situated, ) No. 11-cv-10230 MLW

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )

Defendant. )

\_\_\_\_\_  
ARNOLD HENRIQUEZ, MICHAEL T. COHN, )  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, ) No. 11-cv-12049 MLW  
and those similarly situated, )

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )  
STATE STREET GLOBAL MARKETS, LLC and )  
DOES 1-20, )

Defendants. )

\_\_\_\_\_  
THE ANDOVER COMPANIES EMPLOYEE SAVINGS )  
AND PROFIT SHARING PLAN, on behalf of itself, and ) No. 12-cv-11698 MLW  
JAMES PEHOUSHEK-STANGELAND, and all others )  
similarly situated, )

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )

Defendant. )

\_\_\_\_\_  
**SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF  
INTERROGATORIES TO LIEFF CABRASER HEIMANN & BERNSTEIN, LLP**

Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen's (Retired), by his undersigned counsel, hereby propounds the following Interrogatories upon Loeff Cabraser Heimann & Bernstein, LLP. The Special Master requests that Loeff Cabraser Heimann & Bernstein, LLP answer the Interrogatories herein under oath and provide responses within fourteen (14) days from the date of service hereof, to: William F. Sinnott, Esq., Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108.

### **DEFINITIONS**

1. The term "you", "your", "the Firm", and "the Law Firm" refer to Loeff Cabraser Heimann & Bernstein, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
2. The term "Thornton" refers to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all employees, agents, counsels, attorneys, and representatives.
3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
4. The term "Plaintiffs' Law Firms" refers to Labaton, Loeff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.
5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.
6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term “State Street Litigation”, “SST Litigation” or “Litigation” refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term “State Street Document Review”, “SST Document Review” or “Document Review” refers to the Law Firm’s review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term “State Street” refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term “settlement in principle” refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term “Court” refers to the United States District Court for the District of Massachusetts.

12. The term “California Action” refers to the qui tam lawsuit(s) originally filed under seal in California and other states against State Street that was unsealed on or about October 20, 2009 by the intervention of the Attorney General for the State of California.

13. The term “BNY Mellon Action” refers to the investigation and prosecution of the multidistrict litigation entitled *In re Bank of New York Mellon Corp.* and related actions, including but not limited to Civil Action 12-MD-02335 filed in the United States District Court for the Southern District of New York.

14. The term “Fee Petition” or “Fee Application” refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs’ Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and*

*Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached hereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

15. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

16. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

17. The term "Fee Award" refers to a certain award of attorneys' fees of \$74,541,250.00 and expenses and costs of \$1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

18. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

19. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

20. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted

to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

21. The term “Staff Attorneys” refers to licensed attorneys working on a part-time or full-time basis for the Law Firm, but who are not deemed “associates” or otherwise on a traditional partnership track.

22. The term “hourly clients” refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

23. The term “non-hourly clients” refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

24. Any word written in the singular also includes the plural and vice-versa.

25. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.

26. The term “any” and the term “all” are intended to mean “any and all.”

27. As used herein, the term “or” and the term “and” shall mean “and/or” and vice-versa.

28. As used herein, the terms “relating to” or “referring to” or “concerning” or “constituting” or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized,

generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

29. The term “date” means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

30. The term “communication” as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

31. The term “document” shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms “document” and “documents” are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 30 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained

within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate “document.” The word “document” also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

32. The term “draft” shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

### **INSTRUCTIONS**

A. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court’s March 8, 2017 Order (pp. 3-4), you are required to answer the following Interrogatories under oath and within 14 days, or within the time otherwise required by Court order.

B. For each of the Interrogatories listed below, please include the full name(s) of all persons from the Law Firm (attorneys, staff, agents, consultants, or affiliates) who have knowledge of the information provided.

C. These Interrogatories are deemed to be continuing and to require supplemental responses, if you obtain additional, contradictory, or different information. Such supplemental answers shall be filed promptly upon the discovery by you of such supplemental information. Each Interrogatory is to be answered separately and as completely as possible. The fact that an investigation is continuing and discovery is not complete shall not be used as a reason for failure to answer any Interrogatory as fully as possible.

D. If you refuse to answer any Interrogatory or any part thereof on the grounds of privilege, please identify the claimed privilege (i.e., attorney-client) and the nature of any information you refuse to disclose, referring specifically to the Interrogatory or any part thereof to which the claimed privilege applies, the form in which said information exists, and the grounds for the claimed privilege.

E. If the answer to all or any part of an Interrogatory is not presently known by or available to you, include a statement to that effect, specifying the portion of the Interrogatory which cannot be completely answered.

### **INTERROGATORIES**

1. Describe each of the Law Firm's practice area(s), including areas of specialty, special services offered, the total number of attorneys and staff, and a brief description of any representative matters. **[JUNE 1]**

~~2. Identify all other class actions or other litigations in which the Firm has been or is currently engaged in relating to the foreign exchange market, mismanagement of retirement funds, and/or any other subject matter overlapping the allegations in the SST Litigation. Please include all such matters on which the Firm has worked, as counsel of record or otherwise, the complete case caption, the docket number, and the outcome.~~

3. Describe in detail the Firm's involvement in the California Action and in the BNY Mellon Action and how that involvement assisted the Firm in the SST Litigation. **[JUNE 1]**

~~4. Identify all other class actions or other litigation in which the Firm was engaged during the pendency of the SST Litigation. For each action:~~

~~a. Please identify the timekeepers who worked on the matter and provide their~~

hourly rate(s);

~~b. Please provide the detailed, itemized hourly billing entries for each timekeeper.~~

5. Explain how and when the Law Firm became involved in the SST Litigation, including any conversations between and among the Firm and ARTRS, the Plaintiffs' Law Firms, and/or the ERISA firms. **[JUNE 1]**

6. Describe the role played by the Law Firm in filing the substantive claims alleged in the SST Litigation, including the filing of the Complaint (Docket #1) and/or the Amended Complaint (Docket #10), a description of any legal or factual research performed, consultations with State Street, legal drafting and/or review of pleadings. **[JUNE 1]**

~~7. Summarize the factual basis for State Street's liability and your/plaintiffs' contention that State Street was legally liable for damages to the class members.~~

8. Describe the Firm's theory of damages, including an estimate of total damages to the customer and/or ERISA classes, whether this theory changed throughout the course of the SST Litigation, and if so, what factors affected the Firm's theory and total calculation of estimated damages. **[JUNE 1]**

9. Identify and describe all risk factors you considered prior to getting involved in the SST Litigation, including any "bad facts," meritorious defenses and/or unsettled legal issues, or other circumstances that affected the potential outcome and total damages recoverable in the case. **[JUNE 1]**

10. Describe the frequency and nature of communications with the Plaintiffs' Law Firms over the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic substance of those conversations.~~ **[JULY 10]**

11. Describe the role of the U.S. Department of Labor, including any field divisions or offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and

Exchange Commission, in the SST Litigation ~~and the basic substance of the Law Firm's~~  
~~communications with each agency through the course of the Litigation.~~ **[JULY 10]**

~~12. Explain the role played by ARTRS and/or George Hopkins in the SST Litigation,~~  
~~including Mr. Hopkins' substantive contributions to the pleadings and/or case strategy, and what,~~  
~~if any, role he had in the negotiation and mediation of the Final Settlement.~~

13. Describe the frequency and nature of communications with ERISA counsel over  
the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic~~  
~~substance of those conversations.~~ **[JULY 10]**

14. Explain the Law Firm's litigation strategy in pursuing the claims raised in the  
SST Litigation, including the strategy employed in mediation. Identify and describe all events  
that impacted or caused the Firm to change that strategy. **[JULY 10]**

15. Explain any tensions and/or adversarial positions assumed between the ERISA  
counsel, on the one hand, and the Plaintiffs' Law Firms, on the other, including differences in  
litigation strategy, legal theories, damages, and/or theories of liability asserted during the SST  
Litigation. **[JULY 10]**

16. Explain how the adversarial positions described above impacted or did not impact  
the Law Firm's strategy, including its discovery, mediation, and/or the settlement of the SST  
Litigation. **[JULY 10]**

17. Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the  
one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of  
the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not  
represent the final agreement for allocation of the Fee Award, explain the reason for modifying a  
previous agreement, including all persons involved in these discussions and their affiliation/firm.  
**[JUNE 9]**

18. Describe in detail the nature and the scope of the SST Document Review, including the total number of pages and/or size of the productions, the nature and date of each document production(s) received from State Street, all other document production(s) received in connection with the Litigation, and a general description of the information contained in each production. **[JUNE 1]**

19. Describe in detail how the Law Firm conducted the SST Document Review, including how it selected and/or staffed Staff Attorneys, a description of all training binders/protocols or search terms used for Document Review, and a brief description of the tasks assigned to Staff Attorneys and any other individuals who participated, and how those tasks furthered the Firm's overall litigation strategy. **[JUNE 1]**

20. Describe how the Law Firm utilized the Catalyst database, including all persons who had access to the database, any electronic and/or technical training provided to those individuals, and a description of the information maintained in the Catalyst database during the course of the SST Document Review. **[JUNE 1]**

21. Describe in detail all documents destroyed and/or deleted from the Catalyst database, including the date, and explain why each document was deleted/destroyed. **[JUNE 1]**

22. Identify and describe any training the Firm provided to Staff Attorneys relating to the substantive allegations in the SST Litigation/SST Document Review, including addressing all legal issues, key witnesses, theories of liability, damages, and critical topics raised in the case. **[JUNE 1]**

~~23. Please list all class actions or other litigations in the past five years in which the Firm has assigned Staff Attorneys to work on the matter. For each matter, please list the full case caption, the docket number, the outcome of the case, and the hourly rates charged, if any, for each Staff Attorney who worked on the matter, and the nature of the work performed by the~~

~~assigned Staff Attorneys.~~

24. Please list the full name of each Staff Attorney who worked on the SST Litigation/Document Review. Please include for each Staff Attorney: his/her employment classification (full-time/part-time employee or independent contractor); how long he or she worked (has worked) at the Firm; the name/description of any other cases to which he or she was assigned during the pendency of SST Litigation/Document Review; whether he/she was allocated to Thornton for any portion of the SST Litigation; any prior experience in securities class action litigations, foreign-exchange trading and/or mismanagement of custodial funds; the physical location where the work was performed; and the hourly rate charged in the Fee Petition.

**[JULY 10]**

25. For each of the Staff Attorneys listed above, please describe all compensation paid to the Staff Attorney and the total number of hours recorded for work on the SST Litigation/Document Review. **[JULY 10]**

26. Identify any other individuals who worked on the SST Document review who were not Staff Attorneys and explain their affiliation with the Law Firm, their employment status, and how they were compensated for their time. **[JUNE 1]**

~~27. Explain how Staff Attorneys working on the SST Litigation recorded, including through handwritten and/or interim measures, and subsequently reported their time to the Firm and what, if any, steps were taken by the Firm to review or scrutinize those hours.~~

28. Explain how the Firm supervised and/or performed quality control of the work performed by the Staff Attorneys and others who participated in the SST Document Review, including the name, title, and tasks performed by any supervising individual. **[JUNE 1]**

29. Explain in detail the job responsibilities and tasks performed by the Staff Attorneys assigned to the SST Document Review, including those Staff Attorneys allocated to

Thornton, including but not limited to, coding, deposition preparation, creation of witness kits and similar work. **[JUNE 1]**

30. Describe the process for assigning and reviewing factual, legal, and/or discursive memoranda prepared by Staff Attorneys, including how such memoranda were relevant to, used as part of the SST Litigation, and/or shared among counsel. **[JUNE 1]**

31. Describe the Firm's understanding of how fees, costs and/or expenses associated with performance of discovery in the SST Document Review would be shared among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms, including but not limited to who would be responsible for: compensating Staff Attorneys for hours worked; hosting Catalyst and/or other electronic database(s); compiling "hot docs" and other documents relative to the liability and/or damages theories; and/or other expenses associated with the SST Document Review. **[JULY 10]**

32. For each of the categories listed above, explain the Firm's understanding of how those fees, costs and/or expenses would be reported to the Court in the event of a successful verdict and/or settlement. **[JULY 10]**

33. Explain the origin of the cost-sharing agreement with Thornton through which the Firm agreed to allocate the costs associated with a certain number of Staff Attorneys to Thornton, including the names and descriptions of all other matters in which the Firm entered into a similar arrangement (whether or not documented) to share costs with other firms, prior to or after the SST Litigation. **[JUNE 1]**

34. Describe the Firm's understanding, in or about early 2015, as to how Thornton would account for the allocation/sharing of costs for certain of the Firm's Staff Attorneys in its Fee Petition, including the Firm's understanding as to which firm was responsible for reporting the total number of hours worked by those Staff Attorneys on its Fee Petition and/or Lodestar calculation. **[JUNE 1]**

~~35. Please state whether the Firm's understanding of how Thornton would account for the sharing of Staff Attorney costs has changed since 2015, and if so, when, and explain what prompted that change.~~

~~36. Explain the Firm's current understanding of the all cost sharing agreements (formal or informal) between the Law Firm and Thornton to allocate and/or share costs for certain of the Firm's Staff Attorneys assigned to work on the SST Litigation.~~

37. Explain what knowledge, if any, the Firm had about the existence of a cost-sharing agreement(s) (formal or informal) between Labaton and Thornton to allocate and/or share costs for certain of Labaton's Staff Attorneys assigned to work on the SST Litigation.

**[JUNE 9]**

38. Describe in detail the process through which the Law Firm invoiced or otherwise sought reimbursement from Thornton for costs of those Staff Attorneys allocated to Thornton as part of the SST Litigation/Document Review. **[JUNE 1]**

39. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton reimbursed the Firm, from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Christopher Jordan and Jonathan Zaul for reviewing Thornton folders 2/9/15 to 4/14/15 was not removed from the Firm's timekeeping records. **[JUNE 1]**

40. Explain the Firm's process for removing time reported by Staff Attorneys allocated to Thornton for whom Thornton paid directly through a third-party staffing agency from the Firm's Fee Petition, including the role of the Firm's Accounting Department, and explain why time reported by Staff Attorneys Ann Ten Eyck and Rachel Wintterle for work performed from March through June 2015, was not removed from the Firm's timekeeping records. **[JUNE 1]**

~~41. Identify and describe all communications between the Law Firm and Thornton relating to the firms' cost-sharing agreement to share the costs of certain Staff Attorneys, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

~~42. Identify and describe all communications between and among the Firm, Labaton, and Thornton relating to cost-sharing agreement(s) between any of the firms, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

43. Describe what knowledge, if any, the Firm had in early 2015 about Michael Bradley's involvement in the SST Litigation, including any knowledge of Thornton's agreement to pay Mr. Bradley an agreed-upon rate of \$500/hour. **[JUNE 9]**

44. Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/SST Document Review from 2010 through November 2016, including relating to compensation or an hourly billing rate that Thornton would charge for Mr. Bradley's time spent on the matter. **[JUNE 9]**

~~45. Explain how the Firm supervised and/or performed quality control of the work performed by Michael Bradley in the SST Document Review, including the name, title, and nature of any supervising individual.~~

46. Please describe any previous matters, whether based on a contingency, hourly, or other fee arrangement, in which the Firm engaged in a fee dispute with a client or class representative prior to the conclusion of the representation. For each such matter, explain how that fee dispute was resolved and any hourly rate/quantum meruit applied for work performed. **[JULY 10]**

47. Explain how the Law Firm determines annual billing rates for all attorneys,

including Staff Attorneys. Please identify and describe all factors considered and/or resources relied upon in making these determinations. **[JUNE 9]**

48. Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why. **[JUNE 9]**

49. Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

50. Please list all of the Firm's hourly rates charged to non-hourly clients (whether in class action or other contingency-fee litigation) for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

51. Please list all of the hourly rates charged or associated with any matters in which the Firm has acted as local counsel for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

52. Please identify the Firm's managing partner for each of the years from 2010 to present, and list all members of the Firm's Executive Committee and describe their respective roles in determining annual rates. **[JULY 10]**

53. Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not. **[JUNE 9]**

54. Identify and describe all instances in which the Firm has billed an attorney at a lesser or higher rate than the annual rate determined by the Managing Partner, in conjunction with the Executive Committee, for a particular year and explain why that decision was made. **[JULY 10]**

55. Describe in detail the process for finalizing the term sheet and Final Settlement in the SST Litigation, including the role of the U.S. Department of Labor, U.S. Attorney's Office, U.S. Department of Justice and/or the U.S. Securities and Exchange Commission in the

negotiations. **[JULY 10]**

56. Describe in detail how the Firm prepared the Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s). **[JUNE 9]**

57. Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why. **[JUNE 9]**

58. Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not. **[JUNE 9]**

59. Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of Staff Attorneys for whom Thornton had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees. **[JUNE 9]**

60. Identify all individuals at the Firm who reviewed, assisted or contributed to the preparation and submission of Thornton's Fee Petition and, if appropriate, describe the nature of their contributions. **[JUNE 9]**

61. Describe how the Law Firm and/or the Plaintiffs' Law Firms arrived at a total fee percentage roughly equal to 25% of the final Fee Award. Please explain whether the Firm prepared its Lodestar calculation to achieve a 25% award of the total settlement amount. **[JULY 10]**

62. Identify all billing entries, costs and/or expenses incurred by the Firm during the

SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor. **[JUNE 9]**

63. Explain the significance of the statement made in Paragraph 5 to the *Declaration of Daniel P. Chiplock on Behalf of Lieff Cabraser Heimann & Bernstein, LLP In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Expenses* (Docket #104-17), affirming that the hourly rates included in Exhibit A to the *Declaration* are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language. **[JUNE 9]**

64. Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not? **[JUNE 9]**

65. Identify, in detail, each error in your Fee Petition, and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s). **[JULY 10]**

66. Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award, and underlying billing practices employed by the Firm and other counsel in the SST Litigation, that preceded the publication of the December 17, 2016 Article. **[JUNE 9]**

67. Describe when and how the Law Firm first identified duplicative billing entries reflected in the Firm's Fee Petition and describe all actions taken by the Firm to review, confirm, and/or correct those errors. **[JUNE 9]**

68. Describe in detail how the Law Firm participated in the drafting of the November

10, 2016 Letter, including the full names of all individuals who contributed to the Letter, the nature of any internal review by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s). **[JUNE 9]**

69. Identify and describe all documents relied upon by the Law Firm in the drafting of the November 10, 2016 Letter. **[JUNE 9]**

~~70. State the total number of class members and the estimated recovery or settlement amounts, net of fees and expenses, due to each class member.~~

~~71. Itemize the total estimated damages to the ERISA and non-ERISA plaintiffs and summarize the factual basis for the estimate.~~

72. Identify, in detail, any additional errors in your any communication with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s). **[JUNE 9]**

73. Identify and explain any mistakes you have identified in the Fee Petition, Motion for Attorneys' Fees, and/or Fee Award, not described above. **[JUNE 9]**

74. Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge. **[JUNE 9]**

75. Identify and describe the steps taken by the Firm to identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master including, without limitation, the name and title of those involved, the process undertaken, the database and documents searched, and the parameters of any electronic search including date range, timekeepers and search terms. **[JULY 10]**

76. Identify with specificity sufficient to constitute a valid response to a request for

production of documents, any documents identified by you as responsive to the Special Master's Request for Production of Documents but withheld from production to the Special Master on grounds of any evidentiary or other privilege or otherwise including (a) the type of document; (b) its date if any; (c) any identifying marks such as bates stamp or other numeric designation; (d) the reason you withheld it from production; and (e) the current location of the document. To the extent any such document or other responsive document has been destroyed, identify (a) the type of document; (b) its date, if any; (c) the date of its destruction; (d) the circumstance thereof; and (e) the persons involved therein. For each such person, please provide their name, current or prior title or position with the Law Firm, the date, if any, of termination of employment with the Law Firm and the reason therefor, and the last known residential and business address. **[JULY 10]**

77. Identify the timekeeping, accounting, and billing software systems utilized by the Law Firm to record and bill attorney time charges, costs and expenses associated with legal and other services rendered by the Law Firm in connection with the SST Litigation and the persons within the Law Firm with the most knowledge and responsibility for the system and operation.

**[JULY 10]**

Date: May 18, 2017

Respectfully submitted,

SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),  
By his Attorneys,

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William F. Sinnott (BBO #547423)  
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**CERTIFICATE OF SERVICE**

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Richard M. Heimann, Esquire, Lief Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29<sup>th</sup> Floor, San Francisco, CA 94111, by electronic mail and first class mail, postage prepaid, this 18<sup>th</sup> day of May, 2017.

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William F. Sinnott

# **EX. 259**

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**From:** William Sinnott  
**Sent:** Wednesday, May 24, 2017 10:58 AM  
**To:** Kelly, Brian  
**Cc:** Lukey, Joan; Heimann, Richard M.; Fuller, Anthony E.; Elizabeth McEvoy  
**Subject:** Revised RFPs & Ints. for Thornton  
**Attachments:** Rev. First Set of RFPs to Thornton- ANNOTATED (5-23-17).DOCX; Rev. First Set of Ints to Thornton- ANNOTATED (5-23-17).DOCX

Hi Brian:

Thanks for sending over your objections to the written discovery propounded on May 18, 2017.

As noted in my previous correspondence to the group, our meeting addressed a number of concerns raised by Labaton and Lief, which in large part overlapped with Thornton's objections. In addition to prioritizing the information most needed for depositions and eliminating many RFPs and Interrogatories altogether, we respond to Thornton's objections (and clarify the scope of the requests) as listed below.

In the event that Thornton continues to object or raises new objections to the revised RFPs and Interrogatories attached, please send us an email detailing the nature of each request and corresponding Ints/RFP by no later than **Friday, May 26, 2017**. Again, we will consider all timely objections and do our best to further narrow the scope of eliminate extraneous information, if appropriate.

If the Firm is unable to complete the search by the date provided due to a large volume of responsive documents, please inform me in writing of the proposed search terms and total number of "hits." Should this be the case, we will try to work together to provide a list of relevant timekeepers and/or narrowed search terms.

Finally, as stated previously, if the Firm has already produced information requested as part of its prior document productions, please respond in writing with the specific date(s) or production and Bates nos. of all responsive documents. Such information need not be produced a second time.

#### Interrogatories

No. 1- Reference to "other representative matters" includes publicly-available information commonly listed on the Firm's website or shared with new or prospective clients. This interrogatory does not seek proprietary information.

No. 2- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address the subject matter, experience and/or expertise of the Law Firm prior to its involvement in the SST Litigation, involving FX-based claims.

No. 4- Stricken in its entirety for now. The Special Master reserves the right to propound additional discovery specifically to address potential double-billing of Staff Attorney and attorney time between the SST Litigation and other, concurrent litigations in which the Firm was involved.

**Objection to Nos. 8 & 9-** Interrogatories seek (i) a narrative overview describing the Firm's theory of damages and/or the potential monetary recovery to the class; and (ii) an explanation of the risks considered by the Firm and other factors

that impacted the Firm's strategy or damage calculation. ***This information is directly relevant to determining the appropriateness of attorney's fees, hours billed, and fairness of the settlement reached.***

Nos. 10-11, 14- Strike the portion of each interrogatory seeking a description of the "basic substance" of certain communications referenced therein.

***Objection to No. 10-*** This interrogatory seeks only those communications between and among Plaintiffs' Law Firms, as described therein, relating to the State Street Litigation or foreign-exchange-based claims. ***This information is directly relevant to understanding the dynamics and course of the complex class action (7 years in duration) as well as to determining the relationship between the Plaintiffs' Law Firms and the background giving rise to a cost-sharing agreement between Lieff/Labaton and Thornton sharing the costs of certain staff attorneys.***

***Objection to No. 11-*** This interrogatory seeks only the Firm's understanding of the role played by the listed government agencies. ***This information is directly relevant and probative of the hours billed/total attorney hours reported in the Fee Petition as well as bears on the timing and terms of the Final Settlement in the State Street Litigation.***

***Objection to No. 12-*** This interrogatory seeks information about any relationship between any Thornton attorneys, including but not limited to Garrett Bradley, and any persons at the USAO, including but not limited to the Boston office of the USAO. Please explain the scope and nature of any conversations between Thornton and the USAO. It is limited to the conversations relating to the State Street Litigation. ***This information is directly relevant to and probative of the role played by each firm, the hours billed/total attorney hours reported in the Fee Petition, and bears on the timing and terms of the Final Settlement in the State Street Litigation***

***Objection to Nos. 14 & 16-*** This interrogatory seeks only those communications between and among Plaintiffs' Law Firms and ERISA counsel, as described therein, relating to the State Street Litigation or foreign-exchange-based claims. ***This information is directly relevant to understanding the dynamics and course of the complex class action (7 years in duration) as well as to determining the relationship between the Plaintiffs' Law Firms and the ERISA firms, and how that impacted the course of discovery employed by each in the State Street Litigation, including the sharing and/or lack of sharing of resources between and among the firms.***

***Objection to No. 15-*** This interrogatory seeks an overview of the litigation strategy employed by Thornton throughout the course of the Litigation. To the extent that Thornton's strategy changed at any time, please identify, generally, the time period or relevant event (i.e. Lobby Conference, Motion to Dismiss, access to State Street production) that caused a change in said strategy. ***This information is directly relevant to determining the appropriateness of attorney's fees, hours billed, and fairness of the settlement reached.***

Nos. 16-17- If the answer is "none," so state in your response.

***Objection to No. 17-*** This interrogatory seeks a general description and/or explanation of how the inclusion of the ERISA firms in the State Street Litigation impacted, if at all, the litigation strategy for the consumer class. ***This information is directly relevant to provide context for the breadth and scope of the Litigation, impacting the hours billed and utilization of Staff Attorneys, as well as the fairness/appropriateness of the final outcome/Fee Award rendered in the case.***

No. 19- Figures need not be exact; approximations or ranges for the total number of pages or GB are acceptable. The reference to "general description of the information contained in the production" may include brief descriptions for the various categories of documents, such as "real time trading transactions"; "internal State Street emails between traders and compliance"; and/or "foreign exchange market spreadsheets of exchange rates."

Nos. 19/29- To the extent these interrogatories overlap in substance, the Firm need not answer twice. However, insofar as one or more interrogatories seeks information that is not included in the other two, please respond to all sub-questions presented.

No. 34- Reference to “all other matters in which the Firm entered into a similar arrangement [] to share costs with other firms” refers to any other matters in which the firm agreed to share the costs of the time spent/billed by another firm’s staff or contract attorneys, and reimbursed that other firm either directly or indirectly for that staff attorney time. If none, so state in your response.

**Objection to No. 48** - This interrogatory seeks information about any situation and/or circumstances, whether or not arising to a true “dispute,” in which the Firm has ended its representation of a client/class representative prematurely or otherwise before the anticipated conclusion of a matter, whether due to insistence of the client/class representative or the Firm, and where the Firm sought payment from the client or the client paid for the work already performed by the Firm. To the extent an hourly rate was paid to the Firm for services rendered, please identify that rate. If another sum was paid, please provide that figure and the basis for that payment. **Any proprietary and/or privileged client information may be redacted. Moreover, this information is directly relevant to and probative of the “hourly rates” charged by the Firm to its clients.**

**Objections to Nos. 49-56- Information about how the Firm arrives at the hourly billing rates submitted in the Fee Petitions, including the rates submitted for Staff Attorneys used and/or paid for by the Firm, is directly relevant to and probative of the central issue in this case—appropriateness of the representations in the Fee Petition (and attorney billing rates reported therein) and the Fee Award in the State Street Litigation. The Firm’s hourly billing rates throughout the course of the State Street Litigation (a 7 year period) is essential to fully evaluating this issue. Moreover, the nature of billing rates charged in other matters as well as in non-class action matters is directly relevant to determining whether the hourly rates charged in the State Street Litigation are “regular rates charged for their services, which have been accepted in other complex class actions.”**

No. 56- This interrogatory seeks identification/description only of those instances in the State Street Litigation where the Firm billed an attorney at a higher or lesser rate than the rate determined by the Firm. Please explain the deviation in any such instance.

**Objection to No. 57**- This interrogatory seeks the Firm’s general observations and understandings about the role played by the listed government agencies in progressing from the settlement in principle to the Final Settlement resolving the Litigation. **This information is directly relevant to and probative of the role played by each firm, the hours billed/total attorney hours reported in the Fee Petition, and bears on the timing and terms of the Final Settlement in the State Street Litigation**

**Objection to No. 66**- This interrogatory does not call for speculation, **but asks the Firm to agree or dispute with a central contention in the case regarding the appropriateness of the hourly billing rates submitted in the Fee Petition.**

#### RFPs

No. 1- As proposed by Lief/Labaton, a hard drive containing the Catalyst database is acceptable. If you contend such production is barred under the terms of the protective order entered into with State Street’s counsel during the State Street Litigation, please respond stating with specificity the nature of such an objection.

No. 2- As discussed with counsel yesterday, production of all documents marked “hot” or “smoking hot” in the Catalyst database is sufficient; the phrase “bearing on material issues” is, therefore, stricken.

No. 3: This request seeks documents relating to representation of class representatives in the State Street Litigation only. The reference to all documents “referring to, relating to, or evidencing terms of the law Firm’s representation of class representatives” relates to any written communications, emails, notes that set out the terms of an agreement that is not otherwise reflected in a formal written agreement previously produced, or any documents that contain terms that amend a formal agreement and is not otherwise contained in another written agreement produced therein.

**Objection to Nos. 4 & 5 (6 is now stricken)** : These requests seek only information, as described therein, from 2009-2011. To the extent any such information is privileged and/or bears on the attorney-client privilege, you may redact such privileged information. ***This information is directly relevant to and probative of the hourly billing rate charged by the Firm and review of the Fee Award, two central issues in this case.***

**Objection to Nos. 7, 8, 9** : Requests nos. 8 and 9 seek only those documents referenced therein from 2010-2011 and 2015-2016. Moreover, each of these requests seeks information about the typical and regular billing rates charged by the Firm for providing legal services notwithstanding the rates charged here. To the extent any such information is privileged and/or bears on the attorney-client privilege, you may redact such privileged information. ***This information is directly relevant to and probative of the hourly billing rate charged by the Firm and review of the Fee Award, two central issues in this case.***

**Objection to No. 10**- This request seeks only those emails and/or other communications or documents soliciting opinions and/or retaining an expert to provide an opinion as described therein ***with regard to Staff Attorneys only***, as well as ***all*** opinions, reports or work product received by the Firm from said experts or third parties.

No. 17- To the extent that a single 1099 or W-2 captures ***all*** compensation paid by the Firm directly to a particular Staff Attorney, the Firm need not produce the individual paystubs reflected on those documents. However, in the event a Staff Attorney received individual or intermittent payments from the Firm that is/are ***not*** reflected on a 1099 and/or W-2, please produce both the appropriate 1099/W-2 and all records of payment made by Thornton directly, in order to provide a complete record of all payments made in connection with that particular Staff Attorney's work on the State Street Litigation. If none, so state.

**Objection to No. 22**- This request seeks information solicited and/or maintained by the Firm from a third-party with the express purpose of assisting the Firm in litigating the legal and factual issues in the State Street Litigation. ***This information is directly relevant to provide context for the breadth and scope of the Litigation, including as the nature of the Litigation impacts the hours billed and utilization of Staff Attorneys, as well as the fairness/appropriateness of the final outcome/Fee Award rendered in the case.*** If Thornton did not retain an expert, so state in your response. Moreover, If you contend such production is barred under the terms of the protective order entered into with State Street's counsel during the State Street Litigation, please respond clarifying the scope of the protective order and how this request violates it.

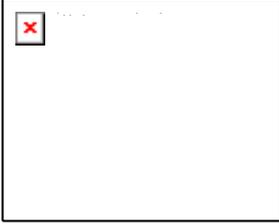
**Objections to Nos. 26 & 27**- These requests seek work product produced by the Staff Attorneys working on the State Street Litigation, the nature of which varied over the 7-year course of the litigation. ***This information is extremely probative of the central issue in the case concerning the appropriate billing rate for staff attorneys and the appropriateness of the rates submitted in the firms' Fee Petitions.***

**Objection to No. 30**- This request seeks communications, or other documents evidencing communications, between Thornton attorneys (including but not limited to Garrett Bradley) and attorneys at the USAO Boston/other offices to further confirm or clarify Thornton's role in the multi-faceted negotiation of the Final Settlement in the State Street Litigation. It is limited to the conversations relating to the State Street Litigation. ***This information is directly relevant and probative of the role played by each firm in the Litigation, the hours billed/total attorney hours reported in the Fee Petition, and bears on the timing and the fairness of terms of the Final Settlement.***

**Objections to No. 52**- This request seeks all work product, if any, produced by Michael Bradley. Like the Staff Attorneys, Michael Bradley was a licensed attorney who performed document review as part of his work on the State Street Litigation, the nature of which varied over the 7-year course of the litigation. ***This information is extremely probative of the central issue in the case concerning the appropriate billing rate for Michael Bradley and/or the appropriateness of the rates submitted by Thornton in its fee petition.***

All the best,

Bill



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**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others similarly situated, ) No. 11-cv-10230 MLW  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
)  
Defendant. )

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ARNOLD HENRIQUEZ, MICHAEL T. COHN, )  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, ) No. 11-cv-12049 MLW  
and those similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
STATE STREET GLOBAL MARKETS, LLC and )  
DOES 1-20, )  
)  
Defendants. )

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THE ANDOVER COMPANIES EMPLOYEE SAVINGS )  
AND PROFIT SHARING PLAN, on behalf of itself, and ) No. 12-cv-11698 MLW  
JAMES PEHOUSHEK-STANGELAND, and all others )  
similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
STATE STREET BANK AND TRUST COMPANY, )  
)  
Defendant. )

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**SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST REQUEST  
FOR THE PRODUCTION OF DOCUMENTS TO THORNTON LAW FIRM, LLP**

Pursuant to Rule 53(c) of the Federal Rules and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby requests that Thornton Law Firm, LLP produce the documents described below for inspection and copying at the offices of Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108, within fourteen (14) days from the date of service hereof.

### **DEFINITIONS**

1. The terms "you", "your", "the Firm", "the Law Firm", or "Thornton" refer to Thornton Law Firm, LLP, formerly known as Thornton & Naumes, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
2. The term "Lieff" refers to Lieff Cabraser Heimann & Bernstein, LLP, and all employees, agents, counsels, attorneys, and representatives.
3. The term "Labaton" or "Labaton Sucharow" refers to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
4. The term "Plaintiffs' Law Firms" refers to Labaton, Lieff, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.
5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.
6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term “State Street Litigation”, “SST Litigation” or “Litigation” refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term “State Street Document Review”, “SST Document Review” or “Document Review” refers to the review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

9. The term “State Street” refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term “settlement in principle” refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term “Court” refers to the United States District Court for the District of Massachusetts.

12. The term “Fee Petition” or “Fee Application” refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs’ Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and Lead Counsel’s Motion for An Award of Attorneys’ Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, “Fee Petition” in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses

incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

13. The term “Motion for Attorneys’ Fees” refers to Lead Counsel’s Motion for An Award of Attorneys’ Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

14. The term “Final Settlement” refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

15. The term “Fee Award” refers to a certain award of attorneys’ fees of \$74,541,250.00 and expenses and costs of \$1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

16. The term “November 10, 2016 Letter” refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

17. The term “December 17, 2016 Article” refers to the Boston Globe article entitled *Critics hit law firms’ bills after class-action lawsuits*, published on or about December 17, 2016.

18. The term “hourly rates charged” refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

19. The term “Staff Attorneys” refers to licensed attorneys working on a part-time or full-time basis for Lief/Labatton or other firm, but who are not deemed “associates” or otherwise on a traditional partnership track.

20. The term “hourly clients” refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

21. The term “non-hourly clients” refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

22. Any word written in the singular also includes the plural and vice-versa.

23. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.

24. The term “any” and the term “all” are intended to mean “any and all.”

25. As used herein, the term “or” and the term “and” shall mean “and/or” and vice-versa.

26. As used herein, the terms “relating to” or “referring to” or “concerning” or “constituting” or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized, generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

27. The term “date” means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

28. The term “communication” as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

29. The term “document” shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms “document” and “documents” are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to, e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 28 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or

non-identical copy is a separate “document.” The word “document” also includes data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices in a reasonably usable form.

30. The term “draft” shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

### **INSTRUCTIONS**

A. Unless otherwise specified, these requests seek documents for the period from January 1, 2010 until the present.

B. This document request (“Request”) requires you to produce all documents called for herein that were created or originated by you, or that came into your possession, custody or control, from all files or other sources that contain responsive documents, wherever located and whether active, in storage, or otherwise.

C. This Request shall be deemed to include any document now or at any time in your possession, custody, or control. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (iv) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

D. The obligation to produce the documents specified below is of a continuing nature; your production is to be supplemented if at any time you acquire possession, custody, or control of any additional responsive documents, or otherwise discover additional responsive documents, between the time of initial production and conclusion of the investigation, to the fullest extent required by the Federal Rules of Civil Procedure, the March 8, 2017 Court order, and the Local Rules of this Court.

E. Where only a portion of a document relates or refers to the subject indicated, the entire document is to be produced nevertheless, along with all attachments, appendices and exhibits.

F. Each document produced in response to the Requests below should be clearly categorized to indicate which Request(s) it is responsive to.

G. If any document or portion thereof is withheld under a claim of privilege, you shall produce so much of the document as is not subject to the possible claim of privilege, and shall furnish a statement, signed by an attorney representing you, which identifies each document or portion thereof for which a privilege is claimed, including the following information:

- (i) The date of the document;
- (ii) The name and title of the person who sent, authored, prepared, signed, or originated the document, or of the person who knows about the information contained therein;
- (iii) The name and title of the recipient of the document;
- (iv) All persons to whom copies of the document were furnished, along with such persons' job titles or positions;
- (v) A brief description of the subject matter or nature of the document sufficient to assess whether the assertion of privilege is valid;
- (vi) The specific basis upon which the privilege is claimed;

(vii) With respect to any claim of privilege relating to an attorney, or action or advice or work product of an attorney, the identity of the attorney involved; and

(viii) The paragraphs of this request to which such document responds.

H. All documents shall be produced as they are kept in the ordinary course of business and in their original file folders with any identifying labels, file markings, or similar identifying features. If there are no documents responsive to a category specified below, you shall so state in a writing produced at the time and place that documents are demanded to be produced by this request.

I. Documents created or stored electronically must be produced in their original electronic format, and not printed to paper or PDF. All electronically stored information (“ESI”) shall be produced in electronic form (the “production set”). Each document will have its own unique identifier (“Bates number”), which must be consistently formatted across the production, comprising of an alpha prefix and a fixed length number of digits (e.g., “PREFIX0000001”).

The production set shall consist of, and meet, the following specifications:

1. Image Files. All ESI will be rendered to single-page, black and white, Group IV *tagged image file* (“*.tif*” or “*.tiff*”) images with a resolution of 300 dpi, the file name for each page is named after its corresponding Bates number. Records in which a color copy is necessary to interpret the document (e.g., photographs, presentations, AUTOCAD, etc.) will be rendered to higher resolution, single-page *joint photographic experts group* (“*.jpg*” or “*.jpeg*”) format. Endorsements must follow these guidelines:
  - a. Bates numbers must be stamped on the lower right hand corner of all images.
  - b. Confidentiality must be stamped on the lower left hand corner of all images.
  - c. Other pertinent language may be stamped on the bottom center, or top of the images, as deemed necessary.
2. Load Files. All ESI must be produced with appropriate data load files, denoting logical document boundaries. The following files should be included within each production set.
  - a. A Concordance delimited ASCII text file (“*.dat*”).

- i. The .dat file will contain metadata from the original native documents, wherein the header row (*i.e.*, the first line) of the .dat file must identify the metadata fields.
- ii. The .dat file must be delimited with the standard Concordance delimiters (the use of commas and quotes as delimiters is not acceptable):

ASCII 020 [¶] for the comma character;  
ASCII 254 [b] for the quote character; and  
ASCII 174 [®] for new line.

- iii. All attachments, or *child* records, should sequentially follow the *parent* record.
- iv. The following fields and metadata will be produced:

Beginning Bates; Ending Bates; Beginning Bates Attachment; Ending Bates Attachment; Custodian; File Name; From; Recipient; CC; BCC; Subject; Date Sent; Time Sent; Last Modified Date; Last Modified Time; Author; Title; Date Created; Time Created; Document Extension; Page Count; MD5Hash; Text Path; and Native File Path.

- b. Image cross-reference files, *Opticon* image file (“*.opt*”) and *IPRO View Load* file (“*.lfp*”), which link images to the database and identifies appropriate document breaks.

J. If any document requested herein has been lost, discarded, or destroyed, that document so lost, discarded, or destroyed shall be identified in writing (produced at the time and place that documents are demanded to be produced by this request) as completely as possible, together with the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

### **DOCUMENTS REQUESTED**

1. The Catalyst and Relativity document databases created or used in the SST Litigation, as annotated, compiled and used in the course of the litigation and/or document review, including instructions, software, and anything else necessary to access and analyze the data therein. **[JULY 10]**

2. All so-called “hot docs,” as understood or identified by the Law Firm, ~~and any other documents or information identified during the SST Litigation bearing on the material issues in the Litigation, including but not limited to liability and damages.~~ **[JUNE 9]**

3. All engagement letters, fee agreements, retention letters, and/or other documents referring to, relating to, or evidencing terms of the Law Firm's participation in the SST Litigation and/or representation of class representatives. **[JUNE 9]**

4. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of hourly clients, from ~~2008 to the present~~ **2009-2011**. **[JULY 10]**

5. All engagement letters, fee agreements, retention letters, RFPs, and/or other documents referring to, relating to, or evidencing terms and/or hourly rates associated with the Law Firm's representation of non-hourly clients, from ~~2008 to the present~~ **2009-2011**. **[JULY 10]**

~~6. All documents and/or communications relating to how the Law Firm records, accounts for and/or seeks reimbursement for hours billed by Staff Attorneys for whom is shared the costs in other class action or contingency cases, including the hourly rates the Law Firm would charge if successful, from 2010 to the present.~~

7. Copies of all billing rate tables, spreadsheets, fee binders, or other collection of the Law Firm's annual billing rates, from 2010 to the present.

8. All minutes, notes, recordings, memoranda or other documents relating to or created by the Law Firm during meetings to determine annual billing rates, from ~~2008 to the present~~ **2010-2011 and 2015-2016**. **[JUNE 9]**

9. All documents and/or communications relating to Firm's review and adjustment of annual billing rates, from ~~2008 to the present~~ **2010-2011 and 2015-2016**. **[JUNE 9]**

10. All documents and/or communications relating to the Law Firm's internal classification of costs and expenses, including but not limited to any ethical, legal, or factual opinions solicited by the firm by third parties regarding the classification of Staff Attorneys as fees vs. expenses. **[JUNE 1]**

~~11. A complete set of time records for all attorneys, including Staff Attorneys allocated to the Firm, and other Law Firm staff who worked on or contributed to the SST Litigation, including but not limited to hand-written time sheets/ledgers, emails, electronic entries, pre-bills, and/or client bills, including the hourly rate billed and/or corresponding to the hours recorded.~~

12. A complete set of time records for Michael Bradley's work performed on the SST Litigation, including hand-written notes, emails, ledgers or other notations reflecting hours worked.

~~13. All documents referring to, relating to, evidencing or constituting the basis for and amounts of any costs and expenses billed, incurred or charged by the Law Firm for legal or other services rendered as part of the SST Litigation including but not limited to documents pertaining to the terms under which Staff Attorneys and/or third parties provided services to the Law Firm in the Lawsuit.~~

~~14. All documents and/or communications relating to or evidencing the Law Firm's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.~~

15. All documents and/or communications relating to or evidencing Michael Bradley's use of Catalyst in connection with the SST Document Review, including all records of time spent in the Catalyst database, costs incurred, and coding of electronic documents.

~~16. All W-2s, 1099s, paystubs, or other documentation of payments made to the Firm attorneys and non-legal staff assigned to or who contributed to the SST Litigation, for work performed on the Litigation.~~

17. All W-2s, 1099s, paystubs, or other documentation of payments made directly to Staff Attorneys assigned to Thornton under the cost-sharing agreement with Lieff and/or Labaton, for work performed on the Litigation. **[JUNE 1]**

18. All documents referring to, relating to, evidencing or constituting discussions between the Law Firm and the Plaintiffs' Law Firms relating to sharing costs and/or expenses of the SST Document Review/SST Litigation, including but not limited to sharing the cost of Staff Attorneys, hosting costs for Catalyst database, and other expenses consistent with conducting voluminous document review. **[JUNE 9]**

19. All agreements, contracts, and/or memorialization of an arrangement to share the costs of certain Staff Attorneys allocated to the Firm by Labaton and/or Lieff, including the compensation, reimbursement, and/or invoicing of costs associated with the same. **[JUNE 9]**

20. All documents referring to, relating to, evidencing or constituting discussions with Labaton regarding the Firm's plan or intention to include Staff Attorney time as part of the Firm's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

21. All documents referring to, relating to, evidencing or constituting discussions with Lieff regarding the Firm's plan or intention to include Staff Attorney time as part of the Firm's Fee Petition and/or Lodestar calculation. **[JUNE 9]**

22. All expert reports, factual or legal opinions, or other work product solicited from a third-party by the Law Firm in connection with factual and/or legal issues arising in the SST

Litigation, including but not limited to the foreign-exchange market, foreign-exchange trading practices, and custodial management of retirement funds. **[JULY 10]**

~~23. All documents and/or communications relating to or evidencing discussions between and among the Law Firm, the Plaintiffs' Law Firms, and/or ERISA counsel regarding the allocation of a certain percentage of the Fee Award among counsel, including but not limited to agreements to pay ERISA counsel a fixed percentage of the total Fee Award.~~

24. All written guidance, training manuals, policies/procedures, search criteria, other documents provided by the Firm to any Staff Attorneys for whom it shared the costs, relating to the SST Document Review, including but not limited to materials related to use of Catalyst database. **[JUNE 1]**

25. All other documents relating to the SST Litigation, other than those responsive to Request No. 24 above, that the Law Firm provided to any Staff Attorneys for whom it shared the costs, including but not limited to case pleadings, mediation reports, legal memoranda. **[JUNE 1]**

26. All written work product produced by Staff Attorneys allocated to the Firm for the SST Litigation/Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 1]**

27. A complete copy of all binder(s) containing discursive memoranda pertaining to the SST Litigation/SST Document Review, including all attachments. **[JUNE 1]**

~~28. All presentations, memoranda, or other submissions, including potential exhibits, any plaintiffs' counsel prepared for or submitted to the mediator, including all exhibits thereto.~~

~~29. All communications between the Law Firm and counsel for State Street relating to the SST Litigation, including but not limited to document productions, mediations, and settlement.~~

30. All communications with the U.S. Department of Labor, including all local field offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission relating to the SST Litigation. **[JULY 10]**

~~31. All documents relating to, referring to or evidencing a secondary review or quality control process of the SST Document Review performed by Staff Attorneys allocated to the Firm.~~

32. All documents and/or communications between and among the Law Firm and its accounting and/or billing personnel relating to the accounting for, recording, and/or invoicing of Staff Attorneys for whom the Firm shared the costs. **[JUNE 1]**

~~33. All invoices, requests for payment, paystubs, proof of payment, and/or similar documents sent to or received from Labaton pursuant to the cost sharing agreement between Labaton and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

~~34. All invoices, requests for payment, paystubs, proof of payment, and/or similar documents sent to or received from Lieff pursuant to the cost sharing agreement between Lieff and Thornton to share the costs of certain Staff Attorneys, including all emails or other communications related to the same.~~

35. All documents relied upon by the Law Firm in preparing and filing the Firm's Fee Petition, including but not limited to expense reports, billing records, emails, invoices, and/or other records. **[JUNE 9]**

36. All documents, other than those requested in Request No. 35 above, reviewed or considered by the Law Firm in calculating the Firm's Lodestar calculation. **[JUNE 9]**

37. All documents relating to, referring to, or constituting the Law Firm's Fee Petition, including all drafts, spreadsheets, outlines, notes, emails. **[JUNE 9]**

~~38. All documents relating to, referring to, or constituting the Motion for Attorneys' Fees, including all drafts, spreadsheets, outlines, notes, emails.~~

~~39. All communications between and among the Law Firm, the Plaintiffs' Law Firms, and the ERISA firms, relating to preparation of the Motion for Attorneys' Fees and/or the Fee Petitions filed in the SST Litigation.~~

40. All documents and/or communications relating to the discovery of billing errors disclosed in the November 10, 2016 Letter filed with the Court, including but not limited to communications between and among you, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

~~41. All documents, including notes, outline, drafts and exhibits, explaining or attempting to correct any part of the Fee Petition(s).~~

~~42. All documents illustrating, demonstrating, or establishing any errors you or anyone identified in any part of the Fee Petition(s).~~

43. All documents relating to, referring to, evidencing, or constituting the November 10, 2016 Letter, including all drafts, outlines, notes, and communications relating to the filing of that correspondence. **[JUNE 9]**

~~44. All documents and/or communications relating to, referring to or evidencing corrective actions or subsequent review taken by the Law Firm after discovery of the billing errors disclosed in the November 10, 2016 Letter.~~

45. All documents and/or communications relating to the December 17, 2016 Article, including but not limited to communications between and among the Law Firm, the Plaintiffs' Law Firms, class representatives, and/or the ERISA firms. **[JUNE 9]**

46. All documents relating to, reflecting, or evidencing an agreement between the Firm and Michael Bradley to participate in the SST Litigation/Document Review. **[JUNE 9]**

47. All documents relating to, reflecting, or evidencing an agreement to pay Michael Bradley \$500/hour for all work performed by Michael Bradley in the SST Litigation/Document Review. **[JUNE 9]**

48. All documents and/or communications relating to Michael Bradley's work on the SST Document Review between January 2009 and November 2016. **[JUNE 9]**

~~49. All documents and/or communications relating to the Firm's agreement to compensation Michael Bradley at an hourly rate of \$500/hour for his work in the SST Litigation/Document Review.~~

50. All 1099s, W-2s, paystubs, or similar documents evidencing payments made to Michael Bradley for his work on the SST Litigation/SST Document Review. **[JUNE 9]**

51. All documents and/or communications relating to, reflecting, or evidencing all other instances in which Michael Bradley performed work for or on behalf of the Firm, other than in the SST Litigation, including the hourly rates charged, the total hours billed, and the total compensation paid to Michael Bradley, if any. **[JUNE 9]**

52. All written work product produced by Michael Bradley as part of his involvement in the SST Litigation/SST Document Review, including all memoranda, factual summaries, deposition preparation, written analyses, witness kits, summaries. **[JUNE 9]**

53. All documents you may contend support your Fee Petition for reimbursement of fees and/or expenses, which you have not produced thus far. **[JUNE 9]**

Date: May \_\_\_\_, 2017

**SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),**

By his Attorneys,

---

William F. Sinnott (BBO #547423)  
Elizabeth J. McEvoy 9BBO #683191)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of May, 2017 a copy of the foregoing document was sent by first class mail to the following counsel of record.

---

William F. Sinnott

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others similarly situated, ) No. 11-cv-10230 MLW

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )

Defendant. )

\_\_\_\_\_  
ARNOLD HENRIQUEZ, MICHAEL T. COHN, )  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, ) No. 11-cv-12049 MLW  
and those similarly situated, )

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )  
STATE STREET GLOBAL MARKETS, LLC and )  
DOES 1-20, )

Defendants. )

\_\_\_\_\_  
THE ANDOVER COMPANIES EMPLOYEE SAVINGS )  
AND PROFIT SHARING PLAN, on behalf of itself, and ) No. 12-cv-11698 MLW  
JAMES PEHOUSHEK-STANGELAND, and all others )  
similarly situated, )

Plaintiffs, )

v. )

STATE STREET BANK AND TRUST COMPANY, )

Defendant. )

\_\_\_\_\_  
**SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF  
INTERROGATORIES TO THORNTON LLP**

Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court's March 8, 2017 Order (pp. 3-4), Special Master Honorable Gerald E. Rosen (Retired), by his undersigned counsel, hereby propounds the following Interrogatories upon Thornton, LLP. The Special Master requests that Thornton, LLP answer the Interrogatories herein under oath and provide responses within fourteen (14) days from the date of service hereof, to: William F. Sinnott, Esq., Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, Massachusetts 02108.

### **DEFINITIONS**

1. The terms "you", "your", "the Firm", and "the Law Firm" refer to Thornton, LLP, formerly known as Thornton & Naumes, LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
2. The term "Lief" refers to Lief Cabraser Heimann & Bernstein, LLP, and all employees, agents, counsels, attorneys, and representatives.
3. The terms "Labaton" and "Labaton Sucharow" refer to Labaton Sucharow LLP, and all of its employees, contractors, affiliates, agents, counsels, and representatives.
4. The term "Plaintiffs' Law Firms" refers to Labaton, Lief, and/or Thornton, and their respective employees, contractors, affiliates, agents, counsels, and representatives, collectively and/or individually.
5. The term "ERISA firms" or "ERISA counsel" refers to Brian McTigue and/or the McTigue Law Firm, the Law Offices of Keller Rohrback, LLP, Zuckerman Spaeder, LLP, Beins Alexrod, P.C., and any firms retained by one or more of the above, and all employees, agents, counsels, attorneys, and representatives.
6. The term "ARTRS" refers to the Arkansas Teacher Retirement System and/or its Executive Director, George Hopkins, Esq.

7. The term “State Street Litigation”, “SST Litigation” or “Litigation” refers to *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, pending in the United States District Court for the District of Massachusetts.

8. The term “State Street Document Review”, “SST Document Review” or “Document Review” refers to the review of hard copy and electronic documents produced as part of discovery in *Arkansas Teacher Retirement System, et al. v. State Street Corporation, et al.*, C.A. No. 1:11-cv-10230-MLW, as performed by the plaintiffs in that case, pending in the United States District Court for the District of Massachusetts.

9. The term “State Street” refers to State Street Bank and Trust Company and/or State Street Global Markets, defendants in the SST Litigation.

10. The term “settlement in principle” refers to the settlement agreement reached in substance between counsel by and through mediation.

11. The term “Court” refers to the United States District Court for the District of Massachusetts.

12. The term “California Action” refers to the qui tam lawsuits originally filed under seal in California and other states against State Street that was unsealed on or about October 20, 2009 by the intervention of the Attorney General for the State of California.

13. The term “BNY Mellon Action” refers to the investigation and prosecution of the multidistrict litigation entitled *In re Bank of New York Mellon Corp.* and related actions, including but not limited to Civil Action 12-MD-02335 filed in the United States District Court for the Southern District of New York.

14. The term “Fee Petition” or “Fee Application” refers to the *Declaration of Lawrence A. Sucharow in Support of Plaintiffs’ Assented-To Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and*

*Lead Counsel's Motion for An Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs* (Docket #104), and Exhibits 1-32 attached thereto, filed with the Court in the State Street Litigation. In particular, "Fee Petition" in conjunction with one or more of the individual firms, refers to the respective Exhibit (and exhibits attached thereto) in which an individual law firm sought approval for payment of its respective fee and expenses incurred in the SST Litigation, including all declarations, affidavits, and/or the Lodestar reports filed therewith.

15. The term "Motion for Attorneys' Fees" refers to Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, including the Memorandum in Support and exhibits, filed with the Court on or about September 15, 2016 and October 21, 2016, respectively (Docket #102, 108).

16. The term "Final Settlement" refers to the Stipulation and Agreement of Settlement dated July 26, 2016 (Docket #89).

17. The term "Fee Award" refers to a certain award of attorneys' fees of \$74,541,250.00 and expenses and costs of \$1,257,697.94, as approved by the Court in the Lawsuit by Order dated November 2, 2016.

18. The term "November 10, 2016 Letter" refers to the letter from David Goldsmith to Judge Wolf dated November 10, 2016 (Exhibit A to Docket #117), advising the Court of inadvertent errors in the Fee Petitions and Fee Order.

19. The term "December 17, 2016 Article" refers to the Boston Globe article entitled *Critics hit law firms' bills after class-action lawsuits*, published on or about December 17, 2016.

20. The term "hourly rates charged" refers to the hourly billing rates corresponding to work of an individual attorney or staff member of the firm, appearing on a fee petition submitted

to the Court or otherwise charged to a client for work performed on a legal matter, including the rates listed on the Fee Petitions submitted in the SST Litigation.

21. The term “Staff Attorneys” refers to licensed attorneys working on a part-time or full-time basis for Labaton, Lieff, and/or a third-party agency, but who are not deemed “associates” or otherwise on a traditional partnership track.

22. The term “hourly clients” refers to all past, present, and prospective clients who agree to pay and/or are charged for legal services rendered on an hourly basis, notwithstanding the actual amount paid or collected.

23. The term “non-hourly clients” refers to all past, present, and prospective clients who do not pay for legal services on an hourly rate, such as clients paying a flat fee, retained through a contingency arrangement and/or class action litigation, or other non-hourly fee structure, notwithstanding the actual amount paid or collected.

24. Any word written in the singular also includes the plural and vice-versa.

25. In case of doubt as to the scope of a clause including “and,” “or,” “any,” “all,” “each,” or “every,” the intended meaning is inclusive rather than exclusive.

26. The term “any” and the term “all” are intended to mean “any and all.”

27. As used herein, the term “or” and the term “and” shall mean “and/or” and vice-versa.

28. As used herein, the terms “relating to” or “referring to” or “concerning” or “constituting” or the like mean and include all documents that in any manner or form are relevant in any way to or bear upon the subject matter in question, including, without limitation, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit, refer to, or discuss that subject matter or that in any manner state the background of, or were the basis or bases for, or that record, evaluate comment upon, or were referred to, relied upon, utilized,

generated, transmitted, or received in arriving at, your conclusions, opinions, estimates, calculations, positions, decisions, beliefs, assertions or allegations, that undermine, contradict, or conflict with your conclusions, opinions, calculations, estimates, positions, beliefs, assertions, or allegations, concerning the subject matter in question.

29. The term “date” means the exact day, month, and year, if ascertainable, or the best approximation thereof if not.

30. The term “communication” as used herein includes, without limitation, the following: conversations, telephone conversations, e-mails, text messages, social media communications, and other electronic transmissions of any kind, statements, discussions, debates, arguments, disclosures, interviews, consultation and every other manner of oral utterance, correspondence, or electronic or written transmittals of information or messages of any kind.

31. The term “document” shall mean those things described in Rule 34(a) of the Federal Rules of Civil Procedure. The terms “document” and “documents” are used herein in the broadest possible sense and mean written, typed, printed, recorded or graphic matter, however produced or reproduced of any kind and description, and whether an original, master, duplicate or copy, including, but not limited to e-mails, papers, notes, accounts, books, advertisements, letters, memoranda, notes of conversations, contracts, agreements, drawings, telegrams, tape recordings, communications (as defined in paragraph 30 hereof), including inter-office and intra-office memoranda reports, studies, working papers, corporate records, minutes of meetings, notebooks, bank deposit slips, bank checks, canceled checks, diaries, diary entries, appointment books, desk calendars, photographs, transcriptions or sound recordings or any type of personal or telephone conversations or negotiations, meetings or conferences, or things similar to any of the foregoing, and to include any data, information or statistics contained

within any data storage modules, tapes, discs or other memory device, or other information retrievable from storage systems, including but not limited to, computer-generated reports and printouts. If any document has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate “document.” The word “document” also includes data compilations from which information can be obtained and translated, if necessary, by the respondent through detection devices in a reasonably usable form.

32. The term “draft” shall mean any earlier, preliminary, preparatory, proposed, or tentative version of all or part of a document, whether or not such draft was superseded by a later draft or final document and whether or not the terms of the draft are the same or different from the terms of the final document.

### **INSTRUCTIONS**

A. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure and the Court’s March 8, 2017 Order (pp. 3-4), you are required to answer the following Interrogatories under oath and within 14 days, or within the time otherwise required by Court order.

B. For each of the Interrogatories listed below, please include the full name(s) of all persons from the Law Firm (attorneys, staff, agents, consultants, or affiliates) who have knowledge of the information provided.

C. These Interrogatories are deemed to be continuing and to require supplemental responses, if you obtain additional, contradictory, or different information. Such supplemental answers shall be filed promptly upon the discovery by you of such supplemental information. Each Interrogatory is to be answered separately and as completely as possible. The fact that an investigation is continuing and discovery is not complete shall not be used as a reason for failure to answer any Interrogatory as fully as possible.

D. If you refuse to answer any Interrogatory or any part thereof on the grounds of privilege, please identify the claimed privilege (i.e., attorney-client) and the nature of any information you refuse to disclose, referring specifically to the Interrogatory or any part thereof to which the claimed privilege applies, the form in which said information exists, and the grounds for the claimed privilege.

E. If the answer to all or any part of an Interrogatory is not presently known by or available to you, include a statement to that effect, specifying the portion of the Interrogatory which cannot be completely answered.

### **INTERROGATORIES**

1. Describe each of the Law Firm's practice area(s), including areas of specialty, special services offered, the total number of attorneys and staff, and a brief description of any representative matters. **[JUNE 1]**

~~2. Identify all other class actions or other litigations in which the Firm has been or is currently engaged in relating to the foreign exchange market, mismanagement of retirement funds, and/or any other subject matter overlapping the allegations in the SST Litigation. Please include all such matters on which the Firm has worked, as counsel of record or otherwise, the complete case caption, the docket number, and the outcome.~~

3. Describe in detail the Firm's involvement in the California Action and how that involvement assisted the Firm in the SST Litigation. **[JUNE 1]**

~~4. Identify all other class actions or other litigation in which the Firm was engaged during the pendency of the SST Litigation. For each action:~~

~~a. Please identify the timekeepers who worked on the matter and provide their hourly rate(s);~~

~~b. Please provide the detailed, itemized hourly billing entries for each timekeeper.~~

5. Explain how and when the Law Firm became involved in the SST Litigation, including any conversations between and among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms. **[JUNE 1]**

6. Describe the role played by the Law Firm in filing the substantive claims alleged in the SST Litigation, including the filing of the Complaint (Docket #1) and/or the Amended Complaint (Docket #10), a description of any legal or factual research performed, consultations with State Street, legal drafting and/or review of pleadings. **[JUNE 1]**

~~7. Summarize the factual basis for State Street's liability and your/plaintiffs' contention that State Street was legally liable for damages to the class members.~~

8. Describe the Firm's theory of damages, including an estimate of total damages to the customer and/or ERISA classes, whether this theory changed during the course of the SST Litigation, and if so, what factors affected the Firm's theory and total calculation of estimated damages. **[JUNE 1]**

9. Identify and describe all risk factors you considered prior to getting involved in the SST Litigation, including any "bad facts," meritorious defenses and/or unsettled legal issues, or other circumstances that affected the potential outcome and total damages recoverable in the case. **[JUNE 1]**

10. Describe the frequency and nature of communications between the Plaintiffs' Law Firms over the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic substance of those conversations.~~ **[JULY 10]**

11. Describe the role of the U.S. Department of Labor, including any field divisions or offices, the U.S. Attorney's Office, the U.S. Department of Justice, and/or the U.S. Securities and Exchange Commission, in the SST Litigation ~~and the basic substance of the Law Firm's~~

~~communications with each agency throughout the course of the Litigation. [JULY 10]~~

12. Explain the Firm's relationship with the U.S. Attorney's Office, including the local Boston office, and identify and describe any conversations between Thornton and the U.S. Attorneys' Office relating to the SST Litigation. **[JUNE 9]**

~~13. Explain the role played by ARTRS and/or George Hopkins in the SST Litigation, including Mr. Hopkins' substantive contributions to the pleadings and/or case strategy, and what, if any, role he had in the negotiation and mediation of the Final Settlement.~~

14. Describe the frequency and nature of communications with ERISA counsel over the course of the Litigation. Please specify the attorneys with whom you dealt ~~and the basic substance of those conversations.~~ **[JULY 10]**

15. Explain the Law Firm's litigation strategy in pursuing the claims raised in the SST Litigation, including the strategy employed in mediation. Identify and describe all events that impacted or caused the Firm to change that strategy. **[JULY 10]**

16. Explain any tensions and/or adversarial positions assumed between the ERISA counsel, on the one hand, and the Plaintiffs' Law Firms, on the other, including differences in litigation strategy, legal theories, damages, and/or theories of liability asserted during the SST Litigation. **[JULY 10]**

17. Explain how the adversarial positions described above impacted or did not impact the Law Firm's strategy, including its discovery, mediation, and/or the settlement of the SST Litigation. **[JULY 10]**

18. Describe in detail all agreements between the Firm/Plaintiffs' Law Firms, on the one hand, and the ERISA firms, on the other, to allocate to the ERISA firms a fixed percentage of the total Fee Award rendered by the Court in the SST Litigation. As to any agreement that did not represent the final agreement for allocation of the Fee Award, explain the reason for modifying a

previous agreement, including all persons involved in these discussions and their affiliation/firm.

**[JUNE 9]**

19. Describe in detail the nature and the scope of the SST Document Review, including the total number of pages and/or size of the productions, the nature and date of each document production(s) received from State Street, all other document production(s) received in connection with the Litigation, and a general description of the information contained in each production. **[JUNE 1]**

20. Describe in detail Law Firm's participation in the SST Document Review, including any input into the overall discovery strategy and any oversight, supervision, quality control, or training of the Staff Attorneys as to technical and/or substantive (i.e. legal theories, key witnesses, theories of liability, damages, and critical topics) information. **[JUNE 1]**

21. Explain the nature and scope of your interactions and/or communication with the Staff Attorneys allocated to the Firm as part of the SST Litigation, including any communications relating to specific documents or "hot docs" reviewed as part of the SST Document Review, questions concerning legal theories of the case, and/or timekeeping methods. **[JUNE 1]**

22. Describe how the Law Firm utilized the Catalyst database, including all persons who had access to the database, any electronic and/or technical training provided to those individuals, and a description of the information maintained in the Catalyst database during the course of the SST Document Review. **[JUNE 1]**

23. Describe in detail all documents destroyed and/or deleted from the Catalyst database, including the date, and explain why each document was deleted/destroyed. **[JUNE 1]**

~~24. Please list all class actions or other litigations in the past five years in which the Firm has shared the costs for Staff Attorneys assigned to work on the matter, whether or not such costs were reported on the Firm's Fee Petition. For each matter, please list the full case caption,~~

~~the docket number, a brief description of the case, the outcome, the hourly rates charged by the Firm.~~

25. Please list the full name and firm/affiliation of each Staff Attorney for whom the Thornton paid costs and/or expenses as part of the cost-sharing agreement entered into in the SST Litigation/Document Review. **[JULY 10]**

26. For each of the Staff Attorneys listed above, please describe all compensation paid by the Firm to the Staff Attorney (including the total number of hours recorded for work on the SST Litigation/Document Review). **[JULY 10]**

27. Explain how you determined the hourly rates charged for Lief/Labat Staff Attorneys for whom you shared costs, as reported in the Firm's Fee Petition. **[JUNE 9]**

28. Identify any other individuals the Firm hired to work on the SST Document Review who were not Staff Attorneys, and explain their affiliation with the Law Firm, their employment status, and how they were compensated for their time. **[JUNE 1]**

29. Explain in detail the job responsibilities and tasks performed by the Staff Attorneys assigned to the Firm, including but not limited to, coding, deposition preparation, creation of witness kits and similar work. **[JUNE 1]**

30. Describe the process for assigning and reviewing factual, legal, and/or discursive memoranda prepared by Staff Attorneys, including how such memoranda were relevant to, used, and/or shared among counsel in the SST Litigation. **[JUNE 1]**

31. Describe the Firm's process for collecting and recording the hours and rates of Staff Attorneys allocated to Thornton as part of the cost-sharing agreement with Lief and/or Labaton. Identify and describe all timekeeping records you received from Lief and/or Labaton as well as those maintained by the Firm. **[JUNE 1]**

32. Describe the Firm's understanding of how fees, costs and/or expenses associated

with performance of discovery in the SST Litigation/SST Document Review would be shared among the Firm, the Plaintiffs' Law Firms, and/or the ERISA firms, including but not limited to who would be responsible for: compensating Staff Attorneys for hours worked; hosting Catalyst and/or other electronic database(s); compiling "hot docs" and other documents relative to the liability and/or damages theories; and/or other expenses associated with the SST Document Review. **[JULY 10]**

33. For each of the categories listed above, explain the Firm's understanding of how those fees, costs and/or expenses would be reported to the Court in the event of a successful verdict and/or settlement. **[JULY 10]**

34. Explain the origin of the cost-sharing agreement between the Firm and Labaton through which Firm agreed to pay costs associated with a certain number of Labaton Staff Attorneys, including the names and descriptions of all other matters in which the Firm has entered into similar arrangements (whether or not documented) to share document review costs with other firms, prior to or after the SST Litigation. **[JUNE 1]**

35. Explain the origin of the cost-sharing agreement between the Firm and Liefv through which Firm agreed to pay costs associated with a certain number of Liefv Staff Attorneys. **[JUNE 1]**

36. Describe the Firm's understanding in early 2015 as to how the Firm would account for the allocation/sharing of costs for certain of the Labaton and/or Liefv Staff Attorneys in its Fee Petition, including how those Staff Attorney hours would be or would not be represented on Labaton's and/or Liefv's respective Fee Petitions as well as your understanding as to which firm was responsible for reporting the total number of hours worked by shared Staff Attorneys to the Court. **[JUNE 1]**

~~37. Has the Firm's understanding described above changed since 2015? If yes,~~

~~explain when and what prompted the change in understanding.~~

~~38. Explain the Firm's current understanding of the any cost sharing agreements between Thornton, on the one hand, and Labaton and/or Lieff, on the other, to allocate and/or share costs for certain of the Staff Attorneys assigned to work on the SST Litigation, whether formal or informal.~~

39. Describe in detail the process through which Thornton compensated or paid Labaton for costs associated with Staff Attorneys allocated to the firm as part of the SST Litigation/Document Review, including the frequency, dates of payment, and total amount paid.

**[JUNE 1]**

40. Describe in detail the process through which Thornton compensated or paid Lieff for costs associated with Staff Attorneys allocated to the firm as part of the SST Litigation/Document Review, including the frequency, dates of payment, and total amount paid.

**[JUNE 1]**

~~41. Identify and describe all communications between the Firm and Labaton relating to the firms' cost sharing agreement to share the costs of certain Labaton Staff Attorneys, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

~~42. Identify and describe all communications between the Firm and Lieff relating to the firms' cost sharing agreement to share the costs of certain Lieff Staff Attorneys, including discussions regarding how those costs would be incorporated into the firms' respective Fee Petitions.~~

43. Explain how Michael Bradley, Esq. became involved in the SST Litigation/Document Review and summarize all communications between the Firm and Michael Bradley relating to his potential involvement in the matter. Please identify all individuals who

either participated in these discussions or had knowledge of Michael Bradley's involvement prior to preparing the Fee Petition. **[JUNE 9]**

44. Explain how the Firm and Michael Bradley agreed that Michael Bradley would receive an hourly rate of \$500/hour as compensation for work he performed in the SST Litigation/Document Review. Please identify all individuals who participated in these discussions and/or had knowledge of the \$500/hour rate prior to preparing the Fee Petition. **[JUNE 9]**

45. Identify and describe all work performed by Michael Bradley for or on behalf of the Firm, other than work performed as part of the SST Litigation, including the nature of that work, the total number of hours recorded, and the hourly rate/total compensation paid to Michael Bradley. **[JUNE 9]**

46. Identify and describe all communications relating to Michael Bradley's participation in the SST Litigation/Document Review from January 2009 through November 2016, including relating to compensation or the hourly billing rate that the Firm would charge for Michael Bradley's time spent on the matter. **[JUNE 9]**

47. Explain how the Firm supervised and/or performed quality control of the work performed by Michael Bradley in the SST Document Review, including the name, title, and nature of any supervising individual. **[JUNE 9]**

48. Please describe any previous matters, whether based on a contingency, hourly, or other fee arrangement, in which the Firm engaged in a fee dispute with a client or class representative prior to the conclusion of the representation. For each such matter, explain how that fee dispute was resolved and any hourly rate/quantum meruit applied for work performed. **[JULY 10]**

49. Explain how the Law Firm determines annual billing rates for all attorneys. Please identify and describe all factors considered and/or resources relied upon in making these

determinations. **[JUNE 9]**

50. Please explain how the process described above does or does not vary in determining billing rates charged to hourly clients and why. **[JUNE 9]**

51. Please explain how the Firm determines the hourly rates charged for Staff Attorneys employed or allocated to the Firm, Firm staff, independent contractors and/or other individuals who participate in legal matters but are not associates or partners at the Firm. **[JUNE 9]**

52. Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

53. Please list all of the Firm's hourly rates charged to non-hourly clients (whether in class action or other contingency-fee litigation) for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

54. Please list all of the hourly rates charged or associated with any matters in which the Firm has acted as local counsel for each of the years 2010-2016. For each attorney, please list the relative experience level. **[JULY 10]**

55. Explain how the Firm adjusts its hourly rates to reflect the geographic region in which a matter is filed/pending. If the Firm does not adjust its rates, explain why not. **[JUNE 9]**

56. Identify and describe all instances in which the Firm has billed an attorney at a lesser or higher rate than the annual rate previously determined for that particular year(s) and explain why that decision was made. **[JULY 10]**

57. Describe in detail the process for finalizing the term sheet and Final Settlement in the SST Litigation, including the role of the U.S. Department of Labor, U.S. Attorney's Office, U.S. Department of Justice and/or the U.S. Securities and Exchange Commission in the negotiations. **[JULY 10]**

58. Describe in detail how the Firm prepared its Fee Petition and identify all individuals who assisted in the preparation and the nature of their contribution(s). **[JUNE 9]**

59. Describe in detail any review or steps taken to scrutinize or verify the time reported by the Law Firm, including time reported by Staff Attorneys allocated to the Firm, prior to submitting the Firm's Fee Petition/Lodestar calculation. If the answer is none, explain why. **[JUNE 9]**

60. Describe what, if any, steps the Law Firm took to review, verify, or compare the Fee Petitions and/or Lodestar calculations prepared by the Plaintiffs' Firms or ERISA firms with the Firm's Fee Petition prior to filing its Fee Petition with the Court. If no action was taken, explain why not. **[JUNE 9]**

61. Identify and describe all communication the Firm had with the Plaintiffs' Law Firms and/or ERISA counsel relating to the Firm's preparation of the Fee Petition, including but not limited to preparation of the Lodestar calculation, the inclusion of the Lieff and/or Labaton Staff Attorneys for whom the Firm had paid costs, calculation of a Lodestar multiplier, and reasonableness of attorneys' fees. **[JUNE 9]**

62. Describe how the Law Firm and/or the Plaintiffs' Law Firms arrived at a total fee percentage roughly equal to 25% of the final Fee Award. Please explain whether the Firm prepared its Lodestar calculation to achieve a 25% award of the total settlement amount. **[JULY 10]**

63. Identify all billing entries, costs and/or expenses incurred by the Firm during the SST Litigation that the Firm did not include in its Fee Petition/Lodestar calculation, and the reasons therefor. **[JUNE 9]**

64. Explain the significance of the statement made in Paragraph 4 of the *Declaration of Garrett J. Bradley, Esq. On Behalf of Thornton Law Firm, LLP In Support of Lead Counsel's*

*Motion for An Award of Attorneys' Fees and Payment of Expenses* (Docket #104-16), affirming that the hourly rates included in Exhibit A to the *Declaration* are the Firm's "regular rates charged for their services, which have been accepted in other complex class actions." Please describe any other instances in which the Firm has submitted a Fee Petition with the same or similar language.

**[JUNE 9]**

65. Explain the significance of the above-quoted statement as it applies to Michael Bradley's rate of \$500/hour. **[JUNE 9]**

66. Do you contend that the rates listed in the Firm's Fee Petition represent the prevailing rates in the community for similar services performed by lawyers of reasonably comparable skill, experience and reputation for each of the respective tasks performed? Why or why not? **[JUNE 9]**

67. Identify any errors in your Fee Petition, and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s). **[JULY 10]**

68. Describe when and how the Law Firm first learned about the Boston Globe's inquiry into the Fee Award and underlying billing practices employed by the Firm and other counsel in the SST Litigation that preceded the publication of the December 17, 2016 Article.

69. Describe when and how the Law Firm first identified duplicative billing entries reflected in the Fee Petitions submitted by Lieff and/or Labaton and describe what actions, if any, the Firm took to review, confirm and/or correct those errors. **[JUNE 9]**

70. Describe in detail the Law Firm's involvement in drafting the November 10, 2016 Letter, including the full names of all individuals who contributed to the Letter or underlying review in any way, internal review performed by the Firm, and all individuals outside the firm who reviewed and/or contributed to the Letter and the nature of their contribution(s). **[JUNE 9]**

71. To the extent the Firm was involved in the drafting of the November 10, 2016 Letter, identify and describe all documents reviewed or relied upon by Firm as part of its involvement. **[JUNE 9]**

~~72. State the total number of class members and the estimated recovery or settlement amounts, net of fees and expenses, due to each class member.~~

~~73. Itemize the total estimated damages to the ERISA and non-ERISA plaintiffs and summarize the factual basis for the estimate.~~

74. Identify, in detail, any additional errors in any communications with the Court or with the Special Master, since filing of the Fee Petition(s) and explain each step or action taken to correct each error, including all documents or information consulted or relied upon in making the correction(s). **[JUNE 9]**

75. Identify and explain any mistakes you have identified in the any of the Fee Petitions, the Motion for Attorneys' Fees, and/or Fee Award, not described above. **[JUNE 9]**

76. Identify any other individuals, not listed above, who have knowledge of the Interrogatories and/or the SST Litigation and explain the general nature of such knowledge. **[JUNE 9]**

77. Identify and describe the steps taken by the Firm to identify documents responsive to the corresponding Requests for Production of Documents served by the Special Master including, without limitation, the name and title of those involved, the process undertaken, the database and documents searched, and the parameters of any electronic search including date range, timekeepers and search terms. **[JULY 10]**

78. Identify with specificity sufficient to constitute a valid response to a request for production of documents, any documents identified by you as responsive to the Special Master's Request for Production of Documents but withheld from production to the Special Master on

grounds of any evidentiary or other privilege or otherwise including (a) the type of document; (b) its date if any; (c) any identifying marks such as bates stamp or other numeric designation; (d) the reason you withheld it from production; and (e) the current location of the document. To the extent any such document or other responsive document has been destroyed, identify (a) the type of document; (b) its date, if any; (c) the date of its destruction; (d) the circumstance thereof; and (e) the persons involved therein. For each such person, please provide their name, current or prior title or position with the Law Firm, the date, if any, of termination of employment with the Law Firm and the reason therefor, and the person's last known residential and business address. **[JULY 10]**

79. Identify the timekeeping, accounting, and billing software systems utilized by the Law Firm to record and bill attorney time charges, costs and expenses associated with legal and other services rendered by the Law Firm in connection with the SST Litigation and the persons within the Law Firm with the most knowledge and responsibility for the system and operation.

**[JULY 10]**

Date: May 18, 2017

Respectfully submitted,

SPECIAL MASTER HONORABLE  
GERALD E. ROSEN (RETIRED),  
By his Attorneys,

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**CERTIFICATE OF SERVICE**

I, William F. Sinnott, hereby certify that I have caused a copy of the foregoing document to be served upon Brian T. Kelly, Esquire, Nixon Peabody LLP, 100 Summer Street, Boston, MA 02110, by electronic mail and first class mail, postage prepaid, this 18<sup>th</sup> day of May, 2017.

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William F. Sinnott

# **EX. 260**

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**From:** Garrett Bradley  
**Sent:** Tuesday, June 21, 2016 3:26 PM  
**To:** Damon Chargois  
**Subject:** Fwd: State street fee regarding local counsel

Damon,

As always it was a pleasure to speak with you today. & As requested, I am laying out to you where we are on the State Street matter and below is the email that we referenced on the call. & That email established that Lieff, Thornton and Labaton would "share" your obligation whatever it turned out to be. & The status of the case has gotten better but yet more confusing when it comes to fees.

We have reached a settlement in principle for \$300,000,000 with the defendant but it involves not just our consumer class case, but also obligations to SEC and DOL as well as the Erisa class case which was merged with ours by the Judge for settlement discussions. & DOJ also has a separate settlement that is timed to be announced with ours. & As we spoke this morning, a few matters got screwed up today but we are hoping to have a status conference with the court on Thursday (he is on vacation all July) with a preliminary approval hearing sometime in August. & Given that we have to do a CAFA notice, we are still hoping for a final date this late this year. & We also have to post bonds or wait the 30 day appeal period to take fees [REDACTED] & It is going to be tight.

Since our last conversation some things have changed. & The fee we will apply for is \$70,900,000. This will be for Lief, Thornton, Labaton, you and now three Erisa firms. & We are attempting to hold the Erisa firms to 10% because that is what they agreed to several years ago, but the Erisa part of the settlement is now 20%. & I think we can hold them to 10%. & Also at one point in the litigation, it became clear that State Street was going to try and pick of Arkansas as the class rep so we got [REDACTED] to agree to come in. & We never formally had to bring them but we let the defendants know it would be a waste to settle out with Arkansas.

We have not finalized the balance of the fee between us, Lief and Thornton but I think it is the right time for me to propose what I think would be a fair and reasonable fee for you. & It was my firm that originated the idea and put the firms together. & Also, as we discussed this is not a securities case and is complicated by all the above factors. & We have always been direct with each other and I am not trying to negotiate but rather just give you a set percentage. & I would propose that you be paid 5% of the fee that the court awards (as you know he may award what we ask but could also trim our request). & My firm, Lief and Labaton have put extensive man hours into the case and looked at millions of pages of documents, so I think we have a good chance of getting our request.

I have not put anyone else on this email but if you agree I will flip this around and get everyone's written assent. & Please let me know your thoughts.

Garrett

From: Garrett Bradley [[GBradley@tenlaw.com](mailto:GBradley@tenlaw.com)]  
Sent: Wednesday, April 24, 2013 6:07 PM  
To: Lieff, Robert L.; Robert L. Lieff; Michael Thornton; Eric Belfi  
Cc: Damon Chargois Esq.; Christopher J. Keller Esq.; Chiplock,

Daniel P.

Subject: State street fee regarding local counsel

Bob,

As you, Mike and I discussed in Dublin last week, I am sending this email regarding the obligation to the local counsel who assists Labaton in matters involving the Arkansas Teachers Retirement System. & Labaton has an obligation to this counsel, Damon Chargois copied on this email, of 20% of the net fee to Labaton in the State Street FX class case before Judge Wolf. & Currently this amount would be 4% because of the agreement between Labaton, Thornton and Lieff of a division of 20% guaranteed each with the balance to be decided upon at a later date. & Obviously this may go up should Labaton receive an amount higher than 20%.

We have agreed that the amount due to the local, whatever it turns out to be (4%, 5% etc.), will be paid off the top with the balance of the overall fee split between Lieff, Labaton and Thornton pursuant to our agreement.

The local asked that I copy him on this email so he will have confirmation of this agreement. & When we spoke to him he was agreeable to this as well.

Garrett

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This e-mail and any files transmitted with it are confidential and are

intended solely for the use of the individual or entity to whom they are addressed. & This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error; please immediately notify us by telephone at (800) 431-4600. You will be reimbursed for reasonable costs

incurred in  
notifying us.

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# **EX. 261**

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**From:** Chiplock, Daniel P. <DCHIPLOCK@lchb.com>  
**Sent:** Wednesday, November 9, 2016 7:01 PM  
**To:** 'Goldsmith, David'  
**Cc:** Evan Hoffman; Michael Lesser  
**Subject:** RE: State Street

**Importance:** High

Here is what I've been able to determine, in order of most to least significant:

(1) Rachel Wintterle and Ann Ten Eyck should not have been included in LCHB's lodestar at all. They were Thornton contract reviewers throughout 2015, but worked on our premises. Many if not most of their detailed time entries did not specifically indicate that the work was being done on Thornton assignments in the "narrative" field, which resulted in their time inadvertently being included with other LCHB reviewers they were working with when our accounting department ran lodestar reports. I failed to catch that after our accounting department ran everyone's lodestar, and apologize. These two reviewers account for \$551,719.50 in total lodestar from LCHB that should be removed from LCHB's total. Thornton's lodestar attributable to these two reviewers should not change.

(2) Chris Jordan and Jonathan Zaul each did work for both LCHB and Thornton. Again, we neglected to exclude time entries specifically relating to "Thornton" assignments, which took place between 2/9/15 and 4/14/15 only, from LCHB's lodestar. Once that time is removed, their respective hours and lodestar attributable to LCHB should be as follows:

Christopher Jordan: 540 hours, for \$224,100  
Jonathan Zaul: 503 hours, for \$208,745

Which results in an additional net reduction from LCHB lodestar of \$281,619. Add this to the reduction for Ten Eyck and Wintterle, and you get a total reduction of \$833,338 from LCHB's reported lodestar.

Thornton's adjusted total hours/lodestar for Jordan and Zaul (using Thornton rates), based on the hours invoices to Thornton, should be:

Christopher Jordan: 359.50 hours, for \$152,787.50  
Jonathan Zaul: 319 hours, for \$135,575.00

This results in a net lodestar \*increase\* of \$26,987.50 for these two attorneys for Thornton Law. This should be noted as at least a modest net offset against the lodestar that needs to be cut elsewhere.

(3) Andrew McClelland's and Virginia Weiss's lodestar checks out OK on our end - everything we reported for them was specific to LCHB, even if they may also have done work for Thornton, which Thornton appears to have accounted for separately on their report. I do not see duplication based on my review of our records. I can't speak to the accuracy of their hours for Thornton on Thornton's end.

Evan/Mike, please feel free to check my math on your end. I tried to double-check but am also in grief over the election so my mind's a little hazy.

Dan

-----Original Message-----

From: Goldsmith, David [<mailto:dgoldsmith@labaton.com>]  
Sent: Wednesday, November 09, 2016 3:38 PM  
To: Chiplock, Daniel P.  
Subject: RE: State Street

Appreciate your input

-----Original Message-----

From: Chiplock, Daniel P. [<mailto:DCHIPLOCK@lchb.com>]  
Sent: Wednesday, November 09, 2016 2:55 PM  
To: Goldsmith, David  
Subject: Re: State Street

For what it's worth I strongly agree with just one fulsome letter on this issue.

Sent from my iPhone

This message is intended for the named recipients only. It may contain information protected by the attorney-client or work-product privilege. If you have received this email in error, please notify the sender immediately by replying to this email. Please do not disclose this message to anyone and delete the message and any attachments. Thank you.

# **EX. 262**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.  
TAYLOR, RICHARD A. SUTHERLAND, and those similarly  
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE  
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND  
PROFIT SHARING PLAN, on behalf of itself, and JAMES  
PEHOUSHEK-STANGELAND, and all others similarly  
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**MEMORANDUM OF LABATON SUCHAROW LLP REGARDING RULE 11**

Labaton Sucharow LLP (“Labaton” or the “Firm”) respectfully responds to the Special Master’s suggestion, raised for the first time on April 20, 2018 after the completion of expert

disclosures and depositions, and after the final written submissions<sup>1</sup> and oral arguments, that Labaton, through one of its partners, violated Fed. R. Civ. P. 11 (“Rule 11”). For the reasons explained below, this suggestion is incorrect as a matter of law.

**I. PROCEDURAL BACKGROUND**

During the course of these lengthy proceedings, neither the Special Master nor his expert Prof. Stephen Gillers (“Prof. Gillers”) ever suggested that Labaton had violated Fed. R. Civ. P 11 (“Rule 11”), including with regard to its payment of a bare referral fee to Damon Chargois (the “Chargois Agreement”). As argued below, Labaton respectfully posits that this was not a matter of oversight – indeed, a charge of violation of Rule 11 was leveled against another Customer Class Counsel firm – but was rather a recognition by the Special Master and Prof. Gillers that Labaton had committed no such violation.

On February 23, 2018, Prof. Gillers submitted an 85-page report (the “Gillers Report”) that painstakingly challenged conduct of the three Customer Class Counsel firms, and (unfairly) accused Labaton of violating a variety of rules largely focused on the Massachusetts Rules of Professional Conduct. Not one sentence of the Gillers Report suggested that Labaton had violated Rule 11. In contrast, Prof. Gillers devoted an entire section of his Report to explicating his legal opinion<sup>2</sup> that a partner of The Thornton Law Firm violated MRCP 3.3(a) and 8.4(c) **and**

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<sup>1</sup> Labaton appreciates the Special Master’s acquiescence in the Firm’s request that it be permitted an opportunity to argue in opposition to this belated theory and apologies for the fact that the required twenty-four hour turn-around obviates its ability to present a more fulsome analysis. In addition, the Special Master’s Report is apparently on the verge of being submitted to a vendor for the addition of hyperlinks requested by the Court, thereby throwing into question whether the arguments contained in this Memorandum can or will be meaningfully considered.

<sup>2</sup> From the time of the Special Master’s revelation that he intended to use an academic to express his legal opinions regarding alleged violations of the Federal Rules of Civil Procedure and the Massachusetts Rules of Professional Conduct, Labaton has taken the position that expert opinions cannot be proffered on matters of law, e.g., whether a Federal Rule or a rule of professional conduct has been violated by a party. If a Master cannot offer recommendations on

Rule 11. Gillers Rep. at 79. Accordingly, lacking notice that the Special Master viewed Labaton as a target of a Rule 11 finding, Labaton was deprived of the opportunity to cross-examine Prof. Gillers regarding Rule 11 during his deposition, to offer its own Rule 11 expert testimony, to include a Rule 11 argument in its written submissions, and to argue Rule 11 at the “closing arguments” hearing. Indeed, Labaton did not even examine Thornton’s Rule 11 expert Prof. Vairo because the Special Master had not notified Labaton that he was considering finding Labaton’s attorneys in violation of Rule 11 (and Labaton certainly had not drawn the inference on its own that such a risk existed).

On April 10, 2018, after the conclusion of all of the expert depositions, counsel for the Special Master distributed a list with eight bullet points under the heading “Chargois Payment.” The bullet points related to areas that the Special Master suggested the parties address during their closing arguments to occur three days later. Ex. 1. Rule 11 was noticeably absent, while six rules of Professional Conduct– MRCP 1.2, 1.4, 1.5(a), 3.3, 7.2 (by implication), 7.3, and 8.4(c) – as well as *Saggese v. Kelly*, 445 Mass. 434 (2005), were specifically referenced.

On April 12, 2018, Labaton submitted a lengthy response to the Gillers Report (Labaton’s “Response”), but did not address Rule 11 because Prof. Gillers had raised no such issue in relation to Labaton. At the April 13 “closing argument” hearing, the Special Master heard argument for approximately seven hours, but provided no indication that he was considering finding that Labaton had violated Rule 11 and never asked Labaton’s counsel to address Rule 11, despite specifically asking Labaton’s counsel to address other rules from the list. Hearing Tr. at 121-122. (“I want to give you an opportunity to address 7.2 and 7.3 . . . And I think we put 1.5(a) [on the list], too.”).

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such matters of law based upon his or her own knowledge and expertise, s/he should have tendered those issues back to the Court for determination.

## II. ARGUMENT

### A. **The Special Master's Eleventh-Hour Finding of a Rule 11 Violation Is Unfair and Does Not Comport with Procedural Due Process.**

The various rules that Labaton has been accused of violating have been moving targets throughout this investigation. However, unlike the Special Master's other evolving theories – to which Labaton has been afforded to respond, albeit occasionally with abbreviated notice – the allegation of a Rule 11 violation came after the proceedings were concluded. The belated nature of this serious allegation deprived Labaton of a meaningful chance to challenge it. This is gravely unfair. *See, e.g., In re Ruffalo*, 390 U.S. 544, 552 (1968) (“This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.”); *Ted Lapidus, S.A. v. Vann*, 112 F.3d 91, 97 (2d Cir. 1997) (“We believe that a sanctioned attorney must receive specific notice of the conduct alleged to be sanctionable and the standard by which that conduct will be assessed, and an opportunity to be heard on that matter . . . An attorney must be forewarned of the authority under which sanctions are being considered, and given a chance to defend himself against specific charges.”).

The Special Master's belated reliance upon Rule 11 stands in contrast to his own descriptions of fairness in this proceeding. For example, in requesting an eight-week extension to file his Report and Recommendation (at Customer Class Counsels' request), the Special Master emphasized the need for notice and fairness in this high-stakes matter, both for the sake of the law firms and the soundness of his own Report and Recommendation:

[I]n light of Professor Gillers' report, and its potential implications for the firms and the practicing bar in general, **I believe that it is important that the firms be allowed the fullest opportunity to respond.**<sup>3</sup> And, I wish to have the benefit of

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<sup>3</sup> Again, Labaton expresses its appreciation for this opportunity to respond, granted by the Special Master in response to Labaton's urgent written plea to (a) understand what the alleged Rule 11 violation was, and (b) be provided an opportunity to respond. But, twenty-four hours is

this input as I believe it will provide more complete process to the firms and a better process and foundation for me to be able to make fair and complete findings and recommendations to you.

ECF 216-1 (emphasis added).

Likewise, during the April 13 closing argument, the Special Master again demonstrated his own view that Labaton is entitled to a chance to respond to his recommendations. Specifically, when the Special Master raised, for the first time, the possibility of reallocation of certain funds paid to Customer Class Counsel, he stated: “Unfortunately, I have to make a recommendation. And if I don’t give you [Lieff Cabraser] an opportunity to weigh in, you would **rightly I think** say we didn’t have a chance to address it . . . I’ll give you [Labaton] a chance [to address the new issue].” 4/13 Hearing Tr. at 277-278 (emphasis added).

Any attorney knows that “a Rule 11 violation is [] a serious thing, and an accusation of such wrongdoing is equally serious.” *Safe-Strap Co. v. Koala Corp.*, 270 F. Supp. 2d 407, 421 (S.D.N.Y. 2003) (internal quotation omitted). In light of that seriousness, Labaton should have been provided with a meaningful opportunity to respond to the Special Master’s allegation of a Rule 11 violation. Respectfully, it was not accorded such an opportunity.

**B. The Absence of Any Suggestion That Labaton Had Violated Rule 11 During the Proceedings Is Indicative of the Weakness of Any Such Suggestion, and Reflective of Fashioning the Findings to Meet a Desired Outcome.**

Had Prof. Gillers formed the legal opinion that Labaton had violated Rule 11, as he did with regard to TLF, he would have said so. The broad picture factual predicate for the Rule 11 violation now belatedly asserted – i.e., the failure to disclose the Chargois referral fee to the

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not enough time to comport with procedural due process requirements on an issue of this complexity and import. And, the fact that this Memorandum is being delivered on the same day that the Special Master is submitting his final report to vendors for preparation for filing suggests that little chance exists that the arguments contained herein can be given thoughtful, meaningful consideration.

Court – is similar to that for the alleged violation of Rule 3.3 of the Massachusetts Rules of Professional Conduct (“MRPC 3.3”). But, the specific factual requirements for a Rule 11 violation, including the necessity that the misrepresentation occur in a written pleading or submission to the Court, excluding discovery, differs from the requirements for a MRPC 3.3 violation. Prof. Gillers obviously distinguished between the requirements of the two rules, and found only one of the two to have been violated by Labaton (a finding that Labaton also challenges).<sup>4</sup>

Labaton respectfully notes that the total failure to raise an allegation of a Rule 11 violation by Labaton is not a matter of inadvertence: rather, it is because the Special Master and Prof. Gillers, fully apprised of the facts upon which they now apparently rely,<sup>5</sup> concluded that Labaton’s attorneys had committed no such violation.

Respectfully, this unacceptably tardy addition of a finding of a serious rule violation appears to a case of the tail wagging the dog: The Special Master has made his displeasure well known with the concept of a bare referral fee that would permit a substantial payment to an attorney who has performed no work in the case. *See, e.g.*, Response at 12; 4/13 Hearing Tr. at 61:21-62:4, 86:7-12. With a visceral reaction as strong as that which the Special Master has

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<sup>4</sup> If Prof. Gillers has been persuaded to alter his Report, the Special Master has not informed the parties of that occurrence, nor has he provided them with a copy of the altered Report. Altering the expert report after the parties have concluded their cross-examination of the expert, proffered rebuttal expert testimony, and concluded their written and oral submissions would obviously raise its own set of due process and basic fairness issues.

<sup>5</sup> The Special Master has yet to provide a written explanation for any alleged Rule 11 violation, but Labaton understands through oral comments from the Special Master’s counsel that the violation is based on Lawrence Sucharow’s execution of Labaton’s Fee Declaration, which does not contain a disclosure that a portion of the requested fee would subsequently be paid as a bare referral fee to Damon Chargois. It is unclear where the Special Master contends that this should have appeared in the Fee Declaration. Chargois performed no work, such that he would not have appeared in the lodestar report, and the Fee Declarations did not address fee allocations generally.

demonstrated, the inference is certainly warranted, if not compelled, that additional purported violations have been sought to justify the remedies that the Special Master recommends be imposed.

**B. Labaton Did Not Violate Rule 11.**

Rule 11 applies only to papers submitted to the Court. *See* Fed. R. Civ. P. 11. Although the specifics of the Special Master’s Rule 11 argument remain somewhat amorphous, e.g., a designation of where within a fee declaration disclosure of a referral fee was required (highlighting the profound unfairness of this situation), Labaton understands that the Special Master’s position is that Labaton violated Rule 11 because the Declaration of Lawrence Sucharow (the “Sucharow Declaration”) did not disclose the Chargois referral fee. ECF 104. This argument is off-base for several reasons.

**1. The Federal Rules of Civil Procedure and common sense preclude a finding that Labaton violated Rule 11.**

First, stated simply and with all due respect, the Special Master’s argument does not make sense. As Labaton discussed in its Response (*see* § V), the Federal Rules of Civil Procedure do not require disclosure of information regarding the allocation of attorney fees. This is settled black-letter law, as reflected by the plain text of the Rules and the cases applying them. Fed. R. Civ. P. 54(d)(2)(B) (petition for attorneys’ fees must “disclose, *if the court so orders*, the terms of any agreement about fees for the services for which the claim is made”) (emphasis added); *Id.*, 1993 Advisory Notes (“[i]f directed by the court, the moving party is also required to disclose any fee agreement . . . including those between . . . attorneys sharing a fee to be awarded . . .”); Fed. R. Civ. P. 23(h) (“A claim for an award must be made by motion under Rule 54(d)(2) . . .”); *Pierce v. Barnhart*, 440 F.3d 657, 664-65 (5th Cir. 2006) (district court abused its discretion in denying attorney’s fees where the plaintiffs’ attorney did not submit

information regarding “whether attorney’s fees had been paid or were due to other counsel for representation”); *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 137-38 n.2 (2d Cir. 2016) (Fed. R. Civ. P. 23(h) “does not mandate automatic disclosure of all fee-sharing arrangements in class actions in the absence of a local rule.”); William B. Rubenstein, *Newberg on Class Actions* § 15:11 (5th ed. 2016) (“The third prong of Rule 54(d)(2)’s motion requirement – concerning disclosure of fee agreements – is discretionary with the court.”); Report of William Rubenstein at 5 (“Rule 23(h) and Rule 54 are therefore clear in mandating the submission of fee agreements – including those concerning the allocation of fees among counsel – only upon court order.”); 10-54 *Moore’s Federal Practice - Civil* § 54.154 (2018) (“If the court so directs, the fee motion must also disclose the terms of any fee agreement with respect to the services implicated by the motion.”).

Therefore, the Special Master has proffered the untenable argument that complying with the disclosure obligations set forth in Rules 54 and 23 simultaneously constitutes a non-disclosure that violates Rule 11. In other words, by the Special Master’s logic, the Federal Rules of Civil Procedure are internally inconsistent and directly contradict each other. Such a conclusion would necessarily be premised on the notion that the drafters of the Rules, wittingly or through extraordinary carelessness, laid a trap for attorneys who followed the requirements of Rules 54 and 23 but failed to suss out a particular judge’s desire for information that he had not requested. This reading of the Rules cannot be squared with their essential purpose. *See* Fed. R. Civ. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States district courts . . . They should be construed, administered, and employed by the court and the parties to secure the *just* . . . determination of every action and proceeding”) (emphasis added).

**2. Because Labaton was not on notice of a purported obligation to disclose fee allocations in the Sucharow Declaration, the omission of such information did not violate Rule 11.**

Any alleged “omission” regarding the Chargois bare referral fee from the Sucharow Declaration does not approach the level of a Rule 11 violation, because the “omission” was perfectly permissible under the Federal Rules of Civil Procedure and class action practice. Without any notice that disclosure of the Chargois bare referral fee was required, Rule 11 simply does not apply.

Finding a violation of Rule 11 requires “culpable” conduct by the attorney. As the First Circuit has repeatedly admonished, a “lawyer who makes an inaccurate factual representation must, at the very least, be *culpably* careless to commit a violation [of Rule 11].” *Young v. City of Providence*, 404 F.3d 33, 39 (1st Cir. 2005) (emphasis added); *see also Roger Edwards, LLC v. Fiddes & Son, Ltd.*, 437 F.3d 140, 142 (1st Cir. 2006) (explaining that “some degree of fault is required” to find a violation of Rule 11); *see also McGee v. Town of Rockland*, 11-cv-10523, 2012 U.S. Dist. LEXIS 180197, \*2 n.2 (D. Mass. Dec. 20, 2012) (“Rule 11 sanctions should be reserved for only the most egregious of lawyerly missteps.”). Moreover, the First Circuit has recently explained that whether an attorney violates Rule 11 “depends on the objective reasonableness of the [attorney’s] conduct under the totality of the circumstances.” *Eldridge v. Gordon Bros. Grp., LLC*, 863 F.3d 66, 87-88 (1st Cir. 2017).

Here, Labaton is not culpable of committing any misstep, and its attorneys acted exactly as reasonable lawyers would. Everything known to Labaton indicated that disclosure was *not* required. At the time that Mr. Sucharow submitted the fee petition, the following was true: (1) the Federal Rules of Civil Procedure did not require disclosure; (2) the Court’s local rules did not require disclosure; (3) the Court did not order disclosure; (4) no judge in the District of

Massachusetts had ordered disclosure of fee agreements in well over a hundred class action cases since 2011 (*see* Rubenstein Rep. at 6); (4) no case within the First Circuit (or elsewhere, as far as Labaton’s research has revealed) had found a violation of Rule 11 for non-disclosure of fee agreements; and (5) no BBA and MBA ethics opinions, or BBO ethics decisions, contained analogous guidance relative to the disclosure of fee agreements in connection with the Massachusetts Rules of Professional Conduct. It was (and is) also true that referral fees are a “time-honored practice” in Massachusetts and perfectly permissible. *Saggese*, 445 Mass. at 442.

In short, there was *literally no notice* that disclosure was required. In fact, the opposite was true, i.e., the applicable federal rules stated that disclosure *was not* required in the absence of inquiry or an order. Viewing the circumstances in their totality, a reasonable attorney – trained to rely on the Federal Rules of Civil Procedure, precedent, and standard practice – would not believe that disclosure was required. *See Eldridge*, 863 F.3d at 87-88 (courts must assess the objective reasonableness of the attorney’s conduct); *see also Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003) (explaining that in the Rule 11 context, “courts determine whether a reasonable attorney in like circumstances could believe his actions were factually and legally justified.”). This is far from the “egregious” and “culpable” conduct that courts in the First Circuit require before finding a Rule 11 violation. *See Young*, 404 F.3d at 39; *McGee*, 2012 U.S. Dist. LEXIS 180197, \*2 n.2.

Prof. Gillers and the Special Master appear to share the view that the *Court’s* role as a fiduciary in a class action case at the fee petition stage, created an unspoken, uncodified disclosure requirement, which now apparently serves as the basis for a Rule 11 violation.<sup>6</sup> This view was decisively rejected by the Second Circuit in *Bernstein*. 814 F.3d at 137-38. There, the

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<sup>6</sup> This is somewhat speculative, as Labaton knows very little about the Special Master’s Rule 11 finding at this point.

court unequivocally held that there was no obligation to disclose a fee paid to an attorney who was not identified to the court and did not perform valuable work. *Id.* In addition to this recent and directly on-point appellate decision, which Labaton respectfully suggests offers the best available guidance on this issue, Prof. Rubenstein dismantled the notion that this case’s status as a class action supersedes the Federal Rules of Civil Procedure. As he explained, there are “a variety of situations in which the identities of counsel sharing in a fee award are routinely unknown to the class action court.” Rubenstein Rep. at 11. This is not by mistake; “the class action experts who drafted Rule 23(h) were well aware that a class action case encompasses cast and crew – and they nonetheless chose the default embodied in Rule 54: that fee allocation agreements need not be disclosed absent judicial request, that the judge must ask for the playbill.” *Id.* Prof. Rubenstein’s exhaustive empirical analysis buttressed his opinions. *Id.* at 6. As a matter of law and practice, the Court’s status as a fiduciary does not change the parties’ obligations, which are governed by Fed R. Civ. P. 54 and 23, which in turn do not require disclosure.<sup>7</sup>

To the extent that the Special Master believes that Labaton violated MRPC 3.3(a) and therefore necessarily violated Rule 11, this argument is also incorrect. As Labaton explained in its Response at § VIII.A, MRPC 3.3(a) ( as well as Rule 8.4(c)) require a “knowing” misrepresentation. *See* Mass. R. Prof. C. 3.3(a) (“A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal . . .”). A non-disclosure of information does not violate these rules unless there is a known duty to disclose the information. Joy Rep. at 43-44.

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<sup>7</sup> *See also* Rubenstein Dep. at 149:2-15 (“Rule 23 clearly sets out a process and the structure for the fee process in class action cases. It’s the governing rule. In the case we’re talking about it has a specific subpart directly on point . . . I feel like you all [The Special Master and his team] are trying very hard to find a way around that specific law . . . from where I sit there’s a specific[] rule directly on point. Just doesn’t happen to say what you want it to say, but it’s there.”).

Again, because there was literally no notice that Labaton had an obligation to ignore Rules 54 and 23 and disclose information regarding fee allocations, there was no known duty to speak. Thus, there was no violation of Rule 3.3(a) or Rule 8.4(c) – and no derivative violation of Rule 11. *See Obert v. Republic Western Ins. Co.*, 398 F.3d 138, 147 (1st Cir. 2005) (striking lower court’s determination that attorneys violated Rhode Island Rules of Professional Conduct, including 3.3, and Fed. R. Civ. P. 11).

### III. CONCLUSION.

For the forgoing reasons, any finding that Labaton violated Rule 11 would be incorrect as a matter of law and unfair as a matter of due process.

Dated: May 2, 2018

Respectfully submitted,

By: /s/ Joan A. Lukey

Joan A. Lukey (BBO No. 307340)  
Justin J. Wolosz (BBO No. 643543)  
Stuart M. Glass (BBO No. 641466)  
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*Counsel for Labaton Sucharow LLP*

# EXHIBIT 1

**From:** William Sinnott <wsinnott@barrettsingal.com>  
**Date:** April 10, 2018 at 10:31:54 PM EDT  
**Subject:** Friday's Oral Argument  
**To:** Heimann, Richard M. <RHEIMANN@lchb.com>, Lukey, Joan <joan.lukey@choate.com>, Kelly, Brian <bkelly@nixonpeabody.com>, Fineman, Steven E. <sfineman@lchb.com>, Brian McTigue <bmctigue@mctiguelaw.com>, Lynn Sarko <lsarko@kellerrohrback.com>, Kravitz, Carl S. <ckravitz@zuckerman.com>, Kim Keevers <kkeevers@rpwb.com>, Cathy Campbell <cmc@fczlaw.com>, Jon Axelrod <jaxelrod@beinsaxelrod.com>, Fuller, Anthony E. <afuller@collorallp.com>, Harlan, Emily <eharlan@nixonpeabody.com>, Laura Gerber <lgerber@KellerRohrback.com>, lgraber@collorallp.com, dcopley@kellerrohrback.com, ggotto@kellerrohrback.com, dbond@mctiguelaw.com, Wolosz, Justin J. <jwolosz@choate.com>, Glass, Stuart M. <sglass@choate.com>  
**Cc:** Brian Mulcahy <bmulcahy@barrettsingal.com>, Elizabeth McEvoy <emcevoy@barrettsingal.com>, Jennifer Tisi <jtisi@barrettsingal.com>, Linda Hylenski <lhylenski@att.net>

**Counsel:**

As discussed, oral arguments will begin [Friday at 9:30am](#) at JAMS in Boston. A stenographer will be present to create an official transcript of the hearing. Customer Class counsel will have 4 hours to present oral arguments to the Special Master. Counsel may allocate their time in whatever fashion they deem appropriate. At this time, ERISA counsel do not intend to offer oral arguments, but this is subject to change. If it does, ERISA counsel will argue after Customer Class counsel.

Counsel may present information on any topic they deem relevant to the Special Master's investigation. The topics below are merely suggested areas to address, and should not in any way be deemed exhaustive. Counsel are not limited to addressing the topics below or the topics previously circulated in the Special Master's Request for Supplemental Submission, dated July 31, 2017. However, in response to counsel's request for further guidance as to the substantive areas to address, the Special Master has suggested the following areas for counsel to cover at oral argument:

"Double Counting"

- Any evidence of an agreement, implicit or explicit, between and/or among Labaton, Lief and TLF that TLF would submit the names of off-track associates (i.e. "staff attorneys") in its individual lodestar calculation.
- Address the justification or rationale for how firms billed off-track associates ("staff attorneys"), including the differences, if any, between the firms' billing of off-track attorneys and contract attorneys employed by a third-party agency, and any legal decisions specifically addressing the propriety of marking up the hourly rates charged staff attorneys and/or contract attorneys in a fee petition submitted to the court.
- Any evidence concerning Garrett Bradley's state of mind in signing the Fee Declaration (Exh. 16 to Dkt #104) submitted to the Court, including but not limited to paragraphs 3 and 4 of that Declaration.

Chargois Payment

- Address what, if any, obligations counsel has (and if that duty applied in the State Street case) to inform co-counsel of information material to the case, including but not limited to fee allocation agreements and/or potential referral fees.
- Address how, if at all, Mass. R. Prof. C. 1.5(a) applies to payment of referral fees and/or the payments made to Damon Chargois as part of the Chargois Arrangement.
- What, if any, knowledge Lief Cabraser and TLF attorneys had about the "Chargois Arrangement," as defined in Prof. Gillers' Report.
- Address the legal requirements for fee-sharing agreements entered into in Massachusetts in or about February 2011, including what, if any, effect the SJC's decision in Saggese v. Kelley, 455 Mass. 434 (2005) had on those requirements, and how, if at all, the Chargois Arrangement met those requirements.
- Please describe how you would characterize Chargois and Herron's contact with Paul Doane and/or Senator Farris, taken to secure an introduction to ATRS, including your view on whether the arrangement constitutes a solicitation, recommendation, introduction, referral, and/or endorsement.
- Please describe all legal and ethical duties that counsel owed to the class members, including who (if anyone) represented the class members, including the ERISA class members, as well as the nature and scope of that representation.
- Please describe what duties—ethical, contractual or otherwise—Customer Class counsel had to inform ERISA counsel about the Chargois Arrangement.
- To the extent you have not already addressed them, please describe how, if at all, the following Rules of Massachusetts Professional Conduct applied to counsel's actions (or lack thereof) taken with regard to the Chargois Arrangement, including counsel's knowledge

thereof or involvement with such arrangement:

- Rule 1.2
- Rule 1.4
- Rule 1.5(a)
- Rule 3.3
- Rule 7.3
- Rule 8.4(c)

Please contact me if you have any questions.

**Bill**



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# **EX. 263**

**Michael Bradley**

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**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Friday, March 29, 2013 3:35 PM  
**To:** 'Evan Hoffman'  
**Subject:** Doc Hours

Evan,

State Street Document Review hours as of 3/29/13: -----

- 1) 3/22/13, 4:45-5:30 (45 Min)
- 2) 3/25/13, 2:55-4:45 (1:55)
- 3) 3/26/13, 2:31-4:16 (1:45)
- 4) 3/27/13, 1:15-3:28 (2:13)
- 5) 3/29/13, 1:06-3:15 (2:09)

- Total: 8.48 hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Michael Bradley**

---

**To:** 'Evan Hoffman'  
**Subject:** SS Doc Review

Evan,

State Street document review hours as of 4/5/13:

1. 4/2/13 , 2:34-4:37 (2:03)
2. 4/3/13, 1:29-4:03 (2:34)
3. 4/4/13, 12:55-3:15 (2:20)
4. 4/5/13, 12:29-2:40 (2:41)

- Total Hours: 9.38 Hours

**Question:**

If a document shows "This document has been produced in native format" what would you like me to do. I have been checking NOT reviewed and checking "Get Native". Please advise?

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284

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**Michael Bradley**

---

**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Tuesday, April 16, 2013 12:52 PM  
**To:** 'Evan Hoffman'  
**Subject:** SS DR

Evan,

State Street document review hours as of 4/12/13:

1. 4/8/13 , 1:08-3:05 (1:57)
2. 4/9/13, 12:17-1:48 (1:31)
3. 4/11/13, 12:00-1:47 (1:47)
4. 4/12/13, 11:43-1:46 (2:03)

- Total Hours: 7:18 Minutes

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Michael Bradley**

---

**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Monday, April 22, 2013 1:19 PM  
**To:** 'Evan Hoffman'  
**Subject:** error SSDR as of 4-19

Evan,

State Street document review hours as of 4/19/13:

1. 4/16/13 , 12:52-2:38 (1:40)
2. 4/18/13, 1:07-2:42 (1:35)

- Total Hours: 3:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Michael Bradley**

---

**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Monday, April 29, 2013 12:53 PM  
**To:** 'Evan Hoffman'  
**Subject:** SS DR

Evan,

State Street document review hours as of 4/29/13:

1. 4/25/13 , 11:51-2:12 (2:21)
2. 4/26//13, 11:59-2:17 (2:18)

- Total Hours: 4:39 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Michael Bradley**

---

**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Monday, May 06, 2013 12:15 PM  
**To:** 'Evan Hoffman'  
**Subject:** SS DR

Evan,

State Street document review hours as of 5/3/13:

1. 4/30/13, 2:30-4:00 (1:30)
2. 5/1/13, 12:55-2:43 (1:48)
3. 5/2/13, 11:23-12:25 (1:02)

- Total Hours: 4:20 Min

P.S. I have been in court for the past two weeks, I will log additional hours weekly as we continue to move forward. Please call with any questions or concerns.

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Michael Bradley**

---

**From:** Michael Bradley [mike@bradleylegal.org]  
**Sent:** Tuesday, May 14, 2013 2:24 PM  
**To:** 'Evan Hoffman'  
**Subject:** SS DR

Evan,

State Street document review hours as of 5/10/13:

1. 5/6/13, 12:10-1:15 (1:05)
2. 5/7/13, 12:46-2:35 (1:49)
3. 5/8/13, 1:32-3:24 (1:52)

- Total Hours: 4:46 Min

P.S. [REDACTED]

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Subject:** SS DR

**Date:** Monday, May 20, 2013 4:13:25 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 5/17/2103:

5/14/13, 2:11-4:15 (2:04)

5/16/13, 2:05-4:30 (2:25)

Total: 4:29

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Tuesday, May 28, 2013 11:49:21 AM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Tuesday, May 28, 2013 11:41:49 AM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 5/24/2103:

- 5/20/13, 12:15-3:05 (2:50)
- 5/21/13, 12:00-1:25 (1:25)
- 5/23/13, 12:35-2:05 (1:30)
- 5/24/13, 1:15-2:10 (55 min)

Total: 6:40

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Tuesday, June 4, 2013 1:31:10 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Tuesday, June 4, 2013 1:30:52 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 5/31/2103:

- 5/27/13, 11:55-1:00 (1:05)
- 5/29/13, 11:15-1:00 (1:45)

Total: 2:50 min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, June 10, 2013 1:59:03 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Monday, June 10, 2013 1:58:11 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 6/7/2103:

- 6/4/13, 1:30-2:35 (1:05)
- 6/6/13, 1:50-3:55 (2:05)
- 6/7/13, 12:08-2:45 (2:38)

Total: 5:55 min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, June 17, 2013 1:03:23 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Monday, June 17, 2013 12:52:11 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 6/14/2103:

- 6/10/13, 2:02-3:10 (1:08)
- 6/11/13, 10:10-12:15 (2:05)

Total: 3:13 min

Thank You,  
Michael G. Bradley, Esq  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, June 24, 2013 12:53:39 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Monday, June 24, 2013 12:51:23 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 6/21/2103:

- 6/18/13, 11:58-2:15 (2:17)
- 6/21/13, 1:35-2:50 (1:15)

Total: 3:32 min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, July 1, 2013 3:13:49 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Monday, July 1, 2013 3:13:07 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 6/28/2103:

- 6/25/13, 11:20-12:45 (1:25)
- 6/27/13, 1:43-4:17 (2:35)

Total: 4 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, July 15, 2013 12:44:28 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Monday, July 15, 2013 12:43:55 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 7/12/2103:

- 7/1/13, 3:15-4:20 (1:05)
- 7/11/13, 12:35-2:15 (1:40)
- 7/12/13, 1:30-3:00 (2:30)

Total: 5:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, July 22, 2013 2:42:14 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Monday, July 22, 2013 2:41:18 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 7/19/2103:

- 7/15/13,12:40-2:15 (1:35)
- 7/16/13, 11:16-12:55 (1:39)
- 7/18/13,11:45-2:10 (2:25)

Total: 5:39 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, July 29, 2013 12:59:50 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Monday, July 29, 2013 12:59:39 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 7/26/2103:

- 7/22/13, 2:43-3:58 (1:15)
- 7/23/13, 2:40-3:45 (1:05)

Total: 2:20 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Tuesday, August 6, 2013 1:01:28 PM Eastern Daylight Time

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**Subject:** SS DR

**Date:** Tuesday, August 6, 2013 1:01:16 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 8/2/13:

- 7/29/13,12:55-2:40 (2:20)
- 7/30/13,1:10-3:30 (1:45)
- 7/31/13,12:45-2:30 (1:45)

Total: 5:50 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, August 19, 2013 1:41:29 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Monday, August 19, 2013 1:41:15 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 8/16/13:

- 8/6/13, 1:25-3:15 (1:50)
- 8/8/13, 12:41-2:10 (1:29)
- 8/14/13, 4:52-6:00 (1:08)
- 8/15/13, 1:35-3:50 (2:15)

Total: 6:42 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Tuesday, September 3, 2013 12:52:22 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Tuesday, September 3, 2013 12:52:07 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

CORRECTION IN BOLD

State Street Document Review hours as of as of 8/27/13:

- 8/20/13 12:25-2:30 (2:05)
- 8/26/13, 2:15-3:45 (1:30)
- 8/27/13, 12:38-2:45 (1:53)

Total: 5:28 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, September 16, 2013 5:07:36 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Monday, September 16, 2013 5:07:21 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of 9/13/13:

- 9/3/13 12:52-2:58 (2:06)
- 9/9/13, 11:10-12:15 (1:05)
- 9/11/13, 3:50-5:00 (1:10)
- 9/12/13, 11:30-2:15 (2:45)

Total: 7:06 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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Monday, September 30, 2013 4:02:55 PM Eastern Daylight Time

---

**Subject:** SS DR

**Date:** Monday, September 30, 2013 4:00:31 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 9/27/13:

- 9/16/13 2:15-4:05 (1:50)
- 9/17/13, 11:45-1:45 (2:00)
- 9/23/13, 3:00-4:25 (1:25)
- 9/25/13, 2:30-4:05 (1:35)

Total: 6:50 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Subject:** SS DR

**Date:** Tuesday, November 12, 2013 at 2:37:18 PM Eastern Standard Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 11/8/13:

- 10/31/13, 12:25-2:15 (1:50)
- 11/4/13, 3:50-5:15 (1:25)
- 11/5/13, 2:40-4:30 (1:50)
- 11/8/13, 1:25-2:45 (1:20)

Total: 6:25 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**Subject:** SS DR

**Date:** Monday, October 14, 2013 4:56:21 PM Eastern Daylight Time

**From:** Michael Bradley

**To:** Evan Hoffman

State Street Document Review hours as of as of 10/11/13:

- 10/2/13 11:30-12:55 (1:25)
- 10/3/13, 1:00-2:15 (1:15)
- 10/7//13, 10:35-12:45 (2:10)
- 10/9/13, 2:05-4:10 (2:05)
- 10/10/13, 1:25-3:15 (1:50)

Total: 8:45 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: December 2, 2013 at 1:40 PM  
To: Evan Hoffman E.Hoffman@tenlaw.com

State Street Document Review hours as of as of 11/29/13:

- 11/12/13, 2:45-4:15 (1:30)
- 11/13/13, 1:15-2:50 (1:35)
- 11/14/13, 1:35-3:15 (1:40)
- 11/19/13, 1:00-3:15 (2:15)
- 11/21/13, 10:45-12:30 (1:45)
- 11/26/13, 1:30-3:40 (2:10)

Total: 10:55 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: December 17, 2013 at 4:01 PM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 12/13/13:

- 12/2/13, 1:45-3:15 (1:30)
- 12/3/13, 2:15-4:30 (2:15)
- 12/4/13, 3:25-4:30 (1:05)
- 12/11/13, 3:35-5:25 (1:50)
- 12/12/13, 11:50-1:45 (1:55)

Total: 8:35 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: December 30, 2013 at 12:33 PM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 12/27/13:

- 12/17/13, 2:35-3:55 (1:20)
- 12/18/13, 12:50-2:25 (1:35)
- 12/20/13, 1:45-3:35 (1:50)
- 12/27/13, 2:35-4:15 (1:40)

Total: 6:25 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: January 13, 2014 at 3:33 PM  
To: **Evan Hoffman** EHoffman@tenlaw.com

State Street Document Review hours as of as of 1/10/14:

- 12/30/13, 12:15-2:00 (1:45)
- 12/31/13, 12:40-2:10 (1:30)
- 1/6//14, 3:00-4:15 (1:15)
- 1/7/14, 12:55-2:15 (1:20)
- 1/8/14, 1:00-2:30 (1:30)
- 1/10/14, 11:30-2:25 (1:55)

Total: 9:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: January 27, 2014 at 11:45 AM  
To: Evan Hoffman EHOFFMAN@tenlaw.com

State Street Document Review hours as of as of 1/24/14:

- 1/15/14, 3:30-5:00 (1:30)
- 1/17/14, 10:15-12:30 (2:15)
- 1/23/14, 3:00-4:45 (1:45)
- 1/24/14, 11:30-1:15 (1:45)

Total: 7:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: February 24, 2014 at 11:23 AM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 2/21/14:

- 2/10/14, 1:50-3:30 (1:40)
- 2/12/14, 3:00-4:45 (1:45)
- 2/20/14, 12:40-2:30 (1:50)

Total: 5:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** [mike@bradleylegal.org](mailto:mike@bradleylegal.org)  
Subject: SS DR  
Date: March 10, 2014 at 4:25 PM  
To: Evan Hoffman [EHoffman@tenlaw.com](mailto:EHoffman@tenlaw.com)

State Street Document Review hours as of as of 3/7/14:

- 2/24/14, 11:25-1:15 (1:50)
- 2/25/14, 11:30-2:30 (2:00)
- 2/28/14, 12:50-2:00 (1:10)

Total: 5:00 hours

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** [mike@bradleylegal.org](mailto:mike@bradleylegal.org)  
Subject: SS DR  
Date: March 24, 2014 at 5:22 PM  
To: Evan Hoffman [EHoffman@tenlaw.com](mailto:EHoffman@tenlaw.com)

State Street Document Review hours as of as of 3/21/14:

- 3/11/14, 1:40-3:00 (1:20)
- 3/12/14, 1:15-3:10 (1:55)
- 3/17/14, 1:50-3:30 (1:40)
- 3/18/14, 11:20-12:50 (1:30)
- 3/20/14, 2:45-4:15 (1:30)
- 3/21/14, 10:40-12:00 (1:20)

Total: 9:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: April 7, 2014 at 4:09 PM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 4/4/14:

- 3/25/14, 1:30-2:40 (1:10)
- 3/27/14, 2:35-4:00 (1:25)
- 3/28/14, 12:55-2:20 (1:25)
- 4/3/14, 2:15-3:30 (1:15)

Total: 5:15 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
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Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: April 29, 2014 at 1:08 PM  
To: **Evan Hoffman** EHoffman@tenlaw.com

---

State Street Document Review hours as of as of 4/25/14:

- 4/8/14, 1:25-2:30 (1:05)
- 4/15/14, 2:10-3:50 (1:40)
- 4/17/14, 12:10-2:00 (1:50)
- 4/23/14, 1:30-2:45 (1:15)

Total: 5:50 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: June 2, 2014 at 3:56 PM  
To: Evan Hoffman EHoffman@tenlaw.com

---

State Street Document Review hours as of as of 5/30/14:

- 5/20/14, 2:50-4:15 (1:25)
- 4/30/14, 2:50-4:25 (1:35)

Total: 3 Hrs

I was on trial and will increase the hours over the next several weeks. How is the case against SS progressing?

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**From:** Bradley Michael [mike@bradleylegal.org](mailto:mike@bradleylegal.org)  
**Subject:** SS DR  
**Date:** July 8, 2014 at 11:19 AM  
**To:** Evan Hoffman [EHoffman@tenlaw.com](mailto:EHoffman@tenlaw.com)

State Street Document Review hours as of as of 7/4/14:

- 6/19/14 11:30-1:45 (2:15)
- 6/23/14 4:50-5:50 (1:00)
- 6/25/14 2:25-4:10 (1:45)
- 6/30/14 4:00-5:30 (1:30)

Total: 6:30 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: Re: SS DR  
Date: July 21, 2014 at 3:02 PM  
To: Evan Hoffman EHoffman@tenlaw.com

---

Thanks Evan. Call me if you need anything.

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: July 21, 2014 at 2:54 PM  
To: Evan Hoffman EHoffman@tenlaw.com

---

Evan,

We haven't spoken for some time. Please confirm that you've been receiving these emails. Also, is the case progressing?

State Street Document Review hours as of as of 7/18/14:

- 7/8//14 11:15-1:00 (1:45)
- 7/9/14 5:00-6:10 (1:10)
- 7/14//14 1:25-3:00 (1:35)
- 7/15//14 4:45-6:15 (1:30)
- 7/16/14 12:10-2:05 (1:55)

Total: 7:55 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: August 18, 2014 at 5:22 PM  
To: **Evan Hoffman** EHoffman@tenlaw.com

---

State Street Document Review hours as of as of 8/15/14:

- 8/4/14, 2:00-3:20 (1:20)
- 8/7/14, 1:40-3:10 (1:30)
- 8/14/14, 4:05-5:45 (1:40)

Total: 4:30 Min

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: September 4, 2014 at 2:41 PM  
To: **Evan Hoffman** EHoffman@tenlaw.com

State Street Document Review hours as of as of 8/29/14:

- 8/18/14, 8:30-10:35 (2:05)
- 8/19/14, 12:40-2:30 (1:50)
- 8/25/14, 2:05-4:10 (2:05)
- 8/26/14, 2:35-4:10 (1:35)
- 8/27/14, 3:05-4:30 (1:25)

Total: 9 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: September 15, 2014 at 5:15 PM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 9/12/14:

- 9/4/14, 2:30-4:00 (1:30)
- 9/11/14, 1:00-3:15 (2:15)

Total: 3:45 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: September 29, 2014 at 3:16 PM  
To: Evan Hoffman EHoffman@tenlaw.com

State Street Document Review hours as of as of 9/26/14:

- 9/15/14, 5:15-6:30 (1:15)
- 9/16/14, 12:40-2:30 (1:50)
- 9/19/14, 1:00-3:00 (2:00)
- 9/24/14, 1:30-3:15 (1:45)
- 9/25/14, 2:50-4:15 (1:25)

Total: 8:15 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**From:** Bradley Michael [mike@bradleylegal.org](mailto:mike@bradleylegal.org)  
**Subject:** SS DR  
**Date:** October 20, 2014 at 4:51 PM  
**To:** Evan Hoffman [EHoffman@tenlaw.com](mailto:EHoffman@tenlaw.com)



---

State Street Document Review hours as of as of 10/17/14:

- 9/29/14, 3:15-4:30 (1:15)
- 9/30/14, 11:00-12:25 (1:25)
- 10/1/14, 1:55-3:15 (1:20)
- 10/13/14, 1:45-3:30 (1:45)
- 10/14/14, 3:50-5:20 (1:50)
- 10/15/14, 4:35-6:00 (1:25)
- 10/16/14, 1:45-3:50 (2:05)

Total: 11:05 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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From: Bradley Michael mike@bradleylegal.org  
Subject: SS DR  
Date: November 17, 2014 at 4:42 PM  
To: Evan Hoffman EHoffman@tenlaw.com

SSState Street Document Review hours as of as of 11/14/14:

- 10/20/14, 4:50-6:00 (1:10)
- 10/21/14, 1:35-3:20 (1:45)
- 10/24/14, 11:20-1:10 (1:50)
- 10/27/14, 1:15-2:45 (1:30)
- 10/31/14, 1:10-3:30 (2:20)
- 11/5/14, 12:45-2:30 (1:45)
- 11/6/14, 11:45-1:50 (2:05)
- 11/11/14, 4:00-5:30 (1:30)
- 11/12/14, 2:25-3:40 (1:15)
- 11/14/14, 3:30-4:45 (1:15)

Total: 16:25 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
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**From:** Bradley Michael mike@bradleylegal.org  
**Subject:** SS DR  
**Date:** December 8, 2014 at 3:56 PM  
**To:** Evan Hoffman EHoffman@tenlaw.com



State Street Document Review hours as of as of 12/4/14:

- 11/17/14, 4:30-6:15 (1:45)
- 11/19/14, 2:00-3:30 (1:30)
- 11/21/14, 1:55-3:30 (1:35)
- 11/24/14, 2:55-4:30 (1:35)
- 11/25/14, 2:10-4:00 (1:50)
- 12/1/14, 3:35-5:00 (1:25)
- 12/2/14, 4:30-5:45 (1:15)
- 12/3/14, 12:30-2:15 (1:45)
- 12/4/14, 2:10-3:30 (1:20)

Total: 14:00 Hrs

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
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Fax: (617) 786-0284  
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**From:** Bradley Michael [mike@bradleylegal.org](mailto:mike@bradleylegal.org)  
**Subject:** SS DR  
**Date:** January 5, 2015 at 1:30 PM  
**To:** Evan Hoffman [EHoffman@tenlaw.com](mailto:EHoffman@tenlaw.com)



---

State Street Document Review hours as of as of 12/31/14:

- 12/8/14, 3:30-5:05 (1:35)
- 12/12/14, 3:30-5:00 (1:30)
- 12/15/14, 2:35-4:15 (1:50)
- 12/16/14, 1:25-3:30 (2:05)
- 12/22/14, 4:30-5:45 (1:15)
- 12/23/14, 3:15-4:30 (1:15)
- 12/29/14, 3:30-5:10 (1:40)

Total: 11:10 Hrs

---

Thank You,  
Michael G. Bradley, Esq.  
1145 Hancock Street, Suite E  
Quincy, MA 02169  
Phone: (617) 786-0281  
Fax: (617) 786-0284  
[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**From:** Bradley Michael mike@bradleylegal.org  
**Subject:** SS DR  
**Date:** February 4, 2015 at 1:22 PM  
**To:** Evan Hoffman EHoffman@tenlaw.com



State Street Document Review hours as of as of 1/30/15:

- 1/5/15, 1:20-3:05 (1:45)
- 1/9/15, 2:10-3:30 (1:20)
- 1/12/15, 3:20-5:30 (2:10)
- 1/13/15, 12:45-3:00 (2:15)
- 1/14/15, 1:35-3:50 (2:15)
- 1/15/15, 2:10-4:00 (1:50)
- 1/19/15, 2:25-4:30 (2:05)
- 1/20/15, 2:55-5:15 (2:20)
- 1/21/15, 3:15-5:30 (2:15)
- 1/23/15, 10:50-1:00 (2:10)
- 1/26/15, 2:05-4:10 (2:05)
- 1/29/15, 1:25-4:00 (2:35)
- 1/30/15, 3:50-5:30 (1:40)

Total: 26:45

Thank You,  
Michael G. Bradley, Esq.  
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Quincy, MA 02169  
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**From:** Bradley Michael mike@bradleylegal.org  
**Subject:** SS DR  
**Date:** March 2, 2015 at 2:58 PM  
**To:** Evan Hoffman EHoffman@tenlaw.com



State Street Document Review hours as of as of 2/27/15:

- 2/4/15, 1:20-3:25 (2:05)
- 2/10/15, 3:40-6:00 (2:20)
- 2/12/15, 1:05-3:30 (2:25)
- 2/16/15, 2:15-4:30 (2:15)
- 2/18/15, 4:15-6:00 (1:45)
- 2/24/15, 4:05-6:00 (1:55)
- 2/25/15, 4:55-6:15 (1:20)

Total: 14:05

Thank You,  
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**From:** Bradley Michael mike@bradleylegal.org  
**Subject:** SS DR  
**Date:** April 6, 2015 at 1:52 PM  
**To:** Evan Hoffman Ehoffman@tenlaw.com



State Street Document Review hours as of as of 3/31/15:

- 3/2/15, 2:45-5:00 (2:15)
- 3/3/15, 1:35-3:30 (1:55)
- 3/4/15, 5:25-6:30 (1:05)
- 3/9/15, 5:05-6:30 (1:25)
- 3/10/15, 3:10-5:30 (2:20)
- 3/11/15, 12:00-2:15 (2:15)
- 3/12/15, 12:50-3:00 (2:10)
- 3/16/15, 12:05-2:30 (2:25)
- 3/17/15, 1:05-3:00 (1:55)
- 3/18/15, 3:30-5:00 (1:30)
- 3/23/15, 2:35-4:25 (1:50)
- 3/25/15, 3:30-4:45 (1:15)
- 3/27/15, 2:10-4:30 (2:20)
- 3/31/15, 3:15-5:30 (2:15)

Total: 26:35

Thank You,  
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From: **Bradley Michael** mike@bradleylegal.org  
Subject: SS DR  
Date: July 1, 2015 at 2:39 PM  
To: Evan Hoffman EHoffman@tenlaw.com



State Street Document Review hours as of as of 6/26/15:

- 5/6/15, 2:45-5:00 (2:15)
- 5/11/15, 1:45-4:00 (2:15)
- 5/13/15, 3:30-5:45 (2:15)
- 5/15/15, 2:30-5:00 (2:30)
- 6/1/15, 4:55-6:45 (1:50)
- 6/2/15, 2:05-5:00 (2:55)
- 6/11/15, 3:40-5:45 (2:05)
- 6/15/15, 4:30-6:30 (2:00)
- 6/16/15, 11:30-2:45 (3:15)
- 6/18/15, 2:00-4:10 (2:10)
- 6/23/15, 1:45-3:45 (2:00)

Total: 25:30

Thank You,  
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[mike@bradleylegal.org](mailto:mike@bradleylegal.org)

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**EXHIBIT A**  
**LABATON SUCHAROW TIME RECORDS**  
**INCEPTION THROUGH AUGUST 30, 2016**

Atty #	Timekeeper Name	Status	Date	Hours	Task Code	Narrative
0712	Cindy Chan	PL	10/29/09	0.3	999	Check for and pull California's complaint against State Street.
1355	Peter Bertuglia	RA	10/29/09	3.0	999	State Street Losses 5 Year
0625	Christopher Keller	P	10/30/09	2.9	999	Attend to investigation and analysis.
0706	Natalie Ching	RA	10/30/09	2.5	999	Coordinate work, review analysis on State Street. Discuss time frame needed.
0712	Cindy Chan	PL	10/30/09	0.6	999	Prepare and send conflict check; obtain potential number; check Access for clients; pull 13f/aggregate report; prepare data request.
1086	Thomas Chianelli	RA	10/30/09	6.2	999	Calculated losses for the 5 year proposed class period. E-mail to group re: same.
1355	Peter Bertuglia	RA	10/30/09	7.0	999	State Street 5 Year period client losses
0712	Cindy Chan	PL	11/01/09	2.8	999	Begin 13f loss analysis for 5 year class period.
0849	Stefanie Sundel	A	11/01/09	2.0	999	Drafted case alert and emails to Christopher J. Keller.
0706	Natalie Ching	RA	11/02/09	4.0	999	Review of State Street losses. Compile data for email to Mike Hensman for BCSS. Send around loss data.
0712	Cindy Chan	PL	11/02/09	3.8	999	Complete 13f loss analysis and summary for 3 year and 5 year class periods.
0849	Stefanie Sundel	A	11/02/09	2.5	999	Case alert; losses issues.
1086	Thomas Chianelli	RA	11/02/09	4.7	999	Calculate losses for the new 3 year proposed class period. Email to group re: loss numbers for my half of the project.
1355	Peter Bertuglia	RA	11/02/09	5.0	999	State Street losses, 3 year period
0706	Natalie Ching	RA	11/03/09	5.0	999	Review of 5 year class period losses. Clear up lots of data issues and confirm information we have.
0849	Stefanie Sundel	A	11/03/09	1.0	999	Basic facts for Thomas A. Dubbs.
1086	Thomas Chianelli	RA	11/03/09	3.4	999	Calculate client losses for [REDACTED] and add to master loss chart of 3 year class period. Moved and linked all clients into master loss doc.
0625	Christopher Keller	P	11/04/09	1.7	999	Attend to investigation and analysis; attend to client retention issues.
0706	Natalie Ching	RA	11/04/09	3.0	999	Complete analysis for 3 year period for State Street. Check over loss chart.
0023	Eric Belfi	P	11/05/09	2.5	999	Researched the case.
0625	Christopher Keller	P	11/06/09	2.9	999	Attend to case strategy and client retention issues.
0712	Cindy Chan	PL	11/06/09	0.5	999	Double check Irish Life's 13f numbers (confirm it has a gain); double check whether State Street was trading lower in January than now.
0849	Stefanie Sundel	A	11/06/09	1.0	999	Call with Christopher J. Keller and Garrett Bradley.
0023	Eric Belfi	P	11/09/09	1.5	999	Communicated with potential clients.
0625	Christopher Keller	P	11/11/09	1.8	999	Attend to investigation and analysis.
0712	Cindy Chan	PL	11/11/09	0.2	999	Research on [REDACTED] custodian info (for Alan I. Ellman).
0625	Christopher Keller	P	11/12/09	2.6	999	Attend to investigation and analysis; discuss strategy with team.
0849	Stefanie Sundel	A	11/12/09	1.5	999	Requested and revised compiled list of monitoring clients and custodians; meeting with Christopher J. Keller, Alan E. Gumeny, Javier Bleichmar and Alan I. Ellman.
1086	Thomas Chianelli	RA	11/12/09	0.6	999	Check losses for OTPP. Email to group re: same.
0754	Alan Gumeny	I	11/13/09	4.0	999	Reviewed California complaint. Search for and vet leads, meet attorneys, case start up.
0849	Stefanie Sundel	A	11/13/09	0.5	999	Meeting with Javier Bleichmar and Alan E. Gumeny.
1127	Ted Polk	I	11/13/09	5.0	999	locate formers to interview. background on companies.
1411	Rebecca Warner	I	11/13/09	1.5	999	Researched former employees of Mellon in the FX division from the last 5 yrs.
0754	Alan Gumeny	I	11/14/09	4.0	999	searched and vetted formers. Called formers and reported results
0754	Alan Gumeny	I	11/16/09	2.0	999	Reviewed financials for leads and vetted CWs. Managed case with leads to investigators.

0849	Stefanie Sundel	A	11/16/09	4.0	999	State Street legal research - fiduciary duty - class cert - breach of contract too; read ██████████ State Street contract.
1115	Eunice Ahn	RA	11/16/09	0.1	999	OCR document production for attorney analysis, per S. Sundel.
1127	Ted Polk	I	11/16/09	3.7	999	read through complaint. locate additional witnesses to contact.
1411	Rebecca Warner	I	11/16/09	3.5	999	Research of former Mellon employees in the FX division
0625	Christopher Keller	P	11/17/09	2.7	999	Attend to case strategy; discuss same with Stefanie J. Sundel.
0712	Cindy Chan	PL	11/17/09	1.6	999	Research on all class actions filed against State Street; look into jurisdiction issue; pull MDL orders.
0754	Alan Gumeny	I	11/17/09	4.0	999	Researched and contacted formers.
1086	Thomas Chianelli	RA	11/17/09	1.1	999	Double check ██████████ losses in both 5 year and 3 year class period. Email to group re: same.
1115	Eunice Ahn	RA	11/17/09	0.1	999	Emails w/team re: potential clients and analysis of losses.
1127	Ted Polk	I	11/17/09	2.5	999	locate formers to interview.
1411	Rebecca Warner	I	11/17/09	2.0	999	Cont'd research of former Mellon employees in the FX division
0754	Alan Gumeny	I	11/18/09	5.0	999	Contacted formers and interviewed formers. Prepared reports and conferred with attorneys.
0849	Stefanie Sundel	A	11/18/09	6.0	999	Memo regarding qui tam versus class action and jurisdictional issues.
1411	Rebecca Warner	I	11/18/09	2.4	999	Cont'd research of former Mellon employees in the FX division
1414	David Sack	A	11/18/09	8.7	999	Research case law on qui tam questions for Christopher Keller and Stephanie Sundel.
0712	Cindy Chan	PL	11/19/09	0.2	999	Search for 2nd Circuit class certification decision in IPO case; email same to Garrett Bradley.
0754	Alan Gumeny	I	11/19/09	5.0	999	researched and contacted formers. Prepared reports and conferred with attorneys.
0849	Stefanie Sundel	A	11/19/09	2.0	999	Revised memo; sent materials to Garrett Bradley.
1115	Eunice Ahn	RA	11/19/09	1.3	999	Edit memo re: case analysis, per S. Sundel; pull case law from same, per S. Sundel; organize files and folders in shared drive for working records.
1411	Rebecca Warner	I	11/19/09	7.0	999	Cont'd research of former Mellon employees in the FX division
0625	Christopher Keller	P	11/20/09	3.2	999	Attend to case strategy; discuss same with Stefanie J. Sundel and Alan I. Ellman.
0754	Alan Gumeny	I	11/20/09	3.5	999	Prepare memos, meeting with attorneys. Contact with formers.
0849	Stefanie Sundel	A	11/20/09	1.0	999	Meeting with Christopher J. Keller, Javier Bleichmar, Alan E. Gumeny and David V. Sack regarding agency research issues.
1127	Ted Polk	I	11/20/09	1.0	999	case discussion and location of additional formers.
1414	David Sack	A	11/20/09	1.0	999	Draft memo on agency law research for Christopher Keller and Stephanie Sundel.
1414	David Sack	A	11/20/09	7.0	999	Research questions on agency law for Christopher Keller and Stephanie Sundel.
0023	Eric Belfi	P	11/23/09	1.5	999	Researched the case; updated clients.
0754	Alan Gumeny	I	11/23/09	4.0	999	Contacted and interviewed formers. Conferred with attorneys. liaisoned via e-mail with a high value former.
1411	Rebecca Warner	I	11/23/09	1.5	999	Cont'd research of former Mellon employees in the FX division
0023	Eric Belfi	P	11/24/09	1.5	999	Updated the clients.
0754	Alan Gumeny	I	11/24/09	2.0	999	Received e-mail from high value former, conferred with attorney Bleichmar. Responded to the former and letter received from BNY Mellon. Searched for new formers.
1355	Peter Bertuglia	RA	11/24/09	2.5	999	Updating State Street losses with October data
0754	Alan Gumeny	I	11/25/09	2.0	999	Reviewed CalPERS complaint, searched for formers and contacted former. Conferred with attorney re: call and letter from BNY Mellon.
1355	Peter Bertuglia	RA	11/25/09	1.5	999	Updating with October data
1411	Rebecca Warner	I	11/25/09	2.5	999	Continued research of former Mellon employees in the FX division.
0754	Alan Gumeny	I	11/30/09	1.0	999	researched and attempted contact with former. contacted established bank source to located former FX traders.
1355	Peter Bertuglia	RA	11/30/09	7.0	999	Updating client losses with October data
0754	Alan Gumeny	I	12/01/09	5.0	999	searched for disgruntled formers. Called formers. Prepare report.

1355	Peter Bertuglia	RA	12/01/09	6.0	999	Updating 5 and 3 year class periods for October time
1411	Rebecca Warner	I	12/01/09	4.0	999	Research into ERISA and federal employment lawsuits against Mellon, research to identify new lead for potential CWs, meeting w/ AG
0625	Christopher Keller	P	12/02/09	2.5	999	Attend to case strategy and complaint drafting issues.
1355	Peter Bertuglia	RA	12/02/09	2.0	999	██████████ for both class periods
1411	Rebecca Warner	I	12/02/09	6.3	999	Cont'd research of former Mellon employees in the FX division to identify leads
0754	Alan Gumeny	I	12/03/09	4.0	999	Contacted formers. Reviewed inv. reports.
1411	Rebecca Warner	I	12/03/09	2.9	999	Cont'd research to identify potential CWs
0754	Alan Gumeny	I	12/04/09	2.0	999	Attempted contact and prepare reports.
0754	Alan Gumeny	I	12/06/09	0.8	999	Completed reports.
0754	Alan Gumeny	I	12/07/09	1.0	999	Disseminated reports.
0849	Stefanie Sundel	A	12/07/09	2.5	999	Drafted State Street complaint.
1115	Eunice Ahn	RA	12/07/09	0.1	999	OCR, format, and save to shared drive for working records client agreement, per S. Sundel.
0625	Christopher Keller	P	12/08/09	2.3	999	Attend to case strategy.
0849	Stefanie Sundel	A	12/08/09	0.5	999	Call with Maniskas; read State Street complaint.
0849	Stefanie Sundel	A	12/09/09	1.0	999	Read draft complaint and determined class period.
1115	Eunice Ahn	RA	12/10/09	1.0	999	Proofread, input edits into draft complaint, per S. Sundel.
0625	Christopher Keller	P	12/11/09	2.1	999	Attend to case strategy and complaint filing issues.
0625	Christopher Keller	P	12/15/09	2.7	999	Attend to case strategy and client retention issues.
0625	Christopher Keller	P	12/21/09	2.2	999	Attend to Lead Plaintiff and client retention issues.
0625	Christopher Keller	P	12/22/09	3.2	999	Attend to case strategy and client retention issues; discuss same internally; send case alert to clients.
0849	Stefanie Sundel	A	12/22/09	2.0	999	Revised case alerts - discussion with Christopher J. Keller.
1086	Thomas Chianelli	RA	12/22/09	0.5	999	Retrieve transactions for ██████████ and calculate client losses. Email to Dominic Auld re: same.
1355	Peter Bertuglia	RA	12/22/09	3.0	999	Checked ██████████ loss calculation and worked on other filed figures
0706	Natalie Ching	RA	12/23/09	5.0	999	Review of State Street.
1355	Peter Bertuglia	RA	12/23/09	4.5	999	State Street filed period losses
0706	Natalie Ching	RA	12/28/09	3.0	999	Review client losses.
1115	Eunice Ahn	RA	12/28/09	0.1	999	Emails w/team re: potential clients and losses.
0625	Christopher Keller	P	12/29/09	1.7	999	Attend to case strategy and analysis.
0706	Natalie Ching	RA	12/29/09	5.0	999	Finalize review of problem data for State Street filed period.
1193	Chris Capuozzo	RA	12/29/09	0.7	999	Analyzed ██████████ data in State Street case for filed class period.
0706	Natalie Ching	RA	12/30/09	6.0	999	██████████ losses. Review Fortis losses. Send breakdown of top losers to team.
1086	Thomas Chianelli	RA	12/30/09	1.2	999	Double check ██████████ loss. Emails with Natalie Ching and Chris Capuozzo re: client losses.
1115	Eunice Ahn	RA	12/30/09	0.1	999	Emails w/team re: potential clients.
1193	Chris Capuozzo	RA	12/30/09	3.0	999	Analyzed ██████████ losses filed class period of State Street case.
0625	Christopher Keller	P	01/04/10	2.9	999	Attend to litigation strategy and client retention issues.
0625	Christopher Keller	P	01/05/10	1.8	999	Review client documents; analyze same.
0712	Cindy Chan	PL	01/05/10	0.3	999	Edit list of Massachusetts State Street clients; PDF and email to Garrett Bradley.
0023	Eric Belfi	P	01/11/10	5.0	999	Researched the case.
0625	Christopher Keller	P	01/11/10	2.8	999	Attend to litigation strategy, analysis and case management.
0023	Eric Belfi	P	01/12/10	2.5	999	Communicated with prospective clients.
0849	Stefanie Sundel	A	01/12/10	0.5	999	Revised case alert to reflect 10b filing.
0625	Christopher Keller	P	01/13/10	3.3	999	Attend to investigation, factual research; litigation strategy, analysis and case management.

0706	Natalie Ching	RA	01/13/10	4.0	999	Id issues with [REDACTED]. Break-down of [REDACTED] account by account issues. Distribute breakdown of high losses.
0849	Stefanie Sundel	A	01/13/10	8.0	999	Drafted case report for [REDACTED]
1193	Chris Capuozzo	RA	01/13/10	0.5	999	Sent requests for data to [REDACTED]
0706	Natalie Ching	RA	01/14/10	1.0	999	Edits to [REDACTED] Schedule A. Call to Barbara Doherty at Mellon.
0849	Stefanie Sundel	A	01/14/10	3.0	999	Finished/edited [REDACTED] report; revised report to be generic EU & USA; [REDACTED] version.
1115	Eunice Ahn	RA	01/14/10	0.8	999	Proofread case analysis report, per S. Sundel.
1193	Chris Capuozzo	RA	01/14/10	2.5	999	Analyzed [REDACTED] losses for State Street Corp. Case.
0706	Natalie Ching	RA	01/15/10	1.0	999	Discussion via email for data with [REDACTED] contacts at Mellon for State Street Corp.
0712	Cindy Chan	PL	01/15/10	0.2	999	Look into non-Massachusetts Taft-Hartley State Street clients; email info to Garrett Bradley.
0625	Christopher Keller	P	01/19/10	2.2	999	Attend to client retention issues.
0706	Natalie Ching	RA	01/19/10	1.0	999	Review State Street offering and clients purchased on that date.
1193	Chris Capuozzo	RA	01/19/10	4.5	999	Analyzed FIFO and LIFO losses for [REDACTED] data in State Street Corp. Cases.
0023	Eric Belfi	P	01/20/10	1.5	999	Reviewed the case.
0706	Natalie Ching	RA	01/20/10	0.5	999	Supplement data from [REDACTED]
0706	Natalie Ching	RA	01/21/10	1.0	999	Call with Mike Kania on data issues for State Street. Review audited holdings for missing data. Email to team summarizing my conversation.
1193	Chris Capuozzo	RA	01/21/10	0.5	999	Sent data requests for State Street case to Eric and Javier's International contacts.
0023	Eric Belfi	P	01/22/10	5.0	999	Traveled to and met with prospective client.
0625	Christopher Keller	P	01/22/10	2.6	999	Attend to case strategy and client report.
0712	Cindy Chan	PL	01/22/10	2.7	999	Begin to update the 13f loss analysis for the filed class period.
1193	Chris Capuozzo	RA	01/22/10	1.0	999	Helped Victor perform loss analysis for [REDACTED] data in State Street case. Reported results to client.
1355	Peter Bertuglia	RA	01/25/10	2.5	999	Debt securities losses
0706	Natalie Ching	RA	01/26/10	1.0	999	Review bond losses that Peter did for State Street. Research [REDACTED]
1355	Peter Bertuglia	RA	01/26/10	2.0	999	Debt securities loss analysis
0625	Christopher Keller	P	01/27/10	2.6	999	Attend to client retention and case strategy.
0712	Cindy Chan	PL	01/27/10	2.5	999	Complete 13f loss analysis for filed class period.
0625	Christopher Keller	P	01/28/10	2.3	999	Attend to client retention and Lead Plaintiff issues.
0625	Christopher Keller	P	02/01/10	2.2	999	Attend to investigation and analysis and attend to client retention issues.
0712	Cindy Chan	PL	02/01/10	0.1	999	Prepare reimbursement check request.
1193	Chris Capuozzo	RA	02/02/10	1.2	999	Analyzed FIFO/LIFO losses for [REDACTED] data in State Street case.
0706	Natalie Ching	RA	02/03/10	2.5	999	Resolve issues w [REDACTED] data with audited statements.
0849	Stefanie Sundel	A	02/03/10	1.0	999	Parsed out confounding news damages; call with Forensics; discussion with Christopher J. Keller regarding ERISA memo and meeting next week.
0023	Eric Belfi	P	02/04/10	3.0	999	Researched the case.
0625	Christopher Keller	P	02/04/10	3.5	999	Attend to investigation and analysis; attend to client retention issues.
0849	Stefanie Sundel	A	02/04/10	1.0	999	Questions from Louis Gottlieb.
0712	Cindy Chan	PL	02/05/10	1.8	999	Research on State Street subprime cases; pull ERISA and SEC complaints and agreement for judgment; order to squash subpoena; research bond fund cases; pull bond fund amended complaints.
0849	Stefanie Sundel	A	02/05/10	2.0	999	Case analysis; ERISA and Subprime elements.
1193	Chris Capuozzo	RA	02/08/10	1.0	999	Analyzed [REDACTED] losses for State Street case. Forwarded results to Pietro.
0712	Cindy Chan	PL	02/11/10	0.7	999	OCR complaints and exhibits for Stefanie J. Sundel; attend to Qui Tam meeting issues.
1115	Eunice Ahn	RA	02/11/10	1.2	999	Continue to work on analyst reports; sort and organize documents for working records.
1115	Eunice Ahn	RA	02/11/10	3.0	999	Download, format, separate, index analyst reports, per S. Sundel.

0712	Cindy Chan	PL	03/04/10	0.1	999	Prepare reimbursement check request.
1193	Chris Capuozzo	RA	04/01/10	0.8	999	Analyzed ██████████ transactions and losses in State Street case. Reported losses back to Sven
0712	Cindy Chan	PL	04/08/10	0.5	999	Search for and pull ██████████ complaint and docket sheets; email same to Stefanie J. Sundel.
0712	Cindy Chan	PL	04/19/10	0.5	999	Attend to Arkansas case report issues.
0023	Eric Belfi	P	06/21/10	1.0	999	Prepared update for client.
0023	Eric Belfi	P	08/30/10	0.5	999	Discuss case with the client.
0023	Eric Belfi	P	09/09/10	10.0	999	Prepared for and met with client and consultant and co-counsel.
0023	Eric Belfi	P	09/10/10	2.0	999	Conference call with co-counsel.
0479	Jonathan Gardner	P	09/10/10	1.2	999	Discuss new matter with E. Belfi and P. Scarlato.
0479	Jonathan Gardner	P	09/13/10	2.4	999	Analyze material for new matter including attorney memo and CalPers action against State Street.
0023	Eric Belfi	P	09/14/10	10.0	999	Worked on the memorandum; met with co-counsel on case strategy.
0479	Jonathan Gardner	P	09/14/10	4.5	999	Prepare for and attend meeting with co-counsel and E. Belfi.
0023	Eric Belfi	P	09/15/10	2.5	999	Met with client on the case.
0479	Jonathan Gardner	P	09/15/10	0.1	999	Attorney meeting to discuss status of investigation and possible allegations.
0751	Amy Greenbaum	I	09/15/10	0.1	999	Attorney meeting to discuss status of investigation and possible allegations.
0826	Francisco Malonzo	PL	09/15/10	0.1	999	Attorney meeting to discuss status of investigation and possible allegations.
1538	Paul Scarlato	OC	09/15/10	0.1	130	Meetings of Counsel - Attorney meeting to discuss status of investigation and possible allegations
0023	Eric Belfi	P	09/16/10	2.5	999	Reviewed loss charts for ATRS.
0023	Eric Belfi	P	09/17/10	3.5	999	Prepared memorandum for the client; discussed matter with Chris Keller and Jon Gardner.
0712	Cindy Chan	PL	09/17/10	0.5	999	Draft retention agreement for Arkansas Teacher.
0479	Jonathan Gardner	P	09/20/10	1.5	999	Attorney conference to discuss matter; research legal theories.
0742	Craig Martin	A	09/20/10	4.0	999	Reading and analyzing complaint.
0742	Craig Martin	A	09/20/10	4.0	999	Reading and analyzing news articles on State Street.
0742	Craig Martin	A	09/20/10	2.0	999	Research on faux pricing.
0479	Jonathan Gardner	P	09/21/10	1.6	999	Analyze legal theories; conference call with co-counsel to discuss draft complaint.
0742	Craig Martin	A	09/21/10	3.0	999	Research on Mass G. L. 93A.
0742	Craig Martin	A	09/21/10	4.0	999	Research article on FX custodial issues at State Street.
0742	Craig Martin	A	09/21/10	1.0	999	Conference call with co-counsel.
0742	Craig Martin	A	09/21/10	2.0	999	Analyzing cases on pleading standard under 93A.
1538	Paul Scarlato	OC	09/21/10	5.0	010	Factual Investigation - Case development
0479	Jonathan Gardner	P	09/22/10	0.1	999	Attorney meeting to discuss legal theories and status of investigation.
0751	Amy Greenbaum	I	09/22/10	0.1	999	Attorney meeting to discuss legal theories and status of investigation.
0826	Francisco Malonzo	PL	09/22/10	0.1	999	Attorney meeting to discuss legal theories and status of investigation.
1538	Paul Scarlato	OC	09/22/10	4.0	010	Factual Investigation - Case development
0742	Craig Martin	A	09/23/10	1.0	999	Conference call.
0742	Craig Martin	A	09/23/10	4.0	999	Reserch on NY Consumer Protection Act.
0742	Craig Martin	A	09/23/10	4.0	999	Research on Delaware Consumer Protection Act.
1538	Paul Scarlato	OC	09/23/10	0.1	130	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
1538	Paul Scarlato	OC	09/23/10	3.0	010	Factual Investigation - Case development
0023	Eric Belfi	P	09/24/10	4.5	999	Prepared retainer, reviewed contracts
0742	Craig Martin	A	09/24/10	4.0	999	Research under Delaware consumer protection act.
0742	Craig Martin	A	09/24/10	4.0	999	Drafting memo on claims to be asserted against State Street.
0742	Craig Martin	A	09/24/10	4.0	999	Reserch on claims under NY consumer protection act.

1538	Paul Scarlato	OC	09/24/10	3.0	010	Factual Investigation - Case development
0742	Craig Martin	A	09/27/10	4.0	999	Research on NY Consumer Protection Act.
0742	Craig Martin	A	09/27/10	4.0	999	Research on conduct in NY under NY Consumer Protection Act.
1538	Paul Scarlato	OC	09/27/10	4.0	010	Factual Investigation - Review and analyze contracts; research legal claims
0479	Jonathan Gardner	P	09/28/10	0.2	999	Attorney meeting to discuss foreign exchange fees and possible legal theories.
0742	Craig Martin	A	09/28/10	4.0	999	Research on Delaware Consumer Protection Statutes.
0742	Craig Martin	A	09/28/10	4.0	999	Research on Conversion under NY law.
0742	Craig Martin	A	09/28/10	3.0	999	Drafting memo on viability of conversion claim.
0742	Craig Martin	A	09/28/10	2.0	999	Drafting memo on viability of claim under Delaware Consumer Protection Act.
0751	Amy Greenbaum	I	09/28/10	0.2	999	Attorney meeting to discuss foreign exchange fees and possible legal theories.
0826	Francisco Malonzo	PL	09/28/10	0.2	999	Attorney meeting to discuss foreign exchange fees and possible legal theories.
1538	Paul Scarlato	OC	09/28/10	2.5	050	Pleadings/Briefs - Review and comment on fact section of complaint
0742	Craig Martin	A	09/29/10	4.0	999	Drafting memo on Convesion Class.
0742	Craig Martin	A	09/29/10	4.0	999	Drafting memo on NY Consumer Protection Act.
0742	Craig Martin	A	09/29/10	4.0	999	Research on Conversion Claims.
1538	Paul Scarlato	OC	09/29/10	2.5	130	Meetings of Counsel - Conference with M. Lesser re: source of fiduciary duty
0023	Eric Belfi	P	09/30/10	1.5	999	Reviewed case.
0742	Craig Martin	A	09/30/10	4.0	999	Drafting memo analyzing state law claims against State Street.
0742	Craig Martin	A	09/30/10	3.0	999	Research on PA Consumer Protection Act.
0742	Craig Martin	A	09/30/10	3.0	999	SOL research on Common Law Claims in NY.
0742	Craig Martin	A	09/30/10	2.0	999	Drafting and editing memo on Claims to be asserted against State Street in a nationwide class action.
0742	Craig Martin	A	10/04/10	2.0	999	Analyzing █████ Custodial Agreement.
0023	Eric Belfi	P	10/05/10	2.0	999	Worked on the complaint.
0479	Jonathan Gardner	P	10/06/10	0.2	999	Attorney meeting to discuss complaint, legal theories, and status of investigation.
0742	Craig Martin	A	10/06/10	3.0	999	Research on tolling agreement.
0751	Amy Greenbaum	I	10/06/10	1.0	999	Attorney meeting to discuss complaint, legal theories, and status of investigation.
0826	Francisco Malonzo	PL	10/06/10	0.2	999	Attorney meeting to discuss complaint, legal theories, and status of investigation.
1538	Paul Scarlato	OC	10/06/10	0.2	130	Meetings of Counsel - Attorney meeting to discuss complaint, legal theories and status of investigation
1538	Paul Scarlato	OC	10/06/10	1.5	140	Case Management/Strategy - Strategy emails with co-counsel
0742	Craig Martin	A	10/07/10	4.0	999	Analyzing tolling arguments for CPA claims and New York common law _____.
0742	Craig Martin	A	10/07/10	2.5	999	Drafting memo analyzing tolling argument.
0742	Craig Martin	A	10/11/10	1.0	999	Meeting/conference call.
0742	Craig Martin	A	10/11/10	3.0	999	Analyze and research on Tolling agreements.
0742	Craig Martin	A	10/11/10	3.0	999	Research on equitable tolling.
0742	Craig Martin	A	10/11/10	3.0	999	Continuing violation theory research.
0479	Jonathan Gardner	P	10/12/10	0.1	999	Attorney meeting to discuss legal theories.
0742	Craig Martin	A	10/12/10	1.0	999	Editing tolling memo.
0751	Amy Greenbaum	I	10/12/10	0.1	999	Attorney meeting to discuss legal theories.
0826	Francisco Malonzo	PL	10/12/10	0.1	999	Attorney meeting to discuss legal theories.
1538	Paul Scarlato	OC	10/12/10	2.0	140	Case Management/Strategy - Strategy issues
1538	Paul Scarlato	OC	10/12/10	0.1	130	Meetings of Counsel - Attorney meeting to discuss legal theories
1538	Paul Scarlato	OC	10/13/10	0.3	140	Case Management/Strategy - Draft case summary for █████
1538	Paul Scarlato	OC	10/14/10	1.5	140	Case Management/Strategy - Draft case summary for █████

0479	Jonathan Gardner	P	10/15/10	0.5	999	Follow up with Mass. research.
1538	Paul Scarlato	OC	10/15/10	3.0	140	Case Management/Strategy - Review statement of facts; discuss with co-counsel
0479	Jonathan Gardner	P	10/18/10	0.4	999	Meeting with P. Scarlato and C. Martin; research Mass. law on conversion.
1538	Paul Scarlato	OC	10/18/10	4.5	130	Meetings of Counsel - Travel to NY for meeting with co-counsel; meet with co-counsel
0742	Craig Martin	A	10/19/10	4.0	999	Research on elements of conversion claim in Mass.
0742	Craig Martin	A	10/19/10	4.0	999	Research on whether money conversion claim exist in Mass.
0742	Craig Martin	A	10/19/10	4.0	999	Additional research on statute of limitations tolling for conversion in Mass.
0742	Craig Martin	A	10/19/10	2.0	999	Drafting memo on conversion claims in Mass.
0742	Craig Martin	A	10/20/10	4.0	999	Analysis of Massachusetts law on conversion.
0742	Craig Martin	A	10/20/10	4.0	999	Drafting memo on viability of asserting conversion of money claims in Massachusetts.
1538	Paul Scarlato	OC	10/20/10	2.0	050	Legal Research - Research re: conversion claim
1538	Paul Scarlato	OC	10/21/10	1.5	050	Legal Research - Conversion research
1538	Paul Scarlato	OC	10/22/10	2.0	050	Legal Research - Conversion research
1538	Paul Scarlato	OC	10/25/10	1.5	050	Legal Research - Additional conversion research; research re: 93A Notice
1538	Paul Scarlato	OC	10/26/10	2.5	010	Factual Investigation - Internet research; case development
1538	Paul Scarlato	OC	10/27/10	2.5	140	Case Management/Strategy - Emails re: [REDACTED] case development
1538	Paul Scarlato	OC	10/28/10	2.0	010	Factual Investigation - Case investigation
0023	Eric Belfi	P	11/02/10	2.5	999	Researched the case.
0023	Eric Belfi	P	11/03/10	2.5	999	Communicated with client; reviewed draft of the complaint.
0479	Jonathan Gardner	P	11/03/10	1.1	999	Prepare for meeting with Arkansas Teacher's Ret. System ; analyze Arkansas Teacher's contract and RFP with State Street.
0712	Cindy Chan	PL	11/03/10	0.2	999	Attend to travel issues for Garrett Bradley.
0023	Eric Belfi	P	11/04/10	2.5	999	Met with client and updated him on the case.
0479	Jonathan Gardner	P	11/04/10	2.1	999	Meeting with Arkansas Teachers Ret. System, E. Belfi and G. Bradley; analyze Arkansas claim.
1538	Paul Scarlato	OC	11/04/10	3.0	010	Factual Investigation - Case investigation
0023	Eric Belfi	P	11/05/10	1.5	999	Reviewed communication from State Street.
0479	Jonathan Gardner	P	11/05/10	0.7	999	Review State Street settlement with [REDACTED]
0023	Eric Belfi	P	11/08/10	3.5	999	Communicated with client; prepared materials; spoke with co-counsel.
0479	Jonathan Gardner	P	11/08/10	0.1	999	Attorney meeting to discuss status of client search and complaint.
0479	Jonathan Gardner	P	11/08/10	1.1	999	Prepare for meeting.
0751	Amy Greenbaum	I	11/08/10	0.1	999	Attorney meeting to discuss status of client search and complaint.
0826	Francisco Malonzo	PL	11/08/10	0.1	999	Attorney meeting to discuss status of client search and complaint.
1538	Paul Scarlato	OC	11/08/10	1.0	050	Pleadings/Briefs - Draft complaint; case investigation
1538	Paul Scarlato	OC	11/08/10	0.1	130	Meetings of Counsel - Attorney meeting to discuss status of client search and complaint
0479	Jonathan Gardner	P	11/09/10	4.7	999	Prepare for and attend meeting with co-counsel; attend to investigation on State Street and Mellon Bank; meeting with A. Greenbaum and P. Scarlato.
0712	Cindy Chan	PL	11/09/10	0.2	999	Attend to Lieff Cabraser and Thornton & Naumes meeting issues.
0751	Amy Greenbaum	I	11/09/10	2.3	999	Met with counsel, reviewed pleadings and began to cultivate leads.
1538	Paul Scarlato	OC	11/09/10	6.0	140	Case Management/Strategy - Travel to New York City; attend case strategy meeting
0742	Craig Martin	A	11/10/10	4.0	999	Research on incentive comp to class representative.
0742	Craig Martin	A	11/10/10	4.0	999	Research on claims under agency law.
0751	Amy Greenbaum	I	11/10/10	9.7	999	Created targeted lead list.
0826	Francisco Malonzo	PL	11/10/10	2.8	999	Researched related actions. Uploaded shared drive.
1538	Paul Scarlato	OC	11/10/10	3.0	010	Factual Investigation - Legal research; review investigative reports; consult with Amy Greenbaum re: investigation
0479	Jonathan Gardner	P	11/11/10	1.2	999	Attend to investigation; correspond with co-counsel.

0751	Amy Greenbaum	I	11/11/10	7.9	999	Complied lists of leads and reviewed relevant pleadings.
0754	Alan Gumeny	I	11/11/10	0.5	999	Reviewed BONY docs from Inv. Warner's file and conferred with Attorney Garner re: investigation going forward on Litigation team.
0826	Francisco Malonzo	PL	11/11/10	1.4	999	Researched derivative action.
0023	Eric Belfi	P	11/12/10	1.5	999	Prepared communication for the client.
0742	Craig Martin	A	11/12/10	4.0	999	Research on class certification in 2nd Circuit.
0742	Craig Martin	A	11/12/10	3.0	999	Research on class certification in 2nd Circuit.
0742	Craig Martin	A	11/12/10	1.5	999	Research on class certification.
0751	Amy Greenbaum	I	11/12/10	6.8	999	Looked for leads in Mellon and reviewed relevant information.
0754	Alan Gumeny	I	11/12/10	2.0	999	Reviewed Inv. Warner and Gumeny's previous investigation docs and forwarded to new investigator Greenbaum. Updated access and finalized interview reports.
1538	Paul Scarlato	OC	11/12/10	3.0	010	Factual Investigation - Research re: agency claims; investigation into confidential witnesses
0751	Amy Greenbaum	I	11/13/10	1.0	999	Communicated with counsel.
0751	Amy Greenbaum	I	11/14/10	3.8	999	Cultivated leads for a potential case against Northern Trust.
0742	Craig Martin	A	11/15/10	4.0	999	Research class certification 2nd Circuit.
0742	Craig Martin	A	11/15/10	4.0	999	Research class certification 3rd Circuit.
0742	Craig Martin	A	11/15/10	4.0	999	Research class certification 1st Circuit.
0751	Amy Greenbaum	I	11/15/10	6.8	999	Contacted potential witnesses in preparation for filing complaint.
0826	Francisco Malonzo	PL	11/15/10	1.2	999	Uploaded shared drive with recent filings.
0742	Craig Martin	A	11/16/10	4.0	999	Analysis of 1st Circuit Class Certification cases.
0742	Craig Martin	A	11/16/10	4.0	999	Drafting memo on 1st Circuit case law.
0742	Craig Martin	A	11/16/10	2.0	999	Research on 8th Circuit case law.
0751	Amy Greenbaum	I	11/16/10	7.3	999	Contacted potential witnesses in preparation for filing complaint.
1538	Paul Scarlato	OC	11/16/10	2.5	010	Factual Investigation - Case investigation
0023	Eric Belfi	P	11/17/10	2.5	999	Researched and communicated with the client.
0742	Craig Martin	A	11/17/10	4.0	999	Research class certification 8th Circuit.
0742	Craig Martin	A	11/17/10	4.0	999	Drafting memo comparing class certification in 1, 2, 3, 8th Circuit.
0742	Craig Martin	A	11/17/10	4.0	999	Edit memo on class certification analysis.
0751	Amy Greenbaum	I	11/17/10	7.9	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	11/17/10	2.0	010	Factual Investigation - Case investigation; memo re: incentive award
0023	Eric Belfi	P	11/18/10	1.5	999	Communicated with clients.
0479	Jonathan Gardner	P	11/18/10	0.2	999	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
0742	Craig Martin	A	11/18/10	2.0	999	Reviewing amended complaint.
0751	Amy Greenbaum	I	11/18/10	4.5	999	Contacted potential Northern Trust relators.
0751	Amy Greenbaum	I	11/18/10	4.5	999	Pursued state street leads.
0751	Amy Greenbaum	I	11/18/10	0.2	999	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
0826	Francisco Malonzo	PL	11/18/10	0.8	999	Drafted conflict checks. Emails with attorneys.
0826	Francisco Malonzo	PL	11/18/10	0.2	999	Attorney meeting to discuss status of investigation, possible clients and qui tam actions.
1538	Paul Scarlato	OC	11/18/10	0.2	130	Meetings of Counsel - Attorney meeting to discuss status of investigation, possible clients and qui tam actions
1538	Paul Scarlato	OC	11/18/10	2.5	140	Case Management/Strategy - Reports to Belfi re: factual investigation; review and edit reports
0479	Jonathan Gardner	P	11/19/10	1.2	999	Research; confer with P. Scarlato.
0751	Amy Greenbaum	I	11/19/10	8.3	999	Contacted potential witnesses from Northern Trust and State Street. Conferred with counsel.
1538	Paul Scarlato	OC	11/19/10	5.0	140	Case Management/Strategy - Pickett write up; [REDACTED] agreement; case strategy
0479	Jonathan Gardner	P	11/22/10	0.9	999	Conference call with co-counsel; attend to investigation.

0751	Amy Greenbaum	I	11/22/10	7.7	999	Contacted potential witnesses in BNY Mellon.
0023	Eric Belfi	P	11/23/10	1.0	999	Communicated with client.
0751	Amy Greenbaum	I	11/23/10	3.2	999	Contacted potential witnesses.
1538	Paul Scarlato	OC	11/23/10	2.0	040	Client discovery - Client response re: investigation
0023	Eric Belfi	P	11/24/10	4.0	999	Researched the case and spoke with client.
0751	Amy Greenbaum	I	11/24/10	2.6	999	Contacted potential witnesses and corresponded with counsel.
1538	Paul Scarlato	OC	11/24/10	1.5	140	Case Management/Strategy - Interviews
0751	Amy Greenbaum	I	11/26/10	1.5	999	Wrote-up State Street memos
0751	Amy Greenbaum	I	11/28/10	1.5	999	Wrote-up Northern Trust witness memo.
0751	Amy Greenbaum	I	11/28/10	1.8	999	Wrote-up State Street Memo.
0023	Eric Belfi	P	11/29/10	1.5	999	Prepared communication to the client.
0751	Amy Greenbaum	I	11/29/10	6.3	999	Contacted potential witnesses and wrote-up reports.
0479	Jonathan Gardner	P	11/30/10	0.1	999	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
0751	Amy Greenbaum	I	11/30/10	3.8	999	Contacted potential witnesses and wrote-up reports.
0751	Amy Greenbaum	I	11/30/10	0.1	999	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
0826	Francisco Malonzo	PL	11/30/10	1.2	999	Researched qui tam actions.
0826	Francisco Malonzo	PL	11/30/10	0.1	999	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
1054	Cheryl Boria	PL	11/30/10	0.1	999	Attorney meeting to discuss clients, status of investigation, and qui tam issues.
1538	Paul Scarlato	OC	11/30/10	0.1	130	Meetings of Counsel - Attorney meeting to discuss clients, status of investigation and qui tam issues
1538	Paul Scarlato	OC	11/30/10	1.5	140	Case Management/Strategy - Telephone conference with Amy Greenbaum re: investigation
0023	Eric Belfi	P	12/01/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/01/10	3.3	999	Communicated with co-counsel regarding investigative update and client meeting.
1538	Paul Scarlato	OC	12/01/10	2.5	140	Case Management/Strategy - Conference with co-counsel re: update on investigation
0479	Jonathan Gardner	P	12/02/10	0.9	999	Meeting with co-counsel to discuss investigation and case strategy.
0742	Craig Martin	A	12/02/10	2.5	999	Prep for meeting with Garrett and Mike co-counsel on status of FX case.
0751	Amy Greenbaum	I	12/02/10	6.3	999	Met with co-counsel regarding investigation, continued to contact witnesses and write-up reports.
1538	Paul Scarlato	OC	12/02/10	7.0	140	Case Management/Strategy - Travel to NY for meeting with Thornton, Bradley and Gardner; investigation and follow-up with Lieff; review and edit investigative write ups; follow up with Belfi and Lieff
0023	Eric Belfi	P	12/03/10	2.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/03/10	8.7	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	12/03/10	1.0	010	Factual Investigation - Case development
0023	Eric Belfi	P	12/06/10	2.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/06/10	2.1	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	12/06/10	2.0	140	Case Management/Strategy - Telephone conference with Amy Greenbaum re: investigation; telephone call with Lexi Hazan re: complaint draft
0023	Eric Belfi	P	12/07/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/07/10	8.7	999	Contacted potential witnesses and wrote-up reports.
0751	Amy Greenbaum	I	12/07/10	1.3	999	Northern Trust-Wrote-up witness memos.
1538	Paul Scarlato	OC	12/07/10	0.5	140	Case Management/Strategy - Emails to/from Garrett Bradley re: case status
0023	Eric Belfi	P	12/08/10	2.0	999	Worked on the case.
0742	Craig Martin	A	12/08/10	1.0	999	Reading Manning write-up.
0742	Craig Martin	A	12/08/10	3.0	999	Reserach on class act and reading witness report.
0023	Eric Belfi	P	12/09/10	3.0	999	Worked on the case.

0712	Cindy Chan	PL	12/09/10	0.7	999	Research for California complaint, Washington settlement and Stan Shelton's statement for Javier Bleichmar.
1538	Paul Scarlato	OC	12/09/10	2.0	010	Factual Investigation - Case development
0023	Eric Belfi	P	12/10/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/10/10	2.3	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	12/10/10	1.5	140	Case Management/Strategy - Edit Shelton write-up
0751	Amy Greenbaum	I	12/11/10	1.3	999	Corresponded with counsel regarding investigation.
1538	Paul Scarlato	OC	12/11/10	0.5	140	Case Management/Strategy - Email to /from Jonathan Gardner, Esq. re: status
0023	Eric Belfi	P	12/13/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/13/10	6.3	999	Reviewed draft complaint, contacted potential witnesses and cultivated new leads.
1538	Paul Scarlato	OC	12/13/10	2.5	050	Pleadings/Briefs - Draft complaint
0023	Eric Belfi	P	12/14/10	3.0	999	Worked on the case.
0479	Jonathan Gardner	P	12/14/10	0.2	999	Attorney meeting to discuss legal theories and status of investigation.
0479	Jonathan Gardner	P	12/14/10	0.8	999	Attend to complaint.
0742	Craig Martin	A	12/14/10	2.0	999	Reviewing witness summaries and complaint.
0751	Amy Greenbaum	I	12/14/10	0.2	999	Attorney meeting to discuss legal theories and status of investigation.
0826	Francisco Malonzo	PL	12/14/10	0.2	999	Attorney meeting to discuss legal theories and status of investigation.
1538	Paul Scarlato	OC	12/14/10	1.5	140	Case Management/Strategy - Emails to co-counsel re: claim
1538	Paul Scarlato	OC	12/14/10	0.2	130	Meetings of Counsel - Attorney meeting to discuss legal theories and status of investigation
0023	Eric Belfi	P	12/15/10	3.0	999	Worked on the case.
0023	Eric Belfi	P	12/16/10	2.0	999	Worked on the case.
0742	Craig Martin	A	12/16/10	4.0	999	Reading witness's interviews. Draft of Complaint.
0751	Amy Greenbaum	I	12/16/10	2.9	999	Contacted potential witnesses and wrote-up reports.
0023	Eric Belfi	P	12/17/10	2.5	999	Worked on the case.
0023	Eric Belfi	P	12/20/10	11.0	999	Traveled up to Boston and back and went to meeting with State Street.
0751	Amy Greenbaum	I	12/20/10	1.7	999	Communicated with counsel regarding amended complaint.
1538	Paul Scarlato	OC	12/20/10	0.3	140	Case Management/Strategy - Emails re: meeting
0023	Eric Belfi	P	12/21/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/21/10	2.8	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	12/21/10	1.5	140	Case Management/Strategy - Case strategy
0023	Eric Belfi	P	12/22/10	3.0	999	Worked on the case.
0479	Jonathan Gardner	P	12/22/10	1.0	999	Meeting with M. Thornton to discuss case strategy for complaint in Massachusetts.
0751	Amy Greenbaum	I	12/22/10	4.8	999	Met with co-counsel and reviewed information in preparation for filing amended complaint. Contacted potential additional witnesses.
1538	Paul Scarlato	OC	12/22/10	1.0	130	Meetings of Counsel - Meeting re: complaint
0023	Eric Belfi	P	12/23/10	3.0	999	Worked on the case.
0751	Amy Greenbaum	I	12/23/10	3.5	999	Contacted potential witnesses and wrote-up reports.
1538	Paul Scarlato	OC	12/23/10	1.0	140	Case Management/Strategy - Case investigation; emails re: ATRS
0479	Jonathan Gardner	P	12/25/10	0.6	999	Review correspondence from co-counsel.
0751	Amy Greenbaum	I	12/27/10	0.8	999	Communicated with counsel regarding complaint.
1538	Paul Scarlato	OC	12/28/10	2.0	010	Factual Investigation - Emails re: investigation
0751	Amy Greenbaum	I	01/02/11	0.7	999	Communicated with counsel regarding complaint and tasks.
0023	Eric Belfi	P	01/03/11	2.5	999	Researched the case.
0479	Jonathan Gardner	P	01/03/11	0.8	999	Confer with P. Scarlato and C. Martin.
0742	Craig Martin	A	01/03/11	4.0	999	Analyzing memos on 93A claims under Mass. law.
0742	Craig Martin	A	01/03/11	1.0	999	Analyzing unfair or deceptive practices by state.

0742	Craig Martin	A	01/03/11	4.0	999	Analyzing 93A case law.
0751	Amy Greenbaum	I	01/03/11	1.4	999	Communicated with counsel about complaint and reviewed complaint.
0023	Eric Belfi	P	01/04/11	2.5	999	Communicated with the client.
0742	Craig Martin	A	01/04/11	4.0	999	Research on Section 9 claims under 93A.
0742	Craig Martin	A	01/04/11	4.0	999	Research on Section 11 claims under 93A.
0742	Craig Martin	A	01/04/11	2.0	999	Drafting memo on Section 9 and Section 11 claims.
0751	Amy Greenbaum	I	01/04/11	3.5	999	Reviewed complaint and identified sources in the facts section.
1538	Paul Scarlato	OC	01/04/11	0.5	050	Pleadings/Briefs - Review Angie Nguyen's analysis of the complaint
0023	Eric Belfi	P	01/05/11	3.0	999	Researched the case.
0479	Jonathan Gardner	P	01/05/11	0.2	999	Attorney meeting to discuss status of investigation and complaint.
0479	Jonathan Gardner	P	01/05/11	1.1	999	Conference call with co-counsel; attend to memo to Arkansas.
0742	Craig Martin	A	01/05/11	1.5	999	Conference call with Thorton.
0751	Amy Greenbaum	I	01/05/11	0.2	999	Attorney meeting to discuss status of investigation and complaint.
0826	Francisco Malonzo	PL	01/05/11	0.2	999	Attorney meeting to discuss status of investigation and complaint.
1054	Cheryl Boria	PL	01/05/11	0.2	999	Attorney meeting to discuss status of investigation and complaint.
1538	Paul Scarlato	OC	01/05/11	0.2	130	Meetings of Counsel - Attorney meeting to discuss investigation and complaint
1538	Paul Scarlato	OC	01/05/11	1.0	140	Case Management/Strategy - Telephone conference with plaintiffs' team; review ██████████ Transparency Reports
0023	Eric Belfi	P	01/06/11	2.0	999	Worked on the case.
0742	Craig Martin	A	01/06/11	2.0	999	Drafting client memo.
0023	Eric Belfi	P	01/07/11	2.0	999	Worked on the case.
0479	Jonathan Gardner	P	01/07/11	1.1	999	Prepare memo on Massachusetts law; confer with P. Scarlato and C. Martin.
0742	Craig Martin	A	01/07/11	4.0	999	Research on 93A claims under Mass. law.
0742	Craig Martin	A	01/07/11	4.0	999	Research on 93A claims under Mass. law.
1538	Paul Scarlato	OC	01/07/11	0.5	140	Case Management/Strategy - MA memo
1538	Paul Scarlato	OC	01/08/11	1.0	140	Case Management/Strategy - Emails to/from Jonathan Gardner, Esq. re: memo
0023	Eric Belfi	P	01/10/11	3.0	999	Worked on the case.
0742	Craig Martin	A	01/10/11	1.0	999	Reviewing comments on memo with J. Gardner.
0742	Craig Martin	A	01/10/11	4.0	999	Research in case law on 93A claim.
0742	Craig Martin	A	01/10/11	4.0	999	Drafting and editing memo on 93A.
0742	Craig Martin	A	01/10/11	3.0	999	Research on cash law for consumer and business claims.
1538	Paul Scarlato	OC	01/10/11	0.5	140	Case Management/Strategy - Legal research; edit MA memo
0023	Eric Belfi	P	01/11/11	3.5	999	Researched the case.
0479	Jonathan Gardner	P	01/11/11	2.2	999	Prepare memo for client on Massachusetts law; confer with P. Scarlato and C. Martin.
0742	Craig Martin	A	01/11/11	4.0	999	Drafting State Street memo.
0742	Craig Martin	A	01/11/11	4.0	999	Editing State Street memo.
0742	Craig Martin	A	01/11/11	2.0	999	Editing State Street memo.
1538	Paul Scarlato	OC	01/11/11	2.0	140	Case Management/Strategy - Edit MA memo
0023	Eric Belfi	P	01/12/11	4.0	999	Worked on the case.
0742	Craig Martin	A	01/12/11	3.0	999	Reading and reviewing and editing memo and case law on 93A.
0742	Craig Martin	A	01/13/11	4.0	999	Reviewing 93A and related case law.
0742	Craig Martin	A	01/13/11	2.0	999	Reviewing memo on 93A claim.
0742	Craig Martin	A	01/14/11	4.0	999	Reviewing 93A memo and research.
0742	Craig Martin	A	01/14/11	3.0	999	Reading research on 93A claims.
0023	Eric Belfi	P	01/18/11	3.0	999	Worked on case.
0742	Craig Martin	A	01/18/11	4.0	999	Reviewing and analyzing memo to cut it in length.

0742	Craig Martin	A	01/18/11	4.0	999	Reading and analyzing complaints against State Street.
1538	Paul Scarlato	OC	01/18/11	1.5	130	Meetings of Counsel - Meet with co-counsel to discuss case strategy
0023	Eric Belfi	P	01/19/11	3.0	999	Worked on case.
0479	Jonathan Gardner	P	01/19/11	1.1	999	Prepare memo for client on Massachusetts consumer protection statute.
0742	Craig Martin	A	01/19/11	4.0	999	Drafting and editing memo on 93A claim.
0742	Craig Martin	A	01/19/11	4.0	999	Researching 93A claim.
0742	Craig Martin	A	01/19/11	4.0	999	Drafting and editing memo on 93A claim.
0023	Eric Belfi	P	01/20/11	2.0	999	Worked on case.
0103	Lawrence Sucharow	P	01/20/11	5.5	020	Review research memos in prep for revisions.
0479	Jonathan Gardner	P	01/20/11	1.4	999	Prepare memo for client on Massachusetts consumer protection statute.
0742	Craig Martin	A	01/20/11	4.0	999	Drafting and editing memo analyzing 93A claim against State Street.
0742	Craig Martin	A	01/20/11	4.0	999	Further research on 93A claim.
0742	Craig Martin	A	01/20/11	4.0	999	Drafting and editing memo on 93A claim.
1538	Paul Scarlato	OC	01/20/11	2.0	140	Case Management/Strategy - Edit MA memo
0023	Eric Belfi	P	01/21/11	3.0	999	Worked on case.
0103	Lawrence Sucharow	P	01/21/11	4.9	050	Continued review of research memos.
0742	Craig Martin	A	01/21/11	2.5	999	Reading memo.
0742	Craig Martin	A	01/21/11	2.5	999	Analyzing correspondence on pleading.
0712	Cindy Chan	PL	01/22/11	0.3	999	Compare and edit agreement for Arkansas Teacher; PDF two versions and email to Eric J. Belfi.
0742	Craig Martin	A	01/24/11	4.0	999	Research on pleading on information and belief.
0742	Craig Martin	A	01/24/11	4.0	999	Research on disclosing confidential witnesses.
0742	Craig Martin	A	01/24/11	2.0	999	Research on M.G.L. Rule 11.
0023	Eric Belfi	P	01/25/11	3.0	999	Worked on the complaint.
0742	Craig Martin	A	01/25/11	3.0	999	Editing memo on claims against State Street and memo on pleading on information and belief.
0023	Eric Belfi	P	01/26/11	4.0	999	Worked on complaint.
0023	Eric Belfi	P	01/27/11	5.0	999	Communicated with the client; discussed case with co-counsel; reviewed the complaint.
0023	Eric Belfi	P	01/28/11	2.0	999	Reviewed complaint.
0103	Lawrence Sucharow	P	01/28/11	5.8	020	Revise draft complaint.
0742	Craig Martin	A	01/28/11	1.0	999	Discussion with J. Gardner regarding Northern Trust memo.
0103	Lawrence Sucharow	P	01/29/11	3.6	020	Revise draft complaint.
0742	Craig Martin	A	01/30/11	2.0	999	Editing and revisions to memo to Northern Trust.
0742	Craig Martin	A	01/31/11	3.0	999	Analysis of potential impairment to team meeting on Einborn presentation.
0023	Eric Belfi	P	02/01/11	5.0	999	Worked on the complaint.
1538	Paul Scarlato	OC	02/01/11	1.5	010	Factual Investigation - Case development
0479	Jonathan Gardner	P	02/02/11	0.4	999	Confer with J. Fonti., et. al.
0751	Amy Greenbaum	I	02/02/11	1.8	999	Corresponded with counsel about the status of the investigation and client development.
1538	Paul Scarlato	OC	02/02/11	4.0	010	Factual Investigation - Case development
0023	Eric Belfi	P	02/03/11	2.5	999	Worked on memorandum for client.
0479	Jonathan Gardner	P	02/03/11	1.5	999	Attend meeting to discuss case strategy; attend to complaint.
0712	Cindy Chan	PL	02/03/11	0.8	999	Attend meeting to discuss complaint filing.
0751	Amy Greenbaum	I	02/03/11	2.1	999	Put together an investigative update memo.
1538	Paul Scarlato	OC	02/03/11	8.0	010	Factual Investigation - Case development; travel to New York for meeting; research re: same
0023	Eric Belfi	P	02/04/11	4.0	999	Worked on the complaint; spoke with client.
0751	Amy Greenbaum	I	02/04/11	0.9	999	Advised counsel of investigative progress.

0842	Nicholas Hector	A	02/04/11	1.0	999	Meeting re: research assignment
0842	Nicholas Hector	A	02/04/11	7.0	999	Research and drafting portions of initial complaint
1538	Paul Scarlato	OC	02/04/11	8.0	050	Pleadings/Briefs - Draft complaint
0479	Jonathan Gardner	P	02/05/11	2.6	999	Analyze and prepare comments on draft complaint; attorney conference to discuss additional causes of action.
0842	Nicholas Hector	A	02/05/11	7.5	999	Research in preparation to file initial complaint
1538	Paul Scarlato	OC	02/05/11	8.0	050	Pleadings/Briefs - Draft complaint
0479	Jonathan Gardner	P	02/06/11	1.4	999	Review legal research memos on State Street; analyze revised draft complaint.
0842	Nicholas Hector	A	02/06/11	5.0	999	Research in preparation to file initial complaint
1538	Paul Scarlato	OC	02/06/11	6.0	050	Pleadings/Briefs - Draft complaint
0023	Eric Belfi	P	02/07/11	5.0	999	Communicated with the client and worked on the complaint and retainer agreement.
0479	Jonathan Gardner	P	02/07/11	4.9	999	Review correspondence; comments on complaint; conference call with co-counsel to discuss strategy and complaint; finalize complaint.
0712	Cindy Chan	PL	02/07/11	1.5	999	Revised agreement for Arkansas Teacher; search for language regarding denial of class cert/fee negotiation (did not find); draft own language based on Eric J. Belfi's comments; conflict check and complaint filing issues.
0842	Nicholas Hector	A	02/07/11	5.0	999	Follow-up research in preparation to file initial complaint
0842	Nicholas Hector	A	02/07/11	1.0	999	Edits to the initial complaint
1538	Paul Scarlato	OC	02/07/11	13.0	050	Pleadings/Briefs - Draft complaint
0023	Eric Belfi	P	02/08/11	7.0	999	Spoke with client; worked on the complaint.
0479	Jonathan Gardner	P	02/08/11	2.6	999	Finalize complaint; conference call with co-counsel.
0625	Christopher Keller	P	02/08/11	3.2	999	Worked on edits to complaint draft.
0712	Cindy Chan	PL	02/08/11	1.5	999	Attend to Arkansas Teacher agreement issues; finalize and email to Eric J. Belfi; list of [REDACTED] funds and their custodians.
0842	Nicholas Hector	A	02/08/11	7.8	999	Follow-up research re: common law claims and class certification
1538	Paul Scarlato	OC	02/08/11	9.0	050	Pleadings/Briefs - Legal research; draft complaint; discuss strategy with co-counsel
0023	Eric Belfi	P	02/09/11	5.0	999	Worked on the complaint.
0366	Ira Schochet	P	02/09/11	1.3	999	Conference with Joel H. Bernstein regarding case; reviewed complaint
0479	Jonathan Gardner	P	02/09/11	2.8	999	Attention to complaint and filing issues; attorney conference to discuss staffing on case.
1538	Paul Scarlato	OC	02/09/11	10.0	050	Pleadings/Briefs - Motion for interim class counsel; draft complaint; redraft to remove fraud
0023	Eric Belfi	P	02/10/11	4.0	999	Worked on the case.
0366	Ira Schochet	P	02/10/11	2.5	999	Meeting with Joel H. Bernstein, Jonathan Gardner, Michael Rogers and Christopher J. Keller regarding strategy; reviewed revised complaint; reviewed demand letter draft and provided comments
0446	Joel Bernstein	P	02/10/11	4.2	999	Factual research; analyze complaint; met with Jonathan Gardner, Ira A. Schochet and Mike Rogers
0479	Jonathan Gardner	P	02/10/11	4.2	999	Finalize and file complaint; attorney meeting to discuss staffing and case strategy.
0625	Christopher Keller	P	02/10/11	3.1	999	Attend to complaint/ civil cover sheet issues. Conference call regarding same.
0712	Cindy Chan	PL	02/10/11	2.0	999	Begin State Street custodian research; pull all funds above \$500 million; attend to complaint filing issues; send filed complaint to George Hopkins on Eric J. Belfi's behalf.
0751	Amy Greenbaum	I	02/10/11	1.2	999	Worked out issues for filing of complaint.
0842	Nicholas Hector	A	02/10/11	9.5	999	Follow-up research re: common law claims and class certification
1179	Michael Rogers	P	02/10/11	6.0	999	Meeting with J. Bernstein, C. Keller, I. Schochet, J. Gardner and P. Scarlato regarding new cases, regarding investigation, regarding legal theories; research regarding same; draft memo regarding same.

1538	Paul Scarlato	OC	02/10/11	10.0	050	Pleadings/Briefs - Complaint preparation; meeting with new litigation team; telephone conference with team; 93A demand letter
0023	Eric Belfi	P	02/11/11	5.0	999	Worked on the case.
0366	Ira Schochet	P	02/11/11	2.3	999	Reviewed memos on legal claims and news story on issues; reviewed decision in Lancers re uniform representation theory; reviewed correspondence regarding Boilermakers agreement with CIBC
0446	Joel Bernstein	P	02/11/11	0.4	999	Strategy discussion at team meeting
0625	Christopher Keller	P	02/11/11	2.8	999	Attend to Public Relations issues.
0712	Cindy Chan	PL	02/11/11	0.5	999	Complete list of custodians for funds above \$500 million.
0751	Amy Greenbaum	I	02/11/11	0.8	999	Discussed investigative update.
0842	Nicholas Hector	A	02/11/11	3.8	999	Follow-up research re: common law claims and class certification
1179	Michael Rogers	P	02/11/11	4.5	999	Emails to/from J. Bernstein, C. Keller, E. Belfi, J. Gardner, C. Martin, P. Scarlato, J. Pontrelli, A. Greenbaum regarding new cases, regarding investigation, regarding legal theories; analyze memos and drafts regarding same.
1225	Stacy Auer	PL	02/11/11	0.7	999	Prep for and attend team mtg; update case calendar
1441	Jerome Pontrelli	I	02/11/11	1.0	999	Conference with attorney on case. Meet with investigators and discuss case updates.
1441	Jerome Pontrelli	I	02/11/11	0.5	999	Conference call with Milberg LLP.
1441	Jerome Pontrelli	I	02/11/11	2.0	999	Travel to Milberg LLP for meeting on case.
1538	Paul Scarlato	OC	02/11/11	1.0	140	Case Management/Strategy - Research and case strategy
0023	Eric Belfi	P	02/14/11	2.0	999	Worked on the case.
0366	Ira Schochet	P	02/14/11	3.2	999	Meeting with group regarding strategy and projects; reviewed and made comments on draft demand letter; Telephone call with D Chiplock and Michael Rogers
0446	Joel Bernstein	P	02/14/11	1.0	999	Meeting with investigators, Ira A. Schochet, Mike Rogers, Jonathan Gardner, Scarlato re: amending complaint and preliminary motions
0751	Amy Greenbaum	I	02/14/11	0.8	999	Meeting to discuss investigation.
1179	Michael Rogers	P	02/14/11	6.4	999	Conferences with J. Bernstein, I. Schochet, D. Goldsmith, J. Gardner, P. Scarlato regarding claims, regarding amended complaint, regarding preliminary injunction motion; research regarding same; draft same; draft demand letter.
1225	Stacy Auer	PL	02/14/11	0.9	999	Email re: FX meeting; email w/ Mike Rogers and IT re: access to shared drive; internet searches for General Counsel of State Street Corp; email to Mike Rogers re: same; review/maintain/update shared drive;
1441	Jerome Pontrelli	I	02/14/11	1.0	999	Meeting on case with attorneys.
1441	Jerome Pontrelli	I	02/14/11	1.0	999	Review Memos and develop leads.
1538	Paul Scarlato	OC	02/14/11	4.0	050	Pleadings/Briefs - Attend team meeting; edit demand letter
0023	Eric Belfi	P	02/15/11	3.5	999	Worked on the case; updated the client.
0366	Ira Schochet	P	02/15/11	0.8	999	Reviewed edits to demand letter and e-mails regarding discussions with Defendant's counsel regarding same
0479	Jonathan Gardner	P	02/15/11	0.6	999	Prepare demand letter.
0571	David Goldsmith	P	02/15/11	0.5	999	Discussion with Michael H. Rogers regarding introduction to case, claims, procedural status, strategic issues.
0625	Christopher Keller	P	02/15/11	3.1	999	Attend to Demand Letter issues.
0751	Amy Greenbaum	I	02/15/11	0.8	999	Met with attorneys about investigation.
1179	Michael Rogers	P	02/15/11	6.6	999	Telephone call with P. Scarlato regarding claims; emails to/from J. Bernstein, C. Keller, E. Belfi, I. Schochet, D. Goldsmith, J. Gardner, JG, P. Scarlato, and co-counsel regarding demand letter; telephone call with E. Belfi regarding same, regarding investigation, regarding client documents; edits to demand letter.

1441	Jerome Pontrelli	I	02/15/11	1.5	999	Reviewed draft Mellon complaint and [REDACTED].
1538	Paul Scarlato	OC	02/15/11	4.0	050	Pleadings/Briefs - Edit demand letter; investigation update; interim motion for lead
0366	Ira Schochet	P	02/16/11	0.8	999	Reviewed additional edits to demand letter; reviewed Joel H. Bernstein e-mail regarding meet and confer regarding demand letter waiver
0446	Joel Bernstein	P	02/16/11	1.4	999	Letter to defendant re: 30 day demand
0446	Joel Bernstein	P	02/16/11	0.2	999	Telephone conference with Bill Kaine at Wilma Hale re: 30 day demand letter
0446	Joel Bernstein	P	02/16/11	0.2	999	E-mail report to co-counsel
0625	Christopher Keller	P	02/16/11	1.5	999	Attend to demand letter issues.
1179	Michael Rogers	P	02/16/11	2.2	999	Finalize edits to Demand Letter; conference with J. Bernstein regarding investigation, regarding procedural strategy; review and edit P. Scarlato's draft leadership motion.
1225	Stacy Auer	PL	02/16/11	0.4	999	Email IT re: email distribution groups; review email and update shared drive;
1441	Jerome Pontrelli	I	02/16/11	2.5	999	Reviewed Mellon complaint. Reviewed Investigator Memos done in 2010. Conducted Accurint checks to locate Robert Donelan. Left messages with former employees.
1538	Paul Scarlato	OC	02/16/11	3.5	050	Pleadings/Briefs - Edit demand letter
1538	Paul Scarlato	OC	02/16/11	1.0	050	Pleadings/Briefs - Motion for Interim Class Counsel
0023	Eric Belfi	P	02/17/11	5.0	999	Worked on the case.
0366	Ira Schochet	P	02/17/11	0.8	999	Reviewed 23(g) statement draft
0712	Cindy Chan	PL	02/17/11	0.2	999	Check if [REDACTED] is a Qui Tam state; email map of Qui Tam states to Eric J. Belfi.
1538	Paul Scarlato	OC	02/17/11	6.0	050	Pleadings/Briefs - Draft Rule 23(g) motion
1179	Michael Rogers	P	02/18/11	0.6	999	Analyze P. Scarlato draft of 23(g) leadership motion.
1538	Paul Scarlato	OC	02/18/11	1.0	140	Case Management/Strategy - Case strategy
0023	Eric Belfi	P	02/21/11	3.0	999	Worked on the case.
0571	David Goldsmith	P	02/21/11	2.0	999	Review complaint, demand letter, California AG complaint and other background materials in preparation for March 4 strategy meeting.
0023	Eric Belfi	P	02/22/11	3.5	999	Worked on the case.
0571	David Goldsmith	P	02/22/11	0.7	999	Meeting with Michael H. Rogers regarding status and strategy, investigation and research issues.
1179	Michael Rogers	P	02/22/11	1.6	999	Conference with D. Goldsmith regarding investigation, claims, research questions, client; emails to/from E. Belfi and P. Scarlato regarding same.
1538	Paul Scarlato	OC	02/22/11	1.5	140	Case Management/Strategy - Emails to Rogers re: amended complaint; emails to/from Amy re: investigation
0023	Eric Belfi	P	02/23/11	5.0	999	Worked on the case.
1179	Michael Rogers	P	02/23/11	7.7	999	Research regarding Massachusetts law, regarding declaratory relief law,
0023	Eric Belfi	P	02/24/11	6.0	999	Worked on the case.
0366	Ira Schochet	P	02/24/11	0.9	999	Reviewed draft Interrogatories and RFPs and Michael Rogers comments and edits of same
0625	Christopher Keller	P	02/24/11	3.2	999	Attend to case issues.
0751	Amy Greenbaum	I	02/24/11	2.3	999	Communicated with counsel regarding investigation and contacted potential witnesses.
1179	Michael Rogers	P	02/24/11	5.8	999	Conference with A. Greenbaum regarding investigation; telephone calls with P. Scarlato regarding research and legal issues; research regarding Massachusetts law; draft memo regarding same; analyze Lieff Cabraser draft discovery requests; comments regarding same; emails to/from J. Bernstein, C. Keller, E. Belfi, I. Schochet, D. Goldsmith, J. Gardner, P. Scarlato regarding same.
1439	Rian Wroblewski	I	02/24/11	6.0	999	Identified former employees in the Forex/FX division.
1538	Paul Scarlato	OC	02/24/11	2.5	050	Pleadings/Briefs - Research re: amended complaint; review [REDACTED] document requests and interrogatories
0023	Eric Belfi	P	02/25/11	5.0	999	Communicated with the client; worked on the case.

0366	Ira Schochet	P	02/25/11	0.6	999	E-mail with P. Scarlato; Joel H. Bernstein and Christopher J. Keller regarding complaint issues
0479	Jonathan Gardner	P	02/25/11	0.5	999	Confer with P. Scarlato.
1225	Stacy Auer	PL	02/25/11	1.7	999	Review emails and update shared drive with work product and correspondence; review same; update case tracker;
1538	Paul Scarlato	OC	02/25/11	1.5	010	Factual Investigation - Research possible claims; emails to team re: strategy
0366	Ira Schochet	P	02/26/11	0.4	999	E-mail with Joel H. Bernstein regarding complaint issues
1538	Paul Scarlato	OC	02/26/11	0.5	070	Experts - Emails with team re: expert
0366	Ira Schochet	P	02/27/11	0.5	999	Reviewed David J. Goldsmith comments on discovery request drafts
0571	David Goldsmith	P	02/27/11	1.0	999	Review/mark-up draft document requests and interrogatories; e-mail to Michael H. Rogers and others regarding same.
1538	Paul Scarlato	OC	02/27/11	0.5	030	Discovery requests - Review Goldsmith's edits to discovery
0571	David Goldsmith	P	02/28/11	0.5	999	Meeting with Michael H. Rogers regarding status, discovery, strategic issues.
0625	Christopher Keller	P	02/28/11	4.5	999	Attend to public relations issues.
0751	Amy Greenbaum	I	02/28/11	0.6	999	Communicated with co-investigator and counsel regarding the status of the investigation.
1179	Michael Rogers	P	02/28/11	1.2	999	Conference with D. Goldsmith regarding investigation, regarding legal issues; telephone call with P. Scarlato regarding same.
1439	Rian Wroblewski	I	02/28/11	7.5	999	Located former employees.
1441	Jerome Pontrelli	I	02/28/11	3.0	999	Vetted leads. Conference with attorney on case. Left messages with former State Street employees.
1538	Paul Scarlato	OC	02/28/11	2.0	070	Experts- Telephone call with Peter Gulia re: possible expert report to team; research legal claims
0023	Eric Belfi	P	03/01/11	8.0	999	Worked on the case.
0751	Amy Greenbaum	I	03/01/11	1.8	999	Met with counsel about the investigation.
1115	Eunice Ahn	RA	03/01/11	0.1	999	Pull complaint, per R. Avan.
1179	Michael Rogers	P	03/01/11	3.7	999	Conference with J. Pontrelli and A. Greenbaum regarding investigation; analyze news article regarding FX trading; emails to/from J. Bernstein, D. Goldsmith, P. Scarlato, J. Pontrelli and A. Greenbaum regarding same.
1225	Stacy Auer	PL	03/01/11	0.5	999	Email to team re: FX Transparency; pull and distribute WSJ article;
1441	Jerome Pontrelli	I	03/01/11	0.5	999	Meeting with attorney on case (witness review).
1441	Jerome Pontrelli	I	03/01/11	0.5	999	Accurint checks to locate Aashish Saxena.
1441	Jerome Pontrelli	I	03/01/11	1.0	999	Interviewed former State Bank (SSB) business analyst Aashish Saxena.
1441	Jerome Pontrelli	I	03/01/11	1.0	999	Research on ██████████ F/X trading platform.
1441	Jerome Pontrelli	I	03/01/11	1.0	999	Interviewed former SSB Managing Director Andre Severi.
1441	Jerome Pontrelli	I	03/01/11	1.0	999	Meeting on case with Mike Rogers.
1441	Jerome Pontrelli	I	03/01/11	0.5	999	Accurint checks to locate former SSB AVP Andrew Freed; left messages with same.
1441	Jerome Pontrelli	I	03/01/11	0.5	999	Sent email to former SSB Managing Director Atif Bashir (in Singapore).
1441	Jerome Pontrelli	I	03/01/11	1.0	999	Left messages with several former SSB employees.
1441	Jerome Pontrelli	I	03/01/11	0.5	999	Contacted by Atif Bashir.
1538	Paul Scarlato	OC	03/01/11	3.0	010	Factual Investigation - Case investigation; review FX Futures reports; legal research
0023	Eric Belfi	P	03/02/11	2.0	999	Communicated with the client.
0446	Joel Bernstein	P	03/02/11	0.7	999	Conference with David J. Goldsmith, Mike Rogers and Paul Scarlato
0446	Joel Bernstein	P	03/02/11	1.6	999	Analyze consulting expert witness report of FX transparency
0446	Joel Bernstein	P	03/02/11	0.5	999	Strategy meeting
0571	David Goldsmith	P	03/02/11	3.0	999	Meeting with Joel H. Bernstein, Michael H. Rogers, Paul Scarlato regarding status and strategy issues; e-mails with team regarding same; e-mails to M. Lesser regarding setting up call; begin review FX Transparency analyses and client-specific data and information.

1179	Michael Rogers	P	03/02/11	4.3	999	Conference/conference call with J. Bernstein, D. Goldsmith, P. Scarlato regarding claims, investigation, consultants, clients.
1225	Stacy Auer	PL	03/02/11	1.1	999	Review email and email to Joel Bernstein and David Goldsmith re: deadline to file the Amended Complaint; prep for 3/3 team meeting; review emails from Mike Rogers and update shared drive w/ same; update case calendar; prep for team mtg on 3/16;
1441	Jerome Pontrelli	I	03/02/11	0.5	999	Contacted Atif Bashir in Singapore.
1441	Jerome Pontrelli	I	03/02/11	0.5	999	Conference with attorney.
1441	Jerome Pontrelli	I	03/02/11	1.0	999	Accurint checks to locate former SSB employees.
1441	Jerome Pontrelli	I	03/02/11	0.5	999	Contacted former SSB employee Tom Woodhand in New Zealand.
1441	Jerome Pontrelli	I	03/02/11	0.3	999	Sent email to former SSB employee Nathaniel Benchmoun in France.
1441	Jerome Pontrelli	I	03/02/11	1.0	999	Pulled fresh resumes and developed leads.
1441	Jerome Pontrelli	I	03/02/11	1.0	999	Interviewed former SSB F/X Back Office Specialist Jacqueline Tressler.
1441	Jerome Pontrelli	I	03/02/11	0.5	999	Accurint checks to locate Jennifer Chubb.
1441	Jerome Pontrelli	I	03/02/11	1.0	999	Interviewed former SSB AVP Jennifer Chubb.
1441	Jerome Pontrelli	I	03/02/11	1.3	999	Lengthy interview of former SSB Managing Director Atif Bashir (located in Singapore).
1441	Jerome Pontrelli	I	03/02/11	0.5	999	Communicated via email with Atif Bashir regarding additional witness leads.
1538	Paul Scarlato	OC	03/02/11	1.5	140	Case Management/Strategy - Conference call with team re: FX Futures & strategy; arrange meeting with co-counsel
0023	Eric Belfi	P	03/03/11	5.0	999	Worked on the case.
0366	Ira Schochet	P	03/03/11	0.6	999	Conference with Joel H. Bernstein, Michael Rogers, David J. Goldsmith regarding strategy
0446	Joel Bernstein	P	03/03/11	1.2	999	Analyze State Street client communication re: FX
0571	David Goldsmith	P	03/03/11	3.5	999	Team meeting regarding status and strategy; address conference call with M. Lesser; review FX Transparency analyses and client data; prepare for meeting with Lief Cabraser; discussions with Joel H. Bernstein and Michael H. Rogers regarding same.
1179	Michael Rogers	P	03/03/11	1.4	999	Research regarding Mass Consumer act law; analyze trading data and FX Transparency analysis regarding same.
1225	Stacy Auer	PL	03/03/11	1.7	999	Update shared drive with various materials including trading records from State Street; emails to IT re: attorney access to shared drive;
1439	Rian Wroblewski	I	03/03/11	5.5	999	Located Former Employees.
1441	Jerome Pontrelli	I	03/03/11	3.0	999	Drafted Investigative memo highlighting the results of interview and contacts with former SSB Managing Director Atif Bashir.
1441	Jerome Pontrelli	I	03/03/11	1.0	999	Drafted Interview Memo highlighting the results of interview with former SSB AVP Jennifer Chubb.
1441	Jerome Pontrelli	I	03/03/11	1.5	999	Developed lead. Contacted by Co-Co-counsel regarding witness contacts.
1441	Jerome Pontrelli	I	03/03/11	1.0	999	Left messages with former SSB employees.
1538	Paul Scarlato	OC	03/03/11	3.0	140	Case Management/Strategy - Research; strategy; review FX Transparency analysis
0023	Eric Belfi	P	03/04/11	4.0	999	Client communication.
0103	Lawrence Sucharow	P	03/04/11	1.8	130	Confer co-counsel.
0446	Joel Bernstein	P	03/04/11	1.6	999	Meeting with team, Fineman and Chiplock to discuss strategy
0446	Joel Bernstein	P	03/04/11	0.8	999	Telephone conference with Petere Giulio re: trust law

0571	David Goldsmith	P	03/04/11	4.5	999	Meeting with Joel H. Bernstein, J. Fineman, D. Chiplock, Michael H. Rogers, Paul Scarlato regarding status and strategy issues; prepare for same; telephone conference with M. Lesser, Michael H. Rogers, Paul Scarlato regarding same and FX Transparency meeting; telephone conference with Joel H. Bernstein, P. Gulia, Michael H. Rogers, Paul Scarlato regarding potential ERISA claims and co-counsel; multiple discussions with Joel H. Bernstein, Michael H. Rogers, Paul Scarlato regarding all and same; review ERISA memorandum regarding potential claims.
1179	Michael Rogers	P	03/04/11	6.7	999	Conferences, conference calls, telephone calls, and emails to/from/with J. Bernstein, D. Goldsmith, P. Scarlato, S. Fineman, D. Chiplock, M. Lesser, P. Gulia regarding claims, regarding research issues, regarding facts and investigation; analysis regarding memoranda regarding same.
1439	Rian Wroblewski	I	03/04/11	1.0	999	Located Former Employees.
1441	Jerome Pontrelli	I	03/04/11	8.0	999	Completed lengthy interview Memo of Atif Bashir. Completed interview memo of Jennifer Chubb. Conference call with attorneys on case. Left messages with former State Street employees. Interviewed former State Street financial analyst Youssef Girgis. Sent follow-up email to Girgis.
1538	Paul Scarlato	OC	03/04/11	6.0	130	Meetings of Counsel - Travel to NY for meeting of counsel; meet with co-counsel; telephone call with Gulia
1538	Paul Scarlato	OC	03/04/11	0.7	140	Case Management/Strategy - Review and analyze ERISA memo
1538	Paul Scarlato	OC	03/05/11	0.5	070	Experts - Email from Peter Gulia re: possible legal claims
0023	Eric Belfi	P	03/07/11	5.0	999	Client communication and research on the case.
0571	David Goldsmith	P	03/07/11	0.3	999	E-mails with M. Lesser regarding meeting with FX Transparency.
1225	Stacy Auer	PL	03/07/11	0.4	999	Review/maintain emails; update shared drive;
1439	Rian Wroblewski	I	03/07/11	2.0	999	Located Former Employees.
1441	Jerome Pontrelli	I	03/07/11	7.5	999	Accurant checks to locate Elena Theodorou in London (left message with same). Contacted former software performance analyst Lewis Rich-Shea. Interviewed former senior associate Bora Lim. Accurant check to locate Paul Briggs (sent email to same). Accurant checks to locate Carlos Morales (left message with same). Accurant checks to locate Tim Mazanec. Interviewed former VP Tim Mazanec. Left messages with former employees. Accurant checks to locate Yury Bubnov (sent email to same).
1538	Paul Scarlato	OC	03/07/11	4.0	050	Legal Research - Legal research for amended complaint
0023	Eric Belfi	P	03/08/11	3.0	999	Client communication.
0571	David Goldsmith	P	03/08/11	1.2	999	E-mails with team and co-counsel regarding Friday meeting with FX Transparency; discussions with Michael H. Rogers regarding status, strategy, amended complaint, meeting with FX Transparency, meeting with client in Little Rock; arrangements for FX Transparency meeting.
0751	Amy Greenbaum	I	03/08/11	2.2	999	Contacted potential witnesses and conferred with co-counsel.
1179	Michael Rogers	P	03/08/11	7.5	999	Telephone call with A. Greenbaum regarding investigation; conference with J. Pontrelli and R. Wroblewski regarding same; conferences with J. Bernstein and D. Goldsmith regarding theories, law, strategies, investigations; conference with M. Thornton, J. Pontrelli, A. Greenbaum regarding investigation; emails to/from J. Bernstein, C. Keller, E. Belfi, D. Goldsmith, P. Scarlato, G. Bradley, M. Lesser and J. Pontrelli regarding DOJ investigation.
1439	Rian Wroblewski	I	03/08/11	2.0	999	Located Former Employees.

1441	Jerome Pontrelli	I	03/08/11	8.5	999	Meeting with Mike Thorton, from Thorton and Noumes, on matter. Accurint checks to locate John Ellard. Lengthy interview of former VP John Ellard. Sent follow-up email to Ellard. Meeting with attorney on case. Left messages with former employees. Uploaded leads into Access. Developed fresh leads. Research on possible Department of Justice involvement in case.
1538	Paul Scarlato	OC	03/08/11	1.5	050	Legal Research - Search public records re: Department of Justice investigation
0571	David Goldsmith	P	03/09/11	1.5	999	Review new SEPTA v. BNY Mellon complaint; address issues regarding FX Transparency meeting; e-mails with team regarding gameplan for amended complaint, other issues; discussions with Joel H. Bernstein and Michael H. Rogers regarding same.
1179	Michael Rogers	P	03/09/11	1.1	999	Research regarding DOJ investigation; conferences, telephone calls, emails to/from J. Bernstein, D. Goldsmith, P. Scarlato regarding possible claims, investigation, strategy.
1225	Stacy Auer	PL	03/09/11	0.6	999	Review emails re: mtg on 3/11; review emails from Mike Rogers and update shared drive w/ same; ;
1439	Rian Wroblewski	I	03/09/11	3.0	999	Identified internal trading systems.
1441	Jerome Pontrelli	I	03/09/11	6.0	999	Conference call with Bob Demaria, investigator at LCHB on matter. Meet with attorneys on case. Draft Interview Memo. Contacted by former VP John Ellard with additional information.
1538	Paul Scarlato	OC	03/09/11	2.0	050	Pleadings/Briefs - Legal research for amended complaint
0023	Eric Belfi	P	03/10/11	3.0	999	Worked on the case.
0446	Joel Bernstein	P	03/10/11	1.0	999	Confer with Eric Belfi re: causes of action in Complaint
0571	David Goldsmith	P	03/10/11	0.6	999	Prepare for meeting with FX Transparency.
0712	Cindy Chan	PL	03/10/11	0.5	999	Attend to [REDACTED] FX data issues.
1179	Michael Rogers	P	03/10/11	0.7	999	Emails to/from J. Bernstein, D. Goldsmith, P. Scarlato, J. Pontrelli regarding claims, strategy, investigation.
1225	Stacy Auer	PL	03/10/11	1.6	999	Review various emails and attachments from Mike Rogers and update shared drive w/ same; emails to Mike Rogers re: same; assist in prep for 3/11/11 mtg;
1441	Jerome Pontrelli	I	03/10/11	6.0	999	Draft Interview Memo. Contacted by John Ellard; amended Memo to include additional information. Meeting with attorneys on case. Received and vetted additional leads. Left messages with former employees. Sent updated contact list to Bob Demaria, investigator at LCHB. Interviewed former senior accountant Karen Persad. Interviewed former Global Trading associate Timothy Smith.
1538	Paul Scarlato	OC	03/10/11	2.0	050	Pleadings/Briefs - Research re: amended complaint; emails re: investigation
0023	Eric Belfi	P	03/11/11	5.0	999	Met with the expert.
0446	Joel Bernstein	P	03/11/11	2.5	999	Meeting with FX transparency
0571	David Goldsmith	P	03/11/11	5.7	999	Meeting with Joel H. Bernstein, Eric J. Belfi, Michael H. Rogers, Paul Scarlato, Garrett Bradley, D. Chiplock, J. McGeehan (FX Transparency) regarding FX market issues and FX Transparency analyses, strategy on Amended Complaint; prepare for same; post-meetings discussions with Joel H. Bernstein, Eric J. Belfi, Michael H. Rogers, Garrett Bradley, Paul Scarlato regarding same; prepare for client meetings in Little Rock, discussions with Eric J. Belfi and Michael H. Rogers regarding same; review recent ARTRS-State Street correspondence; review ARTRS custodial agreement and State Street RFP for custodial services; research ARTRS/Hopkins.
0625	Christopher Keller	P	03/11/11	3.0	999	FX transparency meeting regarding Arkansas Teachers. Attend to case issues.
0712	Cindy Chan	PL	03/11/11	0.2	999	Attend to [REDACTED] FX issues.
1179	Michael Rogers	P	03/11/11	6.0	999	Conferences with J. Bernstein, C. Keller, E. Belfi, D. Goldsmith, P. Scarlato, G. Bradley, D. Chiplock, and J. McGahee regarding factual analysis of State Street trading, ATRS trading; regarding claims regarding complaint.

1225	Stacy Auer	PL	03/11/11	0.3	999	Review email and update shared drive with same;
						Updated case status report. Conference call with attorney on case. lengthy interview if former trade operations specialist Martin Cacal. Sent follow-up email to Cacaj. Interviewed former account manager Anthony Jones. Left messages with former employees.
1441	Jerome Pontrelli	I	03/11/11	7.5	999	
1538	Paul Scarlato	OC	03/11/11	2.0	050	Pleadings/Briefs - Legal research re: amended complaint
1538	Paul Scarlato	OC	03/11/11	4.5	130	Meetings of Counsel - Travel to/from NY for meeting with FX Transparency
1538	Paul Scarlato	OC	03/12/11	0.5	140	Case Management/Strategy - Emails to/from C. Martin re: continuing fraud theory
1538	Paul Scarlato	OC	03/12/11	2.0	050	Legal Research - Legal research for amended complaint
1179	Michael Rogers	P	03/13/11	2.3	999	Draft outline and talking points regarding meeting with ATRS; emails with D. Goldsmith regarding same.
0023	Eric Belfi	P	03/14/11	10.0	999	Traveled to and met with client on State Street.
0446	Joel Bernstein	P	03/14/11	0.3	999	Update from Mike Rogers re: client meetings
						Travel New York to Little Rock; meetings with G. Hopkins, W. Greathouse, D. Bumgardner, R. Graves at ARTRS regarding facts and claims for amended complaint, various status and strategic issues, review client documents; discussions with Eric J. Belfi and Michael H. Rogers regarding same.
0571	David Goldsmith	P	03/14/11	11.4	999	
						Travel to Little Rock; meeting with E. Belfi, D. Goldsmith, G. Hopkins, and members of ATRS staff regarding complaint, investigation, trading practices with State Street; analyze documents.
1179	Michael Rogers	P	03/14/11	15.0	999	
1439	Rian Wroblewski	I	03/14/11	7.5	999	Located Former Employees.
1441	Jerome Pontrelli	I	03/14/11	1.0	999	Left messages with former employees.
1538	Paul Scarlato	OC	03/14/11	2.3	050	Legal Research - Legal research re: negative misrepresentations & omissions; strategy re: service
0023	Eric Belfi	P	03/15/11	10.0	999	Met with client and traveled home.
0446	Joel Bernstein	P	03/15/11	0.4	999	Telephone conference with Scarlato re: research for complaint
0446	Joel Bernstein	P	03/15/11	0.2	999	Schedule call with co-counsel
0446	Joel Bernstein	P	03/15/11	0.8	999	Analyze State Street
0446	Joel Bernstein	P	03/15/11	1.0	999	Work on lead plaintiff motion
0446	Joel Bernstein	P	03/15/11	1.0	999	Work on discovery requests
						Meetings with G. Hopkins, W. Greathouse, D. Bumgardner, R. Graves at ARTRS regarding facts and claims for amended complaint, various status and strategic issues, review client documents; discussions with Eric J. Belfi and Michael H. Rogers regarding same; e-mails with team regarding strategic issues; travel Little Rock to New York.
0571	David Goldsmith	P	03/15/11	10.8	999	
						LP memo: calls/emails w/P. Scarlato; pull past LP and class certification pleadings by Thornton and from DMA per P. Scarlato.
1115	Eunice Ahn	RA	03/15/11	1.0	999	
						Emails to/from J. Bernstein, C. Keller, D. Goldsmith, P. Scartato regarding complaint, motion for lead, case strategy; conference with E. Belfi, D. Goldsmith, clients regarding complaint, investigation, trading practices with State Street; analyze documents; travel to New York.
1179	Michael Rogers	P	03/15/11	12.5	999	
1225	Stacy Auer	PL	03/15/11	0.8	999	Review email and update shared drive; update case calendar; prep for team meeting;
1441	Jerome Pontrelli	I	03/15/11	4.0	999	Conference call with Bob Demaria. Draft Investigator memo. Conference call with attorney.
1538	Paul Scarlato	OC	03/15/11	2.0	140	Case Management/Strategy - Strategy re: service and amended complaint
						Pleadings/Briefs - Update lead counsel motion; research re: legal claims; review and edit document requests; draft Thornton blurb
1538	Paul Scarlato	OC	03/15/11	3.0	050	
0103	Lawrence Sucharow	P	03/16/11	2.5	130	Confer co-counsel re litigation strategy.
0366	Ira Schochet	P	03/16/11	0.4	999	Conference regarding strategy
0446	Joel Bernstein	P	03/16/11	0.7	999	Telephone conference with co-counsel re: conflict and lead plaintiff motion

0446	Joel Bernstein	P	03/16/11	0.2	999	Telephone conference with Bill Pane re: scheduling
0446	Joel Bernstein	P	03/16/11	0.5	999	Strategy meeting
0571	David Goldsmith	P	03/16/11	2.6	999	Address various complaint and other issues post-client meetings; conference T/C with co-counsel regarding meetings with ARTRS and overall status and strategy issues; mark-up motion for appointment of interim co-lead counsel; team meeting regarding status and strategy.
0625	Christopher Keller	P	03/16/11	3.7	999	Attend to leadership issues and case status.
1115	Eunice Ahn	RA	03/16/11	3.0	999	Citecheck, quotecheck, shepardize LP memo; emails/calls w/attorneys, S. Auer, and J. Bliss re: same.
1179	Michael Rogers	P	03/16/11	8.0	999	Conferences with J. Bernstein, D. Goldsmith regarding complaint, investigation, trading practices with State Street; analyze consultant's report, client data, contracts.
1225	Stacy Auer	PL	03/16/11	1.8	999	Prep for and attend team mtg;
1441	Jerome Pontrelli	I	03/16/11	5.0	999	Interview former integration specialist Adasa Fraiser. Sent follow-up email to Fraiser. Accurint checks to locate Karen Pandlebury in London. Lengthy interview of former operations specialist Alex Matteucci. Sent follow-up email to Matteucci. Conference call with attorney. Left messages with former employees.
1538	Paul Scarlato	OC	03/16/11	5.0	140	Case Management/Strategy - Team call; review Arkansas contract for Garrett Bradley; motion for interim lead counsel; review contracts and fee schedules; draft Thornton resume; email from FX Transparency
0023	Eric Belfi	P	03/17/11	4.0	999	Researched the case.
0446	Joel Bernstein	P	03/17/11	1.0	999	Meeting with David J. Goldsmith, Paul Scarlato and Mike Rogers re: assignments
0446	Joel Bernstein	P	03/17/11	0.2	999	E-mail Pane
0446	Joel Bernstein	P	03/17/11	0.2	999	Telephone conference with Pane
0571	David Goldsmith	P	03/17/11	4.8	999	Multiple meetings with Joel H. Bernstein, Eric J. Belfi, Michael H. Rogers, Paul Scarlato regarding complaint strategy and theories, document preservation issues, client document issues, outstanding tasks and motions; e-mails with co-counsel regarding same; telephone conference with Joel H. Bernstein and W. Paine regarding amending complaint, discovery, motion to dismiss briefing issues; review J. McGeehan and M. Lesser e-mails regarding ARTRS custodial fee schedules; start revising lead counsel brief, e-mails with team regarding same.
0712	Cindy Chan	PL	03/17/11	0.5	999	Prepare culled custodian chart for public pension funds above \$1 billion.
1115	Eunice Ahn	RA	03/17/11	0.1	999	Emails w/S. Auer re: coverage for LP memo filing.
1179	Michael Rogers	P	03/17/11	9.5	999	Conferences with J. Bernstein, E. Belfi, D. Goldsmith, P. Scarlato regarding claims, client, theories, investigation, facts; conference with J. Pontrelli and R. Wroblewski regarding investigation.
1441	Jerome Pontrelli	I	03/17/11	6.0	999	Meeting with attorney on case. Drafted Investigator Memo. Contacted former operations specialist Salk Leotard. Interviewed former client service representative Henry Volkarts. Left messages with former employees. Additional meeting with attorney.
1538	Paul Scarlato	OC	03/17/11	2.5	050	Pleadings/Briefs - Motion for Interim Lead Counsel; legal research re: amended complaint
0446	Joel Bernstein	P	03/18/11	1.3	999	Analyze letter from Pane
0446	Joel Bernstein	P	03/18/11	0.7	999	Work on letter to Pane
0446	Joel Bernstein	P	03/18/11	0.8	999	Letter to client re: litigation hold

0571	David Goldsmith	P	03/18/11	5.1	999	Draft/revise interim lead counsel motion papers and further revise per client-mandated leadership structure, discussions and e-mails Joel H. Bernstein and team regarding same; review/mark-up Michael H. Rogers reply letter to W. Paine letter in response to settlement demand; discussions with Michael H. Rogers regarding general status, strategy issues; recent McGeehan and M. Lesser e-mails regarding ATRS contract fee schedules; read Matteucci interview memo, e-mails regarding same.
1179	Michael Rogers	P	03/18/11	7.7	999	Conferences with D. Goldsmith, J. Pontrelli, and S. Auer regarding investigation, client documents, facts; analyze letter from defense counsel; draft reply to same; draft and amend litigation hold letters; analyze client documents; emails to/from J. Bernstein, C. Keller, E. Belfi, D. Goldsmith, P. Scarlato, G. Bradley, D. Chiplock, J. Pontrelli, S. Auer, C. Cappuzzo, D. Graves, and J. McGeehan regarding facts, client documents, litigation hold letters, legal issues, response to defendant's letter.
1225	Stacy Auer	PL	03/18/11	7.0	999	Review various emails and attachments and update shared drive accordingly; emails w/ managing clerk re: D. Mass. ECF rules; review local rules; email to David Goldsmith and Francisco Malonzo re: form of briefs; update calendar; assist in prep of Lit Hold Letters; assist in prep of Interim Counsel papers; update/organize/maintain client data
1441	Jerome Pontrelli	I	03/18/11	3.5	999	Completed Interview Memo. Left messages with former employees. Discuss case updates with attorney on case. Updated Access Database.
1538	Paul Scarlato	OC	03/18/11	2.5	050	Pleadings/Briefs - Motion for Interim Lead Counsel; review letter from defendant's counsel
1538	Paul Scarlato	OC	03/19/11	4.0	050	Legal Research - Legal research re: amended complaint
1179	Michael Rogers	P	03/20/11	3.1	999	Draft letter to IMs on behalf of ATRS; draft memo to client regarding visit to ATRS and documents received and requested; draft memo regarding new cases.
1538	Paul Scarlato	OC	03/20/11	1.0	050	Legal Research - Legal research re: amended complaint
0023	Eric Belfi	P	03/21/11	3.0	999	Reviewed lead plaintiff motion and letters to the client.
0571	David Goldsmith	P	03/21/11	4.3	999	Review Michael H. Rogers draft preservation letters and draft client letter to investment managers; review W. Paine response letter to settlement demand letter; discussion with Michael H. Rogers regarding same and task Michael H. Rogers with sending to FX Transparency; follow-up with Eric J. Belfi regarding potential client issues on interim lead counsel motion; telephone conference with Paul Scarlato regarding leadership structure issues.
0625	Christopher Keller	P	03/21/11	1.4	999	Attend to case status and other issues.
1179	Michael Rogers	P	03/21/11	4.7	999	Conferences with D. Goldsmith regarding claims; claims; emails to/from J. Bernstein, E. Belfi, D. Goldsmith, Scarlato regarding claims, regarding investigation; draft and amend Lit Hold letters, memo to client regarding documents and investigation; memo regarding FX claims.
1225	Stacy Auer	PL	03/21/11	1.0	999	Convos and emails w/ Lisette Cavallos re: trading records received from the clients; emails re: the co-counsel distro list;
1441	Jerome Pontrelli	I	03/21/11	1.0	999	Interviewed former Operations Specialist Sal Leotta. Developed leads.
1538	Paul Scarlato	OC	03/21/11	1.5	050	Legal Research - Research re: legal claims; case strategy
0023	Eric Belfi	P	03/22/11	1.5	999	Reviewed motions, researched the case.
0446	Joel Bernstein	P	03/22/11	0.4	999	Conference with David J. Goldsmith re: LP motion
0446	Joel Bernstein	P	03/22/11	0.4	999	Work on LP motion
0571	David Goldsmith	P	03/22/11	1.8	999	Finish drafting proposed Order for interim lead counsel motion; check leadership structure issues with Eric J. Belfi; send motion papers to Joel H. Bernstein to circulate to co-counsel; discussions with Joel H. Bernstein and Michael H. Rogers regarding same.
0625	Christopher Keller	P	03/22/11	1.9	999	Attend to lead plaintiff motion issues.

1179	Michael Rogers	P	03/22/11	6.3	999	Telephone call with D. Bumgardner regarding contracts, regarding trade data; draft letters and memoranda to clients regarding documents, litigation hold, investigation; draft memo regarding FX claims; telephone call with J. McGeehan regarding factual assertions in W. Paine's letter.
1225	Stacy Auer	PL	03/22/11	1.2	999	Email to IT re: access to shared drive for David Goldsmith; email to Joel Bernstein re: various distro lists; email to IT revising State Street Co-Counsel group distro list; review, update and email index of trade records received from clients; update case calendar; emails w/ Steve Krasner re: correspondence; t/c and emails w/ Lisette Cavellos re: uploading and indexing trade reports received from clients;
1538	Paul Scarlato	OC	03/22/11	1.8	050	Pleadings/Briefs - Draft Thornton resume
0023	Eric Belfi	P	03/23/11	3.0	999	Researched the case.
0103	Lawrence Sucharow	P	03/23/11	2.8	050	Att to lead pliff/lead counsel motion.
0446	Joel Bernstein	P	03/23/11	0.6	999	Telephone conference with co-counsel
0446	Joel Bernstein	P	03/23/11	0.7	999	Conference with David J. Goldsmith and Mike Rogers re: expert analysis
0571	David Goldsmith	P	03/23/11	2.0	999	Discussions with Joel H. Bernstein regarding status, strategy, ERISA/Taft-Hartley Fund issues; address issues of organization of counsel; e-mails with team regarding same; revise interim lead counsel motion regarding same and circulate to co-counsel.
0625	Christopher Keller	P	03/23/11	3.2	999	Attend to case status. Attend to interim lead counsel motion issues. Conference call regarding case.
1179	Michael Rogers	P	03/23/11	1.2	999	Telephone call with D. Bumgardner regarding documents; draft memo regarding telephone call with J. McGeehan.
1225	Stacy Auer	PL	03/23/11	0.7	999	Report associate assignments to Joel Bernstein; update client files; email to Steve Krasner re: correspondence;
1441	Jerome Pontrelli	I	03/23/11	1.0	999	Confer with attorney on case. Draft witness highlight fact sheet.
1538	Paul Scarlato	OC	03/23/11	1.5	140	Case Management/Strategy - Telephone conference with co-counsel re: leadership
1538	Paul Scarlato	OC	03/23/11	2.5	050	Legal Research - Research re: mass claims; strategy re: phone call with FX Transparency
0446	Joel Bernstein	P	03/24/11	0.3	999	Telephone conference re: scheduling
0571	David Goldsmith	P	03/24/11	1.5	999	Revise interim lead counsel motion papers per Lief Cabraser comments; transmit to W. Paine per required meet-and-confer; e-mails with team regarding same; review Michael H. Rogers memo regarding J. McGeehan analysis of W. Paine settlement response letter.
0712	Cindy Chan	PL	03/24/11	2.7	999	Research on custodian contract date for ██████████ and ██████████ look into main custodian issue for selective funds; prepare FX outreach chart; discuss same with Eric J. Belfi.
1179	Michael Rogers	P	03/24/11	0.8	999	Emails to/from D. Bumgardner regarding documents; emails to/from J. McGeehan regarding analysis of same; conference with J. Pontrelli and R. Wroblewski regarding investigation.
1225	Stacy Auer	PL	03/24/11	1.6	999	Update shared drive w/ trade reports received from clients; update index of same; emails w/ Steve Krasner re: correspondence; update shared drive w/ State Street Custodian Invoices; emails w/ local counsel re: phv papers; convos w/ David Goldsmith re; same;
1441	Jerome Pontrelli	I	03/24/11	1.5	999	Contacted former Currenex/State employee Alessandro Matteucci. Contacted former employee Martin Cacaj. Sent follow-up email to Cacaj. Meeting with attorney on case.
1538	Paul Scarlato	OC	03/24/11	4.5	050	Legal Research - Legal research for amended complaint
0023	Eric Belfi	P	03/25/11	4.0	999	Worked on the case.
0103	Lawrence Sucharow	P	03/25/11	0.5	130	Conf JHB
0446	Joel Bernstein	P	03/25/11	0.2	999	Telephone conference with Paine
0446	Joel Bernstein	P	03/25/11	0.3	999	Conference with Lawrence A. Sucharow

0571	David Goldsmith	P	03/25/11	2.6	999	Confer T/C Joel H. Bernstein and W. Paine regarding proposal for discovery stay, continued meet-and-confer on interim lead counsel motion, briefing schedule; revise Proposed Order regarding same; e-mail to D. Chiplock regarding discovery in CalPERS action and with team regarding potential discovery stay issues; e-mail to Stacy Auer with instructions for filing counsel motion; discussions with Stacy Auer regarding filing pro hac motions and revise draft pro hac motion; respond to G. Bradley e-mail soliciting thoughts on McGeehan rebuttal to W. Paine letter responding to Joel H. Bernstein settlement demand.
1225	Stacy Auer	PL	03/25/11	2.3	999	Assist in prep of phv papers; convos w/ Steve Krasner and Loly Chan re: same; emails w/ David Goldsmith re: Interim Lead Counsel papers; review/maintain emails; emails w/ local counsel re: phv papers; Fed Ex to local counsel w/ phv checks;
1442	Stephen Krasner	PL	03/25/11	3.0	999	Preparing of Pro Hac Vice motion papers for J. Bernstein, D. goldsmith, M. Rogers and P. Scarlato.
1442	Stephen Krasner	PL	03/25/11	3.0	999	Preparing of Pro Hac Vice motion papers for J. Bernstein, D. Goldsmith, M. Rogers and P. Scarlato, correspondence with the courts clerk office and ECF hotline..
1442	Stephen Krasner	PL	03/25/11	1.0	999	Preparing of Pro Hac Vice motion papers for J. Bernstein, D. Goldsmith, M. Rogers and P. Scarlato, updating files in the shared drive.
1538	Paul Scarlato	OC	03/25/11	4.0	050	Pleadings/Briefs - Legal research; draft amended complaint
0103	Lawrence Sucharow	P	03/26/11	3.5	999	Prepare for conference call with defendants counsel; review file.
1538	Paul Scarlato	OC	03/26/11	2.0	050	Pleadings/Briefs - Draft amended complaint
0103	Lawrence Sucharow	P	03/27/11	1.5	030	Prepare for call with depts counsel re open discovery and litigation issues.
1179	Michael Rogers	P	03/27/11	2.0	999	Research regarding Judge Wolf decisions regarding stay of discovery; draft memo regarding same; emails to/from J. Bernstein regarding same.
1538	Paul Scarlato	OC	03/27/11	3.0	050	Pleadings/Briefs - Draft amended complaint
0023	Eric Belfi	P	03/28/11	4.0	999	Worked on the case.
0103	Lawrence Sucharow	P	03/28/11	2.5	999	Conference call with defendants counsel regarding discovery and litigation issues; prepare for call; confer with Joel H. Bernstein.
0446	Joel Bernstein	P	03/28/11	0.4	999	Read analysis of decisions re: staying discovery pending motion to dismiss
0446	Joel Bernstein	P	03/28/11	0.1	999	E-mail to co-counsel re: same
0446	Joel Bernstein	P	03/28/11	0.4	999	Telephone conference with Lawrence A. Sucharow and Eric Belfi re: discovery issues
0446	Joel Bernstein	P	03/28/11	0.6	999	Telephone conference with defense counsel about discovery issues and lead counsel motion
0446	Joel Bernstein	P	03/28/11	0.1	999	E-mail to co-counsel re: call with defense counsel
1115	Eunice Ahn	RA	03/28/11	0.1	999	Emails w/S. Krasner re: PHV and court admission info for P. Scarlato.
1179	Michael Rogers	P	03/28/11	0.9	999	Emails to/from J. Bernstein and co-counsel regarding Judge Wolf cases regarding stay of discovery; research regarding same; draft memo regarding same.
1225	Stacy Auer	PL	03/28/11	1.3	999	Emails w/ Steve Krasner re: PHV papers; review emails and update shared drive w/ same; update State Street co-counsel email distro list; assist in prep of Interim Lead Counsel papers
1442	Stephen Krasner	PL	03/28/11	1.6	999	Prepare and review Pro Hac Vice papers.
1538	Paul Scarlato	OC	03/28/11	1.0	140	Case Management/Strategy - Reply to Paine letter; review CA PERS and CA STRS' response to interrogatories and requests for production; pro hac vice motion
0023	Eric Belfi	P	03/29/11	4.0	999	Worked on the case.
0446	Joel Bernstein	P	03/29/11	1.0	999	Meeting with co-counsel
0446	Joel Bernstein	P	03/29/11	0.7	999	Analyze memorandum from Rogers re: expert analysis
1179	Michael Rogers	P	03/29/11	4.3	999	Conference with J. Bernstein, E. Belfi, M. Thornton, and G. Bradley regarding claims, regarding complaint, regarding clients, regarding investigation and consultants; telephone call with J. McGeehan regarding analysis of State Street invoices to ARTRS; email to J. Bernstein, D. Goldsmith, P. Scarlato, M. Thornton, G. Bradley, D. Chiplock regarding same.

1225	Stacy Auer	PL	03/29/11	0.8	999	Emails and convos w/ Evan Hoffman, Joyce Murphy, Steve Krasner, and Jean Bliss re: certs of service and filing phv papers;
1442	Stephen Krasner	PL	03/29/11	1.2	999	Prepare certificates of service and edit PHV papers for filing.
1538	Paul Scarlato	OC	03/29/11	1.0	140	Case Management/Strategy - Analyze fee schedules; emails re: same
0023	Eric Belfi	P	03/30/11	3.0	999	Worked on the case; met with the client.
0366	Ira Schochet	P	03/30/11	0.4	999	Conference regarding strategy
0446	Joel Bernstein	P	03/30/11	0.3	999	Telephone conference with defense counsel Rudman and Payne re: LP motion
0446	Joel Bernstein	P	03/30/11	0.4	999	Team meeting re: strategy
0712	Cindy Chan	PL	03/30/11	3.3	999	Research on [REDACTED] non-U.S. equity allocation and duration of contract with BNY as custodian; edit memo to [REDACTED]
1179	Michael Rogers	P	03/30/11	1.4	999	Conference with J. Bernstein regarding interrum leadership motion; emails to/from J. Bernstein, D. Goldsmith, P. Scarlato regarding same.
1225	Stacy Auer	PL	03/30/11	1.5	999	Prep for and attend team mtg; convos re: ongoing projects, assignments, para coverage; coordinate and assist in prep of interim lead counsel papers;
1441	Jerome Pontrelli	I	03/30/11	0.5	999	Contacted former employee Alessandro Matteucci.
0103	Lawrence Sucharow	P	03/31/11	0.7	130	Att to scheduling issues.
0446	Joel Bernstein	P	03/31/11	0.6	999	Review draft agreement from defense counsel and forward to co-counsel for comment
1179	Michael Rogers	P	03/31/11	3.3	999	Emails to/from L. Sucharow, J. Bernstein, D. Goldsmith, P. Scarlato, and D. Chiplock regarding correspondence with B. Paine regarding scheduling; conference J. Bernstein regarding same; conference with J. Pontrelli and R. Wroblewski regarding investigation; emails to/from E. Belfi and L. Gottlieb regarding litigation hold and document preservation policies; conference with L. Gottlieb regarding same.
1441	Jerome Pontrelli	I	03/31/11	1.0	999	Meeting with attorney on case. Contacted by Alex Matteucci. Re-contacted by Matteucci.
1442	Stephen Krasner	PL	03/31/11	0.8	999	Updating of shared drive, editing of folder names.
1538	Paul Scarlato	OC	03/31/11	1.0	050	Pleadings/Briefs - Amended complaint; research re: declaratory relief
0023	Eric Belfi	P	04/01/11	1.5	999	Discussed the case with co-counsel.
0625	Christopher Keller	P	04/01/11	3.0	999	Attend to fee agreement issues. Worked on same with Rachel Avan. Attend to other case issues.
0712	Cindy Chan	PL	04/01/11	1.0	999	Research on when State Street was hired as [REDACTED] custodian.
1179	Michael Rogers	P	04/01/11	2.3	999	Emails to/from J. Bernstein, D. Goldsmith, and P. Scarlato regarding complaint, investigation, consultants causes of action.
1538	Paul Scarlato	OC	04/01/11	3.0	050	Pleadings/Briefs - Draft amended complaint
0571	David Goldsmith	P	04/02/11	0.3	999	Telephone conference with Joel H. Bernstein regarding status and Amended Complaint issues; e-mails with Michael H. Rogers regarding status of amended complaint.
1538	Paul Scarlato	OC	04/03/11	4.0	050	Pleadings/Briefs - Research and draft breach of a claim; research interrogatory misrepresentation
0023	Eric Belfi	P	04/04/11	0.5	999	Worked on the amended complaint.
0103	Lawrence Sucharow	P	04/04/11	2.8	999	Attend to draft agreement regarding discovery; revise draft; confer with Joel H. Bernstein and David J. Goldsmith
0571	David Goldsmith	P	04/04/11	0.7	999	Meetings with Michael H. Rogers regarding amended complaint issues.
1179	Michael Rogers	P	04/04/11	8.4	999	Conferences with D. Goldsmith regarding investigation, regarding complaint; draft same; conference with J. Pontrelli, R. Wroblewski, potential CW regarding facts of case; conferences with D. Goldsmith, J. Pontrelli, and R. Wroblewski regarding same.
1439	Rian Wroblewski	I	04/04/11	4.5	999	Located former employees.
1441	Jerome Pontrelli	I	04/04/11	4.0	999	Meeting with martin Cacaj at our office. Reviewed documents provided by Cacaj. Follow-up meeting with attorney.

1538	Paul Scarlato	OC	04/04/11	5.0	050	Pleadings/Briefs - Draft amended complaint
0446	Joel Bernstein	P	04/05/11	0.8	999	Team meeting re: complaint
0571	David Goldsmith	P	04/05/11	3.0	999	Multiple meetings with Joel H. Bernstein, Michael H. Rogers, Paul Scarlato regarding Amended Complaint and litigation strategy issues; discussion with Joel H. Bernstein regarding agreement on briefing schedule/discovery with W. Paine; circulate W. Paine proposals to co-counsel; e-mails with W. Paine regarding finalizing agreement and lead counsel motion.
0625	Christopher Keller	P	04/05/11	4.9	999	Attend to motion issues. Attend to case strategy and analysis.
1179	Michael Rogers	P	04/05/11	8.4	999	Conferences with J. Bernstein D. Goldsmith, and & P. Scarlato regarding case strategy, regarding amended complaint; draft same; conference call with P. Scarlato and J. McGeehan regarding contractual provisions.
1225	Stacy Auer	PL	04/05/11	1.9	999	Prep CW docs per Mike Rogers for consultants review;
1538	Paul Scarlato	OC	04/05/11	6.0	050	Pleadings/Briefs - Amended complaint; strategy meeting in NY
0571	David Goldsmith	P	04/06/11	2.0	999	E-mail revised
0625	Christopher Keller	P	04/06/11	2.1	999	Teleconference with reporter. Analyze case issues.
1179	Michael Rogers	P	04/06/11	7.5	999	Draft amended complaint; telephone call with P. Scarlato regarding same.
1225	Stacy Auer	PL	04/06/11	2.3	999	Assist in prep of Interim Lead Counsel docs for filing; review/maintain emails; update shared drive; maintain/organize CW docs; t/c w/ Joyce Murphy (Local counsel's assistant) re: electronic filing of Interim Lead Counsel docs; t/c w/ managing clerk re: same;
1439	Rian Wroblewski	I	04/06/11	7.5	999	Located Former Employees.
1441	Jerome Pontrelli	I	04/06/11	1.0	999	Contacted by Alex Matteucci. Confer with attorney.
1538	Paul Scarlato	OC	04/06/11	4.5	050	Pleadings/Briefs - Amended complaint
0571	David Goldsmith	P	04/07/11	1.5	999	Discussions with Michael H. Rogers regarding Amended Complaint issues and strategy; e-mail with Michael H. Rogers and Paul Scarlato regarding same.
1179	Michael Rogers	P	04/07/11	10.5	999	Conferences and telephone calls with D. Goldsmith and P. Scarlato regarding complaint; email to J. McGeehan regarding questions regarding same; draft same; analyze and amend Counts, contract allegations. fiduciary duty allegations.
1225	Stacy Auer	PL	04/07/11	1.6	999	Prep Interim Lead Counsel docs for filing; email to local counsel re: same; download same from pacer, update pleadings file and circulate to team; review/maintain emails;
1538	Paul Scarlato	OC	04/07/11	8.0	050	Pleadings/Briefs - Draft complaint
0023	Eric Belfi	P	04/08/11	3.0	999	Prepared for and communicated with client.
0571	David Goldsmith	P	04/08/11	0.4	999	Discussions with Michael H. Rogers regarding Amended Complaint issues.
1179	Michael Rogers	P	04/08/11	8.0	999	Telephone calls with P. Scarlato and J. McGeehan regarding complaint; conference with D. Goldsmith regarding same; draft, amend, and edit same.
1538	Paul Scarlato	OC	04/08/11	8.0	050	Pleadings/Briefs - Draft amended complaint
1179	Michael Rogers	P	04/09/11	0.7	999	Emails to/from D. Goldsmith and P. Scarlato regarding complaint.
1538	Paul Scarlato	OC	04/09/11	0.5	140	Case Management/Strategy - Telephone conferences with co-counsel re: complaint strategy
0571	David Goldsmith	P	04/10/11	4.4	999	Review/mark-up draft Amended Complaint, e-mails Michael H. Rogers and Joel H. Bernstein regarding same and telephone conference Michael H. Rogers regarding same.
1179	Michael Rogers	P	04/10/11	5.6	999	Telephone calls with D. Goldsmith and P. Scarlato regarding complaint; amend same; draft same; emails to D. Goldsmith, P. Scarlato, and J. McGeehan regarding same.
1538	Paul Scarlato	OC	04/10/11	1.5	050	Pleadings/Briefs - Edit and revise complaint
0023	Eric Belfi	P	04/11/11	1.0	999	Worked on the case.
0103	Lawrence Sucharow	P	04/11/11	2.8	020	Revise draft amended complaint.
0446	Joel Bernstein	P	04/11/11	3.0	999	Work on complaint

0571	David Goldsmith	P	04/11/11	5.5	999	Discussions and e-mails with Michael H. Rogers and Paul Scarlato regarding Amended Complaint issues; review/mark-up revised draft; e-mails with Michael H. Rogers, Paul Scarlato, Joel H. Bernstein regarding same; telephone conference with Michael H. Rogers regarding reconciling my and Joel H. Bernstein's comments.
1179	Michael Rogers	P	04/11/11	12.0	999	Conferences, telephone calls, and emails to/from D. Goldsmith regarding complaint; conference call with P. Scarlato and J. McGeehan regarding same; conference call with D. Goldsmith and P. Scarlato regarding same; draft, amend, and edit same; analyze and integrate comments and edits of J. Bernstein and D. Goldsmith.
1225	Stacy Auer	PL	04/11/11	0.6	999	Review/maintain email and update shared drive;
1441	Jerome Pontrelli	I	04/11/11	2.0	999	Confer with attorney. Contacted by Alessandro Matteucci. Re-contacted Matteucci. Reviewed documents.
1538	Paul Scarlato	OC	04/11/11	11.0	050	Pleadings/Briefs - Draft amended complaint; conference with J. McGeehan; research re: jurisdiction; request to attach contract
0103	Lawrence Sucharow	P	04/12/11	2.5	020	Revise draft amended complaint.
0571	David Goldsmith	P	04/12/11	5.5	999	Review/revise draft Amended Complaint; discussions with Michael H. Rogers and Paul Scarlato regarding same; e-mails with team and co-counsel regarding various Amended Complaint issues; telephone conference with D. Chiplock regarding same.
1179	Michael Rogers	P	04/12/11	9.7	999	Conferences, telephone calls, and emails to/from J. Bernstein, D. Goldsmith, P. Scarlato, and co-counsel regarding complaint; draft, amend, and edit same; research regarding same.
1225	Stacy Auer	PL	04/12/11	0.6	999	Prep for team meeting; review/maintain emails;
1439	Rian Wroblewski	I	04/12/11	4.0	999	Located former employees.
1538	Paul Scarlato	OC	04/12/11	9.0	050	Pleadings/Briefs - Draft amended complaint
0571	David Goldsmith	P	04/13/11	6.0	999	Address various issues on Amended Complaint/general supervision; discussions and e-mails with Michael H. Rogers and team regarding same; telephone conferences with D. Chiplock regarding same; review/revise drafts; review Paul Scarlato edits and e-mails with team and J. McGeehan.
0751	Amy Greenbaum	I	04/13/11	0.6	999	Communicated with counsel and reached out to potential confidential witness.
1179	Michael Rogers	P	04/13/11	11.2	999	Conferences, telephone calls, emails to/from J. Bernstein, D. Goldsmith, P. Scarlato, D. Chiplock, E. Hoffman regarding amended complaint; draft, amend, and edit same.
1538	Paul Scarlato	OC	04/13/11	9.0	050	Pleadings/Briefs - Draft amended complaint
0023	Eric Belfi	P	04/14/11	2.0	999	Reviewed the complaint.
0446	Joel Bernstein	P	04/14/11	1.0	999	Meeting with Mike Rogers and David J. Goldsmith about complaint
0446	Joel Bernstein	P	04/14/11	0.7	999	Call with co-counsel re: complaint
0446	Joel Bernstein	P	04/14/11	3.1	999	Work on amended complaint
0571	David Goldsmith	P	04/14/11	11.1	999	Work on Amended Complaint; revise multiple drafts; discussions, telephone conferences and e-mails with Joel H. Bernstein, Michael H. Rogers, Paul Scarlato, Stacy Auer, co-counsel; conf T/C Michael H. Rogers and J. McGeehan regarding complaint issues and follow-up e-mails regarding same; conference call with team, D. Chiplock, M. Lesser regarding complaint issues and follow-up regarding same; general oversight.
1179	Michael Rogers	P	04/14/11	12.1	999	Conferences, telephone calls, emails to/from J. Bernstein, D. Goldsmith, P. Scarlato, S. Auer, G. Bradley, M. Lesser, D. Chiplock, E. Hoffman, J. McGeehan, J. Galanek regarding amended complaint; draft, amend, and edit same; analyze contracts and guidelines regarding same.



1538	Paul Scarlato	OC	04/25/11	1.0	130	Meetings of Counsel - Telephone conference with team
0625	Christopher Keller	P	04/26/11	1.5	999	Attend to press issues.
1225	Stacy Auer	PL	04/26/11	0.8	999	Login to SEC Secure email; review same and save to correspondence; circulate same to team; begin reviewing SEC doc production specs;
1538	Paul Scarlato	OC	04/26/11	1.0	140	Case Management/Strategy - Consult with R. Avan re: Mass law question
1225	Stacy Auer	PL	04/28/11	0.5	999	Emails w/ Mike Rogers and Howie Goldberg re: lit control; review/maintain email and update shared drive re: same; prep for team meeting;
1441	Jerome Pontrelli	I	04/28/11	0.4	999	Confer with attorney.
0366	Ira Schochet	P	04/29/11	0.5	999	Conference with team regarding strategy
0446	Joel Bernstein	P	04/29/11	0.3	999	Strategy discussion at team meeting
0571	David Goldsmith	P	04/29/11	0.3	999	Team conference re status and strategy.
0625	Christopher Keller	P	04/29/11	2.3	999	Attend to press issues.
1225	Stacy Auer	PL	04/29/11	2.8	999	Prep for and attend team meeting; prep production to SEC; convo w/ IT re same; review/maintain emails and update shared drive w/ same; convos w/ Mike Rogers and David Goldsmith re SEC production; call w/ D. Mass Court Clerk re: alternative email address for David Goldsmith; convo w/ David Goldsmith re same; update case calendar;
1441	Jerome Pontrelli	I	04/30/11	1.4	999	Interviewed former Fuji Bank F/X trader.
1225	Stacy Auer	PL	05/02/11	0.6	999	Review/maintain emails and update shared drive; convo w/ Reka Viczian re: case background; update calendar; email to IT re: email group and shared drive access for Reka Viczian;
1441	Jerome Pontrelli	I	05/02/11	0.4	999	Confer with attorney.
1179	Michael Rogers	P	05/03/11	0.5	999	Draft Lit. Control form.
1225	Stacy Auer	PL	05/03/11	0.8	999	Review/maintain emails; review/maintain emails and maintain shared drive; email to Howie Goldberg re: lit control submission; email to team re: same;
1441	Jerome Pontrelli	I	05/03/11	0.5	999	Meeting on case with attorney.
0625	Christopher Keller	P	05/04/11	2.9	999	Attend to case status.
0712	Cindy Chan	PL	05/04/11	0.3	999	Attend to co-counsel letter agreement issues.
1179	Michael Rogers	P	05/04/11	0.6	999	Telephone calls and emails to/from R. Graves and S. Auer regarding client documents.
1225	Stacy Auer	PL	05/04/11	0.8	999	Emails w/ Mike Rogers re: FTP site; review/maintain emails and maintain shared drive;
1538	Paul Scarlato	OC	05/04/11	1.0	140	Case Management/Strategy - Telephone conference with co-counsel; review motion to dismiss in [REDACTED] case
0571	David Goldsmith	P	05/05/11	0.3	999	Disc with S. Auer re production to SEC.
1179	Michael Rogers	P	05/05/11	0.3	999	Emails to/from R. Graves and S. Auer regarding client documents.
1225	Stacy Auer	PL	05/05/11	5.6	999	Email to clients re: instructions for FTP site; prep production to the SEC; review Complaint for docs we relied upon;
0571	David Goldsmith	P	05/06/11	2.6	999	Supervise document production to SEC, review documents, discs and e-mails with S. Auer re same; draft transmittal letter and send to K. Currid.
1225	Stacy Auer	PL	05/06/11	3.5	999	Prep production to the SEC and Fex Ex same; review Complaint for docs we relied upon;
1538	Paul Scarlato	OC	05/06/11	0.3	140	Case Management/Strategy - Letter to SEC
1225	Stacy Auer	PL	05/09/11	0.4	999	Email to IT re: access to distro lists; review/maintain emails and update shared drive;
0712	Cindy Chan	PL	05/11/11	0.3	999	Attend to FX client file issues; coordinate with WP.
1538	Paul Scarlato	OC	05/11/11	0.5	140	Case Management/Strategy - Emails from D. Chiplock re: SEC investigation
0366	Ira Schochet	P	05/12/11	0.5	999	Conference regarding strategy
0446	Joel Bernstein	P	05/12/11	0.4	999	Strategy discussion at team meeting
0712	Cindy Chan	PL	05/23/11	0.5	999	Attend to custodian FX issues.
1225	Stacy Auer	PL	05/25/11	0.2	999	Emails w/ managing clerk re: registering attys for electronic filing;

0366	Ira Schochet	P	05/26/11	0.5	999	Conference regarding strategy.
0571	David Goldsmith	P	05/26/11	1.0	999	T/C D., Halston re [REDACTED] e-mails with co-counsel and disc with JHB re same; e-mail to D. Halston with position; team conference re status and strategy.
1225	Stacy Auer	PL	05/26/11	0.4	999	Emails w/ team and managing clerk re: page limits for briefs; review local rule re: same; review/maintain emails; prep for and attend team meeting;
0571	David Goldsmith	P	05/27/11	0.6	999	E-mails with defendants re [REDACTED] review/ mark-up proposed joint motion.
0625	Christopher Keller	P	05/27/11	2.7	999	Teleconference with Garrett Bradley regarding case status. Attend to case strategy.
0023	Eric Belfi	P	05/31/11	0.5	999	Updated client on the case.
1225	Stacy Auer	PL	05/31/11	0.8	999	Fwd ECF registration email re: Mike Rogers to Steve Wattenberg; review/maintain emails and update shared drive accordingly; review and update files w/ Joint Motion for Leave to File Memo in Excess of 20 Pages; update case calendar;
0023	Eric Belfi	P	06/01/11	1.5	999	Provided update to client.
0446	Joel Bernstein	P	06/01/11	1.0	999	Respond to reporter inquiry
0712	Cindy Chan	PL	06/01/11	0.5	999	Prepare FX cases info for PowerPoint.
1441	Jerome Pontrelli	I	06/01/11	1.0	999	Contacted by former Managing Director Atif Bashir. Sent follow-up e-mail to Bashir.
0571	David Goldsmith	P	06/02/11	0.4	999	E-mail to team re meet-and-confer with D. Halston regarding motion to dismiss; discs with MHR re same.
1179	Michael Rogers	P	06/02/11	3.6	999	Emails to/from J. Bernstein, C. Keller, E. Belfi, D. Goldsmith, J. Bankston regarding press questions regarding complaint; analyze complaint regarding same; draft talking points regarding same.
1225	Stacy Auer	PL	06/02/11	0.3	999	Attend meeting and prep email re: assignments for summer associates;
0023	Eric Belfi	P	06/03/11	4.0	999	Reviewed defendants motion to dismiss; communicated with the client.
0103	Lawrence Sucharow	P	06/03/11	3.3	050	Revise and analyze M/T/D
0446	Joel Bernstein	P	06/03/11	4.2	999	Analyze motion to dismiss.
0571	David Goldsmith	P	06/03/11	0.4	999	Discs with MHR re motion to dismiss opposition issues; e-mails with team re same.
1179	Michael Rogers	P	06/03/11	3.5	999	Analyze motion to dismiss; conferences with I. Schochet and D. Goldsmith regarding same.
1225	Stacy Auer	PL	06/03/11	0.3	999	Emails to Reka Viczian re: MTD papers filed today;
1538	Paul Scarlato	OC	06/03/11	0.7	140	Case Management/Strategy - Emails to co-counsel re: motion to dismiss
0103	Lawrence Sucharow	P	06/04/11	3.8	050	Review and analyze M/T/D; confer co-counsel.
1538	Paul Scarlato	OC	06/04/11	1.0	050	Pleadings/Briefs - Motion to dismiss
0571	David Goldsmith	P	06/06/11	0.5	999	Set-up conference call to discuss motion to dismiss issues and arguments; e-mails with team re same, discs with MHR re same.
1179	Michael Rogers	P	06/06/11	0.5	999	Emails to/from J. Bernstein, E. Belfi, D. Goldsmith, and P. Scarlato regarding motion to dismiss.
1538	Paul Scarlato	OC	06/06/11	1.0	050	Pleadings/Briefs - Opposition to motion to dismiss; emails with co-counsel
0446	Joel Bernstein	P	06/07/11	1.6	999	Analyze motion to dismiss response.
1179	Michael Rogers	P	06/07/11	0.4	999	Conference with K. Zhang regarding legal research.
0023	Eric Belfi	P	06/08/11	2.5	999	Prepared for and provided client update.
0446	Joel Bernstein	P	06/08/11	0.7	999	Conference with David Goldsmith and Michael Rogers re: complaint.
0446	Joel Bernstein	P	06/08/11	1.7	999	Legal research re: Arkansas Procurement Law.
0446	Joel Bernstein	P	06/08/11	0.5	999	Conference call with co-counsel re: motion to dismiss.
0446	Joel Bernstein	P	06/08/11	1.0	999	Client meeting to discuss motion to dismiss.

0571	David Goldsmith	P	06/08/11	5.0	999	motion to dismiss and complaint, factual and legal research re same; meeting with JHB and MHR re same; conference T/C with co-counsel re same, issues and arguments, strategy; meeting with G. Hopkins, JHB, MHR re status, motion to dismiss, strategy; meeting with MHR and M. Appenfeller re introduction to case, research assignments; discs with MHR re all and same.
1179	Michael Rogers	P	06/08/11	3.3	999	Conference with J. Bernstein, and D. Goldsmith regarding motion to dismiss opposition; conference call with J. Bernstein, D. Goldsmith, P. Scarlato, and co-counsel regarding same; conference with D. Goldsmith and M. Appelbaum regarding same; conference with K. Zhang regarding same; conference with J. Bernstein, E. Belfi, D. Goldsmith, and G. Hopkins regarding same.
1225	Stacy Auer	PL	06/08/11	1.1	999	Review emails and update shared drive w/ same; convo w/ David Goldsmith and email to summer associate, Matthew Appenfeller, with background materials; prep for team meeting and update project tracker;
1538	Paul Scarlato	OC	06/08/11	1.5	050	Pleadings/Briefs - Opposition to motion to dismiss; talking points for client
0446	Joel Bernstein	P	06/09/11	0.5	999	Strategy to discuss at team meeting.
0446	Joel Bernstein	P	06/09/11	0.2	999	Phone call with Bill Brown potential expert.
0571	David Goldsmith	P	06/09/11	0.5	999	T/C D. Chiplock re SEPTA v. BNY case, California motion to dismiss briefing; team meeting re status and strategy.
1153	Felicia Mann	A	06/09/11	0.6	999	Discussed case with Michael Rogers and researched whether a fiduciary duty can be waived via contract.
0023	Eric Belfi	P	06/10/11	4.0	999	Reviewed motion to dismiss.
1153	Felicia Mann	A	06/10/11	4.2	999	Read complaint and motion to dismiss; discussed fiduciary research with Matthew Appenfeller and Michael Rogers.
1225	Stacy Auer	PL	06/10/11	0.4	999	Pull and distribute Order Overruling Defendants' Demurrer in California Action; review/maintain email and update shared drive;
1450	Reka Viczian	PL	06/10/11	0.4	999	Multiple communications re: case pulled and for arranging share drive access for new team members.
1538	Paul Scarlato	OC	06/12/11	1.0	050	Pleadings/Briefs - Review demurrer and response
1153	Felicia Mann	A	06/13/11	1.4	999	Read motion to dismiss and took notes; read Demorier decision in California FX case.
1225	Stacy Auer	PL	06/13/11	0.8	999	Review and save email correspondence re: ftp site; download clients docs from FTP site and organize same on shared drive; convo w/ Matt Giles re: case list;
0625	Christopher Keller	P	06/14/11	2.7	999	Attend to case strategy.
1153	Felicia Mann	A	06/14/11	0.2	999	Reviewed pleadings and other case material.
1225	Stacy Auer	PL	06/14/11	0.4	999	Review/maintain emails and update shared drive w/ same; review State Street Lit Fund memo; emails w/ Danielle Garcia re: FX Transparency bill; emails/convo re: case chart;
0625	Christopher Keller	P	06/15/11	1.9	999	Attend to case strategy and case management.
1153	Felicia Mann	A	06/15/11	4.1	999	Researched whether a fiduciary duty can be waived by contract in Arkansas and Massachusetts and forwarded findings to Michael Rogers; discussed contract section of opposition brief and cases cited with Michael Rogers and Matthew Appenfeller; reviewed State Street custodian agreements and Investment Manager Guides; read investigation memos.
1153	Felicia Mann	A	06/16/11	0.8	999	Researched continuing harm/violation doctrine under Massachusetts and Arkansas law.
0023	Eric Belfi	P	06/17/11	2.0	999	Worked on issues in responding to motion to dismiss.
1153	Felicia Mann	A	06/17/11	0.4	999	Read Matthew Appenfeller's research on the implied duty of good faith.
0446	Joel Bernstein	P	06/20/11	1.0	999	Meeting with David J. Goldsmith, Mike Rogers, Stefanie Sundel and Paul Scarlato to discuss opposition to MTD

0571	David Goldsmith	P	06/20/11	2.8	999	Work on planning issues for opposition to motion to dismiss; review brief in opposition to demurrer in CalPERS case; meeting with JHB, MHR, SJS, P. Scarlato re briefing assignments and issues; discs with SJS re same.
0849	Stefanie Sundel	A	06/20/11	2.0	999	Read complaint ; meeting in Joel Bernstein's office with team.
1179	Michael Rogers	P	06/20/11	0.7	999	Conferences with J. Bernstein, D. Goldsmith, P. Scarlato, S. Sundel regarding motion to dismiss and Opp thereto.
1225	Stacy Auer	PL	06/20/11	0.8	999	Pull and organize docs in Cal. Superior Court Case No. 34-2008-00008457; email to David Goldsmith and Stefanie Sundel re: same;
1538	Paul Scarlato	OC	06/20/11	1.5	140	Case Management/Strategy - Meeting re: opposition to motion to dismiss
0366	Ira Schochet	P	06/21/11	2.9	999	State Streetconf with DG e assistance on brief; reviewed complaint and MTD brief; confs with SS re approach on fiduciary duty issue; reviewed case on fiduciary duty elements and e-mail with SS re same
0446	Joel Bernstein	P	06/21/11	2.2	999	Work on opposition to motion to dismiss
0571	David Goldsmith	P	06/21/11	5.2	999	Address motion to dismiss opposition issues and arguments; research re same; review answer in California case; discs with IAS and SJS re fiduciary duty issues and arguments.
0849	Stefanie Sundel	A	06/21/11	3.5	999	Read motion to dismiss; meetings with David Goldsmith and Ira Schochet.
1179	Michael Rogers	P	06/21/11	1.0	999	Conferences with S. Sundel regarding legal theories, regarding facts; analyze same.
0366	Ira Schochet	P	06/22/11	0.5	999	conf re strategy
0366	Ira Schochet	P	06/22/11	0.7	999	State Streetconf with SS re fiduciary duty issues
0446	Joel Bernstein	P	06/22/11	0.2	999	Telephone conference with Hopkins
0446	Joel Bernstein	P	06/22/11	0.5	999	Discussion at team meeting
0571	David Goldsmith	P	06/22/11	2.5	999	Address various motion to dismiss opposition issues; disc with JHB re R. Pierce (Arkansas procurement office); discs with MHR and SJS re briefing issues; team meeting re status and strategy.
0849	Stefanie Sundel	A	06/22/11	0.5	999	Bernstein Team Meeting; market manipulation notes to Ira Schochet.
0849	Stefanie Sundel	A	06/22/11	3.5	999	Research re Fiduciary duties under Mass law.
1179	Michael Rogers	P	06/22/11	5.9	999	Conferences with J. Bernstein, I. Schochet, D. Goldsmith, P. Scarlato, S. Sundel, and M. Appenfeller regarding research and legal issues regarding opp to motion to dismiss; analysis of case law regarding same.
1225	Stacy Auer	PL	06/22/11	0.5	999	Prep for and attend team meeting; review/maintain emails and update shared drive;
1538	Paul Scarlato	OC	06/22/11	1.0	010	Factual Investigation - Research re: fiduciary duty
0366	Ira Schochet	P	06/23/11	0.7	999	Conf with MR re fiduciary duty research
0446	Joel Bernstein	P	06/23/11	0.6	999	Telephone conference with Ray Pierce, Arkansas Procurement Attorney re: MTD
0571	David Goldsmith	P	06/23/11	2.5	999	Address motion to dismiss opposition issues; e-mail to R. Pierce re developing Arkansas Procurement Statute argument; discs with JHB and MHR re same and other briefing issues; disc with S. Auer re planning
1179	Michael Rogers	P	06/23/11	9.0	999	Conferences, telephone calls, and to/from J. Bernstein, I. Schochet, D. Goldsmith, P. Scarlato, S. Sundel regarding research and legal theories regarding opp to motion to dismiss ; draft statement of facts regarding same.
1225	Stacy Auer	PL	06/23/11	0.6	999	Review/maintain emails and update shared drive; emails to Paul Scarlato re: contracts and fee schedules; convos w/ David Goldsmith re: Opposition to the MTD;
1538	Paul Scarlato	OC	06/23/11	5.0	050	Legal Research - Research re: Arkansas contract law
1179	Michael Rogers	P	06/24/11	6.5	999	Conferences, telephone calls, and emails to/from J. Bernstein, I. Schochet, D. Goldsmith, P. Scarlato, S. Sundel regarding research and legal theories regarding opp to motion to dismiss; draft statement of facts regarding same; conference call with P. Scarlato, D. Chiplock, and J. McGeehan regarding factual refutations to defendants' argument.

0366	Ira Schochet	P	06/26/11	1.0	999	review memo re breach of fiduciary duty in Massachusetts
0446	Joel Bernstein	P	06/27/11	0.6	999	Conference with David J. Goldsmith, Stefanie Sundel and PS to discuss MTD
0446	Joel Bernstein	P	06/27/11	0.8	999	Telephone conference with co-counsel to discuss MTD
0571	David Goldsmith	P	06/27/11	3.3	999	Conferences with Ira A. Schochet, Stefanie Sundel, Paul Scarlato re fiduciary duty issues and arguments; telephone conference with Joel H. Bernstein, Mike Rogers, Stefanie Sundel, Paul Scarlato, D. Chiplock, D. Miami, E. Hoffman re status of motion to dismiss opposition brief issues and arguments; post-call discussion re same; address various issues re same
1179	Michael Rogers	P	06/27/11	7.1	999	Conferences with J. Bernstein, D. Goldsmith, P. Scarlato, and S. Sundel regarding opposition to motion to dismiss, and to research and theories re same; draft statement of facts for opposition; conference call with J. Bernstein, D. Goldsmith, P. Scarlato, S. Sundel, D. Chiplock, M. Miami, and E. Hoffman regarding opposition.
1225	Stacy Auer	PL	06/27/11	0.4	999	Internet searches and email w/ Mike Rogers re: State Street's General Counsel; review emails;
1538	Paul Scarlato	OC	06/27/11	1.0	050	Pleadings/Briefs - Opposition to motion to dismiss
0571	David Goldsmith	P	06/28/11	6.5	999	Discs with Ira A. Schochet, Mike Rogers, Stefanie Sundel re various motion to dismiss opposition issues and arguments; review/mark-up Stefanie Sundel draft breach of fiduciary duty section (after IAS mark-up), disc with Ira A. Schochet re same; review relevant case law.
0849	Stefanie Sundel	A	06/28/11	9.0	999	Fiduciary Duty Section of Opposition brief.
1179	Michael Rogers	P	06/28/11	9.0	999	Conference with D. Goldsmith regarding statement of facts; draft same.
0446	Joel Bernstein	P	06/29/11	1.3	999	Work on opposition to MTD
0446	Joel Bernstein	P	06/29/11	0.6	999	Conference with David J. Goldsmith, Ira A. Schochet, Stefanie Sundel re: opposition to MTD
0571	David Goldsmith	P	06/29/11	2.5	999	Meeting with Joel H. Bernstein and Ira A. Schochet re planning/staffing issues on opposition to motion to dismiss; review mark-up of Stefanie Sundel draft; meeting with Ira A. Schochet and Stefanie Sundel re issues and arguments and draft fiduciary duty argument mark-up; discs with Mike Rogers re issues and arguments on statement of facts.
0849	Stefanie Sundel	A	06/29/11	2.5	999	Meeting with Ira Schochet & David Goldsmith re STT Opposition draft; reviewed mark-up; started to address comments.
1179	Michael Rogers	P	06/29/11	8.9	999	Draft statement of facts; conferences with D. Goldsmith and S. Sundel regarding same,
0446	Joel Bernstein	P	06/30/11	2.6	999	Work on opposition to MTD
0571	David Goldsmith	P	06/30/11	1.0	999	Telephone conference with Joel H. Bernstein and R. Pierce re Arkansas Procurement Law issues; e-mail Custodian Contracts and related materials to R. Pierce; disc with JHB re same; discs with MHR re Statement of Facts issues and arguments.
0849	Stefanie Sundel	A	06/30/11	7.0	999	Second draft of Fiduciary Duty Section of Opposition brief.
1179	Michael Rogers	P	06/30/11	3.5	999	Conferences with D. Goldsmith and S. Sundel regarding statement of facts; draft same.
1225	Stacy Auer	PL	06/30/11	2.7	999	Various emails w/ Paul Scarlato w/ and re: Investment manager Guides; organize same on shared drive; convo w/ Matt Giles re: same; prep and send CD of same to Paul Scarlato; emails to David Goldsmith w/ Custodian Contracts, Fee Schedules & RFP;
1538	Paul Scarlato	OC	06/30/11	2.0	050	Pleadings/Briefs - Opposition to motion to dismiss
0571	David Goldsmith	P	07/01/11	2.0	999	Review mark-up on SJS breach of fiduciary duty section; discs with IAS and SJS re same; planning.
0849	Stefanie Sundel	A	07/01/11	5.0	999	Addressed Comments to Second draft of Fiduciary Duty Section of Opposition brief; discussion with David Goldsmith.
1538	Paul Scarlato	OC	07/01/11	9.0	050	Pleadings/Briefs - Opposition to motion to dismiss
1179	Michael Rogers	P	07/03/11	2.5	999	Draft statement of facts; edit same.
0446	Joel Bernstein	P	07/05/11	2.4	999	Work on opposition to MTD



0571	David Goldsmith	P	07/09/11	6.0	999	Work on opposition to motion to dismiss; mark-up/rewrite P. Scarlato breach of contract section; e-mails with P. Scarlato and Joel H. Bernstein re negligent misrepresentation section issues; forward P. Scarlato e-mail to M. Lesser and E. Hoffman.
1538	Paul Scarlato	OC	07/09/11	6.0	050	Pleadings/Briefs - Opposition to motion to dismiss
0446	Joel Bernstein	P	07/10/11	3.1	999	Work on opposition to motion to dismiss
0571	David Goldsmith	P	07/10/11	3.3	999	Work on opposition to motion to dismiss; mark-up/rewrite P. Scarlato breach of contract section; e-mail to Joel H. Bernstein, P. Scarlato, Mike Rogers re same; mark-up Statement of Facts; e-mail to Joel H. Bernstein, Mike Rogers, P. Scarlato
1538	Paul Scarlato	OC	07/10/11	8.0	050	Pleadings/Briefs - Opposition to motion to dismiss
0446	Joel Bernstein	P	07/11/11	3.6	999	Work on opposition to motion to dismiss
0571	David Goldsmith	P	07/11/11	12.5	999	Work on opposition to motion to dismiss; assess status of breach of contract section and statement of facts; assess changes to co-counsel negligent misrepresentation section, begin researching/redrafting same; insert/revise Chapter 93A and statute of limitations sections from co-counsel, e-mails with D. Chiplock re same; review/revise fiduciary duty and SSBT/SSGM brief sections; revise fiduciary duty section per excessive mark-up cases; assess defendants' exhibits and reply brief in California Action; discs with Stefanie Sundel re drafting/research assignments; conferences with Joel H. Bernstein re various drafting and status issues.
0849	Stefanie Sundel	A	07/11/11	6.0	999	Good faith and fair dealing research; read contract section of brief; MTD sections on breach of contract.
1179	Michael Rogers	P	07/11/11	1.8	999	Emails to/from Joel H. Bernstein, David J. Goldsmith, P. Scarlato, M. Appenfeller, & M. Lesser re brief; edit and comments to draft negligent misrepresentation section of brief
1225	Stacy Auer	PL	07/11/11	0.3	050	Emails w/ managing clerk re: filing MTD Opp;
1538	Paul Scarlato	OC	07/11/11	4.5	050	Pleadings/Briefs - Opposition to motion to dismiss
0366	Ira Schochet	P	07/12/11	0.4	130	Conference regarding strategy
0446	Joel Bernstein	P	07/12/11	0.5	999	Discuss strategy with team
0571	David Goldsmith	P	07/12/11	10.1	999	Work on opposition to motion to dismiss; team meeting re status and strategy; insert/review/revise Loeff Cabraser brief sections; rewrite negligent misrepresentation brief section; start revising statement of facts; discs with SJS re breach of contract argument research and issues; telephone conference with R. Pierce re Arkansas procurement law issues and follow-up e-mail re same.
0849	Stefanie Sundel	A	07/12/11	5.0	999	Good faith and fair dealing and breach of contract law in Arkansas .
1179	Michael Rogers	P	07/12/11	6.8	999	Analyze draft sections of opposition; amendments re same; confs w/ Joel H. Bernstein, David J. Goldsmith, Stefanie Sundel re same; telephone conference with P. Scarlato re same
1450	Reka Viczian	PL	07/12/11	4.1	999	Attend team meeting; review brief and conform citations of Mass. cases; correct WestLaw cites; cite check brief.
1538	Paul Scarlato	OC	07/12/11	3.0	050	Pleadings/Briefs - Opposition to motion to dismiss
0479	Jonathan Gardner	P	07/13/11	0.1	999	Litigation control meeting.
0571	David Goldsmith	P	07/13/11	13.7	999	Work on opposition to motion to dismiss; address/incorporate Joel H. Bernstein comments on draft, discs with Joel H. Bernstein re same; incorporate R. Viczian case citation edits and discs with R. Viczian re same; insert/revise supplemental Chapter 93 arguments from D. Chiplock; revise/redraft Statement of Facts; draft Preliminary Statement and circulate both internally; discs with SJS re breach of contract argument issues and research/drafting assignments; address various potential loose-ends, factual issues for brief
0712	Cindy Chan	PL	07/13/11	0.1	999	Discuss case at Litigation Control Meeting.
0849	Stefanie Sundel	A	07/13/11	7.0	999	Breach of contract section and Arkansas research.

1179	Michael Rogers	P	07/13/11	6.5	999	Analyze draft opposition brief; edits and comments re: same; conference with David J. Goldsmith re: same
1450	Reka Viczian	PL	07/13/11	8.8	999	Cite check brief; conform Mass. court cites; correct Westlaw cites.
0446	Joel Bernstein	P	07/13/11	1.0	020	Work on opposition to motion to dismiss
0446	Joel Bernstein	P	07/13/11	2.6	040	Work on opp to mtd
0849	Stefanie Sundel	A	07/14/11	6.0	050	Opposition research re based on/equal to
0446	Joel Bernstein	P	07/14/11	2.1	020	Work on opposition to motion to dismiss
0446	Joel Bernstein	P	07/14/11	0.6	140	Conference with David Goldsmith and Mike Rogers re: motion to dismiss
1450	Reka Viczian	PL	07/14/11	8.7	050	Cite check brief
0571	David Goldsmith	P	07/14/11	13.3	050	Work on opposition to motion to dismiss; e-mails and T/C D. Chiplock re overlength and shortening issues; revise preliminary statement and statement of facts per JHB comments; e-mail current draft to D. Chiplock; rewrite breach of contract section, discs with SJS re same; meetings with JHB and MHR re various strategy and argument issues; incorporate citation edits from R. Viczian.
1225	Stacy Auer	PL	07/14/11	0.4	140	Review/maintain email and update shared drive;
1179	Michael Rogers	P	07/14/11	8.0	050	Work re: opposition
1450	Reka Viczian	PL	07/15/11	7.0	050	Cite check brief
0571	David Goldsmith	P	07/15/11	6.3	050	Work on opposition to motion to dismiss; revise/insert breach of contract section; mark-up/shorten draft overall; review and incorporate D. Chiplock and M. Miarmi edits on Chapter 93A and SOL issues, e-mails re same; review/incorporate MHR comments; incorporate R. Viczian citation edits; disc with S. Auer and R. Viczian re brief finalization planning; e-mail current draft brief to E. Belfi for forwarding to client for review; e-mail current draft brief to co-counsel for comments.
1179	Michael Rogers	P	07/15/11	7.0	050	Work re: opposition
1450	Reka Viczian	PL	07/16/11	7.3	050	Cite check brief; fact check brief
0571	David Goldsmith	P	07/16/11	4.0	050	Review/mark-up draft brief; notes areas for follow-up; e-mails with R. Viczian re same
1450	Reka Viczian	PL	07/17/11	7.3	050	Fact check brief.
0571	David Goldsmith	P	07/17/11	3.0	050	Review/mark-up draft brief; notes areas for follow-up.
0103	Lawrence Sucharow	P	07/18/11	3.0	050	Revise draft opp. To M/T/D.
0849	Stefanie Sundel	A	07/18/11	4.0	050	Breach of contract section and research re use of Affiliated Ute
1538	Paul Scarlato	OC	07/18/11	2.5	050	Pleadings/Briefs - Opposition to motion to dismiss
1450	Reka Viczian	PL	07/18/11	4.0	050	Generate and clean up Table of Authorities.
0571	David Goldsmith	P	07/18/11	9.5	050	Work on opposition to motion to dismiss brief; review/mark-up drafts and enter changes; substantive follow-up items; ensure brief within page limitation; address comments from D. Chiplock, M. Miarmi, MHR, P. Scarlato; discs and e-mails with JHB, MHR, SJS re same; address R. Viczian citation edits; turnaround revised drafts and redlines to D. Chiplock and all co-counsel; review/revise JHB declaration.
1225	Stacy Auer	PL	07/18/11	0.8	050	Review MTD Opp brief; emails re: same;
0103	Lawrence Sucharow	P	07/19/11	3.2	050	Revise draft opp. To M/T/D.
1450	Reka Viczian	PL	07/19/11	6.6	050	Proof brief; check toa; make additions to same.
0446	Joel Bernstein	P	07/19/11	2.1	050	Work on memo in opposition to motion to dismiss

						Work on opposition to motion to dismiss brief; review/mark-up drafts and enter changes; address comments from Joel H. Bernstein, D. Chiplock, M. Miarmi, R. Viczian; discs with Stefanie Sundel re 12(b)(6) standards research and draft footnote re same; draft footnote re Arkansas procurement law issue and e-mails with Joel H. Bernstein re same; review/mark-up draft table of authorities; review/correct complaint citations; turnaround revised brief and redline to co-counsel
0571	David Goldsmith	P	07/19/11	9.0	050	
1225	Stacy Auer	PL	07/19/11	0.9	050	Review MTD Opp brief; review emails re: same;
1225	Stacy Auer	PL	07/20/11	4.2	050	Finalize/prep/review/proofread Opposition to the MTD and efile same; circulate same and update shared drive;
1450	Reka Viczian	PL	07/20/11	4.6	050	Finalize toa; proof brief.
0571	David Goldsmith	P	07/20/11	6.2	050	Revise/finalize motion to dismiss opposition brief and submissions; review table of contents; address comments from D. Chiplock and M. Miarmi; discs with Mike Rogers, Stefanie Sundel, S. Auer, R. Viczian re same; transmit to E. Belfi for forwarding to client.
1450	Reka Viczian	PL	07/26/11	2.2	140	Review emails and update correspondence and lit files on share drive
1450	Reka Viczian	PL	08/03/11	2.0	140	Add documents to client docs folder on share drive; review for duplicates.
1225	Stacy Auer	PL	08/03/11	1.1	140	Save and organize client's upload to FTP site on shared drive; prep for 8/4 team meeting;
0366	Ira Schochet	P	08/04/11	1.3	130	Reviewed decision in 10b case; conference regarding strategy
0446	Joel Bernstein	P	08/04/11	1.1	050	Read decision in ERISA case re: supplemental authority
1450	Reka Viczian	PL	08/04/11	0.8	140	Attend team meeting; update correspondence folder on share drive.
0571	David Goldsmith	P	08/04/11	1.4	050	Review decision denying motions to dismiss in Rule 10b-5 class action (Hill); check factual assertions against complaint and brief; conference with Joel H. Bernstein re: submitting as supplemental authority
0571	David Goldsmith	P	08/04/11	0.3	130	Team conference re: status and strategy
1225	Stacy Auer	PL	08/04/11	0.8	140	Prep for and attend team meeting; download clients docs from FTP site; emails w/ Reka Viczian re: organizing/indexing client docs from FTP site;
0849	Stefanie Sundel	A	08/05/11	1.0	050	Read Hill decision and notice of supplemental authority
1538	Paul Scarlato	OC	08/05/11	0.5	140	Case Management/Strategy - Email from Christopher Keller, Esq. re: Hill decision
0571	David Goldsmith	P	08/05/11	3.2	050	Draft notice of supplemental authority; transmit to co-counsel; e-mails with co-counsel re: same and Judge Gertner retirement
0571	David Goldsmith	P	08/08/11	3.0	050	Revise/finalize Notice of Supplemental Authority; review D. Chiplock comments and edits; conference with S. Auer re: same
1225	Stacy Auer	PL	08/08/11	1.1	050	Quote check/proofread/prep Plaintiffs' Notice of Supplemental Authority, exhibit A and Cert. of Service; efile same;
0571	David Goldsmith	P	08/10/11	0.5	140	Review/revise case abstract for Firm website; conference with Mike Rogers re: Notice of Supplemental Authority and other case issues
0571	David Goldsmith	P	08/11/11	0.8	130	Conference with Joel H. Bernstein re: Prof. Bill Brown (potential expert) and FX Transparency issues; other strategic and factual issues
0571	David Goldsmith	P	08/15/11	0.2	050	Telephone conference with A. Hornstein re: formal consent to State Street's motion to file reply
0446	Joel Bernstein	P	08/16/11	0.8	130	Set up meeting with co-counsel
0446	Joel Bernstein	P	08/17/11	0.8	130	Meeting with Thornton
0023	Eric Belfi	P	08/19/11	1.5	050	Reviewed Reply to Motion to Dismiss
0446	Joel Bernstein	P	08/19/11	2.6	050	Analyze reply on motion to dismiss
0023	Eric Belfi	P	08/22/11	3.0	050	Reviewed reply Motion to Dismiss and provided update to client.

0571	David Goldsmith	P	08/22/11	2.0	050	Review/analyze defendants' reply brief on motion to dismiss; consider potential surreply arguments; conferences with Joel H. Bernstein and Mike Rogers re same.
0366	Ira Schochet	P	08/24/11	0.6	130	Conference regarding strategy
1450	Reka Viczian	PL	08/24/11	0.6	140	Team meeting
0571	David Goldsmith	P	08/24/11	0.6	140	Team meeting re status and strategy; e-mails with S. Dee and team re Chambers and Partners submission.
0366	Ira Schochet	P	09/13/11	0.5	130	Conference regarding strategy
0446	Joel Bernstein	P	09/13/11	0.5	130	Strategy discussion at team meeting
0023	Eric Belfi	P	09/19/11	4.0	140	Prepared for and met with co-counsel.
0446	Joel Bernstein	P	09/19/11	1.5	130	Meeting with co-counsel
1179	Michael Rogers	P	09/19/11	1.2	130	Conference with Joel H. Bernstein, Chris Keller, Eric Belfi, M. Thornton, G. Bradley, M. Lesser, S. Fineman and D. Chiplock re: case strategy
1225	Stacy Auer	PL	09/30/11	0.3	140	Pull/review/save article to shared drive per Mike Rogers;
0023	Eric Belfi	P	10/05/11	1.5	050	Prepared and sent communication to client.
0446	Joel Bernstein	P	10/05/11	0.4	130	Strategy discussion at team meeting
1225	Stacy Auer	PL	10/14/11	0.6	140	Review/maintain emails and update Joel Bernstein's Outlook calendar; update case calendar; update shared drive;
1538	Paul Scarlato	OC	10/14/11	1.0	140	Case Management/Strategy - Review complaint filed in Maryland; emails re: same
0571	David Goldsmith	P	10/14/11	0.5	130	E-mails among team re new ERISA case in E.D. Va., strategy re transfer/MDL.
1538	Paul Scarlato	OC	10/17/11	1.0	140	Case Management/Strategy - Conference call re: Maryland action; emails re: same
0446	Joel Bernstein	P	10/17/11	0.5	130	Call with co-counsel
0446	Joel Bernstein	P	10/17/11	0.4	050	Conference call with Rudman
0571	David Goldsmith	P	10/17/11	1.7	030	Call with Lawrence Sucharow, Joel Bernstein and co-counsel re [REDACTED] prepare for same; observe Lawrence Sucharow/Joel Bernstein call with J. Rudman (State Street) re same; pre-call meeting with Lawrence Sucharow and post-call meeting with Lawrence Sucharow and Joel Bernstein re status and strategy; e-mail report on call to co-counsel; discs with S. Auer re follow-up tasks.
1450	Reka Viczian	PL	10/18/11	1.0	140	Compare Henriquez complaint to State Street complaint for any copying.
0571	David Goldsmith	P	10/19/11	0.5	130	E-mail to Lawrence Sucharow re items from Monday meeting; breadth of proposed consolidation order; McTigue and Waste Management; similarity of complaint to ERISA complaint
1225	Stacy Auer	PL	10/27/11	1.1	140	Maintain hard copy files; emails w/ local counsel and accounting re: phv fees; prep letter to Joyce Murphy enclosing check for phv fees; review/maintain emails;
0446	Joel Bernstein	P	11/08/11	0.5	130	Strategy discussion at team meeting
0571	David Goldsmith	P	11/14/11	0.2	140	Forward e-mail from Wall Street Journal to Joel Bernstein and Jennifer Bankston; follow-up e-mails re same.
0446	Joel Bernstein	P	12/02/11	2.4	050	Read draft opinion from W. Rubenstein to Thornton
0571	David Goldsmith	P	12/02/11	1.0	130	Review Thornton and Naumes ethics opinion re: separate qui tam case
0571	David Goldsmith	P	12/05/11	1.5	130	Review Rubenstein ethics opinion; discussion with Joel Bernstein re: Thornton qui tam case and Rubenstein ethics opinion; views on potentially representing relator
0023	Eric Belfi	P	12/12/11	2.0	130	Met with co-counsel on strategy.
0446	Joel Bernstein	P	12/13/11	0.6	130	Telephone conference with Thornton re: status
1225	Stacy Auer	PL	12/13/11	0.6	140	Review docket for Mass. ERISA case; emails re: same; update shared drive re: same; prep for and attend team meeting;

1225	Stacy Auer	PL	12/14/11	0.6	140	Review docket for Mass. ERISA case; emails re: same; update shared drive re: same; prep for and attend team meeting;
0571	David Goldsmith	P	12/14/11	0.5	130	Team conference re: status and strategy
1225	Stacy Auer	PL	12/15/11	0.5	140	Review docket for ERISA action; email to David Goldsmith re: same; coordinate same with Rodney Fulton;
0023	Eric Belfi	P	01/10/12	1.5	010	Communicated with potential client.
0023	Eric Belfi	P	01/12/12	2.5	130	Reviewed order, participated in conference call about strategy and communicated with the client.
0103	Lawrence Sucharow	P	01/12/12	3.8	060	Review lead counsel order; strategize M/T/D argument.
0571	David Goldsmith	P	01/12/12	2.0	130	Review interim lead counsel appointment order; address order re: motion to dismiss hearing set for February 24; discussion with Joel Bernstein re: same and staffing/scheduling issues; review motion to dismiss opposition brief; telephone conference with co-counsel re: same and strategy
1179	Michael Rogers	P	01/12/12	1.0	060	Conferences and conference call with Joel Bernstein, Eric Belfi, David Goldsmith, G. Bradley, D. Chiplock and E. Hoffman re: hearing on motion to dismiss
0446	Joel Bernstein	P	01/12/12	0.8	050	Analyze order appointing interim Lead Counsel
0446	Joel Bernstein	P	01/12/12	0.3	140	Conference with David Goldsmith re: motion to dismiss
0446	Joel Bernstein	P	01/12/12	0.5	130	Conference call with plaintiffs' counsel
0571	David Goldsmith	P	01/18/12	2.5	060	Prepare for motion to dismiss hearing; meeting with Mike Rogers re: same and VQT facts
0446	Joel Bernstein	P	01/20/12	1.1	050	Prepare for argument on MTD
0571	David Goldsmith	P	01/20/12	1.5	060	Discussion with Joel Bernstein re: meeting next week on MTD hearing on VQT FX facts; e-mails with Mike Rogers re: same; prepare for hearing
1179	Michael Rogers	P	01/23/12	3.5	060	Analyze pleadings; memorandum re: same; conference with Joel Bernstein and David Goldsmith re: prepare for oral argument on Motion to Dismiss
0446	Joel Bernstein	P	01/23/12	1.4	050	Meeting with Mike Rogers and David Goldsmith to prepare for argument
0571	David Goldsmith	P	01/23/12	6.0	060	Prepare for motion to dismiss hearing; meeting with Joel Bernstein and Mike Rogers re same and VQT FX intelligence; prepare for same; review SEPTA v. BNYM motion to dismiss hearing transcript.
1225	Stacy Auer	PL	01/23/12	1.3	140	Coordinate w/ paras re: doc pull from SEPTA docket in prep for David Goldsmith's Oral Argument; review docket; emails to team re: same; prep for team meeting on 1/27;
0571	David Goldsmith	P	01/24/12	6.5	060	Prepare for motion to dismiss hearing; review materials
0446	Joel Bernstein	P	01/25/12	1.7	050	Work on prepare for argument with David Goldsmith
0571	David Goldsmith	P	01/25/12	4.5	060	Prepare for motion to dismiss hearing; discussions with Joel Bernstein and Mike Rogers re: same and 11/20/09 IM Guide disclosures
0571	David Goldsmith	P	01/26/12	3.8	060	Prepare for motion to dismiss hearing
0571	David Goldsmith	P	01/27/12	2.0	060	Prepare for motion to dismiss hearing
0571	David Goldsmith	P	02/02/12	0.4	060	Telephone conference with Jessica Scott of Trial Graphix re: motion to dismiss hearing and conflict checks; e-mails re: same
0571	David Goldsmith	P	02/13/12	3.0	060	Prepare for motion to dismiss hearing; develop arguments
1450	Reka Viczian	PL	02/14/12	0.4	140	Review California case docket and pull recent decision.
0571	David Goldsmith	P	02/14/12	8.4	060	Prepare for motion to dismiss hearing; discussions with S. Auer and R. Viczian re various tasks; review motion to dismiss argument transcripts in VQT; research re CalPERS v. State Street action; review Local 39 v. BNY motion to dismiss decision and draft Notice of Supplemental Authority; discussions and e-mails with Joel Bernstein and D. Chiplock re same.
1225	Stacy Auer	PL	02/14/12	0.2	140	Coordinate status update of various dockets with David Goldsmith and Reka Viczian;

0103	Lawrence Sucharow	P	02/15/12	4.5	060	Assist in prep of DG for M/T/D hearing; Strategize arguemtns on M/T/D hearing.
1450	Reka Viczian	PL	02/15/12	0.5	140	Print and organize documents into hearing binder for DJG.
0571	David Goldsmith	P	02/15/12	6.4	060	Prepare for motion to dismiss hearing; circulate/revise/finalize Notice of Supplemental Authority; analyze/distinguish key cases; analysis re expert study and buy-side market; discussions with S. Auer and R. Viczian re various tasks.
0366	Ira Schochet	P	02/16/12	0.5	050	E-mail with David Goldsmith regarding hearing cancellation
1450	Reka Viczian	PL	02/16/12	5.8	140	Pull all briefs and orders from California case and organize into share drive.
0571	David Goldsmith	P	02/16/12	3.2	060	Prepare for motion to dismiss hearing; address order cancelling hearing; e-mails with Joel Bernstein and counsel re: same; telephone conference with G. Bradley re: same; discussion with Reka Viczian re: pulling California case materials
1450	Reka Viczian	PL	02/17/12	3.9	140	Pull and organize orders and pleadings from California docket.
1225	Stacy Auer	PL	02/28/12	0.3	140	Review/maintain email and shared drive; review articles;
1450	Reka Viczian	PL	03/01/12	0.4	140	Download new court document from PACER, circulate to team and put on share drive.
0571	David Goldsmith	P	03/16/12	0.8	050	Review defendants' response to Notice of Supplemental Authority
0023	Eric Belfi	P	03/22/12	1.0	130	Provided update to client.
0571	David Goldsmith	P	03/22/12	0.9	130	Meeting with G. Hopkins and E. Belfi re: update on litigation, status and strategy; prepare for same
1225	Stacy Auer	PL	03/30/12	0.3	140	Email w/ Eunice Jo re: status of case; review Order on lead counsel;
0571	David Goldsmith	P	04/09/12	0.4	140	E-mails with Joel Bernstein re: T. Shapiro request for IM Guides; e-mail to T. Shapiro with same
0571	David Goldsmith	P	04/13/12	0.2	010	Address order scheduling motion to dismiss hearing; forward to Eric Belfi; discussion with Mike Rogers re: same
0571	David Goldsmith	P	04/17/12	0.3	130	Discussion with Joel Bernstein re: motion to dismiss hearing
0571	David Goldsmith	P	04/18/12	5.2	060	Prepare for motion to dismiss hearing; discussion with Joel Bernstein re: same
0571	David Goldsmith	P	04/19/12	2.1	060	Prepare for motion to dismiss hearing; discussion with Mike Rogers re: expert issues
0571	David Goldsmith	P	04/20/12	3.8	060	Prepare for motion to dismiss hearing
0103	Lawrence Sucharow	P	04/22/12	4.0	060	Continued assistance to DG re arguments on M/T/D hearing.
0571	David Goldsmith	P	04/22/12	3.7	060	Prepare for motion to dismiss hearing; research re: same
0571	David Goldsmith	P	04/23/12	2.8	060	Prepare for motion to dismiss hearing; e-mails with E. Belfi and Mike Rogers re reaching out to G. Hopkins and telephone conferences with G. Hopkins and J. McGeehan re various facts/arguments/issues.
0571	David Goldsmith	P	04/24/12	2.7	060	Prepare for motion to dismiss hearing
0571	David Goldsmith	P	04/27/12	1.5	060	Prepare for motion to dismiss hearing; disc with Mike Rogers re same and e-mail from client; research re Chapter 93A cases and Attorney General regulations.
0571	David Goldsmith	P	04/29/12	3.5	060	Prepare for motion to dismiss hearing
0571	David Goldsmith	P	04/30/12	4.1	060	Prepare for motion to dismiss hearing; telephone conferences with Mike Rogers re: various issues; e-mail to J. McGeehan re: ARTRS analyses
0023	Eric Belfi	P	05/01/12	2.5	130	Communicated with client on hearing.
0571	David Goldsmith	P	05/01/12	8.8	060	Prepare for motion to dismiss hearing; conference call with M. Thornton, G. Bradley, E. Hoffman, D. Chiplock re hearing issues and arguments; prepare for same; discussions with Joel Bernstein re issues and arguments; Telephone conference with R. Graves (ARTRS) re internal/external portfolio management; address new decision in VQT matter and related False Claims Act decisions, research re same; e-mails with co-counsel re same; address new derivative complaint.
0571	David Goldsmith	P	05/02/12	4.8	060	Prepare for hearing; review reply brief arguments; research re: client documents, investment manager agreements; discussion with G. Bradley; e-mails with Eric Belfi

0366	Ira Schochet	P	05/03/12	0.9	060	Conference with David Goldsmith regarding issues for oral argument
0571	David Goldsmith	P	05/03/12	3.9	060	Prepare for motion to dismiss hearing; discussions with Ira Schochet re: same
0103	Lawrence Sucharow	P	05/04/12	2.5	060	Continued assistance to DG re arguments on M/T/D hearing.
0366	Ira Schochet	P	05/04/12	1.3	060	Conferences with David Goldsmith regarding arguments
0571	David Goldsmith	P	05/04/12	8.2	060	Prepare for motion to dismiss hearing; review key case law; research re: same; telephone conference with Eric Belfi re: logistics and client issues; discussion with Ira Schochet re: various issues
0571	David Goldsmith	P	05/04/12	7.7	060	Prepare for motion to dismiss hearing
0571	David Goldsmith	P	05/07/12	11.9	060	Travel New York to Boston; prepare for motion to dismiss hearing; e-mails with E. Hoffman and Eric Belfi re: same
0023	Eric Belfi	P	05/08/12	14.0	060	Traveled to; prepared for and met with client and attended hearing on Motion to Dismiss.
0366	Ira Schochet	P	05/08/12	0.4	060	E-mail with David Goldsmith regarding result of hearing
0479	Jonathan Gardner	P	05/08/12	0.6	140	Meeting with J. Bernstein; attend to staffing issues.
1153	Felicia Mann	A	05/08/12	1.0	140	Read complaint and discussed w/M. Rogers
0571	David Goldsmith	P	05/08/12	13.3	060	Attend/argue motion to dismiss hearing and post-hearing conference before Chief Judge Wolf; prepare for hearing; pre and post-appearance discs with co-counsel and G. Hopkins; discussions with J. Rudman and W. Paine; travel Boston to New York; multiple e-mails internally re post-hearing conference, settlement issues, related strategy.
0446	Joel Bernstein	P	05/08/12	1.4	140	Come up with strategy in view of denial of Motion to Dismiss. Discussion with Jonathan Gardner.
1225	Stacy Auer	PL	05/08/12	0.1	140	Review email re: MTD hearing;
0023	Eric Belfi	P	05/09/12	1.5	130	Communicated with the client.
0103	Lawrence Sucharow	P	05/09/12	2.5	060	Strategize balance of case following Judge Wolf's denial of def't's M/T/D.
0366	Ira Schochet	P	05/09/12	0.7	060	Conference with David Goldsmith regarding MTD result
0479	Jonathan Gardner	P	05/09/12	2.2	130	Review complaint and motion papers; confer with J. Bernstein.
1153	Felicia Mann	A	05/09/12	7.7	140	Discussed settlement research with M. Rogers and J. Bernstein; researched case law on the propriety of a class representative settling individual claims and notice requirements
1179	Michael Rogers	P	05/09/12	1.3	130	Conferences with and e-mails to/from Larry Sucharow, Joel Bernstein, Chris Keller, Eric Belfi, David Goldsmith and Felicia Mann re: case strategy re: Judge Wolf's decision re: MTD
1538	Paul Scarlato	OC	05/09/12	0.7	140	Case Management/Strategy - Discussion with Gardner re: motion to dismiss decision; discuss with Goldman and Penny
0571	David Goldsmith	P	05/09/12	1.0	130	E-mails re: Hearing/conference/calls to discuss strategy; telephone conferences and e-mails Joel Bernstein and Eric Belfi re: same
0446	Joel Bernstein	P	05/09/12	0.6	140	Phone call with Larry Sucharow.
0446	Joel Bernstein	P	05/09/12	0.4	140	Phone call with Eric Belfi.
0446	Joel Bernstein	P	05/09/12	0.3	140	Phone call with David Goldsmith.
0446	Joel Bernstein	P	05/09/12	0.8	050	Conference with Michael Rogers & Francisco Malonzo regarding memo for client on responsibility
1225	Stacy Auer	PL	05/09/12	0.2	140	Review/maintain emails and shared drive;
0103	Lawrence Sucharow	P	05/10/12	2.0	130	Continued litigation strategy sessions within firm.
0366	Ira Schochet	P	05/10/12	0.9	130	Conferences with Joel H Bernstein and Michael Rogers regarding potential non-class resolution of action
0446	Joel Bernstein	P	05/10/12	1.0	130	Internal strategy meeting.
1153	Felicia Mann	A	05/10/12	8.3	140	Researched case law on the propriety of a class representative settling individual claims and notice requirements and drafted memo

1179	Michael Rogers	P	05/10/12	2.1	130	Conferences and conference calls with Larry Sucharow, Joel Bernstein, Chris Keller, Eric Belfi, David Goldsmith re: case strategy
0571	David Goldsmith	P	05/10/12	2.2	130	Telephone conference with Larry Sucharow, Joel Bernstein, Eric Belfi, Chris Keller, Mike Rogers re: settlement/class certification strategy issues following May 8 proceedings; discussions with Joel Bernstein and Mike Rogers re: hearing and conference and same; address court orders and send to Eric Belfi for client; e-mail co-counsel re: set up conference call
0446	Joel Bernstein	P	05/10/12	1.0	050	Research on LP duty to class
1225	Stacy Auer	PL	05/10/12	0.3	140	Review/maintain emails and update shared drive; pull recent orders and circulate;
0103	Lawrence Sucharow	P	05/11/12	1.8	100	Continued internal discussions of strength of MA statutory claims and class certification.
1179	Michael Rogers	P	05/11/12	6.1	130	Research and analysis re: 93A class definition; draft memorandum re: same; conference with David Goldsmith re: same; e-mails to/from Larry Sucharow, Joel Bernstein, David Goldsmith re: same
1153	Felicia Mann	A	05/14/12	9.4	140	Edited memo on the propriety of a class representative settling individual claims and notice requirements and conducted additional related research; discussed case posture with M. Rogers
1179	Michael Rogers	P	05/14/12	3.0	130	Analyze Felicia Mann memo re: class representatives; conferences with Joel Bernstein and David Goldsmith re: same, re: case strategy
0571	David Goldsmith	P	05/14/12	2.5	130	E-mails to client responding to inquiry re future AMBAC insurance claims on Chevy Chase and other bonds; inquiry re impact of total trustee write-downs on rescission claims; research and discussions with Joel Bernstein and Martis Alex re same; review materials.
0571	David Goldsmith	P	05/14/12	1.0	130	Review F. Mann research memo re: individual settlements/class fiduciary duties and revised drafts; e-mails with Felicia Mann re: same
0023	Eric Belfi	P	05/15/12	2.5	130	Reviewed and sent memo to client.
0103	Lawrence Sucharow	P	05/15/12	2.5	100	Internal litigation strategy re class reps; MA claims; class certification.
0446	Joel Bernstein	P	05/15/12	1.0	140	Conference call with co-counsel
0479	Jonathan Gardner	P	05/15/12	1.0	130	Conference call with co-counsel to discuss case strategy; analyze claims.
1153	Felicia Mann	A	05/15/12	0.3	140	Discussed case updates with M. Rogers
1179	Michael Rogers	P	05/15/12	3.5	130	Conference call with Larry Sucharow, Joel Bernstein, Chris Keller, Eric Belfi, David Goldsmith, Jonathan Gardner and co-counsel re: case strategy; analysis of Felicia Mann memo re: class representatives; conferences with Joel Bernstein and David Goldsmith re: same
0571	David Goldsmith	P	05/15/12	1.6	130	Telephone conference with all co-counsel re May 8 hearing and conference and settlement issues; post-call discussion re same; discussions with Mike Rogers re same; Telephone conference with Lawrence Sucharow re: telephone conference with J. Rudman and B. Paine re settlement issues; e-mail report internally.
0571	David Goldsmith	P	05/15/12	0.4	140	E-mails internally and with D. Halston and A. Hornstine re defendants' request for extension to file answer to complaint; review draft motion and approve.
1179	Michael Rogers	P	05/16/12	2.0	130	Analysis of law and factual materials re: case strategy
0023	Eric Belfi	P	05/18/12	2.5	130	Prepared and sent materials to client.
0023	Eric Belfi	P	05/24/12	3.5	130	Prepared for sent materials to clients.
0103	Lawrence Sucharow	P	05/24/12	1.8	130	Continued internal strategy discussions.
0571	David Goldsmith	P	05/24/12	0.4	130	Telephone conference with Lawrence Sucharow re telephone conference with defendants' counsel; review e-mail summary re same; provide L. Sucharow with names of co-counsel to e-mail.
0103	Lawrence Sucharow	P	05/28/12	3.8	090	Analysis of settlement issue in preparation for settlement/ mediation meeting in Boston.
0571	David Goldsmith	P	05/28/12	0.8	090	Read motion to dismiss hearing transcript; L. Sucharow e-mails re: settlement issues

0103	Lawrence Sucharow	P	05/29/12	1.7	090	Conf call w/ deft's counsel re upcoming settlement mtg.
0571	David Goldsmith	P	05/29/12	0.3	090	Telephone conference with Larry Sucharow re: call with defendants' counsel re: settlement issues; e-mail co-counsel group re: client availability for meetings
1179	Michael Rogers	P	05/29/12	6.0	130	Conference with David Goldsmith re: meetings with State Street re: damages; re: class settlement issues; analysis of case law and factual record re: same; analyze pleadings re: same
0103	Lawrence Sucharow	P	05/30/12	3.3	090	Prep for settlement mtg.
1179	Michael Rogers	P	05/30/12	7.5	130	Conference with David Goldsmith re: meetings with State Street re: damages; re: class settlement issues; analysis of case law and factual record re: same; analyze pleadings re: same
0571	David Goldsmith	P	05/30/12	1.0	090	Discussions with Larry Sucharow re: June 21-22 settlement meetings in Boston; discussion with Mike Rogers re: same; planning and strategy
0571	David Goldsmith	P	05/31/12	0.4	090	Meeting with Mike Rogers re: settlement strategy; preparation for meeting with Larry Sucharow; finalize meeting with Larry Sucharow
1179	Michael Rogers	P	06/01/12	7.0	130	Analyze motion to dismiss hearing transcript; conference with David Goldsmith re: same; prepare for meeting with State Street; analysis of case law and factual record re: same; analyze pleadings re: same;
1450	Reka Viczian	PL	06/01/12	0.2	140	Update share drive with MTD transcript.
1225	Stacy Auer	PL	06/01/12	0.1	140	Email to Mike Rogers re: MTD Transcript;
0103	Lawrence Sucharow	P	06/04/12	5.7	130	Prepare for Strategy meeting (internal)
0446	Joel Bernstein	P	06/04/12	0.3	130	conference with Larry Sucharow re: settlement strategy
0571	David Goldsmith	P	06/04/12	0.2	130	E-mails with Mike Rogers re: preparation for Tuesday meeting with Larry Sucharow
1179	Michael Rogers	P	06/04/12	8.0	130	Analyze FX Transparency report for ARTRS revised trading losses; emails to/from David Goldsmith re: same; prepare for meeting with Larry Sucharow re: same; draft memo re: same; prepare materials re: same
1450	Reka Viczian	PL	06/04/12	1.0	140	Print, index and organize pleadings for M. Rogers binder.
0103	Lawrence Sucharow	P	06/05/12	3.7	130	Internal strategy meeting (David Goldsmith, Michael Rogers, Javier Bleichmar)
0446	Joel Bernstein	P	06/05/12	1.0	130	Meeting with Larry Sucharow, David Goldsmith and Mike Rogers
0571	David Goldsmith	P	06/05/12	3.1	130	Meeting with Lawrence Sucharow, Mike Rogers, Joel Bernstein re case, strategic and settlement issues; prepare for same; pre-meeting with MHR re same; initial review of BNY Mellon consent decree and new post-settlement FX procedures for analogy with potential SST settlement.
1179	Michael Rogers	P	06/05/12	4.7	130	E-mails to/from David Goldsmith re: damages; conferences with Larry Sucharow, Joel Bernstein and David Goldsmith re: meetings with SST; analysis of BNYM Consent Decree with US Attorney
0366	Ira Schochet	P	06/06/12	2.6	130	Reviewed transcript of hearing and conference with David Goldsmith regarding same
0571	David Goldsmith	P	06/06/12	1.2	090	Review BNY consent decree and new FX procedures; discussion with Mike Rogers re: same and strategy; discussion with Ira Schochet re: hearing issues; e-mails internally and with co-counsel re: Reuters article
1179	Michael Rogers	P	06/06/12	5.7	130	Draft proposed settlement agreement; conference with David Goldsmith re: same; analyze State Street November 2009 Investment Manager Guide re: same
0103	Lawrence Sucharow	P	06/07/12	3.5	090	Continued strategizing regarding possible settlement scenarios
0571	David Goldsmith	P	06/07/12	0.2	090	E-mails internally re: planning for June 21 and 22 settlement meetings; travel arrangements
1179	Michael Rogers	P	06/07/12	4.2	130	Draft proposed settlement agreement; analyze State Street November 2009 Investment Manager Guide re: same

0571	David Goldsmith	P	06/08/12	0.6	090	Address M. Lesser e-mail re: rough damages analysis; e-mails internally re: same and June 21-22 meetings
1179	Michael Rogers	P	06/08/12	7.0	130	Draft proposed settlement agreement; prepare for meeting with State Street
1179	Michael Rogers	P	06/11/12	3.8	130	Draft proposed settlement agreement; prepare for meeting with State Street
1179	Michael Rogers	P	06/12/12	6.2	130	Draft proposed settlement agreement; prepare for meeting with State Street
0023	Eric Belfi	P	06/13/12	1.0	130	Communicated with client.
0103	Lawrence Sucharow	P	06/13/12	3.2	090	Prepare for and conduct settlement strategy meeting with plaintiffs' counsel.
0571	David Goldsmith	P	06/13/12	4.4	130	Meeting with Larry Sucharow and Mike Rogers re: settlement issues and strategy; meeting with Larry Sucharow, Mike Rogers, Mike Thornton, M. Lesser, B. Lieff re: same; prepare for same; e-mails internally re: same
1153	Felicia Mann	A	06/13/12	0.5	130	Discussed case updates and research with M. Rogers; researched whether a the definition for a settlement class can be limited to certain claims
1179	Michael Rogers	P	06/13/12	8.3	130	Conferences with and e-mails to/from Larry Sucharow, Joel Bernstein, Eric Belfi, David Goldsmith, M. Thornton, M. Lesser, B. Lieff and D. Chiplock re: meeting with State Street; analysis of factual materials re: same; conference with Felicia Mann re: research re: same
0023	Eric Belfi	P	06/14/12	2.5	130	Prepared for and met client.
0103	Lawrence Sucharow	P	06/14/12	2.5	090	Internal settlement strategy mtg.
0479	Jonathan Gardner	P	06/14/12	0.8	140	Conference call with co-counsel re: ██████████ analyze material.
0571	David Goldsmith	P	06/14/12	0.2	130	Address e-mail from M. Lesser re: new third-party FX provider (Molten Markets) and request for draft of settlement terms
1153	Felicia Mann	A	06/14/12	4.6	130	Researched whether a the definition for a settlement class can be limited to certain claims
1179	Michael Rogers	P	06/14/12	0.6	130	Conference call with Eric Belfi, Joel Bernstein, Jonathan Gardner, D. Chiplock re: possible class representatives
0103	Lawrence Sucharow	P	06/15/12	3.0	090	Prepare for settlement mtg; Review memos on MA law; class cert; etc.
1153	Felicia Mann	A	06/15/12	3.6	090	Researched parties ability/control to narrow a class definition for settlement purposes and whether a class definition used can differ from what is alleged in a complaint; discussed research with M. Rogers
0103	Lawrence Sucharow	P	06/17/12	2.8	090	Prepare for settlement mtg.
1153	Felicia Mann	A	06/17/12	2.2	090	Researched whether a party can create subclasses not alleged in complaint and settle just one of the subclasses and whether a settlement class can be narrower than the class in the complaint
1179	Michael Rogers	P	06/17/12	1.1	130	Draft memo to Larry Sucharow re: settlement class re: 93A; e-mails to/from Felicia Mann re: same; analyze Felicia Mann research memo re: same
0103	Lawrence Sucharow	P	06/18/12	2.7	090	Continued internal settlement strategy discussions
1153	Felicia Mann	A	06/18/12	4.1	090	Researched whether a party can create subclasses not alleged in complaint and settle just one of the subclasses and whether a settlement class can be narrower than the class in the complaint
0103	Lawrence Sucharow	P	06/19/12	4.8	090	Prepare for settlement meeting with defendants counsel and clients.
0571	David Goldsmith	P	06/19/12	0.5	090	Speak with Mike Rogers re: settlement meetings and draft injunctive relief provisions; review documents for settlement meetings
1179	Michael Rogers	P	06/19/12	0.8	130	Conference with David Goldsmith re: draft settlement language; analyze State Street Investment Manager Guide re: same; e-mails to/from M. Lesser re: same; draft and amend draft settlement agreement
0103	Lawrence Sucharow	P	06/20/12	3.5	090	Prepare for settlement meeting with defendants counsel and clients.
0446	Joel Bernstein	P	06/20/12	1.1	130	Analysis re: strategy for settlement meetings

0571	David Goldsmith	P	06/20/12	4.5	090	Prepare for settlement meetings; discussions and e-mails with Larry Sucharow and Mike Rogers re: same; review materials; research re: status of Hill class action
1153	Felicia Mann	A	06/20/12	0.1	140	Discussed case updates with M. Rogers
1179	Michael Rogers	P	06/20/12	7.1	130	Conferences with, telephone calls with and emails to/from Larry Sucharow, Joel Bernstein, Eric Belfi, David Goldsmith, Felicia Mann, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lieff, & D. Chiplock re draft settlement language, re mediators, re case strategy; analyze State Street Investment Manager Guide re same; emails to/from M. Lesser re same; draft and amend draft settlement agreement; draft memos to LAS re and in prep for meetings with G. Hopkins & Defendants
0023	Eric Belfi	P	06/21/12	4.0	140	Prepared for rand met about meeting with defendants.
0103	Lawrence Sucharow	P	06/21/12	6.8	090	Travel to Boston for settlement meeting with defendants; attend strategy session with plaintiffs counsel
0571	David Goldsmith	P	06/21/12	9.5	090	Travel from New York to Boston; meetings and working lunch with Larry Sucharow, Eric Belfi, Mike Rogers re: settlement issues; meeting with Larry Sucharow, Eric Belfi, Mike Rogers, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, R. Lieff, D. Chiplock re: settlement issues and strategy; prepare for same
1179	Michael Rogers	P	06/21/12	9.5	080	Travel to Boston; conferences and conference calls with G. Hopkins, Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, R. Lieff and D. Chiplock re: meeting with State Street
0023	Eric Belfi	P	06/22/12	6.0	140	Prepared for and met defendants.
0103	Lawrence Sucharow	P	06/22/12	7.5	090	Prepare for and attend settlement meeting with defendants counsel; report to plaintiffs counsel
0571	David Goldsmith	P	06/22/12	11.6	090	Settlement meeting with Larry Sucharow, Eric Belfi, Mike Rogers, G. Hopkins, J. Rudman, B. Paine, D. Halston, A. Hornstine, State Street representatives, prepare for same; post-meeting debriefing with Larry Sucharow, Eric Belfi, Mike Rogers, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, R. Lieff, D. Chiplock; prepare questions for FX Transparency for further analysis, e-mails with M. Lesser re same; travel Boston to New York (delayed).
1179	Michael Rogers	P	06/22/12	11.1	080	Meeting with G. Hopkins, Larry Sucharow, Eric Belfi, David Goldsmith, State Street & State Street counsel re settlement; conference and conference call with G. Hopkins, Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, R. Lieff, & D. Chiplock re settlement proposals, re mediation, re discussions with FX Transparency; travel to New York
0103	Lawrence Sucharow	P	06/23/12	3.8	090	Travel home from Boston settlement meeting.
1179	Michael Rogers	P	06/23/12	1.3	080	Emails to/from David Goldsmith, M Thornton, M. Lesser, D. Chiplock, & J. McGeehan re conference call with FX Transparency & exchange of questions re same
0103	Lawrence Sucharow	P	06/24/12	2.5	090	Post-mortem review of settlement meetings.
1179	Michael Rogers	P	06/24/12	0.6	080	Emails to/from David Goldsmith, M. Thornton, M. Lesser, D. Chiplock, & J. McGeehan re conference call with FX Transparency and exchange of questions re same
0571	David Goldsmith	P	06/25/12	1.8	130	Telephone conference with J. McGeehan, M. Thornton, E. Hoffman, R. Lieff, D. Chiplock, Mike Rogers re: SSH/AIR trades data analysis and strategy for settlement, prepare for same, pre and post-call discussions with Mike Rogers re: same
1179	Michael Rogers	P	06/25/12	4.2	080	Draft memo re: meeting with State Street; conference call with David Goldsmith, M. Thornton, E. Hoffman, R. Lieff, D. Chiplock & J. McGeehan re: analysis of ARTRS data
1179	Michael Rogers	P	06/26/12	3.7	080	Draft memo re: meeting with State Street

0571	David Goldsmith	P	06/27/12	0.7	090	Address e-mail from J. McGeehan re: SSH/AIR trades analysis; discussion with Mike Rogers re: same and settlement strategy issues
1179	Michael Rogers	P	06/27/12	3.4	080	Draft memo re: meeting with State Street
0103	Lawrence Sucharow	P	06/28/12	1.5	090	Review draft memo re settlement mtg.
1179	Michael Rogers	P	06/28/12	3.1	080	Draft memo re: meeting with State Street
0571	David Goldsmith	P	06/29/12	0.4	090	Address voice mail from B. Paine; voice mail and e-mail to B. Paine and follow-up internally
1179	Michael Rogers	P	06/29/12	3.6	080	Draft memo re: meeting with State Street
0023	Eric Belfi	P	07/02/12	1.0	010	Review latest news stories.
1179	Michael Rogers	P	07/02/12	3.4	080	Draft memo re: meeting with State Street; telephone conference with D. Halston re: scheduling of mediation; re: submission of report to Court; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, R. Lief, D. Chiplock re: same
1179	Michael Rogers	P	07/03/12	2.3	080	Draft memo re: meeting with State Street
0571	David Goldsmith	P	07/05/12	2.0	080	Review new FX Transparency reports on ARTRS FX trades; call with co-counsel re: same and other mediation and settlement issues; prepare for same; pre and post-call discussions with Mike Rogers re: same
1179	Michael Rogers	P	07/05/12	3.0	080	Draft memo re: meeting with State Street; conferences with and e-mails to/from David Goldsmith re: FXT analysis; conference call with co-counsel re: same
1179	Michael Rogers	P	07/09/12	2.4	080	Telephone conference with D. Halston re: mediator dates re: July 13 submission; analyze and edit draft joint motion to file under seal and draft joint status report; e-mails to/from David Goldsmith and D. Chiplock re: same
0571	David Goldsmith	P	07/09/12	0.5	130	Discussion with Mike Rogers re: status and mediation strategy; review and comment on draft status report to court due July 13
1179	Michael Rogers	P	07/10/12	2.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, R. Lief and D. Chiplock re: mediation dates re: submission to court re: artrs DATA analysis; analysis re: same
1179	Michael Rogers	P	07/11/12	6.9	080	E-mails to/from defense counsel re: edits to submissions to Court re: dates for mediation; conference call with Mike Lesser and D. Chiplock re: trade data; analysis re: same
1179	Michael Rogers	P	07/12/12	2.1	080	Analysis of data re: ARTRS FX trades; e-mails to/from co-counsel and defense counsel re: joint submission to court re: mediator
0571	David Goldsmith	P	07/13/12	0.5	080	Discussions with Mike Rogers re: joint status report due to Court; status; e-mails re: same
1179	Michael Rogers	P	07/13/12	0.9	080	E-mails to/from co-counsel and defense counsel re: joint submission to court re: mediator
0023	Eric Belfi	P	07/16/12	2.0	140	Researched case and communicated with co-counsel.
0103	Lawrence Sucharow	P	07/16/12	2.3	080	Att to selection of mediator candidates.
0571	David Goldsmith	P	07/16/12	0.9	080	Telephone conference with Larry Sucharow re: telephone conference with J. Rudman and W. Paine re: potential mediators; e-mail report to co-counsel and follow-up e-mails re: same; discussion with Mike Rogers re: same
1179	Michael Rogers	P	07/16/12	0.6	080	E-mails to/from co-counsel re: mediators; conference with David Goldsmith re: same
1179	Michael Rogers	P	07/18/12	0.8	080	E-mails to/from M. Lesser and D. Chiplock re: ARTRS data analysis and data requests from SST
1179	Michael Rogers	P	07/20/12	0.6	080	E-mails to/from M. Lesser and D. Chiplock re: ARTRS data analysis and data requests from SST
0103	Lawrence Sucharow	P	07/23/12	1.8	080	Continued scheduling efforts for mediation; correspondence Bill Paine and plaintiffs' counsel.
1179	Michael Rogers	P	07/23/12	0.3	080	E-mails to/from co-counsel re: mediation
1179	Michael Rogers	P	07/26/12	0.3	080	E-mails to/from co-counsel re: mediation

0571	David Goldsmith	P	07/27/12	0.6	080	Telephone conference with Larry Sucharow re: status of mediator selection; review e-mails with W. Paine re: same; forward to co-counsel with cover note; reach out to Judge Tevrizian office re: availability; e-mails internally re: same; discussion with Mike Rogers re: same
0571	David Goldsmith	P	07/31/12	1.0	140	Address Judge Wolf endorsed order re: joint status report; e-mails internally and with co-counsel re: same and mediators and scheduling issues; e-mails with Mike Rogers re: Judge Tevrizian availability
1179	Michael Rogers	P	07/31/12	0.8	080	Analyze Court's order denying motion to seal; conference with David Goldsmith re: same; e-mails to/from Larry Sucharow, Joel Bernstein, Chris Keller, Eric Belfi, David Goldsmith and co-counsel re: same, re: mediators and mediator dates; telephone conference with JAMS mediation clerk; e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: same
1225	Stacy Auer	PL	07/31/12	0.2	140	Emails re: ecf notifications for Eric Belfi and Larry Sucharow;
0023	Eric Belfi	P	08/01/12	1.0	140	Communicated with co-counsel.
0571	David Goldsmith	P	08/01/12	0.4	080	E-mail to co-counsel group re: Jonathan Marks availability; telephone conferences with Larry Sucharow re: same
1179	Michael Rogers	P	08/01/12	1.3	080	Edit memo re: meeting with defendants; e-mails to/from David Goldsmith re: same; analyze Henriquez complaint; e-mails to/from David Goldsmith, M. Thornton, G. Bradley, M. Lesser re: same
1179	Michael Rogers	P	08/02/12	1.4	080	Telephone conferences and conferences with and e-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: scheduling pre-call with mediator; telephone conferences with and e-mails to/from Larry Sucharow re: preparation of materials for pre-call with mediator; draft same
0103	Lawrence Sucharow	P	08/03/12	1.5	080	Prepare for organizational call with all parties and mediator.
0571	David Goldsmith	P	08/03/12	1.5	080	Progress on mediation preparation; discussion with Mike Rogers re: same; review/comment on Mike Rogers memo re: June meetings with co-counsel and defendants
1179	Michael Rogers	P	08/03/12	2.0	080	E-mails to/from co-counsel, opposing counsel and mediator's assistant re: mediation pre-call; conference with David Goldsmith re: same
0103	Lawrence Sucharow	P	08/06/12	1.7	130	Meet with David Goldsmith and Michael Rogers to prepare for conference call with mediator on Tuesday.
0571	David Goldsmith	P	08/06/12	4.8	090	Meeting with Larry Sucharow and Mike Rogers re: Tuesday conference call with all parties and mediator; discussions with Mike Rogers re: same; prepare for conference call
1179	Michael Rogers	P	08/06/12	3.7	080	Edit and amend cheat sheet and memo; conference with Larry Sucharow and David Goldsmith re: pre-mediation call; telephone conference with Matt Lesser re: information needed from defendants to estimate damages; e-mails to/from M. Lesser re: same
1225	Stacy Auer	PL	08/06/12	0.3	140	Emails w/ Reka Vizcain re: shared drive per David's request;
0103	Lawrence Sucharow	P	08/07/12	1.5	080	Prepare for and conduct conference call with mediator to prepare for mediation.
0571	David Goldsmith	P	08/07/12	2.4	080	Conference call with Nicole Zeiss, Eric Belfi, Mike Rogers, all parties with mediator; prepare for same; post-call e-mails re: same; review D. Halston e-mails to mediator with motion to dismiss materials; e-mail to Mike Rogers re: same
1179	Michael Rogers	P	08/07/12	3.7	080	Draft document/data/information requests to State Street re: mediation; e-mails to/from Larry Sucharow, David Goldsmith, M. Lesser and D. Chiplock re: same; conferences with David Goldsmith re: same; e-mails to/from David Goldsmith, mediator, SST counsel and co-counsel re: materials submitted to mediator
0571	David Goldsmith	P	08/08/12	1.2	080	Conference call with co-counsel re: data requests for mediation purposes; prepare for same; pre and post-call discussions with Mike Rogers

1179	Michael Rogers	P	08/08/12	6.3	080	Draft, edit and amend document/data/information requests to State Street re: mediation; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Lesser and D. Chiplock re: same; conferences with David Goldsmith re: same; conference call with David Goldsmith, M. Lesser and D. Chiplock re: same; telephone conference with J. Galanek re: same
0023	Eric Belfi	P	08/09/12	3.0	140	Prepared for and participated in conference call.
0103	Lawrence Sucharow	P	08/09/12	2.8	080	Conference call with defendants counsel, David Goldsmith, Michael Rogers regarding discovery for mediation.
0571	David Goldsmith	P	08/09/12	2.5	080	Conference calls with defendants and co-counsel re: data requests for mediation purposes; prepare for same; e-mails internally and with co-counsel re: same; address logistics; pre and post-call discussions with Larry Sucharow and Mike Rogers re: same
1179	Michael Rogers	P	08/09/12	9.5	080	Conference calls and telephone conferences with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and opposing counsel re: requests for data re: mediation re: today's call re: same; research and analyze docket items on California v. State Street; analyze court order compelling interrogatory responses; analyze previous interrogatory responses; telephone conferences with Larry Sucharow and Eric Belfi re: same; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: same
0103	Lawrence Sucharow	P	08/10/12	1.5	080	Attend to discovery issues related to upcoming mediation.
1179	Michael Rogers	P	08/10/12	2.3	080	E-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: communications with defendants
0571	David Goldsmith	P	08/13/12	1.5	080	Review/mark-up draft Status Report to Court, e-mails internally re same; address mediation agreement, e-mails with Larry Sucharow and Mike Rogers re same; discussion and e-mails with Mike Rogers re 8/14 meeting with M. Thornton
1179	Michael Rogers	P	08/13/12	3.1	080	Emails to/from co-counsel and opposing counsel re: draft Status Report; telephone conference with M. Thornton re: scope of information and data request to State Street in mediation; analyze public materials from California v. State Street docket re: same
0103	Lawrence Sucharow	P	08/14/12	2.0	080	Attend to discovery and mediation issues.
0571	David Goldsmith	P	08/14/12	1.4	080	Meeting with M. Thornton and Mike Rogers re: mediation and document strategy; post-meeting discussions with Mike Rogers; e-mails internally; follow-up with defendants re: next call to discuss mediation document production; sign/return mediation agreement
1179	Michael Rogers	P	08/14/12	3.9	080	Conference calls with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton and M. Lesser re: scope of information and data request to State Street in mediation; analyze public materials from California v. State Street docket re: same
1225	Stacy Auer	PL	08/14/12	0.2	140	Convo & email re: Larry Sucharow's phv application;
0571	David Goldsmith	P	08/15/12	0.4	080	Address M. Lesser e-mail re: California document requests; discussion with Mike Rogers re: strategy
1179	Michael Rogers	P	08/15/12	2.3	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: information request to State Street; telephone conference with M. Lesser re: same; telephone conferences and e-mails to/from David Goldsmith re: same; analyze publicly-available materials from California v. State Street docket
0103	Lawrence Sucharow	P	08/15/12	1.2	080	Attend to mediation issues.
0103	Lawrence Sucharow	P	08/16/12	1.2	080	Attend to discovery in prep for mediation.
0571	David Goldsmith	P	08/16/12	1.3	080	Meeting with Larry Sucharow and Mike Rogers re: mediation strategy; California document production issues; e-mail follow-up to W. Paine; e-mails with co-counsel; discussions with Mike Rogers re: same
1179	Michael Rogers	P	08/16/12	0.5	080	Conference with Larry Sucharow and David Goldsmith re: data requests to defendants

0571	David Goldsmith	P	08/17/12	1.0	080	Telephone conference with W. Paine and Mike Rogers re: requesting production of documents produced in California Actin; pre and post-call discussions with Mike Rogers re: same; e-mails internally and with co-counsel re: same
1179	Michael Rogers	P	08/17/12	0.6	080	Conference call with David Goldsmith and B. Paine re: data requests; e-mails to/from Team re: same
1225	Stacy Auer	PL	08/17/12	0.4	140	Emails re: workflow for doc pull for Mike Rogers; email to Katie Good re: same; pull and circulate the Joint Status Report and update shared drive w/ same;
1179	Michael Rogers	P	08/20/12	0.3	080	Analyze Basel Guidance re: FX trading
0103	Lawrence Sucharow	P	08/21/12	1.5	080	Attend to mediation voluntary discovery issues.
1179	Michael Rogers	P	08/21/12	0.4	080	Telephone conference with Mike Lesser re: request for information; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and defense counsel re: same
1450	Reka Viczian	PL	08/21/12	1.2	140	Take care of PHV papers and filing for L. Sucharow; multiple communications with local counsel re same.
0571	David Goldsmith	P	08/21/12	0.2	080	E-mails with Mike Rogers and internally re: status of mediation dialogue; following-up with defendants
0571	David Goldsmith	P	08/23/12	1.2	080	Telephone conferences with W. Paine re mediation discovery issues and potentially including Henriques ERISA action in Oct mediation; e-mail report to co-counsel re same and follow-up e-mails; discussion with Mike Rogers re same and strategy; e-mails with Larry Sucharow re same.
0571	David Goldsmith	P	08/24/12	0.8	080	E-mails with co-counsel and discussions with Mike Rogers re: mediation/document production strategy; review discovery letters to court in Hill securities class action
0103	Lawrence Sucharow	P	08/27/12	1.5	080	Attend to mechanics of ex parte meeting with mediator
0571	David Goldsmith	P	08/27/12	0.4	080	Telephone conference with Larry Sucharow re: planning and logistics for September 13 pre-mediation meeting; e-mail J. Marks requesting time and location; e-mails internally and with co-counsel re: same; discussions with Mike Rogers and Stacy Auer re: same
1179	Michael Rogers	P	08/27/12	0.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, B. Loeff, D. Chiplock and J. Marks re: scheduling of pre-mediation meeting with J. Marks
1225	Stacy Auer	PL	08/27/12	0.3	140	Prep re: mtg w/ mediator and co-counsel scheduled for 9/13; emails and convos re: same;
0571	David Goldsmith	P	08/28/12	0.5	080	Telephone conference with M. Thornton re: posture re: Henrique ERISA class action and mediation; report internally re: same and e-mail with Larry Sucharow
0571	David Goldsmith	P	08/29/12	0.6	080	E-mails internally and with co-counsel re: ERISA action and mediation/strategy issues
1179	Michael Rogers	P	08/29/12	3.4	130	Analyze SST's draft motion to extend deadline to answer complaint; emails to/from Larry Sucharow, Eric Belfi, David Goldsmith & co-counsel re same
1179	Michael Rogers	P	08/29/12	2.3	080	Telephone conference with B. Paine re communications with Henriquez plaintiffs re mediation & intervention; emails to/from Larry Sucharow, Eric Belfi, David Goldsmith & co-counsel re same;
0103	Lawrence Sucharow	P	08/30/12	1.7	130	Att to Henriquez (Erisa) plttfs participation in case.
0571	David Goldsmith	P	08/30/12	0.8	130	E-mails internally and with co-counsel re: ERISA action, intervention, mediation strategy issues
1179	Michael Rogers	P	08/30/12	6.5	080	Telephone conference with B. Paine re mediation, re Henriquez plaintiffs threatened intervention; emails to/from Larry Sucharow, Eric Belfi, David Goldsmith & co-counsel re same; emails to/from Larry Sucharow, Joel Bernstein, Eric Belfi and David Goldsmith re Henriquez plaintiffs request for meet and confer re intervention;
0103	Lawrence Sucharow	P	08/31/12	2.0	130	Continued att to Henriquez (Erisa) plttfs participation in case.

0571	David Goldsmith	P	08/31/12	0.8	080	E-mails with team and co-counsel re ERISA action intervention and mediation issues and strategy.
1179	Michael Rogers	P	08/31/12	1.1	080	E-mails to/from Larry Sucharow, Joel Bernstein, Eric Belfi, David Goldsmith, co-counsel, & Henriquez counsel re Henriquez plaintiffs request for meet and confer re motion to intervene
0023	Eric Belfi	P	09/04/12	2.0	130	Prepared for and met with co-counsel.
0103	Lawrence Sucharow	P	09/04/12	2.7	080	Conference call plaintiffs counsel regarding upcoming mediation and possible coordination with Henriquez case; tel Bill Paine regarding discovery and mediation issues.
0571	David Goldsmith	P	09/04/12	2.0	130	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, co-counsel re Henriquez ERISA action, mediation and intervention issues, strategy; post-call discussion re same; prepare for and research re same, review pleadings and research ERISA preemption.
1179	Michael Rogers	P	09/04/12	0.3	080	E-mails to/from Larry Sucharow, Joel Bernstein Eric Belfi, David Goldsmith and co-counsel re: SST's thoughts re: coordination of mediation
1179	Michael Rogers	P	09/04/12	7.1	050	Analyze LAMPERS v. JPMC Complaint; conferences and conference calls with and e-mails to/from Larry Sucharow, Joel Bernstein, Eric Belfi, David Goldsmith and co-counsel re: same re: ERISA, preemption and coordination
0103	Lawrence Sucharow	P	09/05/12	1.7	130	Internal discussions re Henriquez plttfs.
0571	David Goldsmith	P	09/05/12	1.0	080	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, M. Thornton, other co-counsel, B. McTigue, J. Moore re: ERISA action, intervention, coordination, consolidation, mediation issues; post-call discussion re: same
1179	Michael Rogers	P	09/05/12	2.7	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and Henriquez counsel re: coordinated mediation re: motion to intervene
0023	Eric Belfi	P	09/06/12	2.5	080	Prepared for mediation.
0103	Lawrence Sucharow	P	09/06/12	2.7	080	Prepare for and conduct conference call with ERISA counsel regarding intervention into State Street case; discuss alternatives; confer co-counsel; telephone call with Bill Paine regarding offer of coordinated mediation.
1179	Michael Rogers	P	09/06/12	0.3	080	Conference with David Goldsmith re: mediation and preparation thereof
0023	Eric Belfi	P	09/07/12	3.5	130	Prepared for and met with co-counsel.
1179	Michael Rogers	P	09/07/12	0.3	080	E-mails to/from Larry Sucharow, David Goldsmith and J. Moore re; LAMPERS v. JPMC complaint
0571	David Goldsmith	P	09/07/12	0.3	080	Discussion with Mike Rogers re: rough damages analysis, strategy for next week
0103	Lawrence Sucharow	P	09/10/12	3.8	080	Prepare for mediation sessions.
0571	David Goldsmith	P	09/10/12	0.5	080	Discussions with Mike Rogers re: rough damages analyses for mediation meetings tomorrow and Thursday, mediation strategy
1179	Michael Rogers	P	09/10/12	8.0	080	Conference call with Larry Sucharow, M. Thornton, M. Lesser, E. Hoffman, B. Lieff and D. Chiplock re: ERISA claims; telephone conference with M. Lesser re: damages estimates; conferences and telephone conferences with and e-mails to/from M. Lesser and David Goldsmith re: same; analyze data and create worksheet re: same; conference with David Goldsmith re: same
0023	Eric Belfi	P	09/11/12	2.0	090	Worked on the mediation.
0103	Lawrence Sucharow	P	09/11/12	3.5	080	Meeting Plaintiffs' counsel to prepare for meeting with mediator (Thornton; Lief); attend to damages estimate.
0571	David Goldsmith	P	09/11/12	2.5	080	Meeting with co-counsel re: ex parte meeting with mediator; prepare for same; discussions with Mike Rogers re: same

						Conference with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and co-counsel re: mediation re: trading data re: damages estimates; create and amend table re: damages estimates; conferences with Ellen Pundyk re: creation of same; conference with Larry Sucharow, Chris Keller, Eric Belfi, David Goldsmith, M. Thornton, M. Lesser, E. Hoffman and R. Lieff re: mediation
1179	Michael Rogers	P	09/11/12	9.6	080	
0103	Lawrence Sucharow	P	09/12/12	3.0	080	Prepare for mediation; review memos and materials.
0571	David Goldsmith	P	09/12/12	1.5	080	Prepare for 9/13 meeting with mediator; discussions with Mike Rogers re: same; e-mail to Larry Sucharow with list of issues
1179	Michael Rogers	P	09/12/12	6.6	080	Amend table re: damages estimates; conferences with Ellen Pundyk re: same; conferences with David Goldsmith re: pre-mediation meeting; review pleadings and other materials in preparation for same
1225	Stacy Auer	PL	09/12/12	0.3	140	Coordinate workflow re: prep for meeting w/ mediator; emails w/ Shella Mundo re: same; maintain hard copy files;
1523	Shella Mundo	PL	09/12/12	3.0	080	Prepared compilation of materials for pre-mediation meeting per Michael Rogers; Emails to Michael Rogers and Stacy Auer re: same.
0023	Eric Belfi	P	09/13/12	4.0	090	Worked on mediation.
0103	Lawrence Sucharow	P	09/13/12	4.0	080	Prepare for and attend pre-mediation with Jonathan Marks (mediator) and co-counsel.
0571	David Goldsmith	P	09/13/12	3.0	080	Meeting with J. Marks, Larry Sucharow, Eric Belfi, Mike Rogers, co-counsel re: ex parte mediation issues; prepare for same
1179	Michael Rogers	P	09/13/12	9.4	080	Prepare for pre-mediation meeting; attend pre-mediation meeting with Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lieff, J. Marks and B. Wally
1523	Shella Mundo	PL	09/13/12	0.5	080	Prepared additional compilation of materials for pre-mediation meeting per Michael Rogers; Emails re: same.
0103	Lawrence Sucharow	P	09/14/12	2.5	080	Conduct post review of mediation session.
0571	David Goldsmith	P	09/14/12	0.3	080	Discussion with Mike Rogers re: end of meeting with mediator; mediation issues going forward
0571	David Goldsmith	P	09/15/12	0.2	140	Task Mike Rogers with handling payment of mediator's fees/involvement of ERISA actions
0103	Lawrence Sucharow	P	09/18/12	3.0	080	Review McTigue mediation letter and demands.
0571	David Goldsmith	P	09/18/12	1.0	080	Review ERISA plaintiffs proposal re: separate mediation agreement; e-mails with Larry Sucharow and Mike Rogers re: same; discussions with Mike Rogers re: same going forward; potential intervention motion issues
1179	Michael Rogers	P	09/18/12	7.0	080	E-mails to/from Larry Sucharow, David Goldsmith & co-counsel re: McTigue request re: mediation; analyze same; conference with David Goldsmith re: same; research re: 1st Circuit standards for intervention; draft memo re: same
1225	Stacy Auer	PL	09/18/12	0.2	140	Emails re: Larry Sucharow's ECF login; update contacts;
0571	David Goldsmith	P	09/19/12	0.3	050	Discussions with Mike Rogers re: Lawrence Sucharow e-mail to McTigue, forthcoming intervention motion
1179	Michael Rogers	P	09/19/12	3.9	080	E-mails to/from team re: Henriquez plaintiffs; research re: motions to consolidate motions to intervene re: 1st Circuit standards re: same; re: relevant cases re: same
0103	Lawrence Sucharow	P	09/20/12	1.5	080	Continued internal strategy discussions re McTigue (Erisa) issues.
1179	Michael Rogers	P	09/20/12	5.4	080	Research re: motions to consolidate, motions to intervene re: 1st Circuit standards re: same re: relevant cases re: same
1179	Michael Rogers	P	09/21/12	3.9	080	Research re: motions to consolidate, motions to intervene re: 1st Circuit standards re: same; re: relevant cases re: same
1179	Michael Rogers	P	09/24/12	4.1	080	Analysis and research re: 1st Circuit law re: intervention and consolidation

0103	Lawrence Sucharow	P	09/27/12	1.2	080	Attend to new ERISA complaint
1179	Michael Rogers	P	09/27/12	0.8	080	E-mails to/from Larry Sucharow, David Goldsmith, M. Lesser, D. Chiplock and Howard Goldberg re: payments to mediator
0103	Lawrence Sucharow	P	09/28/12	1.5	080	Conference call with plaintiffs counsel; conference call with additional ERISA counsel (Lynn Sarko); review new ERISA complaint.
1179	Michael Rogers	P	09/28/12	2.3	080	Conference with Larry Sucharow re: ERISA funds and mediation; conference call with Larry Sucharow and co-counsel re: same; e-mails to/from Larry Sucharow and co-counsel re: same; analyze ERISA complaints re: same
1179	Michael Rogers	P	09/28/12	0.4	040	Conference with Chris Keller re: analysis of public materials
1179	Michael Rogers	P	10/01/12	3.6	040	Analyze public materials re: FOIA; analyze Massachusetts FOIA; conference with Chris Keller re: same
1179	Michael Rogers	P	10/01/12	1.7	080	Telephone conference with Larry Sucharow re: mediator's request for meeting; emails to/from Larry Sucharow, David Goldsmith and co-counsel re: same
0103	Lawrence Sucharow	P	10/02/12	1.2	080	Attend to mediator's request for a meeting
1179	Michael Rogers	P	10/02/12	0.7	080	E-mails to/from Larry Sucharow, David Goldsmith, co-counsel, defense counsel and J. Marks re: mediation
0571	David Goldsmith	P	10/03/12	0.3	080	Telephone conference with Larry Sucharow, Mike Rogers and co-counsel re: mediation issues and strategy
1179	Michael Rogers	P	10/03/12	0.4	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith and co-counsel re: mediation
0571	David Goldsmith	P	10/07/12	0.3	080	Discussion with Mike Rogers re: Tuesday mediation meeting; mediation and settlement strategy issues
0103	Lawrence Sucharow	P	10/08/12	2.2	080	Telephone call with mediator; prepare for ore-mediation meeting with defendants' counsel and mediator on Tuesday.
0571	David Goldsmith	P	10/08/12	0.4	080	Prepare for Tuesday mediation meeting; discussions with Mike Rogers re: same
0103	Lawrence Sucharow	P	10/09/12	4.7	080	Prepare for and attend meeting with defendants' counsel and mediator regarding upcoming mediation.
0571	David Goldsmith	P	10/09/12	4.0	080	Meeting with J. Marks, Larry Sucharow, Mike Rogers, W. Paine, J. Rudman re: settlement and mediation issues; prepare for same; pre and post-meetings with Larry Sucharow and Mike Rogers
1179	Michael Rogers	P	10/09/12	4.7	080	Conferences with Larry Sucharow, David Goldsmith, J. Marks, J. Rudman and B. Paine re: mediation; conference call with Larry Sucharow, B. Lief, M. Thornton and E. Hoffman re: same
0571	David Goldsmith	P	10/10/12	0.3	080	Review data received from defendants for mediation purposes
1179	Michael Rogers	P	10/10/12	1.2	080	Conferences with, telephone calls and e-mails to/from Larry Sucharow, David Goldsmith, M. Lesser and D. Chiplock re: defendants' data production re: scheduling and logistics re: mediation; telephone conference with and e-mails to/from B. Lief re: same
0571	David Goldsmith	P	10/11/12	0.6	080	Call with Mike Rogers, M. Lesser, D. Chiplock re: data produced by defendants for mediation purposes and M. Lesser analyses, strategy going forward; prepare for same

1179	Michael Rogers	P	10/11/12	1.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and B. Lieff re: mediation logistics; conference call with David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: defendants' data; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and W. Paine re: call to discuss data
0571	David Goldsmith	P	10/15/12	0.5	080	Discussion with Mike Rogers re: Tuesday call with defendants' counsel and co-counsel re: mediation data production; travel arrangements for mediation; e-mails internally re: same
1179	Michael Rogers	P	10/15/12	0.4	080	E-mails to/from David Goldsmith, M. Lesser, D. Chiplock and B. Paine re: [REDACTED]
0103	Lawrence Sucharow	P	10/15/12	2.7	080	Efforts to understand data produced by defendants.
0571	David Goldsmith	P	10/16/12	1.8	090	Telephone conference with W. Paine, D. Deng, Mike Rogers, M. Lesser, E. Hoffman, D. Chiplock re: [REDACTED] post-call conference with Mike Rogers, M. Lesser, E. Hoffman, D. Chiplock re: same and strategy; pre and post-call discussions with Mike Rogers re: same; e-mails re: Judge Wolf taking senior status
1179	Michael Rogers	P	10/16/12	1.2	080	Conferences and conference calls with David Goldsmith, M. Lesser, D. Chiplock, E. Hoffman and B. Paine re: [REDACTED]
0571	David Goldsmith	P	10/17/12	0.4	140	Review mediation data analysis from M. Lesser
0571	David Goldsmith	P	10/19/12	3.0	080	Prepare for mediation sessions; gather materials
1179	Michael Rogers	P	10/19/12	1.4	080	E-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith, Co-counsel and Defense counsel re: mediation; e-mails to/from Larry Sucharow, David Goldsmith and co-counsel in [REDACTED] analyze same
1523	Shella Mundo	PL	10/19/12	3.8	080	Prepared compilation of materials for mediation per Michael Rogers.
1225	Stacy Auer	PL	10/19/12	0.2	140	Emails re: mediation prep; update case calendar;
1179	Michael Rogers	P	10/21/12	2.1	080	Draft memo re: October 8 meeting with Larry Sucharow, David Goldsmith, J. Marks, J. Rudman and B. Paine
0103	Lawrence Sucharow	P	10/21/12	3.8	080	Prepare for mediation session; review data and memos.
0023	Eric Belfi	P	10/22/12	4.0	090	Prepared for mediation.
0103	Lawrence Sucharow	P	10/22/12	4.5	080	Prepare for mediation in Boston.
1179	Michael Rogers	P	10/22/12	0.3	080	emails to/from LAS, EJB, DJG re pre-mediation meeting tomorrow
1523	Shella Mundo	PL	10/22/12	3.4	080	Prepared compilation of materials for mediation per Michael Rogers.
0023	Eric Belfi	P	10/23/12	10.0	090	Prepared for and attended mediation
0103	Lawrence Sucharow	P	10/23/12	12.0	080	Conduct mediation in Boston before Jonathan Marks; travel to Boston; meeting co-counsel.
0571	David Goldsmith	P	10/23/12	13.4	080	Travel New York to Boston; pre-mediation meeting with co-counsel; prepare for same; attend mediation before Jonathan Marks re: settlement discussions and information exchanges for mediation purposes going forward; multiple meetings/strategy sessions with co-counsel, defendants' counsel; working dinner with co-counsel
1179	Michael Rogers	P	10/23/12	11.0	080	travel to Boston for mediation; pre-mediation & post-mediation meetings w/ LAS, EJB, DJG, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lieff, & D. Chiplock; mediation with LAS, EJB, DJG, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lieff, D. Chiplock, J. Marks, B. Wally, & counsel for State Street
0023	Eric Belfi	P	10/24/12	7.0	090	Attended mediation
0103	Lawrence Sucharow	P	10/24/12	10.5	080	Conduct second day of mediation; travel to NYC.
0571	David Goldsmith	P	10/24/12	10.4	080	Attend mediation before Jonathan Marks re: information exchanges for mediation purposes going forward; prepare for same; multiple meetings/strategy sessions with co-counsel, defendants' counsel, ERISA plaintiffs' counsel; work out/mark-up written agreed points going forward; travel Boston to New York

1179	Michael Rogers	P	10/24/12	7.9	080	pre-mediation & post-mediation meetings w/ LAS, EJB, DJG, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lief, & D. Chiplock; mediation with LAS, EJB, DJG, G. Hopkins, M. Thornton, G. Bradley, M. Lesser, E. Hoffman, B. Lief, D. Chiplock, J. Marks, B. Wally, & counsel for State Street; travel to NY;
0571	David Goldsmith	P	10/25/12	0.7	130	Respond to A. Hornstine re: assented-to motion to extend time to answer; discussions with Mike Rogers re: issues going forward
1179	Michael Rogers	P	10/25/12	0.5	040	t/c w/ R. Graves re ARTRS documents; re communications w/ IMs re documents
1179	Michael Rogers	P	10/25/12	0.3	030	analyze M. Lesser draft information requests
0103	Lawrence Sucharow	P	10/25/12	2.5	080	Post-mortem internal review of mediation sessions.
0571	David Goldsmith	P	10/26/12	2.2	080	Review/comment on co-counsel and defendants comments on Discussion Points for discovery going forward; e-mails and telephone conference with M. Lesser, E. Hoffman, D. Chiplock, M. Rogers re same; review/mark-up draft protective order; review M. Lesser draft document requests; discussions with M. Rogers re all and same
1179	Michael Rogers	P	10/26/12	2.3	030	emails to/from DJG, M. Lesser, D. Chiplock, J. Marks, B. Wally, D. Halston, & A. Hornstine re [REDACTED] confs w/ DJG re same
1179	Michael Rogers	P	10/26/12	1.7	040	confs w/ DJG re same
1179	Michael Rogers	P	10/31/12	0.5	080	emails to/from DJG & M. Lesser re communications w/ J. Wolf
0571	David Goldsmith	P	11/01/12	0.8	130	Review draft status report; e-mails with co-counsel re: same and office closure issues
1179	Michael Rogers	P	11/01/12	0.6	080	t/c w/ DJG & emails to/from DJG, M. Lesser, & D. Chiplock re submission to Court re mediation
0571	David Goldsmith	P	11/02/12	1.8	140	Review Wilmer draft letter to Court re: status and report and conference; various e-mails with co-counsel re: strategic issues; address moved mediation deadlines due to office closure
1179	Michael Rogers	P	11/02/12	2.8	080	emails to/from LAS, DJG, M. Thornton, B. Lief, M. Lesser, & D. Chiplock re report to court; re communications w/ SST counsel re same
1523	Sheila Mundo	PL	11/05/12	0.2	140	Retrieved new filings on the docket; Revised shared drive.
0571	David Goldsmith	P	11/06/12	0.2	020	Review recent team e-mails; e-mail Mike Rogers re: having schedule of mediation/discovery deadlines
1179	Michael Rogers	P	11/06/12	0.3	080	emails to/from LAS, DJG, M. Lesser, D. Chiplock re schedule, re protective order
1179	Michael Rogers	P	11/07/12	0.6	080	analyze SST data requests; emails to/from DJG, M. Lesser, & D. Chiplock re same
0571	David Goldsmith	P	11/08/12	1.0	130	Telephone conference with Mike Rogers, M. Lesser, D. Chiplock re: mediation discovery issues and strategy, protective order status, Nov. 15 status conference; address order setting Nov. 15 status conference; e-mails internally re: same
1179	Michael Rogers	P	11/08/12	1.3	080	analyze SST data requests; conf call w/ & emails to/from DJG, M. Lesser, & D. Chiplock re same; emails to/from LAS, DJG, M. Thornton, & B. Lief re conf call re communications with Judge Wolf
1179	Michael Rogers	P	11/09/12	0.3	080	emails to/from R. Graves re ARTRS discovery
0571	David Goldsmith	P	11/11/12	0.8	060	Prepare for November 12 conference call with co-counsel and defendants re: November 15 status conference; review discussion points and e-mails
0571	David Goldsmith	P	11/12/12	2.0	130	Telephone conference with co-counsel and defendants re: November 15 status conference; rearrange travel plans for week; review and comment on draft status report; e-mails with co-counsel re: same; discussion with Mike Rogers re: overall status and strategy
1179	Michael Rogers	P	11/12/12	1.3	080	Conferences and conference calls with and e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and opposing counsel re: conference with J. Wolf re: data exchange

1225	Stacy Auer	PL	11/12/12	0.5	140	Update case calendar; convo re: same w/ David Goldsmith; update case status tracker; email to Goldsmith re: team members having appeared on the docket; review docket re: same;
0571	David Goldsmith	P	11/13/12	1.3	130	Review draft status report; e-mails re: same; discussion with Mike Rogers re: client discovery
1179	Michael Rogers	P	11/13/12	2.7	080	Telephone conferences with R. Graves re: ARTRS document retrieval and production; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same re: protective order re: report to Court
1225	Stacy Auer	PL	11/13/12	0.3	140	Update shared drive w/ Status Report per Mike Rogers;
0571	David Goldsmith	P	11/14/12	4.5	130	Prepare for status conference, discussions with Mike Rogers re: same and discovery generally; negotiate Protective Order; e-mails with co-counsel and defendants' counsel re: same; telephone conference with B. Goldweitz re: potential experts; e-mail to co-counsel re: same
1179	Michael Rogers	P	11/14/12	1.1	080	Conference with David Goldsmith re: ARTRS documents and production; e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and opposing counsel re: conference with J. Wolf
0103	Lawrence Sucharow	P	11/14/12	1.3	080	Confer internally re status conf issues.
1225	Stacy Auer	PL	11/14/12	0.3	140	Emails/convos w/ David Goldsmith re: e-filing; pull and update shared drive w/ same; circulate same to team;
0023	Eric Belfi	P	11/15/12	1.5	130	Provided update to client on the case.
0571	David Goldsmith	P	11/15/12	9.5	060	Attend status conference before Judge Wolf; prepare for same; pre and post-conference discussions with co-counsel; e-mails re: same; round-trip travel New York to Boston
1179	Michael Rogers	P	11/15/12	0.5	080	E-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: hearing with J. Wolf
0103	Lawrence Sucharow	P	11/15/12	0.7	080	Received results of status conf before Wolf.
1225	Stacy Auer	PL	11/15/12	0.2	140	Emails re: prepping Motion for Protective Order per David Goldsmith;
0571	David Goldsmith	P	11/16/12	1.0	130	Address draft filings for Monday; ERISA discussion points; e-mails internally re: same; telephone conference with M. Thornton re: meeting on class certification issues; e-mails with Larry Sucharow and Mike Rogers re: same
1179	Michael Rogers	P	11/16/12	0.9	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel and opposing counsel re: mediation re: discovery plan re: protective order re: report to the Court
1450	Reka Viczian	PL	11/16/12	0.3	140	Download documents, organize onto share drive and circulate to team.
0103	Lawrence Sucharow	P	11/19/12	2.0	080	Attend to outstanding discovery issues
0571	David Goldsmith	P	11/20/12	3.4	130	Meeting at Lief Cabraser with M. Thornton, Mike Rogers, D. Chiplock, other co-counsel re: class certification, discovery, strategy issues; prepare for same; pre and post-meeting discussions with Mike Rogers and e-mails with co-counsel re: same
1179	Michael Rogers	P	11/20/12	2.3	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: conference of plaintiffs' counsel re: ARTRS production; conference with David Goldsmith, M. Thornton, D. Chiplock re: discovery
0103	Lawrence Sucharow	P	11/20/12	1.5	080	Confer DG and MR re o/standing issues.
1179	Michael Rogers	P	11/27/12	0.6	080	Conference with David Goldsmith re: ARTRS production; e-mails to/from R. Graves re: same; analyze SST document requests
1179	Michael Rogers	P	11/28/12	1.9	080	Telephone conference with R. Graves re: communications with IMs re: ARTRS documents; conference with DJF re: same; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same
1523	Shella Mundo	PL	11/28/12	1.0	140	Prepared list of client documents in shared drive per Michael Rogers.
0571	David Goldsmith	P	11/29/12	0.3	130	Address recent e-mails re: discovery and information exchange issues; discussions with Mike Rogers re: same

1179	Michael Rogers	P	11/29/12	0.8	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: ERISA Fund document requests; e-mail index of ARTRS documents to R. Graves
1523	Sheila Mundo	PL	11/29/12	0.2	140	Revised list of client documents per Michael Rogers.
1225	Stacy Auer	PL	11/29/12	0.3	140	Emails re: ordering transcript of Lobby Conference held on November 15, 2012, before Chief Judge Mark L. Wolf; review emails and shared drive;
0571	David Goldsmith	P	11/30/12	2.6	030	Telephone conference with co-counsel and ERISA counsel re: discovery issues and strategy; prepare for same; post-call telephone conference with co-counsel; e-mails re: same and discussions with Mike Rogers re: same
1179	Michael Rogers	P	11/30/12	1.3	080	Conferences and conference call with David Goldsmith, M. Lesser and D. Chiplock re: ARTRS discovery obligations; e-mail to D. Halston re: same
0571	David Goldsmith	P	12/03/12	0.6	130	Read transcript of 11/15 status conference; forward to J. Bankston
0571	David Goldsmith	P	12/05/12	0.5	030	Address newly received document production (partial California production); e-mails with co-counsel re: same; discussions with Stacy Auer re: same
1179	Michael Rogers	P	12/05/12	0.6	080	E-mails to/from David Goldsmith, M. Lesser, D. Chiplock and A. Hornstine re: ARTRS discovery
1450	Reka Viczian	PL	12/05/12	0.4	140	Prepare CDs and letter for mailing to co-counsel.
1225	Stacy Auer	PL	12/05/12	1.1	030	Oversee workflow re: distribution of doc production; review CD; convos w/ IT re: specs of production from State Street; convos w/ David Goldsmith re: doc review; assist in prep of Dupe CD and Fed Ex to Chiplock and Lesser; review emails re same;
1179	Michael Rogers	P	12/06/12	3.2	080	Telephone conference with R. Graves re: discovery of ARTRS documents; telephone conference with L. Gerber re: ERISA Funds coordination of discovery; conferences with Joel Bernstein and David Goldsmith re: staffing, expenses and strategy re: discovery aspects of on-going case and mediation
0571	David Goldsmith	P	12/07/12	2.7	030	Review submission by Defendants re: production of class member information; review submission by ERISA Plaintiffs re: third-party discovery templates; draft ARTRS response re: same; review general status
1450	Reka Viczian	PL	12/07/12	0.4	140	Review emails and update share drive.
0571	David Goldsmith	P	12/10/12	0.5	030	Telephone conference with Mike Rogers, D. Chiplock, M. Lesser, E. Hoffman re: document review planning/status/strategy; post-call discussion with Mike Rogers
1179	Michael Rogers	P	12/10/12	0.8	080	conf call w/ DJG, M. Lesser, & D. Chiplock re discovery protocols; re review of SST documents; re ARTRS production
0571	David Goldsmith	P	12/11/12	0.8	130	Telephone conference with Mike Rogers and co-counsel re: strategy re: ERISA Plaintiffs and discovery and mediation issues; review Mike Rogers e-mail to Litigation Control committee
1179	Michael Rogers	P	12/11/12	1.0	080	Conf call w/ Co-Counsel re case strategy; re discovery strategy; re staffing and allocation of resources; conf w/ DJG re same
1179	Michael Rogers	P	12/11/12	0.4	140	Confs w/ DJG, T. Kussin, & D. McKenzie re staffing and document analysis; draft email to Lit Control re budget request
1225	Stacy Auer	PL	12/11/12	0.3	030	Call w/ re:
0571	David Goldsmith	P	12/12/12	0.2	030	E-mails internally re: document review planning
1179	Michael Rogers	P	12/12/12	0.3	080	Emails to/from T. Kussin re ARTRS docs

						Reviewed documents identified by coders during review including those associated with relationship between ██████████ in connection with the Abacus CDO; reviewed selected chapters of book by William D. Cohan titled "Money and Power, How Goldman Sachs Came to Rule the World[;]" identified quotes from the book and conducted searches in FCIC Report and Report by Senate Subcommittee on Investigations in order to identify sources of said quotes; gathered sources and organized in database for future use; prepared index summarizing and referencing sources of quotes; continued assisting reviewers with decisions on coding of documents as well as interpretation of coding sheet, and answered questions regarding documents serving as background materials for this litigation; reviewed early stages of timelines drafted by coders for each of the CDOs that are the subject of this litigation, and provided ideas for additional sources to be used to expand breadth of timelines.
4089	Todd Kussin	SA	12/12/12	3.2	030	
0571	David Goldsmith	P	12/14/12	0.2	040	Discussions with Mike Rogers re: ARTRS document production due December 20
1179	Michael Rogers	P	12/14/12	0.9	080	confs w/ DJG, T. Kussin, S. Mundo, & M. Yan re ARTRS docs for production; conf call w/ DJG, M. Lesser, & D. Chiplock re same
1523	Shella Mundo	PL	12/14/12	0.6	040	Prepared electronic compilation of client documents for production per Michael Rogers; Emails re: same.
0571	David Goldsmith	P	12/17/12	0.3	030	E-mails with co-counsel and telephone conference with D. Chiplock re: document production receipt and timing issues; discussion with Mike Rogers re: ARTRS document production
1179	Michael Rogers	P	12/17/12	1.1	080	confs w/ DJG, T. Kussin, S. Mundo, & M. Yan re ARTRS docs for production
1523	Shella Mundo	PL	12/17/12	0.1	140	Emails re: production of plaintiffs' documents.
0571	David Goldsmith	P	12/18/12	0.5	030	E-mails with defendants and co-counsel re: California production issues and timing
1179	Michael Rogers	P	12/18/12	0.3	080	emails to/from DJG & co-counsel re SST docs
0571	David Goldsmith	P	12/19/12	0.8	040	Discussions with Mike Rogers and Matthew Yan re: ARTRS document production; technical issues
1179	Michael Rogers	P	12/19/12	1.4	080	confs w/ & emails to/from DJG & M. Yan re ARTRS docs to be produced; analyze same
0571	David Goldsmith	P	12/20/12	1.2	030	E-mails with co-counsel and discussions with Mike Rogers re: third-party discovery strategy; ARTRS production
1179	Michael Rogers	P	12/20/12	3.5	080	confs w/ & emails to/from DJG, T. Kussin, & M. Yan re ARTRS docs to be produced; analyze same
1523	Shella Mundo	PL	12/20/12	0.3	140	Reviewed select documents for production per Michael Rogers; Emails re: same.
4071	Charles Pietrofesa	SA	12/20/12	4.0	030	Reviewed and analyzed State Street documents, bates range SST-ARTRS 0014079- 0014833 (nonconsecutive); ██████████ in order to find documents containing privileged information.
4089	Todd Kussin	SA	12/20/12	7.0	040	Met with Michael Rogers and Matt Yan to develop protocol for reviewing documents to be produced to defendants; conferred with reviewers to go over protocol and assign batches of documents to review; formulated searches and reviewed on Concordance, documents to be produced to defendants, identifying all documents that should be withheld for privilege.
1179	Michael Rogers	P	12/21/12	4.0	080	confs w/ & emails to/from DJG, T. Kussin, & M. Yan re ARTRS docs to be produced; analyze same;
4071	Charles Pietrofesa	SA	12/21/12	1.0	030	Performed search for attorney name for State Street case and reviewed and analyzed documents, bates range SST-ARTRS 0008360- SST-ARTRS 0011458.
0571	David Goldsmith	P	12/26/12	0.3	030	Review e-mails with defendants' counsel and co-counsel re: ARTRS document production and setting up meet and confer re: third-party discovery

1179	Michael Rogers	P	12/26/12	1.4	080	E-mails to/from S. Mundo and Daron Deo re: CD for production; e-mails to/from David Goldsmith, D. Chiplock, M. Lesser & A Hornstine re: same
1523	Sheila Mundo	PL	12/26/12	2.7	140	Prepared documents for production per Michael Rogers; Emails to Michael Rogers and IT re: same.
1179	Michael Rogers	P	12/27/12	0.3	080	E-mails to/from D. Chiplock, M. Lesser & D. Halston re: meet and confer call re: discovery
0571	David Goldsmith	P	01/04/13	2.0	030	Meet and confer conference call with Mike Rogers, D. Chiplock, M. Lesser, Defendants' counsel re: third-party discovery issues; prepare for same; pre and post-call discussions with Mike Rogers re: same; e-mails with co-counsel re: same; e-mails with Larry Sucharow re: January 24 mediation meeting
1179	Michael Rogers	P	01/04/13	1.3	080	Conference call with David Goldsmith, M. Lesser, D. Chiplock, B. Paine and D. Halston re: [REDACTED]
0023	Eric Belfi	P	01/07/13	1.5	130	Provided update to client
1179	Michael Rogers	P	01/08/13	0.3	080	E-mails to/from David Goldsmith, D. Chiplock, M. Lesser, R. Graves and D. Halston re: [REDACTED]
0571	David Goldsmith	P	01/09/13	0.2	130	E-mails with co-counsel re: Friday document production call
0571	David Goldsmith	P	01/11/13	0.8	030	E-mails with co-counsel, Larry Sucharow, Mike Rogers re: discovery issues and strategy, rescheduling call; January 24 meeting
1179	Michael Rogers	P	01/11/13	0.7	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: document and data discovery
0571	David Goldsmith	P	01/13/13	1.3	130	Review data and documents produced on Friday January 11; prepare for call with co-counsel; e-mails with Larry Sucharow and Mike Rogers re: January 24 meeting in DC and logistics
0571	David Goldsmith	P	01/14/13	1.0	090	Telephone conference with D. Chiplock, M. Lesser, E. Hoffman re: Friday data production from SST and strategy, prepare for same; pre and post-call discussions with Mike Rogers re: same
1179	Michael Rogers	P	01/14/13	1.4	080	Conference call with David Goldsmith, M. Lesser and D. Chiplock re: data and documents received from SST re: plan for January 23 meeting with mediator and defense counsel; conference with David Goldsmith re: same
1225	Stacy Auer	PL	01/14/13	0.2	140	Update case tracker; review pleadings and emails re: same;
1179	Michael Rogers	P	01/16/13	0.4	080	E-mails to/from David Goldsmith, D. Chiplock and M. Lesser re: call with ERISA counsel re: documents and mediator meeting
1179	Michael Rogers	P	01/17/13	0.5	080	E-mails to/from David Goldsmith, D. Chiplock, M. Lesser and ERISA counsel; re: conference call; conference with David Goldsmith re: same
0571	David Goldsmith	P	01/18/13	2.0	030	Telephone conference with D. Chiplock, M. Lesser, E. Hoffman, D. Bostwick, L. Sarko, L. Gerber, Mike Rogers re discovery issues, strategy for January 24 mediation meeting; pre and post-call discussions with Mike Rogers; e-mails with co-counsel re follow-up document requests to defendants and strategy.
1179	Michael Rogers	P	01/18/13	0.8	080	Conference call with David Goldsmith, M. Lesser, D. Chiplock and ERISA counsel re: documents re: meeting with mediator
0571	David Goldsmith	P	01/21/13	1.7	080	Meeting with Lawrence Sucharow and Mike Rogers re: Tuesday call with mediator, prepare for same, discussions and e-mails with Mike Rogers re: same; review materials
1179	Michael Rogers	P	01/21/13	0.6	080	Conference with Larry Sucharow and David Goldsmith re: call with mediator
0103	Lawrence Sucharow	P	01/21/13	4.0	080	Prep for conf all with mediator; prep for call; prep for mediation.

0571	David Goldsmith	P	01/22/13	2.5	080	Telephone conference with J. Marks and co-counsel re: January 24 mediation meeting; prepare for same, pre-call telephone conference with D. Chiplock re same; post-call discussion with Lawrence Sucharow and Mike Rogers; e-mail November 15 transcript and Stay Order to J. Marks; telephone conference with co-counsel and ERISA counsel re strategy and agenda for Jan 24 mediation meeting; e-mail internally re same; review D. Chiplock draft agenda.
1179	Michael Rogers	P	01/22/13	1.8	080	Conference call with Lawrence Sucharow, David Goldsmith, co-counsel and J. Marks re: agenda for Thursday meeting in DC; conferences with Lawrence Sucharow and David Goldsmith re: same; e-mails to/from co-counsel and ERISA counsel re: same
0103	Lawrence Sucharow	P	01/22/13	3.5	080	Conduct call with mediator; conduct post mortem following call; prep for mediation.
0571	David Goldsmith	P	01/23/13	2.2	080	Prepare for January 24 mediation meeting; review correspondence from co-counsel; comment on draft proposed agenda; e-mails with co-counsel re: various issues re: data production, strategy and ARTRS information and document productions; discussions with Mike Rogers re: same
1179	Michael Rogers	P	01/23/13	2.3	080	Conferences with David Goldsmith re: meeting with J. Marks, co-counsel, ERISA counsel and SST counsel; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same
4089	Todd Kussin	SA	01/23/13	0.4	040	Exchanged emails with Michael Rogers and Matt Yan to discuss work done by coders in December to identify privileged docs to be withheld from production to defendants; reviewed series of emails re: same, as well as document database created for this production.
0023	Eric Belfi	P	01/24/13	2.5	130	Provided update to client
0571	David Goldsmith	P	01/24/13	11.0	080	Attend mediation and information exchange meeting before J. Marks; discussions with Larry Sucharow, Mike Rogers, co-counsel, ERISA counsel; round trip travel to Washington DC
1179	Michael Rogers	P	01/24/13	9.7	080	Travel to and from DC for meeting with J. Marks, co-counsel, ERISA counsel and SST counsel; attend and participate in same; conferences with Lawrence Sucharow, David Goldsmith and co-counsel re: same; analyze data and documents re: same
0571	David Goldsmith	P	01/25/13	2.0	080	Review motion to dismiss opinion in SEPTA v. BNY; discussions with Mike Rogers and Stacy Auer re: document review planning and logistics, e-mails with co-counsel re: same; e-mails with co-counsel re: damages issues
1225	Stacy Auer	PL	01/25/13	0.6	030	Convos and emails w/ David Goldsmith and Mike Rogers re: doc review, prep for same, and staffing; email to Danette McKenzie re: same;
0571	David Goldsmith	P	01/28/13	1.5	080	Review B. Wally draft agenda for next mediation period and defendants' comments; e-mails with co-counsel re: proposed comments; transmit our comments to mediator and all counsel
4089	Todd Kussin	SA	01/28/13	0.4	030	Met with Danette McKenzie and exchanged emails with Michael Rogers to discuss staffing of review team.
1225	Stacy Auer	PL	01/29/13	0.2	030	Emails re: staffing/logistics for doc review;
4089	Todd Kussin	SA	01/30/13	1.9	020	Reviewed Amended Class Action Complaint in anticipation of coders beginning review of documents.
1225	Stacy Auer	PL	01/30/13	0.1	030	Email to Todd Kussin re: Amended Complaint;
0571	David Goldsmith	P	01/31/13	0.8	090	E-mails with co-counsel re: FXT methodology; e-mails with Mike Rogers re: status of ARTRS document production and document review planning
1179	Michael Rogers	P	01/31/13	0.7	080	E-mails to/from David Goldsmith re: communications with SST re: documents

1225	Stacy Auer	PL	01/31/13	0.4	030	Email to Dan Chiplock re: Catalyst accounts and training session tomorrow for same; convos re: same;
0571	David Goldsmith	P	02/01/13	2.0	090	Participate in Catalyst document reviewing training; discussions and e-mails with Mike Rogers, Stacy Auer, T. Kussin, D. McKenzie re: document review planning; finalize and transmit statement re: ARTRS document production re: agreed points
1179	Michael Rogers	P	02/01/13	1.3	080	E-mails to/from David Goldsmith, T. Kussin, Danette McKenzie and Stacy Auer re: preparations for review of ARTRS documents for production; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: communications with State Street Counsel re: documents and information production
1225	Stacy Auer	PL	02/01/13	1.8	140	Emails re: transcripts; attend training for Catalyst database/platformconvos re: case management;
1523	Shella Mundo	PL	02/01/13	1.0	030	Attended Catalyst webinar in preparation for document review per Stacy Auer.
4089	Todd Kussin	SA	02/01/13	2.4	030	Participated in conference call/training session on the use of Catalyst platform for upcoming review; emails with David Goldsmith, Michael Rogers, and Stacy Auer re: strategies for upcoming review of documents; reviewed background materials of case including order on motion to dismiss; met with Danette McKenzie to discuss staffing of team.
4089	Todd Kussin	SA	02/01/13	0.8	040	Prepared folders for review of documents provided by the Arkansas Teacher Retirement System on Concordance; emails with David Goldsmith, Michael Rogers, and Stacy Auer re: strategies for upcoming review of documents.
1179	Michael Rogers	P	02/04/13	0.3	080	E-mails to/from David Goldsmith, T. Kussin and Stacy Auer re: ARTRS document review
4089	Todd Kussin	SA	02/04/13	3.5	020	Reviewed background materials of case, including Amended Class Action Complaint and Transcript of Hearing on Motion to Dismiss; met with reviewers to discuss facts of case as well as to explain assignments going forward; gathered background reading materials for reviewers.
4263	Zeev Kirsh	SA	02/04/13	9.3	020	Initial research and review of pleadings and transcripts.
4341	Frantzgermain Bernadin	SA	02/04/13	8.5	020	Reviewed the following pleadings: Amended complaint and Motion to Dismiss Hearing minutes.
4369	David Pospischil	SA	02/04/13	6.8	040	Team meeting with T. Kussin regarding case background; reviewing amended complaint and motion to dismiss hearing transcript.
4257	Orlando Perez	SA	02/04/13	7.5	020	Reviewed the Amended Class Action Complaint and the Transcript for Motion to Dismiss.
4089	Todd Kussin	SA	02/04/13	2.6	040	Analyzed documents provided by the Arkansas Teacher Retirement System ("ATRS") in order to develop search terms re: derivatives of the term "foreign exchange" and set up folders to be reviewed by coders containing documents referencing these terms as well as references to State Street; exchanged emails with Michael Rogers re: same, describing steps taken to conduct searches; reviewed summary descriptions of documents referenced in defendant's document requests.
4240	Eddie Shrem	SA	02/04/13	10.5	020	reviewed amended class action complaint for ATRS vs State Street and reviewed and digested transcript for ATRS vs State Street motion to dismiss hearing
0571	David Goldsmith	P	02/05/13	0.3	040	Discussion and telephone conference with Mike Rogers with client document review
1179	Michael Rogers	P	02/05/13	1.3	080	Conferences with David Goldsmith and T. Kussin re: ARTRS document review and production

4089	Todd Kussin	SA	02/05/13	5.5	040	Met with Michael Rogers to discuss strategies for designation of documents provided by the Arkansas teacher Retirement System ("ATRS") as responsive/non-responsive and privileged/non-privileged; conferred with reviewers to discuss strategies and coding assignments; drafted email to coders explaining coding protocol and providing names of privileged recipients and senders of emails; performed searches on Concordance to identify relevant documents and set up coding tags for each reviewer; exchanged emails with coders regarding the proper designation for spreadsheets containing information re: trades by the ATRS [REDACTED] reviewed such documents in conjunction with document requests from defendants; exchanged emails with Michael Rogers re: same.
4263	Zeev Kirsh	SA	02/05/13	3.5	020	Initial research and review of pleadings and transcripts.
4341	Frantzgermain Bernadin	SA	02/05/13	8.5	040	I reviewed and analyzed relevant and non relevant documents covering the following non consecutive bates range: CTRL_00101603-187090. The types of documents that I reviewed were characterized by excel spreadsheets and industry newsletters.
4369	David Pospischil	SA	02/05/13	6.5	040	Reviewing motion to dismiss hearing transcript, topics from defendants' document requests; team meeting regarding review; reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding document relating to FX reports.
4240	Eddie Shrem	SA	02/05/13	11.1	040	reviewed and digested ARTRS Document request schedule in preparation for coding. Also coded documents with ranges CTRL00000001-CTRL00003645
1225	Stacy Auer	PL	02/05/13	0.1	140	Email re: prep for additional training session;
4089	Todd Kussin	SA	02/06/13	4.0	040	Further streamlined coding process by reorganizing folders in order to enable coders to more easily review documents by families; conferred with coders regarding the proper designation of documents, including those discussing foreign exchange trading but not expressly mentioning State Street; performed secondary review/quality check on documents reviewed by coders thus far.
4263	Zeev Kirsh	SA	02/06/13	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/06/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/06/13	7.3	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding review.
4257	Orlando Perez	SA	02/06/13	8.6	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4240	Eddie Shrem	SA	02/06/13	11.3	040	Reviewed non-consecutively bates numbered documents CTRL0003650-000013068 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	02/07/13	3.2	040	Conferred with coders regarding the proper designation of documents, including those discussing foreign exchange trading but not expressly mentioning State Street; performed secondary review/quality check on documents reviewed by coders, including those containing both a derivative of the term "foreign exchange" and a mention of State Street.
4263	Zeev Kirsh	SA	02/07/13	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/07/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/07/13	7.4	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	02/07/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/07/13	11.2	040	Reviewed non-consecutively bates numbered documents within range CTRL00013068-00019571 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	02/08/13	1.1	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System ("ATRS") that were coded by reviewers in order to ensure the accuracy of their designation as privileged/non-privileged and responsive/non-responsive; conferred with coders in order to answer questions re: the proper designation of documents.
4263	Zeev Kirsh	SA	02/08/13	5.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/08/13	6.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/08/13	6.0	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00019589-00024080 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4257	Orlando Perez	SA	02/08/13	5.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	02/11/13	0.3	080	E-mails to/from David Goldsmith, M. Lesser & D. Chiplock re: conference calls re: document issues
4089	Todd Kussin	SA	02/11/13	2.4	040	Conferred with coders regarding the proper designation of documents, including those discussing foreign exchange trading but not expressly mentioning State Street; performed secondary review/quality check on documents reviewed by coders, including those containing both a derivative of the term "foreign exchange" and a mention of State Street; emails with Catalyst trainer and co-counsel as well as met with IT Department in order to set up webinar for Catalyst review platform training to be held this coming Wednesday for new reviewers; drafted reviewer productivity report for week ending 2/8/2013.
4263	Zeev Kirsh	SA	02/11/13	10.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/11/13	8.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/11/13	7.0	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	02/11/13	8.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/11/13	11.3	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00024139-31303 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4263	Zeev Kirsh	SA	02/12/13	11.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/12/13	9.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/12/13	4.0	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding documents.

4257	Orlando Perez	SA	02/12/13	9.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/12/13	11.1	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00031383-00036803 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	02/13/13	2.1	040	Conferred with coders regarding the proper designation of documents, including those discussing foreign exchange trading but not expressly mentioning State Street as well as those containing both a derivative of the term "foreign exchange" and a mention of State Street; performed secondary review/quality check on documents reviewed by coders to ensure proper designation of documents as privileged/non-privileged and responsive/non-responsive; emails with Catalyst trainer and in order to set up webinar for Catalyst review platform training; attended Catalyst training along with reviewers.
4263	Zeev Kirsh	SA	02/13/13	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/13/13	9.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/13/13	7.7	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; attending Catalyst training; conference with T. Kussin regarding documents.
4257	Orlando Perez	SA	02/13/13	8.7	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/13/13	11.3	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00036804-00041672 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	02/14/13	3.7	040	Conferred with coders to discuss reorganization of review folders on Concordance for review of documents with many attachments discussing foreign exchange trading but not expressly mentioning State Street as well as those containing both a derivative of the term "foreign exchange" and a mention of State Street; created additional folders for such searches; conferred with coders to discuss protocol for coding documents with large number of attachments; performed secondary review/quality check on documents reviewed by coders to ensure proper designation of documents as privileged/non-privileged and responsive/non-responsive; reviewed email from co-counsel discussing issues to be aware of when coding documents.

4263	Zeev Kirsh	SA	02/14/13	7.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/14/13	8.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/14/13	8.9	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents; team meetings with T. Kussin regarding review; reviewing M. Lesser email regarding review.
4240	Eddie Shrem	SA	02/14/13	10.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	02/14/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	02/15/13	1.5	040	Performed secondary review/quality check on documents reviewed by coders to ensure proper designation of documents as privileged/non-privileged and responsive/non-responsive; conferred with coders re: protocol for coding of document families that may reach outside of assigned folders in order to ensure consistency throughout coding process.
4263	Zeev Kirsh	SA	02/15/13	9.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/15/13	7.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/15/13	7.4	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/15/13	6.0	040	Reviewed non-consecutively bates numbered documents within ranges CTRL0006002-00048080 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	02/15/13	8.1	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4089	Todd Kussin	SA	02/19/13	3.6	040	Requested summaries from coders detailing types and subject matters of documents they have seen thus far in their review of documents provided by the Arkansas Teacher Retirement System ("ATRS"); reviewed same and combined into composite summary to discuss with Michael Rogers at upcoming meeting; emails with Michael Rogers regarding progress of review of the ATRS's documents; conferred with coders re: proper designation of documents dated subsequent to the end of the class period but arguably referring to events during the class period; performed secondary review/quality check on documents reviewed by coders to ensure proper designation of documents as privileged/non-privileged and responsive/non-responsive; reviewed email from co-counsel discussing issues to be aware of when coding documents; drafted reviewer productivity report for week ending 2/15/2013.
4263	Zeev Kirsh	SA	02/19/13	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/19/13	9.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/19/13	6.6	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding documents; drafting email responding to T. Kussin email regarding types and subject matter of documents reviewed.
4240	Eddie Shrem	SA	02/19/13	11.3	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00048131-00052248 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	02/19/13	8.8	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	02/20/13	0.5	080	Conference with T. Kussin re: ARTRS document review
4089	Todd Kussin	SA	02/20/13	10.5	040	Met with Michael Rogers to discuss progress of review of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and to discuss the type and subject matters of documents seen by reviewers thus far; discussed strategy for production of first batch of documents to defendants; conferred with coders to explain system of preparing documents marked responsive and non-privileged for production to defendants; conducted searches and prepared new folders for use by reviewers in preparing such documents for production; performed quality check/secondary review on first half of all documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; confirmed that all families of documents had been marked consistently.

4263	Zeev Kirsh	SA	02/20/13	9.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/20/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/20/13	7.3	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; team meeting with T. Kussin regarding review, preparing documents for production.
4257	Orlando Perez	SA	02/20/13	8.4	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/20/13	11.4	040	Reviewed non-consecutively bates numbered documents within ranges CTRL00052257-00057444 discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	02/21/13	0.3	080	E-mails to/from David Goldsmith, S. Auer, D. Chiplock and M. Lesser re: coordination of March 13 videoconference
4089	Todd Kussin	SA	02/21/13	7.0	040	Conferred with coders to explain system of preparing documents marked responsive and non-privileged for production to defendants; conducted searches and prepared new folders for use by reviewers in preparing such documents for production; created folders for each coder as well as folders to hold documents that are to be created in electronic format in anticipation of production to defendants; instructed coders on preparation of documents and aided them in formatting documents for production; performed quality check/secondary review on second half of all documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; confirmed that all families of documents had been marked consistently.
4263	Zeev Kirsh	SA	02/21/13	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/21/13	8.9	040	Prepared documents for production by modifying them into a pdf format.
4369	David Pospischil	SA	02/21/13	6.8	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; team meeting with T. Kussin regarding saving documents to shared drive for production; saving documents to shared drive for production; conference with T. Kussin regarding documents.

4257	Oriando Perez	SA	02/21/13	8.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
						Compiled PDFs of responsive documents for production.
4240	Eddie Shrem	SA	02/21/13	11.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege. Also converted responsive documents into PDF format for submission to Defendant.
0571	David Goldsmith	P	02/22/13	0.5	040	Discussions with Mike Rogers and Stacy Auer re: Arkansas document production issues; discussion with Mike Rogers re: mediation issues
1179	Michael Rogers	P	02/22/13	2.4	080	Conferences with and e-mails to/from Chris Keller, Eric Belfi, David Goldsmith, T. Kussin and S. Auer re: review and production of ARTS documents; telephone conference with A. Patton re: same
4089	Todd Kussin	SA	02/22/13	8.2	040	Met with Michael Rogers to discuss decision to have outside vendors prepare production to defendants of documents coded by reviewers as responsive and non-privileged; coordinate same with IT Department and Stacy Auer; reorganized production folders on share drive and Concordance database in order to allow for production of documents on rolling basis; discussed same with coders and also discussed assignment of selecting representative sample documents for each of several categories marked responsive in order to show associates and partners the types of documents that are to be produced; performed quality check/secondary review on second half of all documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; confirmed that all families of documents had been marked consistently.
1225	Stacy Auer	PL	02/22/13	1.4	040	Emails/convos re: production and workflow re: same;
4263	Zeev Kirsh	SA	02/22/13	9.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/22/13	7.4	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/22/13	7.3	040	Saving documents to shared drive for production; conferences with T. Kussin regarding same; reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/22/13	6.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege and converted into pdf format for submission to Defendant.

4257	Orlando Perez	SA	02/22/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	02/23/13	1.0	080	E-mails to/from T. Kussin, S. Auer, M. Yan and A. Patton re: ARTRS documents for production
0103	Lawrence Sucharow	P	02/25/13	3.5	100	Attention to analyze and understand plaintiffs' damages analyses.
1179	Michael Rogers	P	02/25/13	2.8	080	Conferences, conference calls and e-mails to/from T. Kussin, S. Auer, M. Yan, A. Patton, J. Hudson re: ARTRS documents for production; analyze ARTRS documents for production; conference with David Goldsmith and T. Kussin re: same
4089	Todd Kussin	SA	02/25/13	8.2	040	Emails with Michael Rogers, Matt Yan, and outside vendors to discuss preparation of second production to defendants of documents provided by the Arkansas Teacher Retirement System (the "ATRS") coded as responsive and non-privileged by reviewers; reorganized production folders on share drive and Concordance database in order to allow for production of documents on rolling basis; instructed coders on assignment of selecting representative sample documents for each of several categories marked responsive in order to show associates and partners the types of documents that are to be produced; created folders to organize same; reviewed documents selected by coders for each category, identified relevant language making such documents responsive, populated folders, and printed and highlighted chosen documents; performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests.
4263	Zeev Kirsh	SA	02/25/13	11.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege, Organized March 2nd production document folders and prepared and sample batches of documents for production.
4341	Frantzgermain Bernadin	SA	02/25/13	9.0	040	Created a document summary by identifying examples of the documents that I previously marked as responsive. Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/25/13	6.8	040	Reviewing and collecting sample of documents marked responsive; team meeting with T. Kussin regarding same; saving sample documents to shared drive; conferences with T. Kussin regarding documents; reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.

4257	Orlando Perez	SA	02/25/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/25/13	11.4	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
0571	David Goldsmith	P	02/26/13	0.4	040	Meeting with Mike Rogers and T. Kussin re: status of ARTRS document production; production issues
4089	Todd Kussin	SA	02/26/13	6.0	040	Finalized selection, identification, and review of sample documents for each of several categories marked responsive among those provided by the Arkansas Teacher Retirement System (the "ATRS") in order to show associates and partners the types of documents that are to be produced; created folders to organize same; reviewed documents selected by coders for each category, identified relevant language making such documents responsive, populated folders, and printed and highlighted chosen documents; met with David Goldsmith and Michael Rogers re: same; performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; coordinated with paralegals, IT Department and outside vendor re: next production of documents to defendants; drafted reviewer productivity report for week ending 2/22/2013.
4263	Zeev Kirsh	SA	02/26/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/26/13	9.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/26/13	6.3	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding documents.
1179	Michael Rogers	P	02/26/13	2.5	080	Conferences, conference calls and e-mails to/from T. Kussin, S. Auer, M. Yan, A. Patton, J. Hudson re: ARTRS documents for production; analyze ARTRS documents for production; conference with David Goldsmith and T. Kussin re: same
4257	Orlando Perez	SA	02/26/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4240	Eddie Shrem	SA	02/26/13	11.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
0103	Lawrence Sucharow	P	02/27/13	2.5	100	Attention to review and understanding damages analyses
1450	Reka Viczian	PL	02/27/13	0.6	140	Scan and name pdfs for sending to client.
4089	Todd Kussin	SA	02/27/13	6.1	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; coordinated with paralegals, IT Department and outside vendor re: next production of documents to defendants; reviewed production once prepared by outside vendor to ensure consistency.
4263	Zeev Kirsh	SA	02/27/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/27/13	7.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/27/13	6.8	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding review.
1179	Michael Rogers	P	02/27/13	1.0	080	Analyze ARTRS documents for production; conference call with and e-mail to/from R. Graves, D. Bumgartner and M. Palmer re: same
4257	Orlando Perez	SA	02/27/13	7.8	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/27/13	11.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	02/27/13	0.9	040	Emails/convos re: plaintiff's production to State Street and format/delivery/prep of same; review contents of DVD w/ production;
4089	Todd Kussin	SA	02/28/13	5.2	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; reviewed previous production once prepared by outside vendor to in order to ensure correct order of documents, inclusion of bates numbers, and that the documents are able to be opened.

4263	Zeev Kirsh	SA	02/28/13	7.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	02/28/13	10.8	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/28/13	7.5	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
1179	Michael Rogers	P	02/28/13	0.6	080	E-mails to/from T. Kussin, S. Auer, M. Yan, A. Patton and J. Hudson re: ARTRS documents for production
4257	Orlando Perez	SA	02/28/13	8.2	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	02/28/13	11.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	02/28/13	0.4	040	Emails, convos re: doc production; review CD of production;
1179	Michael Rogers	P	03/01/13	2.7	080	Draft production letter for production of ARTRS documents; e-mails to/from T. Kussin, S. Auer and M. Yan re: same re: ARTRS documents; e-mail to defense counsel re: same
4263	Zeev Kirsh	SA	03/01/13	5.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/01/13	10.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/01/13	7.6	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/01/13	1.3	040	Emails/convos re: plaintiff's production, bates numbering, QC and label of DVD; review DVD of same;
4240	Eddie Shrem	SA	03/01/13	7.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4089	Todd Kussin	SA	03/04/13	6.9	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; coordinated with paralegals, IT Department and outside vendor re: next production of documents to defendants; conferred with coders re: proper designation of documents with family members dated outside of the relevant time period, yet discussing timely information responsive to defendants' document requests; re-organized on Concordance folders containing non-privileged responsive documents to be sent to vendors for production; drafted reviewer productivity report for week ending 3/1/2013.
4263	Zeev Kirsh	SA	03/04/13	7.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/04/13	10.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/04/13	6.8	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	03/04/13	8.4	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	03/04/13	11.2	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/04/13	0.4	040	Review emails re: plaintiff's production prep;
1179	Michael Rogers	P	03/05/13	0.9	080	E-mails to/from David Goldsmith, S. Auer, D. Chiplock, M. Lesser, K. Dirgar re: ARTRS production; e-mails to/from Larry Sucharow and David Goldsmith re: meeting with co-counsel
4089	Todd Kussin	SA	03/05/13	4.1	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; coordinated with paralegals and IT Department re: next production of documents to defendants; conferred with coders re: proper designation of documents with family members dated outside of the relevant time period, yet discussing timely information responsive to defendants' document requests.
4263	Zeev Kirsh	SA	03/05/13	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4341	Frantzgermain Bernadin	SA	03/05/13	9.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/05/13	6.7	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	03/05/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/05/13	0.5	040	FedEx 3/1/13 production to Catalyst; emails/convos re: same; review/QC DVDs;
4089	Todd Kussin	SA	03/06/13	3.5	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; prepared documents for production to defendants; conferred with coders re: proper designation of documents with family members dated outside of the relevant time period, yet discussing timely information responsive to defendants' document requests.
4263	Zeev Kirsh	SA	03/06/13	7.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/06/13	10.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/06/13	7.1	040	Reviewing non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding document.
4257	Orlando Perez	SA	03/06/13	8.2	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/06/13	0.1	040	Email to Catalyst re: delivery of Plaintiff's doc production;
4089	Todd Kussin	SA	03/07/13	3.4	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; prepared documents for production to defendants; conferred with coders re: proper designation of documents with family members dated outside of the relevant time period, yet discussing timely information responsive to defendants' document requests.

4263	Zeev Kirsh	SA	03/07/13	10.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/07/13	9.5	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/07/13	7.9	040	Performing second review of documents marked as responsive to defendants' document requests; conferences with T. Kussin regarding same.
4257	Orlando Perez	SA	03/07/13	8.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	03/08/13	2.4	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; prepared documents for production to defendants; conferred with coders re: proper designation of particularly relevant documents with family members that were privileged or not relevant.
4263	Zeev Kirsh	SA	03/08/13	6.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/08/13	9.8	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/08/13	5.7	040	Performing second review of documents marked as responsive to defendants' document requests; conferences with T. Kussin regarding documents.
4089	Todd Kussin	SA	03/11/13	0.9	030	Communications with Catalyst support staff, associates, and IT Department about gaining access to catalyst database in order to allow reviewers to begin coding documents produced by defendants.
4263	Zeev Kirsh	SA	03/11/13	11.0	030	Reviewed quality check non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/11/13	8.7	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/11/13	7.0	040	Performing second review of documents marked as responsive to defendants' document requests; conferences with T. Kussin regarding documents.

4257	Orlando Perez	SA	03/11/13	7.8	040	Performed quality control on non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
0571	David Goldsmith	P	03/12/13	3.5	130	Review damages analyses, discovery issues, recent correspondence; meeting with Larry Sucharow, Mike Rogers, Mike Thornton, R. Lief re: status and strategy for March 21 mediation meeting, prepare for same; post-meeting discussion with Mike Rogers
1179	Michael Rogers	P	03/12/13	2.8	080	E-mails to/from Larry Sucharow, David Goldsmith, Stacy Auer and Sal Sirico re: prepare for meetings today, tomorrow and next week; conference with Larry Sucharow, David Goldsmith, M. Thornton and B. Lief re: case strategy re: next week's mediator's meeting; re: prepare for tomorrow's teleconference call; analyze SST 10K re: damages statements; conferences and telephone conferences with and e-mails to/from T. Kussin, Stacy Auer, Matthew Yan, A. Patton and J. Hudson re: ARTRS documents for production
4089	Todd Kussin	SA	03/12/13	3.4	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; prepared documents for production to defendants; conferred with Michael Rogers, Stacy Auer, and Matt Yan in order to properly identify the numbers of documents and pages as well as the dates of each production completed thus far; reviewed documents previously marked responsive by the coders and identified categories of each in order to select samples of such categories to be analyzed by partners and associates prior to production; discussed same with Michael Rogers; prepared report documenting coder productivity for the week ending 3/8/2013.
4089	Todd Kussin	SA	03/12/13	0.6	030	Conferred with support team for Catalyst database in order to ensure proper access to enable coders to review documents produced by defendants; conferred with coders re: questions pertaining to coding sheet.
4263	Zeev Kirsh	SA	03/12/13	8.0	030	Reviewed quality check non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/12/13	10.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/12/13	6.0	040	Reviewing guidelines for review of defendants' production; reviewing amended complaint; performing second review of documents marked as responsive to defendants' document requests; searching for sample responsive documents; saving sample documents to shared drive.
4257	Orlando Perez	SA	03/12/13	8.8	040	Reviewed the Amended Class Action Complaint and the Transcript for Motion to Dismiss.
1225	Stacy Auer	PL	03/12/13	1.7	040	Emails re: doc production cover letters; update prod log; review files and emails re: info relating to same; emails re: requested info re: production prep;
0571	David Goldsmith	P	03/13/13	2.5	030	Attend videoconferencing with all parties re: explanations of sources and formulas for data spreadsheets; discussions with plaintiffs' group re: same; prepare for same

1179	Michael Rogers	P	03/13/13	2.2	080	Conference and video conference call with Larry Sucharow, David Goldsmith, B. Lieff, D. Chiplock, D. Seitz, M. Lesser, E. Hoffman, ERISA counsel, and State Street counsel re: SST data and methodology
4089	Todd Kussin	SA	03/13/13	1.3	030	Communications with support team for Catalyst database and co-counsel in order to schedule upcoming training session on use of the database, particularly with regard to the grouping and identifying of families; conferred with coders re: questions pertaining to coding sheet, as well as documents presenting financial information but with little context due to the absence of identifiable family members.
4089	Todd Kussin	SA	03/13/13	1.0	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests.
4263	Zeev Kirsh	SA	03/13/13	7.0	030	Reviewed quality check non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	03/13/13	12.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/13/13	7.7	030	Searching for sample responsive documents; conferences with T. Kussin regarding second review of documents, review of documents produced by defendants; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including pricing.
4257	Orlando Perez	SA	03/13/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4089	Todd Kussin	SA	03/14/13	2.9	030	Attended training session re: Catalyst platform along with review team; drafted follow up questions to administrators re: problems with coding process; particularly with regard to the grouping and identifying of families; conferred with coders re: questions pertaining to coding sheet, as well as documents presenting financial information but with little context due to the absence of identifiable family members.
4263	Zeev Kirsh	SA	03/14/13	10.9	030	Reviewed quality check non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege. Training session for catalyst document review platform.
4341	Frantzgermain Bernadin	SA	03/14/13	9.4	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	03/14/13	7.8	030	Assisting T. Kussin with printing and organizing of sample documents; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds; attending Catalyst training; conferring with T. Kussin and team regarding various Catalyst review issues, drafting of response to email from Catalyst database case manager; assisting in drafting of email to Catalyst database case manager describing various review issues.
1179	Michael Rogers	P	03/14/13	0.7	080	Analyze ARTRS documents for production; e-mails to/from David Goldsmith, T. Kussin and Danette McKenzie re: STAs
4257	Orlando Perez	SA	03/14/13	8.0	040	Reviewed the Amended Class Action Complaint and the Transcript for Motion to Dismiss.
1225	Stacy Auer	PL	03/14/13	0.8	040	Review/QC production and assist in prep of same;
4263	Zeev Kirsh	SA	03/15/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	03/15/13	10.3	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/15/13	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conference with T. Kussin regarding review.
1179	Michael Rogers	P	03/15/13	1.0	080	E-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: damages numbers; e-mails to/from David Goldsmith, T. Kussin and Stacy Auer re: production of ARTRS documents
4257	Orlando Perez	SA	03/15/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/15/13	1.1	040	Assist in prep of production; fed ex to defense counsel w/ production; fed ex to Catalyst w/ production; emails/convos re: same;
0103	Lawrence Sucharow	P	03/18/13	4.2	080	Prepare for conference call with mediator and defendants' counsel; conduct conference call; meeting with David Goldsmith and Michael Rogers; review damages analyses.
0571	David Goldsmith	P	03/18/13	0.5	080	Attend call with J. Marks, J. Rudman, W. Paine, D. Halston, Larry Sucharow, L. Sarko, R. Loeff re: mediation issues; post-call discussion with Larry Sucharow and Mike Rogers re: same
1179	Michael Rogers	P	03/18/13	0.7	080	Conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel, defense counsel and J. Marks re: mediation and settlement possibilities
4089	Todd Kussin	SA	03/18/13	2.5	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; prepared report summarizing coder productivity for week ending 3/18/2013.
4263	Zeev Kirsh	SA	03/18/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4369	David Pospischil	SA	03/18/13	9.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conferences with T. Kussin regarding Catalyst database, review.

4341	Frantzgermain Bernadin	SA	03/18/13	7.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	03/18/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1225	Stacy Auer	PL	03/18/13	0.3	040	Track production to Catalyst and Defense counsel; emails re: same;
4089	Todd Kussin	SA	03/19/13	1.3	040	Performed quality check/secondary review on documents thus far marked responsive by reviewers as of this date and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests.
4257	Orlando Perez	SA	03/19/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	03/19/13	11.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	03/19/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/19/13	9.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, reconciliation responses; conference with T. Kussin regarding review.
1179	Michael Rogers	P	03/20/13	0.4	080	Conference with David Goldsmith and e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: groupings of entities within potential settlement class, and allocations thereto
4089	Todd Kussin	SA	03/20/13	6.5	040	Conducted quality check/secondary review of documents marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; emails with Michael Rogers to discuss proper designation of documents containing cover emails dated after the class period but referencing information from within the class period; prepared next batch of documents for production to defendants.
4263	Zeev Kirsh	SA	03/20/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	03/20/13	7.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/20/13	8.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, FX policies, and public pension fund investment data; conference with T. Kussin regarding public pension fund documents.
4257	Orlando Perez	SA	03/20/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.

4089	Todd Kussin	SA	03/21/13	4.9	040	Conducted quality check/secondary review of documents marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; reviewed all documents containing references to the year 2011 to ensure that they refer to information prior to April 11, and then removed the remainder of documents from the folder.
4369	David Pospischil	SA	03/21/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4341	Frantzgermain Bernadin	SA	03/21/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	03/21/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	03/22/13	3.8	040	Conducted quality check/secondary review of documents marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production and also to ensure that all documents marked for production are responsive to defendants' document requests; conferred with coders re: questions about documents relating to pension funds but not discussing foreign exchange; continued preparing next batch of documents for production to defendants.
4341	Frantzgermain Bernadin	SA	03/22/13	9.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	03/22/13	6.0	040	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4341	Frantzgermain Bernadin	SA	03/25/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/25/13	9.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction foreign exchange data, and public pension fund presentations; conference with T. Kussin regarding document.
4257	Orlando Perez	SA	03/25/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1225	Stacy Auer	PL	03/25/13	0.9	040	Review/QC production Vol005 from Precision Discovery; emails re: same; update production log;
1179	Michael Rogers	P	03/26/13	0.3	080	Emails to/from S. Auer & A. Hornstine re production of ARTRS docs.
1225	Stacy Auer	PL	03/26/13	1.4	040	QC and assist in prep of ARTRS Production of Documents (SST-ARTRS 0069632 to SST-ARTRS 0071932); fed ex to defense counsel w/ same; fed ex to catalyst re: same;
4341	Frantzgermain Bernadin	SA	03/26/13	11.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	03/26/13	9.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction foreign exchange data, public pension fund investment data.
4257	Orlando Perez	SA	03/26/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4369	David Pospischil	SA	03/27/13	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4341	Frantzgermain Bernadin	SA	03/27/13	10.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1225	Stacy Auer	PL	03/27/13	0.2	040	Review production log and update same;
4257	Orlando Perez	SA	03/27/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0103	Lawrence Sucharow	P	03/28/13	2.3	080	Attention to email exchanges regarding next mediation session and mediation strategy. Review Rogers memo.
1179	Michael Rogers	P	03/28/13	1.3	080	Analyze emails to/from D. Chiplock and M. Lesser & Massachusetts Consumer Law re potential allocations of damages; draft memo to LAS re same; emails to/from LAS & DJG re same.
4341	Frantzgermain Bernadin	SA	03/28/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/28/13	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	03/28/13	9.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1450	Reka Viczian	PL	03/29/13	0.5	140	Review emails and update share drive.
4341	Frantzgermain Bernadin	SA	03/29/13	5.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	03/29/13	7.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4341	Frantzgermain Bernadin	SA	04/01/13	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/01/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, foreign exchange data, and FX policies.
4257	Orlando Perez	SA	04/01/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.



4257	Orlando Perez	SA	04/03/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	04/04/13	1.3	030	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and coded responsive and non-privileged by reviewers in order to ensure the accuracy of their coding; prepared same for production; drafted brief summary of types of documents identified as responsive; attended to problems with the Catalyst platform experienced by coders, including failure to upload documents and forced shut downs, and communicated with IT Department re: same.
4341	Frantzgermain Bernadin	SA	04/04/13	7.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/04/13	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, State Street foreign exchange practice, and State Street foreign exchange and international equities training.
1179	Michael Rogers	P	04/04/13	1.3	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: draft re: submissions to J. Marks re: damages; analyze amended ERISA complaint
4240	Eddie Shrem	SA	04/04/13	9.6	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4257	Orlando Perez	SA	04/04/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	04/05/13	1.6	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and coded responsive and non-privileged by reviewers in order to ensure the accuracy of their coding; prepared same for production; drafted brief summary of types of documents identified as responsive.
4341	Frantzgermain Bernadin	SA	04/05/13	6.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/05/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	04/05/13	4.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
0103	Lawrence Sucharow	P	04/08/13	3.5	080	Draft letter of issues for discussion for mediator;
4263	Zeev Kirsh	SA	04/08/13	6.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/08/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	04/08/13	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, FX practice, FX pricing, standing instructions, FX revenue, and currency exchange rates and prices.
4240	Eddie Shrem	SA	04/08/13	11.4	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
1179	Michael Rogers	P	04/08/13	0.4	080	E-mails to/from Larry Sucharow, M. Lesser and D. Chiplock re: draft memo to J. Marks re: settlement class items
4257	Orlando Perez	SA	04/08/13	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0103	Lawrence Sucharow	P	04/09/13	2.7	080	Continued draft letter of issues for discussion for mediator.
4263	Zeev Kirsh	SA	04/09/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/09/13	8.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/09/13	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including currency exchange rates and prices, FX policies, reconciliation responses, and public pension fund investment data.
1179	Michael Rogers	P	04/09/13	2.9	080	E-mails to/from Larry Sucharow, David Goldsmith, D. Chiplock and M. Lesser re: submission to Marks; draft same
4257	Orlando Perez	SA	04/09/13	9.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	04/09/13	10.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
0103	Lawrence Sucharow	P	04/10/13	1.8	080	Finalize letter of discussion issues with Michael Rogers.
1225	Stacy Auer	PL	04/10/13	0.2	140	Emails re: March Electronic Discovery Invoice;
4263	Zeev Kirsh	SA	04/10/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/10/13	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/10/13	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including exchange rate variances, RFP/RFI responses, FX practices and policies, reconciliation responses, and public pension fund investment data.

4240	Eddie Shrem	SA	04/10/13	11.3	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
1179	Michael Rogers	P	04/10/13	2.7	080	Conference with Larry Sucharow re: submission to Marks; edit same; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same
4257	Orlando Perez	SA	04/10/13	9.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0023	Eric Belfi	P	04/11/13	1.0	130	Provided update to client
4089	Todd Kussin	SA	04/11/13	1.8	040	Performed quality check/secondary review on documents provided by the Arkansas Teacher Retirement System and marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production; prepared documents for next round of production to defendants.
4263	Zeev Kirsh	SA	04/11/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/11/13	10.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/11/13	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, RFP/RFI responses, and FX practices and policies.
4257	Orlando Perez	SA	04/11/13	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	04/11/13	11.1	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4089	Todd Kussin	SA	04/12/13	2.6	040	Performed quality check/secondary review on documents provided by the Arkansas Teacher Retirement System and marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production; prepared documents for next round of production to defendants; conferred with reviewers re: proper coding of documents that do not specifically refer to to foreign exchange trades yet allude thereto.
4263	Zeev Kirsh	SA	04/12/13	6.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/12/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	04/12/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including preferential pricing and institutional investor services revenue.
4257	Orlando Perez	SA	04/12/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	04/12/13	8.7	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
0571	David Goldsmith	P	04/14/13	0.5	130	Review April 10 submission to Jonathan Marks re: issues for future settlement discussions
4089	Todd Kussin	SA	04/15/13	2.2	030	Performed quality check/secondary review on documents provided by the Arkansas Teacher Retirement System and marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production; prepared documents for next round of production to defendants; conferred with reviewers re: proper coding of documents referencing client inquiries about foreign exchange trading; prepared report summarizing productivity of reviewers for week ending 4/12/2013.
4263	Zeev Kirsh	SA	04/15/13	9.8	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/15/13	7.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/15/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, custodial fees, and custodian contracts.
4240	Eddie Shrem	SA	04/15/13	11.3	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
4257	Orlando Perez	SA	04/15/13	9.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	04/16/13	1.2	040	Performed quality check/secondary review on documents provided by the Arkansas Teacher Retirement System and marked responsive and non-privileged by reviewers and performed searches throughout the Concordance database in order to ensure that no privileged documents had been marked for production.
4263	Zeev Kirsh	SA	04/16/13	8.4	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/16/13	8.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	04/16/13	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; team conference with T. Kussin regarding meeting regarding relevant documents in defendants' production; reviewing notes in preparation for same; conference with T. Kussin and F. Bernadin regarding review.
4257	Orlando Perez	SA	04/16/13	7.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	04/16/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Relativity.
4089	Todd Kussin	SA	04/16/13	0.4	030	Conferred with reviewers re: proper coding of documents referencing pension funds including Calpers, as well as alluding to foreign exchanges but not necessarily discussing fx rates.
4089	Todd Kussin	SA	04/17/13	2.2	030	Performed quality check/secondary review of documents thus far coded by reviewers on Catalyst in order to ensure the accuracy of their designations; reviewed sample of documents thus far marked relevant by coders in order to get idea of the the types and subject matters of such documents in preparation for upcoming meeting with associates and co-counsel; conferred with reviewers re: proper coding of documents referencing pension funds including Calpers, as well as alluding to foreign exchanges but not necessarily discussing fx rates.
4263	Zeev Kirsh	SA	04/17/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/17/13	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/17/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; team conference with T. Kussin regarding meeting regarding relevant documents in defendants' production; reviewing and preparing notes in preparation for same.
4240	Eddie Shrem	SA	04/17/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4257	Orlando Perez	SA	04/17/13	9.1	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	04/18/13	1.0	140	Telephone conferences with and e-mails to/from T. Kussin and D. McKenzie re: document review attorneys
1179	Michael Rogers	P	04/18/13	1.6	030	Conference call with and e-mails to/from David Goldsmith, T. Kussin, D. Chiplock, M. Lesser, E. Hoffman and document review attorneys from all three firms re: SST documents re: review platform

4089	Todd Kussin	SA	04/18/13	4.3	030	Communications with Catalyst support staff in order to construct searches for documents coded by reviewers; reviewed documents in advance of conference call with reviewers, associates, and co-counsel; drafted notes summarizing key documents thus far coded and assigned coders with task of doing same; reviewed coders' summaries in advance of call; attended conference call in order to discuss technical issues involving the review process on Catalyst as well as substantive issues including results of searches thus far and ideas for targeted searches to enable the discovery of more relevant documents; along with reviewers, compiled list of technical problems experienced thus far in order to present same to co-counsel's Catalyst staff.
4263	Zeev Kirsh	SA	04/18/13	10.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Conference call with co-counsel regarding the review.
4341	Frantzgermain Bernadin	SA	04/18/13	11.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/18/13	4.1	030	Conference with T. Kussin regarding writing up notes regarding relevant documents in defendants' production; writing up notes regarding relevant documents in defendants' production; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX pricing; conference call with T. Kussin, team, and co-counsel regarding review.
4240	Eddie Shrem	SA	04/18/13	10.8	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
0571	David Goldsmith	P	04/18/13	1.0	030	Telephone conference with Mike Rogers, T. Kussin, M. Lesser, E. Hoffman, K. Dugar, all STAs re: document review, strategy and technical issues
4257	Orlando Perez	SA	04/18/13	8.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	04/19/13	6.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/19/13	7.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/19/13	9.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	04/19/13	6.9	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4257	Orlando Perez	SA	04/19/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	04/22/13	0.5	080	E-mails to/from David Goldsmith, T. Kussin, D. Chiplock and M. Lesser : search parameters re: SST document production

4089	Todd Kussin	SA	04/22/13	2.7	030	In advance of meeting with Michael Rogers and reviewers, analyze email from co-counsel containing several high-level suggestions for the types of documents to be focused on when reviewing defendants' production going forward; performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their coding; prepared report summarizing productivity of reviewers for week ending April 19.
4263	Zeev Kirsh	SA	04/22/13	6.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/22/13	8.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/22/13	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	04/22/13	11.3	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
1179	Michael Rogers	P	04/23/13	0.5	080	Conference with David Goldsmith re: scheduling and staffing
4089	Todd Kussin	SA	04/23/13	1.5	030	In advance of meeting with Michael Rogers and reviewers, analyze email from co-counsel containing several high-level suggestions for the types of documents to be focused on when reviewing defendants' production going forward; discussed same with reviewers; performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their coding.
4263	Zeev Kirsh	SA	04/23/13	9.7	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/23/13	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/23/13	5.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; reviewing M. Lesser memo regarding document review suggestions.
4240	Eddie Shrem	SA	04/23/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
1179	Michael Rogers	P	04/24/13	1.5	080	E-mails to/from D. Chiplock and M. Lesser re: opinion in related FX case; analyze same
4089	Todd Kussin	SA	04/24/13	0.5	030	In advance of meeting with Michael Rogers and reviewers, analyze email from co-counsel containing several high-level suggestions for the types of documents to be focused on when reviewing defendants' production going forward; discussed same with reviewers; performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their coding.

4263	Zeev Kirsh	SA	04/24/13	9.8	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/24/13	10.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/24/13	2.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund reaction to 8-K and public pension fund investment data.
4240	Eddie Shrem	SA	04/24/13	10.6	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
0571	David Goldsmith	P	04/25/13	0.3	080	E-mails with co-counsel re: BNY FX FIRREA decision and strategy re: sending to Jonathan Marks
4263	Zeev Kirsh	SA	04/25/13	5.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/25/13	7.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4341	Frantzgermain Bernadin	SA	04/25/13	0.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	04/25/13	9.9	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4089	Todd Kussin	SA	04/26/13	2.0	030	In advance of meeting with Michael Rogers and reviewers, analyze email from co-counsel containing several high-level suggestions for the types of documents to be focused on when reviewing defendants' production going forward; discussed same with reviewers; performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their coding.
4263	Zeev Kirsh	SA	04/26/13	10.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/26/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/26/13	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	04/26/13	6.2	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.

0571	David Goldsmith	P	04/29/13	1.5	130	Review/analyze Judge Kaplan decision in US v. BNY
4089	Todd Kussin	SA	04/29/13	2.0	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their coding; prepared reports summarizing productivity of reviewers during week ending April 26, 2013.
4263	Zeev Kirsh	SA	04/29/13	10.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/29/13	9.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/29/13	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	04/29/13	11.1	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4257	Orlando Perez	SA	04/29/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	04/30/13	6.1	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	04/30/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/30/13	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	04/30/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	04/30/13	11.1	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4263	Zeev Kirsh	SA	05/01/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/01/13	11.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/01/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	05/01/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.

4240	Eddie Shrem	SA	05/01/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
4263	Zeev Kirsh	SA	05/02/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/02/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/02/13	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX pricing.
4257	Orlando Perez	SA	05/02/13	8.1	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/02/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst.
0023	Eric Belfi	P	05/03/13	1.0	130	Updated client on case
4263	Zeev Kirsh	SA	05/03/13	6.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/03/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/03/13	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4240	Eddie Shrem	SA	05/03/13	6.5	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4257	Orlando Perez	SA	05/03/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/06/13	2.2	030	Conferred with coders re: proper designation of documents that discussed relevant financial data yet did not reveal any information re: State Street's policies with respect to foreign exchange trading; conducted secondary review/quality check of documents produced by defendants and coded for priority and issue by reviewers in order to ensure the accuracy of their coding; prepared report summarizing productivity of coders during week ending May 3, 2013.
4263	Zeev Kirsh	SA	05/06/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.

4341	Frantzgermain Bernadin	SA	05/06/13	10.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/06/13	9.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, custodial FX, non-pension customers, FX policies, preferential FX pricing, and custodial fees.
4257	Orlando Perez	SA	05/06/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/06/13	11.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4263	Zeev Kirsh	SA	05/07/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/07/13	10.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/07/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including non-pension customers, custodial fees, FX revenue, custodial FX, FX spreads, FX pricing, preferential FX pricing, and best execution; conferences with T. Kussin regarding review, document.
4257	Orlando Perez	SA	05/07/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/07/13	10.9	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4089	Todd Kussin	SA	05/08/13	2.2	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with reviewers re: proper coding of documents re: California pension funds.
4089	Todd Kussin	SA	05/08/13	2.5	040	Conducted secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/08/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.

4341	Frantzgermain Bernadin	SA	05/08/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/08/13	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenue, non-pension customers, custodial FX, FX pricing, reconciliation responses, public pension funds, and FX policies.
4257	Orlando Perez	SA	05/08/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/08/13	10.9	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4089	Todd Kussin	SA	05/09/13	1.7	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with reviewers re: proper coding of documents produced by defendants
4089	Todd Kussin	SA	05/09/13	2.3	040	Conducted secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/09/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/09/13	11.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/09/13	11.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, FX pricing, and FX costs.
4257	Orlando Perez	SA	05/09/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/09/13	10.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.

4089	Todd Kussin	SA	05/10/13	1.3	040	Conducted secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/10/13	10.5	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/10/13	8.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4240	Eddie Shrem	SA	05/10/13	6.5	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4257	Orlando Perez	SA	05/10/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/13/13	1.4	040	Conducted secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4089	Todd Kussin	SA	05/13/13	2.1	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; prepared report summarizing productivity of reviewers for week ending May 10, 2013.
4263	Zeev Kirsh	SA	05/13/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/13/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/13/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, customer FX inquiries, public pension fund investment data, FX policies, and FX revenue.

4257	Orlando Perez	SA	05/13/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/13/13	11.5	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4089	Todd Kussin	SA	05/14/13	1.3	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants.
4089	Todd Kussin	SA	05/14/13	4.4	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included; prepared short summary detailing production dates thus far as well as indicating numbers of documents included in each.
4263	Zeev Kirsh	SA	05/14/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/14/13	7.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/14/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX revenue.
4257	Orlando Perez	SA	05/14/13	7.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/14/13	9.7	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
1179	Michael Rogers	P	05/15/13	0.3	080	E-mails to/from Larry Sucharow, David Goldsmith and Mike Rogers re: communications from mediator
4089	Todd Kussin	SA	05/15/13	4.7	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included; prepared short summary detailing production dates thus far as well as indicating numbers of documents included in each.

4263	Zeev Kirsh	SA	05/15/13	9.7	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform
4341	Frantzgermain Bernadin	SA	05/15/13	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/15/13	8.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX-related systems, FX pricing, FX rates, public pension fund investment data, FX revenue, FX policies, best execution, and spreads.
4257	Orlando Perez	SA	05/15/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/16/13	2.9	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included; prepared short summary detailing production dates thus far as well as indicating numbers of documents included in each.
4263	Zeev Kirsh	SA	05/16/13	10.7	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform
4341	Frantzgermain Bernadin	SA	05/16/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/16/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, FX revenue, FX pricing, custody FX, and public pension fund investment data.
4257	Orlando Perez	SA	05/16/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/17/13	1.3	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/17/13	6.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform

4341	Frantzgermain Bernadin	SA	05/17/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/17/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, and FX revenue.
4240	Eddie Shrem	SA	05/17/13	9.9	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4257	Orlando Perez	SA	05/17/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/20/13	1.2	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4089	Todd Kussin	SA	05/20/13	1.2	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; prepared report summarizing productivity of reviewers for week ending 5/17/2013.
4263	Zeev Kirsh	SA	05/20/13	11.7	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/20/13	9.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/20/13	5.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, FX pricing, and public pension fund investment data.
4257	Orlando Perez	SA	05/20/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/20/13	11.3	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
1179	Michael Rogers	P	05/21/13	1.4	080	Conference with and e-mails to/from David Goldsmith, T. Kussin and STAs re: document analysis and review; analyze hot documents; e-mails to/from co-counsel re: problems with review platform

4089	Todd Kussin	SA	05/21/13	6.4	030	Communications with co-counsel and support from Catalyst in order to ascertain search and print functions for the platform; conferred with reviewers to identify and gather most relevant documents thus far reviewed and also to put together brief summary of types of documents reviewed since inception of litigation; reviewed documents pulled by coders as representative sample of most relevant documents thus far identified; along with reviewers, attended meeting with Michael Rogers to discuss types of documents reviewed thus far, strategies going forward, and issues with catalyst platform; drafted email to Michael Rogers to forward to Catalyst support team, describing problems with Catalyst.
4263	Zeev Kirsh	SA	05/21/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform, Meeting with mike rogers regarding document review progress.
4341	Frantzgermain Bernadin	SA	05/21/13	8.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/21/13	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX revenue; conferences with T. Kussin regarding printing documents, team meeting regarding documents; reviewing notes and documents in preparation for team meeting; team meeting with T. Kussin and M. Rogers regarding case, documents; conference with T. Kussin and F. Bernadin regarding technical issues relating to database.
4257	Orlando Perez	SA	05/21/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/21/13	11.3	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
1179	Michael Rogers	P	05/22/13	0.8	080	Analyze hot documents; e-mails to/from co-counsel re; problems with review platform; e-mails to/from M. Lesser and E. Hoffman re: same
4089	Todd Kussin	SA	05/22/13	2.2	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/22/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/22/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	05/22/13	8.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, public pension fund investment data, and FX pricing.
4257	Orlando Perez	SA	05/22/13	8.1	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/22/13	11.5	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4089	Todd Kussin	SA	05/23/13	1.9	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/23/13	8.3	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/23/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/23/13	5.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, reconciliation responses, and standing instruction FX.
4257	Orlando Perez	SA	05/23/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4240	Eddie Shrem	SA	05/23/13	10.0	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.

4089	Todd Kussin	SA	05/24/13	4.0	030	In anticipation of arrival of new document reviewer, identified and gathered written materials discussing background of case, as well as work product created since discovery commenced that provides tips for coding the documents produced by defendants; reviewed same in order to identify most important issues to discuss with new coder; performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4341	Frantzgermain Bernadin	SA	05/24/13	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/24/13	8.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX revenue.
4240	Eddie Shrem	SA	05/24/13	9.8	030	Reviewed and analyzed in order to code for priority, issues, and document type, non-consecutively bates numbered documents produced by defendants and uploaded to Catalyst. Relevant documents included those having issues in FX revenue and FX policies and Public Pension fund spreadsheets. There were also redactions that were flagged accordingly.
4257	Orlando Perez	SA	05/24/13	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0103	Lawrence Sucharow	P	05/28/13	1.5	080	Prepare for conference call with mediator
1179	Michael Rogers	P	05/28/13	0.5	080	Conference with T. Kussin and STA re: document analysis
1450	Reka Viczian	PL	05/28/13	0.2	140	Pull MTD papers and custodian contracts for T. Kussin.
4263	Zeev Kirsh	SA	05/28/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/28/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/28/13	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, FX pricing, and FX spreads.
4214	Allison Tierney	SA	05/28/13	7.5	010	Reviewed State Street Summons and Complaint and transcript of Motion to Dismiss hearing for case orientation
4257	Orlando Perez	SA	05/28/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.

4089	Todd Kussin	SA	05/28/13	2.5	020	Met with new reviewer Allison Tierney to discuss background of case and identified and gathered background materials to provide to her; along with Allison Tierney, met with Michael Rogers who provided additional background; reviewed transcript of 5/8/2012 hearing on motion to dismiss.
4089	Todd Kussin	SA	05/28/13	2.0	030	Conferred with coders re: proper designation of documents produced by defendants, including proper designations of issue and priority; prepared report summarizing productivity of coders for the week ending May 24
0103	Lawrence Sucharow	P	05/29/13	2.7	080	Prepare for and conduct call with mediator. Confer co-counsel.
4089	Todd Kussin	SA	05/29/13	3.7	030	Conferred with new coder Allison Tierney re: problems with logging on to Catalyst, use of Catalyst platform to review documents, and standards to use when determining priority of documents produced by defendants; conducted secondary review/quality check of documents produced by defendants and reviewed by coders in order to ensure the accuracy of their coding.
4263	Zeev Kirsh	SA	05/29/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/29/13	10.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/29/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including bank computer systems, FX pricing, FX policies, custodial fees, public pension fund investment data, and FX revenues.
4214	Allison Tierney	SA	05/29/13	8.0	030	Reviewed Defendant's Memo in Support of Motion to Dismiss, Plaintiff's reply brief, Defendant's reply to Plaintiff, and coding guidelines for background into State Street litigation
4257	Orlando Perez	SA	05/29/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	05/30/13	3.5	040	Performed secondary review/quality check of documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/30/13	12.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/30/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	05/30/13	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX revenues, standing instruction FX, FX policies, standing instruction FX costs, FX spreads, and best execution; conference with T. Kussin regarding document.
4214	Allison Tierney	SA	05/30/13	8.3	030	Reviewed and Analyzed documents relating to California pension funds StateSt_CA_LIT04334907 to StateSt_CA_LIT04338493N
4257	Orlando Perez	SA	05/30/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	05/31/13	1.3	080	Analyze J. Marks memo re: positions of various parties re: settlement classes and allocation; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same
4089	Todd Kussin	SA	05/31/13	3.2	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	05/31/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street discussing "foreign exchange" in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	05/31/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/31/13	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4214	Allison Tierney	SA	05/31/13	8.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04338530 to StateSt_CA_LIT04341262N
4257	Orlando Perez	SA	05/31/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	06/03/13	1.6	080	E-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: J. Marks' summary of each parties' position re: plans of allocation, class definitions re: document review platform; e-mails to M. Lesser and E. Hoffman re: documents produced by SST; analyze same
4089	Todd Kussin	SA	06/03/13	2.1	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	06/03/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.

4341	Frantzgermain Bernadin	SA	06/03/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/03/13	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4214	Allison Tierney	SA	06/03/13	8.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04341295 to StateSt_CA_LIT04343794N
4257	Orlando Perez	SA	06/03/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0103	Lawrence Sucharow	P	06/04/13	2.5	080	Continued factual investigation and analysis of damages
1179	Michael Rogers	P	06/04/13	1.7	080	Conferences and telephone conferences with and e-mails to/from Larry Sucharow, David Goldsmith, M. Thornton, B. Lieff, M. Lesser and D. Chiplock re: meeting with co-counsel next week re: mediation re: parties' suggestions re: allocation, class definition
4089	Todd Kussin	SA	06/04/13	1.6	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; prepared report summarizing productivity of coders for week ending 5/31/2013.
4263	Zeev Kirsh	SA	06/04/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/04/13	10.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/04/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conference with T. Kussin and A. Tierney regarding document.
4214	Allison Tierney	SA	06/04/13	9.2	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04343814 to StateSt_CA_LIT04350387N
1225	Stacy Auer	PL	06/04/13	0.2	140	Emails re: prep for meeting on Thursday, June 13, w/ Bob Lieff, Dan Chiplock, Mike Thornton, Mike Lesser, and Evan Hoffman; update calendar e: same;
4257	Orlando Perez	SA	06/04/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	06/05/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/05/13	11.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/05/13	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX revenue, and FX policies.
4214	Allison Tierney	SA	06/05/13	9.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04350444 to StateSt_CA_LIT04352492N

4257	Orlando Perez	SA	06/05/13	8.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	06/06/13	1.5	080	Conference call with and e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: allocation, class definition; analyze M. Lesser memo re: same
4089	Todd Kussin	SA	06/06/13	2.0	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	06/06/13	9.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/06/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/06/13	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, standing instruction FX, and public pension fund investment data.
4214	Allison Tierney	SA	06/06/13	9.5	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04352495 to StateSt_CA_LIT04355977N
4257	Orlando Perez	SA	06/06/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	06/07/13	1.7	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	06/07/13	5.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/07/13	8.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/07/13	4.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and standing instruction FX.

4257	Orlando Perez	SA	06/07/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0571	David Goldsmith	P	06/10/13	1.5	080	Meeting with Mike Rogers re: mediation issues and strategy; review J. Marks mediation points memo and recent analyses by co-counsel
1179	Michael Rogers	P	06/10/13	5.2	080	Draft memorandum/talking points in preparation for team conference/conference call with J. Marks for Thursday; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Lesser and C. Chiplock re: same; conference with David Goldsmith re: same
4089	Todd Kussin	SA	06/10/13	2.0	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; prepared report summarizing productivity of coders for week ending 6/7/2013.
4263	Zeev Kirsh	SA	06/10/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/10/13	10.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/10/13	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, and FX revenue.
4214	Allison Tierney	SA	06/10/13	8.8	030	Reviewed and Analyzed documents related to California Pension funds StateSt_CA_LIT04355979 to StateSt_CA_LIT04358076N
4257	Orlando Perez	SA	06/10/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0023	Eric Belfi	P	06/11/13	2.0	090	Worked on mediation issues
1179	Michael Rogers	P	06/11/13	3.7	080	Draft memorandum/talking points in preparation for team conference/conference call with J. Marks for Thursday; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same; edit and amend same as per comments of David Goldsmith, M. Lesser and D. Chiplock
4089	Todd Kussin	SA	06/11/13	2.5	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents were included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4263	Zeev Kirsh	SA	06/11/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/11/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	06/11/13	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, public pension fund investment data, FX revenue, and standing instruction FX.
4214	Allison Tierney	SA	06/11/13	9.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04358085 to StateSt_CA_LIT04363932N
4257	Orlando Perez	SA	06/11/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0571	David Goldsmith	P	06/12/13	1.2	080	Meeting with Larry Sucharow, Eric Belfi, Mike rogers re: Thursday meeting with co-counsel and call with mediator; mediation issues and strategy; prepare for meeting
1179	Michael Rogers	P	06/12/13	1.4	080	Conference with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith re: talking points for preparation for tomorrow's meeting and conference call; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: same
4263	Zeev Kirsh	SA	06/12/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/12/13	7.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/12/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, standing instruction FX, and FX pricing.
4214	Allison Tierney	SA	06/12/13	9.3	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04363938 to StateSt_CA_LIT04365131N
4257	Orlando Perez	SA	06/12/13	8.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0103	Lawrence Sucharow	P	06/13/13	3.8	080	Prepare for and conduct meeting of plaintiffs' counsel and conference call with mediator
0571	David Goldsmith	P	06/13/13	2.5	080	Meeting with Larry Sucharow, Mike Rogers, M. Thornton, M. Lesser, R. Lieff, D. Chiplock re: mediation and strategy issues; prepare for same; telephone conferences with Lawrence Sucharow, Mike Rogers, M. Thornton, M. Lesser, R. Lieff, D. Chiplock, J. Marks re: mediation issues toward July 9 meeting of all parties
1179	Michael Rogers	P	06/13/13	4.5	080	Conference with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, M. Lesser, B. Lieff and D. Chiplock re: class definition and allocation issues re: case strategy re: prepare for call with J. Marks; conference call with Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, M. Lesser, B. Lieff, D. Chiplock, J. Marks and B. Wally re: class definition and allocation issues
4089	Todd Kussin	SA	06/13/13	1.8	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents were included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.

4263	Zeev Kirsh	SA	06/13/13	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/13/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/13/13	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenue, public pension fund investment data, and custodial fees.
4214	Allison Tierney	SA	06/13/13	8.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04365139 to StateSt_CA_LIT04368247N
4257	Orlando Perez	SA	06/13/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4214	Allison Tierney	SA	06/14/13	9.8	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04368324 to StateSt_CA_LIT04371146N
4263	Zeev Kirsh	SA	06/14/13	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/14/13	9.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/14/13	6.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP responses, custodial fees, FX pricing, and public pension fund investment data.
4257	Orlando Perez	SA	06/14/13	8.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	06/17/13	2.2	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; prepared report summarizing productivity of coders for week ending 6/14/2013.
4214	Allison Tierney	SA	06/17/13	4.6	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04371158 to StateSt_CA_LIT04371571N
4263	Zeev Kirsh	SA	06/17/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Reviewed materials, pleadings and motions associated with the case.
4341	Frantzgermain Bernadin	SA	06/17/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege. Also, when network issues arose, I reviewed case materials such as pleadings and motions.
4369	David Pospischil	SA	06/17/13	4.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, custodial fees, custodian agreements, and customer FX inquiries.

4257	Orlando Perez	SA	06/17/13	5.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4214	Allison Tierney	SA	06/18/13	8.1	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04371589 to StateSt_CA_LIT04452466N
4263	Zeev Kirsh	SA	06/18/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/18/13	8.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/18/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX marketing, netting, FX revenues, public pension fund investment data, and FX pricing.
4257	Orlando Perez	SA	06/18/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	06/19/13	0.6	080	E-mails to/from M. Lesser re: communications with J. Marks re: mediation session on July 9
4214	Allison Tierney	SA	06/19/13	8.1	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04452484 to StateSt_CA_LIT04454478
4263	Zeev Kirsh	SA	06/19/13	8.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/19/13	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/19/13	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, and FX revenue.
4257	Orlando Perez	SA	06/19/13	7.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	06/20/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4369	David Pospischil	SA	06/20/13	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, FX revenue, and public pension fund investment data.
4214	Allison Tierney	SA	06/20/13	8.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04454502 to StateSt_CA_LIT04456981N
4257	Orlando Perez	SA	06/20/13	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
1179	Michael Rogers	P	06/21/13	2.9	080	E-mails to/from David Goldsmith, T. Kussin, M. Lesser, D. Chiplock and E. Hoffman re: redactions in defendants' production re: strategy to address with defendants
4214	Allison Tierney	SA	06/21/13	9.0	030	Reviewed and Analyzed documents related to California pension funds StateSt_CA_LIT04457007 to StateSt_CA_LIT04459215N

4263	Zeev Kirsh	SA	06/21/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform.
4341	Frantzgermain Bernadin	SA	06/21/13	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/21/13	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, government investigation, custodial fees, standing instruction FX, disclosure of FX practice, spreads, and customer FX inquiries.
4257	Orlando Perez	SA	06/21/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	06/24/13	11.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	06/24/13	7.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/24/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, best execution, FX costs, and FX revenue.
4257	Orlando Perez	SA	06/24/13	9.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
0571	David Goldsmith	P	06/25/13	1.0	080	Telephone conference with R. Lieff, M. Thornton, L. Sarko re: mediation and settlement strategy and July 8 meeting; e-mail report to Larry Sucharow and Mike Rogers re: same; follow-on e-mails re: same
1179	Michael Rogers	P	06/25/13	1.3	080	E-mails to/from Larry Sucharow, David Goldsmith, M. Lesser and D. Chiplock re: preparations for mediator meeting on July 9 re: pre-meeting on July 8, analyze hot documents produced by SST; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: same
4089	Todd Kussin	SA	06/25/13	1.4	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents discussing custody FX; prepared report summarizing productivity of coders for week ending 6/21/2013.
4263	Zeev Kirsh	SA	06/25/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.

4341	Frantzgermain Bernadin	SA	06/25/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/25/13	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, public pension fund investment data, FX pricing, and FX revenue; conference with F. Bernadin regarding review.
1179	Michael Rogers	P	06/26/13	0.8	080	Analyze hot documents produced by SST; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: same
4263	Zeev Kirsh	SA	06/26/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	06/26/13	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/26/13	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX costs and FX revenue.
4257	Orlando Perez	SA	06/26/13	8.1	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4089	Todd Kussin	SA	06/27/13	2.6	040	Performed secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System (the "ATRS") and reviewed by coders for responsiveness to defendants' document requests in order to ensure the accuracy of their designations re: responsiveness and privilege; reviewed all documents marked responsive and non-privileged by coders re: derivatives of the term "foreign exchange" in order to ensure the accuracy of such categorizations and confirm that no privileged documents had been included in batches marked for production to defendants as well as to confirm that all family members of responsive documents had been included.
4341	Frantzgermain Bernadin	SA	06/27/13	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Arkansas Teacher Retirement System ("ATRS") in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	06/27/13	7.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX costs, FX revenue, and standing instruction FX; conference with T. Kussin regarding review.
4257	Orlando Perez	SA	06/27/13	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the State Street Corporation in order to determine their responsiveness.
4263	Zeev Kirsh	SA	06/27/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.

1179	Michael Rogers	P	06/28/13	1.4	080	Analyze hot documents produced by SST; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock, and E. Hoffman re: same
4089	Todd Kussin	SA	06/28/13	1.5	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; analyzed document containing State Street's responses to questions from Investor Services, specifically those pertaining to ensuring best execution on FX transactions, and discussed same with Mike Rogers.
4263	Zeev Kirsh	SA	06/28/13	10.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	06/28/13	9.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	06/28/13	5.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, and FX costs.
4257	Orilando Perez	SA	06/28/13	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	07/01/13	1.0	080	Telephone conference with A. Hornstine re: video/audio remote access for July 9 mediation session; e-mails to/from David Goldsmith, S. Auer, S. Sirico, M. Yan, D. Deo & A. Hornstine re: same
4089	Todd Kussin	SA	07/01/13	2.2	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents re: certain errors made when coding documents including RFP Responses from Investor Services, particularly portions of the document discussing "best execution" policies with respect to FX trades; email to co-counsel requesting any records regarding the coding of such documents; prepared report summarizing productivity of coders for week ending 6/28/2013.
4263	Zeev Kirsh	SA	07/01/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/01/13	9.1	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".

4369	David Pospischil	SA	07/01/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX costs, and FX revenue; conference with T. Kussin regarding review.
4257	Orlando Perez	SA	07/01/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1225	Stacy Auer	PL	07/01/13	0.6	080	Prep for 7/9 mediation;
1179	Michael Rogers	P	07/02/13	0.7	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Lesser and D. Chiplock re: mediation session and pre-mediation session next week
0571	David Goldsmith	P	07/02/13	0.8	080	Prepare for Monday and Tuesday mediation meetings
4263	Zeev Kirsh	SA	07/02/13	10.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/02/13	6.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/02/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX costs and FX revenue.
4257	Orlando Perez	SA	07/02/13	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0103	Lawrence Sucharow	P	07/03/13	3.8	080	Review mediator's summary of parties' positions regarding upcoming mediation session. Prepare for mediation
1179	Michael Rogers	P	07/03/13	0.7	080	Edit ERISA counsel talking points
4089	Todd Kussin	SA	07/03/13	2.5	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders on Catalyst in order to ensure that their designations of priority and issues are correct; conferred with coders re: proper designation of documents referencing FX trades in a cover letter but not actual discussing pertinent information having to do with FX trading.
4263	Zeev Kirsh	SA	07/03/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/03/13	7.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".

4369	David Pospischil	SA	07/03/13	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX costs, FX revenue, FX pricing, public pension fund investment data, and FX policies.
1225	Stacy Auer	PL	07/03/13	0.2	080	Emails re: video conference testing;
4257	Orlando Perez	SA	07/03/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0103	Lawrence Sucharow	P	07/08/13	4.0	080	Meeting of plaintiffs' counsel in preparation for mediation; prepare for mediation.
0571	David Goldsmith	P	07/08/13	3.7	130	Meeting with Larry Sucharow, Mike Rogers, M. Thornton, M. Lesser, E. Hoffman, R. Lieff, D. Chiplock, L. Sarko re: preparation and strategy for July 9 mediation meeting with defendants; prepare for same
1179	Michael Rogers	P	07/08/13	5.0	080	Analyze news article re: related case; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and co-counsel re: same; e-mails to/from M. Lesser, Stacy Auer and Kellie Star re: logistics of today's and tomorrow's meetings; draft summary of talking points vetted and discussed at today's pre-mediation meeting; e-mails to Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, B. Lieff, M. Lesser, D. Chiplock, E. Hoffman and L. Sarko re: same
1225	Stacy Auer	PL	07/08/13	0.3	080	Emails re: prep for mediation session;
4089	Todd Kussin	SA	07/08/13	1.8	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared report summarizing productivity of coders for week ending 7/3/2013.
4263	Zeev Kirsh	SA	07/08/13	9.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/08/13	8.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/08/13	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, standing instruction FX, public pension fund investment data, and FX revenue.
4257	Orlando Perez	SA	07/08/13	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included disclosures of FX practices and RFP/RFI responses.
0023	Eric Belfi	P	07/09/13	4.0	050	Prepared for and participated in mediation
0103	Lawrence Sucharow	P	07/09/13	4.7	080	Prepare for and conduct mediation session with Jonathan Marks, plaintiffs' counsel, defendants' counsel
0571	David Goldsmith	P	07/09/13	4.0	080	Mediation meeting with J. Marks, Larry Sucharow, Mike Rogers, M. Thornton, M. Lesser, E. Hoffman, R. Lieff, D. Chiplock, L. Sarko, C. Kravitz, W. Paine, D. Halston re: settlement issues; discussions with co-counsel re: same; post-meeting e-mails with Mike Rogers

1179	Michael Rogers	P	07/09/13	5.4	080	Conference with Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, M. Lesser, E. Hoffman, B. Lieff, D. Chiplock, L. Sarko, C. Zuckerman, B. McTigue, B. Paine, D. Halston and J. Marks; conferences with and e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: same; e-mails with co-counsel re: conference call to address drafting of presettlement papers
4263	Zeev Kirsh	SA	07/09/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/09/13	9.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/09/13	6.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, standing instruction FX, FX pricing, best execution, FX policies, and public pension fund investment data.
4257	Orlando Perez	SA	07/09/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	07/10/13	0.8	080	E-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: documents produced by SST; re: custodial contracts
4263	Zeev Kirsh	SA	07/10/13	9.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/10/13	8.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/10/13	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, public pension fund investment data, best execution, standing instruction FX, FX pricing, and FX policies.
4257	Orlando Perez	SA	07/10/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4263	Zeev Kirsh	SA	07/11/13	9.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.

4341	Frantzgermain Bernadin	SA	07/11/13	8.9	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/11/13	8.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX policies, FX revenue, FX pricing, best execution, spreads, and investment managers; conference with F. Bernadin regarding document.
0571	David Goldsmith	P	07/12/13	0.4	090	E-mails and discussions with Mike Rogers and Nicole Zeiss re: coordinating with co-counsel on initial draft settlement papers
1179	Michael Rogers	P	07/12/13	1.7	080	Conference call with co-counsel and ERISA counsel re: creating of/drafting pre-settlement papers; conference call with D. Chiplock and M. Lesser re: assignment of tasks re: same; e-mails to/from David Goldsmith re: same
4089	Todd Kussin	SA	07/12/13	2.7	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS.
4263	Zeev Kirsh	SA	07/12/13	9.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/12/13	8.1	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/12/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data and FX pricing.
4257	Orlando Perez	SA	07/12/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	07/15/13	1.5	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared reports summarizing productivity of reviewers for week ending 7/12/2013.
4263	Zeev Kirsh	SA	07/15/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.

4341	Frantzgermain Bernadin	SA	07/15/13	9.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/15/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, and FX revenue.
4257	Orlando Perez	SA	07/15/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4263	Zeev Kirsh	SA	07/16/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/16/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/16/13	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, FX pricing, and public pension fund investment data.
4257	Orlando Perez	SA	07/16/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy documents for clients.
4263	Zeev Kirsh	SA	07/17/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/17/13	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/17/13	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, FX pricing, and public pension fund investment data.
4257	Orlando Perez	SA	07/17/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and profit documents for clients.

1179	Michael Rogers	P	07/19/13	0.6	080	E-mails to/from David Goldsmith and Nicole Zeiss re: draft settlement papers
4341	Frantzgermain Bernadin	SA	07/19/13	8.9	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/19/13	6.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, FX revenue, and standing instruction FX.
4257	Orlando Perez	SA	07/19/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and best execution documents for clients
1179	Michael Rogers	P	07/22/13	0.4	080	E-mails to/from Nicole Zeiss and Elizabeth Rosenberg-Wierzbowski re: pre-settlement papers
4263	Zeev Kirsh	SA	07/22/13	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others.
4341	Frantzgermain Bernadin	SA	07/22/13	6.6	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/22/13	5.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, and standing instruction FX.
4257	Orlando Perez	SA	07/22/13	8.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and best execution documents for clients
1179	Michael Rogers	P	07/23/13	0.7	080	Conference with Nicole Zeiss and Elizabeth Rosenberg-Wierzbowski re: pre-settlement papers; e-mails to/from Larry Sucharow and David Goldsmith re: same
4089	Todd Kussin	SA	07/23/13	2.1	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; conferred with coders to discuss proper designation of documents referencing foreign exchanges but not necessarily fx rates.
4263	Zeev Kirsh	SA	07/23/13	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others

4341	Frantzgermain Bernadin	SA	07/23/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/23/13	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, and standing instruction FX.
4257	Oriando Perez	SA	07/23/13	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and best execution documents for clients
1225	Stacy Auer	PL	07/23/13	0.1	090	Emails re: materials for Elizabeth Rosenberg Wierzbowski's review;
4263	Zeev Kirsh	SA	07/24/13	8.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/24/13	7.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/24/13	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, and standing instruction FX; conference with F. Bernadin regarding review.
4089	Todd Kussin	SA	07/25/13	2.0	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; conferred with coders to discuss proper designation of documents involving communications re: standing-instruction trades.
4263	Zeev Kirsh	SA	07/25/13	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/25/13	9.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/25/13	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX revenue, and FX costs.

4257	Orlando Perez	SA	07/25/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and best execution documents for clients
1513	Elizabeth Wierzbowski	A	07/26/13	1.5	090	Review amended complaint and other documents.
4263	Zeev Kirsh	SA	07/26/13	9.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/26/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/26/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenue, and FX costs; conference with T. Kussin and F. Bernadin regarding document.
4257	Orlando Perez	SA	07/26/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx policy and best execution documents for clients
4089	Todd Kussin	SA	07/29/13	1.4	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared reports summarizing productivity of reviewers for week ending 7/19/2013.
4263	Zeev Kirsh	SA	07/29/13	10.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/29/13	7.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	07/29/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX costs, FX revenue, and public pension fund investment data.
4257	Orlando Perez	SA	07/29/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.

4263	Zeev Kirsh	SA	07/30/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/30/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	07/30/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, public pension fund investment data, best execution, reconciliation responses, custodial fees, RFP/RFI responses, standing instruction FX, and bonuses.
4257	Orlando Perez	SA	07/30/13	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	07/31/13	1.9	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS.
1513	Elizabeth Wierzbowski	A	07/31/13	3.5	090	Review complaints and other filings to prepare draft notice.
4257	Orlando Perez	SA	07/31/13	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4263	Zeev Kirsh	SA	07/31/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	07/31/13	8.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, Statements of Financial Condition, and Monthly Real Estate Monthly Adjustments.
4369	David Pospischil	SA	07/31/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenue, public pension fund investment data, FX pricing, and reconciliation responses.
1179	Michael Rogers	P	08/01/13	0.6	080	E-mails to/from Elizabeth Rosenberg Wierzbowski re: pre-settlement papers; conference with David Goldsmith re: same
1513	Elizabeth Wierzbowski	A	08/01/13	3.5	090	Work on Draft Notice.

4257	Orlando Perez	SA	08/01/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4263	Zeev Kirsh	SA	08/01/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4369	David Pospischil	SA	08/01/13	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, public pension fund investment data, custodial fees, FX revenues, RFP/RFI responses, FX policies, preferential FX pricing, disclosure of FX practice, and FX pricing.
1179	Michael Rogers	P	08/02/13	0.3	080	Telephone conference with Elizabeth Rosenberg Wierzbowski re: pre-settlement papers
1513	Elizabeth Wierzbowski	A	08/02/13	10.0	090	Work on draft long form Notice.
4263	Zeev Kirsh	SA	08/02/13	5.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/02/13	7.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included International Equity Index, Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	08/02/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, spreads, FX pricing, FX revenues, FX policies, custodial fees, disclosure of FX practice, best execution, and IM guides.
4257	Orlando Perez	SA	08/02/13	7.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1513	Elizabeth Wierzbowski	A	08/04/13	3.0	090	Work on draft of long form Notice.
4089	Todd Kussin	SA	08/05/13	1.2	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared reports summarizing productivity of reviewers for week ending 8/2/2013.
1513	Elizabeth Wierzbowski	A	08/05/13	5.5	090	Work on draft of long Notice; send draft to Michael Rogers.
4263	Zeev Kirsh	SA	08/05/13	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others

4341	Frantzgermain Bernadin	SA	08/05/13	10.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/05/13	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including best execution, FX revenues, FX pricing, spreads, FX policies, public pension funds, custodial fees, and standing instruction FX.
4257	Orlando Perez	SA	08/05/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4257	Orlando Perez	SA	08/06/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4263	Zeev Kirsh	SA	08/06/13	4.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/06/13	9.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/06/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, standing instruction FX, FX revenues, public pension fund investment data, FX costs, and FX pricing.
4263	Zeev Kirsh	SA	08/07/13	5.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/07/13	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, Statements of Financial Condition, and Monthly Real Estate Monthly Adjustments.
4369	David Pospischil	SA	08/07/13	5.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data, and FX pricing.
4257	Orlando Perez	SA	08/07/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.

1179	Michael Rogers	P	08/08/13	2.9	080	Analyze, edit and amend Elizabeth Rosenberg Wierzbowski draft notice
4263	Zeev Kirsh	SA	08/08/13	9.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/08/13	7.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, billing invoice entry forms , and Gross Dividend Breakdown.
4369	David Pospischil	SA	08/08/13	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, FX revenues, standing instruction FX, and reconciliation responses.
4257	Orlando Perez	SA	08/08/13	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
4263	Zeev Kirsh	SA	08/09/13	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/09/13	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/09/13	9.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, custodial fees, public pension funds, RFP/RFI responses, preferential pricing, and FX revenues.
4257	Orlando Perez	SA	08/09/13	5.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/12/13	6.5	080	Analyze and edit draft notice re: pre-settlement papers; e-mails to/from Nicole Zeiss, Elizabeth Rosenberg Wierzbowski, M. Lesser and D. Chiplock; conference with David Goldsmith re: same
4263	Zeev Kirsh	SA	08/12/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others

4341	Frantzgermain Bernadin	SA	08/12/13	7.7	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/12/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds, custodial fees, customer requests, costs, RFP/RFI responses, and spreads; conference with F. Bernadin regarding document.
4257	Orlando Perez	SA	08/12/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/13/13	1.3	080	E-mails to/from ERW, D. Chiplock and M. Lesser re: pre-settlement papers
1513	Elizabeth Wierzbowski	A	08/13/13	0.2	090	Emails re: draft notice.
4263	Zeev Kirsh	SA	08/13/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/13/13	8.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, Statements of Financial Condition, and Monthly Real Estate Monthly Adjustments.
4369	David Pospischil	SA	08/13/13	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, custodial fees, FX revenues, RFP/RFI responses, costs, FX policies, and FX pricing.
4257	Orlando Perez	SA	08/13/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0023	Eric Belfi	P	08/14/13	1.0	130	Case administration.
1179	Michael Rogers	P	08/14/13	3.2	080	Telephone conference with Larry Sucharow re: strategy re: pre-settlement papers, re: plan of allocation, re: class definitions; telephone conferences with and e-mails to/from Eric Belfi, David Goldsmith, R. Politano and Danette McKenzie re: document review attorneys
4263	Zeev Kirsh	SA	08/14/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/14/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.

4369	David Pospischil	SA	08/14/13	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, non-pension customers, custodial fees, FX revenues, FX policies, standing instruction FX, FX pricing, and ERISA customers.
4257	Orlando Perez	SA	08/14/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/15/13	0.8	080	Conferences with and e-mails to/from Eric Belfi, David Goldsmith, Ray Politano, Danette McKenzie, D. Chiplock and M. Lesser re: document review attorneys
4263	Zeev Kirsh	SA	08/15/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents included Fx industry commentary, State Street fx pricing documents for clients, Execution of FX pricing transactions and quotes, Fx revenue contract documentation, and others
4341	Frantzgermain Bernadin	SA	08/15/13	10.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/15/13	4.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, custodial fees, and customer inquiries.
4257	Orlando Perez	SA	08/15/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/16/13	2.0	080	Analyze D. Chiplock markup of draft notice; e-mails to/from D. Chiplock and M. Lesser re: same
4341	Frantzgermain Bernadin	SA	08/16/13	9.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, billing invoice entry forms , and Gross Dividend Breakdown.
4369	David Pospischil	SA	08/16/13	9.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX revenues, custodial fees, RFP/RFI responses, spreads, standing instruction FX, FX pricing, FX policies, and disclosure of FX practice.
4257	Orlando Perez	SA	08/16/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0023	Eric Belfi	P	08/19/13	1.0	010	Researched the case.
1179	Michael Rogers	P	08/19/13	1.1	080	Analyze M. Lesser draft plan of allocation; analyze D. Chiplock draft settlement

4089	Todd Kussin	SA	08/19/13	1.4	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared report summarizing productivity of reviewers for week ending 8/9/2013.
4341	Frantzgermain Bernadin	SA	08/19/13	8.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, Statements of Financial Condition, and Monthly Real Estate Monthly Adjustments.
4369	David Pospischil	SA	08/19/13	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds, and spreads.
4257	Orlando Perez	SA	08/19/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/20/13	4.7	080	Analyze D. Chiplock draft settlement agreement; edit and comment re: same; edit and amend draft notice
4089	Todd Kussin	SA	08/20/13	1.2	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared report summarizing productivity of reviewers for week ending 8/16/2013.
4341	Frantzgermain Bernadin	SA	08/20/13	6.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/20/13	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds, spreads, and custodial fees.
1179	Michael Rogers	P	08/21/13	6.0	080	Edit and amend draft notice; e-mails to/from M. Lesser re: pre-settlement papers
4089	Todd Kussin	SA	08/21/13	1.3	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS.
4341	Frantzgermain Bernadin	SA	08/21/13	9.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Issue inquiries, Trade summary Reports, billing invoice entry forms , and Gross Dividend Breakdown.
4369	David Pospischil	SA	08/21/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, custodial fees, FX revenues, best execution, FX policies, RFP/RFI responses, FX pricing, and costs.

4257	Orlando Perez	SA	08/21/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/22/13	3.2	080	Edit and amend draft notice and plan of allocation; e-mails to/from D. Chiplock and M. Lesser re: same
4341	Frantzgermain Bernadin	SA	08/22/13	7.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/22/13	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, custodial fees, FX pricing, public pension funds, RFP/RFI responses, best execution, spreads, and FX revenues; conference with T. Kussin regarding document.
4257	Orlando Perez	SA	08/22/13	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/23/13	2.7	080	Analyze draft pre-settlement papers; e-mails to/from M. Lesser and D. Chiplock re: same
4341	Frantzgermain Bernadin	SA	08/23/13	6.7	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/23/13	8.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, public pension funds, and RFP/RFI responses.
0571	David Goldsmith	P	08/23/13	0.4	090	Discussion with Mike Rogers re: settlement documentation issues
4257	Orlando Perez	SA	08/23/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0023	Eric Belfi	P	08/26/13	1.5	130	Discussed strategy with Mike Rogers.
1179	Michael Rogers	P	08/26/13	1.7	080	E-mails to/from D. Chiplock and M. Lesser re: pre-settlement papers; telephone conference with Larry Sucharow re: same; e-mails to/from Eric Belfi, Ray Politano, M. Lesser and E. Hoffman re: document review attorneys and document review
4089	Todd Kussin	SA	08/26/13	1.8	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared report summarizing productivity of reviewers for week ending 8/23/2013.

4341	Frantzgermain Bernadin	SA	08/26/13	6.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Appraisal Reports, Trade summary Reports, Statements of Financial Condition, and Monthly Real Estate Monthly Adjustments.
4369	David Pospischil	SA	08/26/13	4.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, custodial fees, FX revenues, best execution, FX pricing, spreads, customer FX inquiries, and standing instruction FX.
4257	Orlando Perez	SA	08/26/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	08/27/13	7.4	080	Analyze pre-settlement papers; conference call with and e-mails to/from D. Chiplock and M. Lesser re: same; edit and amend same; distribute to team for review and analysis
4341	Frantzgermain Bernadin	SA	08/27/13	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Issue inquiries, Trade summary Reports, billing invoice entry forms , and Gross Dividend Breakdown.
4369	David Pospischil	SA	08/27/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, public pension funds, customer FX inquiries, and FX policies.
4257	Orlando Perez	SA	08/27/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	08/28/13	0.7	080	E-mails to/from D. Chiplock and M. Lesser re: pre-settlement papers
4341	Frantzgermain Bernadin	SA	08/28/13	7.9	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/28/13	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, custodial fees, FX revenues, best execution, and FX pricing.
4257	Orlando Perez	SA	08/28/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	08/29/13	5.4	080	E-mails to/from co-counsel and ERISA counsel re: pre-settlement papers re: September 17 meeting; analyze same
4341	Frantzgermain Bernadin	SA	08/29/13	7.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.

4369	David Pospischil	SA	08/29/13	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, and public pension funds.
4257	Orlando Perez	SA	08/29/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	08/30/13	2.5	080	E-mails to/from Lawrence Sucharow, David Goldsmith, co-counsel and ERISA counsel re; pre-settlement papers; analyze L. Sarko letter re: same
4341	Frantzgermain Bernadin	SA	08/30/13	8.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	08/30/13	9.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX pricing, and FX revenues.
4257	Orlando Perez	SA	08/30/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0571	David Goldsmith	P	09/03/13	4.0	090	Review draft Settlement Agreement and Notice of Settlement, recent e-mail correspondence and comments on drafts; discussions with Mike Rogers re same; prepare for calls; Telephone conference with Larry Sucharow, Mike Rogers, M. Thornton, M. Lesser, E. Hoffman, R. Lieff, D. Chiplock re settlement and ERISA case issues; post-call discussion with Larry Sucharow and Mike Rogers re same; Telephone conference with Mike Rogers, M. Thornton, M. Lesser, E. Hoffman, R. Lieff, D. Chiplock, D. Loeser, L. Gerber, C. Kravitz re settlement and ERISA case issues; post-call discussion with Larry Sucharow and Mike Rogers re same.
1179	Michael Rogers	P	09/03/13	6.7	080	Analyze Larry Sucharow edits to settlement agreement; edits reflecting same; e-mails to/from Larry Sucharow, David Goldsmith & co-counsel re: same; conferences and conference calls with and e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: strategy re: settlement papers
4089	Todd Kussin	SA	09/03/13	1.6	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; prepared report summarizing productivity of reviewers for week ending 8/26/2013.
4341	Frantzgermain Bernadin	SA	09/03/13	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4257	Orlando Perez	SA	09/03/13	9.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.

1179	Michael Rogers	P	09/04/13	2.5	030	Conference call with and e-mails to/from D. Chiplock re: settlement papers; edits and amendments re: same
4341	Frantzgermain Bernadin	SA	09/04/13	8.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4257	Orlando Perez	SA	09/04/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0103	Lawrence Sucharow	P	09/06/13	1.0	080	Plaintiffs conference call.
0571	David Goldsmith	P	09/06/13	1.0	080	Telephone conference with Larry Sucharow, Mike Rogers, R. Lieff, D. Chiplock, M. Thornton, M. Lesser, E. Hoffman, C. Kravitz, D. Loeser, L. Gerber re: settlement and ERISA issues; prepare for same; post-call discussion with Mike Rogers re: same
1179	Michael Rogers	P	09/06/13	1.7	080	Conferences and conference calls with and e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: settlement papers
4341	Frantzgermain Bernadin	SA	09/06/13	9.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4257	Orlando Perez	SA	09/06/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0571	David Goldsmith	P	09/09/13	1.5	090	Review/comment on draft Settlement Agreement; e-mail team re: same; discussions and e-mails with Mike Rogers re: same and general issues
1179	Michael Rogers	P	09/09/13	4.1	080	E-mails to/from Larry Sucharow, David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: settlement papers re: draft requests of State Street; analyze Keller Rohrback markup of settlement agreement; analyze D. Chiplock markup of same; e-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: same
4341	Frantzgermain Bernadin	SA	09/09/13	10.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4257	Orlando Perez	SA	09/09/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
1179	Michael Rogers	P	09/10/13	2.0	080	Conference call with D. Chiplock and L. Gerber re: settlement papers; e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: same

4341	Frantzgermain Bernadin	SA	09/10/13	8.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	09/10/13	5.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX pricing, FX revenues, FX marketing, RFP/RFI responses, best execution, FX policies, custodial fees, standing instruction FX, FX disclosure, spreads, and FX inquiries.
4257	Orlando Perez	SA	09/10/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0571	David Goldsmith	P	09/11/13	0.8	080	E-mails and discussions internally re: draft settlement agreement and notice to send to ERISA counsel and defendants
1179	Michael Rogers	P	09/11/13	3.4	080	E-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel
4089	Todd Kussin	SA	09/11/13	1.7	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; conferred with coders regarding proper designation of documents referencing responses to RFPs where only a small handful of the family members made reference to foreign exchange trades.
4341	Frantzgermain Bernadin	SA	09/11/13	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	09/11/13	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, best execution, FX pricing, RFP/RFI responses, FX policies, FX disclosure, FX marketing, FX inquiries, FX revenues, public pension funds, and non-pension customers; conference with T. Kussin regarding documents.
4257	Orlando Perez	SA	09/11/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0571	David Goldsmith	P	09/12/13	1.0	080	Review materials and e-mail correspondence; prepare for call with J. Marks and all plaintiffs; e-mail to group re: scope of release issues
1179	Michael Rogers	P	09/12/13	4.2	080	Analyze State Street's submissions to Marks re: settlement papers, definitions, and document requests; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Lesser and D. Chiplock re: same; e-mails to/from T. Kussin and R. Graves re: SST's document requests

4089	Todd Kussin	SA	09/12/13	2.0	040	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; met with Michael Rogers to discuss defendants' contention that certain document types had not yet been produced; reviewed summary of such concerns as well as Mr. Rogers' thoughts on each; conducted searches on Concordance throughout documents provided by the Arkansas Teachers Retirement System in order to get an idea of whether such cited by defendants had been provided.
4341	Frantzgermain Bernadin	SA	09/12/13	6.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom Data Holding files, Fx industry commentary, State Street fx pricing documents for clients, and other documents discussing variations of the term "foreign exchange".
4369	David Pospischil	SA	09/12/13	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX pricing, best execution, standing instruction FX, FX policies, FX disclosure, bonus, and RFP/RFI responses; conference with O. Perez regarding document.
4257	Orlando Perez	SA	09/12/13	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0023	Eric Belfi	P	09/13/13	3.0	090	Reviewed materials for the mediation.
0103	Lawrence Sucharow	P	09/13/13	0.8	080	Plaintiffs conference call.
0571	David Goldsmith	P	09/13/13	1.0	080	Telephone conference with J. Marks, Larry Sucharow, Mike Rogers, L. Sarko, L. Gerber, C. Kravitz, R. Lieff, D. Chiplock, M. Thornton, M. Lesser, E. Hoffman re: Sept. 17 mediation meeting; prepare for same; post-call discussion with Mike Rogers
1179	Michael Rogers	P	09/13/13	5.3	080	Conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel and J. Marks re: Tuesday's mediation; analyze settlement papers; analyze SST document requests; telephone conferences with and e-mails to/from T. Kussin nd R. Graves re: same
4089	Todd Kussin	SA	09/13/13	6.0	040	Reviewed State Street's follow up document requests, specifically concerns regarding various document types it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); discussed same with Michael Rogers in advance of call with client; met with coders to design searches on Concordance throughout documents provided by ATRS to determine whether, and to what extent, such documents requested by defendants were included; conducted searches in order to document existence of such documents; identified documents including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; drafted email to Mr. Rogers summarizing results of coders' searches.
4341	Frantzgermain Bernadin	SA	09/13/13	8.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant.

4369	David Pospischil	SA	09/13/13	8.8	040	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees and standing instruction FX; meeting and conferences with T. Kussin and team regarding defendant's follow-up request pertaining to certain document categories; reviewing M. Rogers email regarding same; searching document database for RFP responses relating to custody services.
4257	Orlando Perez	SA	09/13/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0023	Eric Belfi	P	09/16/13	2.5	090	Prepared for mediation.
0571	David Goldsmith	P	09/16/13	0.8	080	Prepare for mediation meeting
1179	Michael Rogers	P	09/16/13	1.6	080	E-mails to/from M. Lesser and D. Chiplock re: document requests; e-mails to/from R. Graves re: ARTRS documents; analyze same
4089	Todd Kussin	SA	09/16/13	2.4	040	Reviewed State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street.
4089	Todd Kussin	SA	09/16/13	1.2	030	Conducted quality check/secondary review of documents produced by defendants and reviewed by coders in order to ensure that their designations of priority and issues are correct; conferred with coders re: documents containing references to foreign exchange, fx, or any derivatives of such terms in connection with CalSTRS and CalPERS; answered questions of coders regarding proper designation of documents discussing invoices but not specifically alluding to issues pertaining to foreign exchange trades; prepared report summarizing productivity of reviewers for week ending 9/13/2013.
4341	Frantzgermain Bernadin	SA	09/16/13	8.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant.
4369	David Pospischil	SA	09/16/13	5.4	040	Searching document database for RFP responses relating to custody services; conferences with T. Kussin regarding same.
4257	Orlando Perez	SA	09/16/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
0023	Eric Belfi	P	09/17/13	7.0	090	Prepared for and went to mediation.
0103	Lawrence Sucharow	P	09/17/13	4.5	080	Continuation of mediation (Jonathan Marks) and prep.
0571	David Goldsmith	P	09/17/13	4.5	080	Attend mediation meeting with J. Marks, Larry Sucharow, Mike Rogers, Eric Belfi, M. Thornton, M. Lesser, E. Hoffman, R. Lieff, D. Chiplock, L. Sarko, C. Kravitz, B. McTigue, W. Paine, D. Halston, J. Rudman, A. Hornstine, N. Mitchell; pre and post-meeting discussions with co-counsel re: same

1179	Michael Rogers	P	09/17/13	5.2	080	Conferences with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Lesser, D. Chiplock, & E. Hoffman re mediation meeting re settlement papers, class definition, plan of allocation, & doc production; attend mediation session with Larry Sucharow, Eric Belfi, David Goldsmith, B. Lieff, M. Thornton, G. Bradley, M. Lesser, D. Chiplock, E. Hoffman, L. Sarko, C. Kravitz, B. McTigue, B. Paine, D. Halston, J. Marks, & L. Bailey;
4089	Todd Kussin	SA	09/17/13	3.7	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; conferred with coders to come up with efficient search terms in order to allow for identification of additional documents; confer with coders re: question concerning the distinction between consultants and investment managers for the purposes of identifying documents responsive to defendants' additional requests.
4341	Frantzgermain Bernadin	SA	09/17/13	10.8	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant.
4369	David Pospischil	SA	09/17/13	7.2	040	Searching document database for RFP responses relating to custody services; conferences with O. Perez regarding database search for consultant reports concerning FX; conferences with T. Kussin regarding document listing money managers and consultants.
4257	Orlando Perez	SA	09/17/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.
4089	Todd Kussin	SA	09/18/13	2.3	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street.
4341	Frantzgermain Bernadin	SA	09/18/13	8.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant.
4369	David Pospischil	SA	09/18/13	6.8	040	Searching document database for RFP responses relating to custody services; conferences with O. Perez regarding database search for consultant reports concerning FX; conference with T. Kussin regarding references in ATRS investment committee meeting minutes to RFP and report regarding same.
4257	Orlando Perez	SA	09/18/13	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and fx policy documents for clients.

1179	Michael Rogers	P	09/19/13	1.1	080	Analyze defense document requests; e-mails to/from R. Graves re: same; conference call with T. Kussin and STAs re: review and analysis of same
4089	Todd Kussin	SA	09/19/13	1.8	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; along with reviewers David Pospischil and Orlando Perez, participated in telephone call with Michael Rogers to discuss specifics of searches for documents related to reports from consultants including Ennis Knupp as well as responses to RFPs.
4341	Frantzgermain Bernadin	SA	09/19/13	7.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant.
4369	David Pospischil	SA	09/19/13	9.6	040	Conferences with O. Perez and F. Bernadin regarding database search for consultant reports concerning FX; searching document database for RFP responses relating to custody services; conference with T. Kussin and team regarding consultant contracts; telephone conference with T. Kussin and M. Rogers regarding RFP responses relating to custody services.
4257	Orlando Perez	SA	09/19/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0103	Lawrence Sucharow	P	09/20/13	1.5	080	Conference call re outstanding discovery issues.
0571	David Goldsmith	P	09/20/13	0.8	130	Telephone conference with Lawrence Sucharow, Mike Rogers, M. Thornton, M. Lesser, E. Hoffman, R. Lief, D. Chiplock re: mediation and settlement strategy; post telephone conference with Mike Rogers
1179	Michael Rogers	P	09/20/13	0.7	080	Conference call with Larry Sucharow, David Goldsmith and co-counsel re: letter to J. Marks re: discovery requests re: SEC investigation
4089	Todd Kussin	SA	09/20/13	1.4	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; conferred with coders, including Orlando Perez, regarding the proper characterization of quarterly reports prepared by Ennis Knupp.
4341	Frantzgermain Bernadin	SA	09/20/13	8.2	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/20/13	6.0	040	Searching document database for RFP responses relating to custody services; conference with F. Bernadin regarding database search for consultant reports.
4257	Orlando Perez	SA	09/20/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.

4089	Todd Kussin	SA	09/23/13	2.6	030	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; prepared report summarizing the productivity of reviewers for the week ending 9/20/2013.
4341	Frantzgermain Bernadin	SA	09/23/13	8.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/23/13	6.6	040	Searching document database for RFP responses relating to custody services.
4257	Orlando Perez	SA	09/23/13	8.1	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0571	David Goldsmith	P	09/24/13	1.0	040	Telephone conference with S. Curtin (SEC) re: informal request to interview ARTRS employees; e-mails internally re: same; review SEC letter and circulate internally
1179	Michael Rogers	P	09/24/13	0.3	080	E-mails to/from M. Lesser and D. Chiplock re: letter to defendants re: discovery
4089	Todd Kussin	SA	09/24/13	2.2	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders identified the preceding Friday that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; conferred with coders re: inclusion of documents prepared by State Street itself, and notone of Arkansas' consultants or investment managers.
4341	Frantzgermain Bernadin	SA	09/24/13	9.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/24/13	6.9	040	Searching document database for RFP responses relating to custody services; conferences with F. Bernadin and O. Perez regarding database search for consultant reports.
4257	Orlando Perez	SA	09/24/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
1225	Stacy Auer	PL	09/24/13	0.3	140	Pull and distribute 9/24/2013 email & letter to D. Goldsmith from S. Curtin re: assistance with SEC investigation; update shared drive w/ same;
0571	David Goldsmith	P	09/25/13	0.4	040	E-mails internally re: SEC request; telephone conference with J. Thomas re: meeting
4089	Todd Kussin	SA	09/25/13	1.1	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents identified previously by coders that were provided by the client and also responsive to such requests including investment management contracts between ATRS and several managers such as [REDACTED], RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street.

4341	Frantzgermain Bernadin	SA	09/25/13	9.2	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/25/13	7.0	040	Searching document database for RFP responses relating to custody services.
4257	Orlando Perez	SA	09/25/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
1225	Stacy Auer	PL	09/25/13	0.2	080	Get disk of doc production copied per Mike Rogers;
0571	David Goldsmith	P	09/26/13	1.0	040	Telephone conference with J. Thomas re: SEC informal interview request to ARTRS; e-mail report internally; e-mails with Larry Sucharow and Mike Rogers re: same and strategy
1179	Michael Rogers	P	09/26/13	0.6	080	Conference with David Goldsmith re: communications with SEC; e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: same; e-mails to/from M. Lesser and D. Chiplock re: documents produced by SST
4341	Frantzgermain Bernadin	SA	09/26/13	6.2	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/26/13	6.1	040	Searching document database for RFP responses relating to custody services; conference with F. Bernadin regarding RFP responses relating to custody services.
4257	Orlando Perez	SA	09/26/13	6.9	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
4341	Frantzgermain Bernadin	SA	09/27/13	6.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	09/27/13	8.4	040	Searching document database for RFP responses relating to custody services.
4257	Orlando Perez	SA	09/27/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	09/30/13	2.0	040	Discovery issues.
0571	David Goldsmith	P	09/30/13	0.8	080	Review D. Chiplock draft letter to J. Marks re: documents produced in Hill v. State Street; e-mails internally and with co-counsel re: same; discussion with Mike Rogers re: same
1179	Michael Rogers	P	09/30/13	1.6	080	Analyze D. Chiplock draft letter to J. Marks and defendants re: document requests; e-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: same
4089	Todd Kussin	SA	09/30/13	1.8	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders have thus far identified that were provided by the client and also responsive to such requests, including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; conferred with coders to discuss results to date in anticipation of upcoming meeting with Michael Rogers; prepared report summarizing the productivity of reviewers for the week ending 9/27/2013.
4341	Frantzgermain Bernadin	SA	09/30/13	7.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants

4369	David Pospischil	SA	09/30/13	6.0	040	Searching document database for RFP responses relating to custody services; conference with O. Perez regarding consultant report concerning custody RFP responses; team meeting with T. Kussin regarding meeting regarding database search results.
4257	Orlando Perez	SA	09/30/13	9.7	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	10/01/13	2.0	040	Discovery issues.
0103	Lawrence Sucharow	P	10/01/13	1.3	080	Correspondence to defendants re discovery issues including demand for Hill documents and SEC transcripts.
1179	Michael Rogers	P	10/01/13	1.7	080	E-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: draft letter to Marks/SST re: document requests; analyze same; reformat for Larry Sucharow signature; e-mail same to J. Marks and defense counsel
4089	Todd Kussin	SA	10/01/13	1.2	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders have thus far identified that were provided by the client and also responsive to such requests, including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conducted searches to determine whether documents of a similar type had already been produced to State Street; conferred with coders to discuss results to date in anticipation of upcoming meeting with Michael Rogers.
4341	Frantzgermain Bernadin	SA	10/01/13	8.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/01/13	7.0	040	Printing, organizing, and reviewing documents from database searches in preparation for meeting regarding database search results.
4257	Orlando Perez	SA	10/01/13	9.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
4089	Todd Kussin	SA	10/02/13	1.8	030	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders have thus far identified that were provided by the client and also responsive to such requests, including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conferred with coders to discuss results to date in anticipation of upcoming meeting with Michael Rogers; reviewed documents thus far collected to get sense of how responsive such documents are to defendants' follow up request.
4341	Frantzgermain Bernadin	SA	10/02/13	9.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/02/13	6.0	040	Reviewing documents from database searches in preparation for meeting regarding database search results; searching document database for RFP responses relating to custody services; conference and meeting with T. Kussin regarding documents, meeting regarding database search results.

4257	Orlando Perez	SA	10/02/13	8.0	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
1179	Michael Rogers	P	10/03/13	1.2	080	Conference with T. Kussin and STAs re: ARTRS documents for production
4089	Todd Kussin	SA	10/03/13	4.2	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders have thus far identified that were provided by the client and also responsive to such requests, including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conferred with coders to discuss results to date in anticipation of upcoming meeting with Michael Rogers; reviewed documents thus far collected to get sense of how responsive such documents are to defendants' follow up requests including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts; along with coders, met with Micheal Rogers to discuss progress thus far in identifying such documents; created tags on Concordance database in order to mark responsive documents for production; reviewed disk containing 4,000 pages of documents provided by the ATRS for the SEC in order to put together summary of contents thereof; conferred with coder David Pospischil to discuss proper designation of otherwise responsive documents re: RFPs contained in larger collection of non-responsive documents.
4341	Frantzgermain Bernadin	SA	10/03/13	8.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants.
4369	David Pospischil	SA	10/03/13	8.9	040	Reviewing documents from database searches; conference with T. Kussin regarding meeting regarding documents from database searches; team meeting with M. Rogers, T. Kussin, and F. Bernadin regarding case, documents from database searches; reviewing defendants' document requests; meetings with T. Kussin regarding document requests, documents for supplemental production, copies of State Street RFP response in database; reviewing and tagging documents for supplemental production.
4341	Frantzgermain Bernadin	SA	10/04/13	7.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants.
4369	David Pospischil	SA	10/04/13	7.1	040	Reviewing and tagging documents for supplemental production; conference with T. Kussin regarding copies of fee schedule.
1179	Michael Rogers	P	10/07/13	0.6	080	E-mail to R. Graves re: RFP responses; analyze hot documents; e-mails to/from M. Lesser, D. Chiplock and E. Hoffman re: same
4341	Frantzgermain Bernadin	SA	10/07/13	10.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/07/13	5.0	040	Reviewing results from database searches for RFP responses relating to custody services; conference with T. Kussin regarding Arkansas/State Street contract; reviewing defendants' document requests.
1179	Michael Rogers	P	10/08/13	0.4	080	Telephone conference with R. Graves re: ARTRS documents for production

4089	Todd Kussin	SA	10/08/13	3.2	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed documents coders have thus far identified that were provided by the client and also responsive to such requests, including investment management contracts between ATRS and several managers such as [REDACTED] RFP Responses, engagement letters with consultants, and ISDA and IFEMA letter agreements between internal IMs and State Street; conferred with coders to discuss results to date; reviewed documents thus far collected to get sense of how responsive such documents are to defendants' follow up requests including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts; reviewed memorandum drafted by coder summarizing contents of disk containing 4,000 pages of documents provided by the ATRS to the SEC; edited and supplemented same; prepared report summarizing productivity of coders for week ending 10/4/2013.
4341	Frantzgermain Bernadin	SA	10/08/13	7.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants.
4369	David Pospischil	SA	10/08/13	8.2	040	Conference with F. Bernadin regarding consultant reports; reviewing results from database searches for RFP responses relating to custody services; searching document database for Ennis Knupp report regarding custody RFP.
4341	Frantzgermain Bernadin	SA	10/09/13	5.8	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/09/13	5.7	040	Searching document database for Ennis Knupp report regarding custody RFP.
1225	Stacy Auer	PL	10/10/13	0.3	140	Pull and circulate email / letter from SEC and update files w/ same;
4089	Todd Kussin	SA	10/10/13	2.7	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed on Concordance the documents coders have identified to this point that were provided by the client and also responsive to such requests, including including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED] [REDACTED] continued reviewing memorandum drafted by coder summarizing contents of disk containing 4,000 pages of documents provided by the ATRS to the SEC; provided edits to and supplemented same; reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and that they do not contain privileged information.
4341	Frantzgermain Bernadin	SA	10/10/13	8.7	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/10/13	7.4	040	Searching document database for Ennis Knupp report regarding custody RFP.
0571	David Goldsmith	P	10/10/13	0.7	040	Address follow-up letter from SEC; discussion and telephone conference with Eric Belfi re: same; e-mails with Larry Sucharow, Eric Belfi, Mike Rogers re: same
0023	Eric Belfi	P	10/11/13	2.0	130	Communicated with client.
0103	Lawrence Sucharow	P	10/11/13	1.8	080	Conference call with J. Marks and D. Halston re production of Hill documents; email co-counsel.

1179	Michael Rogers	P	10/11/13	0.4	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and co-counsel re: response to D. Chiplock letter
4089	Todd Kussin	SA	10/11/13	2.1	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed on Concordance the documents coders have identified to this point that were provided by the client and also responsive to such requests, including including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED]; specifically reviewed reports issued by Ennis Knupp and identified common language appearing in same in order to use such language as search terms in attempts to identify additional reports prepared by Ennis Knupp or other consultants; continued reviewing memorandum drafted by coder summarizing contents of disk containing 4,000 pages of documents provided by the ATRS to the SEC; provided edits to and supplemented same; reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and that they do not contain privileged information.
4341	Frantzgermain Bernadin	SA	10/11/13	8.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/11/13	8.8	040	Searching document database for Ennis Knupp report regarding custody RFP; meetings with T. Kussin and F. Bernadin regarding document database searches for additional documents to produce in response to defendants' follow-up requests; searching database for consultant reports concerning FX; conference with F. Bernadin regarding investment manager contracts.
0571	David Goldsmith	P	10/11/13	0.2	040	Follow-up e-mail to S. Curtin (SEC)
4089	Todd Kussin	SA	10/14/13	2.2	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed on Concordance the documents coders have identified to this point that were provided by the client and also responsive to such requests, including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED]; specifically reviewed reports issued by Ennis Knupp and identified common language appearing in same in order to use such language as search terms in attempts to identify additional reports prepared by Ennis Knupp or other consultants; reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and that they do not contain privileged information; conferred with reviewers re: proper designation of Ennis Knupp reports not explicitly addressing issues enumerated in document requests; prepared report summarizing progress or reviewers during week ending 10/11/2013.
4341	Frantzgermain Bernadin	SA	10/14/13	6.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/14/13	5.2	040	Searching database for and reviewing consultant reports; conference with T. Kussin regarding Ennis Knupp performance report; conference with F. Bernadin and T. Kussin regarding consultant contract.

4257	Orlando Perez	SA	10/14/13	8.0	030	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	10/15/13	1.0	010	Dealt with letter from SEC.
0103	Lawrence Sucharow	P	10/15/13	1.2	080	Review Halston proposed schedule and agreement to produce Hill document; correspondence with co-counsel.
1179	Michael Rogers	P	10/15/13	0.8	080	E-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: SST's counter-proposal re: discovery
4341	Frantzgermain Bernadin	SA	10/15/13	8.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/15/13	7.2	040	Searching database for consultant reports relating to FX.
4257	Orlando Perez	SA	10/15/13	6.8	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0103	Lawrence Sucharow	P	10/16/13	0.8	080	Conference call with plaintiffs counsel re Halston proposal.
0571	David Goldsmith	P	10/16/13	0.6	080	Telephone conference with Larry Sucharow, Mike Rogers, R. Loeff, D. Chiplock, M. Thornton, M. Lesser re: strategy on receiving Hill production and proposed extensions of stay
1179	Michael Rogers	P	10/16/13	1.6	080	Conference call with Larry Sucharow, David Goldsmith and co-counsel re: SST's counter proposal and plans re: same; e-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: same
4341	Frantzgermain Bernadin	SA	10/16/13	8.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/16/13	4.9	040	Searching database for consultant reports relating to FX.
0103	Lawrence Sucharow	P	10/17/13	1.2	080	Email Halston and J. Marks re plaintiff's counterproposal and scheduling.
4089	Todd Kussin	SA	10/17/13	2.5	040	Reviewed State Street's follow up document requests, focusing on concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed on Concordance the documents coders have identified to this point that were provided by the client and also responsive to such requests, including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers; specifically reviewed reports issued by consultants such as Ennis Knupp and identified common language appearing in same in order to use such language as search terms to be used to identify additional reports prepared by Ennis Knupp or other consultants; reviewed and performed quality check of documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and that they do not contain privileged information.
4341	Frantzgermain Bernadin	SA	10/17/13	8.8	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/17/13	9.0	040	Searching database for consultant reports relating to FX.
4257	Orlando Perez	SA	10/17/13	7.0	030	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
4341	Frantzgermain Bernadin	SA	10/18/13	9.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants

4369	David Pospischil	SA	10/18/13	8.7	040	Reviewing Ennis Knupp quarterly performance reports and annual report letters; conference with T. Kussin regarding same.
4257	Orlando Perez	SA	10/18/13	8.7	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	10/21/13	2.0	130	Worked on the issue with the SEC.
0103	Lawrence Sucharow	P	10/21/13	1.0	080	Conference call with J. Marks, Halston, Paine re schedule of negotiations; confer with M. Rogers; email co-counsel.
1179	Michael Rogers	P	10/21/13	1.3	080	Conference with Larry Sucharow re: document exchange re: counter proposal; conference call with Larry Sucharow, B. Paine, D. Halston and J. Marks re: same
4089	Todd Kussin	SA	10/21/13	3.3	040	Continued review of State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); reviewed on Concordance the documents coders have identified to this point that were provided by the client and also responsive to such requests, including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED] reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and that they do not contain privileged information; conferred with reviewers re: formulating additional searches to identify reports prepared by Ennis Knupp; prepared report summarizing progress of reviewers during week ending 10/18/2013.
4341	Frantzgermain Bernadin	SA	10/21/13	6.7	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/21/13	7.0	040	Reviewing Ennis Knupp quarterly performance reports and annual report letters.
0571	David Goldsmith	P	10/21/13	0.5	130	E-mail internally re: strategy on SEC interview request; review J. Marks e-mail re: deliverables for next mediation meeting; e-mails internally and with co-counsel re: call with defendants and J. Marks re: recent proposals
4257	Orlando Perez	SA	10/21/13	8.7	030	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	10/22/13	1.0	130	Prepared for and participated in conference call.
1179	Michael Rogers	P	10/22/13	0.9	080	Conference call with Larry Sucharow, Eric Belfi, co-counsel and ERISA counsel re: proposal; re: counterproposal; re: strategy; e-mails to/from Larry Sucharow, L. Sarko and L. Gerber re: same
4341	Frantzgermain Bernadin	SA	10/22/13	7.7	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/22/13	7.1	040	Reviewing document family members of Ennis Knupp quarterly performance reports; conferences with T. Kussin regarding privilege review of same.
0103	Lawrence Sucharow	P	10/22/13	1.2	080	Conference call with plaintiffs attorney re extending stay.
4257	Orlando Perez	SA	10/22/13	8.5	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0023	Eric Belfi	P	10/23/13	1.0	130	Discussed issues with client.
0571	David Goldsmith	P	10/23/13	1.5	040	Telephone conference with S. Curtin re: request for informal interview of ARTRS; e-mail report internally re: same, telephone conference with Larry Sucharow and follow-up e-mails re: same and strategy; review and circulate e-mail from S. Curtin re: topics for discussion

1179	Michael Rogers	P	10/23/13	1.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: SEC request to interview ARTRS; re: counter to Halston's proposal
4089	Todd Kussin	SA	10/23/13	5.3	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED]. [REDACTED] reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information and are parts of complete families; conferred with reviewers re: formulating additional searches to identify documents relating to consulting agreements and investment management contracts.
4369	David Pospischil	SA	10/23/13	7.2	040	Reviewing document family members of Ennis Knupp quarterly performance reports and annual report letters; conferences with T. Kussin regarding same, manager fee schedule, supplemental production.
4257	Orlando Perez	SA	10/23/13	8.8	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
1179	Michael Rogers	P	10/24/13	2.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: counter to Halston's proposal; telephone conference with L. Sarko re: same
4089	Todd Kussin	SA	10/24/13	3.4	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, including quarterly reports issued by Ennis Knupp as well as correspondence regarding RFP responses, and examples of investment management contracts between ATRS and several managers such as [REDACTED]. [REDACTED] reviewed documents thus far placed in "to be produced" folders in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information, are parts of complete families, and include final copies rather than drafts; met with Michael Rogers re: same; conferred with reviewers re: formulating additional searches to identify documents relating to consulting agreements and investment management contracts; conferred with coder David Pospischil re: review of new set of documents provided by ATRS to be produced to defendants.
4341	Frantzgermain Bernadin	SA	10/24/13	10.3	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/24/13	7.6	040	Reviewing document family members of Ennis Knupp quarterly performance reports and annual report letters; team meeting regarding database searches for follow-up requests; conferences with T. Kussin regarding review of additional client documents; reviewing defendants' document requests and follow-up requests; reviewing additional client documents.
4257	Orlando Perez	SA	10/24/13	6.5	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.

0571	David Goldsmith	P	10/25/13	0.3	130	E-mails with E. Belfi re: [REDACTED] interview; discussion with Mike Rogers re: same, status and strategy
4089	Todd Kussin	SA	10/25/13	2.8	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, [REDACTED] [REDACTED] reviewed documents thus far placed in "to be produced" folder in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information and that all are members of complete families; removed all documents dated after the relevant time period as well as all examples of contracts that were drafts shared among ATRS personnel; conferred with coder David Pospischil re: review of new set of documents provided by ATRS to be produced to defendants.
4341	Frantzgermain Bernadin	SA	10/25/13	9.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/25/13	6.5	040	Reviewing client documents regarding RFP responses; conferences with T. Kussin regarding review, confidentiality.
4257	Orlando Perez	SA	10/25/13	8.5	040	[REDACTED]
0023	Eric Belfi	P	10/28/13	1.5	130	Addressing [REDACTED] issue.
0103	Lawrence Sucharow	P	10/28/13	2.7	080	Confer ERISA counsel; confer Halston (defts counsel); draft proposal to extend stay, mediation and discovery.
0571	David Goldsmith	P	10/28/13	1.1	080	Discussion with Mike Rogers re: [REDACTED] with co-counsel re: all and same; e-mails internally re: scheduling [REDACTED]
1179	Michael Rogers	P	10/28/13	3.5	080	E-mails to/from T. Kussin re: analysis of RFP responses; e-mails to/from D. Chiplock and M. Lesser re: same; analyze same

4089	Todd Kussin	SA	10/28/13	4.2	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, [REDACTED] finalized secondary review/quality check of documents thus far placed in "to be produced" folder in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information and that all are members of complete families; removed all documents dated after the relevant time period as well as all examples of contracts that are merely drafts; along with reviewers Frants Bernadin, Orlando Perez, and David Pospischil, met with Mike Rogers to discuss progress of review and to discuss further guidelines regarding what should be produced; conferred with coder David Pospischil re: review of documents identified as responses to RFPs; prepared report summarizing productivity of reviewers for week ending 10/25/2013.
4341	Frantzgermain Bernadin	SA	10/28/13	9.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/28/13	7.3	040	[REDACTED] conferences with T. Kussin regarding review, team meeting, ISDA's; team meeting with M. Rogers regarding supplemental production.
4257	Orlando Perez	SA	10/28/13	8.5	040	Conducted a search of plaintiffs documents in the Concordance database for reports by consultant Ennis Knupp regarding RFPs and FX rates.
0103	Lawrence Sucharow	P	10/29/13	1.8	080	Confer with Plaintiffs' counsel; telephone conference with Defendants counsel re mediation and discovery.
1179	Michael Rogers	P	10/29/13	1.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, D. Chiplock and M. Lesser re: production of ARTS documents to SST; conference with T. Kussin re: same
4089	Todd Kussin	SA	10/29/13	4.0	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, [REDACTED] conducted further quality check of documents thus far placed in "to be produced" folder in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information and that all are members of complete families; ensured that all investment management and consultant contracts marked for production and dated prior to the relevant time period covered terms such that said contracts were operative at some point during relevant time period; additionally reviewed such contracts to ensure that the managers involved therewith were given a global mandate to invest by the ATRS; conferred with coder David Pospischil re: review of documents identified as responses to RFPs.

4341	Frantzgermain Bernadin	SA	10/29/13	8.1	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/29/13	7.1	040	Reviewing client documents regarding RFP responses, consultant contracts; meeting with T. Kussin regarding client documents and supplemental production.
4257	Orlando Perez	SA	10/29/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0103	Lawrence Sucharow	P	10/30/13	1.3	080	Prepare and review emails re discovery and extension of mediation.
1179	Michael Rogers	P	10/30/13	1.0	080	E-mails to/from Larry Sucharow and David Goldsmith re: communications to SST
4089	Todd Kussin	SA	10/30/13	3.9	040	Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); began finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such requests, [REDACTED] conducted further quality check of documents thus far placed in "to be produced" folder in order to assure their responsiveness to defendants' requests and also to assure that such documents do not contain privileged information and that all are members of complete families; ensured that all [REDACTED] conferred with coder David Pospischil re: review of documents identified as responses to RFPs.
4341	Frantzgermain Bernadin	SA	10/30/13	7.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/30/13	7.0	030	Conference with T. Kussin regarding client documents, review of defendants' production; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, netting, best execution, standing instruction FX, FX pricing, FX revenues, disclosure of FX practice, spreads; conferences with T. Kussin regarding FX manual.
4257	Orlando Perez	SA	10/30/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0023	Eric Belfi	P	10/31/13	4.0	040	Discovery issues.
1179	Michael Rogers	P	10/31/13	3.7	080	E-mails to/from Larry Sucharow and David Goldsmith re: communications with State Street; e-mail to D. Halston re: Judge Cott's BNYM discovery order re: November 8 production; e-mails to/from T. Kussin, M. Yan, D. Deo, A. Patton and J. Hudson re: ARTRS production; conference with David Goldsmith re: same

						Continued response to State Street's follow up document requests, specifically concerns regarding various document types it contends it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS"); continued finalizing production to defendants by reviewing on Concordance the documents coders have identified that were provided by the client and also responsive to such [REDACTED] as [REDACTED] conducted further quality check of documents thus far placed in "to be produced" folder in order to assure their responsiveness to defendants' requests; in advance of upcoming call with vendor, participated in email exchange with Michael Rogers regarding investment management and consultant contracts marked for production and provided list of all managers for which contracts were located; [REDACTED] assigned Mr. Bernadin the project to draft index of all documents to be produced and conferred with him re: same; conferred with coder David Pospischil re: [REDACTED]
4089	Todd Kussin	SA	10/31/13	4.1	040	[REDACTED]
4341	Frantzgermain Bernadin	SA	10/31/13	9.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	10/31/13	3.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, investment managers, disclosure of FX practice, FX policies; meeting with T. Kussin regarding FX manual.
4257	Orlando Perez	SA	10/31/13	6.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/01/13	0.4	080	Discussion with Mike Rogers re: status of deliverables due November 8 and mediation strategy; e-mails with Eric Belfi re: [REDACTED]
1179	Michael Rogers	P	11/01/13	4.9	080	Telephone conferences with and e-mails to/from T. Kussin, D. Deo, A. Patton and J. Hudson re: ARTRS document production; conference with David Goldsmith re: same; analyze ARTRS documents; conference with T. Kussin re: same; e-mails to/from T. Kussin and R. Graves re: same
4341	Frantzgermain Bernadin	SA	11/01/13	5.8	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/01/13	9.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial service, FX policies; conferences with T. Kussin regarding drafting descriptions for certain client documents, searching for State Street RFP response in database; reviewing certain client documents and drafting descriptions; searching for State Street RFP response in database.
1225	Stacy Auer	PL	11/01/13	0.3	090	Review production log for last bates numbers used for production by ARTS; emails / convos re: same;

4257	Orlando Perez	SA	11/01/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	11/01/13	4.6	040	Finalized selection of documents on Concordance database to be produced to State Street as part of its follow up requests for document types it had not received in prior productions from client Arkansas Teacher Retirement System ("ATRS") including quarterly reports issued by Ennis Knupp as well as [REDACTED] [REDACTED] [REDACTED] with Michael Rogers and Daron Deo, participated in telephone call with contacts from Precision Discovery in order to work out logistics of production; worked with IT Department to identify and organize documents to be prepared by Precision; worked with reviewer Frantz Bernadin to draft an index of the documents to be produced to defendants; worked with reviewer David Pospischil to draft summary of documents provided by ATRS as a supplement to documents already identified on Concordance; reviewed [REDACTED] [REDACTED] met with Michael Rogers to discuss final set of Investment Management contracts.
0571	David Goldsmith	P	11/04/13	0.2	140	E-mails with Mike Rogers and co-counsel re: Hill document production; e-mails internally re: [REDACTED] interview of client
1179	Michael Rogers	P	11/04/13	4.8	080	E-mails to/from T. Kussin, D. Deo, A. Patton and J. Hudson re: ARTRS document production; telephone conference with and e-mails to/from R. Graves re: same; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, T. Kussin, D. Chiplock, M. Lesser, K. Dirgar and A. Hornstine re: SST production, e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: SEC interview
4089	Todd Kussin	SA	11/04/13	2.5	040	Incorporated final changes to selection of documents on Concordance database to be produced to State Street as part of its follow up requests for document types it had not received in prior productions from [REDACTED] [REDACTED] between ATRS and several managers such as [REDACTED] as well as consulting agreements; conferred with Michael Rogers re: same and emails with vendor Precision Discovery to provide final list of control numbers for production; searched through investment management contracts with [REDACTED] in [REDACTED] from the production; conferred with with reviewer Frantz Bernadin re: drafting of index of the documents to be produced to defendants; reviewed FX/FI Overview produced by defendants, discussing the foreign exchange and fixed income products offered by State Street Global Markets; prepared report summarizing productivity of reviewers for week ending 11/1/2013.
4341	Frantzgermain Bernadin	SA	11/04/13	11.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants

4369	David Pospischil	SA	11/04/13	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, FX pricing.
4257	Oriando Perez	SA	11/04/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	11/05/13	3.4	080	E-mails to/from T. Kussin, M. Yan, D. Deo, A. Patton and J. Hudson re: ARTRS documents for production; e-mails to/from David Goldsmith, D. Chiplock, M. Lesser, T. Kussin, K. Dirgar and A. Hornstein re: SST production
4089	Todd Kussin	SA	11/05/13	3.1	040	Performed quality check/secondary review of disk containing documents to be produced in response to State Street's follow up request for document types it had not received in prior productions from client [REDACTED] ATRS and several managers such as [REDACTED] as well as consulting agreements; conferred with reviewer Frantz Bernadin re: drafting of index of the documents to be produced to defendants; [REDACTED]
4341	Frantzgermain Bernadin	SA	11/05/13	9.0	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/05/13	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial fees, public pension funds.
1225	Stacy Auer	PL	11/05/13	0.2	090	Emails re: production; review files re: production 3/36/13 letter;
4257	Oriando Perez	SA	11/05/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/06/13	0.3	140	E-mails internally re: Litigation Control and budgeting issues
1179	Michael Rogers	P	11/06/13	2.8	080	Conferences with and e-mails to/from T. Kussin, S. Auer, M. Yan and A. Patton re: ARTRS production
4089	Todd Kussin	SA	11/06/13	3.4	040	Continued quality check/secondary review of disk containing documents to be produced in response to State Street's follow up request for document types it had not received in prior productions from client [REDACTED] ATRS and several managers such as [REDACTED] as well as consulting agreements; identified various documents that were possibly privileged and/or non-responsive to the requests; discussed same with Michael Rogers to determine which ones should be removed from the production; communications with vendor, drafting email identifying those documents to be removed from disk; performed quality check/secondary review of updated version of disk.

4341	Frantzgermain Bernadin	SA	11/06/13	9.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/06/13	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses.
4257	Orlando Perez	SA	11/06/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1225	Stacy Auer	PL	11/06/13	0.3	040	Review / maintain emails re: doc production;
0023	Eric Belfi	P	11/07/13	2.0	040	Dealt with discovery issues.
0571	David Goldsmith	P	11/07/13	0.8	130	E-mail to S. Curtin confirming time for [REDACTED] phone interview of client; e-mails with Eric Belfi re: same; telephone conference with Eric Belfi re: call with [REDACTED] office re: [REDACTED] telephone interview; discussions with Mike Rogers re: deliverables due Friday and call with [REDACTED]
1179	Michael Rogers	P	11/07/13	4.3	080	E-mails to/from Larry Sucharow, David Goldsmith, M. Lesser and D. Chiplock re: ARTRS production re: other deliverables; draft production letter; analyze ARTRS documents for production; conference with David Goldsmith re: ARTRS production re: November 13 mediation meeting
1225	Stacy Auer	PL	11/07/13	0.4	040	Emails & convos w/ Mike Rogers re: doc production; FedEx doc production to Defs per Mike Rogers; update FileSite w/ same;
4341	Frantzgermain Bernadin	SA	11/07/13	5.2	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/07/13	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial fees, public pension funds, FX revenues, FX pricing, FX policies, disclosure of FX practice, customer FX inquiries.
4257	Orlando Perez	SA	11/07/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0023	Eric Belfi	P	11/08/13	2.5	040	Research on discovery issue.
0571	David Goldsmith	P	11/08/13	1.2	130	Telephone conference with Eric Belfi, Mike Rogers, B. Aburano re: [REDACTED]; [REDACTED], prepare for same; post-call discussions with Mike Rogers re: same
1179	Michael Rogers	P	11/08/13	2.2	080	Conference call with Eric Belfi, David Goldsmith and potential class member re: [REDACTED]; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel and defense counsel re: information exchange
4341	Frantzgermain Bernadin	SA	11/08/13	4.7	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/08/13	8.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial fees, public pension funds, bonus, FX revenues.

4257	Orlando Perez	SA	11/08/13	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/11/13	0.2	080	Discussions with Mike Rogers re: issues for Wednesday mediation meeting; e-mails re: same
1179	Michael Rogers	P	11/11/13	1.7	080	Edit SST's draft release; conference with and e-mails to/from David Goldsmith re: same; analyze letter from Halston re: plaintiffs' production; e-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: same; e-mail to/from Halston, State Street counsel, Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel and J. Marks re: same re: request for telephone call re: same
4089	Todd Kussin	SA	11/11/13	1.8	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; prepared report summarizing productivity of reviewers for week ending November 8, 2013.
4341	Frantzgermain Bernadin	SA	11/11/13	8.8	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/11/13	5.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, standing instruction FX.
1225	Stacy Auer	PL	11/11/13	0.3	140	Review and update files w/ SST's production cover letters;
4257	Orlando Perez	SA	11/11/13	8.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/12/13	0.5	080	Prepare for Wednesday mediation meeting
1179	Michael Rogers	P	11/12/13	4.0	080	Conference call with D. Halston, A. Hornstine, L. Gerber and B. McTigue re: ARTRS documents re: Andover documents; telephone conferences with and e-mails to/from Larry Sucharow, T. Kussin and M. Lesser re: same
4089	Todd Kussin	SA	11/12/13	3.5	040	Along with coders, devised searches and reviewed documents provided by the Arkansas Teacher [REDACTED] pension fund; drafted email to Michael Rogers summarizing results of searches.
4341	Frantzgermain Bernadin	SA	11/12/13	6.2	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/12/13	5.4	030	Conference with T. Kussin regarding client document database; reviewing non-consecutively bates [REDACTED] investment managers, disclosure of FX practice; working with T. Kussin and team on determining list of investment managers and consultants; reviewing documents in connection with same.
4257	Orlando Perez	SA	11/12/13	8.3	040	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.

0023	Eric Belfi	P	11/13/13	0.5	130	Updated client on the case
0103	Lawrence Sucharow	P	11/13/13	6.5	080	Prepare for and conduct mediation session before Jonathan Marks with all counsel present.
0571	David Goldsmith	P	11/13/13	4.0	080	Attend mediation meeting with all parties and J. Marks; prepare for same; post-meeting meeting with plaintiffs' counsel; discussions re: strategy going forward
1179	Michael Rogers	P	11/13/13	4.1	080	Mediation conference; conference with Larry Sucharow and David Goldsmith re: same; telephone conference with Eric Belfi re: same
4341	Frantzgermain Bernadin	SA	11/13/13	9.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/13/13	6.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custody.
4257	Orlando Perez	SA	11/13/13	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/14/13	2.0	130	E-mails with co-counsel re: December 18 planning meeting, damages analyses and presentations, document review strategy and logistics; discussion with Mike Rogers re: same; address travel arrangements for December 18 meeting; e-mail to co-counsel and ERISA counsel re: defendants' draft joint motion to continue stay
1179	Michael Rogers	P	11/14/13	1.7	080	Conference with David Goldsmith and e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: analysis of losses and overcharges re: analysis of hot documents
4341	Frantzgermain Bernadin	SA	11/14/13	8.5	030	Performed a search for Investment Contracts and letter agreements between Investment Managers and the Defendant. Also, Performed a search for Contracts or Engagement Letters with Consultants
4369	David Pospischil	SA	11/14/13	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial fees, FX revenues, FX policies, public pension funds, non-pension customers, FX pricing, spreads, disclosure of FX practice, marketing of customer FX service, best execution.
4257	Orlando Perez	SA	11/14/13	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/15/13	1.5	080	E-mail to defendants' counsel re: comments on proposed Joint Motion to Continue Stay; travel arrangements for Little Rock and Santa Barbara trips, discussions with Mike Rogers re: same
1179	Michael Rogers	P	11/15/13	2.2	080	E-mails to/from Eric Belfi and David Goldsmith re: meeting with ARTRS in Little Rock re: meeting with Plaintiffs' counsel in Santa Barbara
4341	Frantzgermain Bernadin	SA	11/15/13	7.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED]
4369	David Pospischil	SA	11/15/13	8.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]

4257	Orlando Perez	SA	11/15/13	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	11/18/13	1.4	080	Conferences with and e-mails to/from David Goldsmith re: Plaintiffs' counsel meeting
4089	Todd Kussin	SA	11/18/13	1.5	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; prepared report summarizing productivity of reviewers for week ending November 15, 2013.
4341	Frantzgermain Bernadin	SA	11/18/13	8.9	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	11/18/13	4.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, custodial fees, bonus.
4257	Orlando Perez	SA	11/18/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1225	Stacy Auer	PL	11/18/13	0.2	140	Pull and distribute Stip and Joint Motion to Continue Stay; update files w/ same;
1179	Michael Rogers	P	11/19/13	3.4	080	E-mails to/from David Goldsmith, T. Kussin, M. Lesser, D. Chiplock and K. Dirgar re: document review; analyze motions and orders re: MDL case; e-mails to/from Lawrence Sucharow, Eric Belfi and David Goldsmith re: same
1450	Reka Viczian	PL	11/19/13	1.0	140	Pull, organize and distribute multiple pleadings per M. Rogers.
4089	Todd Kussin	SA	11/19/13	2.4	030	Emails with Michael Rogers and IT Department at the office of co-counsel to discuss uploading, batching, and review of most recent production made by defendants; performed quality check/secondary review of documents coded by reviewers to ensure the accuracy of their designations; conferred with coders to discuss system for identifying all hot documents coded as of this date.
4341	Frantzgermain Bernadin	SA	11/19/13	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	11/19/13	6.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, ERISA obligations, ERISA customers, non-pension customers; conference with T. Kussin and team regarding review, hot documents.
0571	David Goldsmith	P	11/19/13	0.3	080	Address discovery order in BNY FX case; e-mails internally and discussion with Mike Rogers re: same
4257	Orlando Perez	SA	11/19/13	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.

4341	Frantzgermain Bernadin	SA	11/20/13	7.7	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4257	Orlando Perez	SA	11/20/13	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4341	Frantzgermain Bernadin	SA	11/21/13	8.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED]
4369	David Pospischil	SA	11/21/13	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]
4257	Orlando Perez	SA	11/21/13	6.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	11/21/13	2.3	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discussed questions re: proper designation of documents produced by defendants; began reviewing collection of hottest documents reviewed thus far in order to present same to Michael Rogers.
4341	Frantzgermain Bernadin	SA	11/22/13	6.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED]
4369	David Pospischil	SA	11/22/13	4.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]
4089	Todd Kussin	SA	11/22/13	1.8	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discussed questions re: proper designation of documents produced by defendants; reviewed collection of hottest documents reviewed thus far in order to present same to Michael Rogers.
4257	Orlando Perez	SA	11/22/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/25/13	1.0	140	E-mails with Larry Sucharow, Chris Keller, Eric Belfi, Mike Rogers, Ray Politano re: STA staffing issues; e-mail to co-counsel requesting lodestar and expense information
1179	Michael Rogers	P	11/25/13	0.9	080	Telephone conferences with and e-mails to/from David Goldsmith, T. Kussin, Ray Politano and J. Russo re: STAs and document analysis

4089	Todd Kussin	SA	11/25/13	2.9	040	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants, including several containing redacted material; prepared report summarizing productivity of reviewers for week ending November 22, 2013; conferred with coders re: assignment to gather hottest documents produced by defendants that have been coded thus far.
4341	Frantzgermain Bernadin	SA	11/25/13	6.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	11/25/13	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, FX policies, FX pricing, best execution, damages, standing instruction FX, disclosure of FX practice, FX revenues, spreads, customer FX inquiries; conferences with T. Kussin regarding document.
4257	Orlando Perez	SA	11/25/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/26/13	0.5	140	Address rescheduling [REDACTED] e-mails with Eric Belfi and Mike Rogers re: same; e-mail to S. Curtin re: same
4089	Todd Kussin	SA	11/26/13	2.0	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; conferred with coders re: assignment to gather hottest documents produced by defendants that have been coded thus far; emails with co-counsel's IT Department re: setting up folders re: same.
4341	Frantzgermain Bernadin	SA	11/26/13	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	11/26/13	6.6	030	Conferences with T. Kussin and team regarding locating and printing documents marked as hot; reviewing notes relating to documents marked as hot; conference with F. Bernadin regarding searching database for documents marked as hot; searching database for and reviewing documents marked as hot.
4257	Orlando Perez	SA	11/26/13	9.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	11/27/13	1.7	080	E-mails to/from Eric Belfi and David Goldsmith re: [REDACTED]; analyze documents re: same
4341	Frantzgermain Bernadin	SA	11/27/13	8.7	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.

4369	David Pospischil	SA	11/27/13	7.6	030	Reviewing documents produced by defendants marked as hot; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including best execution, FX policies, damages, standing instruction FX, disclosure of FX practice, FX revenues, FX pricing, spreads, customer FX inquiries, investment managers, preferential FX pricing.
4257	Oriando Perez	SA	11/27/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	11/30/13	0.3	140	E-mails with S. Curtin, Eric Belfi, Mike Rogers re: confirming new time for ARTRS [REDACTED] telephone interview
0571	David Goldsmith	P	12/02/13	2.0	130	Telephone conference with Eric Belfi re: gameplan and strategy for [REDACTED] interview; e-mail to S. Curtin re: participants in call
1179	Michael Rogers	P	12/02/13	2.8	080	Telephone conferences with and e-mails to/from David Goldsmith and T. Kussin re: documents produced [REDACTED]; analyze index of same
4089	Todd Kussin	SA	12/02/13	2.5	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants, including several regarding fee schedules; conferred with coders re: assignment to gather hottest documents produced by defendants that have been coded by Labaton since beginning of the review; emails with Catalyst IT Support in order to devise ways to print attorneys' notes for documents selected among those coded hot; prepared report summarizing productivity of reviewers for week ending November 29, 2013.
4341	Frantzgermain Bernadin	SA	12/02/13	7.4	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED]
4369	David Pospischil	SA	12/02/13	6.6	030	Reviewing notes regarding documents produced by defendants marked as hot; reviewing, printing, and organizing documents produced by defendants marked as hot; conferences with T. Kussin regarding documents, printing of same; conference with T. Kussin and O. Perez regarding documents regarding AIR rate calculation.
4257	Oriando Perez	SA	12/02/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/02/13	3.0	040	Revised memorandum prepared by reviewer Frantz Bernadin summarizing documents produced by the Arkansas Teacher Retirement System to the [REDACTED] on May 6, 2011; reviewed disk containing such documents in order to identify those documents of note and to identify various "categories" of documents produced; began preparing index describing same
0023	Eric Belfi	P	12/03/13	1.0	130	Client communications
0571	David Goldsmith	P	12/03/13	3.0	130	Prepare for [REDACTED] interview; discussions with Mike Rogers re: same and ARTRS document production and damages analysis issues
1179	Michael Rogers	P	12/03/13	2.0	080	Analyze ARTRS documents produced to [REDACTED] in May 2011; conferences with David Goldsmith and T. Kussin re: same

4089	Todd Kussin	SA	12/03/13	1.1	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants.
4341	Frantzgermain Bernadin	SA	12/03/13	11.0	030	Prepared an Index of previously produced documents. Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on [REDACTED] [REDACTED] [REDACTED]
4369	David Pospischil	SA	12/03/13	7.3	030	Reviewing and cataloguing documents produced by defendants marked as hot; assisting T. Kussin with photocopying of certain client documents produced to [REDACTED]
4257	Orlando Perez	SA	12/03/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/03/13	4.9	040	Reviewed memorandum prepared by reviewer Frantz Bernadin summarizing documents produced by the Arkansas Teacher Retirement System [REDACTED] on May 6, 2011; edited, reformatted, and supplemented same while reviewing disk containing such documents in order to ensure the accuracy of the memorandum; selected representative samples from categories of documents referenced therein, located same, and gathered for review by Michael Rogers.
0023	Eric Belfi	P	12/04/13	4.0	130	Met with client
0571	David Goldsmith	P	12/04/13	10.7	130	Travel New York to Little Rock; prepare for [REDACTED] of ARTRS; meeting with G. Hopkins, W. Greathouse, R. Graves, Eric Belfi, Mike Rogers re: same and strategy
1179	Michael Rogers	P	12/04/13	9.5	080	Travel to Little Rock; analyze documents re: preparation for [REDACTED] call; meetings with Eric Belfi, David Goldsmith, G. Hopkins, W. Greathouse and R. Graves re: same
4341	Frantzgermain Bernadin	SA	12/04/13	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED] [REDACTED]
4369	David Pospischil	SA	12/04/13	7.0	030	Reviewing, printing, and organizing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/04/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0023	Eric Belfi	P	12/05/13	4.0	130	Met with client
0571	David Goldsmith	P	12/05/13	10.0	130	Defend [REDACTED] interview of ARTRS with G. Hopkins, W. Greathouse, R. Graves, Eric Belfi, Mike Rogers; pre and post-call discussions re: same and strategy; travel Little Rock to New York

1179	Michael Rogers	P	12/05/13	9.9	080	Conferences with Eric Belfi, David Goldsmith, G. Hopkins, W. Greathouse and R. Graves re: [REDACTED] call; participate in call with Eric Belfi, David Goldsmith, G. Hopkins, W. Greathouse, R. Graves and [REDACTED] counsel; travel to NY
4341	Frantzgermain Bernadin	SA	12/05/13	7.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED].
4369	David Pospischil	SA	12/05/13	4.9	030	Reviewing and organizing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/05/13	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/05/13	2.3	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; reviewed documents thus far identified by reviewers as among the hottest of the hot documents thus far coded.
1179	Michael Rogers	P	12/06/13	3.5	080	Analyze M. Lesser draft PPT re: damages assessment re: issues re: merits; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: same
4341	Frantzgermain Bernadin	SA	12/06/13	5.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included [REDACTED].
4369	David Pospischil	SA	12/06/13	9.2	030	Reviewing, printing, and organizing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/06/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/09/13	2.5	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; conferred with coders re: assignment to gather hottest documents produced by defendants that have been coded by Labaton since beginning of the review; discussed documents identified thus far by coder David Pospischil; prepared report summarizing productivity of reviewers for week ending December 6, 2013.

4341	Frantzgermain Bernadin	SA	12/09/13	8.6	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED]
4369	David Pospischil	SA	12/09/13	6.5	030	Reviewing, printing, and organizing documents produced by defendants marked as hot; conference with T. Kussin regarding same.
4257	Orlando Perez	SA	12/09/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/10/13	2.0	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; conferred with coders re: assignment to gather hottest documents produced by defendants that have been coded by Labaton since beginning of the review.
4341	Frantzgermain Bernadin	SA	12/10/13	7.4	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED]
4369	David Pospischil	SA	12/10/13	5.4	030	Reviewing, printing, and organizing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/10/13	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4341	Frantzgermain Bernadin	SA	12/11/13	7.2	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies
4369	David Pospischil	SA	12/11/13	6.8	030	Reviewing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/11/13	9.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/11/13	1.3	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; reviewed documents thus far identified by coders as part of project to gather the hottest of the hot documents produced by defendants and thus far coded by Labaton since beginning of the review.
1179	Michael Rogers	P	12/12/13	1.4	080	Analyze M. Lesser draft presentation for meeting with co-counsel and ERISA counsel

4089	Todd Kussin	SA	12/12/13	2.8	030	Performed secondary review/quality check of documents produced by defendants and thus far reviewed by coders in order to ensure the accuracy of their designations; conferred with coders to discuss questions re: proper designation of documents produced by defendants; conferred with coders re: documents thus far identified as part of project to gather the hottest of the hot documents produced by defendants and thus far coded by Labaton since beginning of the review; reviewed hottest of hot documents thus far selected by coders; phone call with Michael Rogers regarding hot document project.
4341	Frantzgermain Bernadin	SA	12/12/13	10.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies
4369	David Pospischil	SA	12/12/13	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including best execution, FX policies, damages, standing instruction FX, disclosure of FX practice, FX revenues, FX pricing, spreads, customer FX inquiries; team conference with T. Kussin regarding putting together collection of documents produced by defendants marked as hot; conferences with F. Bernadin and O. Perez regarding same; reviewing, printing, and organizing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	12/12/13	6.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0571	David Goldsmith	P	12/13/13	2.0	090	Review M. Lesser draft PowerPoint presentation, organize comments; telephone conference with Mike Rogers, M. Lesser, E. Hoffman, D. Chiplock re: same; pre and post-call discussions and e-mails with Mike Rogers re: same; e-mails with L. Simms re: travel
1179	Michael Rogers	P	12/13/13	4.2	080	Analyze M. Lesser draft presentation; conferences and conference call with David Goldsmith, M. Lesser, D. Chiplock and E. Hoffman re: same
4089	Todd Kussin	SA	12/13/13	9.0	030	Met with reviewers Frantz Bernadin, David Pospischil, and Orlando Perez to discuss every document from narrowed down list of hot documents in order to arrive at compilation of 20 hottest reviewed by Labaton as of December 13, 2013; reviewed all documents chosen to determine whether they should be included on list; drafted edited, and supplemented index summarizing all documents ultimately chosen for review by Michael Rogers, including explanations of their value; prepared sets of all documents and grouped them by category/issue in order to develop logical organization thereof and to ensure that appropriate family members and attachments were included; conducted final review of selected documents to ensure that the information contained in each corresponded to information contained in index.
4341	Frantzgermain Bernadin	SA	12/13/13	8.7	030	Generated an Index of highly responsive documents.
4369	David Pospischil	SA	12/13/13	8.3	030	Reviewing documents produced by defendants marked as hot; working and meeting with T. Kussin, F. Bernadin, and O. Perez with respect to review and selection of collection of documents produced by defendants marked as hot; drafting document descriptions for index; conferences with T. Kussin and F. Bernadin regarding same.

						Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4257	Orlando Perez	SA	12/13/13	8.5	030	Reviewed all documents that I coded as hot, discussed with the team and print for review by Mike Rodgers.
0571	David Goldsmith	P	12/16/13	2.0	130	Prepare for strategy meeting in Santa Barbara; review materials and M. Lesser draft PowerPoint; review hot documents pulled by STAs
1179	Michael Rogers	P	12/16/13	4.5	080	Conferences with David Goldsmith and T. Kussin re: hot documents re: presentation; analyze hot documents
4089	Todd Kussin	SA	12/16/13	4.5	030	Along with reviewers Frantz Bernadin and Orlando Perez, finalized selection of 20 hottest documents coded since beginning of review for analysis by Michael Rogers, as well as preparation of index summarizing same; emails with Michael Rogers re: selection; reviewed emails selected as part of top 20 and identified hottest of these in effort to narrow down results; revised index to reflect changes; prepared final set of documents for David Goldsmith; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending December 13, 2013.
4341	Frantzgermain Bernadin	SA	12/16/13	7.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED].
4257	Orlando Perez	SA	12/16/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0103	Lawrence Sucharow	P	12/17/13	5.5	080	Travel to CA for strategy meeting if plaintiffs counsel; prepare for meeting; review power point.
0571	David Goldsmith	P	12/17/13	13.7	130	Travel New York to Santa Barbara, CA prepare for Wednesday strategy meeting; dinner meeting with Larry Sucharow, Mike Rogers, R. Lief, D. Chiplock, M. Thornton, M. Lesser, L. Sarko, L. Gerber, C. Kravitz, others
1179	Michael Rogers	P	12/17/13	15.0	080	Travel to Santa Barbara for meeting with co-counsel and ERISA counsel; analyze hot documents; analyze draft presentation re: damages and issues; meeting with Lawrence Sucharow, David Goldsmith, co-counsel and ERISA counsel
4341	Frantzgermain Bernadin	SA	12/17/13	9.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED].

4369	David Pospischil	SA	12/17/13	6.6	030	Conference with T. Kussin regarding collection of hot documents produced by defendants; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, custodial fees, bonus, FX policies, customer FX inquiries.
4257	Orlando Perez	SA	12/17/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0103	Lawrence Sucharow	P	12/18/13	7.5	080	Participate in plaintiffs strategy meeting re upcoming mediation.
0571	David Goldsmith	P	12/18/13	15.2	130	Settlement strategy meeting with Larry Sucharow, Mike Rogers, R. Lieff, D. Chiplock, M. Thornton, M. Lesser, L. Sarko, L. Gerber, C. Kravitz, prepare for same; travel Santa Barbara, CA to NY
1179	Michael Rogers	P	12/18/13	11.5	080	Meeting with Lawrence Sucharow, David Goldsmith, co-counsel and ERISA counsel re: damages and issues; travel to Los Angeles
4341	Frantzgermain Bernadin	SA	12/18/13	10.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED].
4369	David Pospischil	SA	12/18/13	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, preferential FX pricing, FX pricing, custodial fees.
4257	Orlando Perez	SA	12/18/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
0023	Eric Belfi	P	12/19/13	2.0	010	Client update
1179	Michael Rogers	P	12/19/13	7.5	080	Travel to New York
4341	Frantzgermain Bernadin	SA	12/19/13	6.7	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED].
4369	David Pospischil	SA	12/19/13	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including preferential FX pricing, FX pricing, custodial fees, public pension funds, RFP responses.
4257	Orlando Perez	SA	12/19/13	7.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	12/20/13	0.4	080	E-mails to/from T. Kussin re: hot documents

4089	Todd Kussin	SA	12/20/13	1.8	030	Reviewed presentation prepared by co-counsel containing quotes from hot documents coded by reviewers thus far and conducted searches on Catalyst to identify the full documents as well as the coding information related thereto; phone call with Michael Rogers re: same; discussed project with coders Orlando Perez, Frantz Bernadin, and Dave Pospischil in order to coordinate work and share results; conducted quality check/secondary review of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations.
4341	Frantzgermain Bernadin	SA	12/20/13	8.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies
4369	David Pospischil	SA	12/20/13	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED] searching database for certain documents referenced in report; reviewing hot documents collection; meeting with T. Kussin regarding portion of report and hot documents collection.
4257	Orlando Perez	SA	12/20/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
4089	Todd Kussin	SA	12/23/13	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending December 13, 2013.
4369	David Pospischil	SA	12/23/13	5.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including spreads, FX pricing, standing instruction FX, disclosure of FX practice, FX revenues.
4257	Orlando Perez	SA	12/23/13	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue documents for clients.
1179	Michael Rogers	P	12/26/13	2.8	080	Draft letter to J. Marks re: exchange of damages figure and methodology; e-mails to/from David Goldsmith, M. Lesser, D. Chiplock and L. Gerber re: payment to mediator
4257	Orlando Perez	SA	12/26/13	10.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
0571	David Goldsmith	P	12/27/13	0.3	130	Discussions with Mike Rogers re: letter to mediator; outstanding issues and strategy
4089	Todd Kussin	SA	12/27/13	1.8	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending December 27, 2013.
4257	Orlando Perez	SA	12/27/13	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.

4257	Orlando Perez	SA	12/30/13	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
4257	Orlando Perez	SA	12/31/13	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX policy documents for clients.
0571	David Goldsmith	P	01/02/14	0.4	080	Review/mark-up Mike Rogers draft letter to J. Marks re: mediation issues
1179	Michael Rogers	P	01/02/14	3.6	080	Analyze Michael Lesser and Dan Chiplock edits to draft letter to J. Marks re: exchange of markup methodology; edit and amend letter; e-mails to/from Michael Lesser and Dan Chiplock re: same; e-mails to/from David Goldsmith, Michael Lesser, Dan Chiplock and Cindy Ng re: payment of outstanding invoices to mediator and document hosting vendor
4369	David Pospischil	SA	01/02/14	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, marketing of customer FX service, customer FX inquiries, spreads, FX pricing, best execution, FX revenues, public pension funds.
4257	Orlando Perez	SA	01/02/14	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
1179	Michael Rogers	P	01/03/14	1.4	080	Telephone conferences with Lynn Sarko and Carl Kravitz re: letter to Jonathan Marks; e-mails to/from Larry Sucharow re: same
4369	David Pospischil	SA	01/03/14	3.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds, custodial fees.
4257	Orlando Perez	SA	01/03/14	6.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
1179	Michael Rogers	P	01/06/14	0.3	080	E-mails to/from Larry Sucharow, co-counsel and ERISA counsel re: letter to Jonathan Marks re: exchange of markup data
4341	Frantzgermain Bernadin	SA	01/06/14	11.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies
4369	David Pospischil	SA	01/06/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, public pension funds; conference with O. Perez and T. Kussin regarding document.
4257	Orlando Perez	SA	01/06/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
1179	Michael Rogers	P	01/07/14	0.3	080	E-mails to/from R. Graves re: SST letter re: ARTRS documents

4089	Todd Kussin	SA	01/07/14	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending January 3, 2014; conferred with coders regarding the proper designation for documents including foreign exchange guidelines referencing standing instructions.
4341	Frantzgermain Bernadin	SA	01/07/14	8.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/07/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, public pension funds.
4257	Orlando Perez	SA	01/07/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
1179	Michael Rogers	P	01/08/14	2.5	080	Conference with Larry Sucharow re: letter to Jonathan Marks re: exchange of mark-up numbers; telephone conference with Larry Sucharow and Bill Paine re: same; e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: same; edit letter; telephone conference with Rod Graves re: ARTRS documents in connection with SST's requests
4341	Frantzgermain Bernadin	SA	01/08/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/08/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, public pension funds, FX pricing, spreads.
4257	Orlando Perez	SA	01/08/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients.
1179	Michael Rogers	P	01/09/14	3.0	080	Draft letter in response to A. Hornstein December 20, 2013 letter re: ARTRS retrieval and production; e-mails to/from Rod Graves re: same; telephone conference with Chris Ausbrooks re: same
4341	Frantzgermain Bernadin	SA	01/09/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/09/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, FX policies.
4257	Orlando Perez	SA	01/09/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
4089	Todd Kussin	SA	01/09/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; conferred with coders regarding the proper designation for documents including foreign exchange guidelines referencing standing instructions.

4089	Todd Kussin	SA	01/09/14	0.7	040	Conducted research among documents provided by client Arkansas Teacher Retirement ("ATRS") and uploaded to Concordance database, documents created thus far as examples of Labaton attorney work product, and communications among plaintiffs' attorneys in order [REDACTED]
4089	Todd Kussin	SA	01/10/14	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; conferred with coders regarding the proper designation for documents including those discussing valuation methods yet not indicating anything with respect to foreign exchange policies.
4341	Frantzgermain Bernadin	SA	01/10/14	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". [REDACTED]
4369	David Pospischil	SA	01/10/14	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems; conference with F. Bernadin regarding document.
4257	Orlando Perez	SA	01/10/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
4089	Todd Kussin	SA	01/13/14	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending January 10, 2014.
4341	Frantzgermain Bernadin	SA	01/13/14	7.8	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED]
4369	David Pospischil	SA	01/13/14	6.6	030	Reviewing complaint; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing, spreads.
4257	Orlando Perez	SA	01/13/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
0571	David Goldsmith	P	01/14/14	0.3	030	Telephone conference with D. Chiplock re: [REDACTED] client interview issues
1179	Michael Rogers	P	01/14/14	0.4	080	E-mails to/from R. Graves re: custodians and information re: same as re: response to Hornstine letter
4341	Frantzgermain Bernadin	SA	01/14/14	8.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom Data Holding files, total market summaries and emails reflecting Total pricing and position discrepancies.
4369	David Pospischil	SA	01/14/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing.

4257	Orlando Perez	SA	01/14/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
4089	Todd Kussin	SA	01/15/14	1.6	040	Conducted research within documents provided by client Arkansas Teacher Retirement System in order to identify any documents showing communications between [REDACTED]
4341	Frantzgermain Bernadin	SA	01/15/14	7.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were [REDACTED].
4369	David Pospischil	SA	01/15/14	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing, spreads, FX revenues.
4257	Orlando Perez	SA	01/15/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
1179	Michael Rogers	P	01/16/14	4.0	080	Draft response letter to Hornstein; e-mail to R. Graves and C. Ausbrooks to vet facts; e-mails to/from David Goldsmith, M. Lesser and D. Chiplock re: legal position and tactics; e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: draft of letter to G. Hopkins re: follow-up with Paine re: [REDACTED]
4341	Frantzgermain Bernadin	SA	01/16/14	7.0	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom [REDACTED].
4257	Orlando Perez	SA	01/16/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	01/17/14	7.3	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom [REDACTED].
4257	Orlando Perez	SA	01/17/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
1179	Michael Rogers	P	01/21/14	0.8	080	E-mails to/from Eric Belfi re: client review of letter to Hornstein; analyze court submission in Hill case; e-mails to/from David Goldsmith, Dan Chiplock and Mike Lesser re: same

4341	Frantzgermain Bernadin	SA	01/21/14	5.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform. Non Responsive documents were reflected by excel sheets with no reference to "foreign exchange". Responsive documents included Custom
4369	David Pospischil	SA	01/21/14	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing, spreads.
4257	Orlando Perez	SA	01/21/14	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue and FX pricing documents for clients
1179	Michael Rogers	P	01/22/14	0.4	080	E-mails to/from Larry Sucharow and B. Lieff re: SST's response to our request re: exchange of markup numbers; e-mails to/from Eric Belfi re: client review of letter to Hornstine
4089	Todd Kussin	SA	01/22/14	2.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending January 17, 2014; conferred with coders re: proper designation of documents, including
4369	David Pospischil	SA	01/22/14	4.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing.
4257	Orlando Perez	SA	01/22/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	01/23/14	0.3	080	E-mails to/from Eric Belfi re: client review of letter to Hornstine
4341	Frantzgermain Bernadin	SA	01/23/14	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	01/24/14	0.3	080	E-mails to/from Eric Belfi re: client review of letter to Hornstine
4341	Frantzgermain Bernadin	SA	01/24/14	10.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/24/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, spreads, FX pricing.
4257	Orlando Perez	SA	01/24/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	01/27/14	0.3	080	E-mails to/from Eric Belfi re: client review of letter to Hornstine
4089	Todd Kussin	SA	01/27/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending January 24, 2014; conferred with coders re: proper designation of documents, including
4369	David Pospischil	SA	01/27/14	5.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing.

4257	Orlando Perez	SA	01/27/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	01/28/14	1.1	080	Finalize letter to Hornstine re: ARTRS discovery; send to SST
4341	Frantzgermain Bernadin	SA	01/28/14	5.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/28/14	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, spreads.
4257	Orlando Perez	SA	01/28/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4089	Todd Kussin	SA	01/29/14	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; conferred with coders re: proper designation of documents, including internal State Street communications regarding standing instructions.
4341	Frantzgermain Bernadin	SA	01/29/14	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/29/14	8.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX pricing, FX policies, FX revenues, custodial fees.
4257	Orlando Perez	SA	01/29/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	01/30/14	5.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/30/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds.
4257	Orlando Perez	SA	01/30/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	01/31/14	11.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	01/31/14	8.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues <div style="background-color: black; height: 1em; width: 100%;"></div>

4257	Orlando Perez	SA	01/31/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	02/03/14	0.3	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith & co-counsel re: news article re: State Street
4089	Todd Kussin	SA	02/03/14	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending January 24, 2014; conferred with coders re: proper designation of documents, including background materials re: non-negotiated or standing instruction foreign exchange trades.
4341	Frantzgermain Bernadin	SA	02/03/14	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/03/14	3.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including best execution, FX policies, netting, standing instruction FX, FX revenues, FX pricing, custodial fees.
4257	Orlando Perez	SA	02/03/14	7.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	02/04/14	8.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/04/14	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including RFP/RFI responses, public pension funds, FX policies, FX pricing, standing instruction FX, disclosure of FX practice, marketing of custody FX service, FX revenues, spreads.
4257	Orlando Perez	SA	02/04/14	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	02/05/14	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/05/14	3.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, FX revenues, marketing of custody FX service, standing instruction FX.
1179	Michael Rogers	P	02/06/14	0.7	080	E-mails to/from David Goldsmith, Mike Lesser, Dan Chiplock and Evan Hoffman re: overcharge estimates
4341	Frantzgermain Bernadin	SA	02/06/14	11.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/06/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including marketing of custody FX service, FX revenues, FX pricing, FX policies, spreads.

4257	Orlando Perez	SA	02/06/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0571	David Goldsmith	P	02/07/14	0.2	080	Discussion with Mike Rogers re: status and strategy re: mediation
4341	Frantzgermain Bernadin	SA	02/07/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/07/14	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, marketing of custody FX service, FX pricing.
4257	Orlando Perez	SA	02/07/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	02/10/14	0.7	080	E-mails to/from Larry Sucharow, David Goldsmith and Mike Lesser re: exchange of data with State Street in advance of mediation
4089	Todd Kussin	SA	02/10/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending February 7, 2014.
4341	Frantzgermain Bernadin	SA	02/10/14	10.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/10/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, investment managers, spreads, customer FX inquiries, public pension funds.
4257	Orlando Perez	SA	02/10/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0571	David Goldsmith	P	02/11/14	0.3	130	Discussion with Mike Rogers re: status and strategy for March 4 mediation meeting
1179	Michael Rogers	P	02/11/14	2.3	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, Mike Lesser, Dan Chiplock, Bill Paine and D. Halston re: State Street data submission re: March 4 mediation; telephone conference with Mike Lesser and Bill Paine re: same; conference with David Goldsmith re: same
4341	Frantzgermain Bernadin	SA	02/11/14	7.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/11/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]
4257	Orlando Perez	SA	02/11/14	7.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients

4341	Frantzgermain Bernadin	SA	02/12/14	8.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom [REDACTED]
4369	David Pospischil	SA	02/12/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including customer FX inquiries, spreads, FX pricing, FX revenues, custodial fees; conference with F. Bernadin regarding document.
4257	Orlando Perez	SA	02/12/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	02/13/14	1.2	080	E-mails to/from Larry Sucharow, David Goldsmith and co-counsel re: data to share in advance of March 4 mediation
4257	Orlando Perez	SA	02/13/14	7.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0571	David Goldsmith	P	02/14/14	0.4	080	Review e-mails re: mediation status and strategy; e-mails with Larry Sucharow, Eric Belfi, Mike Rogers re: same
4341	Frantzgermain Bernadin	SA	02/14/14	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/14/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, spreads, standing instruction FX, FX pricing.
4257	Orlando Perez	SA	02/14/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4089	Todd Kussin	SA	02/18/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending February 14, 2014.
4341	Frantzgermain Bernadin	SA	02/18/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/18/14	6.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	02/18/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	02/19/14	9.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/19/14	4.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.

4257	Orlando Perez	SA	02/19/14	8.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0571	David Goldsmith	P	02/20/14	0.4	090	Discussion with Mike Rogers re: mediation status and strategy; review recent e-mails
1179	Michael Rogers	P	02/20/14	2.7	080	Analyze data re: markups; e-mails to/from Larry Sucharow, David Goldsmith, Bob Lieff, Mike Thornton, Lyn Sarko, Carl Kravitz, Mike Lesser, Dan Chiplock re: same; conference with Larry Sucharow re: same
4341	Frantzgermain Bernadin	SA	02/20/14	8.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/20/14	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues
0103	Lawrence Sucharow	P	02/20/14	1.5	080	Correspondence with plaintiffs' counsel re upcoming mediation strategy
4257	Orlando Perez	SA	02/20/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0103	Lawrence Sucharow	P	02/21/14	2.5	080	Review damages analyses in preparation for upcoming mediation.
0751	Amy Greenbaum	I	02/21/14	1.6	010	Reviewed notes and corresponded with counsel.
1179	Michael Rogers	P	02/21/14	0.7	080	E-mails to/from Larry Sucharow, Amy Greenbaum and Mike Lesser re: former SST officer; telephone conference with Amy Greenbaum re: same
4341	Frantzgermain Bernadin	SA	02/21/14	8.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/21/14	9.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	02/21/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	02/24/14	0.4	080	E-mails to/from Larry Sucharow, Chris Keller, Eric Belfi, David Goldsmith and Jonathan Gardner re: investigation memo
4089	Todd Kussin	SA	02/24/14	0.8	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending February 21, 2014.
4341	Frantzgermain Bernadin	SA	02/24/14	7.5	030	Reviewed non-consecutively bates numbered documents provided by State Street in order to determine their responsiveness to defendants' requests on catalyst review platform.. Documents included Custom
4369	David Pospischil	SA	02/24/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.

4257	Orlando Perez	SA	02/24/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	02/25/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/25/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, spreads.
4257	Orlando Perez	SA	02/25/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	02/26/14	0.7	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: March 4 mediation re: data exchange in advance of same
4341	Frantzgermain Bernadin	SA	02/26/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/26/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, custodial fees, spreads, best execution, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	02/26/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0023	Eric Belfi	P	02/27/14	1.5	130	Updated by Larry.
4341	Frantzgermain Bernadin	SA	02/27/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/27/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, standing instruction costs, standing instruction FX, FX revenues, FX pricing, spreads, best execution, custodial fees.
4257	Orlando Perez	SA	02/27/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	02/28/14	1.7	080	Analyze letter from A. Hornstine re: ARTRS document discovery; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, Rod Graves and Chris Ausbrooks re: same
4341	Frantzgermain Bernadin	SA	02/28/14	5.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	02/28/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, spreads, FX revenues, FX pricing, custodial fees.

4257	Orlando Perez	SA	02/28/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	02/28/14	5.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
0103	Lawrence Sucharow	P	03/01/14	2.5	080	Prepare for Mediation session before Jonathan Marks; review damages analyses
0103	Lawrence Sucharow	P	03/02/14	3.5	080	Prepare for Mediation session before Jonathan Marks; review damages analyses and powerpoint presentation
0103	Lawrence Sucharow	P	03/03/14	5.5	080	Prepare for Mediation session before Jonathan Marks; review damages analyses
0571	David Goldsmith	P	03/03/14	2.5	080	Prepare for March 4 mediation meeting
4341	Frantzgermain Bernadin	SA	03/03/14	10.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
1179	Michael Rogers	P	03/03/14	0.5	080	Analyze spreadsheets re: markup estimates
4257	Orlando Perez	SA	03/03/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0103	Lawrence Sucharow	P	03/04/14	6.5	080	Prepare for Mediation session before Jonathan Marks; review damages analyses; meeting of plaintiffs counsel in preparation for mediation; mediation with defendants counsel.
0571	David Goldsmith	P	03/04/14	5.0	080	Pre-mediation strategy meeting with Larry Sucharow, Mike Rogers, R. Lief, D. Chiplock, M. Thornton, M. Lesser, L. Sarko; mediation meeting at Wilmer Hale with same plus J. Marks, W. Paine, D. Halston, others; post-meeting discussions with Larry Sucharow and Mike Rogers re: same
4341	Frantzgermain Bernadin	SA	03/04/14	10.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/04/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs, custodial fees, standing instruction FX.
0023	Eric Belfi	P	03/04/14	1.0	130	Provided update to client
1179	Michael Rogers	P	03/04/14	8.3	080	Conferences with Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: meeting with State Street and mediator; attend mediation session with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel, SST counsel and mediator; draft summary memo re: same; analyze SST 10-Ks re: large settlement figures
4257	Orlando Perez	SA	03/04/14	7.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/05/14	8.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	03/05/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, standing instruction FX, FX revenues, FX pricing, best execution, FX policies, costs, spreads; conference with O. Perez regarding documents.
0023	Eric Belfi	P	03/05/14	1.0	130	Client communication
1179	Michael Rogers	P	03/05/14	4.1	080	E-mails to/from R. Graves and C. Ausbrooks re: scheduling call to discuss ARTRS documents and discovery; e-mail to Marks re: G. Hopkins availability on May 9; draft summary memorandum re: mediation session with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel, SST counsel and mediator; e-mail same to Eric Belfi
4257	Orlando Perez	SA	03/05/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients. Documents were also coded as hot.
4341	Frantzgermain Bernadin	SA	03/06/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/06/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, costs, best execution, standing instruction FX, FX pricing.
0571	David Goldsmith	P	03/07/14	1.0	080	Telephone conference with D. Chiplock, M. Lesser, E. Moffman, Mike Rogers re: mediation tasks and strategy; post-call discussion with Mike Rogers re: same
4341	Frantzgermain Bernadin	SA	03/07/14	9.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/07/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, custodial fees, FX revenues, FX pricing, best execution, FX policies, spreads, costs.
0023	Eric Belfi	P	03/07/14	1.0	130	Client communication
1179	Michael Rogers	P	03/07/14	1.3	080	Conference call with David Goldsmith, Michael Lesser, Daniel Chiplock and Evan Hoffman re: prepare for conference call and May 9 mediation; conference with David Goldsmith re: same
4257	Orlando Perez	SA	03/07/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients. Documents were also coded as hot.
4341	Frantzgermain Bernadin	SA	03/10/14	1.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/10/14	2.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, FX revenues.

4257	Orlando Perez	SA	03/10/14	4.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients. Documents were also coded as hot.
1179	Michael Rogers	P	03/11/14	1.5	080	Analyze Hornstine letter re: ATRTS discovery; prepare for call with Rod Graves and Chris Ausbrooks re: same; conference call with Rod Graves and Chris Ausbrooks re: same
4341	Frantzgermain Bernadin	SA	03/11/14	11.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/11/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4257	Orlando Perez	SA	03/11/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/12/14	10.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/12/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX pricing.
4257	Orlando Perez	SA	03/12/14	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	03/13/14	2.0	080	Prepare for call with Wayne Greathouse, Rod Graves and Donna Bumgartner re: former ARTRS employees and ARTRS documents re: same; call with Wayne Greathouse, Rod Graves and Donna Bumgartner re: same
4341	Frantzgermain Bernadin	SA	03/13/14	6.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/13/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, standing instruction FX.
4257	Orlando Perez	SA	03/13/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/14/14	8.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/14/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX pricing, public pension fund investment data, FX revenues, costs.

4257	Orlando Perez	SA	03/14/14	7.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	03/17/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending March 14, 2014.
4341	Frantzgermain Bernadin	SA	03/17/14	10.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/17/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	03/17/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4369	David Pospischil	SA	03/18/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues, FX pricing, costs, standing instruction FX.
4257	Orlando Perez	SA	03/18/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/19/14	10.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/19/14	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, FX policies, FX pricing, public pension funds.
4257	Orlando Perez	SA	03/19/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/20/14	9.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/20/14	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data, FX pricing.
4257	Orlando Perez	SA	03/20/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/21/14	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege. .

4369	David Pospischil	SA	03/21/14	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, costs, FX revenues, FX pricing.
1179	Michael Rogers	P	03/24/14	1.0	080	E-mails to/from Eric Belfi and David Goldsmith re: ARTRS document production
4089	Todd Kussin	SA	03/24/14	0.9	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending March 21, 2014.
4341	Frantzgermain Bernadin	SA	03/24/14	12.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/24/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs, FX pricing, spreads.
4257	Orlando Perez	SA	03/24/14	3.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	03/25/14	1.0	140	Met with Mike Rogers to go over the case
1179	Michael Rogers	P	03/25/14	0.7	080	Conference with Eric Belfi re: ARTRS document production
4341	Frantzgermain Bernadin	SA	03/25/14	9.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/25/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues, FX policies, FX pricing, standing instruction FX.
4257	Orlando Perez	SA	03/25/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	03/26/14	0.5	130	Discussion with Mike Rogers re: discovery issues, mediation, status, strategy
1179	Michael Rogers	P	03/26/14	1.2	080	E-mails to/from C. Ausbrook, A. Patton and J. Hudson re: potential ARTRS ESI retrieval; conference with David Goldsmith re: same
4341	Frantzgermain Bernadin	SA	03/26/14	10.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/26/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, FX revenues, FX pricing.
4257	Orlando Perez	SA	03/26/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	03/27/14	11.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/27/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX policies, FX revenues, FX pricing, standing instruction FX, public pension fund investment data.

4257	Orlando Perez	SA	03/27/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4369	David Pospischil	SA	03/28/14	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4257	Orlando Perez	SA	03/28/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	03/31/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending March 28, 2014.
4341	Frantzgermain Bernadin	SA	03/31/14	11.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	03/31/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, costs, FX revenues.
4257	Orlando Perez	SA	03/31/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	04/01/14	1.0	080	Conference calls with Chris Ausbrooks, A. Patton and J. Hudson re: retrieval of ARTRS documents for production; conference and telephone conference with Larry Sucharow re: communications with Marks re: May 9 mediation meeting
4341	Frantzgermain Bernadin	SA	04/01/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/01/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues.
4257	Orlando Perez	SA	04/01/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	04/02/14	0.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: May 9 mediation session
4341	Frantzgermain Bernadin	SA	04/02/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/02/14	6.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues.
4257	Orlando Perez	SA	04/02/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.

0571	David Goldsmith	P	04/03/14	0.2	080	Set up call with co-counsel re: May 9 mediation meeting; e-mails with Mike Rogers re: same
1179	Michael Rogers	P	04/03/14	0.3	080	E-mails to/from David Goldsmith, Daniel Chiplock and Michael Lesser re: preparation for May 9 mediation session re: presentation re: same
4341	Frantzgermain Bernadin	SA	04/03/14	6.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/03/14	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues.
4257	Orlando Perez	SA	04/03/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	04/04/14	6.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/04/14	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues, FX pricing, public pension fund investment data.
4257	Orlando Perez	SA	04/04/14	7.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	04/07/14	2.5	080	Telephone conference with M. Lesser, D. Chiplock, Mike Rogers re: presentation and strategy for May 9 mediation meeting, prepare for same; pre and post-call discussions with Mike Rogers re: same; task T. Kussin with pulling documents; attention to strategy
1179	Michael Rogers	P	04/07/14	3.7	080	Conference call with David Goldsmith, Mike Lesser and Dan Chiplock re: prepare for May mediation session; conferences with David Goldsmith re: same; conferences and telephone conferences with and e-mails to/from David Goldsmith, Todd Kussin and Mike Lesser re: documents re: same
4089	Todd Kussin	SA	04/07/14	3.3	030	Conferred with coders Frantzgermain Bernadin, Orlando Perez, and David Pospischil regarding assignment to identify and gather all documents on Catalyst platform cited in Annotated damages and Issue Analysis; aided coders in locating and printing same for review by David Goldsmith and Michael Rogers; phone calls with Catalyst technicians on creating most efficient searches for such documents on Catalyst platform; conferred with Michael Rogers re: same; reviewed productivity of coders in order to determine the exact number of documents that have yet to be reviewed from initial production by defendants.
4341	Frantzgermain Bernadin	SA	04/07/14	10.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/07/14	5.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data; team conference with T. Kussin regarding searching for and printing documents cited in presentation; conferences with F. Bernadin and O. Perez regarding same; reviewing presentation; searching database for and printing documents cited in presentation; telephone conference with J. Schmitt of Catalyst regarding searching database; conference with team regarding telephone conference.

4257	Orlando Perez	SA	04/07/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	04/08/14	3.2	080	Prepare for May 9 mediation presentation; e-mail co-counsel re: gameplan; e-mails Mike Rogers re: same
1179	Michael Rogers	P	04/08/14	0.3	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Michael Lesser and Daniel Chiplock re: preparation for May mediation session
4089	Todd Kussin	SA	04/08/14	2.5	030	Along with coders Frantzgermain Bernadin, Orlando Perez, and David Pospischil, finalized identification and gathering of all documents on Catalyst platform cited in Annotated Damages and Issue Analysis Presentation; conducted quality check of documents assembled; drafted index identifying each document and providing pinpoint cite for location in presentation; drafted report summarizing productivity of reviewers for week ending April 4, 2014.
4341	Frantzgermain Bernadin	SA	04/08/14	9.0	030	Prepared an Index of and Created a compilation of documents reflecting a search of documents referenced in a Presentation. these documents included but were not limited to the following: Profit and Loss documents, all custody RFP questions, RFP Responses, and FX Answers for RFP Machine.
4369	David Pospischil	SA	04/08/14	8.0	030	Searching database for and printing documents cited in presentation; conferences with team regarding organization of documents; organizing documents; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4257	Orlando Perez	SA	04/08/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	04/09/14	0.7	080	E-mails to/from Eric Belfi and David Goldsmith re: ARTRS ESI and production
4341	Frantzgermain Bernadin	SA	04/09/14	6.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/09/14	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4257	Orlando Perez	SA	04/09/14	7.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	04/10/14	3.0	010	Research on the case
1179	Michael Rogers	P	04/10/14	0.5	080	E-mails to/from Eric Belfi and David Goldsmith re: meeting to discuss ARTRS documents and production
4341	Frantzgermain Bernadin	SA	04/10/14	10.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/10/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.

4257	Orlando Perez	SA	04/10/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	04/11/14	10.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/11/14	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4257	Orlando Perez	SA	04/11/14	8.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	04/14/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for the week ending April 11, 2014.
4341	Frantzgermain Bernadin	SA	04/14/14	11.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/14/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, costs, FX revenues.
4257	Orlando Perez	SA	04/14/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	04/15/14	0.3	080	Discussion with Mike Rogers re: May 9 presentation; issues and strategy
0625	Christopher Keller	P	04/15/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
1179	Michael Rogers	P	04/15/14	5.2	080	Conference with David Goldsmith re: prepare for May 9 mediation; analyze documents re: same; analyze Mike Lesser power point presentation re: same; draft updated and amended PPT presentation
1179	Michael Rogers	P	04/15/14	0.3	020	E-mails to/from Vincent DiForto and Sherief Morsy re: Levie SOC and request for waiver of fees
4341	Frantzgermain Bernadin	SA	04/15/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/15/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues.
4257	Orlando Perez	SA	04/15/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	04/16/14	1.0	130	Discussed case strategy with mike rogers and David goldsmith
0571	David Goldsmith	P	04/16/14	1.8	080	Meeting with Eric Belfi and Mike Rogers re: mediation and discovery strategy; e-mail co-counsel re: new internal deadline for Powerpoint slides for May 9 presentation; discussions and meeting with Mike Rogers re: May 9 presentation issues and strategy

0625	Christopher Keller	P	04/16/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4341	Frantzgermain Bernadin	SA	04/16/14	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/16/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including costs, FX revenues.
4257	Orlando Perez	SA	04/16/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0625	Christopher Keller	P	04/17/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4341	Frantzgermain Bernadin	SA	04/17/14	9.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/17/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	04/17/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0625	Christopher Keller	P	04/18/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4089	Todd Kussin	SA	04/18/14	1.1	030	Conferred with coders Frantz Bernadin and Orlando Perez to discuss project re: identifying and locating a set of the 20 hottest documents reviewed over the last four months; reviewed index summarizing 20 hottest documents identified as of December 13, 2013 and compared to newly-identified hot documents.
4341	Frantzgermain Bernadin	SA	04/18/14	6.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	04/18/14	7.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0625	Christopher Keller	P	04/21/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4089	Todd Kussin	SA	04/21/14	1.1	030	Prepared report summarizing productivity of reviewers for week ending April 18, 2014; conferred with coders re: identifying hottest documents coded over last six months.
4341	Frantzgermain Bernadin	SA	04/21/14	8.0	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not limited to the following: Profit and Loss documents, all custody RFP questions, RFP Responses, and FX Answers for RFP Machine.
4369	David Pospischil	SA	04/21/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds; conferences with team regarding searching database for documents produced by defendants marked as hot; reviewing notes regarding documents produced by defendants marked as hot; searching for, reviewing, and printing documents produced by defendants marked as hot.

4257	Orlando Perez	SA	04/21/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0625	Christopher Keller	P	04/22/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4341	Frantzgermain Bernadin	SA	04/22/14	6.0	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not limited to the following: Profit and Loss documents, all custody RFP questions, RFP Responses, and FX Answers for RFP Machine.
4369	David Pospischil	SA	04/22/14	6.2	030	Reviewing and organizing documents produced by defendants marked as hot; conference with T. Kussin regarding same.
4257	Orlando Perez	SA	04/22/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0103	Lawrence Sucharow	P	04/23/14	4.8	080	Prepare for mediation; review/revise file re liability; damages; class certification.
0571	David Goldsmith	P	04/23/14	0.7	080	E-mails with Mike Rogers and co-counsel re: status of document review; Hill production
0625	Christopher Keller	P	04/23/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
1179	Michael Rogers	P	04/23/14	0.7	080	E-mails to/from David Goldsmith, Todd Kussin, Mike Lesser and Dan Chiplock re: review and analysis of Hill documents
4089	Todd Kussin	SA	04/23/14	1.0	030	Reviewed documents thus far identified by reviewers as among the hottest coded over last six months; conducted quality check/secondary review of documents coded by reviewers to ensure the accuracy of their designations.
4341	Frantzgermain Bernadin	SA	04/23/14	10.5	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not limited to the following: Profit and Loss documents, all custody RFP questions, RFP Responses, and FX Answers for RFP Machine.
4369	David Pospischil	SA	04/23/14	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, FX pricing.
4257	Orlando Perez	SA	04/23/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0103	Lawrence Sucharow	P	04/24/14	5.0	080	Prepare for mediation; review/revise file re liability; damages; class certification.
0571	David Goldsmith	P	04/24/14	3.1	080	Work on May 9 presentation; meeting with Mike Rogers
0625	Christopher Keller	P	04/24/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
1179	Michael Rogers	P	04/24/14	2.3	080	E-mails to/from David Goldsmith, Cindy Ng, Mike Lesser, Dan Chiplock re: funding and expenses for mediator and doc. hosting vendor; conference with David Goldsmith re: presentation for May 9 mediation; analyze documents re: same
4089	Todd Kussin	SA	04/24/14	1.2	030	Reviewed additional documents thus far identified by reviewers as among the hottest coded over the last six months; conducted quality check/secondary review of documents coded by reviewers to ensure the accuracy of their designations.
4341	Frantzgermain Bernadin	SA	04/24/14	7.7	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not limited to the following: Profit and Loss documents, all custody RFP questions, RFP Responses, and FX Answers for RFP Machine. Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.

4369	David Pospischil	SA	04/24/14	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including reconciliation responses, standing instruction FX, FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	04/24/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0625	Christopher Keller	P	04/25/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
4341	Frantzgermain Bernadin	SA	04/25/14	8.8	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not [REDACTED]. Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/25/14	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX pricing.
4257	Orlando Perez	SA	04/25/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	04/28/14	8.4	080	Work on May 9 mediation presentation; review documents and other materials; mark-up/revise Powerpoint slides; task T. Kussin to pull documents; discussion with Mike Rogers
0625	Christopher Keller	P	04/28/14	2.5	090	Attend to potential settlement structures as well as document discovery analysis
1179	Michael Rogers	P	04/28/14	1.9	080	Conference with David Goldsmith re: May 9 presentation; analyze David Goldsmith draft of same; analyze documents cited in and referenced same; e-mails to/from David Goldsmith and Todd Kussin re: same
4341	Frantzgermain Bernadin	SA	04/28/14	7.8	030	Prepared an Index of and Created a compilation of documents reflecting a search of including but were not [REDACTED]. Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	04/28/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds.
4257	Orlando Perez	SA	04/28/14	7.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	04/28/14	2.0	030	Conducted secondary review/quality check of documents coded by reviewers over the last week to ensure the accuracy of their designations; reviewed documents identified by coders as hottest documents coded over past six months; identified, located on Catalyst platform and prepared pdfs of documents cited in internal PowerPoint presentation used at mediation session; prepared report summarizing productivity of reviewers for week ending April 25, 2014.

0571	David Goldsmith	P	04/29/14	4.3	080	Work on powerpoint slides for May 9 mediation presentation; review documents and D. Chiplock memo re: class certification issues; discussions and e-mails Mike Rogers re: same and strategy; task Mike Rogers with review
1179	Michael Rogers	P	04/29/14	2.3	080	Analyze David Goldsmith edits to May 9, presentation; e-mails to/from David Goldsmith re: same
4257	Orlando Perez	SA	04/29/14	3.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	04/30/14	3.4	080	Work on May 9 mediation Powerpoint slides and presentation; discussions with Mike Rogers re: same
1179	Michael Rogers	P	04/30/14	0.6	070	Conference call with James Johnson, Spence Burkholz, Jonah Goldstein and John Finnerty re: damages and loss causation
1179	Michael Rogers	P	04/30/14	3.2	080	Conferences with David Goldsmith re: May 9 presentation; analyze same; comments re: same
4369	David Pospischil	SA	04/30/14	8.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds.
4257	Orlando Perez	SA	04/30/14	9.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	05/01/14	1.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Mike Lesser re: presentation for May 9 Mediation; analyze drafts of same
4341	Frantzgermain Bernadin	SA	05/01/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/01/14	8.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data, FX pricing.
0571	David Goldsmith	P	05/01/14	2.1	080	Finalize draft Powerpoint slides for May 9 mediation presentation; e-mail to counsel; address initial comment from M. Lesser; e-mails internally re: initial reactions to M. Lesser further comments; e-mails with Larry Sucharow re: logistics
4257	Orlando Perez	SA	05/01/14	6.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	05/02/14	2.0	080	Respond to M. Lesser comments on Powerpoint slides; e-mails re: same; revise slides re: same; discussions with Mike Rogers re: same and strategy
1179	Michael Rogers	P	05/02/14	1.5	080	Conference with David Goldsmith re: May 9 presentation; e-mails to/from David Goldsmith and Mike Lesser re: same
4341	Frantzgermain Bernadin	SA	05/02/14	6.8	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/02/14	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.

4257	Orlando Perez	SA	05/02/14	8.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	05/05/14	2.5	080	Review/comment on M. Lesser and D. Chiplock powerpoint slides; e-mails with Mike Rogers re: same and other mediation issues
1179	Michael Rogers	P	05/05/14	2.2	080	E-mails to/from David Goldsmith re: preparation for May 9th mediation meeting; analyze draft damages and class certification slides; comment re: same; e-mails to/from David Goldsmith re: same
4089	Todd Kussin	SA	05/05/14	1.0	030	Conducted secondary review/quality check of documents coded by reviewers over the last week to ensure the accuracy of their designations; reviewed documents identified by coders as hottest documents coded over past six months; prepared report summarizing productivity of reviewers for week ending May 2, 2014.
4341	Frantzgermain Bernadin	SA	05/05/14	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4257	Orlando Perez	SA	05/05/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	05/06/14	2.0	090	Reviewed materials for mediations
0103	Lawrence Sucharow	P	05/06/14	4.5	080	Prepare for mediation; review/revise draft power points re liability; damages; class certification
0571	David Goldsmith	P	05/06/14	5.4	080	Prepare for May 9 mediation presentation; mark-up Powerpoint slides; review latest class certification and damages slides; e-mails with co-counsel; send draft slides to ERISA counsel; discussions with Mike Rogers re: same; e-mails internally re: meetings
1179	Michael Rogers	P	05/06/14	1.4	080	Conferences with David Goldsmith re: preparation for May mediation meeting; e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: same
4341	Frantzgermain Bernadin	SA	05/06/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/06/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	05/06/14	7.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0103	Lawrence Sucharow	P	05/07/14	7.3	080	Prepare for mediation; review/revise draft power points re liability; damages; class certification.
0571	David Goldsmith	P	05/07/14	4.2	080	Prepare for May 9 mediation presentation; meeting with Larry Sucharow and Mike Rogers re: presentations and overall mediation strategy mark-up Powerpoint slides and issues re: mediator's proposed agenda; e-mail to co-counsel setting up call for Thursday; discussion with Stacy Auer re: logistics and preparing presentation books
1179	Michael Rogers	P	05/07/14	0.4	080	Conferences with Larry Sucharow and David Goldsmith re: May 9 meeting
1225	Stacy Auer	PL	05/07/14	0.5	080	Emails / convos re: prep for mediation;

4341	Frantzgermain Bernadin	SA	05/07/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/07/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	05/07/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	05/08/14	2.5	090	Prepared for mediation
0103	Lawrence Sucharow	P	05/08/14	5.5	080	Prepare for mediation; review/revise draft power points re liability; damages; class certification.
0571	David Goldsmith	P	05/08/14	7.5	080	Prepare for mediation and presentation on liability issues; revise/finalize slides; call with Larry Sucharow and co-counsel re: same
1179	Michael Rogers	P	05/08/14	0.3	080	E-mails to/from Eric Belfi and David Goldsmith re: ARTRS take on mediation meeting
1225	Stacy Auer	PL	05/08/14	2.2	080	Prep mediation materials and distribute same; page check same; convos and emails re: same;
4341	Frantzgermain Bernadin	SA	05/08/14	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/08/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	05/08/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	05/09/14	6.0	090	Prepared for and went to mediation
0103	Lawrence Sucharow	P	05/09/14	8.7	080	Prepare for mediation; mtg of plaintiffs' counsel; conduct mediation for plaintiffs.
0571	David Goldsmith	P	05/09/14	8.0	080	Attend mediation before J. Marks with all parties and co-counsel, presentation on liability issues; pre-meetings with co-counsel and client; e-mails with co-counsel re: all and same
1179	Michael Rogers	P	05/09/14	7.8	080	E-mails to/from David Goldsmith, Mike Lesser and Dan Chiplock re: presentation; conferences with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel & ERISA counsel re: mediation meeting; attend mediation meeting with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, George Hopkins, defense counsel, Jeff Carp and Jonathan Marks
4341	Frantzgermain Bernadin	SA	05/09/14	8.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/09/14	7.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	05/09/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1225	Stacy Auer	PL	05/09/14	0.7	080	Assist in prep of materials for mediation; emails and convos re: same;

4089	Todd Kussin	SA	05/12/14	1.0	030	Conducted secondary review/quality check of documents coded by reviewers over the last week to ensure the accuracy of their designations; prepared report summarizing productivity of reviewers for week ending May 9, 2014.
4369	David Pospischil	SA	05/12/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension funds, FX policies.
4257	Orlando Perez	SA	05/12/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	05/13/14	0.9	080	Telephone conference with and e-mails to/from Eric Belfi and Mike Lesser re: ARTRS FX trading
4341	Frantzgermain Bernadin	SA	05/13/14	9.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/13/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems; conference with T. Kussin regarding document.
4257	Orlando Perez	SA	05/13/14	6.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	05/14/14	0.4	080	E-mails to/from Eric Belfi and Rod Graves re: ARTRS FX trading; conference with David Goldsmith re: mediation posture
4341	Frantzgermain Bernadin	SA	05/14/14	11.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/14/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]
4257	Orlando Perez	SA	05/14/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	05/15/14	0.3	140	E-mails with co-counsel re: requesting lodestar and expense information
4341	Frantzgermain Bernadin	SA	05/15/14	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege.
4369	David Pospischil	SA	05/15/14	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues [REDACTED]
1179	Michael Rogers	P	05/15/14	0.5	080	Telephone conference with Rod Graves re: ARTRS FX trading
4257	Orlando Perez	SA	05/15/14	10.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	05/16/14	0.4	080	Telephone conference with Mike Lesser re: ARTRS post-2009 FX trading

4089	Todd Kussin	SA	05/16/14	2.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed documents identified by coders as hottest reviewed over last six months.
4341	Frantzgermain Bernadin	SA	05/16/14	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/16/14	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, spreads, custodial fees.
4257	Orlando Perez	SA	05/16/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	05/19/14	0.3	080	E-mails to/from David Goldsmith, Mike Lesser and Dan Chiplock re: update from mediator
4089	Todd Kussin	SA	05/19/14	1.8	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of coders for week ending May 16, 2014.
4341	Frantzgermain Bernadin	SA	05/19/14	10.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/19/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, FX revenues, spreads.
4257	Orlando Perez	SA	05/19/14	9.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	05/20/14	1.6	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations.
4341	Frantzgermain Bernadin	SA	05/20/14	7.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/20/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, standing instruction FX, spreads, public pension funds.
4257	Orlando Perez	SA	05/20/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	05/21/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/21/14	10.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, spreads, custodial fees.
4257	Orlando Perez	SA	05/21/14	4.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.

4089	Todd Kussin	SA	05/21/14	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations.
0023	Eric Belfi	P	05/22/14	1.0	130	Client communication
1179	Michael Rogers	P	05/22/14	2.3	080	Telephone conferences with Larry Sucharow re: communications with Jonathan Marks; conference call with and e-mails to/from Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: same; e-mails to/from and telephone conference with Mike Lesser re: ARTRS FX trading records; e-mails to/from Rod Graves re: same
4341	Frantzgermain Bernadin	SA	05/22/14	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/22/14	5.2	030	Conferences with T. Kussin regarding database system issue, reviewing complaint; reviewing complaint; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, standing instruction FX, FX revenues, spreads.
1179	Michael Rogers	P	05/23/14	1.8	080	Telephone conference with and e-mails to/from D. Halston re: joint motion to extend stay; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: same; analyze draft of same; e-mails to/from Mike Lesser and Rod Graves re: ARTRS FX trade data
4341	Frantzgermain Bernadin	SA	05/23/14	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
1179	Michael Rogers	P	05/27/14	0.7	080	E-mails to/from Larry Sucharow, David Goldsmith and Mike Lesser re: ARTRS FX trade data
4089	Todd Kussin	SA	05/27/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of reviewers for week ending May 23, 2014.
4369	David Pospischil	SA	05/27/14	3.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, custodial fees.
4257	Orlando Perez	SA	05/27/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	05/28/14	1.0	130	Client communications
0571	David Goldsmith	P	05/28/14	0.7	130	E-mails internally and with co-counsel re: [REDACTED] discussions with Mike Rogers and telephone conference with Eric Belfi re: same
1179	Michael Rogers	P	05/28/14	2.3	080	Telephone conferences and conferences with Larry Sucharow, Eric Belfi, David Goldsmith and Mike Lesser re: ARTRS FX data; e-mails to/from Mike Lesser re: same
4341	Frantzgermain Bernadin	SA	05/28/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/28/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including custodial fees, standing instruction FX, FX revenues, FX pricing, spreads, public pension fund investment data; conference with F. Bernadin regarding document.

4257	Orlando Perez	SA	05/28/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
0571	David Goldsmith	P	05/29/14	0.3	080	Review proposed stipulation and application to extend stay; e-mails with Mike Rogers and co-counsel re: same
1179	Michael Rogers	P	05/29/14	1.9	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: ARTRS FX data; re: additional language for joint motion to extend stay; edit same; e-mails to/from D. Halston and A. Hornstine re: same
4089	Todd Kussin	SA	05/29/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far.
4341	Frantzgermain Bernadin	SA	05/29/14	7.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/29/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	05/29/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	05/30/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	05/30/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, costs, FX revenues.
1450	Reka Viczian	PL	05/30/14	0.2	140	Pull, file and circulate filed court doc.
4257	Orlando Perez	SA	05/30/14	8.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	06/02/14	2.6	080	Telephone conferences with and e-mail to/from Eric Belfi, Garrett Bradley, Mike Lesser and Rod Graves re: ARTRS FX data and analysis re: same
4089	Todd Kussin	SA	06/02/14	2.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending May 30, 2014.
4341	Frantzgermain Bernadin	SA	06/02/14	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/02/14	6.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.

4257	Orlando Perez	SA	06/02/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
4341	Frantzgermain Bernadin	SA	06/03/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/03/14	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/03/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street fx profit/revenue, FX policies and FX pricing documents for clients
1179	Michael Rogers	P	06/04/14	0.8	080	Conference call with e-mails to/from Mike Lesser and Rod Graves re: ARTRS FX data
4341	Frantzgermain Bernadin	SA	06/04/14	7.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/04/14	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/04/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	06/05/14	0.5	130	Client communication. Worked on discovery issues
4341	Frantzgermain Bernadin	SA	06/05/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/05/14	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/05/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	06/06/14	4.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/06/14	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/06/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.

4089	Todd Kussin	SA	06/09/14	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending June 6, 2014.
4341	Frantzgermain Bernadin	SA	06/09/14	7.3	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/09/14	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/09/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	06/10/14	0.4	040	Discussion with Mike Rogers re: ARTRS document production issues and strategy; defendant inquiries
1179	Michael Rogers	P	06/10/14	2.6	080	Conference call with D. Halston and A. Hornstine re: ARTRS document production; conference with David Goldsmith re: same; preparation for same
4341	Frantzgermain Bernadin	SA	06/10/14	8.2	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/10/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/10/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
1179	Michael Rogers	P	06/11/14	0.6	080	E-mails to/from Eric Belfi and David Goldsmith re: ARTRS document production
4341	Frantzgermain Bernadin	SA	06/11/14	6.7	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/11/14	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/11/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
0571	David Goldsmith	P	06/12/14	0.5	040	Telephone conference with Eric Belfi and Mike Rogers re: strategy on defendants' request for additional custodians and years for responsive documents; post-call discussion with Mike Rogers re: same
1179	Michael Rogers	P	06/12/14	0.9	080	Conference call with and e-mails to/from Eric Belfi and David Goldsmith re: ARTRS document retrieval and production
4341	Frantzgermain Bernadin	SA	06/12/14	7.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege

4341	Frantzgermain Bernadin	SA	06/12/14	1.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/12/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/12/14	8.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
0023	Eric Belfi	P	06/13/14	1.5	130	Provided update to client and went over discovery issues
4341	Frantzgermain Bernadin	SA	06/13/14	8.4	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/13/14	4.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/13/14	7.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4089	Todd Kussin	SA	06/16/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending June 13, 2014.
4341	Frantzgermain Bernadin	SA	06/16/14	7.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/16/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/16/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	06/17/14	6.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/17/14	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs.
4257	Orlando Perez	SA	06/17/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	06/18/14	6.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege

4369	David Pospischil	SA	06/18/14	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, costs, systems.
4257	Orlando Perez	SA	06/18/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	06/19/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/19/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems.
4257	Orlando Perez	SA	06/19/14	4.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4341	Frantzgermain Bernadin	SA	06/20/14	8.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/20/14	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems.
0023	Eric Belfi	P	06/23/14	1.0	130	Client communication
1225	Stacy Auer	PL	06/23/14	0.2	140	Review recent orders and track deadline of stay;
1450	Reka Viczian	PL	06/23/14	0.6	140	Pull new documents, organize in filesite and distribute.
4089	Todd Kussin	SA	06/23/14	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending June 20, 2014; reviewed documents identified by reviewers as the hottest of the hot since the most recent of such analyses.
4341	Frantzgermain Bernadin	SA	06/23/14	9.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/23/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX revenues, FX pricing, public pension funds.
1179	Michael Rogers	P	06/23/14	1.0	080	Analyze Court's orders; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Mike Lesser, Dan Chiplock and Evan Hoffman re: same
4257	Orlando Perez	SA	06/23/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.
4369	David Pospischil	SA	06/24/14	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	06/24/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policies and FX pricing documents for clients.

4341	Frantzgermain Bernadin	SA	06/25/14	5.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/25/14	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	06/25/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4341	Frantzgermain Bernadin	SA	06/26/14	5.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/26/14	6.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	06/26/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4341	Frantzgermain Bernadin	SA	06/27/14	8.9	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/27/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	06/27/14	9.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
1179	Michael Rogers	P	06/30/14	1.9	080	Work out assignment of resources over coming months; emails to/from Larry Sucharow and David Goldsmith re: same
4089	Todd Kussin	SA	06/30/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending June 27, 2014; reviewed documents identified by reviewers as the hottest of the hot since the most recent of such analyses.
4341	Frantzgermain Bernadin	SA	06/30/14	8.6	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	06/30/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	06/30/14	10.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.

4089	Todd Kussin	SA	07/01/14	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; reviewed documents identified by reviewers as the hottest of the hot since the most recent of such analyses.
4341	Frantzgermain Bernadin	SA	07/01/14	8.0	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	07/01/14	6.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies; conference with T. Kussin regarding document.
4257	Orlando Perez	SA	07/01/14	9.1	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4341	Frantzgermain Bernadin	SA	07/02/14	5.5	030	Reviewed non-consecutively bates numbered documents discussing variations of the term "foreign exchange" provided by the Defendants in order to determine their responsiveness to defendants' requests as well as any applicable privilege
4369	David Pospischil	SA	07/02/14	7.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies.
4257	Orlando Perez	SA	07/02/14	10.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	07/07/14	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending July 3, 2014.
4369	David Pospischil	SA	07/07/14	5.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies, FX pricing.
4257	Orlando Perez	SA	07/07/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
1179	Michael Rogers	P	07/08/14	1.5	080	E-mails to/from Larry Sucharow, David Goldsmith, Cindy Ng, M. Lesser, D. Chiplock and Laura Gerber re: remittance of fees to mediator; re: budgetary items re: same; e-mails to/from Eric Belfi, David Goldsmith, Rod Graves, Chris Ausbrooks and A. Patton re: ARTRS ESI retrieval
4089	Todd Kussin	SA	07/08/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed documents identified by coders as the hottest of the hot reviewed over the last six months.
4257	Orlando Perez	SA	07/08/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.

4369	David Pospischil	SA	07/08/14	5.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies, FX pricing.
4369	David Pospischil	SA	07/09/14	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, reconciliation responses, standing instruction FX, FX revenues, costs, FX pricing, public pension funds.
4257	Orlando Perez	SA	07/09/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
1179	Michael Rogers	P	07/10/14	1.0	080	E-mails to/from Larry Sucharow, David Goldsmith, Cindy Ng, Mike Lesser and Dan Chiplock re: budgetary items
4369	David Pospischil	SA	07/10/14	8.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds, FX pricing.
4257	Orlando Perez	SA	07/10/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
1179	Michael Rogers	P	07/11/14	1.3	080	Telephone conference with A. Patton re: retrieval of ARTRS documents; conference call with Wayne Greathouse, Rod Graves, Chris Ausbrooks and A. Patton re: same
4369	David Pospischil	SA	07/11/14	8.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.
4257	Orlando Perez	SA	07/11/14	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	07/14/14	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending July 11, 2014; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4369	David Pospischil	SA	07/14/14	5.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.
4257	Orlando Perez	SA	07/14/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/15/14	5.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.
4257	Orlando Perez	SA	07/15/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/16/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.

4257	Orlando Perez	SA	07/16/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/17/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.
4257	Orlando Perez	SA	07/17/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/18/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds.
4257	Orlando Perez	SA	07/18/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	07/21/14	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending July 18, 2014; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4369	David Pospischil	SA	07/21/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds, costs, FX revenues.
4257	Orlando Perez	SA	07/21/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/22/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	07/22/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/23/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	07/23/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4257	Orlando Perez	SA	07/24/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4369	David Pospischil	SA	07/25/14	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.

4089	Todd Kussin	SA	07/28/14	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending July 25, 2014; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4369	David Pospischil	SA	07/28/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	07/28/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients
4369	David Pospischil	SA	07/29/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension funds, FX revenues.
4257	Orlando Perez	SA	07/29/14	9.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients
4369	David Pospischil	SA	07/30/14	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds, costs.
4257	Orlando Perez	SA	07/30/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	07/30/14	1.1	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4369	David Pospischil	SA	07/31/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	07/31/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	08/01/14	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4369	David Pospischil	SA	08/01/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, FX pricing, public pension funds.
4257	Orlando Perez	SA	08/01/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.

4089	Todd Kussin	SA	08/04/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending August 1, 2014; reviewed documents identified by reviewers as hottest of those coded hot over the last six months.
4257	Orlando Perez	SA	08/04/14	8.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4257	Orlando Perez	SA	08/05/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients.
4089	Todd Kussin	SA	08/06/14	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far.
4257	Orlando Perez	SA	08/06/14	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices. Documents were also marked as hot.
4257	Orlando Perez	SA	08/07/14	10.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4089	Todd Kussin	SA	08/11/14	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending August 8, 2014.
4257	Orlando Perez	SA	08/11/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4257	Orlando Perez	SA	08/12/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/13/14	6.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems.

4257	Orlando Perez	SA	08/13/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/14/14	8.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies, netting.
4257	Orlando Perez	SA	08/14/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/15/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including systems, FX policies, netting, best execution, FX pricing, costs, FX revenues, public pension funds.
4257	Orlando Perez	SA	08/15/14	7.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4089	Todd Kussin	SA	08/18/14	1.0	040	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending August 15, 2014.
4369	David Pospischil	SA	08/18/14	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds.
4257	Orlando Perez	SA	08/18/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4257	Orlando Perez	SA	08/19/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/20/14	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension funds.
4257	Orlando Perez	SA	08/20/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/21/14	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.

4257	Orlando Perez	SA	08/21/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/22/14	5.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4257	Orlando Perez	SA	08/22/14	7.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4369	David Pospischil	SA	08/25/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4257	Orlando Perez	SA	08/25/14	9.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX profits documents for clients as well as client's inquiries regarding state street's FX practices.
4089	Todd Kussin	SA	08/26/14	1.1	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; conferred with reviewer re: proper designation of document discussing draft of agreement referencing standing instructions; prepared report summarizing productivity of State Street reviewers for week ending August 22, 2014.
4369	David Pospischil	SA	08/26/14	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4257	Orlando Perez	SA	08/26/14	4.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4089	Todd Kussin	SA	08/27/14	1.7	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; conferred with reviewer re: proper designation of documents re: FX pricing; conferred with reviewers and IT Department re: error messages on Catalyst program preventing review of documents by coders.
4369	David Pospischil	SA	08/27/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4257	Orlando Perez	SA	08/27/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	08/28/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.

4257	Orlando Perez	SA	08/28/14	9.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	08/29/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	08/29/14	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4089	Todd Kussin	SA	09/02/14	1.1	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending August 29, 2014.
4369	David Pospischil	SA	09/02/14	3.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	09/02/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4089	Todd Kussin	SA	09/03/14	0.7	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far.
4257	Orlando Perez	SA	09/03/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4089	Todd Kussin	SA	09/04/14	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; communications with coders and administrators of catalyst platform in order to determine source of coders' inability to properly open documents contained in their Catalyst folders.
4369	David Pospischil	SA	09/04/14	8.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4369	David Pospischil	SA	09/05/14	8.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/05/14	8.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.

4089	Todd Kussin	SA	09/08/14	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending September 5, 2014.
4369	David Pospischil	SA	09/08/14	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/08/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	09/09/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/09/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	09/10/14	6.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/10/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	09/11/14	7.4	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/11/14	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	09/12/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX.
4257	Orlando Perez	SA	09/12/14	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4089	Todd Kussin	SA	09/15/14	2.1	030	Emails and phone call with Catalyst support staff in order to discuss more concise weekly report generating data to summarize productivity of coders as measured by documents and pages coded per week, usage time on Catalyst, and progress in completing production; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending September 12, 2014.

4369	David Pospischil	SA	09/15/14	6.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	09/15/14	8.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy documents for clients.
4369	David Pospischil	SA	09/16/14	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	09/16/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	09/17/14	6.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4257	Orlando Perez	SA	09/17/14	7.9	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	09/18/14	9.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	09/18/14	9.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4257	Orlando Perez	SA	09/19/14	8.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
1179	Michael Rogers	P	09/22/14	0.9	080	Analyze letter from A. Hornstein re: ARTRS document production; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Lief, Garrett Bradley, Mike Lesser and Dan Chiplock re: same
4089	Todd Kussin	SA	09/22/14	1.5	030	Emails with Catalyst support staff in order to discuss more concise weekly report generating data to summarize productivity of coders as measured by documents and pages coded per week, usage time on Catalyst, and progress in completing production; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; designed and constructed more detailed format for productivity report including additional calculations for progress of review by Labaton review team; prepared report summarizing productivity of State Street reviewers for week ending September 19, 2014.
4369	David Pospischil	SA	09/22/14	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.

4257	Orlando Perez	SA	09/22/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0023	Eric Belfi	P	09/23/14	1.5	040	Discovery issues
1179	Michael Rogers	P	09/23/14	0.7	080	E-mails to/from Eric Belfi, Mike Lesser, Dan Chiplock, Rod Graves and Chris Ausbrooks re: ARTRS document production issues
4369	David Pospischil	SA	09/23/14	8.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	09/23/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
1179	Michael Rogers	P	09/24/14	2.6	080	Conference call with Mike Lesser and Dan Chiplock re: SST requests for further ARTRS document production; conference call with Rod Graves and Chris Ausbrooks re: same
4369	David Pospischil	SA	09/24/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues, FX pricing.
4257	Orlando Perez	SA	09/24/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	09/26/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
1179	Michael Rogers	P	09/29/14	1.3	080	Analyze ARTRS documents for production; e-mails to/from Rod Graves re: same
4089	Todd Kussin	SA	09/29/14	1.1	030	Examined emails from Catalyst support staff in effort to develop more concise weekly report generating data to summarize productivity of coders as measured by documents and pages coded per week, usage time on Catalyst, and progress in completing production; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of State Street reviewers for week ending September 26, 2014.
4369	David Pospischil	SA	09/29/14	5.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	09/29/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	09/30/14	8.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.

4257	Orlando Perez	SA	09/30/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
1179	Michael Rogers	P	10/01/14	0.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, M. Thornton, Garrett Bradley, Bob Lieff, Lynn Sarko, Carl Kravitz, Michael Lesser and Dan Chiplock re: Larry Sucharow communications with B. Paine
4369	David Pospischil	SA	10/01/14	8.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues, FX pricing.
4257	Orlando Perez	SA	10/01/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	10/02/14	5.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/02/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4257	Orlando Perez	SA	10/03/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4089	Todd Kussin	SA	10/06/14	1.0	030	Communications with Catalyst support staff in order to request reorganization of Labaton folders containing uncoded documents and also to receive more recent report of coders' progress; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of State Street reviewers for week ending October 3, 2014.
4369	David Pospischil	SA	10/06/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4369	David Pospischil	SA	10/07/14	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/07/14	8.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	10/08/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.

4257	Orlando Perez	SA	10/08/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0571	David Goldsmith	P	10/09/14	0.2	130	E-mails with Larry Sucharow and Mike Rogers re: settlement/mediation status and strategy
4369	David Pospischil	SA	10/09/14	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/09/14	8.6	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	10/10/14	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/10/14	7.7	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4089	Todd Kussin	SA	10/13/14	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of State Street reviewers for week ending October 10, 2014.
4369	David Pospischil	SA	10/13/14	7.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/13/14	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4369	David Pospischil	SA	10/14/14	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/14/14	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
1179	Michael Rogers	P	10/15/14	1.3	080	E-mails to/from Todd Kussin, Matthew Yan, Rod Graves, Chris Ausbrooks, Aaron Patton and Jeff Hudson re: ARTRS documents
4369	David Pospischil	SA	10/15/14	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/15/14	7.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.

1179	Michael Rogers	P	10/16/14	0.9	080	E-mails to/from Todd Kussin, Matthew Yan, Rod Graves, Chris Ausbrooks, Aaron Patton and Jeff Hudson re: ARTRS documents
4369	David Pospischil	SA	10/16/14	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/16/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX Profits and Revenues and Public Pension Funds.
1179	Michael Rogers	P	10/17/14	0.5	080	E-mails to/from Todd Kussin, Matthew Yan, Rod Graves, Chris Ausbrooks, Aaron Patton and Jeff Hudson re: ARTRS documents
4369	David Pospischil	SA	10/17/14	4.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/17/14	8.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX Profits and Revenues and Public Pension Funds.
4089	Todd Kussin	SA	10/17/14	1.0	030	Reviewed prior communications and exchanged additional emails among Mike Rogers, IT Department, and vendor Precision Legal regarding current production from Arkansas Teachers Retirement System in order to decide on method and organization of additional documents provided by plaintiff to be uploaded onto Concordance database and reviewed..
4089	Todd Kussin	SA	10/20/14	1.1	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of State Street reviewers for week ending October 17, 2014; communications with Catalyst support re: provision of metrics in order to prepare such report.
4089	Todd Kussin	SA	10/20/14	1.3	040	Searched for and reviewed all correspondence regarding analysis of documents provided by Arkansas Teachers Retirement ("ATRS"), including guidelines for selection of documents to be produced to defendants; compiled packet of same to be provided to coders in advance of reviewing and selecting additional documents provided by ATRS to be produced to defendants.
4257	Orlando Perez	SA	10/20/14	8.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX Profits and Revenues and Public Pension Funds.
4089	Todd Kussin	SA	10/21/14	1.9	040	Searched for and reviewed additional correspondence regarding analysis of documents provided by Arkansas Teachers Retirement ("ATRS"), including guidelines for selection of documents to be produced to defendants; conferred with Michael Rogers regarding goals of review and criteria for selection of documents to be produced to defendants, including issues with respect to the global mandate of certain managers; met with reviewers Orlando Perez and David Pospischil to provide documents containing guidelines for review and discussed strategies for selection and coding of documents.

4369	David Pospischil	SA	10/21/14	6.7	040	Team meeting and conferences with T. Kussin regarding review of additional client documents; reviewing document requests and related materials; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.
4257	Orlando Perez	SA	10/21/14	7.8	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX Profits and Revenues and Public Pension Funds.
4089	Todd Kussin	SA	10/22/14	1.6	040	Conferred with reviewers Orlando Perez and David Pospischil regarding assignment to review documents provided by Arkansas Teachers Retirement ("ATRS") in order to identify those that are non-privileged and responsive, and thus appropriate for production to defendants; reviewed documents on Concordance database, creating tags to organize such documents for more efficient use by reviewers.
4369	David Pospischil	SA	10/22/14	7.3	040	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues; team meeting and conference with T. Kussin regarding review of additional client documents; reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTS-HC 006568 - 006617 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/22/14	8.0	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4369	David Pospischil	SA	10/23/14	7.0	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTS-HC 006618 - 006815 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/23/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
0023	Eric Belfi	P	10/24/14	1.0	130	Updated the client
4369	David Pospischil	SA	10/24/14	7.0	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTS-HC 006816 - 007035 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
0571	David Goldsmith	P	10/24/14	0.2	080	Review e-mail from Larry Sucharow and J. Marks re: status of mediation; e-mails internally re: same and setting up call
4257	Orlando Perez	SA	10/24/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
0103	Lawrence Sucharow	P	10/27/14	1.5	130	Various conferences and communications with co-lead counsel and mediator re settlement strategy
0571	David Goldsmith	P	10/27/14	0.7	080	Telephone conference with Larry Sucharow, Mike Rogers, R. Loeff, C. Chiplock, M. Thornton, M. Lesser re: settlement mediation status and strategy; pre-call discussion with Mike Rogers re: same
1179	Michael Rogers	P	10/27/14	1.4	080	Conference call with Larry Sucharow, David Goldsmith, Mike Thornton, Bob Loeff, Mike Lesser and Dan Chiplock re: mediation scheduling and message for Marks and SST; conference with Larry Sucharow and David Goldsmith re: same; e-mails to/from Mike Lesser and Dan Chiplock re: same

4089	Todd Kussin	SA	10/27/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teachers Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness; prepare report summarizing productivity of reviewers for the week ending October 24, 2014.
4369	David Pospischil	SA	10/27/14	3.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 007036 - 007220 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4369	David Pospischil	SA	10/28/14	8.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 007221 - 007650 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/28/14	8.8	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
0103	Lawrence Sucharow	P	10/29/14	2.0	130	Correspond mediator.
0103	Lawrence Sucharow	P	10/29/14	2.0	130	Attention to email correspondence.
4089	Todd Kussin	SA	10/29/14	1.8	040	Performed secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to verify coders' designation of documents as responsive/non-responsive to defendants' requests and privileged/non-privileged.
4369	David Pospischil	SA	10/29/14	7.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 007651 - 008084 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/29/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4369	David Pospischil	SA	10/30/14	9.4	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 008085 - 008614 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/30/14	8.6	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4369	David Pospischil	SA	10/31/14	5.3	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 008615 - 009045 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	10/31/14	9.4	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	11/03/14	0.8	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for the week ending October 31, 2014.
4369	David Pospischil	SA	11/03/14	6.6	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 009046 - 009498 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	11/03/14	8.8	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.

4089	Todd Kussin	SA	11/04/14	0.8	040	Conducted secondary review/quality check of documents provided by client Arkansas Teachers Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and privilege; conferred with reviewer David Pospischil re: responsiveness of documents involving [REDACTED] given their dates outside the relevant time period.
4369	David Pospischil	SA	11/04/14	6.3	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 009499 - 009671 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding review, documents.
4257	Orlando Perez	SA	11/04/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	11/05/14	4.3	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 009672 - 009715 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	11/05/14	8.8	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	11/06/14	1.2	040	Conducted secondary review/quality check of documents provided by client Arkansas Teachers Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and privilege; conferred with reviewer David Pospischil re: responsiveness of documents involving [REDACTED] yet not specifically alluding to foreign exchange transactions.
4369	David Pospischil	SA	11/06/14	7.3	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 009716 - 009926 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding review, documents.
4257	Orlando Perez	SA	11/06/14	4.6	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
4257	Orlando Perez	SA	11/07/14	9.3	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
0571	David Goldsmith	P	11/10/14	0.2	130	E-mails internally re: Wall Street Journal inquiry on SST disclosure of unrelated DOJ subpoenas
1179	Michael Rogers	P	11/10/14	1.0	080	E-mails to/from Larry Sucharow, Joel Bernstein, Eric Belfi, David Goldsmith and Matt Lesser re: SST disclosures to SEC
4089	Todd Kussin	SA	11/10/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for the week ending November 7, 2014.
4369	David Pospischil	SA	11/10/14	5.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 009927 - 010408 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4089	Todd Kussin	SA	11/11/14	1.8	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; conferred with reviewer David Pospischil re: documents containing reference to George Hopkins, but not necessarily discussing legal issues.

4369	David Pospischil	SA	11/11/14	6.4	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 010409 - 010441 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conference with T. Kussin regarding documents, review; reviewing document requests.
4257	Orlando Perez	SA	11/11/14	9.0	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	11/12/14	1.6	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; conferred with reviewer David Pospischil re: ██████████ documents discussing foreign exchange transactions yet not in the context of the issue involved in the present case.
4369	David Pospischil	SA	11/12/14	8.5	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 010442 - 010544 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	11/12/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4369	David Pospischil	SA	11/13/14	7.4	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 010545 - 010768 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	11/13/14	8.8	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	11/14/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; conferred with reviewer David Pospischil re: ██████████ billing correspondence.
4369	David Pospischil	SA	11/14/14	7.0	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 010769 - 010973 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin regarding documents.
4257	Orlando Perez	SA	11/14/14	8.4	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	11/17/14	1.3	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for week ending November 14, 2014.
4369	David Pospischil	SA	11/17/14	6.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 010974 - 011107 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	11/17/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privileged. Documents were reviewed in Concordance.

1179	Michael Rogers	P	11/18/14	0.3	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel and Jonathan Marks re: mediation phone call
4369	David Pospischil	SA	11/18/14	7.3	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011108 - 011324 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	11/18/14	9.2	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
0571	David Goldsmith	P	11/19/14	0.4	090	Discussion with Mike Rogers re: document review project, tasking T. Kussin with pulling new relevant documents; overall settlement strategy
1179	Michael Rogers	P	11/19/14	1.4	080	Conference with David Goldsmith and emails to/from David Goldsmith and Todd Kussin re: hot documents produced by State Street
4089	Todd Kussin	SA	11/19/14	1.0	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege.
4089	Todd Kussin	SA	11/19/14	0.5	030	Conferred with coders Orlando Perez and David Pospischil re: assignment to collect, among those documents produced by defendants, the hottest of the hot documents reviewed over the last six months; discussed strategies for identifying and then selecting same.
4369	David Pospischil	SA	11/19/14	6.2	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011325 - 011471 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; team meeting with T. Kussin regarding searching for and printing documents produced by defendants marked as hot; reviewing notes regarding documents produced by defendants marked as hot.
4257	Orlando Perez	SA	11/19/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
1179	Michael Rogers	P	11/20/14	2.6	080	Prepare for call with A. Hornstine re: ARTRS document production; telephone conference with A. Hornstine re: same
4089	Todd Kussin	SA	11/20/14	2.2	030	Created template for index summarizing hottest documents coded by reviewers since May 2014, from set of documents produced by defendants; discussed same with reviewers Orlando Perez and David Pospischil; located and reviewed prior index summarizing hot documents previously coded by reviewers for comparison; reviewed documents thus far identified by coders to be included in next installment of representative hot documents.
4369	David Pospischil	SA	11/20/14	8.0	030	Conferences with T. Kussin and O. Perez regarding gathering documents produced by defendants marked as hot, index regarding same; reviewing notes regarding documents produced by defendants marked as hot; searching for, printing, organizing, and reviewing documents produced by defendants marked as hot.
4257	Orlando Perez	SA	11/20/14	6.0	030	Secondary review of documents previously coded as "Hot" within the CALPers production, for inclusion of index to be presented to partners. Conferred with Todd Kussin.
4089	Todd Kussin	SA	11/21/14	2.0	030	Conducted secondary review/quality check of documents selected by reviewers as the hottest of those marked hot since May 2014; met with David Pospischil to review all documents marked hot in that period and select those to be summarized, indexed, and provided to partners.
4369	David Pospischil	SA	11/21/14	6.8	030	Reviewing documents produced by defendants marked as hot; conference with T. Kussin regarding same; meeting with T. Kussin to review documents produced by defendants marked as hot.
4257	Orlando Perez	SA	11/21/14	8.6	030	Secondary review of documents previously coded as "Hot" within the CALPers production, for inclusion of index to be presented to partners. Conferred with Todd Kussin.

4089	Todd Kussin	SA	11/24/14	2.3	030	Conducted secondary review/quality check of documents selected by reviewers as the hottest of those marked hot since May 2014; reviewed summaries of same to be included in index to be presented to partners; prepared report summarizing productivity of reviewers for week ending November 21, 2014, and describing existing and future assignments.
4369	David Pospischil	SA	11/24/14	6.9	030	Reviewing and organizing documents produced by defendants marked as hot; drafting index regarding same.
4257	Orlando Perez	SA	11/24/14	7.4	030	Secondary review of documents previously coded as "Hot" within the CalPERS production, for inclusion of index to be presented to partners. Conferred with Todd Kussin.
4089	Todd Kussin	SA	11/25/14	2.4	030	Conducted secondary review/quality check of documents selected by reviewers as the hottest of those marked hot since May 2014; reviewed summaries of same to be included in index to be presented to Michael Rogers; conferred with David Pospischil re: method for selection of documents to be included on index; edited, supplemented, and re-organized index containing summaries of hot documents; conducted quality check of hard copies of documents to be presented to Mr. Rogers.
4369	David Pospischil	SA	11/25/14	8.4	030	Drafting index regarding documents produced by defendants marked as hot; conference with T. Kussin regarding printing additional sets of documents identified on index; searching database for, printing, and organizing documents identified on index; meeting with T. Kussin regarding index, documents.
4257	Orlando Perez	SA	11/25/14	8.8	030	Secondary review of documents previously coded as "Hot" within the CalPERS production, for inclusion of index to be presented to partners. Conferred with Todd Kussin.
4089	Todd Kussin	SA	11/26/14	4.3	030	Finalized secondary review/quality check of documents selected by reviewers as the hottest of those marked hot since May 2014; reviewed summaries of same to be included in index to be presented to Michael Rogers; combined index summaries of reviewers Orlando Perez and David Pospischil into one document and supplemented and edited the same; ensured that summaries prepared by reviewers were accurate with respect to substance of documents; assembled and organized hard copies of selected documents for review by Mr. Rogers; conferred with Mr. Perez re: selection of hot documents; conducted research within documents produced by defendants and within publicly available documents in order identify positions at State Street for each of the individuals cited in index as either recipient, sender or subject of the selected documents.
4257	Orlando Perez	SA	11/26/14	7.0	030	Secondary review of documents previously coded as "Hot" within the CalPERS production, for inclusion of index to be presented to partners. Conferred with Todd Kussin.
4369	David Pospischil	SA	12/01/14	7.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011472 - 011586 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4089	Todd Kussin	SA	12/02/14	1.0	030	Prepared and analyzed final collection of documents selected by reviewers as the hottest of those marked hot since May 2014 before providing same to Michael Rogers; performed final analysis of index summarizing same; prepared report summarizing productivity of reviewers for week ending November 26, 2014.

4369	David Pospischil	SA	12/02/14	3.1	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011587 - 011621 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; team conference with T. Kussin regarding defendants' document productions.
4257	Orlando Perez	SA	12/02/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ARTS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/03/14	8.6	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011622 - 011795 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/03/14	9.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/04/14	7.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011796 - 011866 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/04/14	9.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/05/14	7.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011867 - 011947 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/05/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/08/14	6.6	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 011948 - 012015 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/08/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	12/09/14	1.2	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for the week ending December 5, 2014.
4369	David Pospischil	SA	12/09/14	6.6	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012016 - 012121 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/09/14	8.8	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
0103	Lawrence Sucharow	P	12/10/14	1.7	130	Prepare for Monday conference call with all counsel and mediator.
1179	Michael Rogers	P	12/10/14	0.3	080	E-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: mediation and communications with SST counsel
4369	David Pospischil	SA	12/10/14	6.5	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012122 - 012248 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/10/14	8.0	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/11/14	8.6	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012249 - 012358 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.

4257	Orlando Perez	SA	12/11/14	8.2	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
0103	Lawrence Sucharow	P	12/12/14	2.5	130	Prepare for conference call with all counsel re settlement discussions.
0571	David Goldsmith	P	12/12/14	0.4	080	Telephone conference with Larry Sucharow, R. Lief, M. Thornton, M. Lesser re: mediation issues; strategy for Monday call
4369	David Pospischil	SA	12/12/14	6.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012359 - 012500 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/12/14	8.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
0103	Lawrence Sucharow	P	12/13/14	3.5	130	Conference call mediator and defendant's counsel re settlement negotiations; corespondent co-counsel re same; set up conference call with plaintiff's counsel.
0571	David Goldsmith	P	12/14/14	0.5	080	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, R. Lief, D. Chiplock, Lynn Sarko, C. Kravitz, M. Thornton re: Larry Sucharow call on Saturday and strategy for Monday call with mediator and all parties; prepare for same; follow-up e-mail re: same
1179	Michael Rogers	P	12/14/14	0.5	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: mediation and conference call with SST
0571	David Goldsmith	P	12/15/14	0.6	080	Telephone conference with J. Marks, Larry Sucharow, Mike Rogers, R. Lief, D. Chiplock, L. Sarko, M. Thornton, M. Lesser, W. Paine, D. Halston re: mediation status and settlement negotiations and position, scheduling for upcoming meetings; post-call discussion with Mike Rogers re: same
1179	Michael Rogers	P	12/15/14	2.0	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and follow-up meetings; conferences with Eric Belfi, David Goldsmith and Garrett Bradley re: same
4369	David Pospischil	SA	12/15/14	6.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012501 - 012655 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/15/14	8.7	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	12/16/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for the week ending December 12, 2014; conferred with reviewer Orlando Perez re: responsiveness of weekly report from investment manager.
4369	David Pospischil	SA	12/16/14	6.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012656 - 012879 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/16/14	9.5	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
0571	David Goldsmith	P	12/17/14	0.2	050	Discussion with Garrett Bradley re: mediation status and strategy
4089	Todd Kussin	SA	12/17/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege.
4369	David Pospischil	SA	12/17/14	7.8	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 012880 - 013086 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.

4257	Orlando Perez	SA	12/17/14	9.0	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4089	Todd Kussin	SA	12/18/14	1.1	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; conferred with reviewer Orlando Perez re: status of documents referencing George Hopkins yet not amounting to communications to or from Mr. Hopkins.
4369	David Pospischil	SA	12/18/14	4.9	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 013087 - 013294 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/18/14	6.0	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4369	David Pospischil	SA	12/19/14	5.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 013295 - 013475 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege.
4257	Orlando Perez	SA	12/19/14	8.1	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
1179	Michael Rogers	P	12/22/14	0.6	080	Conference with Garrett Bradley about January 5 meeting; e-mails to/from Mike Lesser re: same
4089	Todd Kussin	SA	12/22/14	1.3	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; prepared report summarizing productivity of reviewers for the week ending December 19, 2014; conferred with reviewer Orlando Perez re: responsiveness of dated subsequent to relevant time period but arguably discussing matters from within time period..
4369	David Pospischil	SA	12/22/14	6.7	040	Reviewing documents provided by Arkansas Teacher Retirement System ("ATRS") and bates-numbered SST-ARTRS-HC 013476 - 013600 in order to determine their responsiveness to defendants' document requests as well as any applicable privilege; conferences with T. Kussin and O. Perez regarding review; reviewing notes regarding document types reviewed.
4257	Orlando Perez	SA	12/22/14	10.4	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
1179	Michael Rogers	P	12/23/14	0.5	080	E-mails to/from Larry Sucharow, David Goldsmith and Mike Lesser re: January 5 mediation meeting
4089	Todd Kussin	SA	12/23/14	1.8	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; reviewed and made edits to memos prepared by reviewers summarizing the types of documents they marked for production to defendants.
4369	David Pospischil	SA	12/23/14	7.3	040	Drafting list regarding document types identified in review of additional client documents; conferences with T. Kussin regarding same.
4257	Orlando Perez	SA	12/23/14	5.4	040	Reviewed nonconsecutive bates numbered documents provided by ATRS for privilege. Documents were reviewed in Concordance.
4257	Orlando Perez	SA	12/23/14	4.3	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.

4089	Todd Kussin	SA	12/26/14	1.4	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege.
0103	Lawrence Sucharow	P	12/29/14	3.5	080	Prepare for mediation session on 1/5; review damages analyses; review liability presentations.
4089	Todd Kussin	SA	12/29/14	1.5	040	Conducted secondary review/quality check of documents provided by client Arkansas Teacher Retirement System and coded by reviewers for production to defendants in order to certify their judgments of responsiveness and non-privilege; reviewed brief memos prepared by reviewers David Pospischil and Orlando Perez describing types of documents marked for production to defendants.
4257	Orlando Perez	SA	12/29/14	9.4	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0103	Lawrence Sucharow	P	12/30/14	4.8	080	Prepare for mediation session on 1/5; review damages analyses; review liability presentations.
0571	David Goldsmith	P	12/30/14	1.8	080	Prepare for December 31 conference call with all plaintiffs' counsel re: mediation and settlement; circulate powerpoint slides from May 9 mediation session
0023	Eric Belfi	P	12/30/14	1.0	130	Client communication
4257	Orlando Perez	SA	12/30/14	10.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive were FX profits and revenues.
0103	Lawrence Sucharow	P	12/31/14	2.3	080	Conference call with plaintiff's counsel to discuss preparation for mediation session on 1/5; continued review of damages and liability analyses.
0571	David Goldsmith	P	12/31/14	2.0	090	Telephone conference with Larry Sucharow, Mike Rogers, Lynn Sarko, C. Kravitz, M. Thornton, M. Lesser, R. Lief, D. Chiplock re: strategy for January 5 mediation session; prepare for same
1179	Michael Rogers	P	12/31/14	1.4	080	Conference call with Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: Monday meeting
4257	Orlando Perez	SA	12/31/14	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive were FX profits and revenues.
0023	Eric Belfi	P	12/31/14	1.0	130	Client communication
0023	Eric Belfi	P	01/02/15	1.0	130	Client communication
0103	Lawrence Sucharow	P	01/02/15	6.5	080	Review damages analysis and case issues in preparation for NYC mediation.
0103	Lawrence Sucharow	P	01/03/15	5.0	080	Prepare fore mediation meetings in NYC.
0103	Lawrence Sucharow	P	01/04/15	7.3	080	Prepare for mediation session with Jonathan Mark; plaintiff and defendants counsel; travel from Phoenix to NYC for mediation
1179	Michael Rogers	P	01/04/15	1.3	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: Monday meeting
0103	Lawrence Sucharow	P	01/05/15	7.0	080	Conduct mediation; prepare for mediation; confer with plaintiffs counsel.
0571	David Goldsmith	P	01/05/15	6.1	080	Attend mediation session before J. Marks, prepare for same; pre-mediation meeting with co-counsel; discussions with Larry Sucharow and Mike Rogers, other plaintiffs' counsel post-meeting; e-mails with co-counsel; discussion with Joel Bernstein re: settlement prospects

1179	Michael Rogers	P	01/05/15	4.1	080	Attend mediation meeting with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel; and State Street counsel; conferences with Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: same
4089	Todd Kussin	SA	01/05/15	3.6	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed folders of documents for each coder contained on Catalyst platform in order to tabulate progress of review thus far; prepared report summarizing productivity of State Street reviewers for week ending December 31, 2014; communications with Catalyst database IT staff regarding calculation of number of un-coded pages remaining between the three plaintiffs firms among all productions by defendants; reviewed all prior productivity reports to ensure consistency of results from Catalyst; communications with Mike Rogers re: same.
4369	David Pospischil	SA	01/05/15	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues; conference with T. Kussin regarding review of defendants' production.
4257	Orlando Perez	SA	01/05/15	6.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0023	Eric Belfi	P	01/06/15	1.5	130	Discussed case strategy with L. Sucharow.
1179	Michael Rogers	P	01/06/15	0.4	080	E-mails to/from Mike Lesser re: damages; conference with Garrett Bradley re: yesterday's meeting
4089	Todd Kussin	SA	01/06/15	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; communications with Catalyst database IT staff regarding calculation of number of un-coded pages among all productions from defendants remaining in the folders of each of the three plaintiff firms; reviewed all prior productivity reports to ensure consistency of results from Catalyst.
4369	David Pospischil	SA	01/06/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4257	Orlando Perez	SA	01/06/15	8.2	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
4089	Todd Kussin	SA	01/07/15	1.2	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; communications with Catalyst database IT staff regarding calculation of number of un-coded pages among all productions from defendants remaining in the folders of each of the three plaintiff firms as well as communications regarding whether there were ways to calculate the number of documents that had not yet been coded but were otherwise viewed by reviewers in some way; emails with Michael Rogers re: same; reviewed all prior weekly productivity reports to ensure consistency of results from Catalyst.
4369	David Pospischil	SA	01/07/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues; conference with T. Kussin regarding review.

4257	Orlando Perez	SA	01/07/15	9.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0023	Eric Belfi	P	01/08/15	2.0	130	Client communication
0571	David Goldsmith	P	01/08/15	0.4	130	E-mails internally re: STA and document review status; planning for February 4 mediation session
1179	Michael Rogers	P	01/08/15	0.6	080	Conference with and e-mails to/from Larry Sucharow, Chris Keller, Eric Belfi, Mike Lesser and Evan Hoffman re: case strategy
4089	Todd Kussin	SA	01/08/15	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; reviewed email chain involving Michael Rogers and co-counsel regarding total number of documents and pages remaining un-coded on Catalyst database for the three plaintiff firms; compared calculations made by co-counsel to those provided by Catalyst IT department as well as weekly records kept thus far re: Labaton coders in order to assess consistency; reviewed prior records re: Labaton coders in order to calculate estimate of average number of pages reviewed per day and month; discussed same with Mr. Rogers via email and phone.
4369	David Pospischil	SA	01/08/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4257	Orlando Perez	SA	01/08/15	8.0	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0023	Eric Belfi	P	01/09/15	2.5	130	Worked on case strategy and discovery issues with Mike Rogers and L Sucharow.
1179	Michael Rogers	P	01/09/15	2.6	080	Conferences and conference calls with Larry Sucharow and Eric Belfi re: case strategy
4089	Todd Kussin	SA	01/09/15	0.9	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations.
4369	David Pospischil	SA	01/09/15	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4257	Orlando Perez	SA	01/09/15	6.5	030	Reviewed non-consecutively bates numbered documents from state street in order to determine their responsiveness to plaintiff's requests on catalyst review platform. Documents reviewed were primarily non-responsive. Documents that were responsive included State Street FX policy and customer inquiry documents for clients.
0571	David Goldsmith	P	01/12/15	0.5	090	Discussion with Mike Rogers re: settlement strategy, staffing issues
1179	Michael Rogers	P	01/12/15	1.2	080	Conferences with Joel Bernstein and David Goldsmith re: case strategy
4089	Todd Kussin	SA	01/12/15	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity of State Street reviewers for week ending January 9, 2015.
4369	David Pospischil	SA	01/12/15	5.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
0023	Eric Belfi	P	01/13/15	1.0	040	Discovery issue
1179	Michael Rogers	P	01/13/15	1.4	080	Analyze Mike Lesser's analysis of SST's revenues and expenses; e-mails to/from Eric Belfi, David Goldsmith, Mike Lesser and Dan Chiplock re: case strategy

4089	Todd Kussin	SA	01/13/15	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations; conferred with Danette McKenzie-Moreau re: recruitment of additional coders for review team.
4369	David Pospischil	SA	01/13/15	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues, FX pricing.
0571	David Goldsmith	P	01/14/15	0.2	030	Telephone conference with Mike rogers; e-mails re: document review and preparation session for new STA's
1179	Michael Rogers	P	01/14/15	1.4	080	Conferences and conference calls with and e-mails to/from Eric Belfi, David Goldsmith, Garrett Bradley and Todd Kussin re: case strategy and analysis of SST documents
1225	Stacy Auer	PL	01/14/15	0.3	040	Assist in pre of materials for Doc reviewer orientation; convos and emails re: same;
1523	Shella Mundo	PL	01/14/15	1.0	140	Prepared compilation of documents for review by new STAs per Michael Rogers; Emails and convos re same.
4089	Todd Kussin	SA	01/14/15	5.8	030	Reviewed pleadings, background materials, prior correspondence with counsel, and and work product created by review team throughout discovery in order to identify additional documents to be provided to incoming reviewers; prepared files of same and drafted cast of characters guide for reviewers; analyzed document review protocol, documents selected as the "hottest of the hot" over the course of the review, liability presentation created for May 9, 2014 mediation, and transcript of hearing on motion to dismiss; conducted secondary review/quality check of documents produced by defendants and coded by reviewers in order to ensure the accuracy of their designations.
4369	David Pospischil	SA	01/14/15	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues, FX pricing; various conferences with T. Kussin regarding orientation meeting, case, mediation powerpoint presentation, hot document indexes; reviewing mediation powerpoint presentation, hot document indexes.
0571	David Goldsmith	P	01/15/15	2.0	030	Run new STA orientation session with Mike Rogers and Team Leaders; prepare for same
1179	Michael Rogers	P	01/15/15	1.8	080	Conferences with Eric Belfi, David Goldsmith, Todd Kussin, D. Popischel and reviewing attorneys re: facts and law of case re: analysis of discovery documents
1225	Stacy Auer	PL	01/15/15	0.2	040	Email to Todd Kussin re: past doc prods; review production emails;
4071	Charles Pietrofesa	SA	01/15/15	5.1	020	Attended initial training for Arkansas Teacher Retirement System v. State Street. Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation. Starting reviewing various introductory case materials such as the Amended Class Action Complaint, Topics for Document Requests, Motion to Dismiss, Hot document index, and document review coding guide.
4089	Todd Kussin	SA	01/15/15	7.5	030	Along with David Goldsmith, Michael Rogers, and David Pospischil, attended orientation meeting with newest coders, discussing background of litigation, strategies for upcoming review of documents, and issues in case; conferred with Mr. Pospischil re: complaint and additional pleadings; met with coders to discuss documents review process, assignments for supplementing cast of characters and hot documents chart and additional issues to be aware of when reviewing documents on Catalyst; drafted emails to reviewers containing detailed instructions re: same; communications with Catalyst IT group to set up Catalyst accounts and folders for newest coders; identified additional documents to be reviewed by newest coders prior to commencement of document review, including plaintiffs' opposition to defendants' motion to dismiss; reviewed same.

4369	David Pospischil	SA	01/15/15	7.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, FX pricing, public pension fund investment data, spreads; reviewing hot document index, complaint; conference with T. Kussin regarding complaint; attending orientation meeting for new reviewers.
4236	George Kaiafas	SA	01/15/15	5.0	020	Attended case orientation and training with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil. Discussed background of litigation. Reviewed reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, hot documents chart, and other Relevant Case Memos and Materials.
4244	Judy Watson	SA	01/15/15	4.5	020	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation; reviewed pleadings and additional background materials including complaint and motion to dismiss.
4424	Jacqueline Grant	SA	01/15/15	6.5	020	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation; reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, and hot documents chart.
4242	Donato Gianturco	SA	01/15/15	4.5	020	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation; reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, and hot documents chart.
4383	James Griffin	SA	01/15/15	4.0	020	Meet with Partners and Staff Attorneys regarding case and review protocols and review of Complaint and Hot Documents.
4173	Maritza Bolano	SA	01/15/15	7.0	020	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil regarding case background, factual allegations and litigation; reviewed pleadings and additional background materials which includes complaint, hearing transcript of motion to dismiss, hot documents chart and coding fields guide.
4425	Anuj Vaidya	SA	01/15/15	5.0	020	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation; reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, and hot documents chart.
4423	Nicole Cameron	SA	01/15/15	5.0	010	Met with David Goldstein, Mike Rogers, Todd Kussin, and David Pospischil to discuss background of litigation; reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, and hot documents chart.
4071	Charles Pietrofesa	SA	01/16/15	6.9	020	Reviewed pleading documents for Arkansas Teacher Retirement System v. State Street. Reviewed various case materials such as the Amended Class Action Complaint, Topics for Document Requests, Motion to Dismiss, Hot document index, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and document review coding guide.
4089	Todd Kussin	SA	01/16/15	2.5	030	Communicated with Catalyst IT department in order to request population of folders for review by coders recently assigned to case; reviewed production letters, prior communications re: same and productivity reports in order to determine progress of review and identify documents for reviewers to code; conferred with newest reviewers re: questions pertaining to background materials including complaint, motion to dismiss opposition, and hot documents chart.
4173	Maritza Bolano	SA	01/16/15	10.0	020	Reviewed background materials, including pleadings, transcript of hearing on motion to dismiss, emails, brief in opposition of motion to dismiss and hot documents chart.
4242	Donato Gianturco	SA	01/16/15	9.6	020	Reviewed pleadings and additional background materials including complaint, transcript of hearing on motion to dismiss, and hot documents chart.



4423	Nicole Cameron	SA	01/20/15	9.5	010	Reviewed and coded 251 documents ranging from SST-ARTRS 0032287N to SS-ARTRS 0031206N. Many of these documents included Financial Audits from Accounting Firms and Portfolio Holdings Reports. Not many relevant documents coded.
4236	George Kaiafas	SA	01/20/15	8.0	030	Reviewed Doc ID #SST-ARTRS 0064142 to #SST-ARTRS 0064225. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
4425	Anuj Vaidya	SA	01/20/15	10.0	020	Reviewed documents. Coded for relevance, privilege and issue tags. Bates Range:338901 - 338976. Additionally reviewed materials.
1179	Michael Rogers	P	01/21/15	2.0	080	Analyze hot documents
4071	Charles Pietrofesa	SA	01/21/15	9.0	030	Reviewed and analyzed State Street production documents, bates range (SST-ARTS0070507 -SST-ARTS0070291)-(nonconsecutive), which regarded FX policies, FX pricing and rates, FX trade documents, FX articles, and settlement date discrepancy discussions; summarized hot documents; reviewed case materials.
4089	Todd Kussin	SA	01/21/15	2.5	030	Conferred with reviewers re: coding protocol for Catalyst database, specifically the coding of families of documents using identical priority designations, the definitions for issue coding, and navigation of folders; conferred with coders re: proper designations for investment management agreements and emails discussing standing instructions and best execution; communications with Catalyst IT support re: population of reviewers' folders with additional documents from defendants' productions; communications with Kirti Dugar, co-counsel's Litigation Supportt Manager about dividing up un-coded documents among three plaintiffs firms in a more organized manner; reviewed folders on Catalyst database assigned to Labaton coders in order to take inventory of un-coded documents and populate newest coders folders with additional documents for review.
4173	Maritza Bolano	SA	01/21/15	9.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive bates numbers.; Documents included annual reports, FX trading rate information reports, rate analyses, and emails.
4369	David Pospischil	SA	01/21/15	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data; conference with T. Kussin regarding review; conference with A. Vaidya regarding documents.
4383	James Griffin	SA	01/21/15	6.5	030	Reviewed Defendant's production of documents pertaining to Fx trading and institutional services including emails, spreadsheets, financial statements, and reports, in non-consecutive Bates range SST-ARTRS 0063316 through SST-ARTRS 0063417, and coded for responsiveness, priority, and issues.
4425	Anuj Vaidya	SA	01/21/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies for relevance, privilege and issue tags with regards to foreign exchange.
4424	Jacqueline Grant	SA	01/21/15	6.0	030	Review and analysis of Defendant's documents consisting of emails, PDFs, reports, and excel sheets, for relevance, and select issues - inconsistent Bates range from SS-ARTRS-0062911 -SS-ARTRS-0063119N, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	01/21/15	7.8	030	Reviewed from defendant's documents (bates numbers not in consecutive order) 250 documents consisting of: reconciliation statements, year end closing checklists, fx rate emails, financial statements.
4236	George Kaiafas	SA	01/21/15	7.2	030	Reviewed Doc ID #SST-ARTRS 0064026 to #SST-ARTRS 0064644. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.

4424	Jacqueline Grant	SA	01/21/15	3.0	030	Review and analysis of non consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	01/21/15	9.6	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets ██ ██ Bates numbers were non-consecutive- StateSt_CA_LIT04575144N to SST-ARTRS 0071841N
4423	Nicole Cameron	SA	01/21/15	9.0	010	Reviewed and coded emails and financial reports regarding FX revenues produced by defendants for relevance. Bates numbers were not consecutive.
1179	Michael Rogers	P	01/22/15	2.0	080	Analyze hot documents
4071	Charles Pietrofesa	SA	01/22/15	9.3	030	Reviewed and analyzed State Street production documents, bates range (SST-ARTS0070297 -SST-ARTS0071898)-(nonconsecutive), which regarded FX policies, FX pricing and rates, FX trade documents, and FX articles; quality-checked previously reviewed documents; reviewed case materials.
4089	Todd Kussin	SA	01/22/15	1.5	030	Conferred with reviewers re: proper coding designations for documents produced by defendants and uploaded onto Catalyst database, including the proper coding of fee schedules and investment management agreements with entities other than State Street; further communications with Catalyst IT support re: population of reviewers' folders with additional documents from defendants' productions; identified documents to be issued to next round of new reviewers scheduled to start within the next day and prepared collection of documents for their review.
4173	Maritza Bolano	SA	01/22/15	9.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers included investment reports, policy notices, FX trades and emails.
4369	David Pospischil	SA	01/22/15	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data.
4383	James Griffin	SA	01/22/15	5.3	030	Reviewed Defendant's production of documents pertaining to Fx trading and services including emails, spreadsheets, and financial reports, in non-consecutive Bates range SST-ARTRS 0063317 through SST-ARTRS 0063836, and coded for responsiveness, priority, and issues.
4242	Donato Gianturco	SA	01/22/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets ██ ██ Bates numbers were non-consecutive- StateSt_CA_LIT04539557 StateSt_CA_LIT04522543N
4424	Jacqueline Grant	SA	01/22/15	12.0	030	Review and analysis of non consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and Ledger Journals, for attorneys' use in preparation for further litigation.
4423	Nicole Cameron	SA	01/22/15	9.0	010	Reread Motion to Dismiss transcript and Opposition to Motion to Dismiss. No new batches assigned today.

4244	Judy Watson	SA	01/22/15	9.5	030	Review from defendant's documents (bates range not consecutive) 98 documents, qc'd 218 documents consisting of: fx rate emails, reconciliation statements, financial statements, invoices.
4425	Anuj Vaidya	SA	01/22/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies for relevance, privilege and issue tags with regards to foreign exchange.
4236	George Kaiafas	SA	01/22/15	8.0	030	Reviewed Doc ID #SST-ARTRS 0064645 to #SST-ARTRS 0064080. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
0571	David Goldsmith	P	01/23/15	1.5	030	Orientation session for new STAs; discussions with Mike Rogers re: same and strategy; task Mike Rogers with following earnings call
1179	Michael Rogers	P	01/23/15	2.5	080	Conferences with Eric Belfi, David Goldsmith, Todd Kussin and reviewing attorneys re: facts and law of case re: analysis of discovery documents; analyze same
4071	Charles Pietrofesa	SA	01/23/15	9.0	030	Quality-controlled and analyzed State Street production documents, which regarded FX policies, FX pricing and rates, FX trade documents, and FX articles; reviewed case materials.
4089	Todd Kussin	SA	01/23/15	2.5	030	Along with David Goldsmith, Michael Rogers, and Vivianne Abrahams, attended orientation meeting with newest coders, discussing background of litigation, strategies for upcoming review of documents, and issues in case; identified additional background materials for review by newest coders and prepared copies for each; conferred with coders re: background of case, strategies for review of background materials, and issues to be aware of when coding documents; communications with Kirti Dugar and Catalyst IT Support in order to formulate strategies for identifying additional un-coded documents for coders to review and to set up Catalyst accounts and folders for newest coders; conducted searches on Catalyst platform to identify un-coded documents in Labaton folders.
4173	Maritza Bolano	SA	01/23/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers, documents included trading spreadsheets, financial reports and emails.
4247	Aron Rosenbaum	SA	01/23/15	1.0	020	Received case materials. Was briefed on basics of case.
4295	Dorothy Hong	SA	01/23/15	5.5	020	Reading hand outs, amended class action complaint, plaintiff's (Arkansas) memo of law, order. Meeting with D Goldsmith et al. team.
4369	David Pospischil	SA	01/23/15	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data, FX pricing, standing instruction FX.
4383	James Griffin	SA	01/23/15	4.5	030	Reviewed Defendant's production pertaining to Fx trading and services including emails, reports, spreadsheets, and financial statements, in non-consecutive Bates range SST-ARTRS 0063326 through SST-ARTRS 0063971N, and coded for responsiveness, priority, and issues.
0103	Lawrence Sucharow	P	01/23/15	1.8	080	Prep for mediation session.
4060	Stephen Dolben	SA	01/23/15	7.0	020	Attended case overview presentation by M. Rogers, and D. Goldsmith, T. Kussin and V. Abrahams. Read and took notes on Amended Class Complaint.
4394	David Alper	SA	01/23/15	4.0	030	Read reviewed and analyzed State Street motion and complaint
4394	David Alper	SA	01/23/15	1.5	030	Meeting case review with MRogers, TKussin and VAbraham and DGoldsmith
4426	Tryphena Greene	SA	01/23/15	7.5	020	Met with David Goldsmith, Mike Rogers, Todd Kussin and Vivian Abrams to discuss background of litigation; reviewed pleadings including complaint, opposition to motion to dismiss, and transcript of hearing on motion to dismiss.
4027	Debra Fouchong	SA	01/23/15	7.4	020	Case overview with David Goldsmith and Mike Rogers - Q and A and review of complaint.

4424	Jacqueline Grant	SA	01/23/15	9.5	030	Review and analysis of non consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and Ledger Journals, for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	01/23/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. This was even more so today with memos and other docs that were not relevant for our case.  Bates numbers were non-consecutive- StateSt_CA_LIT04539783 StateSt_CA_LIT00388068
4244	Judy Watson	SA	01/23/15	9.5	030	Review from defendant's documents (bates numbers not consecutive): qc'd 280 documents consisting of fx rate emails, financial statements, investment guidelines, reconciliatioin statements, year-end closing checklists.
4423	Nicole Cameron	SA	01/23/15	9.0	010	Continued reading Motion to Dismiss transcript. No new batches assigned today.
4425	Anuj Vaidya	SA	01/23/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4041	Vivianne Brissett	SA	01/23/15	1.0	020	Attended meeting with David Goldsmith, Mike Rogers, Todd Kussin and staff attorneys for case overview and orientation. Reviewed complaint.
4236	George Kaiafas	SA	01/23/15	8.8	030	Reviewed Doc ID #SST-ARTRS 0064081 to #SST-ARTRS 0064431. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
0103	Lawrence Sucharow	P	01/24/15	4.5	080	Conf. DG and MR re Wash mediation session.
1179	Michael Rogers	P	01/26/15	1.5	080	Conferences with Eric Belfi, David Goldsmith, Todd Kussin and reviewing attorneys re: facts and law of case re: analysis of discovery documents; analyze same
4027	Debra Fouchong	SA	01/26/15	10.5	020	Reviewed the Amended Class Action Complaint, Plaintiff's Memorandum in opposition to defendant's Motion to dismiss, the Order and part of Defendant's Motion To Dismiss
4060	Stephen Dolben	SA	01/26/15	5.0	020	Read and took outline notes on Plaintiffs Memorandum of Law in Opposition to Defendants Motion to Dismiss, (p.1-50).
4071	Charles Pietrofesa	SA	01/26/15	10.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000866966 - SST_KHR_SSGM_E000874422) (nonconsecutive), which regarded FX policies, FX pricing and rates, FX trade documents, and FX articles; reviewed case materials; quality-controlled and analyzed documents.
4173	Maritza Bolano	SA	01/26/15	8.5	030	Reviewed key players and hot documents charts; Reviewed and coded documents from Defendant's production of non-consecutive Bates numbers; Documents included reports, FX trading data, presentations, charts and emails.
4247	Aron Rosenbaum	SA	01/26/15	3.8	020	Reviewed case materials.
4295	Dorothy Hong	SA	01/26/15	6.0	020	Continue to read complaint, hand outs on coding, hearing transcript b/f Mark L Wolf on defendants' motion to dismiss.
4369	David Pospischil	SA	01/26/15	4.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4383	James Griffin	SA	01/26/15	3.0	030	Reviewed Defendant's production pertaining to Fx trading and custodial services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST-ARTRS 0063451 through SST-ARTRS 0064046N, and coded for responsiveness, priority, and issues.

4426	Tryphena Greene	SA	01/26/15	5.1	030	Reviewed pleadings including Complaint, Motion to Dismiss, Memorandum of Law, Protocol, and Hot Document Index, and Quick Reference Guide.
4394	David Alper	SA	01/26/15	6.0	020	Read, reviewed, analyzed and highlighted 39 pages of the Arkansas Teacher Ret Sys v. State Street Corp Amended Class Action Complaint
						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. A continuation of the docs previously noted.
4242	Donato Gianturco	SA	01/26/15	5.7	030	Bates nummbers were non-consecutive- StateSt_CA_LIT0463184 StateSt_CA_LIT00377941
4423	Nicole Cameron	SA	01/26/15	6.0	010	Continued reading Motion to Dismiss transcript. No new batches assigned today.
4244	Judy Watson	SA	01/26/15	9.5	030	Review from defendant's documents (nonconsecutive bate range): review of documents consisting of: fx financial news analyses, fx financial market updates, State Street news summaries.
4424	Jacqueline Grant	SA	01/26/15	12.0	030	Review and analysis of non consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	01/26/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1179	Michael Rogers	P	01/27/15	1.0	080	Conferences with Eric Belfi, David Goldsmith, Todd Kussin and reviewing attorneys re: facts and law of case re: analysis of discovery documents; analyze same
4027	Debra Fouchong	SA	01/28/15	11.0	020	Reviewed ARTRS Topics for document requests in conjunction with the Amended Class Action Complaint, Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss and, the Hearing on Defendant's Motion to Dismiss.
4060	Stephen Dolben	SA	01/28/15	10.1	020	Read and took notes on Plaintiffs Memorandum of Law in Opposition to Defendants Motion to Dismiss, (p.50-65). Read and prepared notes on MTD hearing transcript (P.1-50). Read doc review coding fields "quick reference guide" provided by team leader.
4071	Charles Pietrofesa	SA	01/28/15	10.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000862905 - SST_KHR_SSGM_E000871038) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, and State Street internal FX reports.
4089	Todd Kussin	SA	01/28/15	3.2	040	Conducted secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System and marked as responsive to defendants' document requests by reviewers David Pospischil and Orlando Perez in order to ensure that none of the selected documents are privileged and that each is in fact responsive; reviewed documents marked as non-responsive to defendants' requests as well as those documents marked privileged in order to ensure that such designations are accurate.
4173	Maritza Bolano	SA	01/28/15	9.5	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers, including emails, reports, spreadsheets, and computer images of FX trading.
4247	Aron Rosenbaum	SA	01/28/15	7.3	020	Reviewed case materials.

4295	Dorothy Hong	SA	01/28/15	10.0	020	Review complaint, hearing transcript, memo of law in opposition to Defendants' (State Street) Motion to Dismiss, other hand outs, draft note on impression of reading material and e-mail to/from T Kussin.
4369	David Pospischil	SA	01/28/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing; conferences with T. Kussin regarding prior review of client documents.
4383	James Griffin	SA	01/28/15	4.7	030	Reviewed Defendant's production pertaining to Fx trading and services including emails, screen shots, and financial data, in non-consecutive Bates range SST_KHR_SSGM_E001338119 through SST_KHR_SSGM_E001344493, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	01/28/15	10.8	030	Reviewed pleadings, complaint, opposition to motion to dismiss, and transcript of hearing on motion to dismiss.
4394	David Alper	SA	01/28/15	3.0	020	Reviewed and analyzed 82 pages of the Plaintiffs Memorandum of Law in Opposition to Defendants Motion to Dismiss relevant to the Arkansas Teacher Ret System v. State Street et al. case these documents are non- consecutive or the Bates range were missing from said documents.
4394	David Alper	SA	01/28/15	1.5	020	Reviewed and analyzed Index of Documents tagged Hot on Catalyst, and reviewed Index of Hot Documents Identified from Defendants Production pertaining to the Arkansas Teachers Ret System v. State Street et al. case, these documents are non- consecutive or the Bates range were missing from said documents. Read and received email from Project Mgr regarding Cast of Characters pertinent to above referenced case.
4424	Jacqueline Grant	SA	01/28/15	10.5	030	Review and analysis of non consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	01/28/15	9.1	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. A continuation of the docs previously noted. The same continuation.  Bates nummbers were non-consecutive- StateSt_CA_LIT05038598N StateSt_CA_LIT04283988
4423	Nicole Cameron	SA	01/28/15	9.0	010	Reviewed and coded documents related to FX revenue for relevancy. Bates were numbered out of sequence.
4244	Judy Watson	SA	01/28/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx audit inquiry, fx trading revenue reports, fx P/L email discussions, fx cash projection reports, fx policy emails.
4394	David Alper	SA	01/28/15	3.0	020	Reviewed and analyzed 103 pages of Defendants Motion to Dismiss pertaining to the Arkansas Teacher Retirement System v. State Street et al. case, these documents are non- consecutive or the Bates range were missing from said documents.
4394	David Alper	SA	01/28/15	3.0	020	Completed the review and analysis of Defendants Motion to Dismiss pertaining to the Arkansas Teachers Retirement System v. State Street et al. case, and read, reviewed and analyzed handout: "Topics for ARTS Document Request" these documents are non- consecutive or the Bates range were missing from said documents.

4425	Anuj Vaidya	SA	01/28/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	01/28/15	8.8	030	Reviewed Doc ID #SST_KHR_SSGM_E001158053N to #SST_KHR_SSGM_001143579. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
4089	Todd Kussin	SA	01/28/15	3.9	030	Conducted secondary review/quality check of those documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; identified and prepared copies of additional documents to be reviewed by most recent wave of new coders and explained the significance of each as well as assignments related thereto including the running list of hot documents, the chart of the cast of characters, and the damages presentation prepared in advance of the mediation held on May 9, 2014; conferred briefly with newest coders to discuss coding protocols on Catalyst platform; conferred with coders re: proper designations for documents including internal state Street discussions re: prior customer questions and spreadsheets involving daily financial information information involving profits and losses; prepared report summarizing productivity of coders for week ending January 23, 2015.
1179	Michael Rogers	P	01/29/15	1.8	080	Analyze transcript of SST earnings call; e-mails to/from David Goldsmith, Mike Lesser and Evan Hoffman re: same
4027	Debra Fouchong	SA	01/29/15	11.0	020	Reviewed Plaintiff's Memorandum of Law, Hearing transcript on Motion to Dismiss, Index of documents Identified from defendant's production, Index of documents tagged Hot on the Catalyst, Plaintiff's Presentation on Liability, Defendant's cast of Characters re notable documents and, Coding protocols/reference Guide and introduction to Catalyst.
4060	Stephen Dolben	SA	01/29/15	10.0	020	Read and prepared notes on MTD hearing transcript (P.1-103). Read doc review coding fields "quick reference guide" provided by team leader. Attended meeting with team leader regarding the Catalyst platform and became familiar with document review protocol for the review. Completed reading of all background materials and pleading.
4071	Charles Pietrofesa	SA	01/29/15	8.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000871039 - SST_KHR_SSGM_E000897866) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, and State Street internal FX reports.
4089	Todd Kussin	SA	01/29/15	3.2	040	Conducted secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System and marked as responsive to defendants' document requests by reviewers David Pospischil and Orlando Perez in order to ensure that none of the selected documents are privileged and that each is in fact responsive; reviewed documents marked as non-responsive to defendants' requests as well as those documents marked privileged in order to ensure the accuracy of such designations.

						Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with newest wave of coders to explain use of Catalyst review platform and discuss protocol for coding documents including treatment of families and proper designations for documents not falling neatly into one of the issue categories; discussed updating of cast of characters and hot documents charts, specifically adding references to documents as review progresses.
4089	Todd Kussin	SA	01/29/15	3.5	030	
4173	Maritza Bolano	SA	01/29/15	9.5	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers including emails, reports, FX trading data, analyses; provided annotations for Hot documents in Attorney Comments field in catalyst database and in the Index of Hot Documents.
4247	Aron Rosenbaum	SA	01/29/15	8.8	020	Reviewed briefing materials.
4295	Dorothy Hong	SA	01/29/15	2.5	030	Reviewed, coded docs. Mostly irrelevant from after class period.
4369	David Pospischil	SA	01/29/15	7.8	030	Document review from State Street production consisting of e-mail correspondence, data, cross currency charts, negotiated and non-negotiated fx trades, trade practices, tickets, due diligence presentation, industry articles with comments.
4383	James Griffin	SA	01/29/15	8.5	030	Conferences with T. Kussin regarding prior review of client documents; reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX revenues, standing instruction FX; conference with team regarding database.
4426	Tryphena Greene	SA	01/29/15	10.3	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non consecutive Bates range SST_KHR_SSGM_E001315422 through SST_KHR_SSGM_E001318210, and coded for responsiveness, priority, and issues.
4394	David Alper	SA	01/29/15	3.5	020	Review pleadings: complaint, opposition to motion to dismiss, and transcript of hearing on motion to dismiss; review and analysis of inconsistently bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies and marketing of FX services for attorneys' use in preparation for further litigation.
4424	Jacqueline Grant	SA	01/29/15	8.0	030	Reviewed and analyzed power point documents pertaining to the Arkansas Teacher Retirement System v. State Street et al. case that set forth plaintiffs presentation on liability this document is non- consecutive and the Bates range were missing from said documents.
4244	Judy Watson	SA	01/29/15	9.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
						Review from defendant's documents (nonconsecutive bates ranges) consisting of: [REDACTED] investigation news articles, fx market news articles, fx cash projection reports, fx trade end of day summary reports, direct fx procedure emails.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsp [REDACTED] [REDACTED] [REDACTED]
4242	Donato Gianturco	SA	01/29/15	10.4	030	Bates nummbers were non-consecutive-StateSt_CA_LIT05069952 StateSt_CA_LIT05138324
4423	Nicole Cameron	SA	01/29/15	9.0	010	Reviewed and coded documents for FX revenue relevance. Bates numbered out of sequence.
4425	Anuj Vaidya	SA	01/29/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4394	David Alper	SA	01/29/15	2.5	020	Revisited reviewed and analyzed the document Arkansas Teacher Retirement System v. State Street et al. Plaintiffs Memo of Law in Opposition to Defendants Motion to dismiss this documents is non- consecutive or the Bates range were missing from said Memorandum.
4394	David Alper	SA	01/29/15	5.0	020	Familiarized myself with the protocol and then started to tag, review and analyze emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case using the Catalyst desktop software these documents are non- consecutive. Bates range.
4295	Dorothy Hong	SA	01/29/15	8.0	020	Review complaint, hearing transcript, plaintiff's memo of law, coding instruction, power point presentation on liability.
4236	George Kaiafas	SA	01/29/15	10.1	030	Reviewed Doc ID #SST_KHR_SSGM_E001143580 to #SST_KHR_SSGM_E001149178. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
0103	Lawrence Sucharow	P	01/30/15	4.5	080	Prepare for upcoming mediation in Boston.
0571	David Goldsmith	P	01/30/15	2.1	130	Telephone conference with S. Curtin [REDACTED] re: settlement issues; e-mails internally re: same and mediation issues; start preparing for mediation
1179	Michael Rogers	P	01/30/15	1.3	080	E-mails to/from Lawrence Sucharow, Eric Belfi and David Goldsmith re: analysis of State Street's public filings re: litigation reserves; analyze public filings re: same
1225	Stacy Auer	PL	01/30/15	0.2	080	Emails/convos re: various materials for Mike Rogers' review in prep of mediation;
1450	Reka Viczian	PL	01/30/15	0.4	140	Search for latest 10K, 10Q and earnings statement; distribute.
4027	Debra Fouchong	SA	01/30/15	11.0	020	Reviewed and analyzed non consistent bates numbered documents produced by Defendants, consisting of excel spreadsheets, emails and reports for relevance and selected issues including FX Policies, and Netting, for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	01/30/15	4.0	030	Reviewed and coded documents for relevance and issue from Defendants California AG production, Bates ranges SST KHR SSGM E001612384 through SST KHR SSGM E00155222N.
4071	Charles Pietrofesa	SA	01/30/15	9.4	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000869979 - SST_KHR_SSGM_E000897255) (nonconsecutive), which regarded FX policies, FX data files, FX customer emails, global strategy reports, and State Street internal FX reports.

						Continued secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; drafted emails to and conferred with coders who had incompletely or inconsistently coded families of documents on the Catalyst review platform, reminding them to code all related documents before moving forward in their batches and to code family members consistently for the priority designation; answered questions re: the proper designation for documents involving netting, FX policies, and customer complaints/questions; continued conferring with newest wave of coders regarding coding protocols and the use of the Catalyst system, proper designations for documents which were improperly uploaded to the system as well as the treatment of irrelevant documents in the same family as relevant/hot documents that are related.
4089	Todd Kussin	SA	01/30/15	3.5	030	
4089	Todd Kussin	SA	01/30/15	3.1	040	Continued secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System and marked as responsive to defendants' document requests by reviewers David Pospischil and Orlando Perez in order to ensure that none of the selected documents are privileged and that each is in fact responsive; reviewed documents marked as non-responsive to defendants' requests as well as those documents marked privileged in order to ensure the accuracy of such designations.
4173	Maritza Bolano	SA	01/30/15	10.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included data charts, excel spreadsheets, emails, reports, marketing materials and presentations; annotated Index of Hot Documents.
4247	Aron Rosenbaum	SA	01/30/15	4.4	030	Reviewed and coded docs from defendant's production, mostly general financial newsletters. Majority from after class period ended and thus irrelevant. Bates range: SST-KHR-SSGM E000843108 thru 854617
4295	Dorothy Hong	SA	01/30/15	10.5	030	Document review of Defendant's discovery production re e-mail correspondence, [REDACTED]
4383	James Griffin	SA	01/30/15	6.3	030	Reviewed Defendant's production pertaining to Fx trading and custodial services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST_KHR_SSGM_E001323543 through SST_KHR_SSGM_E001346608, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	01/30/15	10.0	030	Review and analysis of inconsistently bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, organizational charts, presentations, spreadsheets, and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	01/30/15	5.0	020	Reviewed, tagged and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case that included documents which are non-consecutive or the Bates range were missing from said documents.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. A continuation of the docs previously noted. Also there were numerous transaction sheets. some relevant some not.
4242	Donato Gianturco	SA	01/30/15	9.5	030	Bates numbers were non-consecutive- StateSt_CA_LIT04283988 StateSt_CA_LIT05023172
4244	Judy Watson	SA	01/30/15	9.5	030	Review of defendant's documents (nonconsecutive range) consisting of: fx market news summaries, fx policy emails, P&L email discussions and spreadsheets, fx code of conduct, end of day summary reports.
4424	Jacqueline Grant	SA	01/30/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	01/30/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4394	David Alper	SA	01/30/15	5.0	020	Reviewed, tagged and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street Corp. case that included documents which are non-consecutive or the Bates range were missing from said documents.
4236	George Kaiafas	SA	01/30/15	8.1	040	Reviewed Doc ID #SST_KHR_SSGM_E001149179 to #SST_KHR_SSGM_E001142463. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
4423	Nicole Cameron	SA	01/30/15	9.5	010	Reviewed emails, trade tickets and spreadsheets produced by defendants [REDACTED]. Coded documents for relevance. Bates were not numbered consecutively.
0103	Lawrence Sucharow	P	02/01/15	3.7	130	Prepare for State Street mediation.
0103	Lawrence Sucharow	P	02/02/15	5.8	080	Prepare for mediation in Boston; review plaintiffs presentation on damages and case issues; meeting of plaintiffs counsel to prepare
0103	Lawrence Sucharow	P	02/02/15	5.5	130	Prepare for upcoming State Street mediation.
0571	David Goldsmith	P	02/02/15	3.2	080	Prepare for mediation session; e-mails re: same
1179	Michael Rogers	P	02/02/15	1.7	080	Analyze SST's public filings re: legal loss contingencies; emails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: same
4027	Debra Fouchong	SA	02/02/15	11.1	020	Reviewed and analyzed non consistent bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, [REDACTED] for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	02/02/15	8.0	030	Reviewed and coded for relevance and issue State Street California AG production documents primarily relating to FX policies and global trading business. Bates range ST_KHR_SSGM_E001605879 thru SST_KHR_SSGM_E001553271
4071	Charles Pietrofesa	SA	02/02/15	8.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000863281 - SST_KHR_SSGM_E000901339) (nonconsecutive), which regarded FX policies, FX data files, FX customer emails, global strategy reports, and State Street internal FX reports.

4089	Todd Kussin	SA	02/02/15	1.5	040	Continued secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System and marked as responsive to defendants' document requests by reviewers David Pospischil and Orlando Perez in order to ensure that no privileged documents have been marked for production; reviewed documents marked as non-responsive to defendants' requests as well as those documents marked privileged in order to ensure the accuracy of such designations.
4089	Todd Kussin	SA	02/02/15	1.8	030	Continued secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewers involving questions re: coding large families of documents containing only a single relevant document; conferred with coders re: documents suggesting tensions between different State Street offices re: FX rate determination; prepared report summarizing productivity and accuracy of reviewers for week ending January 30, 2015.
4173	Maritza Bolano	SA	02/02/15	10.0	030	Reviewed and coded documents from Defendant's Production; Non-consecutive Bates numbers; Documents included reports, emails, requests for proposals, marketing presentations, and data of FX trading; Annotated Index of hot documents and attorney notes.
4247	Aron Rosenbaum	SA	02/02/15	6.8	030	rVIEWED, CODED mostly general financial newsletters sent by e-mail. About half were basically relevant, touching on FX during class period. Others were from after end of class period. Nonconsecutive bates numbers.
4295	Dorothy Hong	SA	02/02/15	8.5	030	Review Defendant's production of e-mails, articles, data, charts re FX SI practices and procedures of SS.
4426	Tryphena Greene	SA	02/02/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants, consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, articles, revenue, marketing and organizational charts for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/02/15	4.5	030	Reviewed and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	02/02/15	6.0	010	Reviewed email chains and reports related to FX revenue, FX rates, and trades involving standing instructions. Bate numbers were not consecutive.
4424	Jacqueline Grant	SA	02/02/15	10.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/02/15	4.5	030	Reviewed and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.

4244	Judy Watson	SA	02/02/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx policy and procedure emails, fx cash projection reports, email discussions regarding fx standing instructions
4425	Anuj Vaidya	SA	02/02/15	11.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	02/02/15	8.8	030	Reviewed Doc ID #SST_KHR_SSGM_E001149393 to #SST_KHR_SSGM_E001154917. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.
0023	Eric Belfi	P	02/03/15	4.0	130	Mediation preparation
0103	Lawrence Sucharow	P	02/03/15	8.5	080	Conduct mediation in Boston; meeting of plaintiffs counsel to plan next steps.
0571	David Goldsmith	P	02/03/15	11.5	080	Travel New York to Boston; meeting with Larry Sucharow, Eric Belfi, Mike rogers, G. Hopkins, Mike Thornton, Mike Lesser, E. Hoffman, R. Lieff, M. Miami re: same
1179	Michael Rogers	P	02/03/15	13.7	080	Travel to Boston; conferences with Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Lieff, Garrett Bradley, Mike Lesser, Carl Kravitz, Mike Miami, Evan Hoffman and George Hopkins re: State Street, damages and possible settlement issues; analyze documents re: same
4027	Debra Fouchong	SA	02/03/15	10.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, and Best Execution, for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	02/03/15	8.0	030	Reviewed and coded for relevance and issue State Street California AG production documents primarily relating to FX policies, global trading business and State street global strategy: Bates range ST_KHR_SSGM_E001605879 thru SST_KHR_SSGM_E001612350.
4071	Charles Pietrofesa	SA	02/03/15	8.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000885965 - SST_KHR_SSGM_E000861189) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, and State Street internal FX reports.
4089	Todd Kussin	SA	02/03/15	2.7	030	Continued secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewer David Alper [REDACTED] senders and recipients onto cast of characters list; discussions with reviewers on lower end of productivity in terms of documents coded during the week ending January 30, 2015.
4089	Todd Kussin	SA	02/03/15	0.8	040	Continued secondary review/quality check of all documents provided by the Arkansas Teacher Retirement System and marked as responsive to defendants' document requests by reviewers David Pospischil and Orlando Perez in order to ensure that no privileged documents have been marked for production; reviewed documents marked as non-responsive to defendants' requests as well as those documents marked privileged in order to ensure the accuracy of such designations.

4173	Maritza Bolano	SA	02/03/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included marketing presentations, draft RFPs, emails, FX data charts and spreadsheets, business organizational projects, audits and accounting records; annotated Index of Hot documents.
4247	Aron Rosenbaum	SA	02/03/15	5.7	030	Reviewed, coded docs, primarily general economic newsletters related to FX. However, most were from after class period without relevance.
4295	Dorothy Hong	SA	02/03/15	10.5	030	document review of defendant's production of e-mails, (e.g. FX trade analysis and discussion e.g. AIR/repatriation), articles, industry reports, charts, [REDACTED]
4369	David Pospischil	SA	02/03/15	6.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues.
4383	James Griffin	SA	02/03/15	8.8	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non-consecutive Bates range SST_KHR_SSGM_E001309079 through SST_KHR_SSGM_E001357889, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/03/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, organizational charts, revenues and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/03/15	5.0	030	Reviewed and analyzed emails spreadsheets and documents pertaining to the case Arkansas Teacher Retirement System v. State Street Corp for responsiveness, these documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/03/15	9.0	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. [REDACTED] Bates nummbers were non-consecutive-StateSt_CA_LIT05050327 StateSt_CA_LIT04109147N
4423	Nicole Cameron	SA	02/03/15	9.0	010	[REDACTED] Bate numbers were nonconsecutive.
4244	Judy Watson	SA	02/03/15	9.5	030	[REDACTED]
4394	David Alper	SA	02/03/15	5.0	030	Reviewed and analyzed e mails spreadsheets and documents pertaining to the case Arkansas Teacher Retirement System v. State Street Corp for responsiveness, these documents are non-consecutive or the Bates range were missing from said documents.
4425	Anuj Vaidya	SA	02/03/15	9.0	010	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4424	Jacqueline Grant	SA	02/03/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4236	George Kaiafas	SA	02/03/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001169356 to #SST_KHR_SSGM_EE001142407. Reviewed and analyzed Documents and Emails containing Invoices, FX Rates, and spreadsheets for responsiveness.

0023	Eric Belfi	P	02/04/15	8.0	130	Mediation
0103	Lawrence Sucharow	P	02/04/15	10.5	130	Conduct State Street mediation with plaintiffs and defendants counsel; travel from Boston to Arizona.
0571	David Goldsmith	P	02/04/15	11.1	080	Mediation before J. Marks with Larry Sucharow, Eric Belfi, Mike Rogers, G. Hopkins, M. Thornton, M. Lesser, E. Hoffman, R. Loeff, M. Miarmi, W. Paine, D. Halston, J. Jolly, J. Carp; expert presentation and break-out sessions; travel Boston to New York
1179	Michael Rogers	P	02/04/15	9.1	080	Mediation meeting with Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Loeff, Garrett Bradley, Mike Lesser, Carl Kravitz, Mike Miarmi, Derrick Loesser, Evan Hoffman, George Hopkins, Jonathan Marks, Bill Paine, D. Halson and J. Carp re: State Street, damages and possible settlement issues; analyze documents re: same; travel to New York
4027	Debra Fouchong	SA	02/04/15	10.0	020	Reviewed and analyzed non consistent bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies and Customer FX Inquiries for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	02/04/15	9.4	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX policies, global trading business, State street global strategy and FX protocol. : Bates range SST_KHR_SSGM_E001574237 thru SST_KHR_SSGM_E001554582
4071	Charles Pietrofesa	SA	02/04/15	7.2	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000873262 - SST_KHR_SSGM_E000897585) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, and State Street internal FX reports.
4089	Todd Kussin	SA	02/04/15	1.8	030	Continued secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4173	Maritza Bolano	SA	02/04/15	10.0	030	Reviewed and coded documents from Defendant's Production; Non-consecutive Bates numbers; documents included charts of FX data, emails, marketing materials, draft RFPs, reports and audit documents; Annotated Index of Hot documents.
4247	Aron Rosenbaum	SA	02/04/15	7.2	030	Reviewed, coded docs. Mostly research reports, about half and half from during and after class period.
4295	Dorothy Hong	SA	02/04/15	10.5	030	Document review of defendant's production at 940 out of 9,997 of e-mails, power points, charts, articles, RFP's and comments, hot doc list update.
4369	David Pospischil	SA	02/04/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues.
4383	James Griffin	SA	02/04/15	10.0	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports and financials, in non-consecutive Bates range SST_KHR_SSGM_E001357892 through SST_KHR_SSGM_E001355153, and coded for responsiveness, priority, type and issues.

4426	Tryphena Greene	SA	02/04/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, organizational charts, revenues and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/04/15	5.5	030	Reviewed and analyzed and tagged emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case these documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/04/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets.  Bates numbers were non-consecutive-StateSt_CA_LIT04567165N StateSt_CA_LIT04599329N
4423	Nicole Cameron	SA	02/04/15	8.0	010	Reviewed email chains regarding FX revenue, FX rates, and requests to cancel trades. Email also contained requests for responses to RFP. Bates were numbered out of order. Started with SST_KHR_SSGM_E001471122 and ended with SST_KHR_SSGM_E001491920
4424	Jacqueline Grant	SA	02/04/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, and FX pricing, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	02/04/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx customer inquiries, daily fx rates emails, invoices for fx services.
4425	Anuj Vaidya	SA	02/04/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	02/04/15	9.2	030	Reviewed Doc ID #SST_KHR_SSGM_E001142395 to #SST_KHR_SSGM_E001145506. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, and spreadsheets for responsiveness.
4394	David Alper	SA	02/04/15	5.5	030	Reviewed and analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.
4027	Debra Fouchong	SA	02/05/15	10.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies and Customer FX Inquiries for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/05/15	7.0	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX pricing policies, global trading, State Street custody business and FX protocol. : Bates range SST_KHR_SSGM_E001599958 thru SST_KHR_SSGM_E001552397.
4071	Charles Pietrofesa	SA	02/05/15	8.1	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000866363 - SST_KHR_SSGM_E000885388) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, and State Street internal FX reports.

4089	Todd Kussin	SA	02/05/15	1.4	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; communications with reviewer Tryphena Greene re: proper designation for document [REDACTED] reviewed updated cast of characters lists; conferred with reviewers as a group to discuss the complete coding of families.
4173	Maritza Bolano	SA	02/05/15	6.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included FX trading data, FX research study, emails, reports on global markets P/L and trades; Annotated Index of Hot documents and Key Players; Reviewed section of Amended Complaint.
4424	Jacqueline Grant	SA	02/05/15	7.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4247	Aron Rosenbaum	SA	02/05/15	7.7	030	Reviewed and coded docs--Many research reports, from State Street and other companies--Also many e-mail chains relating to specific trades.  Nonconsecutive Bates numbers.  One hot doc--SST-KHR-SSGM_E00083525
4295	Dorothy Hong	SA	02/05/15	9.5	030	Document review of Defendant's production at 1202 out of 9997 of e-mails, charts, IM Guides, business reports, tickets re FX trades, macro economics articles.
4369	David Pospischil	SA	02/05/15	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data; conference with team member regarding document.
4383	James Griffin	SA	02/05/15	10.3	030	Reviewed Defendant's production pertaining to Fx trading and custodial services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST_KHR_SSGM_E001326816 through SST_KHR_SSGM_E001355786, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/05/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, standing instruction pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/05/15	6.5	030	Reviewed and analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non-consecutive or the Bates range were missing from said documents.
4244	Judy Watson	SA	02/05/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily fx rates emails, customer fx inquiries, cash statements, fx transaction spreadsheets, disclosure of fx practices, invoices.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. [REDACTED] Also there were a number of FX revenue and profit docs which were relevant as well.
4242	Donato Gianturco	SA	02/05/15	9.5	030	Bates numbers were non-consecutive-StateSt_CA_LIT04562162 StateSt_CA_LIT05480303N
4423	Nicole Cameron	SA	02/05/15	9.0	010	Coded bates numbers SST_KHR_SSGM_E001491455 - SST_KHR_SSGM_E001477711 for relevancy. [REDACTED]
4425	Anuj Vaidya	SA	02/05/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including [REDACTED]
4236	George Kaiafas	SA	02/05/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001145506 to #SST_KHR_SSGM_E001168876. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4027	Debra Fouchong	SA	02/06/15	7.3	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, [REDACTED] FX Profit Revenues, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/06/15	5.3	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX pricing policies and global trading business. State Street custody business and FX protocol. : Bates range SST_KHR_SSGM_E001599958 thru SST_KHR_SSGM_E001612854
4071	Charles Pietrofesa	SA	02/06/15	8.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000900827 - SST_KHR_SSGM_E000862685) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, FX trade reports and confirmations, and State Street internal FX reports.
4089	Todd Kussin	SA	02/06/15	1.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; communications with IT group at Catalyst in order to solve problems re: viewing documents and logging on to platform of several reviewers.
4173	Maritza Bolano	SA	02/06/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included financial statements, reports, emails, FX trading data and articles; Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/06/15	2.0	030	Reviewed and coded mostly research reports.
4295	Dorothy Hong	SA	02/06/15	9.8	030	Document review of defendant's production at 1452 of e-mails, charts, articles, presentations, IM Guide sections, update hot doc list.
4369	David Pospischil	SA	02/06/15	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues.
4383	James Griffin	SA	02/06/15	6.0	030	Reviewed Defendant's production pertaining to FX trading and services including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E00132687 through SST_KHR_SSGM_E001353574, and coded for responsiveness, priority, and issues.

4426	Tryphena Greene	SA	02/06/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, organizational charts, ERISA obligations, standing instruction pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/06/15	4.0	030	Reviewed analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	02/06/15	6.0	010	Coded documents SST_KHR_SSGM_E001477723 - SST_KHR_SSGM_E001477848. Reviewed e-mails that discussed FX rates, spreads, and responses to RFP questions.
4236	George Kaiafas	SA	02/06/15	6.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001168831 to #SST_KHR_SSGM_E001143146. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4244	Judy Watson	SA	02/06/15	9.5	030	Review defendant's documents (nonconsecutive bates ranges) consisting of: daily fx rates emails, financial statements, fx reconciliation summaries, management fees spreadsheets, general fx news articles, economic news articles, fx trading revenue reports, fx cash projection reports.
4394	David Alper	SA	02/06/15	3.5	030	Reviewed analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/06/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well.  Bates numbers were non-consecutive-StateSt_CA_LIT05480303N StateSt_CA_LIT04712591
4424	Jacqueline Grant	SA	02/06/15	4.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public FX policies, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	02/06/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1179	Michael Rogers	P	02/09/15	0.4	080	Conference with Todd Kussin re: ARTRS documents for production
4027	Debra Fouchong	SA	02/09/15	10.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, Spread - Neg- SI, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/09/15	9.3	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX policy, global trading, bank strategy, State Street custody business and FX protocol. : Bates SST_KHR_SSGM_E001612854 thru SST_KHR_SSGM_E001605759.

4071	Charles Pietrofesa	SA	02/09/15	9.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000874179 - SST_KHR_SSGM_E000872810) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, FX trade reports and confirmations, and State Street internal FX reports.
4089	Todd Kussin	SA	02/09/15	1.7	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with team as a whole in order to discuss pace of document review thus far and also issues regarding the consistent coding of families; prepared report summarizing productivity of reviewers for week ending February 6, 2015.
4173	Maritza Bolano	SA	02/09/15	9.8	030	Reviewed and coded documents from Defendant's Production; Non-consecutive Bates numbers; documents included reports, FX give-up contracts, emails, FX financial data, strategic policy reports, and computer systems reports; annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/09/15	7.6	030	Reviewed, coded docs. Mostly research reports, both internal and from outside firms. Some e-mail chains, primarily from after class period.
4295	Dorothy Hong	SA	02/09/15	10.5	030	Document review of defendant's production at 1861 of e mails, articles, charts, data, IU Guide sections relating to FX trades, processing and policies, SI practices.
4369	David Pospischil	SA	02/09/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data.
4383	James Griffin	SA	02/09/15	6.0	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non consecutive Bates range SST_KHR_SSGM_E001353575 through SST_KHR_SSGM_E001338528, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/09/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, custody FX inquiries, organizational charts, pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/09/15	5.5	030	Reviewed analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non- consecutive or the Bates range were missing from said documents.
4424	Jacqueline Grant	SA	02/09/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.

4242	Donato Gianturco	SA	02/09/15	9.4	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. Some more irrelevant docs were spreadsheets of trades not associated with State Street.  Bates numbers were non-consecutive-StateSt_CA_LIT04795919 StateSt_CA_LIT04712150N
4423	Nicole Cameron	SA	02/09/15	8.0	010	Reviewed bates numbers SST_KHR_SSGM_E001477849 - SST_KHR_SSGM_E01495611N. Coded documents for relevancy. Consisted of emails and screen shots of deals, FX rates, an RFP and requests to cancel and rebook deals.
4425	Anuj Vaidya	SA	02/09/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4394	David Alper	SA	02/09/15	5.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non-consecutive or the Bates range were missing from said documents.
4027	Debra Fouchong	SA	02/10/15	10.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, FX Profit - Revenue, Spreads - Neg - SI, SI FX Pricing, Negotiated FX Pricing, Customer FX Inquiries, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/10/15	9.1	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX revenue and FX strategy, Bates SST_KHR_SSGM_E001611180.
4071	Charles Pietrofesa	SA	02/10/15	9.2	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000872813 - SST_KHR_SSGM_E000882679) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, FX trade reports and confirmations, FX spread discussions, and State Street internal FX reports.
4089	Todd Kussin	SA	02/10/15	1.7	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with coders re: correct designation for documents discussing relationship between VaR and profits/losses.
4173	Maritza Bolano	SA	02/10/15	9.0	030	Reviewed and coded documents from Defendant's Production; Non-consecutive Bates numbers, documents included reports, emails, FX trading data and analyses. Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/10/15	7.6	030	Reviewed and coded mostly research reports. Some e-mail chains, overwhelmingly from after end of class period.  Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	02/10/15	9.5	030	Doc review of defendant's production at 2034 out of 9997 of emails, charts, spreadsheets, articles re FX trade, practice and processing and rate setting/valuation, business reports.

4369	David Pospischil	SA	02/10/15	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, FX pricing, public pension fund investment data; conference with T. Kussin and team members regarding document.
4383	James Griffin	SA	02/10/15	8.5	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports and financials, in non-consecutive Bates range SST_KHR_SSGM_E001312422 through SST_KHR_SSGM_E001339324, and coded for responsiveness, priority, type and issues.
4426	Tryphena Greene	SA	02/10/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/10/15	6.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case, these documents are non-consecutive or the Bates range were missing from said documents.
4424	Jacqueline Grant	SA	02/10/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	02/10/15	9.6	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. Some more irrelevant docs were spreadsheets of trades not associated with State Street. There was also a Highly relevant email chain discussing price differences in trades.  Bates numbers were non-consecutive-StateSt_CA_LIT05043475 StateSt_CA_LIT00403973N
4244	Judy Watson	SA	02/10/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily fx risk report, fx customer inquiry, fx cash projection reports, fx email policies, cost leadership presentations, daily P/L reports.
4425	Anuj Vaidya	SA	02/10/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4423	Nicole Cameron	SA	02/10/15	9.0	010	Coded bates numbers SST_KHR_SSGM_E001473342--SST_KHR_SSGM_E001442074. Documents concerned FX rates, spreads, and FX policy related information.
4236	George Kaiafas	SA	02/10/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001168830 to #SST_KHR_SSGM_SST_KHR_SSGM_E001172023. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4027	Debra Fouchong	SA	02/11/15	10.3	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation

4060	Stephen Dolben	SA	02/11/15	9.4	030	Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX revenue and FX strategy and global market strategy. Bates SST_KHR_SSGM_E001606174N thru SST_KHR_SSGM_E001592526.
4071	Charles Pietrofesa	SA	02/11/15	8.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000882682 - SST_KHR_SSGM_E000884437) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX rate discussions, FX trade reports and confirmations, FX spread and netting discussions, and State Street internal FX reports.
4089	Todd Kussin	SA	02/11/15	2.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; in particular, focused on the coding of reviewers who came in on the low end of the range of documents and pages reviewed during the week; conferred with reviewers re: ██ ██
4173	Maritza Bolano	SA	02/11/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, reports, FX data charts, and SS organizational files; Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/11/15	7.5	020	REVIEWED, CODED DOCS. Many research reports. Some docs from outside class period deemed relevant since they touched directly on pricing issues.
4295	Dorothy Hong	SA	02/11/15	9.0	030	Document review of defendant's production at 2139 of e mails, IM Guide sections, charts, spreadsheets, business reports, trade sheets, tickets re FX trade - negotiated and non-negotiated trades, FX trades and policies of restricted currencies.
4369	David Pospischil	SA	02/11/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data.
4425	Anuj Vaidya	SA	02/11/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	02/11/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/11/15	10.8	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents

4242	Donato Gianturco	SA	02/11/15	10.2	030	<p>Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. Some more irrelevant docs were spreadsheets of trades not associated with State Street. There was also another Highly relevant email chain discussing price differences in trades.</p> <p>Bates numbers were non-consecutive-StateSt_CA_LIT00404004 StateSt_CA_LIT04279953N</p>
4424	Jacqueline Grant	SA	02/11/15	11.0	030	<p>Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and Ledger Journals, for attorneys' use in preparation for further litigation.</p>
4244	Judy Watson	SA	02/11/15	10.5	030	<p>Review of defendant's documents (nonconsecutive bates ranges) consisting of: end of day reports, fx general news articles, fx cash projection reports, fx records of trades, fx policy emails, earnings report.</p>
4236	George Kaiafas	SA	02/11/15	9.0	030	<p>Reviewed Doc ID #SST_KHR_SSGM_E001171802 to #SST_KHR_SSGM_E001159865. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.</p>
4027	Debra Fouchong	SA	02/12/15	10.6	020	<p>Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Preferential FX Pricing, Negotiated FX Pricing, SI FX Pricing, for attorneys' use in preparation for further litigation</p>
4060	Stephen Dolben	SA	02/12/15	10.3	030	<p>Reviewed and coded for relevance and issue State Street California AG production documents, primarily relating to FX revenue and FX strategy, Global business strategy and risk. Bates SST_KHR_SSGM_E001606174N thru SST_KHR_SSGM_E001592526 thru SST_KHR_SSGM_E001568133</p>
4071	Charles Pietrofesa	SA	02/12/15	8.7	030	<p>Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000899636 - SST_KHR_SSGM_E000863453) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX pricing discussions, FX trade reports and confirmations, and State Street internal FX reports.</p>
4173	Maritza Bolano	SA	02/12/15	9.0	030	<p>Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, reports, and FX data charts and analyses; Annotated Index of Hot documents and attorney notes as appropriate.</p>
4247	Aron Rosenbaum	SA	02/12/15	7.4	030	<p>Reviewed, coded docs. Many FX rate validation reports.</p> <p>Nonconsecutive Bates numbers.</p>
4295	Dorothy Hong	SA	02/12/15	9.5	030	<p>Document review of defendant's production of e mails, charts, ppt, article relating to FX trades indirect and direct FX trades process and policies.</p>
4369	David Pospischil	SA	02/12/15	6.6	030	<p>Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing.</p>

4383	James Griffin	SA	02/12/15	10.5	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non-consecutive Bates range SST_KHR_SSGM_E001310678 through SST_KHR_SSGM_E001339768, and coded for responsiveness, priority, issues, and completeness.
4426	Tryphena Greene	SA	02/12/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, RFP/RFI response, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/12/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	02/12/15	6.0	010	Coded bates numbers SST_KHR_SSGM_E001442075 - SST_KHR_SSGM_E001442665. Email chains concerned FX rate request, spreads, and FX revenue.
4242	Donato Gianturco	SA	02/12/15	9.4	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. Some more irrelevant docs were spreadsheets of trades not associated with State Street. There were numerous State Street pension fund docs that were relevant today.  Bates numbers were non-consecutive-SST-ARTRS 0037094 SST_KHR_SSGM_E001036988
4244	Judy Watson	SA	02/12/15	10.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: revenue reports, fx daily risk reports, documents discussing netting, fx cash projection reports, fx trade reports, fx daily P/L reports, fx daily trading revenue reports, internal fx audit document request.
4425	Anuj Vaidya	SA	02/12/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4424	Jacqueline Grant	SA	02/12/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4236	George Kaiafas	SA	02/12/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001159864 to #SST_KHR_SSGM_E001164278. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4027	Debra Fouchong	SA	02/13/15	9.0	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, SI General, Spreads -- Neg -- SI, for attorneys' use in preparation for further litigation

4060	Stephen Dolben	SA	02/13/15	7.4	030	Reviewed and coded for relevance and issue State Street's California AG production documents, primarily relating to State Street global business planning, FX revenue reporting and FX trading strategy, Bates range SST_KHR_SSGM_E001568135 thru SST_KHR_SSGM_E001589618.
4071	Charles Pietrofesa	SA	02/13/15	8.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000863461 - SST_KHR_SSGM_E000865940) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports, FX trade reports and confirmations, and State Street internal FX reports.
4089	Todd Kussin	SA	02/13/15	2.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; in particular, focused on the coding of reviewers who came in on the low end of the range of documents and pages reviewed during the week; conferred with reviewers re: 
4173	Maritza Bolano	SA	02/13/15	9.2	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, reports, marketing materials, FX trading data, and industry guidances; Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/13/15	2.8	030	Reviewed and coded docs, primarily research reports from State St and outside firms. Weekly State St FX strategy reports.
4295	Dorothy Hong	SA	02/13/15	9.5	030	Document review of defendant's production at 2869 out of 9997 of e-mails, charts, articles relating to FX trade practice, process and policy.
4369	David Pospischil	SA	02/13/15	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, standing instruction FX, FX revenues.
4383	James Griffin	SA	02/13/15	10.0	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non consecutive Bates range SST_KHR_SSGM_E001363472 through SST_KHR_SSGM_E001338123, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/13/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/13/15	7.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4424	Jacqueline Grant	SA	02/13/15	6.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.

4242	Donato Gianturco	SA	02/13/15	9.9	030	<p>Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today.</p> <p>Bates numbers were non-consecutive-SST_KHR_SSGM_E001073949 SST_KHR_SSGM_E001082087N</p>
4244	Judy Watson	SA	02/13/15	9.5	030	<p>Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx revenue estimate, fx division code of conduct, FIRB daily P/L reports, fx intraday NOP reports, internal audit fx document request, fx cash projection reports, fx general news articles.</p>
4425	Anuj Vaidya	SA	02/13/15	10.0	020	<p>Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.</p>
4236	George Kaiafas	SA	02/13/15	8.0	030	<p>Reviewed Doc ID #SST_KHR_SSGM_E001164331 to #SST_KHR_SSGM_E001148895. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.</p>
0571	David Goldsmith	P	02/17/15	0.4	090	<p>Discussions with Garrett Bradley and Mike Rogers re: mediation and settlement issues</p>
4027	Debra Fouchong	SA	02/17/15	11.1	020	<p>Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, SI FX Pricing, Marketing of Customers FX Service, for attorneys' use in preparation for further litigation</p>
4060	Stephen Dolben	SA	02/17/15	9.2	030	<p>Reviewed and coded defendant documents (Cal AG production) primarily relating to State Street FX revenue, Bates range SST_KHR_SSGM_E001589664 thru SST_KHR_SSGM_E001560303</p>
4071	Charles Pietrofesa	SA	02/17/15	9.0	030	<p>Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000878547 - SST_KHR_SSGM_E000869156) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports, FX trade reports and confirmations, and State Street internal FX reports.</p>
4089	Todd Kussin	SA	02/17/15	2.3	030	<p>Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; prepared report summarizing productivity of reviewers for week ending February 6, 2015.</p>
4173	Maritza Bolano	SA	02/17/15	9.5	030	<p>Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, FX trading data, industry articles and reports; Annotated Index of Hot documents and Attorney notes as appropriate.</p>
4247	Aron Rosenbaum	SA	02/17/15	7.4	030	<p>Reviewed, coded docs. Primarily research reports--Morning meeting, regime mapping, Americas Pre Market. Nonconsecutive Bates numbers.</p>
4295	Dorothy Hong	SA	02/17/15	9.0	030	<p>Document review of defendant's production at 3181 of 9997 of emails, charts, PPT's of FX trades, direct and indirect, process, policy and procedure and exception reports.</p>
4369	David Pospischil	SA	02/17/15	6.5	030	<p>Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, public pension fund investment data, FX revenues.</p>

4383	James Griffin	SA	02/17/15	8.0	030	Reviewed Defendant's production pertaining to Fx trading and services including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001338123 through SST_KHR_SSGM_E001350710N, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/17/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and negotiated FX pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/17/15	10.8	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	02/17/15	9.0	010	Reviewed bate numbers SST_KHR_SSGM_E001442667 - SST_KHR_SSGM_E001440617. Coded E-mail chains regarding FX revenue, FX requests, FX rates and Case Management Projection spreadsheets.
4244	Judy Watson	SA	02/17/15	10.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx services contract, fx P/L & limit exception reports, fx G/L reports, fx cash projection reports, P/L reports, fx trade confirmation emails.
4425	Anuj Vaidya	SA	02/17/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	02/17/15	8.8	030	Reviewed Doc ID #SST_KHR_SSGM_E001148896 to #SST_KHR_SSGM_E001161607. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
1179	Michael Rogers	P	02/18/15	1.3	080	Conference and telephone call with Eric Belfi re: February 26 mediation; emails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Lief, Lynn Sarko, Carl Kravitz, Mike Lesser, Dan Chiplock, M. Miarmi, Evan Hoffman and Jonathan Marks re: same; scheduling of follow-up session
4027	Debra Fouchong	SA	02/18/15	11.2	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/18/15	9.6	030	Reviewed and coded defendant documents (Cal AG production) primarily relating to State Street FX revenue and FX tech systems, Bates range SST_KHR_SSGM_E001560543 thru SST_KHR_SSGM_E001606566.
4071	Charles Pietrofesa	SA	02/18/15	8.1	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000869160 - SST_KHR_SSGM_E000883141) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports, FX trade reports and confirmations, and State Street internal FX reports.
4089	Todd Kussin	SA	02/18/15	1.3	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewer David Alper regarding potentially hot document discussing re-dating of transactions.
4173	Maritza Bolano	SA	02/18/15	9.7	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, spreadsheets, FX trading data, and reports; annotated Index of hot documents and Attorney notes as appropriate.

4247	Aron Rosenbaum	SA	02/18/15	7.7	030	Reviewed and coded. Mostly routine e-mails from the desk of Jason Ganski, FX Confirmations, State St Global. Mostly involving cancellations, what forms, what computer programs.
4295	Dorothy Hong	SA	02/18/15	9.0	030	Document review of defendant's production at 3534 of 9997 of emails, charts, articles, presentations re FX trade direct and indirect process, procedures and policies.
4369	David Pospischil	SA	02/18/15	4.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX revenues, public pension fund investment data, standing instruction FX.
4383	James Griffin	SA	02/18/15	10.3	030	Reviewed Defendant's production pertaining to Fx trading and custodial services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST_KHR_SSGM_E001339215N through SST_KHR_SSGM_E001338615N, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/18/15	11.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, negotiated FX pricing, revenues, and pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/18/15	10.8	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. Uncovered a Hot e mail document which I promptly recorded in the Team's collective Excel spreadsheet for future reference and analysis. These numerous investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	02/18/15	9.0	010	Reviewed bates numbers SST_KHR_SSGM_E001440627 through SST_KHR_SSGM_E001469291 which included emails concerning FX rates, FX requests, RFP questions, and FX trade details.
4425	Anuj Vaidya	SA	02/18/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4424	Jacqueline Grant	SA	02/18/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, and reports, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	02/18/15	10.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily P/L & limit exception reports, fx stop loss reports, fx trade confirmation emails, daily P/L reports, fx policy emails, fx G/L reports, sales & trading revenue reports.
4236	George Kaiafas	SA	02/18/15	9.2	030	Reviewed Doc ID #SST_KHR_SSGM_E001171381N to #SST_KHR_SSGM_E001172086. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
1179	Michael Rogers	P	02/19/15	0.6	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Lieff, Lyn Sarko, Carl Kravitz, Mike Lesser, Dan Chiplock and Evan Hoffman re: scheduling of mediation session
4060	Stephen Dolben	SA	02/19/15	9.4	030	Reviewed and coded defendant documents (Cal AG production) primarily relating to the marketing of State Street FX services and FX revenue. Bates range SST_KHR_SSGM_E001611643 thru SST_KHR_SSGM_E001573459.

4071	Charles Pietrofesa	SA	02/19/15	8.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000883143 - SST_KHR_SSGM_E000881698) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX trade reports and confirmations, and State Street internal FX reports.
4173	Maritza Bolano	SA	02/19/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, marketing presentations, reports, FX trading data, and financial statements of profits and loss; Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/19/15	7.0	030	Reviewed, coded docs, primarily research reports and docs re individual trades and technical issues (what forms to use, computer platforms, etc.) Mostly from after class period.
4295	Dorothy Hong	SA	02/19/15	10.0	030	Document review of defendant's production of emails, charts, data files, articles of FX trades negotiated and non-negotiated process, procedure, policy.
4369	David Pospischil	SA	02/19/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data.
4383	James Griffin	SA	02/19/15	8.5	030	Reviewed Defendant's production pertaining to Fx trading and services including emails, reports and financials, in non-consecutive Bates range SST_KHR_SSGM_E001353351 through SST_KHR_SSGM_E001318572, and coded for responsiveness, priority, type and issues.
4426	Tryphena Greene	SA	02/19/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/19/15	11.4	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/19/15	10.3	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001076941 SST_KHR_SSGM_E001026103
4423	Nicole Cameron	SA	02/19/15	9.0	010	Reviewed and coded bates numbers SST_KHR_SSGM_E001469294 - SST_KHR_SSGM_E001475792. Documents were e-mails with the following content: FX rates, FX trade reports, client inquiries about rates

4027	Debra Fouchong	SA	02/19/15	11.0	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, for attorneys' use in preparation for further litigation
4424	Jacqueline Grant	SA	02/19/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	02/19/15	9.5	030	Review of defendant's documents (nonconsecutive ranges) consisting of: fx new business reports, fx revenue reports, consolidated revenue summaries, fx daily volume & revenue estimate reports, fx daily P/L reports, fx rate violation report.
4425	Anuj Vaidya	SA	02/19/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	02/19/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001171707N to #SST_KHR_SSGM_E001172515. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4089	Todd Kussin	SA	02/19/15	2.0	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewers re: correct designations for documents discussing government inquiries.
4027	Debra Fouchong	SA	02/20/15	7.6	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, Netting, Marketing of CustomerFX Service, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/20/15	5.8	030	Reviewed and coded defendant documents (Cal AG production) primarily relating to the marketing of State Street FX services, FX transaction policy, FX revenue and FX tech systems, Bates range SST_KHR_SSGM_E001573531 thru SST_KHR_SSGM_E001597431.
4071	Charles Pietrofesa	SA	02/20/15	9.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000881701 - SST_KHR_SSGM_E000883564) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX trade reports and confirmations, and State Street internal FX reports.
4089	Todd Kussin	SA	02/20/15	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewers re: correct designations for State Street's 8-Ks and other public filings as well as documents discussing best execution plans..
4173	Maritza Bolano	SA	02/20/15	9.3	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, FX trading reports, data files, monthly Management Reports, financial statements of profit/loss; Annotated Index of Hot documents and Attorney notes as appropriate.
4247	Aron Rosenbaum	SA	02/20/15	3.2	030	Reviewed, coded docs. Assortment of research reports and e-mails mostly issues re specific trades. One hot.
4295	Dorothy Hong	SA	02/20/15	9.5	030	Document review of defendant's production of e mails, charts, articles, ppts of FX non-negotiated and negotiated FX trade process, policy and procedures.

4369	David Pospischil	SA	02/20/15	7.2	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data; conference with team member regarding review.
4383	James Griffin	SA	02/20/15	6.5	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non-consecutive Bates range SST_KHR_SSGM_E001318574 through SST_KHR_SSGM_E001334244N, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/20/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, RFI/RFP response, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/20/15	7.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, one of which was marked and tagged Hot, are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/20/15	10.0	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001026231 SST_KHR_SSGM_E001037104
4423	Nicole Cameron	SA	02/20/15	8.0	010	Reviewed bates numbers SST_KHR_SSGM_E001475801 - SST_KHR_SSGM_E001475970. Documents consist of emails from State Street regarding FX revenue, rates, trades, cancellation and rebooking of trades, rate requests, and trade ticket reports.
4236	George Kaiafas	SA	02/20/15	8.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001172195N to #SST_KHR_SSGM_E001183023. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4425	Anuj Vaidya	SA	02/20/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4244	Judy Watson	SA	02/20/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx daily volume & revenue estimates, fx weekly P/L, fx general news articles, fx trade confirmations, daily fx trading revenue reports.
4424	Jacqueline Grant	SA	02/20/15	9.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	02/23/15	11.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, Marketing of Customer/FX Service, for attorneys' use in preparation for further litigation

4060	Stephen Dolben	SA	02/23/15	8.8	030	Reviewed and coded defendant documents (Cal AG production) primarily relating to the marketing of State Street FX services, FX transaction policy, FX revenue and FX tech systems, Bates range SST_KHR_SSGM_E001573531 thru SST_KHR_SSGM_E001570091
4071	Charles Pietrofesa	SA	02/23/15	9.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000883568 - SST_KHR_SSGM_E000871628) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, netting analysis, FX customer inquiries, and State Street internal FX reports.
4173	Maritza Bolano	SA	02/23/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, reports, financial statements, and FX trading audit data; Annotated Attorney notes for documents coded in Highly relevant category.
4247	Aron Rosenbaum	SA	02/23/15	6.8	030	Reviewed, coded docs. Mostly research reports, routine e-mails. Some Customer Interaction reports, almost all from after end of class period.  Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	02/23/15	10.0	030	Document review of defendant's production at 4733 of 9997 of emails, charts, data files, articles of FX trades negotiated and non-negotiated process, procedure, policy.
4369	David Pospischil	SA	02/23/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data, FX pricing; conference with team member regarding document.
4383	James Griffin	SA	02/23/15	10.0	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001340461 through SST_KHR_SSGM_E001360766, and coded for responsiveness, priority, and issues.
4426	Tryphena Greene	SA	02/23/15	9.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, organizational charts, and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/23/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/23/15	9.7	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Also there was a highly relevant doc that discussed some possible fees but the conversation was muted somewhat.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001037108 SST_KHR_SSGM_E001030565

4423	Nicole Cameron	SA	02/23/15	8.0	010	Reviewed bate numbers SST_KHR_SSGM_E001475972 - SST_KHR_SSGM_E001492466. Email documents discussing some FX practices, trade tickets, Standing Instructions, and FX rates on trades.
4244	Judy Watson	SA	02/23/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx trade confirmations, fx cash projection reports, marketing strategy emails, fx G/L reports, daily P/L & limit exception reports, value at risk reports.
4425	Anuj Vaidya	SA	02/23/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4424	Jacqueline Grant	SA	02/23/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4236	George Kaiafas	SA	02/23/15	9.7	030	Reviewed Doc ID #SST_KHR_SSGM_E001171514 to #SST_KHR_SSGM_E001160487N. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
1179	Michael Rogers	P	02/24/15	1.4	080	Analyze hot documents; e-mails to/from David Goldsmith, Mike Lesser and Evan Hoffman re: same
4027	Debra Fouchong	SA	02/24/15	11.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, Marketing of customer/FX services, SI FX Pricing, for attorneys' use in preparation for further litigation
4071	Charles Pietrofesa	SA	02/24/15	8.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000871661 - SST_KHR_SSGM_E000862214) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, FX practice disclosures, and State Street internal FX reports.
4089	Todd Kussin	SA	02/24/15	1.7	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; prepared report summarizing productivity of reviewers for week ending February 20, 2015.
4173	Maritza Bolano	SA	02/24/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included FX trading reports, management project presentations, emails, financial data and statements; Annotated Index of hot documents and Attorney notes for hot and highly relevant documents as appropriate
4247	Aron Rosenbaum	SA	02/24/15	7.3	030	Reviewed and coded, notably many FX reports, research reports, and routine e-mails regarding computer or other technical issues. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	02/24/15	9.3	030	Document review of defendant's production at 5051 of 9997 of emails, charts, data files, articles of FX trades negotiated and non-negotiated process, procedure, policy.
4369	David Pospischil	SA	02/24/15	6.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, standing instruction FX, FX revenues.

4383	James Griffin	SA	02/24/15	4.2	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and advertising, in non-consecutive Bates range SST_KHR_SSGM_E001346469 through SST_KHR_SSGM_E001354434, and coded for responsiveness, priority, and issues.
4424	Jacqueline Grant	SA	02/24/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	02/24/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	02/24/15	10.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenue, marketing, RFP/RFI response, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/24/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a few tagged Hot and a few tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
4236	George Kaiafas	SA	02/24/15	7.0	030	Reviewed Doc ID #SST_KHR_SSGM_E0011592288 to #SST_KHR_SSGM_E001138167. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
4242	Donato Gianturco	SA	02/24/15	9.6	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Also there was a highly relevant doc that [REDACTED] Bates numbers were non-consecutive-SST_KHR_SSGM_E001030576 SST_KHR_SSGM_E001040623
4244	Judy Watson	SA	02/24/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx trade confirmations, daily P/L reports, daily fx G/L reports, volume & revenue analysis, fixed income rates & trading revenue P&L reports, fx daily trading revenue reports.
0023	Eric Belfi	P	02/25/15	3.0	130	Prepare for mediation.
0103	Lawrence Sucharow	P	02/25/15	4.5	080	Prepare for mediation session; meeting of plaintiffs' counsel in preparation for mediation session.
0571	David Goldsmith	P	02/25/15	1.5	130	Strategy meeting with Larry Sucharow, Eric Belfi, Mike Rogers, Lynn Sarko, C. Kravitz, R. Loeff, D. Chiplock, M. Thornton, M. Lesser, E. Hoffman re: February 26 mediation session
0571	David Goldsmith	P	02/25/15	1.5	130	Meeting with G. Hopkins, Chris Keller, Eric Belfi
1179	Michael Rogers	P	02/25/15	7.5	080	Conferences with Larry Sucharow, Eric Belfi, David Goldsmith, Mike Thornton, Bob Loeff, Lyn Sarko, Carl Kravitz, Mike Lesser, Dan Chiplock, Evan Hoffman and George Hopkins re: mediation session; conferences with and e-mails to/from David Goldsmith, Todd Kussin, Mike Lesser and Evan Hoffman re: hot documents

4027	Debra Fouchong	SA	02/25/15	11.0	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customer/FX services, SI FX Pricing, for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	02/25/15	5.8	030	Drafted "hot doc" summaries.  Reviewed and coded defendant documents (Cal AG production) primarily relating to the marketing of State Street FX services, FX transaction policy, FX revenue and FX tech systems, Bates range SST_KHR_SSGM_E001570091 thru SST_KHR_SSGM_E001570091.
4071	Charles Pietrofesa	SA	02/25/15	7.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000862218 - SST_KHR_SSGM_E000876750) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, FX practice disclosures, and State Street internal FX reports.
4089	Todd Kussin	SA	02/25/15	4.1	030	Met with reviewers David Alper and Stephen Dolben in order to assign project to review selected hot documents forwarded by co-counsel and summarize each for upcoming meeting; emails with IT Department and Michael Rogers re: properly viewing such documents; reviewed all documents, mainly consisting of communications and presentations re: State Street's Custodial FX Services and best execution policies regarding same; reviewed summaries prepared by reviewers.
4173	Maritza Bolano	SA	02/25/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, reports, RFP responses, FX trading data, presentations and financial revenue statements of P/L; annotated Index of Hot documents and Attorney notes for hot and highly relevant documents as appropriate.
4247	Aron Rosenbaum	SA	02/25/15	7.4	030	Reviewed, coded docs. FX reports, FX rate validation reports, Street FX client's reports, FX pricing check reports, among others.
4295	Dorothy Hong	SA	02/25/15	9.5	030	Document review of defendant's production at 5394 of 9997 of emails, charts, data files, articles of FX trades negotiated and non-negotiated process, procedure, policy.
4369	David Pospischil	SA	02/25/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data; meeting with T. Kussin regarding assignment regarding summarizing documents.
4383	James Griffin	SA	02/25/15	5.5	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports and financials, in non-consecutive Bates range SST_KHR_SSGM_E001320098 through SST_KHR_SSGM_E001355470, and coded for responsiveness, priority, type and issues.
4424	Jacqueline Grant	SA	02/25/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	02/25/15	10.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenue, marketing, negotiated FX pricing, and preferential FX pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/25/15	8.6	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents. Furthermore, I assisted the PM and senior attorney in digesting and summarizing key Hot documents pertaining to the Arkansas Teachers Retirement System v.State Street case.
4244	Judy Watson	SA	02/25/15	8.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: RFP requests, fx audit reports, fx trading policies, fx model diagnostics report, fx trade confirmations, fx general news articles.
4242	Donato Gianturco	SA	02/25/15	10.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. There were a few Highly Relevant docs that were emails discussing pricing and how they come about prices.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001040425 SST_KHR_SSGM_E001031361N
4425	Anuj Vaidya	SA	02/25/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4027	Debra Fouchong	SA	02/25/15	0.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of customer/FX services, SI FX Pricing, for attorneys' use in preparation for further litigation
4423	Nicole Cameron	SA	02/25/15	10.0	010	Reviewed and coded bates SST_KHR_SSGM_E001471938 - SST_KHR_SSGM_E001467507. Documents contained information about foreign exchange rates, spreads, netting, cancellation of trades, and general FX policy.
4236	George Kaiafas	SA	02/25/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001138174 to #SST_KHR_SSGM_E001164899. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, Marketing Presentations and spreadsheets for responsiveness.
0023	Eric Belfi	P	02/26/15	8.0	080	Mediation
0103	Lawrence Sucharow	P	02/26/15	8.7	080	Prepare for and conduct continued mediation session.
0571	David Goldsmith	P	02/26/15	7.3	080	Attend mediation session before J. Marks with all parties
1179	Michael Rogers	P	02/26/15	8.3	080	Attend mediation session with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, SST counsel, George Hopkins and Jonathan Marks; conferences with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel re: same

4027	Debra Fouchong	SA	02/26/15	11.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customer/FX Services, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	02/26/15	5.3	030	Reviewed and coded defendant documents (Cal AG production) primarily relating State Street global FX services, FX transaction policy, FX revenue and FX tech systems, Bates range SST_KHR_SSGM_E001578639 thru SST_KHR_SSGM_E001590586.
4071	Charles Pietrofesa	SA	02/26/15	9.1	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000876751 - SST_KHR_SSGM_E000882209) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports, FX pricing and trade reports, FX practice disclosures, FX marketing documents, and State Street internal FX reports.
4089	Todd Kussin	SA	02/26/15	1.4	030	Emails with Catalyst IT Department and co-counsel re: populating reviewers' folders with additional documents to code; reviewed documents identified by co-counsel as hot, mainly consisting of communications and presentations re: State Street's Custodial FX Services and best execution policies regarding same; conducted quality check/secondary review of documents coded by reviewers to ensure accuracy of designations of priority and issue.
4173	Maritza Bolano	SA	02/26/15	10.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, financial statements and analyses, investment and management reports, FX trading data, basis points and spread charts, RFPs, presentations; Annotated Index of hot documents and Attorney notes of hot and highly relevant documents as appropriate.
4247	Aron Rosenbaum	SA	02/26/15	7.4	030	Reviewed and coded, notably e-mails from as far back as 2005. Many research reports.
4295	Dorothy Hong	SA	02/26/15	9.0	030	Nonconsecutive Bates numbers.
4369	David Pospischil	SA	02/26/15	5.9	030	Document review of defendant's production at 5682 of 9997 of emails, charts, data files, articles of FX trades negotiated and non-negotiated process, procedure, policy.
4424	Jacqueline Grant	SA	02/26/15	9.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4426	Tryphena Greene	SA	02/26/15	10.7	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/26/15	9.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.
4423	Nicole Cameron	SA	02/26/15	8.0	010	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
						Coded bates SST_KHR_SSGM_E001455230 - SST_KHR_SSGM_E001479065 for relevancy. Documents contained information on FX rates, FX revenue and FX policy.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. There were a few Highly Relevant docs that were emails discussing pricing and how they come about prices.
4242	Donato Gianturco	SA	02/26/15	9.5	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E0010404125 SST_KHR_SSGM_E001044331
4425	Anuj Vaidya	SA	02/26/15	9.2	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4244	Judy Watson	SA	02/26/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx G/L reports, fx trade confirmations, daily P/L & limit exception reports, fx general news articles.
4236	George Kaiafas	SA	02/26/15	8.8	030	Reviewed Doc ID #SST_KHR_SSGM_E001145181 to #SST_KHR_SSGM_E001172873. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Marketing Presentations and spreadsheets for responsiveness.
4027	Debra Fouchong	SA	02/27/15	9.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Customer FX Inquiries, FX Profits/Revenues, Marketing of Customer/FX Services, for attorneys' use in preparation for further litigation.
4060	Stephen Dolben	SA	02/27/15	8.2	030	Reviewed and coded for relevance and issue State Street's California AG production documents, primarily [REDACTED] FX revenue reporting and FX trading strategy, Bates range SST_KHR_SSGM_E001590590 thru SST_KHR_SSGM_E001584092.
4071	Charles Pietrofesa	SA	02/27/15	9.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000882212 - SST_KHR_SSGM_E000884040) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and custodial fees, FX pricing and trade reports, netting issues, preferential FX pricing, and State Street internal FX reports.
4173	Maritza Bolano	SA	02/27/15	4.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, FX trading reports and financial data, RFP questions and answers; Annotated Index of hot documents and Attorney notes of hot and highly relevant documents as appropriate.
4247	Aron Rosenbaum	SA	02/27/15	3.3	030	Reviewed and coded mostly routine e-mails and research reports.
4295	Dorothy Hong	SA	02/27/15	6.5	030	document review of defendant's production at 5901 of 9997 of emails, charts, articles re FX negotiated and non-negotiated trades process, procedures, marketing and policies.
4369	David Pospischil	SA	02/27/15	8.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, standing instruction FX, FX revenues.

4424	Jacqueline Grant	SA	02/27/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	02/27/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, netting, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	02/27/15	7.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	02/27/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001044332 SST_KHR_SSGM_E001028352
4425	Anuj Vaidya	SA	02/27/15	7.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Re-reviewed coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4244	Judy Watson	SA	02/27/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx audit document request, fx revenue comparison reports, daily fx P&L reports, daily fx stop/loss reports, daily fx trading revenue reports, daily P/L & limit exception reports.
4423	Nicole Cameron	SA	02/27/15	9.0	010	Coded documents SST_KHR_SSGM_E001479075 - SST_KHR_SSGM_E001496434 for relevancy. Docs consisted of e-mails related to FX revenue, FX rates, IM guides, FX policy.
4236	George Kaiafas	SA	02/27/15	8.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001156809 to #SST_KHR_SSGM_E001172997. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0023	Eric Belfi	P	03/02/15	0.5	130	Discussed case with client
0625	Christopher Keller	P	03/02/15	1.0	130	Attend to case status and strategy.
4027	Debra Fouchong	SA	03/02/15	10.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, FX Profits/Revenues, Marketing of Customer/FX Services, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	03/02/15	8.0	030	Reviewed and coded for relevance and issue State Street's California AG production documents, primarily relating to "Netting" and FX revenue reporting: Bates range SST_KHR_SSGM_E001584092 thru SST_KHR_SSGM_E001602880.

4071	Charles Pietrofesa	SA	03/02/15	8.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000884042 - SST_KHR_SSGM_E000880756) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, netting issues, preferential FX pricing, and State Street internal FX reports.
4089	Todd Kussin	SA	03/02/15	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; prepared report summarizing productivity of reviewers for week ending February 27, 2015.
4173	Maritza Bolano	SA	03/02/15	9.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, data charts, trading reports and RFP inquiries and responses; Annotated Index and Attorney notes of highly relevant documents.
4247	Aron Rosenbaum	SA	03/02/15	6.8	030	Reviewed, coded docs; mostly routine e-mails from after class period. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/02/15	9.0	030	Document review of defendant's production at 6237 of 9997 of emails, charts, articles, data files of negotiated and non-negotiated FX trades policy, practice, procedures including customer query/request and marketing materials.
4369	David Pospischil	SA	03/02/15	3.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including standing instruction FX, FX revenues, public pension fund investment data.
4424	Jacqueline Grant	SA	03/02/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/02/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/02/15	9.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/02/15	10.4	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001028353 SST_KHR_SSGM_E001038536

4244	Judy Watson	SA	03/02/15	8.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx G/L reports, fx audit document request, fx daily volume & revenue estimate reports, daily p/l & limit exception reports, daily stop/loss reports.
4423	Nicole Cameron	SA	03/02/15	8.5	010	Reviewed documents SST_KHR_SSGM_E001474055 - SST_KHR_SSGM_E001474200 for relevancy. Documents related to inquiries about FX rate calculations, FX requests, trade reports, and FX rates.
4425	Anuj Vaidya	SA	03/02/15	10.0	020	Quality controlled previously reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	03/02/15	8.6	030	Reviewed Doc ID #SST_KHR_SSGM_E001173007 to #SST_KHR_SSGM_E001180249. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0625	Christopher Keller	P	03/03/15	2.0	130	Attend to case status and strategy.
4060	Stephen Dolben	SA	03/03/15	6.3	030	Reviewed and coded for relevance and issue State Street's California AG production documents, relating Custody FX, to "Netting" and FX revenue reporting: Bates range SST_KHR_SSGM_E001584092 thru SST_KHR_SSGM_E001602880:
4071	Charles Pietrofesa	SA	03/03/15	9.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000880758 - SST_KHR_SSGM_E000863193) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, marketing of FX services, and State Street internal FX reports.
4173	Maritza Bolano	SA	03/03/15	9.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, charts, FX trading data, customer and marketing presentations, management reports and HR records.
4247	Aron Rosenbaum	SA	03/03/15	7.3	030	Reviewed, coded mostly irrelevant e-mails from after end of class period. Also many research reports. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/03/15	9.7	030	Document review of defendant's production at 6542 of 9997 of emails, charts, articles, data files of negotiated and non-negotiated FX trades policy, practice, procedures including customer query/request and marketing materials.
4369	David Pospischil	SA	03/03/15	7.8	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including FX pricing, public pension fund investment data, FX revenues.
4424	Jacqueline Grant	SA	03/03/15	8.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	03/03/15	9.5	020	Quality controlled previously reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.

4426	Tryphena Greene	SA	03/03/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/03/15	6.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/03/15	9.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Today also had a couple of highly relevant emails discussing FX pricing.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001038547 SST_KHR_SSGM_E001004423N
4027	Debra Fouchong	SA	03/03/15	10.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, SI FX Pricing, for attorneys' use in preparation for further litigation.
4423	Nicole Cameron	SA	03/03/15	8.5	010	Reviewed documents SST_KHR_SSGM_E001474203--SST_KHR_SSGM_E001470289 and coded for relevancy. FX rates, FX requests, FX policy were among emails reviewed.
4244	Judy Watson	SA	03/03/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily fx trading revenue reports, fx G/L reports, daily value at risk reports, fx general news articles, fx trade confirmations, daily p/l & limit exception reports, fx daily stop/loss reports.
4236	George Kaiafas	SA	03/03/15	10.4	030	Reviewed Doc ID #SST_KHR_SSGM_E001144318 to #SST_KHR_SSGM_E001180382. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0023	Eric Belfi	P	03/04/15	0.5	130	Client communications
0625	Christopher Keller	P	03/04/15	5.0	130	Attend to case status and strategy.
1179	Michael Rogers	P	03/04/15	1.4	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, SST counsel, and Jonathan Marks re: scheduling additional mediation; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Cindy Ng, co-counsel, ERISA counsel and Jonathan Marks re: mediator's invoice
4027	Debra Fouchong	SA	03/04/15	10.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4060	Stephen Dolben	SA	03/04/15	3.1	030	Reviewed docs produced by the defendants in the ATRS FX matter. Docs are non-consecutive.

4071	Charles Pietrofesa	SA	03/04/15	7.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000874675 - SST_KHR_SSGM_E000878267) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, disclosure of FX services, and State Street internal FX reports.
4173	Maritza Bolano	SA	03/04/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, financial statements, project reports, organizational charts, FX trading data spreadsheets and revenue analyses.
4247	Aron Rosenbaum	SA	03/04/15	4.9	030	Reviewed and coded docs. Mostly from after class period. Many research reports.
4295	Dorothy Hong	SA	03/04/15	8.5	030	Nonconsecutive Bates numbers.
4369	David Pospischil	SA	03/04/15	7.9	030	Document review of defendant's production at 6783 of 9997 of emails, charts, articles, data files of negotiated and non-negotiated FX trades policy, practice, procedures including customer query/request and marketing materials.
4383	James Griffin	SA	03/04/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues; conference with team member and T. Kussin regarding document.
4424	Jacqueline Grant	SA	03/04/15	9.7	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001354682 through SST_KHR_SSGM_E001325245, and coded for responsiveness, priority, and issues.
4425	Anuj Vaidya	SA	03/04/15	9.5	020	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/04/15	10.0	030	Quality controlled previously reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4394	David Alper	SA	03/04/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, spreads, best execution, RFP/RFI response, and organizational charts of FX services for attorneys' use in preparation for further litigation.
0571	David Goldsmith	P	03/04/15	1.0	080	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
						E-mails internally and with co-counsel re: J. Marks invoice and alternative mediation dates; arrange travel

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Today also had a couple of highly relevant emails discussing FX pricing.
4242	Donato Gianturco	SA	03/04/15	9.2	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E001073402 SST_KHR_SSGM_E001023632
4423	Nicole Cameron	SA	03/04/15	9.0	010	Coded documents SST_KHR_SSGM_E001490322 -- SST_KHR_SSGM_E001450486 for relevancy. Documents related to FX policies and included FX rates.
4244	Judy Watson	SA	03/04/15	10.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx daily revenue reports, org charts, netting presentations.
4236	George Kaiafas	SA	03/04/15	8.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001180391 to #SST_KHR_SSGM_E001142858. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0625	Christopher Keller	P	03/05/15	2.0	090	Attend to case status and strategy.
4027	Debra Fouchong	SA	03/05/15	10.9	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4071	Charles Pietrofesa	SA	03/05/15	7.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000865466 - SST_KHR_SSGM_E000868492) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports, FX pricing and trade reports, disclosure of FX services, and State Street internal FX reports.
4173	Maritza Bolano	SA	03/05/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, reports, FX trading data, revenue spreadsheets, and policy analyses
4295	Dorothy Hong	SA	03/05/15	7.0	030	Document review of defendant's production at 7017 of 9997 of emails, charts, articles, data files of negotiated and non-negotiated FX trades policy, practice, procedures including customer query/request and marketing materials.
4369	David Pospischil	SA	03/05/15	8.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4383	James Griffin	SA	03/05/15	8.8	030	Reviewed production from Defendant concerning Fx trading and services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST_KHR_SSGM_E001313249 through SST_KHR_SSGM_E001308194, and coded for responsiveness, priority, and issues.
4424	Jacqueline Grant	SA	03/05/15	11.8	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	03/05/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, netting, best execution, and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/05/15	10.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
0571	David Goldsmith	P	03/05/15	0.3	080	E-mail to J. Marks re: management fee in mediation invoices; follow-up
4242	Donato Gianturco	SA	03/05/15	7.2	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Today also had a couple of highly relevant emails discussing FX pricing.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001023634 SST_KHR_SSGM_E001028765
4423	Nicole Cameron	SA	03/05/15	6.0	010	Coded documents SST_KHR_SSGM_E001450488 - SST_KHR_SSGM_E001443709 for relevancy. Consisted of emails discussing FX policy, FX rates, and spreads.
4244	Judy Watson	SA	03/05/15	9.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: consolidated daily PL, fx daily volume & revenue estimate reports, fx policy emails, fx quarterly performance reports, fx general news articles.
4425	Anuj Vaidya	SA	03/05/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4236	George Kaiafas	SA	03/05/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001142857 to #SST_KHR_SSGM_E001162865. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0023	Eric Belfi	P	03/06/15	2.0	040	Worked on discovery issues
0625	Christopher Keller	P	03/06/15	1.5	020	Attend to case status and strategy.
4027	Debra Fouchong	SA	03/06/15	7.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/06/15	5.0	030	Meeting with team leader for a case overview and coding guidelines. Reviewed case materials- Amended Class Action Complaint and Plaintiffs' Memorandum of Law in Response to Defendants' Motion to Dismiss

4071	Charles Pietrofesa	SA	03/06/15	8.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000868503 - SST_KHR_SSGM_E000896698) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing and trade reports, disclosure of FX services, and State Street internal FX reports.
4173	Maritza Bolano	SA	03/06/15	9.5	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, project reports, FX trading data, business P/L analyses and audits.
4247	Aron Rosenbaum	SA	03/06/15	3.8	030	Reviewed, coded, research reports, FX reports, e-mails re specific trades.
4295	Dorothy Hong	SA	03/06/15	6.3	030	Document review of defendant's production at 7017 of 9997 of e-mails, articles, charts, PPT's of negotiated and non negotiated trade policy, practice and procedures.
4424	Jacqueline Grant	SA	03/06/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/06/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/06/15	9.7	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	03/06/15	6.0	010	Reviewed and coded emails for relevancy related to FX revenue, FX rates, reports, and RFP responses.
4244	Judy Watson	SA	03/06/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx management team reports, fx pricing engines email discussions/presentations, fx general news articles, fx volume & revenue estimates reports, fx trading revenues site level reports, fx trade confirmations, fx G/L reports.
4242	Donato Gianturco	SA	03/06/15	11.1	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Today also had a couple of highly relevany emails discussing FX pricing.  Bates nummbers were non-consecutive-SST_KHR_SSGM_E001028773 SST_KHR_SSGM_E001045201
4425	Anuj Vaidya	SA	03/06/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.

4236	George Kaiafas	SA	03/06/15	8.7	030	Reviewed Doc ID #SST_KHR_SSGM_E001174935 to #SST_KHR_SSGM_E001175002. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
4089	Todd Kussin	SA	03/06/15	2.7	030	Met with Comfort Orji to discuss background and theories of litigation, coding protocol, and documents to review including complaint, opposition to motion to dismiss, and hearing on motion to dismiss; conducted secondary review/quality check of documents reviewed by coders in order to verify the accuracy of their designations of priority, document type, and issues.
0023	Eric Belfi	P	03/09/15	2.0	040	Worked on discovery issues
0625	Christopher Keller	P	03/09/15	1.5	090	Attend to case status and strategy.
1179	Michael Rogers	P	03/09/15	2.6	080	Conference with Eric Belfi re: mediation; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: same
1225	Stacy Auer	PL	03/09/15	0.2	140	Emails w/ Todd Kussin re: MTD Transcript;
4027	Debra Fouchong	SA	03/09/15	10.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/09/15	7.0	010	Continued to review case materials- Amended Class Action Complaint and Plaintiffs' Memorandum of Law in Response to Defendants' Motion to Dismiss, Cast of character and Index of Hot documents
4071	Charles Pietrofesa	SA	03/09/15	8.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000882914 - SST_KHR_SSGM_E000881330) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, Standing-Instruction FX pricing, preferential and best execution pricing, netting, and State Street internal FX reports.
4089	Todd Kussin	SA	03/09/15	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; prepared report summarizing productivity of reviewers for week ending March 6, 2015; conferred with reviewers re: potential hot documents concerning queries involving automated income repatriation.
4173	Maritza Bolano	SA	03/09/15	9.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included FX trading data spreadsheets, management reports, emails, and policy reports.
4247	Aron Rosenbaum	SA	03/09/15	7.3	030	Reviewed, coded docs, overwhelmingly irrelevant from after class period. Some FX reports from within period.
4295	Dorothy Hong	SA	03/09/15	8.5	030	Document review of defendant's production at 7511 of 9997 of emails, charts, articles, reports, business reports, data of FX negotiated and non-negotiated trading practice, procedure and policy matters.
4369	David Pospischil	SA	03/09/15	6.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4383	James Griffin	SA	03/09/15	8.8	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001308195 through SST_KHR_SSGM_E001352192N, and coded for responsiveness, priority, type and issues.

4424	Jacqueline Grant	SA	03/09/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/09/15	11.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, bonus, and public pension funds of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/09/15	11.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, many of which were tagged Hot and Highly Responsive, are non-consecutive or the Bates range were missing from said documents.
0571	David Goldsmith	P	03/09/15	1.1	080	Review DOL letter re: potential settlement; e-mails with co-counsel re: same; attention to mediation strategy
4423	Nicole Cameron	SA	03/09/15	7.0	010	Reviewed e-mail documents produced by defendants that related to FX policies, FX rates, and trade reports.
4242	Donato Gianturco	SA	03/09/15	10.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. No highly relevant emails today.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001045204 SST_KHR_SSGM_E001013833N
4244	Judy Watson	SA	03/09/15	9.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily fx G/L reports, customer inquiry re direct fx transaction, fx unrealized gains/losses, fx daily volume & revenue estimate reports, fx trade confirmations, fx internal audit request.
4236	George Kaiafas	SA	03/09/15	9.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001163053 to #SST_KHR_SSGM_E001171608. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0571	David Goldsmith	P	03/10/15	1.5	130	E-mails and discussions with Mike Rogers and Stacy Auer re: increasing STAs and planning; discuss with Mike rogers re: settlement strategy
4027	Debra Fouchong	SA	03/10/15	10.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4071	Charles Pietrofesa	SA	03/10/15	9.2	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000881387 - SST_KHR_SSGM_E000897652) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, Standing-Instruction FX pricing, preferential pricing, netting, and State Street internal FX reports.

4089	Todd Kussin	SA	03/10/15	1.5	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewers re: potential hot documents re: negotiated markups.
4173	Maritza Bolano	SA	03/10/15	9.0	030	Reviewed and coded documents from Defendant's document production; non-consecutive Bates numbers; documents included emails, reports, FX trading data, and management policies. Annotated Index of Hot documents and Attorney notes for hot hot and highly relevant documents as appropriate.
4247	Aron Rosenbaum	SA	03/10/15	7.1	030	Reviewed, coded docs. Many research reports, FX reports. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/10/15	9.5	030	Document review of defendant's production at 7735 of 9997 of emails, charts, articles, reports, business reports, data of FX negotiated and non-negotiated trading practice, procedure and policy matters.
4369	David Pospischil	SA	03/10/15	7.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX revenues.
4383	James Griffin	SA	03/10/15	8.3	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001358204 through SST_KHR_SSGM_E001361918, and coded for responsiveness, priority, and issues.
4424	Jacqueline Grant	SA	03/10/15	9.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	03/10/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	03/10/15	11.2	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and bonus of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/10/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were marked Highly Relevant or Hot, are non-consecutive or the Bates range were missing from said documents.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. No highly relevant emails today.
4242	Donato Gianturco	SA	03/10/15	8.6	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E000999475 SST_KHR_SSGM_E001039408
4244	Judy Watson	SA	03/10/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx internal audit discussion items, fx general news articles, faily fx G/L reports, fx daily stop/loss trading reports, fx trade confirmations, fx cash projection reports, fx policy emails.
4423	Nicole Cameron	SA	03/10/15	9.0	010	Reviewed and coded emails produced by defendants. Documents were coded for relevance to FX rates, FX revenues, rate request, RFP questions/responses, and standing instructions.
4236	George Kaiafas	SA	03/10/15	8.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001171581 to #SST_KHR_SSGM_E001183952. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
1225	Stacy Auer	PL	03/10/15	0.4	140	Emails and convos re: doc review and status of case;
4021	Maureen Flanigan	SA	03/11/15	9.5	020	Reviewed amended complaint, opposition to motion to dismiss and transcript on motion to dismiss.
4027	Debra Fouchong	SA	03/11/15	8.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, FX Profits/Revenues, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/11/15	8.0	030	Reviewed and Analyzed attorney work product guidelines for review, index of documents tagged in the Catalyst platform, hot documents identified from Defendant production, also reviewed and coded bates range SST_KHR_SSGM_E001588138--SST_KHR_SSGM_E001579576
4071	Charles Pietrofesa	SA	03/11/15	9.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000883452 - SST_KHR_SSGM_E000879354) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, Standing-Instruction FX pricing, non-pension customers, and State Street internal FX reports.
4089	Todd Kussin	SA	03/11/15	2.8	030	Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; conferred with reviewers re: potentially hot documents including internal State Street communications discussing transparency and cost in connection with FX transactions as well as documents involving employee compensation; conferred with new reviewer Comfort Orji regarding coding protocol and use of Catalyst platform; prepared packet of documents, including pleadings, hot document memos, and communications among plaintiff firms regarding coding category definitions, for newest wave of coders.
4148	Albert Powell	SA	03/11/15	9.1	020	Read compliant, transcript and motion to dismiss.

4173	Maritza Bolano	SA	03/11/15	10.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, reports, FX trading data and spreadsheets; Annotated Index of Hot documents and Attorney notes for hot and highly relevant documents.
4065	Lisa George	SA	03/11/15	8.0	020	Reviewed case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Plaintiffs' Memorandum Of Law In Opposition To Defendants' Motion To Dismiss.
4247	Aron Rosenbaum	SA	03/11/15	7.0	030	Reviewed, coded docs; mostly from after class period. Some FX reports.
4295	Dorothy Hong	SA	03/11/15	6.5	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	03/11/15	8.9	020	Document review at 7945 of 9997 of e-mails, charts, data files, PPT's, articles relating to FX negotiated and non-negotiated trade policy, practice and procedures.
4369	David Pospischil	SA	03/11/15	5.7	030	Began review of Amended Complaint and Motion to Dismiss.
4383	James Griffin	SA	03/11/15	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX revenues, standing instruction FX; conference with T. Kussin regarding case background materials.
4385	David Packman	SA	03/11/15	7.8	020	Reviewed production from Defendant pertaining to Fx trading including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001358032 through SST_KHR_SSGM_E001338717, and coded for responsiveness, priority, type and issues.
4402	Jason Saad	SA	03/11/15	9.7	020	Read the complaint and the plaintiff's opposition to the motion to dismiss the case.
4424	Jacqueline Grant	SA	03/11/15	12.0	030	Reviewed and analyzed Arkansas Teacher Retirement Systems v. State Street Amended Complaint, Arkansas Teacher Retirement Systems v. State Street Amended Motion to Dismiss, Arkansas Teacher Retirement Systems Memorandum of Law in Opposition to Defendants Motion to Dismiss and other relevant materials.
4426	Tryphena Greene	SA	03/11/15	11.3	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/11/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, organizational charts, bonus, public pension funds, and netting of FX services for attorneys' use in preparation for further litigation.
4413	Barry Kaplan	SA	03/11/15	10.0	010	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents many of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4244	Judy Watson	SA	03/11/15	9.5	030	Orientation: Reviewed complaint and motion to dismiss.
						Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx policy emails, branded streaming prices presentations, fx general news articles, GM/SF flash reports, CFXS pricing reports.

						Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. No highly relevant emails today.
4242	Donato Gianturco	SA	03/11/15	10.0	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E001039418 SST_KHR_SSGM_E001024945
4423	Nicole Cameron	SA	03/11/15	9.2	010	Reviewed emails produced by SS which consisted of FX policies, RFP questions and responses, FX rates, request for cancellation, information on spreads, and trade reports
4425	Anuj Vaidya	SA	03/11/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/11/15	10.3	020	Read through preparatory documents in order to get acquainted with the case: the Amended Complaint, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and the Transcript of the May 8, 2012 Hearing before Chief Judge Mark L. Wolf concerning the motion to dismiss. Attended to team matters.
4236	George Kaiafas	SA	03/11/15	9.6	030	Reviewed Doc ID #SST_KHR_SSGM_E001183953 to #SST_KHR_SSGM_E001177658. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0023	Eric Belfi	P	03/12/15	1.0	130	Client communications
1225	Stacy Auer	PL	03/12/15	0.5	030	Review files for doc requests to Defs; convos and emails re: same;
4021	Maureen Flanigan	SA	03/12/15	7.6	020	Reviewed Defendant's brief for the motion to dismiss, plaintiff's opposition to same, power point presentation regarding case overview and various Hot documents; discuss same with T Kussin.
4027	Debra Fouchong	SA	03/12/15	11.3	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Disclosure of FX Practice, SI FX Pricing, for attorneys' use in preparation for further litigation
4071	Charles Pietrofesa	SA	03/12/15	9.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000866245 - SST_KHR_SSGM_E000878261) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, Standing-Instruction FX pricing, non-pension customers, and State Street internal FX reports.

						Conducted secondary review/quality check of documents produced by defendants and coded by reviewers over the previous week in order to ensure the accuracy of their designations of priority, issue and document type; in advance of orientation meeting with partners, conferred with new coders to discuss background of litigation and began discussing protocol for coding defendants' documents on Catalyst review platform; prepared additional selection of documents for newest coders, including collection of hot documents referenced by existing coders on current version of hot documents chart and presentation prepared for prior mediation; communications with Catalyst to identify total number of hours logged onto Catalyst by each coder during the review.
4089	Todd Kussin	SA	03/12/15	3.6	030	
4148	Albert Powell	SA	03/12/15	9.4	020	Review complaint, motion to dismiss, opposition to motion to dismiss, and other pleadings.
4173	Maritza Bolano	SA	03/12/15	8.0	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, FX spreadsheets, trading data, and reports; Annotated Index of hot documents and Attorney notes of hot and highly relevant documents.
4247	Aron Rosenbaum	SA	03/12/15	7.3	030	Reviewed and coded mostly irrelevant docs from after class period. Some relevant reports.
4295	Dorothy Hong	SA	03/12/15	8.5	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	03/12/15	9.0	020	Document review at 8242 of 9997 of e-mails, charts, data files, PPT's, articles relating to FX negotiated and non-negotiated trade policy, practice and procedures.
4383	James Griffin	SA	03/12/15	7.8	030	Continued review of Amended Complaint and Motion to Dismiss.
4385	David Packman	SA	03/12/15	7.2	020	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001339996 through SST_KHR_SSGM_E001328166, and coded for responsiveness, priority, type and issues.
4402	Jason Saad	SA	03/12/15	10.6	020	Complete reviewing the plaintiff's opposition to the motion to dismiss and read and review the transcript of the judge's denial of the motion to dismiss. Read the Patsos case. Review slides and others "hot documents" found so far in discovery regarding the claims.
4424	Jacqueline Grant	SA	03/12/15	8.5	030	Reviewed and analyzed Arkansas Teacher Retirement Systems v. State Street Amended Complaint, Arkansas Teacher Retirement Systems v. State Street Amended Motion to Dismiss, Arkansas Teacher Retirement Systems Memorandum of Law in Opposition to Defendants Motion to Dismiss, Hot Docs, PowerPoint Presentations, Defendants Memorandum of Law in support of Defendants Motion to Dismiss and other relevant materials.
4426	Tryphena Greene	SA	03/12/15	10.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/12/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, negotiated FX pricing, and netting of FX services for attorneys' use in preparation for further litigation.
						Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, some of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.

4423	Nicole Cameron	SA	03/12/15	9.0	010	Reviewed documents produced by defendants. Documents were emails that related to FX policies, FX rates, rate request, cancellations, RFP questions, and trade tickets.
4242	Donato Gianturco	SA	03/12/15	8.5	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. One highly relevant email about concern over the FX execution.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001043193 SST_KHR_SSGM_E001043443
1643	Roger Yamada	SA	03/12/15	8.9	020	Continued preparing and reading through preparatory documents in order to get acquainted with the case: the Amended Complaint, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and the Transcript of the May 8, 2012 Hearing before Chief Judge Mark L. Wolf concerning the motion to dismiss. Attended to team matters.
4413	Barry Kaplan	SA	03/12/15	10.0	010	Review of case law and defendant's documents from CalPers case.
4425	Anuj Vaidya	SA	03/12/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4244	Judy Watson	SA	03/12/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx volume & revenue reports, customer fx inquiries, fx audit requests.
4236	George Kaiafas	SA	03/12/15	10.0	030	Reviewed Doc ID #SST_KHR_SSGM_E001177662 to #SST_KHR_SSGM_E001177788. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness.
0103	Lawrence Sucharow	P	03/13/15	2.7	080	Telephone conference call with Jonathan Marks and Bill Paine re new mediation developments with the federal government agencies and class plaintiffs; emails and conference calls with co - counsel re mediation strategy and scheduling.
0571	David Goldsmith	P	03/13/15	1.4	030	Orientation session with new STAs; prepare for same; e-mails re: mediation
1179	Michael Rogers	P	03/13/15	1.2	080	Conference with David Goldsmith, Todd Kussin and document review attorneys re: document review
4021	Maureen Flanigan	SA	03/13/15	9.5	030	Attend orientation meeting regarding case overview with D Goldsmith, M Rogers and team members; attend meeting with T Kussin and team members regarding coding sheet and guidelines and platform specifics; reviewed Defendant's brief for the motion to dismiss, plaintiff's opposition to same, power point presentation regarding case overview and various Hot documents.
4027	Debra Fouchong	SA	03/13/15	9.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation



4385	David Packman	SA	03/13/15	6.0	020	Review certain hot documents in the State Street material that points to the deception. Meeting with David Goldsmith, Mike Rogers, Todd Kussin and others regarding elements of the case-- overview and questions asked and answered. Reviewed the fee schedule and custodian agreement and followed back with the transcript of the motion to dismiss hearing.
4402	Jason Saad	SA	03/13/15	8.8	020	Reviewed and analyzed Arkansas Teacher Retirement Systems v. State Street Amended Complaint, Arkansas Teacher Retirement Systems v. State Street Amended Motion to Dismiss, Arkansas Teacher Retirement Systems Memorandum of Law in Opposition to Defendants Motion to Dismiss, Hot Docs, PowerPoint Presentations, Defendants Memorandum of Law in support of Defendants Motion to Dismiss, Document Review Coding Fields Quick Reference Guide, Custodian Contract between Plaintiffs and Defendants, Plaintiff's Pro Forma Fee Analysis, Massachusetts Title XV Chapter 93A Regulation of Business Practices for Consumer Protection, and other relevant materials. Catalyst training and attend case briefing meeting.
4424	Jacqueline Grant	SA	03/13/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/13/15	6.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, and pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/13/15	7.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, some of which were tagged Highly Relevant, are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	03/13/15	5.2	010	Reviewed emails produced by SS regarding FX rates, FX policy, RFP responses, and trade cancellations.
4244	Judy Watson	SA	03/13/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx policy email discussions/presentations, fx general news articles, fx revenue reports, fx p/l reports.
4242	Donato Gianturco	SA	03/13/15	10.7	030	Reviewed documents for the State Street ATPF litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. One highly relevant email about concern over execution as a business strategy.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001036614 SST_KHR_SSGM_E001029929
4413	Barry Kaplan	SA	03/13/15	10.0	010	Review of case law, statute, and motion papers from CalPERS and Arkansas cases. Attended orientation sessions on case posture and document coding.

4236	George Kaiafas	SA	03/13/15	8.4	030	Reviewed Doc ID #SST_KHR_SSGM_E01177792 to #SST_KHR_SSGM_E001173325. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness
4425	Anuj Vaidya	SA	03/13/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/13/15	10.4	020	Met with David Goldsmith and Mike Rogers concerning an overview of the litigation. Continued preparing and reading through preparatory documents in order to get acquainted with the case: the Amended Complaint, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and the Transcript of the May 8, 2012 Hearing before Chief Judge Mark L. Wolf concerning the motion to dismiss. Attended to team matters.
0571	David Goldsmith	P	03/16/15	0.2	140	Address new mediation date; travel and logistics
0625	Christopher Keller	P	03/16/15	1.0	130	Attend to case status and strategy.
4021	Maureen Flanigan	SA	03/16/15	8.4	030	Reviewed and analyzed coding guidelines, document requests and hot documents; review and analyze emails, market research documents and spreadsheets about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/16/15	10.8	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/16/15	9.1	030	Reviewed and Analyses defendant production, bates range SST_KHR_SSGM_E001570097N-SST_KHR_SSGM_E001592055 documents consisted of emails regarding FX trades and policies, im guidelines, client renewal and proposal, meeting agenda, data files, fx buudget and revenue for various clients
4071	Charles Pietrofesa	SA	03/16/15	8.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000878306 - SST_KHR_SSGM_E000882105) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, and State Street internal FX reports.
4089	Todd Kussin	SA	03/16/15	4.4	030	Conducted secondary review/quality check of documents reviewed by coders during the week ending March 13, 2015 to ensure the accuracy of their designations of priority, issue, and document type; drafted report summarizing productivity of reviewers for week ending March 13, 2015; identified and gathered all documents discussing guidelines for issue coding on Catalyst to be provided for newest round of coders; emails with Catalyst support regarding the obtaining of new batch of un-coded documents to be reviewed by newest coders; conferred with newest coders re: document coding issue guidelines.
4148	Albert Powell	SA	03/16/15	8.7	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/16/15	8.3	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading data reports, management policies, and FX projects; Annotated Index of hot documents and Attorney notes for hot and highly relevant documents.

4065	Lisa George	SA	03/16/15	8.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Plaintiffs' Memorandum Of Law In Opposition To Defendants' Motion To Dismiss, Memorandum In Support of Defendants' Motion To Dismiss, Various Emails and other produced documents, Plaintiffs' Presentation on Liability, Custodian Contract between ARTRS and defendants, ARTRS Pro Forma Fee Analysis, Investment Manager Agreement between BlackRock and ARTRS, screenshot of the Catalystapps desktop platform, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, presentations, and data sheets concerning State Street FX trading business growth and customer issues.
4247	Aron Rosenbaum	SA	03/16/15	7.0	030	Reviewed and coded, notably FX reports and research reports. Many irrelevant docs from after class period. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/16/15	9.5	030	Document review at 8793 of 9997 of e mails, charts, articles, data files, PPT's of negotiated and non-negotiated FX trade policy, practice and procedure.
4321	Ian Herrick	SA	03/16/15	8.0	020	Began first level review of email and other documents relating to class action suit.
4369	David Pospischil	SA	03/16/15	6.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing.
4383	James Griffin	SA	03/16/15	8.7	030	Reviewed production from Defendant pertaining to Fx trading including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001362362 through SST_KHR_SSGM_E001359884, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	03/16/15	7.5	030	Reviewed additional coding descriptions, started coding documents in Alison's set of documents.
4402	Jason Saad	SA	03/16/15	7.4	020	Reviewed and analyzed Arkansas Teacher Retirement Systems v. State Street Amended Complaint, Arkansas Teacher Retirement Systems v. State Street Amended Motion to Dismiss, Arkansas Teacher Retirement Systems Memorandum of Law in Opposition to Defendants Motion to Dismiss, Hot Docs, PowerPoint Presentations, Defendants Memorandum of Law in support of Defendants Motion to Dismiss, Document Review Coding Fields Quick Reference Guide, Custodian Contract between Plaintiffs and Defendants, Plaintiff's Pro Forma Fee Analysis, Massachusetts Title XV Chapter 93A Regulation of Business Practices for Consumer Protection, hot emails, and other relevant materials. Catalyst sampling and coding.
4424	Jacqueline Grant	SA	03/16/15	9.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/16/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, organizational charts, and bonus of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/16/15	9.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant and Hot, are non-consecutive or the Bates range were missing from said documents.

						Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.
4242	Donato Gianturco	SA	03/16/15	9.5	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E001043444
4413	Barry Kaplan	SA	03/16/15	9.5	020	SST_KHR_SSGM_E001022274N Reviewed and tagged State Street FX department documents.
4423	Nicole Cameron	SA	03/16/15	7.0	010	Reviewed documents produced by SS which related to FX policies, FX rates, request for rates, and cancellation of trades. Also reviewed some documentation which included language from IM guides and RFP responses.
4425	Anuj Vaidya	SA	03/16/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4244	Judy Watson	SA	03/16/15	9.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx daily stop/loss reports, daily fx trading revenue reports, fx trade confirmations, daily consolidated trading revenue reports, fx G/L reports.
4236	George Kaiafas	SA	03/16/15	8.5	030	Reviewed Doc ID #SST_KHR_SSGM_E01173326 to #SST_KHR_SSGM_E001140669. Reviewed and analyzed Documents and Emails containing FX Standing Instructions, General FX Policy, FX Rates, FX Profit and Loss, Customer Agreements, Marketing Presentations and spreadsheets for responsiveness
1643	Roger Yamada	SA	03/16/15	9.5	020	Logged into the Catalyst document platform and began coding documents. Continued preparing and reading through preparatory documents in order to get acquainted with the case: the Amended Complaint, Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and the Transcript of the May 8, 2012 Hearing before Chief Judge Mark L. Wolf concerning the motion to dismiss. Attended to team matters.
4021	Maureen Flanigan	SA	03/17/15	7.4	030	Review and analyze emails, market research documents, analyst reports and spreadsheets about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/17/15	10.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/17/15	9.5	030	Reviewed and analyzed Documents in defendant production Bates range SST_KHR_SSGM_E001574241-SST_KHR_SSGM_E001592173 documents consisted of discussions of fx opportunities and marketing, policies, project reports, hr issues, employee promotions,
4071	Charles Pietrofesa	SA	03/17/15	8.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000900763 - SST_KHR_SSGM_E000883889) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, and State Street internal FX reports.

						Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for documents discussing State Street's foreign exchange trading on its own account and how this compared to its trading on behalf of custodial clients; conducted searches on Concordance in order to identify documents included in previous three binders of hot documents as well as their related documents; reviewed same and created additional binders.
4089	Todd Kussin	SA	03/17/15	6.3	030	
4148	Albert Powell	SA	03/17/15	7.8	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/17/15	9.2	030	Reviewed and coded documents from Defendant's production; Non-consecutive Bates numbers; documents included emails, FX trading data, management and annual reports; Annotated Index of hot documents and Attorney notes of hot documents and highly relevant documents.
4065	Lisa George	SA	03/17/15	4.0	020	Continued to review case background materials, including: Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, presentations, and data sheets concerning State Street FX trading business growth and customer issues.
4247	Aron Rosenbaum	SA	03/17/15	7.4	030	Reviewed and coded, notably many FX reports.
4295	Dorothy Hong	SA	03/17/15	8.0	030	Document review at 9106 of 9997 of e mails, charts, articles, business reports, presentations of negotiated and non-negotiated FX trade procedure, policy and practice.
4321	Ian Herrick	SA	03/17/15	8.0	020	Continued first level review of email and other documents relating to class action suit.
4369	David Pospischil	SA	03/17/15	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conferences with T. Kussin regarding review, collections of documents marked as hot.
4383	James Griffin	SA	03/17/15	8.9	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001349765 through SST_KHR_SSGM_E001312018, and coded for responsiveness, priority, and issues.
4385	David Packman	SA	03/17/15	7.1	040	Continue coding documents in Alison's document set. Most of the documents were articles.
4402	Jason Saad	SA	03/17/15	10.2	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, [REDACTED] folder Production 2 - Batch_0001.
4424	Jacqueline Grant	SA	03/17/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/17/15	11.6	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, negotiated FX pricing, and bonus of FX services for attorneys' use in preparation for further litigation.

						Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.
4242	Donato Gianturco	SA	03/17/15	9.4	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E001022752N SST_KHR_SSGM_E001027459
4244	Judy Watson	SA	03/17/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx stop/loss reports, fx volume & revenue reports, fx policy email discussions, fx general news articles.
4423	Nicole Cameron	SA	03/17/15	9.0	010	Reviewed emails, FX reports, rate requests and RFPs related to FX deals executed by defendants. Coded documents related to FX policies issue.
4413	Barry Kaplan	SA	03/17/15	10.3	020	Reviewed and coded defendant's documents.
1643	Roger Yamada	SA	03/17/15	8.0	030	Logged into the Catalyst document platform and began coding documents, including Custodial Agreements, spreadsheets indicating profit and loss margins, internal foreign exchange services documentation, and financial statements. Attended to team matters.
4425	Anuj Vaidya	SA	03/17/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4027	Debra Fouchong	SA	03/18/15	10.8	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/18/15	8.9	030	Reviewed and Analyzed documents in defendants production bates range SST_KHR_SSGM_E001592278-SST_KHR_SSGM_E001576083. Discussions of client marketing, FX trades, FX revenues, opening new business frontiers, Monthly business updates, etc
4071	Charles Pietrofesa	SA	03/18/15	8.4	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000883890 - SST_KHR_SSGM_E000874145) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, preferential pricing, and State Street internal FX reports.

						Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for documents referencing articles about the foreign exchange industry in general, whether or not they mention State Street specifically; formulated and conducted searches on Concordance in order to identify documents included in previous three binders of hot documents as well as the related documents in their families; reviewed same and created additional binders; email communications with Catalyst IT in order to request that additional un-coded documents be placed into the folders of reviewers.
4089	Todd Kussin	SA	03/18/15	7.3	030	
4148	Albert Powell	SA	03/18/15	9.3	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/18/15	8.5	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX business analysis reports, FX trading data, management policy and procedures analyses; Annotated Index and Attorney notes of hot and highly relevant documents.
4065	Lisa George	SA	03/18/15	8.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Plaintiffs' Memorandum Of Law In Opposition To Defendants' Motion To Dismiss, Memorandum In Support of Defendants' Motion To Dismiss, Various Emails and other produced documents, Plaintiffs' Presentation on Liability, Custodian Contract between ARTRS and defendants, ARTRS Pro Forma Fee Analysis, Investment Manager Agreement between BlackRock and ARTRS, screenshot of the Catalystapps desktop platform, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, presentations, and data sheets concerning State Street FX trading business growth and customer issues.
4247	Aron Rosenbaum	SA	03/18/15	7.0	030	Reviewed and coded, mostly irrelevant docs from after class period.
4295	Dorothy Hong	SA	03/18/15	7.5	030	Document review at 9321 of 9997 of e mails, charts, articles, business reports, presentations of negotiated and non-negotiated FX trade procedure, policy and practice.
4321	Ian Herrick	SA	03/18/15	8.5	020	Continued first level review of email and other documents relating to class action suit.
4369	David Pospischil	SA	03/18/15	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	03/18/15	7.7	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001360486 through SST_KHR_SSGM_E001324663, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	03/18/15	7.3	040	Code documents in Catalyst from plaintiff's production. Documents coded for relevance, issue and document type. Most documents were either irrelevant or tangentially relevant.
4402	Jason Saad	SA	03/18/15	10.1	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Production 2 - Batch_0004; Batch_0010; Batch_0015; Batch_0035.

4424	Jacqueline Grant	SA	03/18/15	7.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/18/15	11.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and netting of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/18/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4413	Barry Kaplan	SA	03/18/15	9.5	020	Reviewed and coded defendant's documents.
4242	Donato Gianturco	SA	03/18/15	9.3	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. There were also numerous highly relevant emails discussing FX policy.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001043947 SST_KHR_SSGM_E001044119
4423	Nicole Cameron	SA	03/18/15	8.0	010	reviewed and coded documents regarding cancellation of FXs trades, potential FX business, range of the day rates, and FX policies.
4244	Judy Watson	SA	03/18/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx code of conduct document, fx rfp presentations, fx trade confirmations, fx volume & revenue reports.
1643	Roger Yamada	SA	03/18/15	10.3	030	Logged into the Catalyst document platform and began coding documents, including Custodial Agreements, correspondence concerning different foreign exchange rates, internal foreign exchange services documentation, and financial statements. Attended to team matters.
4425	Anuj Vaidya	SA	03/18/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
0571	David Goldsmith	P	03/19/15	0.3	140	Address disclosures of BNY settlement
4021	Maureen Flanigan	SA	03/19/15	5.6	030	Review and analyze emails, market research documents, analyst reports and spreadsheets about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.

4027	Debra Fouchong	SA	03/19/15	10.8	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits/Revenues, Customer FX Inquiries, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/19/15	9.5	040	Reviewed and Analyzed documents in defendants production Bates range SST_KHR_SSGM_E001576139-SST_KHR_SSGM_E001588768 Discussions of client marketing, investment policy presentations, FX revenues, opening new business (currenex) frontiers, monthly business updates, etc
4071	Charles Pietrofesa	SA	03/19/15	10.2	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000874187 - SST_KHR_SSGM_E000885104) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, preferential pricing, best execution, and State Street internal FX reports.
4089	Todd Kussin	SA	03/19/15	3.1	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for documents referencing articles sent to Calpers discussing general foreign exchange policies; formulated and conducted searches on Concordance in order to identify documents included in previous three binders of hot documents as well as the related documents in their families; reviewed same and created additional binders; email communications with Catalyst IT in order to ensure that additional un-coded documents have been placed into the folders of reviewers.
4148	Albert Powell	SA	03/19/15	8.3	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/19/15	7.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading data reports; policy reports and management project memorandum; Annotated Index and Attorneys Notes of hot and highly relevant documents.
4065	Lisa George	SA	03/19/15	9.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Transcript of Hearing On Motion To Dismiss Before Judge Wolf, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, presentations, and data sheets concerning State Street FX trading business growth and customer issues.
4247	Aron Rosenbaum	SA	03/19/15	7.4	030	Reviewed and coded, mostly research reports. Many irrelevant from after class period. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/19/15	8.0	030	Document review at 10652 of 11051 of e mails, charts, articles, business reports, presentations of negotiated and non-negotiated FX trade policy, procedure and practice.
4321	Ian Herrick	SA	03/19/15	8.5	020	Continued first level review of email and other documents relating to class action suit.
4369	David Pospischil	SA	03/19/15	8.1	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	03/19/15	7.8	030	Reviewed production from Defendant concerning Fx trading and services including emails, spreadsheets, and financial statements, in non-consecutive Bates range SST_KHR_SSGM_E001324661 through SST_KHR_SSGM_E001316221, and coded for responsiveness, priority, and issues.

4385	David Packman	SA	03/19/15	7.1	040	Code plaintiff documents for relevance, issue and document type. Earlier in the day I was coding from Alison's old set of documents, hopping around to find uncoded documents. Later I started coding documents within my assigned documents in my folder. Emailed Todd questions regarding specific documents and coding.
4424	Jacqueline Grant	SA	03/19/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	03/19/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	03/19/15	10.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and negotiated FX pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/19/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged bot Highly Relevant and Hot, are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	03/19/15	5.0	010	Reviewed and coded emails related to FX policies, rates, cancellations and rebookings, and language for RFP responses. Bate numbers not numbered consecutively.
4242	Donato Gianturco	SA	03/19/15	9.6	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsp heets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relavent docs that were currency trading tickets. Also there where a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numeroous profit and loss statements maked relevant. Also there were many emails and attachments for public pension funds maked relevant.  Bates nummbers were non-consecutive-SST_KHR_SSGM_E001044119 SST_KHR_SSGM_E001037920
4244	Judy Watson	SA	03/19/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: cfxs volume reports, cfxs revenue reports, fx general news articles, SSGM fx goals, daily p/l & limit exception reports, fx G/L reports.
4413	Barry Kaplan	SA	03/19/15	10.2	020	Reviewed and coded defendant's documents.
1643	Roger Yamada	SA	03/19/15	10.0	030	Coded documents within the Catalyst workflow, including email correspondence concerning FX custodial client inquiries, internal investigations on FX rate setting, personnel review, and divisional risk assessments within State Street's various branches.
0625	Christopher Keller	P	03/20/15	1.0	130	Review pleadings, lead plaintiff and motion to dismiss briefing.

4021	Maureen Flanigan	SA	03/20/15	7.9	030	Review and analyze market research documents, emails, analyst reports and spreadsheets about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/20/15	8.3	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/20/15	6.0	030	Reviewed and Analyzed documents in defendant production bates range SST_KHR_SSGM_E001588796-SST_KHR_SSGM_E001604080 Documents include emails regarding currenex integration, daily revenue reports, new client acquisitions and other general course of business emails and presentations.
4071	Charles Pietrofesa	SA	03/20/15	8.5	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000885109 - SST_KHR_SSGM_E000884631) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, preferential pricing, best execution, and State Street internal FX reports.
4089	Todd Kussin	SA	03/20/15	7.0	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for documents, [REDACTED] Bisegna [REDACTED] formulated and conducted searches on Concordance in order to identify documents included in previous three binders of hot documents as well as the related documents in their families; reviewed same and created additional binders.
4148	Albert Powell	SA	03/20/15	8.4	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/20/15	7.5	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, management reports, policy initiatives project reports, and FX trading data; annotated Attorney notes or highly relevant documents.
4065	Lisa George	SA	03/20/15	6.5	020	Continued to review case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Transcript of Hearing On Motion To Dismiss Before Judge Wolf, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues and customer issues.
4247	Aron Rosenbaum	SA	03/20/15	3.5	030	Reviewed and coded, notably FX reports and other research reports.
4295	Dorothy Hong	SA	03/20/15	7.0	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	03/20/15	8.5	020	Document review of defendant's production at 10970 of 11051 of e mails, charts, articles, presentations of negotiated and non-negotiated FX trade policy, procedure and practice.
4369	David Pospischil	SA	03/20/15	7.2	030	Continued first level review of email and other documents relating to class action suit.
4383	James Griffin	SA	03/20/15	7.9	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
						Reviewed production from Defendant pertaining to Fx trading including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001334272 through SST_KHR_SSGM_E001359884, and coded for responsiveness, priority, type and issues.

4385	David Packman	SA	03/20/15	6.4	040	code documents in my folder for relevance, issue and document type. Many were irrelevant, a few were relevant. One document was highly relevant (regarding SST having an FX transaction outside the ranges for the day-- not Hot as there is no response).
4402	Jason Saad	SA	03/20/15	10.2	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.
4424	Jacqueline Grant	SA	03/20/15	9.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/20/15	6.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, and pricing and marketing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/20/15	10.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/20/15	8.5	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001037929 SST_KHR_SSGM_E001022300N
4244	Judy Watson	SA	03/20/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx G/L reports, fx cash projection reports, fx general news articles, fx p/l breakdown, fx rfp request.
4423	Nicole Cameron	SA	03/20/15	8.0	010	Reviewed and coded documents produced by State Street. Many documents were out of scope and irrelevant. Documents related to discussions within the normal course of business related to FX. Reviewed trade reports, rate requests, request for RFP responses, and FX policies on AIR and cancellation of trades.  Bate numbers: SST_KHR_SSGM_E001445368 - SST_KHR_SSGM_E001442385
4413	Barry Kaplan	SA	03/20/15	10.2	020	Reviewed and coded defendant's documents.

4425	Anuj Vaidya	SA	03/20/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
						Coded documents within the Catalyst workflow, including email correspondence [REDACTED]
1643	Roger Yamada	SA	03/20/15	10.0	030	[REDACTED]
0571	David Goldsmith	P	03/23/15	0.2	090	E-mails with D. Chiplock re: April 8-9 planning; BNY settlement agreement
0625	Christopher Keller	P	03/23/15	1.0	130	Attend to case status and strategy.
4021	Maureen Flanigan	SA	03/23/15	8.4	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/23/15	10.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/23/15	8.0	030	Reviewed and analyzed documents for defendants production bates range SST_KHR_SSGM_E001604081 - SST_KHR_SSGM_E001599304. Documents were strategy emails, emails regarding international FX transactions, presentations, FX and MiFid analysis, meeting minutes, global interbank communications etc
4071	Charles Pietrofesa	SA	03/23/15	6.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000884645 - SST_KHR_SSGM_E000803966) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, preferential pricing, and State Street internal FX reports.
4089	Todd Kussin	SA	03/23/15	8.0	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for documents containing internal discussions during the class period re: [REDACTED] formulated and conducted searches on Catalyst in order to identify documents included in previous three binders of hot documents; reviewed same and created additional binders; conducted searches for family members of a documents related to those previously identified and selected for hot documents binders; prepared report summarizing productivity of reviewers for the week ending March 20, 2015.
4148	Albert Powell	SA	03/23/15	8.5	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/23/15	9.5	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading reports, management policies, FX trading data; annotated Index and Attorney notes of hot and highly relevant documents.
4065	Lisa George	SA	03/23/15	9.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Motion To Dismiss, Transcript of Hearing On Motion To Dismiss Before Judge Wolf, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues and customer issues.
4247	Aron Rosenbaum	SA	03/23/15	7.0	030	Reviewed previously coded docs for quality control. Nonconsecutive Bates numbers.

4295	Dorothy Hong	SA	03/23/15	0.3	030	Document review at 10971 of 11051 of e-mails of Non-negotiated FX trades matter.
4369	David Pospischil	SA	03/23/15	7.0	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	03/23/15	8.8	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001320810 through SST_KHR_SSGM_E001355011, and coded for responsiveness, priority, and issues.
4385	David Packman	SA	03/23/15	7.3	040	Reviewed and coded documents in my assignment folder for relevance, document and issue type. Most documents were similar either being PL reports, or irrelevant documents. [REDACTED]
4402	Jason Saad	SA	03/23/15	10.6	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.
4424	Jacqueline Grant	SA	03/23/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	03/23/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	03/23/15	10.4	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, and best execution of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/23/15	9.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/23/15	10.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001022319 SST_KHR_SSGM_E001011556
4244	Judy Watson	SA	03/23/15	8.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx policy email discussions, fx volume reports, fx brokerage agreements.

4413	Barry Kaplan	SA	03/23/15	10.3	020	Reviewed and coded defendant's documents.
4423	Nicole Cameron	SA	03/23/15	10.0	010	Reviewed documents about FX policies, FX rates, and requests, cancelation of FX and RFP questions. Coded bates numbers: SST_KHR_SSGM_E001442391 SST_KHR_SSGM_E001472951
1643	Roger Yamada	SA	03/23/15	9.5	030	Coded documents within the Catalyst workflow, including email correspondence [REDACTED] [REDACTED] [REDACTED] Attended to team matters.
4321	Ian Herrick	SA	03/23/15	8.5	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4021	Maureen Flanigan	SA	03/24/15	8.8	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/24/15	10.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/24/15	8.0	030	Reviewed and Analyzed documents in defendants production Bates range SST_KHR_SSGM_E001599309-SST_KHR_SSGM_E001566688. Documents are mainly emails regarding new business, financial reports, competition comparison, FX pricing presentations etc
4071	Charles Pietrofesa	SA	03/24/15	9.1	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E000772953 - SST_KHR_SSGM_E001583710) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, and State Street internal FX reports; reviewed FX article regarding best execution.
4089	Todd Kussin	SA	03/24/15	5.0	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for emails alluding to revenue recognition policies; reviewed and circulated to team article explaining best execution policies as they relate to fiduciary duties; formulated and conducted searches on Catalyst in order to identify documents included in previous three binders of hot documents; reviewed same and created additional binders; conducted searches for family members of a documents related to those previously identified and selected for hot documents binders; reviewed all review folders on Catalyst to take inventory of uncoded documents and re-distributed same to reviewers nearing the end of their batches of documents, analyzed collection of hot documents identified by Comfort Orji in order to provide feedback regarding her designations.
4148	Albert Powell	SA	03/24/15	8.9	030	Review and analyze documents in order to determine relevance.

4173	Maritza Bolano	SA	03/24/15	9.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading data, marketing presentations, and management reports; Annotated index of Hot documents and Attorney notes of hot and highly relevant documents.
4065	Lisa George	SA	03/24/15	7.8	020	Continued to review case background materials, including: Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues and customer issues.
4247	Aron Rosenbaum	SA	03/24/15	7.0	030	Performed quality control second review on some docs.  Reviewed, coded new batch, notably FX reports and research reports.  Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/24/15	6.0	030	document review at 11051 of 11051 of e mails, articles, charts, data files, presentations of negotiated and non-negotiated FX trade policies, practices and procedures.
4321	Ian Herrick	SA	03/24/15	8.5	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4383	James Griffin	SA	03/24/15	6.5	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001355017 through SST_KHR_SSGM_E001331234, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	03/24/15	8.2	040	Reviewed and coded documents from my assignment folder. Documents coded for relevance, document type and issue. Many documents were irrelevant, but a few were highly relevant as they related to State Street's methodology of calculating revenue [REDACTED]
4402	Jason Saad	SA	03/24/15	10.4	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents [REDACTED] [REDACTED] [REDACTED] relevant material within Catalyst in folder Jason Saad.
4424	Jacqueline Grant	SA	03/24/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/24/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, organizational charts, bonus, netting, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.

4394	David Alper	SA	03/24/15	11.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/24/15	9.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001011561 SST_KHR_SSGM_E001044962
4413	Barry Kaplan	SA	03/24/15	10.2	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	03/24/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx revenue reports, fx volume reports, rfp request, fx market analysis presentation.
4423	Nicole Cameron	SA	03/24/15	10.0	010	Reviewed documents from State Street regarding FX policy, rates, request for preferential pricing, and cancelation/rebooking of trades. Coded bates numbers SST_KHR_SSGM_E001462185 -- SST_KHR_SSGM_E001469266
4425	Anuj Vaidya	SA	03/24/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/24/15	10.0	030	Coded documents within the Catalyst workflow, including email correspondence concerning foreign exchange compliance, internal FX audit review, internal investigations on FX rate setting, salary, hiring, and personnel review, and divisional risk assessments. Attended to team matters.
4027	Debra Fouchong	SA	03/25/15	10.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/25/15	9.0	030	Reviewed and Analyzed documents in defendants production Bates range SST_KHR_SSGM_E001599309-SST_KHR_SSGM_E001550309. Documents are mainly performance reports, financial reports, emails, FX pricing, daily fx revenue reporting, customer inquiries, presentations etc
4071	Charles Pietrofesa	SA	03/25/15	9.7	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001583758 - SST_KHR_SSGM_E001554283) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, and State Street internal FX reports.

						Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; emails with coders to discuss the appropriate designation for emails discussing customer complaints as well as emails alluding to the relationship between netting and spreads; formulated and conducted searches on Catalyst in order to identify documents included in previous three binders of hot documents; reviewed same and created additional binders; reviewed all review folders on Catalyst to take inventory of uncoded documents and continued re-distributing same to reviewers nearing the end of their batches of documents.
4089	Todd Kussin	SA	03/25/15	7.8	030	
4148	Albert Powell	SA	03/25/15	10.7	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/25/15	10.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, Requests for Proposals, FX trading data, and memoranda; annotated Index of hot documents and Attorney notes for hot and highly relevant documents.
4065	Lisa George	SA	03/25/15	9.0	020	Continued to review case background materials, including: Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues and customer issues.
4247	Aron Rosenbaum	SA	03/25/15	2.0	030	Reviewed, coded docs.
4295	Dorothy Hong	SA	03/25/15	7.5	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	03/25/15	9.0	030	document review at 11342 of 11342 of e mails, articles, charts, data files, presentations of negotiated and non-negotiated FX trade policies, practices and procedures.
4369	David Pospischil	SA	03/25/15	7.1	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, [REDACTED] compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4383	James Griffin	SA	03/25/15	7.5	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; reviewing background article regarding best execution.
4385	David Packman	SA	03/25/15	7.3	040	Reviewed production from Defendant pertaining to Fx trading and services, including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001351307 through SST_KHR_SSGM_E001356259, and coded for responsiveness, priority, type and issues.
4402	Jason Saad	SA	03/25/15	9.5	030	Review and code documents in my assignment folder. Documents coded for relevance, issue type and document. completed original batch and started working on additional documents added in the afternoon.
						Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.

4424	Jacqueline Grant	SA	03/25/15	7.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/25/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, RFP/RFI response, netting and organizational charts of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/25/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents, a number of which were tagged Highly Relevant, are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/25/15	10.3	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. There were a few highly relevant docs emails discussing the revenue of FX trade deals.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001044962 SST_KHR_SSGM_E001017840N
1643	Roger Yamada	SA	03/25/15	10.0	030	Coded documents within the Catalyst workflow, including email correspondence concerning FX risk management, internal investigations on FX rate setting, and hierarchical changes to divisional reporting. Attended to team matters.
4244	Judy Watson	SA	03/25/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily P/L and limit exception reports, fx policy email discussions, customer fx inquiries, fx general news articles, fx G/L reports.
4413	Barry Kaplan	SA	03/25/15	10.3	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	03/25/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4423	Nicole Cameron	SA	03/25/15	10.0	010	Reviewed State Street documents for FX relevancy. Coded documents related to FX policies, FX rates, discussion about RFP, preferential rates, and cancelation of deals.
0571	David Goldsmith	P	03/26/15	0.3	090	Bate numbers reviewed: SST_KHR_SSGM_E001462185 -- SST_KHR_SSGM_E001475668 Review BNY settlement disclosures and DOJ press release

4021	Maureen Flanigan	SA	03/26/15	9.0	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/26/15	10.6	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/26/15	10.5	030	Reviewed and Analysed documents in defendants production, Bates range SST_KHR_SSGM_E001550309-SST_KHR_SSGM_E001606474 [REDACTED] Also included attorney notes for hot and highly relevant documents. Added to hot doc index
4071	Charles Pietrofesa	SA	03/26/15	9.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001598868 - SST_KHR_SSGM_E001574766) (nonconsecutive); [REDACTED]
4148	Albert Powell	SA	03/26/15	8.5	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/26/15	10.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading data spreadsheets, policy memoranda, and management reports.
4065	Lisa George	SA	03/26/15	8.0	020	Continued to review case background materials, including: Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues and customer issues.
4247	Aron Rosenbaum	SA	03/26/15	7.2	030	Reviewed and coded, mostly irrelevant docs from after class period. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/26/15	3.2	030	Review of handwritten notes during the 1st batch of document review and e-mail to T Kussin notes derived from document review and on general impression. Document review, Q/C of e mails, articles, charts and data files of negotiated and non-negotiated FX trade policy, procedure and practice.
4321	Ian Herrick	SA	03/26/15	8.8	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4369	David Pospischil	SA	03/26/15	6.3	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing.
4383	James Griffin	SA	03/26/15	7.3	030	Reviewed production from Defendant pertaining to Fx trading and services, including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001362128 through SST_KHR_SSGM_E001328228, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	03/26/15	7.3	040	Review and code documents in the assignment folder for relevance, issue and document type. today, two documents were coded as highly relevant as they relate to potential conflicts in custody FX.

4402	Jason Saad	SA	03/26/15	10.5	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.
4424	Jacqueline Grant	SA	03/26/15	11.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/26/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, organizational charts, spreads - neg - SI, netting and standing instruction/SI pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/26/15	10.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	03/26/15	5.0	010	Documents reviewed and coded today relates to FX policies, RFP responses, off-market rates and process, income repatriate transactions, and FX rates. Bates reviewed: SST_KHR_SSGM_E001475683 -- SST_KHR_SSGM_E001457522
4413	Barry Kaplan	SA	03/26/15	9.5	020	Reviewed and coded defendant's documents.
4242	Donato Gianturco	SA	03/26/15	10.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. There were a few highly relevant docs emails discussing the revenue of FX trade deals. There was one Hot doc discussing revenue from FX trades. Bates numbers were non-consecutive-SST_KHR_SSGM_E001018122 SST_KHR_SSGM_E001073837
4244	Judy Watson	SA	03/26/15	9.8	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: daily fx G/L reports, fx volume and revenue summary, fx general news articles, daily p/l & limit exception reports, fx value at risk reports.

4425	Anuj Vaidya	SA	03/26/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/26/15	10.0	030	Coded documents within the Catalyst workflow, including FX analyst reports written by third-party banks and institutions, email correspondence concerning FX rates and political considerations of foreign regulatory rules relating to foreign exchange, internal investigations on FX rate setting, and hierarchical changes to divisional reporting. Attended to team matters.
4021	Maureen Flanigan	SA	03/27/15	9.5	030	Review and analyze emails, market research documents, financial spreadsheets and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/27/15	6.7	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, FX Profits, Revenues, for attorneys' use in preparation for further litigation
4034	Comfort Orji	SA	03/27/15	7.3	030	Reviewed and Analyzed documents in defendants production, Bates range SST_KHR_SSGM_E001606474 - SST_KHR_SSGM_E001580851 [REDACTED] Also included attorney notes for hot and highly relevant documents.
4071	Charles Pietrofesa	SA	03/27/15	8.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001578968 - SST_KHR_SSGM_E001591223) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, netting analysis, and State Street internal FX reports.
4089	Todd Kussin	SA	03/27/15	8.4	030	Conducted searches via the internet as well as within documents produced by defendants and uploaded [REDACTED] [REDACTED] [REDACTED] [REDACTED] statements re: best execution; formulated and conducted searches on Catalyst in order to identify documents included in previous three binders of hot documents; reviewed same and created additional binders; reviewed all folders on Catalyst to take inventory of uncoded documents and continued re-distributing same to reviewers nearing the end of their batches of documents; email communications with Catalyst IT in order to secure search capabilities for several coders.
4148	Albert Powell	SA	03/27/15	10.3	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	03/27/15	7.7	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX articles, data spreadsheets, management policies, market exposure reports and memoranda.

4065	Lisa George	SA	03/27/15	0.7	020	Continued to review case background materials, including: Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails concerning State Street FX trading business growth, revenues, FX policies, FX pricing, and customer issues.
4247	Aron Rosenbaum	SA	03/27/15	3.7	030	Reviewed and coded, notably FX reports and other research reports. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/27/15	5.5	030	e-mail to T Kussin re comment/analysis of 1st batch re customer inquiry on FX. Document review at 11492 of 11492 of emails, articles, charts, data files of FX direct and indirect trade policy, procedure and practice.
4321	Ian Herrick	SA	03/27/15	8.8	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4369	David Pospischil	SA	03/27/15	7.6	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	03/27/15	5.0	030	Reviewed Defendant's production pertaining to Fx trading including emails, reports, and spreadsheets, in non-consecutive Bates range SST_KHR_SSGM_E001359388 through SST_KHR_SSGM_E001362750, and coded for responsiveness and issues.
4385	David Packman	SA	03/27/15	6.8	040	Reviewed and coded documents in my assignment for relevance, issue and document type, including a few highly relevant document. emailed Todd a memo/write up regarding SST, securities lending, fx custody cost and different markets and best price execution.
4402	Jason Saad	SA	03/27/15	7.3	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.
4424	Jacqueline Grant	SA	03/27/15	7.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/27/15	6.3	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, [REDACTED] and pricing and marketing of FX services for attorneys' use in preparation for further litigation.

						Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.
4242	Donato Gianturco	SA	03/27/15	9.2	030	Bates numbers were non-consecutive-SST_KHR_SSGM_E001073838 SST_KHR_SSGM_E001042931
4244	Judy Watson	SA	03/27/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx G/L reports, daily p/l & limit exception reports, fx policy email discussions.
4413	Barry Kaplan	SA	03/27/15	10.0	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	03/27/15	8.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/27/15	10.0	030	Coded documents within the Catalyst workflow, including internal investigations on FX rate setting, correspondence concerning human resources issues and hierarchical changes to divisional reporting. Attended to team matters.
1225	Stacy Auer	PL	03/30/15	0.4	080	Review emails re: mediation; update case trackers; prep for team meeting;
1523	Shella Mundo	PL	03/30/15	0.8	140	Prepared compilation of select documents per David Goldsmith; Emails and convos re same.
4021	Maureen Flanigan	SA	03/30/15	8.8	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	03/30/15	10.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	03/30/15	7.5	030	Reviewed and analysed documents in defendants production. Bates range SST_KHR_SSGM_E001182680N-SST_KHR_SSGM_E000974061 Documents included emerging markets daily update reports, emails re-customer enquires, FX trading pricing, strategy presentations etc. Also added to hot document folder.
4071	Charles Pietrofesa	SA	03/30/15	8.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001593887 - SST_KHR_SSGM_E001590340) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, netting analysis, and State Street internal FX reports.

						Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; prepared report summarizing productivity of reviewers for week ending March 27, 2015; conducted searches via the internet as well as within [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] identify documents included in previous three binders of hot documents; reviewed same and created additional binders.
4089	Todd Kussin	SA	03/30/15	7.8	030	
4148	Albert Powell	SA	03/30/15	8.5	030	Review and analyze documents in order to determine relevance.
						Continued to review case background materials, including: Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, FX policies, FX pricing, and customer inquiries.
4065	Lisa George	SA	03/30/15	9.6	020	
4247	Aron Rosenbaum	SA	03/30/15	6.5	030	Reviewed and coded, mostly docs from after class period. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	03/30/15	3.4	030	Document review of defendant's production from 9921 to 9961 of S Dolben's folder of e mails, charts, articles, data files of FX direct and indirect trade policy, procedure and practice.
						Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4321	Ian Herrick	SA	03/30/15	8.0	030	
4369	David Pospischil	SA	03/30/15	5.7	030	Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	03/30/15	9.0	030	Reviewed production from Defendant with regard to Fx trading including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001362759 through SST_KHR_SSGM_E001355555, and coded for responsiveness, type and issues.
4385	David Packman	SA	03/30/15	7.5	040	I reviewed and coded documents in my assignment folder for relevance, document type and issue. I did not find any highly relevant or hot documents today.
						Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; folder 62.
4402	Jason Saad	SA	03/30/15	11.0	030	
4424	Jacqueline Grant	SA	03/30/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	03/30/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, SI FX pricing, negotiated FX pricing, best execution, netting, customer FX inquiries, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/30/15	10.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/30/15	9.7	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. There were a couple of highly relevant docs discussing FX pricing.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001042935 SST_KHR_SSGM_E001029505
4413	Barry Kaplan	SA	03/30/15	10.3	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	03/30/15	10.0	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx G/L reports, daily P/L & limit exception reports, fx general news articles, customer fx inquiries, fx policy email discussions.
4425	Anuj Vaidya	SA	03/30/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/30/15	10.2	030	Coded documents within the Catalyst workflow, including third-party foreign exchange analyst reports from HSBC and Deutsche Bank, internal communication regarding FX policy, and other personal emails from Anthony Beniga. Attended to team matters.
0103	Lawrence Sucharow	P	03/31/15	3.5	080	Prepare for next mediation session on 4/9 in Boston.
0571	David Goldsmith	P	03/31/15	1.2	090	Review BNYM settlement documents; telephone conference with Mike Rogers re: Friday call with defendants and mediator re: class certification issues; e-mails re: same
1179	Michael Rogers	P	03/31/15	1.0	080	Telephone conferences with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: class certification conference call and re: April 9 mediation
4021	Maureen Flanigan	SA	03/31/15	7.5	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.

4027	Debra Fouchong	SA	03/31/15	11.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, Public Pension Funds, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	03/31/15	9.6	030	Reviewed and Analyzed documents in defendants production, Bates range SST_KHR_SSGM_E001445278-SST_KHR_SSGM_E001321076 Documents included emails of merger plans, spreadsheets of trading reports, FX trading customer enquires. QC's bates range SST_KHR_SSGM_E000972037-SST_KHR_SSGM_E001440816
4071	Charles Pietrofesa	SA	03/31/15	8.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001611950 - SST_KHR_SSGM_E001611358) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, customer inquiries, netting analysis, and State Street internal FX reports.
4089	Todd Kussin	SA	03/31/15	8.8	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; conducted searches via the internet as well as within documents produced by defendants and uploaded onto Catalyst in order to respond to reviewers' [REDACTED] [REDACTED] [REDACTED] conferred with coders re: supply of un-coded documents remaining and plan for distribution of same among Labaton coders; formulated and conducted searches on Catalyst in order to identify documents included in previous three binders of hot documents.
4148	Albert Powell	SA	03/31/15	8.5	030	Review and analyze documents in order to determine relevance.
4065	Lisa George	SA	03/31/15	9.8	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, FX policies, FX pricing, FX marketing, and customer inquiries; Reviewed and organized email inbox and desktop.
4247	Aron Rosenbaum	SA	03/31/15	1.6	030	Reviewed, coded assorted docs.
4295	Dorothy Hong	SA	03/31/15	5.5	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	03/31/15	7.8	030	Document review of defendant's production from 11492 to 11611 of 11611 of e mails, charts, articles, data files of FX direct and indirect trade policy, procedure and practice.
4369	David Pospischil	SA	03/31/15	7.8	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
						Reviewing non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data, FX pricing, FX policies, spreads, standing instruction FX, FX revenues.

4383	James Griffin	SA	03/31/15	7.0	030	Reviewed production from Defendant pertaining to Fx trading including emails, attachments and reports, in non-consecutive Bates range SST_KHR_SSGM_E00135564 through SST_KHR_SSGM_E001357919, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	03/31/15	7.5	040	Reviewed and coded documents in my assignment folder, documents coded for relevance, document type and issue. A few documents today were deemed highly relevant, so they were also recorded in a separate spreadsheet.
4402	Jason Saad	SA	03/31/15	10.0	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; folder 62.
4424	Jacqueline Grant	SA	03/31/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	03/31/15	11.2	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, best execution, netting, SI general, preferential FX pricing, negotiated FX pricing, and SI FX pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	03/31/15	10.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	03/31/15	8.6	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsp heets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. There were a couple of highly relevant docs discussing FX pricing.  Bates nummbers were non-consecutive-SST_KHR_SSGM_E001029505 SST_KHR_SSGM_E001040014
4423	Nicole Cameron	SA	03/31/15	6.0	010	Reviewed and coded electronic documents produced by State Street. Documents consisted of emails related to FX policies, day to day operations with FX trading, and rate requests.
4413	Barry Kaplan	SA	03/31/15	10.3	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	03/31/15	9.5	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx G/L reports, fx revenue reports, fx policy email discussions.

4425	Anuj Vaidya	SA	03/31/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
1643	Roger Yamada	SA	03/31/15	10.0	030	Coded documents in Catalyst within the 'Roger Yamada' and 'Batch_62' workflows, including third-party foreign exchange analyst reports from Morgan Stanley, extensive external communication regarding FX with personnel from [REDACTED], and other personal emails from Anthony Beniga. Attended to team matters.
0023	Eric Belfi	P	04/01/15	2.0	130	Worked on mediation
0103	Lawrence Sucharow	P	04/01/15	2.5	080	Attention to Mediation issues; conference call with mediator and defendant's counsel; correspondence with co-counsel.
1179	Michael Rogers	P	04/01/15	0.9	080	Telephone conferences with Michael Lesser and Carl Kravitz re: mediation meeting
4027	Debra Fouchong	SA	04/01/15	11.2	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/01/15	9.8	030	Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E000971246-SST_KHR_SSGM_E000972276 [REDACTED] spreadsheets of trading reports, FX trading customer enquires, emerging markets daily update etc.
4071	Charles Pietrofesa	SA	04/01/15	8.6	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001611944 - SST_KHR_SSGM_E001551876) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, non-pension customers, customer inquiries, netting analysis, and State Street internal FX reports.
4148	Albert Powell	SA	04/01/15	8.3	030	Review and analyze documents in order to determine relevance.
4065	Lisa George	SA	04/01/15	9.3	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, FX policies, FX pricing, FX marketing, and customer inquiries; Reviewed and organized email inbox and desktop.
4247	Aron Rosenbaum	SA	04/01/15	5.9	030	Reviewed, coded assorted docs. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	04/01/15	5.5	030	Document review of defendant's production of Phillip Qin author files of e-mails, charts and presentation business reports of FX direct and indirect trades of policy, procedure and practice.
4321	Ian Herrick	SA	04/01/15	8.5	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4369	David Pospischil	SA	04/01/15	8.4	030	Secondary review of non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data.
4383	James Griffin	SA	04/01/15	10.6	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001357929 through SST_KHR_SSGM_E001361723, and coded for responsiveness, priority, type and issues.

4385	David Packman	SA	04/01/15	7.3	040	Reviewed and coded documents in my assignment folder for relevance, document type and issue. Many documents were irrelevant at least one was "hot" with many others relevant.
4402	Jason Saad	SA	04/01/15	11.4	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; folder 62.
4424	Jacqueline Grant	SA	04/01/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/01/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, RFP/RFI response, best execution, organizational chart, preferential FX pricing, negotiated FX pricing, and customer FX inquiries of FX services for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	04/01/15	9.8	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001020361 SST_KHR_SSGM_E001034025
4423	Nicole Cameron	SA	04/01/15	8.0	010	Reviewed and coded documents produced by defendants. Analyzed documents for issues related to FX policies, FX rates, spreads, preferential pricing, and best execution.
4394	David Alper	SA	04/01/15	8.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4413	Barry Kaplan	SA	04/01/15	10.2	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	04/01/15	9.8	030	Review/qc of defendant's documents (nonconsecutive bates ranges) consisting of: fx general news articles, fx policy email discussions, fx training program, fx trade confirmations.

4425	Anuj Vaidya	SA	04/01/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags. Additionally, reviewed already coded documents for quality control and proper coding.
1643	Roger Yamada	SA	04/01/15	10.0	030	Coded documents in Catalyst within the 'Roger Yamada' workflow, including extensive external communication regarding FX with personnel from [REDACTED] and other personal emails from Anthony Beniga. Attended to team matters.
0103	Lawrence Sucharow	P	04/02/15	2.0	080	Attention to mediation issues; conference with co-counsel; correspondence with co-counsel
0571	David Goldsmith	P	04/02/15	0.6	080	E-mails internally and with co-counsel re: class certification call; rescheduling
1179	Michael Rogers	P	04/02/15	1.0	080	Conference calls and e-mails to/from David Goldsmith, Dan Chiplock, Mike Miami and Carl Kravitz re: class certification issues call
4027	Debra Fouchong	SA	04/02/15	11.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/02/15	9.5	040	Reviewed, Analysed and Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E000972276 - SST_KHR_SSGM_E000972864 Documents included articles on market outlook, spreadsheets of trading reports, FX trading charts and graphs, Market trend surveys, Market highlight publications,
4071	Charles Pietrofesa	SA	04/02/15	6.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001561398 - SST_KHR_SSGM_E00158066) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, customer inquiries, netting analysis, and State Street internal FX reports.
4089	Todd Kussin	SA	04/02/15	6.3	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; conducted searches via the internet as well as within documents produced by defendants and uploaded onto Catalyst in order to respond to reviewers' [REDACTED]
4148	Albert Powell	SA	04/02/15	7.8	030	Review and analyze documents in order to determine relevance.
4065	Lisa George	SA	04/02/15	8.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, FX policies, FX pricing, FX marketing, and customer inquiries; Reviewed and organized email inbox and desktop.
4247	Aron Rosenbaum	SA	04/02/15	4.2	030	Reviewed, coded assorted docs. Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	04/02/15	5.5	030	Document review of defendant's production from 11611 to 11842 out of 11842 files of e-mails, charts and presentation business reports of FX direct and indirect trades of policy, procedure and practice.

4321	Ian Herrick	SA	04/02/15	7.0	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4369	David Pospischil	SA	04/02/15	5.0	030	Secondary review of non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conference with T. Kussin regarding secondary review.
4383	James Griffin	SA	04/02/15	8.8	030	Reviewed production from Defendant with regard to Fx trading including emails and financial reports, in non-consecutive Bates range SST_KHR_SSGM_E001361760 through SST_KHR_SSGM_E00163236, and coded for responsiveness, type and issues.
4385	David Packman	SA	04/02/15	7.0	040	Reviewed and coded documents in my assignment folder and coded for relevance, document and issue type. I coded and added additional highly relevant documents to the hot and highly relevant documents Word file.
4402	Jason Saad	SA	04/02/15	6.0	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; folder 62.
4424	Jacqueline Grant	SA	04/02/15	10.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/02/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, revenues, pricing and marketing, best execution customer FX inquiries, spreads-negotiated-SI, negotiated FX pricing, disclosure of FX practice, and RFP/RFI response of FX services for attorneys' use in preparation for further litigation. best execution
4394	David Alper	SA	04/02/15	8.5	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/02/15	9.6	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001071896 SST_KHR_SSGM_E001039155

4413	Barry Kaplan	SA	04/02/15	10.2	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	04/02/15	10.5	030	Review & qc of defendant's documents (nonconsecutive bates ranges) consisting of: fx volume & revenue reports, rfp request, master fx give-up agreement, fx code of conduct manuals, fx trade confirmations.
4425	Anuj Vaidya	SA	04/02/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4021	Maureen Flanigan	SA	04/03/15	6.0	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4034	Comfort Orji	SA	04/03/15	6.8	030	Reviewed, Analysed and Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E000972864 - SST_KHR_SSGM_E000971598 Documents included articles on market outlook, spreadsheets of trading reports, FX trading charts and graphs, Market trend surveys, Market highlight publications,
4071	Charles Pietrofesa	SA	04/03/15	10.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001166757 - SST_KHR_SSGM_E001174690) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, netting analysis, and State Street internal FX reports.
4089	Todd Kussin	SA	04/03/15	5.3	030	Conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; conducted searches via the internet as well as within documents produced by defendants and uploaded onto Catalyst in order to respond to reviewers' [REDACTED]
4148	Albert Powell	SA	04/03/15	8.4	030	searches on Catalyst in order to identify documents included in previous three binders of hot documents.
4173	Maritza Bolano	SA	04/03/15	7.8	030	Review and analyze documents in order to determine relevance.
4065	Lisa George	SA	04/03/15	8.7	020	Reviewed and coded documents from Defendant's production; documents included emails, reports, marketing presentations, FX trading data and management policies; Annotated attorney notes for highly relevant documents.
4295	Dorothy Hong	SA	04/03/15	3.5	030	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, Best Execution, IM Guides changes, spreads, Disclosure of FX Practice, FX policies, FX pricing, FX marketing, and customer inquiries; Reviewed and organized email inbox and desktop.
						Document review of defendant's production with bulk e-mail attachments of emails, articles, charts, data files and presentations of FX direct and indirect trade policy, procedure and practice.

4321	Ian Herrick	SA	04/03/15	4.5	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4369	David Pospischil	SA	04/03/15	8.1	030	Secondary review of non-consecutively bates numbered documents produced by defendants for relevance and issues including public pension fund investment data; conference with T. Kussin regarding secondary review.
4383	James Griffin	SA	04/03/15	6.8	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001163233 through SST_KHR_SSGM_E001151880, and coded for responsiveness, priority, type and issues.
4402	Jason Saad	SA	04/03/15	10.4	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; Production 2 - folder 62.
4424	Jacqueline Grant	SA	04/03/15	7.5	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4394	David Alper	SA	04/03/15	6.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	04/03/15	6.0	010	Reviewed emails produced by defendant and coded documents for relevancy. Many of documents reviewed discussed FX rates, trade cancellations, AIR transactions and process, and other matters within the normal course of SS's business.
4413	Barry Kaplan	SA	04/03/15	8.5	020	Reviewed and coded defendant's documents.
4242	Donato Gianturco	SA	04/03/15	10.8	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001033456 SST_KHR_SSGM_E001071673
4425	Anuj Vaidya	SA	04/03/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.

0023	Eric Belfi	P	04/06/15	1.0	130	Call with co-counsel
0571	David Goldsmith	P	04/06/15	1.5	080	Telephone conference with co-counsel re: mediation status and strategy, prepare for same; canceled April 9 mediation session; e-mails re: document review status
1179	Michael Rogers	P	04/06/15	1.3	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: mediation meeting and calls with J. Marks and B. Paine
4021	Maureen Flanigan	SA	04/06/15	9.3	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/06/15	10.8	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, Marketing of Customers/FX Services, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/06/15	8.0	030	Reviewed, Analysed and Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E001158567 - SST_KHR_SSGM_E001152943 Documents included FX trade emails, articles on market outlook, spreadsheets of trading reports, trading charts and graphs, Market trend surveys, Market highlight publications,
4071	Charles Pietrofesa	SA	04/06/15	9.8	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001171021 - SST_KHR_SSGM_E001164369) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, netting analysis, best execution, and State Street internal FX reports.
4148	Albert Powell	SA	04/06/15	8.3	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	04/06/15	9.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, reports, management policies, RFPs, and FX trading data spreadsheets; annotated Index of Hot documents and Attorney notes for hot and highly relevant documents.
4065	Lisa George	SA	04/06/15	7.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, Best Execution, custodial fees, spreads, Disclosure of FX Practice, FX policies, FX pricing, FX marketing, and customer inquiries; Reviewed and organized email inbox and desktop.
4247	Aron Rosenbaum	SA	04/06/15	6.4	030	Reviewed, coded; notably FX reports.
4295	Dorothy Hong	SA	04/06/15	7.0	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	04/06/15	8.0	030	Document review at 6901 from 6801 and 7350 from 7250 of another batch of emails, trade ticket screens, charts, white papers, data files, articles of FX direct and indirect trade policy, procedure and practice.
						Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.

4383	James Griffin	SA	04/06/15	7.8	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001184134 through SST_KHR_SSGM_E001154364, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	04/06/15	7.3	040	Reviewed and coded documents in my assignment folder for relevance, issue type and document type. I completed the set of documents in my folder-as of today-with no new documents being highly relevant or hot.
4402	Jason Saad	SA	04/06/15	9.4	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad; Production 2 - folder 62.
4422	Ebone Bishop	SA	04/06/15	9.0	020	Review case background documents, including Class Action Complaint and Opposition to Defendant's Motion to Dismiss and Transcripts of the Hearing on the Motion to Dismiss.
4424	Jacqueline Grant	SA	04/06/15	12.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/06/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, pricing and marketing, best execution, netting, disclosure of FX practice, SI FX pricing, customer FX inquiries, and negotiated FX pricing of FX services for attorneys' use in preparation for further litigation.
4394	David Alper	SA	04/06/15	9.7	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/06/15	10.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001071673 SST_KHR_SSGM_E001017079
4423	Nicole Cameron	SA	04/06/15	9.0	010	Reviewed and coded documents produced by State Street. Documents pertained to discussions about various FX trades. FX rates were disclosed in emails. [REDACTED] [REDACTED]

4413	Barry Kaplan	SA	04/06/15	10.0	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	04/06/15	9.5	030	Review & qc of defendant's documents (nonconsecutive bates ranges) consisting of: fx policy email discussions, fx general news articles, fx cash projection reports.
4425	Anuj Vaidya	SA	04/06/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
0023	Eric Belfi	P	04/07/15	1.0	040	Discovery issues
0103	Lawrence Sucharow	P	04/07/15	2.7	080	Attention to mediation strategy; discussion with [REDACTED]; strategy D Goldsmith and G Bradley; correspond with mediator; conferene call with plaintiffs counsel and mediator.
0571	David Goldsmith	P	04/07/15	3.0	090	Telephone conference with co-counsel and J. Marks re: mediation and strategy issues; meeting with Larry Sucharow, Eric Belfi, Garrett Bradley re: voicemail from [REDACTED]; telephone conferences with S. Curtin, A. Palid [REDACTED], Garrett Bradley re: mediation and settlement issues; telephone conference with S. Curtin re: follow-up and confidential mediation materials, document calls; e-mails re: all and same
1179	Michael Rogers	P	04/07/15	3.5	080	Conference with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: communications with governmental agencies; conference call with Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel and J. Marks re: mediation meeting; conferences with and e-mails to/from Eric Belfi, Garrett Bradley, Mike Lesser, Dan Chiplock, Evan Hoffman and Danette McKenzie re: staffing
4021	Maureen Flanigan	SA	04/07/15	6.1	030	Review and analyze spreadsheets, market research documents, emails, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/07/15	11.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation.
4071	Charles Pietrofesa	SA	04/07/15	6.0	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001164213 - SST_KHR_SSGM_E001174350) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, and State Street internal FX reports.
4089	Todd Kussin	SA	04/07/15	9.0	030	Met with new coders Mashariki Daniels and Ebone Bishop to discuss background of case, pleadings, and coding protocol; identified and prepared copies of background reading materials for new coders including complaint, opposition to motion to dismiss, transcript of hearing on motion to dismiss, presentation used at May 2014 mediation citing hot documents identified during discovery, coding guidelines, and index of hot documents identified during review of documents produced by defendants; drafted email to coders re: identification of un-coded documents uploaded to Catalyst platform; conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; drafted report summarizing productivity of coders during week ending April 3, 2015.
4148	Albert Powell	SA	04/07/15	8.8	030	Review and analyze documents in order to determine relevance.

4173	Maritza Bolano	SA	04/07/15	9.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, marketing presentations, FX trading data, management reports, and spreadsheets; annotated index of hot documents and attorney notes for hot and highly relevant documents.
4065	Lisa George	SA	04/07/15	8.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, Best Execution, custodial fees, spreads, Disclosure of FX Practice, FX policies, FX pricing, FX marketing, Repatriation and customer inquiries.
4247	Aron Rosenbaum	SA	04/07/15	6.1	030	Reviewed and coded docs, notably FX Confirmations.
4291	Mashariki Daniels	SA	04/07/15	11.0	020	Nonconsecutive Bates numbers. read pleading materials such as the amended class action complaint.
4295	Dorothy Hong	SA	04/07/15	5.5	030	Document review of e mails, articles, charts and data files of 167 files of FX direct and indirect trade policy, procedure and practice.
4321	Ian Herrick	SA	04/07/15	8.5	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4383	James Griffin	SA	04/07/15	8.5	030	Reviewed production from Defendant pertaining to Fx trading including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001169418N through SST_KHR_SSGM_E001457046, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	04/07/15	7.0	040	Reviewed and coded documents first in George Kaiphas's folder, then in my assignment folder. Documents were reviewed for relevance, document type and issue type. Many documents mentioned foreign exchange but were not relevant to the issues of this case of custody FX.
4402	Jason Saad	SA	04/07/15	9.4	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad
4422	Ebone Bishop	SA	04/07/15	10.0	020	Review additional case background materials and case overview meeting with T. Kussin.
4424	Jacqueline Grant	SA	04/07/15	11.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/07/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, negotiated FX pricing, and netting of FX services for attorneys' use in preparation for further litigation.

4394	David Alper	SA	04/07/15	9.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/07/15	9.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant.  Bates numbers were non-consecutive-SST_KHR_SSGM_E001037906- to E001035525 SST_KHR_SSGM_E001024602- to E001466131
4425	Anuj Vaidya	SA	04/07/15	8.5	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4423	Nicole Cameron	SA	04/07/15	8.0	010	Review and code documents produced by defendants. Documents consisted of discussions about AIR processes; [REDACTED]
4413	Barry Kaplan	SA	04/07/15	10.0	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	04/07/15	9.7	030	QC of defendant's documents [REDACTED] reports, fx trade email confirmations, fx code of conduct, daily fx G/L reports, fx general news articles.
0571	David Goldsmith	P	04/08/15	1.3	080	Telephone conference with co-counsel re: [REDACTED] call, mediation issues and strategy, prepare for same; report to co-counsel of [REDACTED] voice mail
1179	Michael Rogers	P	04/08/15	4.0	080	Conference call with Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: mediation strategy; conferences with Larry Sucharow and David Goldsmith re: same; conference call with Mike Lesser, Dan Chiplock, Evan Hoffman and K. Dugar re: document review; conference with David Goldsmith re: same
4021	Maureen Flanigan	SA	04/08/15	9.5	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/08/15	11.5	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, Spreads -- Neg -- SI, FX Profits/Revenues, for attorneys' use in preparation for further litigation.

4034	Comfort Orji	SA	04/08/15	9.0	030	Reviewed, Analyzed and Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E000973655 - SST_KHR_SSGM_E000974665 Documents included FX trade forecasts, emails, articles on market outlook, spreadsheets of trading reports, trading charts and graphs, Market trend surveys, Market highlight publications,
4071	Charles Pietrofesa	SA	04/08/15	7.9	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001181257 - SST_KHR_SSGM_E001431201) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, best execution, and State Street internal FX reports.
4089	Todd Kussin	SA	04/08/15	7.4	030	Created folders on Catalyst for new coders Mashariki Daniels and Ebone Bishop and populated same with documents for upcoming review; identified additional background documents and attorney work product for new coders to review, providing them with guidelines to issue coding; such documents included additional hot document indexes and emails among plaintiff firms discussing guidelines for issue coding; analyzed review folders for each reviewer on team in order to identify all un-coded documents and redistributed among coders who have completed their review of documents; discussed distribution of documents with Michael Rogers via phone call as well as upcoming projects requiring targeted searches; discussed same with Lisa George and Vivianne Abrahams; conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; began reviewing documents previously designated as either hot or highly relevant in order to begin assigning secondary review projects to coders.
4148	Albert Powell	SA	04/08/15	8.8	030	Review and analyze documents in order to determine relevance.
4173	Maritza Bolano	SA	04/08/15	9.0	030	Reviewed and coded documents from defendant's production; non-consecutive Bates numbers; documents included emails, memoranda, management reports, FX trading data and spreadsheets; Annotated Attorney notes of highly relevant documents.
4065	Lisa George	SA	04/08/15	6.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, Best Execution, custodial fees, spreads, Disclosure of FX Practice, FX policies, FX pricing, FX marketing, Repatriation and customer inquiries.
4247	Aron Rosenbaum	SA	04/08/15	6.0	030	reviewed and coded docs, notably 2006 FX Trading Reviews.
4291	Mashariki Daniels	SA	04/08/15	11.0	020	Nonconsecutive Bates numbers. read pleading materials such as the hearing transcript and coding reference.
4295	Dorothy Hong	SA	04/08/15	6.0	030	Document review of defendant's production at 12010 from 11917 and 12131 from 12010 of e-mails, charts, data files, articles of FX direct and indirect trade policy, procedure and practice.
4321	Ian Herrick	SA	04/08/15	7.9	030	Coded documents in the Catalyst platform, including Custodial Agreements, Sub-Custodial Agreements, correspondence concerning foreign exchange rate-setting, client inquiries about forex rate-setting, foreign compliance requests, and communications among the State Street Global Markets trading team between 2008 and 2010.
4385	David Packman	SA	04/08/15	6.8	040	Reviewed and coded documents in my assignment folder regarding relevance, issue type and document type. Most of the documents were not relevant, none were highly relevant or hot.

4402	Jason Saad	SA	04/08/15	9.1	030	Reviewed, analyzed and coded Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Reviewed, analyzed, and coded various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst in folder Jason Saad.
4422	Ebone Bishop	SA	04/08/15	10.0	020	Review case background materials.
4424	Jacqueline Grant	SA	04/08/15	11.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	04/08/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4426	Tryphena Greene	SA	04/08/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including FX policies, negotiated FX pricing, netting, spreads-neg-SI, and customer FX inquiries of FX services for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	04/08/15	10.0	030	Reviewed documents for the State Street ATRS litigation. Checked for HOT and Relevant documents. Docs consisted of emails, spreadsheets, brochures. For example there were numerous irrelevant docs today regarding the California Teachers Pensions case. In addition there were numerous relevant docs that were currency trading tickets. Also there were a number of FX revenue and profit docs which were relevant as well. There were numerous State Street pension fund docs that were relevant today. In addition there were many letters stating FX policy and the discussions associated with them. Plus the numerous profit and loss statements made relevant. Also there were many emails and attachments for public pension funds made relevant. Lots of relevant docs discussing FX pricing.  Bates numbers were non-consecutive-SST_KHR_SSGM_E0010466131 SST_KHR_SSGM_E001367985N
4244	Judy Watson	SA	04/08/15	10.3	030	Review and qc of defendant's documents (nonconsecutive bates ranges) consisting of: daily consolidated trading revenue reports, fx news articles, fx trade confirmation emails and reports.
4413	Barry Kaplan	SA	04/08/15	10.0	020	Reviewed and coded defendant's documents.
4423	Nicole Cameron	SA	04/08/15	10.0	010	Reviewed email chains related to defendant's discussion on income repatriation, erroneously booked transactions, FX rates, and rate requests. Coded documents for relevancy.
0023	Eric Belfi	P	04/09/15	2.0	130	Prepared for and updated client

1179	Michael Rogers	P	04/09/15	3.0	080	Conference calls with and e-mails to/from Larry Sucharow, David Goldsmith, co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: mediation and progress in governmental actions, e-mails to/from Eric Belfi, David Goldsmith, Todd Kussin, Dan Chiplock, Mike Lesser and Even Hoffman re: document review
4021	Maureen Flanigan	SA	04/09/15	9.0	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; meet with T Kussin regarding same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/09/15	11.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation. Also review, analyzed and summarized descriptions of documents.
4034	Comfort Orji	SA	04/09/15	8.8	030	Reviewed, Analysed and Qc'd documents in defendants production, Bates range SST_KHR_SSGM_E000974670- SST_KHR_SSGM_E001180768 Documents included FX trade forecasts, emails, deal details, spreadsheets of trading reports, trading charts and graphs, Market trend surveys, Market highlight publications etc
4071	Charles Pietrofesa	SA	04/09/15	8.3	030	Reviewed and analyzed State Street production documents, bates range (SST_KHR_SSGM_E001428493 - SST_KHR_SSGM_E001489540) (nonconsecutive), which regarded FX policies, FX data files, global strategy reports, FX revenue reports and calculations, FX pricing, best execution, and State Street internal FX reports; reviewed and analyzed highly relevant and hot documents for summary memorandum.
4089	Todd Kussin	SA	04/09/15	5.2	030	Met with all State Street coders to discuss upcoming assignments including secondary review of all documents thus far designated as either hot or highly relevant by coders from any of the three plaintiffs firms and the preparation of memos summarizing the most significant of each and impressions of each; drafted email to Michael Rogers describing the same; created additional folders for each coder on the Catalyst platform and populated same with previously-coded hot and highly relevant documents for secondary review; reviewed and distributed template for memo describing such documents; met with new coders Ebone Bishop and Mashariki Daniels to demonstrate use of Catalyst platform; conferred with coders re: proper treatment of documents encountered on secondary review that are seemingly coded incorrectly for priority; conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type.
4148	Albert Powell	SA	04/09/15	9.9	030	Review and analyze documents previously determined to be Hot or Highly Relevant. Draft memo summarizing Hot and Highly Relevant documents.
4173	Maritza Bolano	SA	04/09/15	9.0	030	Reviewed and coded documents from Defendant's production; non-consecutive Bates numbers; documents included emails, FX trading data and reports; Annotated attorney notes for highly relevant documents; Reviewed Hot and highly relevant documents; Drafted Memorandum of analyses of hot and highly relevant documents.

4065	Lisa George	SA	04/09/15	9.0	020	Continued to review case background materials, including: Amended Class Action Complaint, Notable Documents and List of State Street Employees and Descriptions of the respective position of each, Custodian Contract between ARTRS and defendants, Document Review Coding Fields Quick Reference Guide and related emails concerning document review guidelines; Reviewed non-consecutive emails, data files, analyst reports, articles, powerpoint presentations, and customer reports concerning State Street FX trading business growth, revenues, Best Execution, custodial fees, spreads, Disclosure of FX Practice, FX policies, FX pricing, FX marketing, Repatriation and customer inquiries. Attended brief meeting w/T. Kussin, M. Flanigan, A. Powell, J. Saad, B. Kaplan, D. Packman and I. Herrick re: hot and highly relevant docs assignment; assigned hot docs and highly relevant docs for assignment; Reviewed hot and highly relevant docs.
4424	Jacqueline Grant	SA	04/09/15	8.0	030	Review and analysis of non-consistently bates numbered documents produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including FX policies, FX revenues, and FX pricing, for attorneys' use in preparation for further litigation.
4247	Aron Rosenbaum	SA	04/09/15	4.0	030	Reviewed previously coded docs for quality control. Began evaluating docs coded as hot or highly relevant.
4291	Mashariki Daniels	SA	04/09/15	12.0	020	Nonconsecutive Bates numbers. read pleading materials such as the hearing transcript and coding reference.
4295	Dorothy Hong	SA	04/09/15	7.5	030	Secondary document review of ATRS charts relating to its FX trades and BlackRock monthly report of ATRS portfolio, draft memo thereof.
4321	Ian Herrick	SA	04/09/15	7.0	030	Initiated second-level review of emails and spreadsheets previously marked "Hot" and "Highly Relevant."
4383	James Griffin	SA	04/09/15	10.5	030	Reviewed production from Defendant pertaining to Fx trading and services, including emails and reports, in non-consecutive Bates range SST_KHR_SSGM_E001457448 through SST-ARTRS 0038912N, and coded for responsiveness, priority, type and issues.
4385	David Packman	SA	04/09/15	7.0	040	Completed the coding for documents in my assignment folder. Started reviewing documents in the "Hot Documents" Assignment sub-folder. Reviewed 60 out of 118 documents in this folder. Documents coded as highly relevant were probably irrelevant, although some may be at best relevant.
4402	Jason Saad	SA	04/09/15	10.4	030	Reviewed and analyzed previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst in order to draft and supplement attorney notes for each document and quality control of coded documents. Reviewed and analyzed various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst coded "hot docs" and "highly relevant" for quality control and to draft and supplement attorney notes for each document. Draft and edit memorandum regarding my findings in relation to previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst.
4422	Ebone Bishop	SA	04/09/15	5.5	020	Review background case materials
4422	Ebone Bishop	SA	04/09/15	3.5	030	Review coded documents for quality check

4426	Tryphena Greene	SA	04/09/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets for relevance and issue determination, including irrelevant documents regarding FX services for attorneys' use in preparation for further litigation; review documents tagged hot or highly relevant and prepare memorandum discussing the reasons these documents have been so tagged.
0571	David Goldsmith	P	04/09/15	3.0	080	Telephone conference with Larry Sucharow, Eric Belfi, Mike Rogers, co-counsel, defendants, J. Marks re: mediation issues and status; telephone conference with Garrett Bradley, S. curtin, A. Palid re: involvement in settlement negotiations, report to co-counsel; e-mails with co-counsel re: overall government agency issues and strategy; separate telephone conferences with Garrett Bradley
4394	David Alper	SA	04/09/15	4.2	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/09/15	9.6	030	Quality checked documents for the state street Arkansas Teachers Pension fund project. Began Office memorandum for Hot and Highly Relevant documents .
4244	Judy Watson	SA	04/09/15	9.8	030	Review of defendant's documents (nonconsecutive bates ranges) consisting of fx news articles and fx rate reports. Create summary memo for hot and highly relevant documents.
4413	Barry Kaplan	SA	04/09/15	10.0	020	Reviewed and coded defendant's documents.
4423	Nicole Cameron	SA	04/09/15	9.0	010	Reviewed documents produced by defendant and coded for relevance of FX matters. Documents related to [REDACTED] and FX policies. Reviewed and summarized Hot and Highly Relevant Documents.
4425	Anuj Vaidya	SA	04/09/15	10.5	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags. Prepared memo summarizing previously coded Highly Relevant documents.
1179	Michael Rogers	P	04/10/15	0.9	080	E-mails to/from Dan Chiplock, Mike Lesser and Evan Hoffman re: document review projects
4021	Maureen Flanigan	SA	04/10/15	9.6	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; meet with T Kussin regarding same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/10/15	11.1	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation. Wrote summaries of documents.
4034	Comfort Orji	SA	04/10/15	7.5	030	Worked on defendant production documents. Drafted summaries for Hot and Highly relevant documents, Bates range SST-ARTRS 0023877- SST-ARTRS 0024061.
4071	Charles Pietrofesa	SA	04/10/15	8.4	030	Reviewed and analyzed Highly Relevant and Hot documents in order to write summary memo of noteworthy documents. Documents concerned RFP responses regarding Best Execution, FX fees, Custodian Agreements, and FX trading and pricing procedures.

						Drafted email to all State Street coders describing expected content for memos assigned for the purposes of summarizing all documents designated thus far by the three plaintiffs firms as either hot or highly relevant; analyzed documents in universal hot/highly relevant folder and selected those to be distributed to reviewers in order to replenish their secondary folders; reviewed memos prepared thus far by reviewers summarizing documents thus far coded as hot or highly relevant; conducted secondary review/quality check of documents reviewed by coders to ensure the accuracy of their designations of priority, issue, and document type; met with new coder Mashariki Daniels to further demonstrate use of Catalyst platform.
4089	Todd Kussin	SA	04/10/15	3.6	030	
4148	Albert Powell	SA	04/10/15	9.2	030	Review and analyze documents previously determined to be Hot or Highly Relevant. Draft memo summarizing Hot and Highly Relevant documents.
4173	Maritza Bolano	SA	04/10/15	9.0	030	Reviewed and analyzed Hot and Highly Relevant documents from Defendant's production; non-consecutive Bates numbers; documents included emails, Investment Management Agreements, Custodial Agreements, Fee Schedules, and reports; provided summary analyses and opinions on hot and highly relevant documents for the Memorandum Hot documents' review.
4291	Mashariki Daniels	SA	04/10/15	10.1	020	Read pleading materials and began coding.
4321	Ian Herrick	SA	04/10/15	6.6	030	Continued second-level review of emails and spreadsheets previously marked "Hot" and "Highly Relevant."
4383	James Griffin	SA	04/10/15	6.7	030	Reviewed production from Defendant with regard to FX trading including emails and financial reports, in non-consecutive Bates range SST_ARTRS_0038913 through SST-ARTRS 0038950N, and coded for responsiveness, type and issues.
4402	Jason Saad	SA	04/10/15	9.9	030	Reviewed and analyzed previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst in order to draft and supplement attorney notes for each document and quality control of coded documents. Reviewed and analyzed various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst coded "hot docs" and "highly relevant" for quality control and to draft and supplement attorney notes for each document. Draft and edit memorandum regarding my findings in relation to previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst.
4422	Ebone Bishop	SA	04/10/15	11.0	030	Review coded documents for quality control and begin coding documents
4424	Jacqueline Grant	SA	04/10/15	8.0	030	Review and summarize non-consistently bates numbered documents tagged as "Highly Relevant" or "Hot", produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/10/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants marked hot or highly relevant consisting of emails, PDFs, reports and Excel spreadsheets; prepare memorandum summarizing these documents.

4295	Dorothy Hong	SA	04/10/15	6.0	030	Secondary document review of documents market hot and draft memo thereof on general impression.
4242	Donato Gianturco	SA	04/10/15	9.0	030	Quality checked documents for the state street Arkansas Teachers Pension fund project. Continued Office memorandum for Hot and Highly Relevant documents Summarized documents mostly marked Highly Relevant.
4244	Judy Watson	SA	04/10/15	9.5	030	Review of defendant's documents coded "hot" and "highly relevant" and preparation of summary memos of said documents, namely: executed trades, fx rate reports, customer fx inquiries, fx rate validation reports.
4413	Barry Kaplan	SA	04/10/15	10.0	020	Reviewed and coded defendant's documents.
4423	Nicole Cameron	SA	04/10/15	6.5	010	Reviewed documents coded as "hot" and "highly relative" and summarized contents. Documents with families were coded inconsistently and some were not truly relevant. Documents contained discussion about FX exceptions and inquiries about trades falling out of the range of day.
4425	Anuj Vaidya	SA	04/10/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags. Prepared memo summarizing previously coded Highly Relevant documents.
0023	Eric Belfi	P	04/13/15	1.0	130	Strategy call
1179	Michael Rogers	P	04/13/15	2.8	080	E-mails to/from Todd Kussin, Danette McKenzie, Dan Chiplock, Mike Lesser and Evan Hoffman re: document review projects; telephone conferences with David Goldsmith re: same; conference with Todd Kussin and document reviewing attorneys re: same
1225	Stacy Auer	PL	04/13/15	0.2	140	Prep for team meeting; review / maintain emails;
4021	Maureen Flanigan	SA	04/13/15	9.2	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; meet with M Rogers and team regarding same and new search projects; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/13/15	10.4	020	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for relevance and select issues including, FX Policies, SI FX Pricing, FX Profits/Revenues, for attorneys' use in preparation for further litigation. Wrote summaries/description of hot/highly relevant documents.
4034	Comfort Orji	SA	04/13/15	7.8	030	Worked on defendant production documents. Participated in team meeting with partner. Drafted summaries for Hot and Highly relevant documents, Bates range SST-ARTRS0023881N - SST-ARTRS0026027
4071	Charles Pietrofesa	SA	04/13/15	9.7	030	Reviewed and analyzed Highly Relevant and Hot documents in order to write summary memo of noteworthy documents. Documents concerned RFP responses regarding Best Execution, FX fees, Custodian Agreements, and FX trading and pricing procedures; attended conference call meeting for new memo projects relating to relevant review topics.

4089	Todd Kussin	SA	04/13/15	8.5	030	Reviewed correspondence with co-counsel regarding research topics to be distributed to reviewers as part of assignment to conduct searches on catalyst in connection with such topics and draft memos discussing their connection to the allegations in this litigation; conferred with Vivianne Abrahams and David Pospischil to select research topics to be analyzed by Labaton coders and responded to Michael Rogers listing same; reviewed memorandum circulated by co-counsel listing and summarizing such topics in advance of meeting with reviewers; conducted research on Catalyst to add additional context to such topics, including the preparation of brief lists of the types of documents associated with individuals referenced on the topic list; along with all reviewers and team leaders, attended meeting with Mr. Rogers to discuss research assignments as well as explanation of such topics for consideration; along with Mr. Rogers and Ms. Abrahams, attended call with co-counsel to discuss organization of documents on Catalyst in connection with research project and format of work product to eventually be produced; met with reviewers to determine the assignments for each of the named topics; drafted email to entire team explaining research project and assigning topics; drafted report summarizing productivity of State Street reviewers for the week ending April 10, 2015.
4148	Albert Powell	SA	04/13/15	10.8	030	Review and analyze documents previously determined to be Hot or Highly Relevant. Draft memo summarizing Hot and Highly Relevant documents. Team meeting with Michael Rogers, Todd Kussin and Vivianne Abrahams discussing second level review detail projects.
4173	Maritza Bolano	SA	04/13/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; documents included emails, spreadsheets of FX trading data, reports and contracts; continued analysis of documents on Memorandum of summaries of hot and highly relevant documents.
4247	Aron Rosenbaum	SA	04/13/15	6.7	030	Reviewed docs previously coded Hot or Highly Relevant. Wrote memos to describe relevancy. Participated in team meeting regarding case.
4291	Mashariki Daniels	SA	04/13/15	8.0	030	Attended meeting with the Partner Mike Rogers. Review and issue coded documents consisting of FX Policies and Revenue reports.
4321	Ian Herrick	SA	04/13/15	9.2	030	Continued second-level review of emails and spreadsheets previously marked "Hot" and "Highly Relevant;" Secondary projects meeting.
4369	David Pospischil	SA	04/13/15	6.8	030	Conference with T. Kussin regarding hot documents project; reviewing template for hot/highly relevant documents summary memo; meetings with T. Kussin and V. Abrahams regarding case-related topics project, team meeting regarding same; reviewing documents produced by defendants and marked as hot or highly relevant; drafting memo regarding same; team meeting with M. Rogers and T. Kussin regarding case-related topics project.
4383	James Griffin	SA	04/13/15	8.8	030	Reviewed production from Defendant with regard to Fx trading including emails and financial reports, in non-consecutive Bates ranges SST_ARTRS 0038951 through SST_ARTRS 0039013N, and coded for responsiveness, type and issues.
4385	David Packman	SA	04/13/15	7.0	040	Review the hot documents in the hot documents folder and add to the table the documents such documents improperly coded as highly relevant but in fact were at best relevant. Also review previous documents to add to the table. Reviewed 100 out of 221 documents. Attend meeting regarding the new project regarding search terms and the memo based on the search results.

4402	Jason Saad	SA	04/13/15	10.4	030	Reviewed and analyzed previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst in order to draft and supplement attorney notes for each document and quality control of coded documents. Reviewed and analyzed various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst coded "hot docs" and "highly relevant" for quality control and to draft and supplement attorney notes for each document. Draft and edit memorandum regarding my findings in relation to previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst; Attend Team Meeting.
4422	Ebone Bishop	SA	04/13/15	10.5	030	Coded non-consecutive bates range documents pertaining to subscription based global financial markets reports. Attend team meeting regarding project priorities.
4424	Jacqueline Grant	SA	04/13/15	12.0	030	Review and summarize non-consistently bates numbered documents tagged as "Highly Relevant" or "Hot", produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation; meet with partner re: discussion of review of documents by topic, for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/13/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants marked hot or highly relevant consisting of emails, PDFs, reports and Excel spreadsheets; prepare memorandum summarizing these documents; meeting with partner to discuss new search term project.
4244	Judy Watson	SA	04/13/15	9.5	030	Review of defendant's documents coded "hot" and "highly relevant" and preparation of summary memo for same. Documents include daily executed trade reports, meeting minutes from custody fx oversight committee, customer fx inquiries. Meeting with partner for 1 hr & 15 mins regarding search term analysis project.
4394	David Alper	SA	04/13/15	11.0	030	Reviewed, analyzed and tagged emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case. These investment, pricing and revenue F/X documents are non-consecutive or the Bates range were missing from said documents.
0571	David Goldsmith	P	04/13/15	0.2	080	Teamwide Meeting with Partner in charge to discuss next steps in the State Street discovery process. Discussions with Mike Rogers re: STAs, new review projects
4295	Dorothy Hong	SA	04/13/15	8.3	030	Draft hot doc memo. Meeting with M Rogers et al re new assignment re word, name, concept research.
4242	Donato Gianturco	SA	04/13/15	10.0	030	Continued Office memorandum for Hot and Highly Relevant documents Summarized documents mostly marked Highly Relevant. Some docs were marked irrelevant.
4413	Barry Kaplan	SA	04/13/15	10.0	020	Reviewed and coded defendant's documents.

4425	Anuj Vaidya	SA	04/13/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4423	Nicole Cameron	SA	04/13/15	8.0	010	Reviewed documents coded as hot or highly relevant. Read and summarized documents in memorandum for team leads.
4041	Vivianne Brissett	SA	04/13/15	2.0	030	Participated in a meeting with Mike Rogers, Todd Kussin and Reviewers regarding upcoming special projects. Discussed performing research and review for specialized topics. Also participated in a conference call with Mike and Todd Kussin regarding logistics of conducting the research project.
0023	Eric Belfi	P	04/14/15	1.0	130	Client communication
0571	David Goldsmith	P	04/14/15	0.7	080	Telephone conference with C. Moore, A. Palid, Garrett Bradley re: potential joint mediation and related issues; set up call; telephone conference with Larry Sucharow and Garrett Bradley re: same; post-call discussion with Garrett Bradley
1179	Michael Rogers	P	04/14/15	0.8	080	E-mails to/from Todd Kussin, Dan Chiplock, Mike Lesser, Evan Hoffman and K. Dugar re: document review and related projects
4021	Maureen Flanigan	SA	04/14/15	7.5	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; participate on Catalyst training conference call for new search projects; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/14/15	11.1	030	Search, Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants, consisting of emails, reports, PDFs, for gathering information on FX Transaction Cost Analysis, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/14/15	7.8	030	Ran searches in Defendants production for documents relating to e-trading and FX connect. Foldered off and began review of documents for new assignment. Attended Catalyst training for searching and foldering.
4071	Charles Pietrofesa	SA	04/14/15	8.5	030	Reviewed and analyzed Highly Relevant and Hot documents in order to write summary memo of noteworthy documents. Documents concerned RFP responses, FX fees, and Custodian Agreements; attended conference call training for performing searches; reviewed background materials for new review project.
4089	Todd Kussin	SA	04/14/15	5.2	030	Communications with co-counsel's IT Department as well as Labaton IT in order to set up web conference in order for reviewers to receive additional training in Catalyst in order to conduct searches and identify documents that will enable them to complete their newly assigned projects re: preparing memos on various research topics associated with allegations in the complaint; conferred with coders re: format of expected memos, strategies for searches on Catalyst, and formulating searches for their assigned topics; attended web conference with reviewers and co-counsel's IT department; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants.
4148	Albert Powell	SA	04/14/15	10.0	030	Review and analyze documents previously determined to be Hot or Highly Relevant. Draft memo summarizing Hot and Highly Relevant documents. Team meeting with Todd Kussin, Vivianne Abrahams and IT personnel re second level review searching procedures.
4173	Maritza Bolano	SA	04/14/15	9.0	030	Reviewed documents from Defendant's production pertaining to contracts topics; reviewed pleadings, hot documents, and drafted project memorandum; met with small team to review hardcopy client contracts and RFPs; met for conference call with IT for training on Catalyst system on searching, foldering and saving protocols; conducted contracts-related document searches, created folders and saved documents on system.

4065	Lisa George	SA	04/14/15	5.0	030	Reviewed Team emails and assignment re: conducting searches for documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and started to draft memo regarding same; Conducted searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and had brief office conferences w/B. Kaplan and D. Packman regarding same; Reviewed Liability Presentation for May 9 Mediation; Reviewed Reviewer Detail Projects document; Attended Conference Call and Webinar w/Catalyst Review Platform Administrator concerning search techniques and folder creation.
4242	Donato Gianturco	SA	04/14/15	9.2	030	Continued searches for documents [REDACTED] Received refresher on catalyst program.
4244	Judy Watson	SA	04/14/15	8.0	030	Review of defendant's documents related to rfps, preparation of summary memo regarding same, Catalyst training session.
4247	Aron Rosenbaum	SA	04/14/15	7.1	030	Reviewed documents to get familiar with new project.
4291	Mashariki Daniels	SA	04/14/15	11.0	030	Attended team phone conference for Catalyst use on new phase of project.
4295	Dorothy Hong	SA	04/14/15	8.0	030	attended Catalyst training. ran target searches concerning the topic of reports made to State Street Board of Directors.
4321	Ian Herrick	SA	04/14/15	9.3	030	Secondary document review of documents relating to Knowledge of competitor indirect pricing and practice. Attend IT presentation meeting.
4369	David Pospischil	SA	04/14/15	6.9	030	Initiated review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	04/14/15	10.6	030	Reviewing T. Kussin email regarding case-related topics project; reviewing memo describing topics; searching files for and reviewing documents relating to transparency topic; reviewing and organizing client documents relating to Contracts and RFP Responses topics; conferences with T. Kussin regarding same; meeting with J. Grant, M. Bolano, and J. Watson regarding client documents relating to Contracts and RFP Responses topics; reviewing hot document indexes; team conference call with Catalyst regarding database searches.
4385	David Packman	SA	04/14/15	7.0	040	Attended meeting re: Catalyst training and researched production from Defendants including emails, reports and presentations, in non-consecutive Bates ranges SST_KHR_SSGM_E00101153 through SST_KHR_SSGM_E001019563 in preparation of memorandum re: State Street executives.
4402	Jason Saad	SA	04/14/15	9.2	030	Starting work on the memo project for "P&L" and direct and indirect revenue. I conducted a search for related documents and started to review said documents in the list (of about 1150 documents). Attend Catalyst training session.
						Reviewed and analyzed previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst in order to draft and supplement attorney notes for each document and quality control of coded documents. Reviewed and analyzed various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within Catalyst coded "hot docs" and "highly relevant" for quality control and to draft and supplement attorney notes for each document. Draft and edit memorandum regarding my findings in relation to previously coded "hot docs" and "highly relevant" docs in Arkansas Teacher Retirement Systems v. State Street Amended documents in Catalyst. Attend catalyst training for searches and foldering. Conduct preliminary searches on consilio for new memo project.

4422	Ebone Bishop	SA	04/14/15	10.8	030	Coded non-consecutive bates range documents pertaining to subscription based global markets reports; quality check documents in non-consecutive bates range review batch; attend Catalyst search training meeting; review issue memo review project guidelines; create searches for W. Walsh.
4424	Jacqueline Grant	SA	04/14/15	12.0	030	Review and summarize non-consistently bates numbered documents tagged as "Highly Relevant" or "Hot", produced by Defendants, consisting of emails, PDFs, reports, and excel sheets, for relevance and select issues including public pension fund investment data, FX policies, FX revenues, FX pricing, and Ledger Journals, for attorneys' use in preparation for further litigation; attend webinar on suggested search techniques for review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation; and conduct initial review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/14/15	9.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants marked hot or highly relevant consisting of emails, PDFs, reports and Excel spreadsheets; prepare memorandum summarizing these documents; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations; catalyst search training meeting.
4394	David Alper	SA	04/14/15	11.0	030	Reviewed, and analyzed emails spreadsheets and documents for responsiveness pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.  Attended a meeting with the State Street Team to go over certain IT and Catalyst search techniques in order to create an in depth memo surrounding Anthony Bisegna's role in the case.
4423	Nicole Cameron	SA	04/14/15	7.0	030	Reviewed and summarize documents related to Orla Bierne for her involvement in Indirect FX trading and related matters.
4413	Barry Kaplan	SA	04/14/15	10.0	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/14/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals. Additionally attended meeting regarding database and software use.
4041	Vivianne Brissett	SA	04/14/15	1.0	030	Participated in a conference call with team regarding conducting searches, creating folders and other tips regarding using the platform to commence the research projects.
0023	Eric Belfi	P	04/15/15	1.0	130	Strategy call
0571	David Goldsmith	P	04/15/15	0.3	080	E-mail with Eric Belfi and Mike Rogers re: April 30 mediation; logistics
1179	Michael Rogers	P	04/15/15	0.7	080	E-mails to/from Eric Belfi, David Goldsmith, Mike Lesser, Dan Chiplock and Evan Hoffman re: case strategy; re: document review

4027	Debra Fouchong	SA	04/15/15	11.0	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for [REDACTED] attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/15/15	8.5	030	Working on research and analysis of [REDACTED]. Ran searches for different spelling variations of [REDACTED]. Worked on identifying and saving the best related documents.
4071	Charles Pietrofesa	SA	04/15/15	8.4	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents; reviewed background material for Mark Snyder.
4089	Todd Kussin	SA	04/15/15	2.1	030	Conferred with reviewer Mashariki Daniels re: research involving Mark Snyder; conducted searches on Catalyst platform in order to identify presentations prepared by Snyder for the State Street Board as cited in presentation prepared by plaintiffs firm referencing hottest documents identified thus far in this litigation; conferred with coders re: most efficient ways of setting up Catalyst folders containing documents identified as pertinent to individual research project topics; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants.
4148	Albert Powell	SA	04/15/15	8.4	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/15/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for Contracts topic project included professional services agreements, RFPs, master custody services contracts, and fee schedules; created searches, annotated Memorandum on topic, excel listing and catalyst database folders of searches.
4065	Lisa George	SA	04/15/15	1.0	030	Conducted searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed.
4242	Donato Gianturco	SA	04/15/15	10.0	030	Conducted searches [REDACTED] in preparation for the memo on State Street project.
4247	Aron Rosenbaum	SA	04/15/15	6.5	030	Researched documents in preparation for assigned topic in litigation research.
4291	Mashariki Daniels	SA	04/15/15	9.0	030	Nonconsecutive Bates numbers. ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "Mark Snyder [REDACTED]"
4295	Dorothy Hong	SA	04/15/15	8.5	030	Secondary [REDACTED] SEC filing search of 10K during class period for the list of Board of Directors.
4321	Ian Herrick	SA	04/15/15	9.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/15/15	6.7	030	Reviewing hot document indexes; reviewing plaintiffs' powerpoint presentation on liability; reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic.

4383	James Griffin	SA	04/15/15	8.9	030	Researched production from Defendants including emails, data and presentations, in non-consecutive Bates ranges SST_KHR_SSGM_E001019620 through SST_KHR_SSGM_E001015599, in preparation of memorandum re: State Street executives.
4385	David Packman	SA	04/15/15	7.0	040	As part of the memo project regarding the topics of P&L, Indirect and Direct revenue I started a more focused search of documents related to this issue. Most documents were slightly related, with a few documents on point of P&L with custody FX services. After reviewing the documents (and foldering off relevant documents into a subfolder) I ran an additional search of Phillip Qin, as he was mentioned in many of the other foldered off documents. I started to review these documents as well.
4422	Ebone Bishop	SA	04/15/15	8.9	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to P/L analysis and FX commentary for W. Walsh memorandum
4424	Jacqueline Grant	SA	04/15/15	5.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/15/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/15/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	04/15/15	6.0	030	Review documents related to Orla Beirne. Summarized documents for memorandum.
4244	Judy Watson	SA	04/15/15	8.5	030	Review of defendant's documents related to rfps & preparation of summary memo related to same.
4413	Barry Kaplan	SA	04/15/15	10.3	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/15/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals.
0571	David Goldsmith	P	04/16/15	0.3	080	E-mails with Eric Belfi and Mike Rogers re: April 30 mediation; logistics
1179	Michael Rogers	P	04/16/15	1.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: mediation session
4027	Debra Fouchong	SA	04/16/15	10.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, ██████████ ██████████ for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/16/15	9.4	030	Working on research and analysis of ██████████. Ran searches ██████████. Worked on identifying and saving the best related documents.
4071	Charles Pietrofesa	SA	04/16/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents; summarized important documents for inclusion in memorandum.

4089	Todd Kussin	SA	04/16/15	3.3	030	Conferred with reviewer Judy Watson re: research involving requests for proposal involving ATRS and State Street; conducted searches on Catalyst platform in order to identify examples of same; conferred with coders re: most efficient ways of setting up Catalyst folders containing documents identified as pertinent to individual research project topics; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants.
4148	Albert Powell	SA	04/16/15	9.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/16/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for Contracts topic project; documents included drafts and executed RFPs, master custody services contracts, memoranda, and fee schedules; reviewed search formats, created searches, annotated memorandum and excel spreadsheet listing, saved searches in my folders section of catalyst database.
4247	Aron Rosenbaum	SA	04/16/15	5.9	030	Reviewed documents, primarily Requests for Proposals, as preliminary research for assigned memo topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/16/15	11.5	030	ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "Mark Snyder & Revenue."
4295	Dorothy Hong	SA	04/16/15	8.2	030	Secondary document review of documents relating to Knowledge of competitor indirect pricing and practice.
4321	Ian Herrick	SA	04/16/15	9.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/16/15	6.7	030	Working on memo regarding transparency topic; conferences with T. Kussin and team member regarding RFP response document, Concordance database; reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic; conference with T. Kussin regarding documents relating to transparency topic.
4383	James Griffin	SA	04/16/15	10.6	030	Researched production from Defendants including emails, marketing and presentations, in non-consecutive Bates ranges SST_KHR_SSGM_E001654309 through SST_KHR_SSGM_E000908971, in preparation of memorandum re: State Street executives.
4385	David Packman	SA	04/16/15	7.4	040	Review documents in the specific Phillip QIn search. Relevant documents for the [REDACTED] was foldered off into a sub-folder for additional review. Found key documents that point to [REDACTED] Will further research this to see if each were combined on top of each other. Reviewed the ARTRS custody agreement [REDACTED]

						<p>Reviewed and analyzed documents in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>various types of documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within. Conduct numerous and various searches in Catalyst and outside internet forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.</p>
4402	Jason Saad	SA	04/16/15	9.2	030	
4422	Ebone Bishop	SA	04/16/15	6.6	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to FX pricing and related commentary for W. Walsh memorandum
4424	Jacqueline Grant	SA	04/16/15	12.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/16/15	10.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/16/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4244	Judy Watson	SA	04/16/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4423	Nicole Cameron	SA	04/16/15	7.0	030	Reviewed and summarized documents pertaining to Orla Beirne. Added documents to word doc for organization and quick reference.
4242	Donato Gianturco	SA	04/16/15	9.0	030	Conducted searches for [REDACTED] in preparation for the memo on State Street project. Added searches for [REDACTED]
4413	Barry Kaplan	SA	04/16/15	9.5	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/16/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals

4027	Debra Fouchong	SA	04/17/15	7.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4071	Charles Pietrofesa	SA	04/17/15	9.4	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents; summarized important documents for inclusion in memorandum; reviewed background material of important topics.
4089	Todd Kussin	SA	04/17/15	3.1	030	Conferred with reviewer Pospischil re: research involving State Street's [REDACTED]; conducted searches on Catalyst platform in order to identify and review emails involving CalPERS and AIR program; conferred with coders re: most efficient ways of setting up Catalyst folders containing documents identified as pertinent to individual research project topics; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants.
4148	Albert Powell	SA	04/17/15	10.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/17/15	9.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for Contracts topic project included RFPs, master custody services contracts, and fee schedules; created searches, annotated memorandum and excel spreadsheet; saved relevant documents on search folders database.
4244	Judy Watson	SA	04/17/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	04/17/15	4.5	030	Re searched docs related to assigned topic in preparation for memo.
4275	Dorothy Hong	SA	04/17/15	7.5	030	Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	04/17/15	7.5	030	Secondary document review of documents relating to Knowledge of competitor indirect pricing and practice. Initial outline/draft of memo.
4321	Ian Herrick	SA	04/17/15	10.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/17/15	7.9	030	Working on memo regarding transparency topic; searching database for documents relating to transparency topic; reviewing and analyzing documents relating to transparency topic; conferences with T. Kussin regarding documents relating to transparency topic.
4383	James Griffin	SA	04/17/15	7.0	030	Reviewed production from Defendant including emails, reports and presentations, in non-consecutive Bates ranges SST_KHR_SSGM_E000997505 through SST_KHR_SSGM_E000795269 in preparation of memorandum re: State Street executives.
4385	David Packman	SA	04/17/15	6.8	040	Completed the review of documents under the Phillip Qin search; completed the review of documents under the site spread search and reviewed documents under the [REDACTED] (as part of the review of documents for the Profits and Loss memo).



4034	Comfort Orji	SA	04/20/15	7.6	030	Working on research and analysis of E-trading revenue as it relates to Direct Revenue. Ran searches for "electronic trading" and "e-trading" Detailed and analytical review of search results bated range StateSt_CA_LIT06054664-SST_KHR_SSGM_E002731238. Added relevant documents to e trading folder for use in memo.
4071	Charles Pietrofesa	SA	04/20/15	9.3	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to indirect FX revenue and Snyder's interaction with Orla Bierne and other risk traders; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/20/15	3.2	030	Conferred with reviewer David Alper regarding potentially hot document identified discussing setting of FX spreads and the inability to price FX trades in real-time; conferred with coders re: most efficient ways of setting up Catalyst folders containing documents identified as pertinent to individual research project topics; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; prepared report summarizing assignments and productivity of State Street coders for the week ending April 17, 2015.
4173	Maritza Bolano	SA	04/20/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts topic project included RFPs, master custody services contracts, and fee schedules; annotated excel listing and search folders in database.
4247	Aron Rosenbaum	SA	04/20/15	6.9	030	Reviewed documents in research for assigned topic.
4291	Mashariki Daniels	SA	04/20/15	10.2	030	Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/20/15	10.2	030	ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "Mark Snyder and FX and Board"
4295	Dorothy Hong	SA	04/20/15	6.0	030	Secondary document review of documents relating to Knowledge of competitor indirect pricing and practice. Initial outline/draft of memo.
4321	Ian Herrick	SA	04/20/15	8.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/20/15	6.7	030	Reviewing and analyzing documents relating to transparency topic; working on memo regarding transparency topic; searching database for documents relating to transparency topic; conferences with team members regarding document relating to RFP response topic.
4383	James Griffin	SA	04/20/15	9.8	030	Researched production from Defendants including emails, reports and presentations, in non-consecutive Bates ranges SST_ARTRS E0066553 through SS_CAL_E001090N in preparation of memorandum re: State Street executives.
4385	David Packman	SA	04/20/15	7.1	040	complete a review of documents from my plan sponsor and IM spread searches (and foldering off relevant document). Searched for relevant documents before 2009, and came up with around 365 documents. started to review these documents. [REDACTED]

						Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] documents, best execution, custodial fees, bonus, EIRSA obligations, FX policies, Govt Investments, Netting, SI cost, FX pricing, Spreads, Non-pension customers, emails, spread sheets, custodial agreements and other relevant material within. Conduct numerous and various searches in Catalyst and outside internet forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4402	Jason Saad	SA	04/20/15	8.9	030	
4422	Ebone Bishop	SA	04/20/15	10.0	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to FX markets and investment climate analysis and related commentary for W. Walsh Memorandum
4424	Jacqueline Grant	SA	04/20/15	10.3	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	04/20/15	6.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals
4426	Tryphena Greene	SA	04/20/15	9.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/20/15	9.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	04/20/15	6.0	030	Reviewed emails sent from Orla Beirne [REDACTED] [REDACTED]
4242	Donato Gianturco	SA	04/20/15	10.0	030	Conducted searches for [REDACTED] in preparation for the memo on State Street project. Added searches for [REDACTED] as well. Foldered numerous documents after Orla [REDACTED] [REDACTED]
4244	Judy Watson	SA	04/20/15	8.5	030	Review of defendant's documents related to rfps & preparation of summary memo regarding same.
4413	Barry Kaplan	SA	04/20/15	10.0	020	Reviewed and coded defendant's documents.
0023	Eric Belfi	P	04/21/15	1.0	040	Document issues

4027	Debra Fouchong	SA	04/21/15	10.8	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/21/15	8.5	030	Ran several searches for documents relating to electronic trading and direct revenue in order to compare the relationship between both. Reviewed and analyzed search results and drafted memo paragraph.
4071	Charles Pietrofesa	SA	04/21/15	7.8	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to indirect FX revenue; summarized important documents for inclusion in memorandum.
4148	Albert Powell	SA	04/21/15	9.8	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/21/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed search results documents for Contracts topic project; documents included RFPs, master custody services contracts, and fee schedules; reviewed hardcopy documents; annotated detail of contract analyses on excel spreadsheet.
4065	Lisa George	SA	04/21/15	1.0	030	Briefly reviewed Amended Class Action and the Motion To Dismiss Hearing Transcript; Had office conference w/B. Kaplan and D. Packman regarding concerning search topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and overview plan to organized search results.
4247	Aron Rosenbaum	SA	04/21/15	7.2	030	Researched documents for assigned memo topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/21/15	11.5	030	ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "Mark Snyder and FX and Board"
4321	Ian Herrick	SA	04/21/15	8.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/21/15	7.0	030	Searching database for documents relating to transparency topic; conferences with team members regarding document relating to RFP response topic; reviewing, analyzing, and organizing documents relating to transparency topic; working on memo regarding transparency topic.
4385	David Packman	SA	04/21/15	7.2	040	Continue reviewing documents from my pre-2009 search for custody FX in relation to the P&L memo (currently about one quarter complete). Meet with Lisa and Barry to discuss findings so far, and plan how to move ahead.



4425	Anuj Vaidya	SA	04/21/15	10.8	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals
0023	Eric Belfi	P	04/22/15	1.0	130	Prepared for meeting
0571	David Goldsmith	P	04/22/15	0.7	080	Meeting with Larry Sucharow, Eric Belfi, Mike Rogers, Garrett Bradley re: mediation and settlement strategy
1179	Michael Rogers	P	04/22/15	1.0	080	Conference with Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: mediation strategy
4027	Debra Fouchong	SA	04/22/15	10.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/22/15	9.5	030	Ran several searches for documents relating to "Electronic trading" and "direct revenue" Reviewed and analyzed state SSGM financial statements. Researched relationship between Direct revenue and electronic revenue.
4071	Charles Pietrofesa	SA	04/22/15	9.0	040	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to indirect FX revenue and Snyder's interaction with Orla Bierne and other risk traders; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/22/15	2.8	030	Conferred with reviewers re: documents identified involving Anthony Bisegna, either as an author or recipient, [REDACTED] [REDACTED] communications with Catalyst IT regarding coders' problems viewing their documents in pdf form on Catalyst; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants.
4148	Albert Powell	SA	04/22/15	8.2	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/22/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts topic project; documents included master custody services contracts, RFPs and fee schedules; annotated excel data spreadsheet and saved searches in search folders.
4247	Aron Rosenbaum	SA	04/22/15	3.9	030	Researched docs in preparation for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/22/15	10.0	030	ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "Mark Snyder" [REDACTED]
4321	Ian Herrick	SA	04/22/15	9.4	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/22/15	6.1	030	Reviewing and analyzing documents relating to transparency topic; conference with T. Kussin and D. Alper [REDACTED].

4383	James Griffin	SA	04/22/15	6.8	030	Researched production from Defendants including emails, reports and presentations, in non-consecutive Bates ranges SST_KHR-SSGM_E001027820 through SST_KHR-SSGM_E00126301 in preparation of memorandum re: State Street executives.
4385	David Packman	SA	04/22/15	7.1	040	Continued reviewing documents from a search of pre-2009 documents with regards to P&L and CFXS. conducted a few searches (and reviewed those documents) to figure out the best way to conduct an elimination search of irrelevant documents to the P&L topic.
4402	Jason Saad	SA	04/22/15	10.4	030	Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] other relevant material within. Conduct numerous and various searches in Catalyst and outside internet forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4422	Ebone Bishop	SA	04/22/15	7.9	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to FX market analysis and related commentary for W. Walsh Memorandum
4424	Jacqueline Grant	SA	04/22/15	12.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/22/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/22/15	6.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents
4423	Nicole Cameron	SA	04/22/15	7.0	030	Reviewed emails generated by Orla Beirne from State Street. Charted bates numbers for memorandum.
4242	Donato Gianturco	SA	04/22/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4244	Judy Watson	SA	04/22/15	8.7	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.

4413	Barry Kaplan	SA	04/22/15	10.0	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/22/15	10.2	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals.
0103	Lawrence Sucharow	P	04/23/15	3.2	080	Telephone conference with mediator and defendants' counsel; correspond plaintiffs counsel; telephone conference plaintiffs counsel; attention to scheduling of mediation and substantive mediation issues.
0571	David Goldsmith	P	04/23/15	0.3	080	E-mails internally re: postponement of April 30 mediation
4027	Debra Fouchong	SA	04/23/15	9.9	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/23/15	8.6	030	[REDACTED] Reviewed financial statements, emails and drafted memo paragraphs.
4071	Charles Pietrofesa	SA	04/23/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Search pertained to Orla Biernie's [REDACTED]; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/23/15	2.7	030	Conferred with reviewers re: documents identified involving Anthony Bisegna, either as an author or recipient, [REDACTED] conferred with coders in order to solve problems involving their viewing of documents in pdf form on the Catalyst platform; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	04/23/15	10.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4247	Aron Rosenbaum	SA	04/23/15	7.2	030	Researched documents for memo on assigned topic.
4321	Ian Herrick	SA	04/23/15	3.8	030	Nonconsecutive Bates numbers.
4369	David Pospischil	SA	04/23/15	8.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	04/23/15	8.8	030	Reviewed and analyzing documents relating to transparency topic; working on memo regarding transparency topic; searching database for documents relating to transparency topic; conference with J. Grant regarding document relating to RFP response topic.
						Researched production from Defendant including emails, data and presentations, in non-consecutive Bates ranges SSFXDOL-E0000008130 through SST_KHR_SSGM_E001026995, in preparation of memorandum re: State Street executives.

						<p>Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>other relevant material within. Conduct numerous and various searches in Catalyst and outside internet forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.</p>
4402	Jason Saad	SA	04/23/15	10.5	030	
4422	Ebone Bishop	SA	04/23/15	6.8	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to FX market and investment climate analysis and related commentary for W. Walsh Memorandum.
4424	Jacqueline Grant	SA	04/23/15	7.6	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/23/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/23/15	11.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/23/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Oria [REDACTED]
4244	Judy Watson	SA	04/23/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4413	Barry Kaplan	SA	04/23/15	10.0	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/23/15	11.2	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals.
0103	Lawrence Sucharow	P	04/24/15	2.5	080	Telephone call with mediator; telephone call with plaintiffs counsel; correspond plaintiffs counsel; attention to mediation issues.

4027	Debra Fouchong	SA	04/24/15	7.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/24/15	8.8	030	Researched State Street's electronic trading platforms [REDACTED] Researched background of e-trading, reviewed emails, presentations and analyst reports. Created folders and selected key documents.
4071	Charles Pietrofesa	SA	04/24/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Orla Bierne's [REDACTED] summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/24/15	2.3	030	Conferred with reviewers re: State Street's role as a fiduciary, agent, or principal in relation to the Arkansas teacher Retirement System and how this affected the type of disclosures re: foreign exchange pricing that it owed to plaintiffs; continued conferring with coders and IT in order to solve problems involving their viewing of documents in pdf form on the Catalyst platform; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	04/24/15	11.1	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/24/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for detail on contracts and RFP provisions; documents included drafts, executed final versions of master custody services agreements, RFPs and fee schedules; annotated excel spreadsheet on relevant provisions of contracts and RFPs in database search folders.
4247	Aron Rosenbaum	SA	04/24/15	4.0	030	Researched docs in preparation for me,mo on assigned topic. Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	04/24/15	8.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	04/24/15	7.2	030	Researched production from Defendants using targeted searches for Joseph Hooley, including email and presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	04/24/15	7.0	040	Continue to draft different search terms in order to eliminate as many irrelevant documents (in order to find the smaller set of relevant documents) for the P&L/indirect/direct revenue research memo. The current search function eliminates about 13,000 documents, with 31,000 eliminated including families--out of about 115,000 documents in the database from before 2009.

						Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED]
4402	Jason Saad	SA	04/24/15	9.2	030	forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4422	Ebone Bishop	SA	04/24/15	9.0	030	Review non-consecutive bates range W. Walsh documents primarily pertaining to FX market and investment climate analysis and related commentary for W. Walsh Memorandum.
4424	Jacqueline Grant	SA	04/24/15	10.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/24/15	6.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/24/15	7.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4413	Barry Kaplan	SA	04/24/15	10.0	020	Reviewed and coded defendant's documents.
4242	Donato Gianturco	SA	04/24/15	10.6	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4244	Judy Watson	SA	04/24/15	9.3	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4425	Anuj Vaidya	SA	04/24/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research. Documents included FX reports, Standing Instructions, and Requests for Proposals
0571	David Goldsmith	P	04/27/15	0.5	120	E-mails with Larry Sucharow and Mike Rogers re: mediation issues; following upon on document requests

1179	Michael Rogers	P	04/27/15	1.0	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and co-counsel re: mediation meeting
4021	Maureen Flanigan	SA	04/27/15	9.7	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; search for documents concerning timestamps for FX trades.
4027	Debra Fouchong	SA	04/27/15	10.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/27/15	8.3	030	Ran searches for and reviewed statestreet financial statement with focus on relationship between direct revenue and e-revenue, also reviewed emails and analyst reports. Created folders and selected key documents.
4071	Charles Pietrofesa	SA	04/27/15	8.4	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Orla Bierne's [REDACTED]; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/27/15	1.6	030	Conferred with reviewers re: State Street's role as a fiduciary, agent, or principal in relation to the Arkansas teacher Retirement System and how this affected the type of disclosures re: foreign exchange pricing that it owed to plaintiffs; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing productivity and assignments of State Street reviewers for week ending April 24, 2015.
4148	Albert Powell	SA	04/27/15	8.0	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/27/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed RFPs, master custody services contracts, and fee schedules from searches, annotated excel spreadsheet with relevant issues.
4247	Aron Rosenbaum	SA	04/27/15	7.2	030	Researched docs in preparation for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/27/15	6.0	030	ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX trading revenue and Board"
4321	Ian Herrick	SA	04/27/15	9.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/27/15	4.7	030	Reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic.
4385	David Packman	SA	04/27/15	6.7	040	As part of my task in the P&L/direct/indirect revenue topic to research and draft a memo, I continued to refine my "elimination search." This search is supposed to weed out as many documents that do not address the P&L issue such that the documents that remain can successfully be searched.



4021	Maureen Flanigan	SA	04/28/15	9.3	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents; search for documents concerning timestamps for FX trades; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/28/15	11.0	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/28/15	8.3	030	Reviewed and Analyzed various State Street's Power point presentations and spreadsheets and other [REDACTED], also reviewed emails and analyst reports. Created folders and selected key documents.
4071	Charles Pietrofesa	SA	04/28/15	8.4	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Orla Bierne's [REDACTED]; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/28/15	2.5	030	Conferred with reviewers re: documents they have identified involving Anthony Bisegna, his role in [REDACTED] reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	04/28/15	9.8	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/28/15	8.7	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics; documents included RFPs, master custody services contracts, fee schedules, and amendments to agreements; annotated excel spreadsheet list with analyses of database folders saved in catalyst search.
4247	Aron Rosenbaum	SA	04/28/15	7.3	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/28/15	12.0	030	ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "FX trading revenue and Board"
4321	Ian Herrick	SA	04/28/15	9.2	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/28/15	6.0	030	Reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic.
4383	James Griffin	SA	04/28/15	10.6	030	Researched Defendant's production via targeted searches for Joseph Hooley, including email, data and presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	04/28/15	7.4	040	As part of the memo for P&L/direct/indirect, tested my search terms for the elimination searches. Reviewed about 4525 out of about 12000 documents.

						Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED]
4402	Jason Saad	SA	04/28/15	6.2	030	forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4422	Ebone Bishop	SA	04/28/15	9.8	030	Review non consecutive bates range W. Walsh documents related to FX pricing and trading guidelines along with associated commentary.
4424	Jacqueline Grant	SA	04/28/15	12.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/28/15	10.4	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	04/28/15	10.9	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	04/28/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4244	Judy Watson	SA	04/28/15	8.6	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4413	Barry Kaplan	SA	04/28/15	10.0	020	Reviewed and coded defendant's documents.
4423	Nicole Cameron	SA	04/28/15	8.5	030	summarized email chains from Orla Bierne
0571	David Goldsmith	P	04/29/15	5.0	080	Prepare for mediation session; travel New York to Boston
1225	Stacy Auer	PL	04/29/15	0.2	080	Convos re: mediation prep; calls w/ Americar;
4021	Maureen Flanigan	SA	04/29/15	6.5	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; reviewed and analyzed hot and highly relevant documents;search for documents concerning timestamps for FX trades; review documents in a non-consecutive bates range.

4027	Debra Fouchong	SA	04/29/15	10.7	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of [REDACTED] of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/29/15	7.5	030	Reviewed and Analyzed various State Streets Power point presentations and spreadsheets and other [REDACTED], also reviewed emails and analyst reports. Created folders and selected key documents.
4071	Charles Pietrofesa	SA	04/29/15	8.2	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Orla Bierne's pricing group and BNY Mellon's public litigation timeline; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/29/15	2.0	030	Conferred with reviewer re: strategies for conducting research and drafting memo regarding State Street's [REDACTED] associated therewith; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4089	Todd Kussin	SA	04/29/15	1.8	040	Conducted searches throughout documents provided by the Arkansas Teacher Retirement System ("ATRS") as well as documents produced by defendants and uploaded onto Catalyst in order to identify examples of custodial agreements entered into between State Street and ATRS after the Class Period.
4148	Albert Powell	SA	04/29/15	10.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/29/15	9.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents [REDACTED] annotated excel spreadsheet with relevant terms and catalyst database of documents and saved search folders.
4247	Aron Rosenbaum	SA	04/29/15	6.3	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/29/15	10.0	030	ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX trading revenue and Board"
4295	Dorothy Hong	SA	04/29/15	8.3	030	Draft 3rd version of memo on secondary review of competitor knowledge re indirect FX trading by State Street.
4321	Ian Herrick	SA	04/29/15	9.7	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.



4413	Barry Kaplan	SA	04/29/15	10.3	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	04/29/15	9.6	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4425	Anuj Vaidya	SA	04/29/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
0571	David Goldsmith	P	04/30/15	8.4	080	Attend mediation session with J. Marks and all parties; pre-meeting with Larry Sucharow; travel Boston to New York
4021	Maureen Flanigan	SA	04/30/15	9.6	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices; search for documents [REDACTED] review and analyze same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	04/30/15	11.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	04/30/15	11.3	030	Reviewed and Analyzed various State Streets Power point presentations and spreadsheets and other growth and strategy documents. with focus on relationship between direct revenue and e-revenue, also reviewed emails and analyst reports. Selected key documents.
4071	Charles Pietrofesa	SA	04/30/15	9.2	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to BNY Mellon's public litigation timeline; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	04/30/15	3.6	030	Conferred with reviewer [REDACTED] conferred with reviewer and communicated with IT in order to identify most effective way of pdf'ing from Catalyst voluminous spreadsheets containing State Street fee schedules; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	04/30/15	10.2	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	04/30/15	9.3	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, draft agreements and deal reports; created searches and saved in new folders; Annotated excel spreadsheet with relevant terms and saved in catalyst database.

4065	Lisa George	SA	04/30/15	7.3	040	Conducted searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4247	Aron Rosenbaum	SA	04/30/15	6.9	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	04/30/15	8.0	030	ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX trading revenue and Board"
4295	Dorothy Hong	SA	04/30/15	6.0	030	Secondary document review of research topic and revise memo thereof on State Street's knowledged of competitor FX indirect trade practice.
4321	Ian Herrick	SA	04/30/15	9.7	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	04/30/15	7.4	030	Reviewing, analyzing, and organizing documents relating to transparency topic; conference with D. Alper regarding document relating to FX spreads.
4383	James Griffin	SA	04/30/15	5.7	030	Researched production from Defendants using targeted searches for Joseph Hooley, including email and presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	04/30/15	7.0	040	As part of the research memo for P&L/ direct and indirect revenue, I completed my review of the set of documents for the elimination search regarding research reports (one third of the remaining set). started crafting a new elimination search based on investment guidelines.
4402	Jason Saad	SA	04/30/15	10.4	030	Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4422	Ebone Bishop	SA	04/30/15	8.0	030	Review non-consecutive bates range W. Walsh documents related [REDACTED] and related commentary for W. Walsh issue memorandum.
4424	Jacqueline Grant	SA	04/30/15	10.5	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	04/30/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.

4394	David Alper	SA	04/30/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	04/30/15	5.5	030	Reviewed documents relevant to the scope of Orla Beirne project. Summarized documents for memorandum.
4242	Donato Gianturco	SA	04/30/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after [REDACTED]
1523	Shella Mundo	PL	04/30/15	0.3	140	Retrieved documents from Westlaw per David Goldsmith; Emails re same.
4244	Judy Watson	SA	04/30/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4413	Barry Kaplan	SA	04/30/15	10.2	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	04/30/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
4021	Maureen Flanigan	SA	05/01/15	3.9	030	Review and analyze emails, documents about Calpers litigation, and analyst reports about State Street and other market participant's foreign exchange practices; search for documents concerning timestamps for FX trades and review and analyze same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	05/01/15	8.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/01/15	7.7	030	Ran searches, reviewed and analyzed various State Streets emails and attachments, presentations, spreadsheets and other growth and strategy documents relating to electronic revenue. Selected and saved key documents.
4071	Charles Pietrofesa	SA	05/01/15	7.0	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to BNY Mellon's public litigation timeline and Board presentation emails; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/01/15	6.3	030	Reviewed memorandum prepared by reviewer Dorothy Hong regarding State Street's awareness of its custodial competitors' practices re: indirect pricing schemes and took notes in order to offer suggestions on re-organization of document as well as additions thereto in order to more fully cover all issues; conferred with reviewer re: documents discussing manipulation of spreads and inconsistent pricing in the context of foreign exchange transactions; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	05/01/15	10.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	05/01/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, fee schedules, amendments, drafts and reports; annotated excel spreadsheet with relevant terms, and annotated and saved relevant documents in database folders.
4065	Lisa George	SA	05/01/15	6.7	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/01/15	8.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/01/15	4.5	030	Researched docs in preparation for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/01/15	11.5	030	Ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX trading revenue and Board"
4295	Dorothy Hong	SA	05/01/15	5.0	030	Secondary document review of research topic and revise memo thereof on State Street's knowledged of competitor FX indirect trade practice.
4321	Ian Herrick	SA	05/01/15	8.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/01/15	4.0	030	Reviewing, analyzing, and organizing documents relating to transparency topic; searching database for documents relating to transparency topic.
4383	James Griffin	SA	05/01/15	9.2	030	Researched Defendant's production via targeted searches for Joseph Hooley, including email, data and presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/01/15	7.0	040	I reviewed about a quarter of the documents in a new search of "fx" used in emails (as identified by the database) from before december 31, 2009. I foldered off relevant document regarding P&L or direct or indirect revenue. I searched and looked through documents involving one of the previous business analysts/IT development (Kiran).
4402	Jason Saad	SA	05/01/15	9.9	030	Reviewed and analyzed docs in Arkansas Teacher Retirement Systems v. State Street database in Catalyst in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] other relevant material within. Conduct numerous and various searches in Catalyst and outside internet forums(google) in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Draft and edit memorandum regarding my findings in regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street.
4422	Ebone Bishop	SA	05/01/15	8.0	030	Review non-consecutive bates range W. Walsh documents related to FX pricing, guidelines and volatility and related commentary for W. Walsh issue memorandum.

4424	Jacqueline Grant	SA	05/01/15	6.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/01/15	10.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4422	Donato Gianturco	SA	05/01/15	8.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4423	Nicole Cameron	SA	05/01/15	5.0	030	reviewed documents for Orla Bierne individual product. Summarized documents for memorandum.
4413	Barry Kaplan	SA	05/01/15	9.5	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	05/01/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
4021	Maureen Flanigan	SA	05/04/15	9.1	030	Review and analyze emails, documents about Calpers litigation, and analyst reports about State Street and other market participant's foreign exchange practices; search for documents concerning timestamps for FX trades and review and analyze same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	05/04/15	10.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/04/15	7.4	030	Worked on electronic trading research and memo. Running searches, reviewing and analyzing search results, selecting and saving key documents. Key documents found related to electronic trading growth, market trend, revenue impact of technology etc
4071	Charles Pietrofesa	SA	05/04/15	8.5	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Snyder's revenue documents; summarized important documents for inclusion in memorandum.



4422	Ebone Bishop	SA	05/04/15	10.9	030	Review non-consecutive bates range W. Walsh documents related to FX pricing, guidelines and related commentary for W. Walsh issue memorandum.
4424	Jacqueline Grant	SA	05/04/15	10.2	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/04/15	9.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/04/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/04/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4244	Judy Watson	SA	05/04/15	8.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same. Reviewed and coded defendant's documents.
4413	Barry Kaplan	SA	05/04/15	10.0	020	
4423	Nicole Cameron	SA	05/04/15	8.0	030	Read documents and provided detailed summary of contents for memorandum on Orla Beirne.
4425	Anuj Vaidya	SA	05/04/15	8.5	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
1225	Stacy Auer	PL	05/05/15	0.3	140	Review file for most recent custodial contract between ARTRS and State Street; circulate / emails re same;
4021	Maureen Flanigan	SA	05/05/15	7.4	030	Review and analyze emails, and analyst reports about State Street and other market participant's foreign exchange practices; [REDACTED] and review and analyze same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	05/05/15	10.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/05/15	10.9	030	Worked on electronic trading research and memo. Running searches, reviewing and analyzing search results, selecting and saving key documents. Key documents found related to electronic trading growth, market trend, revenue impact of technology etc
4071	Charles Pietrofesa	SA	05/05/15	9.0	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Snyder's [REDACTED] [REDACTED] summarized important documents for inclusion in memorandum.



4426	Tryphena Greene	SA	05/05/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/05/15	10.9	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	05/05/15	4.5	030	Reviewed and summarized document related to benchmark pricing, rates, and trade activity. Included in memorandum.
4242	Donato Gianturco	SA	05/05/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4413	Barry Kaplan	SA	05/05/15	10.0	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	05/05/15	9.1	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4425	Anuj Vaidya	SA	05/05/15	10.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
4021	Maureen Flanigan	SA	05/06/15	8.2	030	Review and analyze emails, presentations, policy documents, documents about Calpers litigation, and analyst reports about State Street and other market participant's foreign exchange practices; search for documents [REDACTED] and review and analyze same; review documents in a non-consecutive bates range.
4027	Debra Fouchong	SA	05/06/15	11.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/06/15	9.4	030	Worked on fx direct research. Search brought up 4,400 documents. Selectively reviewed and analyzed search results, selecting and saving key documents. reviewed emails, spreadsheets, presentations etc
4071	Charles Pietrofesa	SA	05/06/15	8.5	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Snyder's FX revenue documents; summarized important documents for inclusion in memorandum.

						<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>from Orla Bierne; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations; drafted email to team outlining alternate avenues to pursue in drafting research topic memos when there is an indication that there are no more documents discussing said topic.</p>
4089	Todd Kussin	SA	05/06/15	5.5	030	
4148	Albert Powell	SA	05/06/15	10.4	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/06/15	9.2	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, RFQs, master custody fee schedules, and drafts; ran saved searches; Annotated excel spreadsheet with relevant terms and saved in catalyst database.
4065	Lisa George	SA	05/06/15	3.5	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, [REDACTED] documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4247	Aron Rosenbaum	SA	05/06/15	6.2	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/06/15	11.8	030	Ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "FX trading revenue and Board"
4295	Dorothy Hong	SA	05/06/15	8.3	030	Secondary document review of research topic and revise memo thereof on State Street's knowledge of competitor FX indirect trade practice.
4321	Ian Herrick	SA	05/06/15	5.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/06/15	6.6	030	Reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic; working on memo relating to transparency topic.
4383	James Griffin	SA	05/06/15	8.6	030	Researched Defendant's production via targeted searches for Joseph Hooley, including emails, data and presentations; in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/06/15	7.0	040	As part of the research memo regarding P&L, I conducted exhaustive searches of the SST database for previous years annual reports to the SEC. I did not find any; I searched the SEC website and started reviewing the form 10-K filed in 2009.

						[REDACTED]
4402	Jason Saad	SA	05/06/15	10.4	030	[REDACTED] edit memorandum regarding my findings within Catalyst only. No research outside of the Catalyst database was conducted.
4422	Ebone Bishop	SA	05/06/15	6.9	030	Review non-consecutive bates range W. Walsh documents related to FX pricing, guidelines and related commentary for W. Walsh issue memorandum.
4424	Jacqueline Grant	SA	05/06/15	10.6	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/06/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/06/15	10.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	05/06/15	6.0	030	Reviewed document related to FX trading which discussed pricing and back to back deals. Summarized for memorandum.
4242	Donato Gianturco	SA	05/06/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4413	Barry Kaplan	SA	05/06/15	10.0	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	05/06/15	10.0	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4425	Anuj Vaidya	SA	05/06/15	11.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
1179	Michael Rogers	P	05/07/15	0.6	080	E-mails to/from Larry Sucharow, Eric Belfi, co-counsel and ERISA counsel re: mediation scheduling
4021	Maureen Flanigan	SA	05/07/15	1.8	030	Review and analyze emails, documents about Calpers litigation, and analyst reports about State Street and other market participant's foreign exchange practices; search for documents concerning [REDACTED] and review and analyze same; review documents in a non-consecutive bates range.



4402	Jason Saad	SA	05/07/15	10.5	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED] [REDACTED] [REDACTED] [REDACTED] edit memorandum regarding my findings within Catalyst only. No research outside of the Catalyst database was conducted.
4422	Ebone Bishop	SA	05/07/15	9.5	030	Review non-consecutive bates range W. Walsh documents related to FX pricing, guidelines and related commentary for W. Walsh issue memorandum.
4424	Jacqueline Grant	SA	05/07/15	11.2	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	05/07/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
4426	Tryphena Greene	SA	05/07/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/07/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/07/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED].
4413	Barry Kaplan	SA	05/07/15	10.0	020	Reviewed and coded defendant's documents.
4244	Judy Watson	SA	05/07/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4027	Debra Fouchong	SA	05/08/15	9.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/08/15	6.5	030	Worked on indirect FX research. Selectively reviewed and analyzed search results, selecting and saving key documents. Reviewed emails, spreadsheets, presentations, IM guides etc

4071	Charles Pietrofesa	SA	05/08/15	7.1	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Snyder's risk trader communications and Board documents; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/08/15	7.0	030	Conferred final time with reviewer Dorothy Hong to make suggestion for further edits to memorandum regarding State Street's awareness of its custodial competitors' practices re: indirect pricing; discussed further efforts to improve focus of memorandum by including overview of documents cited therein rather than direct quotes; further, discussed identification of additional communications among State Street personnel discussing competitors' pricing practices; discussed with reviewer additional search strategies for identification of documents relevant to Jay Hooley in order to supplement memorandum re: Hooley; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4173	Maritza Bolano	SA	05/08/15	7.8	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included fee schedules, master custody agreements, RFPs, and amendments; created searches and saved; annotated Memorandum and excel spreadsheet with relevant terms; saved relevant documents in catalyst database.
4247	Aron Rosenbaum	SA	05/08/15	4.3	030	Researched docs for internal memo on assigned topic.
4291	Mashariki Daniels	SA	05/08/15	12.0	030	Nonconsecutive Bates numbers.
4295	Dorothy Hong	SA	05/08/15	5.5	030	Ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "FX trading revenue and Board"
4369	David Pospischil	SA	05/08/15	6.5	030	Secondary review and revise memo on SS knowledge of competitor practice of fx indirect practice.
4383	James Griffin	SA	05/08/15	6.5	030	Reviewing, analyzing, and organizing documents relating to transparency topic; searching database for documents relating to transparency topic; working on memo relating to transparency topic; conference with J. Griffin regarding database searches.
4385	David Packman	SA	05/08/15	7.0	040	Researched production from Defendants using targeted searches for Joseph Hooley, including email, data, & presentations, in preparation of memorandum re: J. Hooley.
4402	Jason Saad	SA	05/08/15	9.5	030	Completed a review of pre-2010 emails with "Fx" in the document; I foldered off the relevant documents (although most were truly irrelevant). Continued reviewing State Street's annual and quarterly reports for further details about the breakout of revenue in the foreign exchange business whether direct or indirect.  Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Draft and edit memorandum regarding my findings within Catalyst only. No research outside of the Catalyst database was conducted.

4422	Ebone Bishop	SA	05/08/15	10.0	030	Review non-consecutive bates range W. Walsh documents related to FX trading and market fluctuations for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/08/15	10.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	05/08/15	8.5	020	Reviewed documents produced by defendant of non-consecutive bates range. Searched for and aggregated data in preparation for legal research regarding indirect fx, revenue and expenses. Documents included FX reports, Standing Instructions, and Requests for Proposals.
4426	Tryphena Greene	SA	05/08/15	4.4	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/08/15	5.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4244	Judy Watson	SA	05/08/15	8.2	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4413	Barry Kaplan	SA	05/08/15	10.0	020	Reviewed and coded defendant's documents.
4242	Donato Gianturco	SA	05/08/15	10.6	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4027	Debra Fouchong	SA	05/11/15	11.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/11/15	7.3	030	Worked on Direct and indirect FX research. Ran searches, selectively reviewed and analyzed documents pulled up in search results, selecting and saving key documents. Reviewed emails, spreadsheets, presentations, IM guides etc
4071	Charles Pietrofesa	SA	05/11/15	8.8	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Snyder's [REDACTED] and Orla Beirne's [REDACTED]; summarized important documents for inclusion in memorandum.

4089	Todd Kussin	SA	05/11/15	8.5	030	Drafted email to all reviewers requesting the forwarding of all examples of organizational charts involving State Street or any of its subdivisions identified while conducting research projects or already identified through same; conducted searches on Catalyst platform for examples of State Street organizational charts; discussed same with reviewer David Alper; reviewed memorandum regarding State Street's awareness of its custodial competitors' practices re: indirect pricing; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations; prepared report summarizing assignments and productivity of reviewers for the week ending May 8, 2015.
4173	Maritza Bolano	SA	05/11/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFQs, master custody services contracts, fee schedules, amendments, and draft agreements; created searches and reviewed documents; Annotated memorandum and excel spreadsheet with relevant terms; saved relevant documents in catalyst database folders.
4244	Judy Watson	SA	05/11/15	8.0	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/11/15	6.5	030	Researched docs for memo on assigned topic.
4291	Mashariki Daniels	SA	05/11/15	8.0	030	Nonconsecutive Bates numbers.
4321	Ian Herrick	SA	05/11/15	7.3	030	Ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX trading revenue and Board"
4369	David Pospischil	SA	05/11/15	6.7	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	05/11/15	10.4	030	Reviewing and analyzing documents relating to transparency topic; searching database for documents relating to transparency topic.
4385	David Packman	SA	05/11/15	6.9	040	Researched production from Defendant using targeted searches for Joseph Hooley, including email, data, & articles, in preparation of memorandum re: J. Hooley.
4422	Ebone Bishop	SA	05/11/15	8.5	030	Reviewed past years State Street's 10-K filings (2002-2009) to track the changes in foreign currency trading revenue and to see if it is broken out to custody and and non-custody (isn't). The classification of this revenue has changed over the years. Searched the SST database to further this development and reviewed documents. Randomly found a relevant document (noted and excerpted in a word document) which will be used to develop a theory of custody FX revenue.
4424	Jacqueline Grant	SA	05/11/15	12.0	030	Review non-consecutive bates-range W. Walsh documents related to fx trading and global strategies for W. Walsh memorandum.
4426	Tryphena Greene	SA	05/11/15	10.5	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
						Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.

4394	David Alper	SA	05/11/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/11/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4413	Barry Kaplan	SA	05/11/15	10.0	020	Reviewed and coded defendant's documents.
4425	Anuj Vaidya	SA	05/11/15	9.0	020	Reviewed documents produced by defendant of non-consecutive bates range. Coded documents including securities order forms, financial statements, and company policies regarding foreign exchange for relevance, privilege and issue tags.
4423	Nicole Cameron	SA	05/11/15	9.0	030	Reviewed documents in which Orla [REDACTED] Summarized documents for memorandum.
4027	Debra Fouchong	SA	05/12/15	10.9	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/12/15	8.2	030	Reviewed and Analyzed documents for Direct and Indirect FX and electronic trading pulled from search results. Selecting and saved key documents. Reviewed emails, spreadsheets, presentations, IM guides etc
4071	Charles Pietrofesa	SA	05/12/15	6.4	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Orla Beirne's [REDACTED]; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/12/15	9.8	030	Reviewed memo prepared by reviewer as part of research project regarding indirect FX costs and expenses and provided comments to reviewer, requesting additional analysis regarding internal communications at State Street regarding the same, especially communications contained in documents previously designated as hot; conducted searches on Catalyst platform for examples of State Street organizational charts; [REDACTED] indirect pricing; reviewed memos prepared by reviewers summarizing hot and highly relevant documents identified by the three plaintiffs firms during the course of the review of documents produced by defendants; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4173	Maritza Bolano	SA	05/12/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, draft agreements and deal inventory reports; created searches and saved in folders; Annotated Memorandum and excel spreadsheet with findings, relevant terms and saved in catalyst database.
4244	Judy Watson	SA	05/12/15	9.6	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.

4247	Aron Rosenbaum	SA	05/12/15	7.1	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/12/15	10.0	030	Ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "FX and revenue"
4321	Ian Herrick	SA	05/12/15	8.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/12/15	6.7	030	Reviewing, analyzing, and organizing documents relating to transparency topic; searching database for documents relating to transparency topic.
4383	James Griffin	SA	05/12/15	7.5	030	Researched production from Defendants using targeted searches for Joseph Hooley, including email, data, & presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/12/15	7.0	040	[REDACTED] [REDACTED] revenue), which has brought me to over 340 documents. After reviewing a few documents I found many to be relevant and certain anomalies-- such as redactions that could clearly not involve privilege.
4402	Jason Saad	SA	05/12/15	9.2	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst database documents that show, the tone/nature/content of the State Street's responses to customers and [REDACTED] [REDACTED] [REDACTED] edit memorandum regarding my findings within Catalyst only.
4422	Ebone Bishop	SA	05/12/15	8.0	030	Review non-consecutive bates-range W. Walsh documents related to fx trading and global strategies for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/12/15	11.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/12/15	11.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/12/15	11.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/12/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4423	Nicole Cameron	SA	05/12/15	8.0	030	Reviewed emails from Orla Beirne and summarized relevant documents for memorandum.
4413	Barry Kaplan	SA	05/12/15	10.0	020	Reviewed and coded defendant's documents.

4425	Anuj Vaidya	SA	05/12/15	10.0	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
0023	Eric Belfi	P	05/13/15	0.5	130	Discussed strategy
0103	Lawrence Sucharow	P	05/13/15	4.7	080	Telephone call with Mediator and defense counsel re outline of possible settlement terms; correspondence co-counsel; schedule conference call with co-counsel.
0571	David Goldsmith	P	05/13/15	2.0	130	E-mails internally re: status of settlement discussions, defendants' response to proposal made at April 30 mediation; telephone conference with all co-counsel re: same and strategy; post-call e-mails internally and discuss with Mike Rogers re: same
1179	Michael Rogers	P	05/13/15	1.9	080	Conference call with Larry Sucharow, David Goldsmith, co-counsel and ERISA counsel re: talks with State Street; conferences with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: same
4027	Debra Fouchong	SA	05/13/15	11.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/13/15	5.0	030	Reviewed and Analyzed documents for Direct and Indirect FX and electronic trading pulled from search results. Selected and saved key documents. Reviewed emails, excel spreadsheets, presentations, IM guides, etc
4071	Charles Pietrofesa	SA	05/13/15	9.3	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Orla Beirne's pricing group; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/13/15	10.3	030	Conferred with reviewer assigned the project of researching changes over time in the substance of responses to requests for proposals prepared by State Street and assisted in forming additional search terms to aid in identifying documents on Catalyst related to topic, including internal communications at State Street discussing responses to requests for proposals; reviewed memo prepared by reviewer as part of research project regarding indirect FX costs and expenses and provided comments to reviewer, requesting additional analysis regarding internal communications at State Street regarding the same; conducted searches on Catalyst platform for examples of State Street organizational charts; reviewed memorandum regarding State Street's awareness of its custodial competitors' practices re: indirect pricing; conducted secondary review/quality check of documents coded by reviewers in order to ensure the accuracy of their designations.
4148	Albert Powell	SA	05/13/15	4.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/13/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, and draft agreements; created searches and confined documents missing from production; continued drafting Memorandum and annotated excel spreadsheet with relevant terms and issues.
4244	Judy Watson	SA	05/13/15	10.0	030	Review of defendant's documents related to rfps and preparation of memo regarding same.
4247	Aron Rosenbaum	SA	05/13/15	4.3	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.

4291	Mashariki Daniels	SA	05/13/15	8.1	030	Ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX and revenue"
4321	Ian Herrick	SA	05/13/15	10.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/13/15	7.8	030	Reviewing and analyzing documents relating to transparency topic.
4385	David Packman	SA	05/13/15	7.4	040	As part of the research memo on P&L for forex services for custody and non-custody accounts, I continued reviewing and foldering off the mostly relevant documents found under a search of indirect and direct "volume." I noted the documents that were wrongfully redacted as well.
4402	Jason Saad	SA	05/13/15	10.8	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED]. Draft and edit memorandum regarding my findings within Catalyst only.
4413	Barry Kaplan	SA	05/13/15	10.0	020	Reviewed and coded defendant's documents.
4422	Ebone Bishop	SA	05/13/15	8.5	030	Review non-consecutive bates-range W. Walsh documents related to fx trading and global strategies for W. Walsh memorandum.
4426	Tryphena Greene	SA	05/13/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/13/15	10.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
0023	Eric Belfi	P	05/13/15	1.5	080	Attention to talks with State Street.
4423	Nicole Cameron	SA	05/13/15	7.5	030	Searched for new documents related to Orla Beirne and rates. Reviewed documents and notated those emails created by her.
4242	Donato Gianturco	SA	05/13/15	11.2	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4425	Anuj Vaidya	SA	05/13/15	9.5	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
0103	Lawrence Sucharow	P	05/14/15	3.5	080	Conference call co-counsel re possible settlement terms; confer with G. Bradley re settlement outline.
1179	Michael Rogers	P	05/14/15	0.8	080	E-mails to/from Todd Kussin, Mike Lesser and Dan Chiplock re: document review and memoranda summarizing same; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Donna Deaton re: Tuesday's call with Jonathan Marks and SST

4027	Debra Fouchong	SA	05/14/15	10.8	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/14/15	7.8	030	Reviewed and Analyzed documents for Direct and Indirect FX and electronic trading pulled from search results. Selected and saved key documents. Reviewed emails, excel spreadsheets, presentations, IM guides, etc
4071	Charles Pietrofesa	SA	05/14/15	8.5	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Indirect FX revenue and the Market Risk Committee; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/14/15	11.3	030	Conferred with all coders re: availability of additional research memo topics to be started when current memo topics have been completed and to discuss timetables for completing memos on existing research topics; emails with Michael Rogers regarding status of memos that have thus far been completed and quality checked; reviewed memo; conferred again with reviewer assigned the topic involving indirect FX costs and expenses and discussed previously assigned instructions to supplement memo with internal communications at State Street regarding the same, specifically the projected timetable for such changes to be complete; conducted searches on Catalyst platform for examples of State Street organizational charts; continued reviewing memorandum regarding State Street's awareness of its custodial competitors' practices re: indirect pricing and began editing, re-organizing, fact-checking, and supplementing same in order to prepare version to be reviewed by Mr. Rogers and co-counsel; reviewed documents cited in memo and uploaded onto Catalyst in order to verify statements in memo and add additional context; additionally, identified language in memo that was either unhelpful or extraneous and eliminated same.
4148	Albert Powell	SA	05/14/15	8.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/14/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, and draft agreements; continued drafting memorandum and updating excel spreadsheet with relevant terms and saved documents in catalyst database.
4244	Judy Watson	SA	05/14/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/14/15	7.0	030	Researched docs for memo on assigned topic Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/14/15	11.8	030	Ran target searches concerning the topic of reports made to State Stree Board of Directors using search terms such as "FX and revenue"
4321	Ian Herrick	SA	05/14/15	9.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.



4027	Debra Fouchong	SA	05/15/15	8.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4071	Charles Pietrofesa	SA	05/15/15	7.1	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to various committees and documents authored by Snyder; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/15/15	12.0	030	Continued re-organizing, fact-checking, and supplementing research memos prepared by reviewers including those addressing (1) State Street's reaction to news regarding the lawsuits by CalSTERS and CalPERS, (2) State Street's awareness of its custodial competitors' practices re: indirect pricing, and (3) indirect foreign exchange costs and revenues; conferred with reviewers responsible for each topic and conducted research on Catalyst platform among documents produced by defendants in order to finalize memos for review by Michael Rogers and co-counsel; emails with Mr. Rogers re: same; analyzed State Street 10-Ks as well as internal emails discussing the California lawsuits and how to respond to customer and investment manager questions regarding the same; conducted searches on Catalyst platform for examples of State Street organizational charts; conducted secondary review/quality check of documents coded by reviewers in order to verify the accuracy of their designations.
4148	Albert Powell	SA	05/15/15	10.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/15/15	6.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, draft agreements; created searches and saved in new folders; continued drafting memorandum and annotated excel spreadsheet with relevant terms; saved documents in catalyst database.
4244	Judy Watson	SA	05/15/15	7.7	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/15/15	3.6	030	Researched docs for memo on assigned topic.
4291	Mashariki Daniels	SA	05/15/15	12.0	030	Ran target searches concerning the topic of reports made to State Street Board of Directors using search terms such as "FX and revenue"
4321	Ian Herrick	SA	05/15/15	10.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/15/15	7.1	030	Reviewing and analyzing documents relating to transparency topic.
4383	James Griffin	SA	05/15/15	7.8	030	Researched production from Defendants using targeted searches for Joseph Hooley, including email, data, & presentations, in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/15/15	7.0	040	As part of my research on P&L and custody FX revenue, I reviewed my foldered off documents and started to draft part of the memo.

						Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED]. Draft and
4402	Jason Saad	SA	05/15/15	9.2	030	edit memorandum regarding my findings within Catalyst only.
4422	Ebone Bishop	SA	05/15/15	6.6	030	Review non-consecutive bates-range W. Walsh documents related to fx trading and global strategies for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/15/15	12.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/15/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/15/15	6.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/15/15	8.5	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Created folder for pre Orla docs. Foldered a few docs.
4425	Anuj Vaidya	SA	05/15/15	9.4	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs. Revised and added to memo.
4413	Barry Kaplan	SA	05/15/15	10.0	020	Reviewed and coded defendant's documents.
0571	David Goldsmith	P	05/16/15	1.0	090	Review recent e-mails re: settlement/BNY/government agency strategy
1179	Michael Rogers	P	05/18/15	0.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: scheduling of call with Marks, co-counsel, ERISA counsel and SST
4027	Debra Fouchong	SA	05/18/15	10.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/18/15	7.0	030	Reviewed and analyzed documents with a view to responding to the question "Does the bank ever prevent marketing of e-trading solutions to profitable Indirect FX clients?" Reviewed emails, presentations, internal memo's etc

4071	Charles Pietrofesa	SA	05/18/15	8.5	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to FX revenues and Board documents; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/18/15	11.3	030	Re-organized, fact-checked, supplemented, and re-drafted parts of research memos prepared by reviewers including those addressing (1) State Street's reaction to news regarding the lawsuits by CalSTERS and CalPERS, and (2) indirect foreign exchange costs and revenues; conferred with reviewers responsible for each topic including with Jason Saad in order to request that he identify additional documents from among those produced by defendants in order to support statements regarding the announcement of the California lawsuit; conducted internet research to identify news articles and broadcasts re: announcement of lawsuit; analyzed State Street 10-Ks as well as internal emails discussing the California lawsuits and how to respond to customer and investment manager questions regarding the same; emails with Michael Rogers discussing progress of memos; conferred with David Pospischil in order to explain assignment re: reviewing Dorothy Hong's memorandum State Street's awareness of its custodial competitors' practices re: indirect pricing in order to eliminate extraneous sections and focus narrowly on question at hand; prepared report summarizing assignments and productivity of State Street reviewers for week ending 5/15/2015.
4148	Albert Powell	SA	05/18/15	9.0	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/18/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, NDAs, limited partnership agreements, trust contracts, master custody services agreements, amendments, draft agreements; created searches and saved in folders; annotated memorandum and excel spreadsheet with relevant terms and saved in database.
4065	Lisa George	SA	05/18/15	3.0	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/18/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same. Researched docs for memo on assigned topic.
4247	Aron Rosenbaum	SA	05/18/15	6.4	030	Nonconsecutive bates numbers.
4291	Mashariki Daniels	SA	05/18/15	11.3	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, FX w/10 change.
4321	Ian Herrick	SA	05/18/15	8.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities

4369	David Pospischil	SA	05/18/15	5.9	030	Reviewing and analyzing documents relating to transparency topic; meetings with T. Kussin regarding editing memo regarding State Street knowledge of competitor indirect FX pricing and practice; reviewing and editing memo regarding same; reviewing memo regarding case topics.
4383	James Griffin	SA	05/18/15	8.9	030	Researched Defendant's production using targeted searches for Joseph Hooley, including emails, presentations, and data; in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/18/15	7.4	040	I went back to the foldered off documents with most of the relevant [REDACTED] and sorted these documents into a separate subfolder than main volume documents (emails and other non-data information).
4422	Ebone Bishop	SA	05/18/15	9.5	030	Review non-consecutive bates-range W. Walsh documents related to fx trading for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/18/15	6.0	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/18/15	10.2	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	05/18/15	10.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/18/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]
4027	Debra Fouchong	SA	05/18/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4413	Barry Kaplan	SA	05/18/15	10.0	020	Reviewed and coded defendant's documents.
4402	Jason Saad	SA	05/18/15	9.0	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Draft and edit memorandum regarding my findings within Catalyst only.
4425	Anuj Vaidya	SA	05/18/15	8.5	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.

1179	Michael Rogers	P	05/19/15	0.4	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, co-counsel, ERISA counsel and SST counsel re: scheduling of call with Marks
4027	Debra Fouchong	SA	05/19/15	10.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/19/15	10.0	030	Reviewed and analyzed documents with a view to responding to the question "Does the bank ever prevent marketing of e-trading solutions to profitable Indirect FX clients?" Reviewed emails, presentations, internal memo's etc
4071	Charles Pietrofesa	SA	05/19/15	8.7	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Board documents and Street FX; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/19/15	11.3	030	Conferred with newest reviewer Betsy Schulman to discuss background of litigation and assignments going forward; identified and prepared background reading materials including complaint, plaintiffs' opposition to defendants' motion to dismiss, transcript of hearing on motion to dismiss, and presentation prepared for use at May 2014 mediation citing hot documents identified by that date; Finalized re-organizing, fact-checking, supplementing, and re-drafting of research memo prepared by reviewer addressing State Street's reaction to news regarding the lawsuits by CalSTERS and CalPERS; conducted searches within documents produced by defendants and uploaded onto Catalyst in order to identify those regarding State Street's communications with its investment managers and clients regarding the announcement of the lawsuits by the California pension funds; fact-checked and re-drafted portions of memorandum prepared by reviewer describing indirect foreign exchange services provided by State Street; conducted searches for additional documents among those produced by defendants discussing the types of indirect foreign exchange services provided to institutional clients by States Street including automated income repatriation ("AIR") and Security Settlement and Holdings ("SSH"); emails with Michael Rogers discussing progress of memos; conferred with David Pospischil in order to discuss progress on edits to Dorothy Hong's memorandum re: State Street's awareness of its custodial competitors' practices re: indirect pricing in order to eliminate extraneous sections and focus narrowly on the question at hand.
4173	Maritza Bolano	SA	05/19/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, partnerships agreements, and draft agreements; created searches, reviewed and saved relevant documents in folders; Annotated memorandum and excel spreadsheet with relevant terms.
4065	Lisa George	SA	05/19/15	8.5	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/19/15	8.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/19/15	6.3	030	Researched docs for memo on assigned topic. Nonconsecutive Bates numbers.



4425	Anuj Vaidya	SA	05/19/15	11.0	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
1179	Michael Rogers	P	05/20/15	0.5	080	E-mails to/from Todd Kussin, Mike Lesser, Dan Chiplock and Evan Hoffman re: document review projects
4027	Debra Fouchong	SA	05/20/15	10.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/20/15	9.0	030	Ran searches for all documents mentioning electronic revenue, reviewed and analyzed documents for relationship between Direct revenue and electronic revenue. Documents were financial statements, presentations, emails etc
4071	Charles Pietrofesa	SA	05/20/15	9.0	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Pension fund litigation and Street FX; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/20/15	6.8	030	Conferred with reviewer Mashariki Daniels in order to formulate new searches on Catalyst to identify documents regarding Mark Snyder and his participation in Board meetings; conducted searches within documents produced by defendants and uploaded onto Catalyst in order to identify those regarding State Street's communications with its investment managers and clients regarding the announcement of the lawsuits by the California pension funds; fact-checked and re-drafted portions of memorandum prepared by reviewer describing indirect foreign exchange services provided by State Street; conducted searches for additional documents among those produced by defendants discussing the types of indirect foreign exchange services provided to institutional clients by States Street including automated income repatriation ("AIR") and Security Settlement and Holdings ("SSH"); re-organized, cite checked and re-drafted portions of memorandum prepared by reviewer regarding Jay Hooley; reviewed suggested edits by David Pospischil to memorandum prepared by reviewer re: State Street's awareness of its custodial competitors' practices re: indirect pricing.
4148	Albert Powell	SA	05/20/15	10.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/20/15	9.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included master custody services contracts, limited partnership agreements, fee schedules, amendments, and draft agreements; created searches and saved in database; Annotated Memorandum and excel spreadsheet with relevant terms.
4065	Lisa George	SA	05/20/15	8.3	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/20/15	9.6	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.

4247	Aron Rosenbaum	SA	05/20/15	6.2	030	Researched docs for memo. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/20/15	11.0	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange.
4321	Ian Herrick	SA	05/20/15	9.4	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities
4369	David Pospischil	SA	05/20/15	7.9	030	Reviewing and analyzing documents relating to transparency topic.
4383	James Griffin	SA	05/20/15	6.8	030	Researched Defendant's production with targeted searches for Joseph Hooley, including emails, data, news articles and presentations; in preparation of memorandum re: J. Hooley.
4385	David Packman	SA	05/20/15	6.8	040	As part of determining the profit and loss and revenue from State Street's custody fx, I am now sorting [REDACTED].
4402	Jason Saad	SA	05/20/15	10.6	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's response to news of the Calphers and Calsters lawsuit against State Street. Accumulate only Catalyst [REDACTED]. Draft and edit memorandum regarding my findings within Catalyst only.
4422	Ebone Bishop	SA	05/20/15	9.2	030	Review non-consecutive bates-range W. Walsh documents related to fx trading and analysis for W. Walsh memorandum
4424	Jacqueline Grant	SA	05/20/15	8.7	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/20/15	11.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	05/20/15	9.0	030	Read Transcript of Hearing Before Chief Judge Wolf re: Motion to Dismiss, and Plaintiff's presentation on liability. Review document review reference guide. Review case details. Review hot and highly relevant documents.
4425	Anuj Vaidya	SA	05/20/15	10.5	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
4394	David Alper	SA	05/20/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	05/20/15	7.0	030	Reviewed documents related to Orla Beirne, bps, and indirect fx pricing. Noted documents for further review for memo.
4242	Donato Gianturco	SA	05/20/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED].

4413	Barry Kaplan	SA	05/20/15	10.0	020	Reviewed and coded defendant's documents.
1179	Michael Rogers	P	05/21/15	0.7	080	E-mails to/from Mike Lesser, Dan Chiplock and K. Dugar re: document review; telephone conference with Dan Chiplock re: same
4027	Debra Fouchong	SA	05/21/15	10.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/21/15	10.0	030	Ran searches for all documents mentioning electronic revenue and direct revenue, reviewed and analyzed documents for relationship between Direct revenue and electronic revenue. Documents were financial statements, presentations, emails etc
4071	Charles Pietrofesa	SA	05/21/15	8.3	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Pension fund litigation and Indirect Revenue; summarized important documents for inclusion in memorandum.
4089	Todd Kussin	SA	05/21/15	8.0	030	Re-organized, fact checked, supplemented and re-drafted certain sections of memorandum prepared by [REDACTED] [REDACTED] [REDACTED] [REDACTED] discussed same with Justin Griffin; reviewed list of new research topics prepared by co-counsel and selected those to be assigned to reviewers who have completed research on their initial topics; emails with Mike Rogers re: same; reviewed suggested edits by David Pospischil to memorandum prepared by reviewer re: State Street's awareness of its custodial competitors' practices re: indirect pricing.
4148	Albert Powell	SA	05/21/15	10.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/21/15	9.8	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, draft amendments and agreements; created searches and folders; saved relevant documents in folders; Annotated excel spreadsheet with relevant terms and saved in catalyst database.
4065	Lisa George	SA	05/21/15	7.5	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Ancillary Revenue documents and Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/21/15	9.5	030	Review of defendant's documents related to rfps and preparation of summary memo regarding same.

4247	Aron Rosenbaum	SA	05/21/15	3.7	030	Researched docs for memo. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/21/15	8.5	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange.
4321	Ian Herrick	SA	05/21/15	8.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/21/15	7.4	030	Reviewing, analyzing, and organizing documents relating to transparency topic; working on memo regarding same.
4383	James Griffin	SA	05/21/15	9.5	030	Researched Defendant's production via targeted searches for Joseph Hooley, including email and presentations, and prepared memorandum re: J. Hooley.
4385	David Packman	SA	05/21/15	7.2	040	I completed the sorting of documents into their specific location folders. I reviewed all the documents in the [REDACTED]. There were many duplicate files, but even more problematic is that many months of monthly volumes is missing.
4402	Jason Saad	SA	05/21/15	10.7	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Draft and edit memorandum regarding my findings within Catalyst only.
4422	Ebone Bishop	SA	05/21/15	8.2	030	Review non-consecutive bates-range W. Walsh documents related to fx trading, related analysis and P&L commentary for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/21/15	12.5	030	Conduct review of documents on specific topics in preparation for drafting of memorandum for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/21/15	10.3	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project - review documents returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	05/21/15	9.0	030	Review hot and highly relevant documents. Conduct searches re: preparation of research assignment memo. Review case details.
4413	Barry Kaplan	SA	05/21/15	7.5	020	Reviewed and coded defendant's documents.
4394	David Alper	SA	05/21/15	10.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.

4242	Donato Gianturco	SA	05/21/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder.
4423	Nicole Cameron	SA	05/21/15	7.0	030	Researched documents related to Orla + spreads + process to determine what documents mentioned her involvement in Indirect FX pricing.
4425	Anuj Vaidya	SA	05/21/15	9.5	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
0571	David Goldsmith	P	05/22/15	1.1	080	Telephone conference with J. Marks and all parties re: settlement and BNY issues; potential next steps; discussion with Mike Rogers re: same
1179	Michael Rogers	P	05/22/15	2.2	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, SST counsel and J. Marks re: mediation; conference with David Goldsmith re: same; e-mails to/from Eric Belfi re: same; e-mails to/from Todd Kussin, Danette McKenzie and Cindy Ng re: document review
4021	Maureen Flanigan	SA	05/22/15	5.1	030	Review and analyze emails, market research documents, and analyst reports about State Street and other [REDACTED]
4027	Debra Fouchong	SA	05/22/15	6.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/22/15	8.0	030	Reviewed and Analyzed search results for response to fact finding assignment. Documents reviewed include, global performance presentation, State street response to [REDACTED] financial reports regarding growth in FX and Electronic trading revenue, board presentation, emails etc
4071	Charles Pietrofesa	SA	05/22/15	7.0	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to general Snyder documents and Indirect Revenue; summarized important documents for inclusion in memorandum. Documents reviewed concerned committee meeting notes and issues with FX pricing systems and client relationships.
4089	Todd Kussin	SA	05/22/15	7.9	030	Continued re-organizing, fact checking, supplementing and re-drafting certain sections of memorandum [REDACTED] conducted research within documents produced by defendants and uploaded onto Relativity in order to identify additional [REDACTED] reviewed suggested edits by David Pospischil to memorandum prepared by reviewer re: State Street's awareness of its custodial competitors' practices re: indirect pricing; reviewed rough draft of memorandum prepared by reviewer researching changes in responses to requests for proposals.
4148	Albert Powell	SA	05/22/15	11.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	05/22/15	5.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included emails, RFPs, master custody services contracts, including StateSt_CA_LIT00646977, StateSt_CA_LIT00058790, fee schedules, amendments, StateSt_CA_LIT01932095, StateSt_CA_LIT00901581 StateSt_CA_LIT00901579, draft agreements, including StateSt_CA_LIT00902154; completed review of new search results and saved in folder; Annotated excel spreadsheet with relevant terms and saved in catalyst database.
4065	Lisa George	SA	05/22/15	8.6	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Ancillary Revenue documents, analysts reports, presentations, client reports, and Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/22/15	8.1	030	Review of defendant's documents related to rfps specifically SST_LIT011667, SST_LIT012529, StateSt_CA_LIT05041182 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/22/15	3.5	030	Researched docs for memo. Nonconsecutive Bates numbers.
4291	Mashariki Daniels	SA	05/22/15	7.3	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports.
4321	Ian Herrick	SA	05/22/15	8.9	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4385	David Packman	SA	05/22/15	6.0	040	as part of the research memo I am drafting on State Street's profit and loss and revenue from custody FX transactions, I went through the monthly volumes reported from various locations and compiled the custody FX volumes into a spreadsheet [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4402	Jason Saad	SA	05/22/15	6.0	030	Conduct searches on the Catalyst database exclusively, in order to draft memo regarding State Street's Knowledge of competitor Indirect pricing and practice. Accumulate only Catalyst database documents [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Draft and edit memorandum regarding my findings within Catalyst only.
4422	Ebone Bishop	SA	05/22/15	8.5	030	Review non-consecutive bates range W. Walsh documents related to FX trading and related commentary and specific client trades for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/22/15	12.5	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	05/22/15	5.3	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	05/22/15	8.5	030	Conduct document searches and review hot and relevant documents re: preparation of research assignment memo. Draft research memo.
4394	David Alper	SA	05/22/15	5.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4425	Anuj Vaidya	SA	05/22/15	4.5	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
0023	Eric Belfi	P	05/22/15	1.0	080	Attention to mediation.
0103	Lawrence Sucharow	P	05/22/15	1.0	080	Conference re: mediation.
4423	Nicole Cameron	SA	05/22/15	6.0	030	Reviewed and summarized documents containing emails from Orla [REDACTED]
4242	Donato Gianturco	SA	05/22/15	11.2	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4413	Barry Kaplan	SA	05/22/15	11.5	020	Reviewed and coded defendant's documents, ~300 documents [REDACTED]
0103	Lawrence Sucharow	P	05/26/15	4.7	080	Conference call with plaintiff's counsel updating on communications with governmental agencies re overall settlement; review settlement scenarios; confer re settlement strategies.
0571	David Goldsmith	P	05/26/15	0.8	080	Telephone conference with co-counsel re: mediation and settlement strategy; follow on e-mails
1179	Michael Rogers	P	05/26/15	1.2	080	Conference call with e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, co-counsel and ERISA counsel re: mediation meeting, meeting with DOJ and strategies re: same
4021	Maureen Flanigan	SA	05/26/15	9.0	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review summary documents and complaint.
4027	Debra Fouchong	SA	05/26/15	8.7	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for [REDACTED] for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/26/15	8.6	030	Reviewed and Analyzed search results for response to fact finding assignment. Documents reviewed include, global performance presentation, financial reports regarding growth in FX and Electronic trading revenue, strategy presentation, emails etc

						Continued re-organizing, fact checking, supplementing and re-drafting certain sections of memorandum [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] reviewed suggested edits by David Pospischil to memorandum prepared by reviewer re: State Street's awareness of its custodial competitors' practices re: indirect pricing; began adding same and identifying additional sections to be cut from memo to achieve streamlined version that focuses more narrowly on questions presented; prepared report summarizing assignments and productivity of State Street reviewers for week ending May 22, 2015.
4089	Todd Kussin	SA	05/26/15	9.5	030	
4148	Albert Powell	SA	05/26/15	8.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	05/26/15	7.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included emails SS_CAL_E0027453, SS_CAL_E0027460, RFPs, master custody services contracts, fee schedules, amendments, and draft agreements; created searches, saved in folders; continued drafting project Memorandum and excel spreadsheet with relevant terms.
4065	Lisa George	SA	05/26/15	7.0	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including Ancillary Revenue documents, ATRS Holdings & Trade Reports, CFXS Documents, Milestone documents, Repatriation documents, analysts reports, presentations, client reports, and Portfolio Holdings Reports from State Street to ATRS during the class period.
4244	Judy Watson	SA	05/26/15	8.0	030	Review of defendant's documents related to rfps specifically SST_LIT011667, StateSt_CA_LIT05041182, SST_LIT012320, SST_LIT012009 and preparation of memo regarding same.
4247	Aron Rosenbaum	SA	05/26/15	6.1	030	Researched docs for memo, topic: historical FX margins. Today's docs were primarily research and analysts reports, e.g. Ideaglobal. FX and Money Markets, Global FX Outlook, among others.
4321	Ian Herrick	SA	05/26/15	8.2	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/26/15	6.0	030	Reviewing and organizing documents relating to transparency topic including documents relating to FX analysis, AIR FX client inquiry; searching database for documents relating to transparency topic.
4383	James Griffin	SA	05/26/15	7.9	030	Researched Defendant's production [REDACTED] [REDACTED]



4425	Anuj Vaidya	SA	05/26/15	8.0	020	Reviewed documents of non-consecutive bates range including emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs. Completed portions of memo.
1179	Michael Rogers	P	05/27/15	1.5	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: scheduling mediation session; e-mails to/from Todd Kussin, Mike Lesser and Evan Hoffman re: document review
4021	Maureen Flanigan	SA	05/27/15	9.0	030	Review and analyze emails about State Street 's foreign exchange practices concerning timestamps for FX trades; review summary documents and complaint.
4027	Debra Fouchong	SA	05/27/15	11.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	05/27/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/27/15	9.8	030	Ran searches, Reviewed and Analyzed search results searched documents related to electronic revenue and SSGM's FX executionn for Custody FX clients. Documents reviewed include, financial analysis and reports, presentation, emails etc etc
4071	Charles Pietrofesa	SA	05/27/15	8.8	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Indirect Revenue; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, committee presentations, and indirect/direct revenue data.
4089	Todd Kussin	SA	05/27/15	9.9	030	Conducted searches within documents produced by defendants and uploaded onto catalyst in order to answer reviewer's question re: State Street's Foreign Exchange Business Analysis Team and identified mandate for team in order to provide same to reviewer; conferred with reviewer re: document identified re: talking points involving Custody FX; email communications with Michael Rogers and co-counsel in order to identify topics for additional memos that are still available to be assigned to reviewers who have completed their initial research topics; continued re-organizing, fact checking, supplementing and re-drafting certain sections of memorandum prepared by reviewer regarding Jay Hooley, [REDACTED] [REDACTED] [REDACTED] order to identify additional documents in order to supplement memo including documents re: Hooley's [REDACTED] [REDACTED]
4148	Albert Powell	SA	05/27/15	10.2	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	05/27/15	7.2	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, draft agreements; ran searches; annotated draft memo and excel spreadsheet with relevant terms; saved searches in catalyst database.
4065	Lisa George	SA	05/27/15	10.0	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, [REDACTED] [REDACTED] State Street to ATRS during the class period.
4244	Judy Watson	SA	05/27/15	10.8	030	Review of defendant's documents related to rfps specifically SST_LIT012529, SST_LIT011667, StateSt_CA_LIT0003144 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/27/15	6.8	030	Researched for memo on FX historical margins. Today's docs were overwhelmingly research reports, from Bernstein, JP Morgan, Citi and Deutsche Bank, among others.
4321	Ian Herrick	SA	05/27/15	7.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/27/15	7.2	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	05/27/15	8.5	030	Researched production from Defendant via targeted searches for CalPERS, including emails and documents, in preparation for memorandum re: information provided to CalPERS by Defendant.
4385	David Packman	SA	05/27/15	7.3	040	As part of the research memo on SST's profit and losses from custody fx transactions, I continued to compile revenue, volumes and spread data into a spreadsheet. I went through most of my foldered [REDACTED] [REDACTED] [REDACTED]
4422	Ebone Bishop	SA	05/27/15	6.0	030	Review non-consecutive bates range W. Walsh documents related to FX trading, commentary and related guidelines for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/27/15	8.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	05/27/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	05/27/15	9.0	030	Conduct search of hot and relevant documents re: preparation of research memo. Draft research memo.
4394	David Alper	SA	05/27/15	10.9	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	05/27/15	7.0	030	Reviewed documents previously researched for relevancy to include in memorandum.

4242	Donato Gianturco	SA	05/27/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after [REDACTED]. Also foldered a few documents in the pre-Orla folder. [REDACTED]
4425	Anuj Vaidya	SA	05/27/15	8.0	020	Reviewed documents, emails, accounting statements, in research for a memo regarding indirect foreign exchange expense and costs.
1179	Michael Rogers	P	05/28/15	0.6	080	E-mails to/from Todd Kussin, Mike Lesser, Dan Chiplock, Evan Hoffman and K. Dugar re: document review
4021	Maureen Flanigan	SA	05/28/15	6.0	030	Review and analyze emails about State Street 's foreign exchange practices concerning timestamps for FX trades; review summary documents and additional hot documents.
4027	Debra Fouchong	SA	05/28/15	11.9	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	05/28/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/28/15	8.0	030	Ran searches, Reviewed and Analyzed search results searched documents related to electronic revenue and SSGM's FX execution for Custody FX clients. Documents reviewed include, financial analysis and reports, presentations, emails, market reports etc
4071	Charles Pietrofesa	SA	05/28/15	7.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Snyder and general concerns; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, market risk planning, committee presentations, client inquiries, and indirect/direct revenue data.
4089	Todd Kussin	SA	05/28/15	9.8	030	Conferred with reviewer assigned to conduct research and draft memo re: William Walsh in order to formulate additional searches on Catalyst for documents related to Walsh and discuss additional areas on which to focus in memo; further email communications with Michael Rogers and co-counsel in order to identify topics for additional memos that are still available to be assigned to reviewers who have completed their initial research topics; emails with and assigned to reviewer research topic re: Responses [REDACTED] [REDACTED] [REDACTED] [REDACTED] conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type.
4148	Albert Powell	SA	05/28/15	10.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	05/28/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, including SS_CAL_E0027453, SS_CAL_E0027460, StateSt_CA_LIT00054798, master custody services contracts, fee schedules, amendments, and draft agreements; created searches and saved; continued drafting memorandum and annotated excel spreadsheet with relevant documents and terms.
4065	Lisa George	SA	05/28/15	7.3	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the documents reviewed, including [REDACTED]
4244	Judy Watson	SA	05/28/15	10.0	030	Review of defendant's documents related to rfps specifically SST_LIT012529, SST_LIT012297, SST_LIT012249, SST_LIT012224 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	05/28/15	5.7	030	Researched for memo on topic: "FX historical margins AIR" Most docs seen today were investment research reports from many sources: Goldman Sachs, merrill Lynch, Morgan Stanley, UBS, among others.
4291	Mashariki Daniels	SA	05/28/15	6.4	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports.
4321	Ian Herrick	SA	05/28/15	8.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/28/15	6.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	05/28/15	5.8	030	Researched Defendant's production [REDACTED]
4385	David Packman	SA	05/28/15	6.0	040	In light of the article from the Wall Street Journal this morning, I searched the SST database for related [REDACTED] I reviewed additional spreadsheets from the [REDACTED] I drafted these additional details in to my draft research memo of this profit and loss topic from custody FX services.
4422	Ebone Bishop	SA	05/28/15	9.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft outline for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/28/15	9.5	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	05/28/15	9.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	05/28/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.

4430	Betsy Schulman	SA	05/28/15	9.0	030	Conduct search of hot and relevant documents re: preparation of research memo. Draft research memo.
4394	David Alper	SA	05/28/15	7.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	05/28/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4423	Nicole Cameron	SA	05/28/15	8.0	030	Ran search for more documents related to bps and pricing methodology. Included documents in memo.
0023	Eric Belfi	P	05/29/15	5.5	040	Phone conversation with client and discussed strategy
4021	Maureen Flanigan	SA	05/29/15	3.7	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review summary documents.
4027	Debra Fouchong	SA	05/29/15	11.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	05/29/15	8.0	030	Ran searches, Reviewed and Analyzed search results searched documents related to electronic revenue and SSGM's FX execution for Custody FX clients. Documents reviewed include, SSGM product and services manual, financial analysis and reports, presentations, emails, street fx reports etc
4071	Charles Pietrofesa	SA	05/29/15	9.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed search for Snyder's pertinent documents and foldered those documents - Search pertained to Snyder and general concerns; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, market risk planning, committee presentations, client inquiries, and indirect/direct revenue data.
4089	Todd Kussin	SA	05/29/15	8.3	030	Reviewed preliminary draft of memo prepared by reviewer assigned to conduct research re: Orla Beirne and her connection to the allegations in this litigation; analyzed documents related to Beirne referenced in this memo; particular focus on discussions of netting re: Custody FX trades; continued re-organizing, fact checking, supplementing and re-drafting certain sections of memorandum prepared by reviewer regarding indirect foreign exchange costs and revenues, particularly focusing on email exchanges discussing daily exchange rate volatility, its potential to result in losses, and efforts to mitigate such losses; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type.
4148	Albert Powell	SA	05/29/15	8.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	05/29/15	7.1	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for Contracts/RFP topic, including RFPs, master custody services contracts, amendments, emails, draft amendments, and fee schedules; created searches; continued drafting and analysis in memorandum on topic and excel spreadsheet; saved relevant searches in catalyst database folders.
4065	Lisa George	SA	05/29/15	4.5	040	Continued to conduct searches and reviewed documents concerning topics of State Street Profit & Loss, Indirect Revenue and Direct Revenue and revised the documents summary in accordance with the [REDACTED].
4244	Judy Watson	SA	05/29/15	10.2	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT05041182, StateSt_CA_LIT05045541, StateSt_CA_LIT05044954 and preparation of memo regarding same.
4247	Aron Rosenbaum	SA	05/29/15	4.3	030	Researched for memo. Topic: Historical margins AIR Many outside investment research reports, also market/economic news digests. Some (few) SS internal e-mails and presentations.
4291	Mashariki Daniels	SA	05/29/15	11.1	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports.
4321	Ian Herrick	SA	05/29/15	9.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	05/29/15	7.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	05/29/15	6.1	030	Researched production from Defendant via targeted searches for CalPERS, including emails and documents, in preparation for memorandum re: information provided to CalPERS via contract with Defendant.
4385	David Packman	SA	05/29/15	7.0	040	As part of the research memo for CFX profit and loss, I was reviewing documents for the memo [REDACTED]. This led to an additional search regarding CFX, "standard" CFX services (as opposed to streetFX or AIR), and negotiated fx services.
4422	Ebone Bishop	SA	05/29/15	8.0	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft outline for W. Walsh memorandum.
4424	Jacqueline Grant	SA	05/29/15	10.5	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	05/29/15	8.5	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	05/29/15	9.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.

4430	Betsy Schulman	SA	05/29/15	9.0	030	Conduct searches of hot and relevant documents re: preparation of research memo. Draft research memo.
4394	David Alper	SA	05/29/15	4.8	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4423	Nicole Cameron	SA	05/29/15	7.5	030	Reviewed and summarized documents and finished memorandum.
4242	Donato Gianturco	SA	05/29/15	11.2	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
0103	Lawrence Sucharow	P	06/01/15	3.7	080	Prepare for meetings with DOJ and defendants' counsel.
1179	Michael Rogers	P	06/01/15	0.9	080	E-mails to/from Larry Sucharow, co-counsel and ERISA counsel re: mediation strategy
4027	Debra Fouchong	SA	06/01/15	10.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/01/15	7.5	030	Ran searches, detailed review and analysis of search results. State Street's documents for research assignment. Documents included presentations, emails, Global Market reports, SSGM product and service manual etc
4071	Charles Pietrofesa	SA	06/01/15	7.8	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Snyder and general concerns and pricing groups; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, pricing committees, client inquiries, and indirect/direct revenue data.
4089	Todd Kussin	SA	06/01/15	10.8	030	Finalized re-organizing, re-drafting, fact checking, and supplementing memorandum prepared by reviewer [REDACTED] [REDACTED] [REDACTED] conducted research within documents produced by defendants and uploaded onto Catalyst, including an analysis of internal State Street emails discussing customer complaints in connection with rates received; reviewed preliminary draft of memo prepared by reviewer assigned to conduct research re: Orla Beirne and her connection to the allegations in this litigation; analyzed documents related to Beirne referenced in this memo; particular focus on discussions of netting re: Custody FX trades; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type; emails with Vivianne Abrahams to discuss her review of documents re: the background of this litigation; prepared report summarizing assignments and productivity of reviewers for the week ending May 29, 2015.
4148	Albert Powell	SA	06/01/15	6.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.

4173	Maritza Bolano	SA	06/01/15	9.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, fee schedules, draft amendments and agreements; created searches and saved; and annotated draft Memorandum with relevant terms.
4244	Judy Watson	SA	06/01/15	9.7	030	Review of defendant's documents related to rfps specifically SSFXDOL-E000019187, SSFXDOL-E000089409, SSFXDOL-E000061268, SSFXDOL-E000074071 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/01/15	6.2	030	Researched for memo. Topic: Historical margins: AIR Today's docs mostly outside research reports from UBS< Merrill Lynch, Goldman Sachs, Citi among others.
4291	Mashariki Daniels	SA	06/01/15	8.0	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports.
4321	Ian Herrick	SA	06/01/15	8.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/01/15	6.7	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/01/15	7.0	030	Researched Defendant's production [REDACTED]
4385	David Packman	SA	06/01/15	7.4	040	As part of the P&L research memo, I continued to review documents in my latest search regarding "custody fx services" and "standard" and "negotiated." Upon hitting a few key documents (like StateSt_CA_LIT00963541 and StateSt_CA_LIT00226921) [REDACTED]. The details of which are to be explored and [REDACTED].
4422	Ebone Bishop	SA	06/01/15	10.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft outline for W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/01/15	10.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/01/15	9.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/01/15	9.0	030	Conduct search of hot and relevant documents re: research assignment. Draft research memo.
4394	David Alper	SA	06/01/15	11.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
0103	Lawrence Sucharow	P	06/01/15	10.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.

						Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4242	Donato Gianturco	SA	06/01/15	10.0	030	
4041	Vivianne Brissett	SA	06/01/15	9.0	030	Reviewed and analyzed State Street background materials including but not limited the amended complaint, opposition to motion to dismiss, and transcript of hearing on MTD.
4425	Anuj Vaidya	SA	06/01/15	9.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0103	Lawrence Sucharow	P	06/02/15	13.0	080	Two meetings with plaintiffs counsel; meeting with DOJ; meeting with Defendants' counsel and mediator; travel to Boston; prepare for meetings.
1179	Michael Rogers	P	06/02/15	13.3	080	Travel to Boston; conferences with Larry Sucharow, Garrett Bradley, Mike Thornton, Bob Lief, Mike Lesser, Dan Chiplock, Evan Hoffman, DOJ counsel; Bill Paine, D. Halston, J. Carp and Jonathan Marks re: mediation/settlement proposals; e-mails to/from Larry Sucharow, Eric Belfi and David Goldsmith re: same; conference calls with Larry Sucharow, Garrett Bradley, Mike Thornton, Bob Lief, Mike Lesser, Dan Chiplock, Evan Hoffman and Lyn Sarko re: same
4027	Debra Fouchong	SA	06/02/15	10.7	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	06/02/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/02/15	8.5	030	Ran various searches, detailed review and analysis of search results. State Street's documents for research assignment. Documents included presentations for Asia branch opening, Investor research docs, competitor analysis, emails, Global Market reports, SSGM product and service manual etc
4071	Charles Pietrofesa	SA	06/02/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Snyder and pricing groups; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, pricing committees, client issues regarding FX rates, trading system issues, and indirect/direct revenue data.

4089	Todd Kussin	SA	06/02/15	10.7	030	Continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewers re: Orla Beirne's responsibilities at State Street, her connection to the allegations in this litigation, and all hot and/or highly relevant documents identified from defendants; production and uploaded onto Catalyst that help support allegations from the operative complaint; reviewed outline, index and description of documents prepared by former reviewer Nicole Cameron regarding Beirne in order to supplement memorandum; particular focus on discussions of netting re: Custody FX trades; continued editing and re-organizing memo prepared by former reviewer regarding State Street's knowledge of its custodial competitors' practices re: indirect pricing; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type; conferred with reviewer re: language in RFP response regarding State Street's automated income repatriation service available as an option to certain clients.
4148	Albert Powell	SA	06/02/15	9.4	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/02/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included emails, RFPs, master custody services contracts, fee schedules, draft agreements and amendments; reviewed pleadings and hearing decision; created searches and saved in catalyst database folders; continued drafting memorandum; annotated excel spreadsheet with relevant document numbers, dates and terms.
4244	Judy Watson	SA	06/02/15	10.0	030	Review of defendant's documents related to rfps specifically SST_KHR_SSGM_E000786128, SSFXDOL-E000042757, SSFXDOL-E000006531, SSFXDOL-E000065802 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/02/15	5.8	030	Researched for memo. Topic: "Historical margins: AIR"  Today's docs included many economic research reports from Citi, Deutsche Bank, Lehman, and Tulett Prebon, among others; also some RFPs and responses, and some State Street presentations.
4291	Mashariki Daniels	SA	06/02/15	12.3	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports. Began drafting a memorandum concerning the issues of FX changes to revenue.
4321	Ian Herrick	SA	06/02/15	8.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/02/15	6.7	030	Drafting memo regarding transparency topic; conference with T. Kussin regarding State Street Investor Services.
4383	James Griffin	SA	06/02/15	8.3	030	Researched production from Defendant re: [REDACTED]

4385	David Packman	SA	06/02/15	7.3	040	As part of the research memo on P&L project, I continued going through my last search that turned up 413 documents. I continued to note documents that were improperly redacted (not privileged or work product), such as documents: StateSt_CA_LIT05969968, StateSt_CA_LIT06301240, StateSt_CA_LIT06301406, StateSt_CA_LIT05970041, SST_LIT012529, StateSt_CA_LIT06180953. I also noted other documents in 2008 and 2009 that note SSGM roles in CFX, such as documents: StateSt_CA_LIT01080222 and StateSt_CA_LIT01327941.
4422	Ebone Bishop	SA	06/02/15	12.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft outline for W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/02/15	10.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/02/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/02/15	9.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo.
4394	David Alper	SA	06/02/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4041	Vivianne Brissett	SA	06/02/15	9.1	030	Continued to review and analyze State Street background materials including the opposition to motion to dismiss, and transcript of hearing on MTD.
4425	Anuj Vaidya	SA	06/02/15	9.2	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
1179	Michael Rogers	P	06/03/15	8.0	080	Travel to New York, conferences with Larry Sucharow re: mediation, settlement proposals, meetings with DOJ; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, Mike Thornton, Bob Lieff, Mike Lesser, Dan Chiplock, Evan Hoffman, Lynn Sarko and Carl Kravitz re: same
4027	Debra Fouchong	SA	06/03/15	11.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/03/15	8.3	030	Reviewed and analysed State Street's documents for research assignment. Documents include emails, presentations, global strategy presentation, board presentations, financial statements etc
4071	Charles Pietrofesa	SA	06/03/15	7.3	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Snyder and Beirne's pricing group; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX revenue calculations, pricing committees, client issues regarding FX rates, trading system issues, and indirect/direct revenue data.

4089	Todd Kussin	SA	06/03/15	11.5	030	Continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewers re: Orla Beirne's responsibilities at State Street, her connection to the allegations in this litigation, and all hot and/or highly relevant documents identified from defendants; production and uploaded onto Catalyst that help support allegations from the operative complaint; reviewed outline, index and description of documents prepared by former reviewer Nicole Cameron regarding Beirne in order to supplement memorandum; identified and located on Catalyst platform, all documents referenced in outline, and analyzed same in order to select language to be used in updated version of memorandum; particular attention was paid to communications involving Beirne regarding regarding inquiries involving indirect FX services and best execution; continued editing and re-organizing memo prepared by former reviewer regarding State Street's knowledge of its custodial competitors' practices re: indirect pricing; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type; reviewed preliminary draft of memorandum re: [REDACTED].
4148	Albert Powell	SA	06/03/15	10.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/03/15	7.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, fee schedules, amendments, draft agreements and amendments; created searches; continued drafting analysis on topics Memorandum; annotated excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/03/15	8.0	030	Review of defendant's documents relating to rfps specifically StateSt_CA_LIT00836528, StateSt_CA_LIT02301826 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/03/15	5.5	030	Researched for memo. Topic: Historical margins--AIR. As usual, most of today's documents consisted of research reports and presentations. Of note: some State St [REDACTED].
4291	Mashariki Daniels	SA	06/03/15	12.3	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports. Continued work on the memorandum addressing the issues of Board reports and FX and revenues.
4321	Ian Herrick	SA	06/03/15	8.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/03/15	8.1	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/03/15	6.6	030	Researched Defendant's production [REDACTED].
4385	David Packman	SA	06/03/15	7.2	040	As part of the research memo for P&L, I continued reviewing the set of documents regarding custody FX services, as well as searched and reviewed documents [REDACTED]. One such document, SST_KHR_SSGM_E000086051, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

4422	Ebone Bishop	SA	06/03/15	8.6	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft outline for W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/03/15	9.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/03/15	10.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/03/15	9.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo.
4394	David Alper	SA	06/03/15	7.8	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
0103	Lawrence Sucharow	P	06/03/15	6.0	080	Travel to New York; conference re: mediation.
4242	Donato Gianturco	SA	06/03/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/03/15	9.4	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0103	Lawrence Sucharow	P	06/04/15	1.7	080	Telephone call with defendants counsel; strategize class settlement terms; conferences re: same.
0571	David Goldsmith	P	06/04/15	0.2	080	Review recent e-mails
0625	Christopher Keller	P	06/04/15	3.0	090	Work on settlement move; settlement strategy.
1179	Michael Rogers	P	06/04/15	7.2	080	Conferences with Larry Sucharow and Garrett Bradley re: mediation, settlement proposals, meeting with DOJ; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, Mike Thornton, Bob Lief, Mike Lesser, Dan Chiplock, Evan Hoffman, Lynn Sarko and Carl Kravitz re: same
4027	Debra Fouchong	SA	06/04/15	11.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/04/15	9.8	030	Reviewed and analysed defendant documents for research assignment. Documents include emails, presentations, David Puth's global market reports and board presentation, MC prep for Board meeting, Market overview, Business profile, emails etc

4071	Charles Pietrofesa	SA	06/04/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Hot and Highly Relevant Snyder documents; summarized important documents for inclusion in memorandum. Documents reviewed concerned FX strategy discussions, FX revenue calculations, pricing committees, client issues regarding FX rates, trading system issues, and indirect/direct revenue data.
4089	Todd Kussin	SA	06/04/15	10.1	030	Identified, gathered, and prepared collection of background documents to be reviewed by newest reviewer Jennifer Hirsh including complaint, motion to dismiss, opposition to motion to dismiss, hearing transcript on motion to dismiss, and presentation prepared for May 2014 mediation referencing hottest documents identified to that point in the case; continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewers re: Orla Beirne's responsibilities at State Street, her connection to the allegations in this litigation, and all hot and/or highly relevant documents identified from defendants' production and uploaded onto Catalyst that help support allegations from the operative complaint; reviewed outline, index and description of documents prepared by former reviewer Nicole Cameron regarding Beirne in order to supplement memorandum; identified and located on Catalyst platform, all documents referenced in outline, and analyzed same in order to select language to be used in updated version of memorandum; continued editing and re-organizing memo prepared by former reviewer regarding State Street's knowledge of its custodial competitors' practices re: indirect pricing; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type.
4148	Albert Powell	SA	06/04/15	9.9	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/04/15	9.4	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, fee schedules, draft amendments, draft agreements; created searches; continued drafting memorandum on topic; and annotated excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/04/15	10.0	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT_00697596, StateSt_CA_LIT00836528, SSFXDOL-E000026736 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/04/15	3.9	030	Researched for memo. Topic: FX historical margins: AIR Noteworthy docs included [REDACTED]
4291	Mashariki Daniels	SA	06/04/15	12.3	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports. Continued work on the memorandum addressing the issues of Board reports and FX and revenues.
4321	Ian Herrick	SA	06/04/15	8.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/04/15	5.7	030	Drafting memo regarding transparency topic.

4383	James Griffin	SA	06/04/15	6.0	030	Researched production from Defendant re: [REDACTED]
4385	David Packman	SA	06/04/15	5.9	040	As part of the research project for determining the P&L for custody FX services, I continued reviewing documents from my recent searches. Such documents exhibit [REDACTED] (see SST_KHR_SSGM_E000500719). But other documents [REDACTED]
4422	Ebone Bishop	SA	06/04/15	10.3	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/04/15	9.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/04/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/04/15	9.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft memo re: FX pricing.
4394	David Alper	SA	06/04/15	7.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/04/15	8.5	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/04/15	9.5	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation, netting, and the allegations of the complaint.
0023	Eric Belfi	P	06/05/15	1.0	130	Client communication
0103	Lawrence Sucharow	P	06/05/15	1.0	080	Telephone call with defendants counsel re DOJ settlement strategy.
4021	Maureen Flanigan	SA	06/05/15	2.0	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review summary documents and complaint.
4027	Debra Fouchong	SA	06/05/15	9.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.

4034	Comfort Orji	SA	06/05/15	8.0	030	Reviewed and analysed defendant documents for research assignment. Documents include emails, presentations, David Puth's global market reports and board presentation, overview of Global markets, M&A Strategy report, morgan stanley discussion materials for State Street, meeting notes, emails etc
4071	Charles Pietrofesa	SA	06/05/15	8.6	030	Reviewed and analyzed documents for review project memorandum concerning Mark Snyder; performed searches for Snyder's pertinent documents and foldered those documents - Searches pertained to Hot and Highly Relevant Snyder documents; summarized important documents for inclusion in memorandum; reviewed and edited memorandum. Documents reviewed concerned FX strategy discussions, FX revenue calculations, pricing committees, client issues regarding FX rates, trading system issues, and indirect/direct revenue data.
4089	Todd Kussin	SA	06/05/15	10.2	030	Conferred with newest coder Jennifer Hirsh to discuss background of litigation, documents to review including complaint, motion to dismiss, opposition to motion to dismiss, transcript of hearing on motion to dismiss, and presentation prepared for May 2014 mediation referencing hottest documents identified as of that date; discussed with Ms. Hirsh current research memo assignments and particularly discussed her assignment to continue preparing memorandum started by previous coder Nicole Cameron regarding Orla Beirne and Beirne's roles at State Street, her connection with the allegations in this case, and her appearance on hot or highly relevant documents identified throughout this review; continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; emails with Vivianne Abrahams re: same in order to get her updated on progress of this memo and provide her with previous drafts of same; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type.
4148	Albert Powell	SA	06/05/15	10.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4244	Judy Watson	SA	06/05/15	10.3	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT01086234, StateSt_CA_LIT00697594, SSFXDOL-E000026736, StateSt_CA_LIT05045541 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/05/15	4.5	030	Researched for memo on topic: FX historical margins--AIR  Noteworthy documents [REDACTED] Also one 10,000 page doc (probably a spreadsheet) dealing with customer sales and recruiting (irrelevant for topic)
4291	Mashariki Daniels	SA	06/05/15	12.2	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports. Continued work on the memorandum addressing the issues of Board reports and FX and revenues.
4321	Ian Herrick	SA	06/05/15	6.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/05/15	7.8	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/05/15	7.1	030	Researched Defendant's production [REDACTED]

4385	David Packman	SA	06/05/15	7.3	040	As part of the P&L memo, I completed reviewing another set of documents (most of them were false hits) regarding custody Fx services. I started drafting the memo regarding State Street's profits and loss (incorporating many of the notes I have taken over this research period).
4422	Ebone Bishop	SA	06/05/15	10.1	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/05/15	8.6	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	06/05/15	9.7	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	06/05/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/05/15	9.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: FX pricing.
4394	David Alper	SA	06/05/15	6.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4041	Vivianne Brissett	SA	06/05/15	6.0	030	I completed review of the transcript of the hearing on the Motion to Dismiss and reviewed the documents that were designated as "Hot" documents. After my review, I commenced assisting Todd Kussin with proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case.
4242	Donato Gianturco	SA	06/05/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED] [REDACTED]
4280	Jennifer Hirsh	SA	06/05/15	8.8	020	Conference with team leader regarding background and procedural posture of case; Reviewed case materials, including the Amended Class Action Complaint, Brief in support of the Motion to Dismiss; Brief in opposition to the Motion to Dismiss and Hearing Transcript on the Motion to Dismiss.
0023	Eric Belfi	P	06/08/15	3.0	090	Prepared for mediation
0103	Lawrence Sucharow	P	06/08/15	4.7	080	Meeting of plaintiffs' counsel; strategize settlement approaches and terms. Prepare for mediation.
0571	David Goldsmith	P	06/08/15	3.0	090	Meeting with co-counsel re: settlement negotiations and strategy; prepare for same

0625	Christopher Keller	P	06/08/15	5.0	090	Work on settlement move; settlement strategy; meeting with Larry Sucharow and other colleagues regarding status and strategy concerning case.
1179	Michael Rogers	P	06/08/15	7.0	080	Conferences with Larry Sucharow, Eric Belfi, David Goldsmith, Garrett Bradley, Mike Thornton, Bob Loeff, Lynn Sarko, Mike Lesser, Dan Chiplock and Carl Kravitz re: mediation strategy
4027	Debra Fouchong	SA	06/08/15	10.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/08/15	7.3	030	Reviewed and analysed defendant documents for research assignment. Documents include emails, presentations, David Puth's global market reports and board presentation, overview of Global markets, M&A Strategy report, morgan stanley discussion materials for State Street, meeting notes, emails etc
4071	Charles Pietrofesa	SA	06/08/15	8.8	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder.
4089	Todd Kussin	SA	06/08/15	9.3	030	Continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; conducted research within documents produced by defendants and uploaded onto Catalyst in order to clarify statements already included in memorandum; analyzed documents referenced by former reviewer Nicole Cameron in outline to be used as basis for memorandum re: Orla Beirne in order to enable new reviewer Jennifer Hirsh to continue with preparation of final memo; conducted research on Relativity re: question from coder involving beginning and end of foreign exchange trading day; conducted secondary review/quality check of documents coded by reviewers in order to confirm the accuracy of their designations re: priority, issue, and document type; prepared report summarizing productivity and assignments of reviewers for the week ending June 5, 2015.
4148	Albert Powell	SA	06/08/15	8.0	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4244	Judy Watson	SA	06/08/15	9.5	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT05041182, StateSt_CA_LIT00243437, SST_LIT011667 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/08/15	6.9	030	Researched for memo on "FX historical margins--AIR"
4280	Jennifer Hirsh	SA	06/08/15	8.5	020	Reviewed approximately 4,000 pages of a 10,000 page doc apparently dealing with marketing approaches to potential new customers. Many indecipherable tables (perhaps a spreadsheet in native). Totally irrelevant to topic.
4291	Mashariki Daniels	SA	06/08/15	6.3	030	Attention and review of pre-motion to dismiss pleadings and hearing transcript
4321	Ian Herrick	SA	06/08/15	9.0	030	Ran numerous searches for documents presented to State Streets BOD, showing changes in FX revenue. Used search terms such as, Snyder and minutes and foreign exchange. The search resulted in documents such as, internal emails and fx reports. Continued work on the memorandum addressing the issues of Board reports and FX and revenues.
						Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.

4369	David Pospischil	SA	06/08/15	7.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/08/15	7.8	030	Researched production from Defendant re: [REDACTED]
4385	David Packman	SA	06/08/15	7.0	040	Drafting parts of my memo regarding State Street's profit and losses from its custody foreign exchange transactions. Specifically drafting the sections regarding the two methods I found to attempt to determine SST's P&L for this revenue source. Included is a description of the process and the limitations to these two methods, the spreads applied, as well related issues.
4422	Ebone Bishop	SA	06/08/15	10.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/08/15	12.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/08/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/08/15	8.5	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/08/15	10.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non-consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/08/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4041	Vivianne Brissett	SA	06/08/15	5.5	030	Continued assisting Todd Kussin with proof reading and editing the topic memos which were assigned to the reviewers.
4425	Anuj Vaidya	SA	06/08/15	9.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/09/15	4.0	090	Prepared for and participated in mediation
0103	Lawrence Sucharow	P	06/09/15	5.0	080	Participate in mediation; strategize settlement approaches and terms; prepare for mediation.
0571	David Goldsmith	P	06/09/15	0.4	080	Discuss with Mike Rogers re: mediation session; settlement status and strategy
1179	Michael Rogers	P	06/09/15	7.0	080	Attend mediation session with Larry Sucharow, Eric Belfi, Garrett Bradley, Mike Thornton, Bob Lieff, Lynn Sarko, Mike Lesser, Dan Chiplock, Carl Kravitz, Jonathan Marks, Bill Paine, D. Halston and J. Carp; conferences with Larry Sucharow, Chris Keller, Eric Belfi, Garrett Bradley, Mike Lesser and Dan Chiplock re: same

4027	Debra Fouchong	SA	06/09/15	11.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/09/15	8.5	030	Ran searches and reviewed search results. Documents include emails, presentations, Documents include FX trade overview, Barrington partners FX research reports, Rate reports, presentations, emails etc
4071	Charles Pietrofesa	SA	06/09/15	9.2	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder.
4089	Todd Kussin	SA	06/09/15	10.4	030	Reviewed preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; focused on the need for additional research regarding the involvement of all individuals mentioned on email; continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; conducted research within documents produced by defendants and uploaded onto Catalyst in order to clarify statements already included in memorandum; analyzed documents referenced by former reviewer Nicole Cameron in outline to be used as basis for memorandum re: Orla Beirne in order to enable new reviewer Jennifer Hirsh to continue with preparation of final memo.
4148	Albert Powell	SA	06/09/15	9.8	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/09/15	5.7	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, draft agreements; created searches; continued drafting memorandum on topic; annotated excel spreadsheet.
4244	Judy Watson	SA	06/09/15	8.5	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT05752455, StateSt_CA_LIT01086234, SST_LIT011667, StateSt_CA_LIT05040752 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/09/15	8.3	020	Continued review of case background materials, including the pre-motion to dismiss pleadings, the hearing transcript on the motion to dismiss and Plaintiffs' Presentation on Liability submitted pursuant to proposed settlement meeting in May 2014
4291	Mashariki Daniels	SA	06/09/15	12.2	030	Continued running searches for documents showing reports made to State Street's Board of Directors regarding FX litigation and revenue changes. Continued drafting the memorandum addressing my findings.
4321	Ian Herrick	SA	06/09/15	9.5	040	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/09/15	4.0	030	Drafting memo regarding transparency topic.

4383	James Griffin	SA	06/09/15	8.8	030	Researched Defendant's production [REDACTED]
4422	Ebone Bishop	SA	06/09/15	10.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/09/15	10.5	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/09/15	10.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/09/15	9.2	030	Conduct document searches re: research assignment. Draft research memo re: FX pricing and the Osler paper.
4394	David Alper	SA	06/09/15	8.4	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
0625	Christopher Keller	P	06/09/15	1.0	080	Attend to mediation discussions.
4242	Donato Gianturco	SA	06/09/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/09/15	9.6	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4021	Maureen Flanigan	SA	06/09/15	3.0	030	Review and analyze emails, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review summary documents and complaint.
0023	Eric Belfi	P	06/10/15	1.0	040	Discovery issues
0103	Lawrence Sucharow	P	06/10/15	2.5	080	Post-mortem and analysis of Tues. mediation session. Mediation strategy for next mtg in Boston.
0625	Christopher Keller	P	06/10/15	2.0	090	Work on settlement move; settlement strategy.
4021	Maureen Flanigan	SA	06/10/15	10.8	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades.

4027	Debra Fouchong	SA	06/10/15	10.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of prices for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/10/15	8.5	030	Reviewed search results. Documents include emails, presentations, Documents include FX trade overview, State street FX practice disclosure, Competitor analysis, presentations, emails etc
4071	Charles Pietrofesa	SA	06/10/15	8.5	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Snyder's relationship with risk managers.
4089	Todd Kussin	SA	06/10/15	9.5	030	Reviewed preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; focused on the need for additional research regarding the involvement of all individuals mentioned on email; reviewed on Catalyst, documents referenced in draft of memorandum [REDACTED] continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; conducted research within documents produced by defendants and uploaded onto Catalyst in order to clarify statements already included in memorandum; analyzed documents referenced by former reviewer Nicole Cameron in outline to be used as basis for memorandum re: Orla Beirne in order to enable new reviewer Jennifer Hirsh to continue with preparation of final memo.
4148	Albert Powell	SA	06/10/15	7.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/10/15	2.8	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, draft agreements; created searches and verified relevant documents; annotated draft memorandum and excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/10/15	10.0	030	Review of defendant's documents related to rfps specifically SST_LIT012872, SST_LIT012621, SST_LIT012591, SST_LIT012448 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/10/15	8.0	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time; discussed background of case with team leader including theories in support of allegations found in complaint.
4291	Mashariki Daniels	SA	06/10/15	11.3	030	Continued running searches for documents showing reports made to State Street's Board of Directors regarding FX litigation and revenue changes. Continued drafting the memorandum addressing my findings.
4321	Ian Herrick	SA	06/10/15	8.6	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/10/15	5.8	030	Drafting memo regarding transparency topic.

4383	James Griffin	SA	06/10/15	7.0	030	Researched production of Defendant via [REDACTED]
4385	David Packman	SA	06/10/15	7.3	040	Read State Street's annual reports and footnotes and details to complete a chart with the relevant data regarding the Net FX revenue, total fee revenue and total operating revenue of State Street in the relevant class period. This is part of Method One of my memo regarding State Street's Profit and Loss.
4422	Ebone Bishop	SA	06/10/15	11.3	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/10/15	10.5	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/10/15	10.6	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/10/15	9.2	030	Conduct searches of hot and relevant documents re: research assignment. Draft memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/10/15	8.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/10/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/10/15	9.7	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0625	Christopher Keller	P	06/11/15	5.0	090	Work on settlement move; settlement strategy.
1179	Michael Rogers	P	06/11/15	0.9	080	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: mediation next week re: strategy re: same
4021	Maureen Flanigan	SA	06/11/15	9.4	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades.
4027	Debra Fouchong	SA	06/11/15	11.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.

4034	Comfort Orji	SA	06/11/15	8.5	030	Searched and Reviewed documents in Defendant production. Researched State Streets view on switching indirect FX clients over to Direct FX. Documents include emails, presentations, FX trade overview, FX practice disclosure, Competitor analysis, emails etc
4071	Charles Pietrofesa	SA	06/11/15	7.7	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Snyder's relationship with risk managers.
4148	Albert Powell	SA	06/11/15	11.0	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4244	Judy Watson	SA	06/11/15	10.0	030	Review of defendant's documents related to rfps specifically SSFXDOL-E000001939, StateSt_CA_LIT00003144, SST_LIT011667, SST_LIT012297, SST_LIT012249 and preparation of memo regarding to same.
4280	Jennifer Hirsh	SA	06/11/15	8.0	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time.
4291	Mashariki Daniels	SA	06/11/15	12.0	030	Continued running searches for documents showing reports made to State Street's Board of Directors regarding FX litigation and revenue changes. Continued drafting the memorandum addressing my findings.
4321	Ian Herrick	SA	06/11/15	7.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/11/15	8.0	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/11/15	6.8	030	Researched production from Defendant [REDACTED]
4385	David Packman	SA	06/11/15	7.3	040	Continued drafting the research memo on State Street's Profit and Loss. I completed the review of the annual reports and lifting the relevant information for a table with relevant data (and thirty footnotes). [REDACTED]
4422	Ebone Bishop	SA	06/11/15	10.0	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4426	Tryphena Greene	SA	06/11/15	10.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/11/15	9.1	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/11/15	10.7	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.

						Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla took [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED].
4242	Donato Gianturco	SA	06/11/15	10.0	030	
4425	Anuj Vaidya	SA	06/11/15	10.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4021	Maureen Flanigan	SA	06/12/15	5.8	030	Review and analyze emails, spreadsheets, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades.
4027	Debra Fouchong	SA	06/12/15	9.6	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/12/15	8.5	030	Searched and Reviewed documents in Defendant production. Researched State Streets view on switching indirect FX clients over to Direct FX. Documents include emails, presentations, FX trade overview, FX practice disclosure, Competitor analysis, emails etc Drafted Memo in relation to impact on revenue for custody clients converting to Direct FX.
4148	Albert Powell	SA	06/12/15	10.5	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4244	Judy Watson	SA	06/12/15	7.0	030	Review of defendant's documents related to rfps specifically SST_LIT012297, SST_LIT012529, SSFXDOL-E000001939, SST_KHR_SSGM_E001390072 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/12/15	4.5	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time.
4291	Mashariki Daniels	SA	06/12/15	8.4	030	Continued running searches for documents showing reports made to State Street's Board of Directors regarding FX litigation and revenue changes. Continued drafting the memorandum addressing my findings
4321	Ian Herrick	SA	06/12/15	8.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/12/15	5.8	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/12/15	4.6	030	Researched Defendant's production [REDACTED]
4385	David Packman	SA	06/12/15	7.0	030	I continued drafting my memo regarding State Street's Profit and Losses from Custody FX transactions. I spent most of the day double checking the State Street database to support a percentage in which to extrapolate the CFX revenue (without success). A document I previously found, SST_KHR_SSGM_E000515843, [REDACTED] memo. Other documents, such as StateSt_CA_LIT06131534, [REDACTED]

4422	Ebone Bishop	SA	06/12/15	7.7	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/12/15	10.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	06/12/15	9.5	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	06/12/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/12/15	7.0	030	Conduct document searches re: research assignment. Draft memo re: FX pricing and Osler memo.
4394	David Alper	SA	06/12/15	6.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/12/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
0625	Christopher Keller	P	06/15/15	5.0	090	Work on settlement move; settlement strategy.
4027	Debra Fouchong	SA	06/15/15	10.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/15/15	9.3	030	Ran searches for and reviewed electronic revenue growth from 2007 to 2010 versus traditional FX growth. Documents include excel spreadsheets, FX revenue analysis, emails, market reports etc Drafted analysis of revenue growth.

						Reviewed and commented upon research memo prepared by reviewer discussing State Street's response [REDACTED] discussed same with Anuj Vaidya in providing instructions on how to supplement memo; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; focused on the need for additional research regarding the involvement of all individuals mentioned on email; reviewed on Catalyst, documents referenced in draft of memorandum [REDACTED] continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; prepared report summarizing assignments and productivity of reviewers for the week ending June 12, 2015.
4089	Todd Kussin	SA	06/15/15	9.4	030	
4148	Albert Powell	SA	06/15/15	8.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/15/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, amendments, draft amendments and agreements; created searches and saved in catalyst database; continuing draft memorandum.
4244	Judy Watson	SA	06/15/15	9.0	030	Review of defendant's documents related to rfps specifically StateSt_CALIT00243437, SST_LIT012009, SST_LIT012224 and preparation of summary memo regarding same.
4369	David Pospischil	SA	06/15/15	5.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/15/15	8.8	030	Researched Defendant's production [REDACTED].
4385	David Packman	SA	06/15/15	6.3	030	Continue drafting my memo on State Street's P&L. Specifically, I completed the section on "Method One" based on SST's public filings. I continued drafting sections of the memo on "Method two" based on compiling monthly volumes by location, applying a spread and summing these volumes and revenue up.
4422	Ebone Bishop	SA	06/15/15	9.0	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/15/15	9.2	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/15/15	10.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/15/15	7.5	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: FX pricing and Osler paper.

4394	David Alper	SA	06/15/15	8.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/15/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/15/15	7.5	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4021	Maureen Flanigan	SA	06/15/15	3.5	030	Review and analyze emails, spreadsheets, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades.
0103	Lawrence Sucharow	P	06/16/15	2.3	080	Confer with plaintiffs counsel re tomorrow's mediation call and outstanding issues.
0571	David Goldsmith	P	06/16/15	0.6	080	Discussion with Mike Rogers re: settlement strategy; e-mails internally re: cancelling Wednesday mediation and meeting
1179	Michael Rogers	P	06/16/15	1.1	080	E-mails to/from Larry Sucharow, co-counsel and ERISA counsel re: mediation meeting; conferences with David Goldsmith and Garrett Bradley re: same
4027	Debra Fouchong	SA	06/16/15	8.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/16/15	9.0	030	Reviewed and analysed defendants documents from search folders. Documents include emals, trade reports, presentations, Financial statements, analyst reports etc
4071	Charles Pietrofesa	SA	06/16/15	8.3	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Snyder's relationship with risk managers.
4089	Todd Kussin	SA	06/16/15	9.1	030	Reviewed memorandum prepared by reviewer regarding article by Carol Osler involving foreign exchange spreads; drafted email to author of memo describing areas in which to supplement and further expand; [REDACTED] discussed further with Anuj Vaidya, providing instructions on responding to questions posed by partners in assignment memo; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; focused on the need for additional research regarding the involvement of all individuals mentioned on email; continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; drafted email to Michael Rogers providing update as to reviewers' progress in completing memo assignments.

4148	Albert Powell	SA	06/16/15	7.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/16/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, fee schedules, amendments, attachments and draft agreements; created searches; continued draft memorandum on topic; annotated excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/16/15	9.0	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT00833816, SST_LIT012872, SST_LIT012224, StateSt_CA_LIT01089499 and preparation of summary memo regarding same.
4291	Mashariki Daniels	SA	06/16/15	10.0	030	continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/16/15	9.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/16/15	7.7	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/16/15	6.2	030	Researched production from Defendant re: [REDACTED].
4422	Ebone Bishop	SA	06/16/15	10.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/16/15	12.0	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	06/16/15	9.5	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	06/16/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/16/15	9.3	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/16/15	9.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.

						Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED] [REDACTED]
4242	Donato Gianturco	SA	06/16/15	9.0	030	
0023	Eric Belfi	P	06/17/15	4.5	130	Client communication and attended mediation
0103	Lawrence Sucharow	P	06/17/15	3.0	130	Conduct mediation conference call with Jonathan Marks and defendants' counsel; review conference call among plaintiffs' counsel following mediation call.
0571	David Goldsmith	P	06/17/15	1.3	080	Telephone conference with all parties and Jonathan Marks re: mediation and scheduling issues, prepare for same; telephone conference with all plaintiffs' counsel re: same and strategy; post-calls discussion with Larry Sucharow, Eric Belfi, Mike Rogers
1179	Michael Rogers	P	06/17/15	3.4	080	Conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, SST counsel and Jonathan Marks re: status of mediation; conference call with Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel and ERISA counsel re: same; conferences with Larry Sucharow, Eric Belfi, David Goldsmith re: same; e-mails to/from Mike Lesser, Dan Chiplock re: percentages of ERISA claims; analyze spreadsheets re: same
4027	Debra Fouchong	SA	06/17/15	8.9	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	06/17/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4071	Charles Pietrofesa	SA	06/17/15	7.5	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning mark-up procedures.
4089	Todd Kussin	SA	06/17/15	4.4	030	Reviewed memorandum prepared by reviewer regarding article by Carol Osler involving foreign exchange spreads; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; focused on the need for additional research regarding the involvement of all individuals mentioned on email.
4148	Albert Powell	SA	06/17/15	7.2	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4244	Judy Watson	SA	06/17/15	8.7	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT01086122, StateSt_CA_LIT01085603, StateSt_CA_LIT01084457, StateSt_CA_LIT01089815, StateSt_CA_LIT06330672 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/17/15	6.4	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time.

4291	Mashariki Daniels	SA	06/17/15	10.0	030	continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/17/15	7.2	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/17/15	6.1	030	Drafting memo regarding transparency topic.
4422	Ebone Bishop	SA	06/17/15	7.2	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and compliant and draft W. Walsh memorandum.
4425	Anuj Vaidya	SA	06/17/15	8.4	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4426	Tryphena Greene	SA	06/17/15	8.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/17/15	8.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/17/15	6.7	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4034	Comfort Orji	SA	06/17/15	9.0	030	Reviewed and Analyzed documents related to the following-India Direct FRX standing instruction, IM guides, Electronic Trading growth charts. Ran searches on relationship between street FX and electronic fx. Reviewed search results.
4424	Jacqueline Grant	SA	06/17/15	8.7	030	Conduct review of documents regarding State Street's responses to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4242	Donato Gianturco	SA	06/17/15	8.7	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
0625	Christopher Keller	P	06/17/15	1.2	140	Attend to CAFA issues.
4173	Maritza Bolano	SA	06/17/15	6.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, emails, fee schedules, amendments, draft agreements; edited draft memorandum on topics; reviewed excel spreadsheet and annotated relevant terms.
0103	Lawrence Sucharow	P	06/18/15	4.7	080	Strategize global settlement terms re DOL; DOJ; SEC and Class Plaintiffs; prepare for next mediation session.
0571	David Goldsmith	P	06/18/15	0.8	090	Review settlement timing memo from Larry Sucharow; e-mails with Larry Sucharow, Mike Rogers, Nicole Zeiss re: same

1179	Michael Rogers	P	06/18/15	1.2	090	Analyze memo re: CAFA; e-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss and Elizabeth Wierzbowski re: same
4027	Debra Fouchong	SA	06/18/15	11.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4071	Charles Pietrofesa	SA	06/18/15	8.0	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning mark-up and pricing procedures.
4089	Todd Kussin	SA	06/18/15	8.1	030	Began re-organizing, re-drafting, fact checking and supplementing memorandum prepared by reviewer discussing State Street's [REDACTED] continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; continued re-organizing, re-drafting, fact checking, and supplementing memo prepared by reviewer re: State Street's knowledge of its custodial competitors' practices with respect to indirect pricing; conducted searches on Catalyst platform among documents produced by defendants in order to identify documents cited in memo; reviewed memorandum prepared by reviewer regarding article by Carol Osler involving foreign exchange spreads.
4148	Albert Powell	SA	06/18/15	8.9	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/18/15	8.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, fee schedules, amendments, draft agreements; created searches and saved in new folders; updated analysis in draft memorandum on topic; updated excel spreadsheet.
4244	Judy Watson	SA	06/18/15	9.5	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT05040752, StateSt_CA_LIT05041182, StateSt_CA_LIT05140762 and preparation of summary memo regarding same.9
4280	Jennifer Hirsh	SA	06/18/15	8.3	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time.
4291	Mashariki Daniels	SA	06/18/15	12.0	030	continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/18/15	8.4	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/18/15	6.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/18/15	8.8	030	Researched production from Defendant re: [REDACTED]
4422	Ebone Bishop	SA	06/18/15	8.5	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.

4424	Jacqueline Grant	SA	06/18/15	12.0	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries and also to Requests for Proposal w/r/t custodial services, including internal emails, RFPs, and draft responses to RFPs, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/18/15	9.9	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/18/15	9.2	030	Review hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/18/15	8.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/18/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED].
4425	Anuj Vaidya	SA	06/18/15	9.6	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4021	Maureen Flanigan	SA	06/19/15	4.4	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades.
4027	Debra Fouchong	SA	06/19/15	6.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, and to compose memorandum for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/19/15	8.6	030	Worked on research related to comparing revenue from electronic revenue with direct revenue. reviewed emails, presentations, financial statements, spreadsheets, charts etc
4071	Charles Pietrofesa	SA	06/19/15	8.2	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; reviewed Case Complaint; performed searches concerning FX mark-up and pricing procedures.

4089	Todd Kussin	SA	06/19/15	9.1	030	Re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's response [REDACTED] conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; reviewed memorandum prepared by reviewer regarding article by Carol Osler involving foreign exchange spreads.
4148	Albert Powell	SA	06/19/15	8.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/19/15	6.2	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, fee schedules, emails, amendments, draft agreements; created searches and saved in catalyst database folders; continued updating draft memorandum on topics; updated and reviewed excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/19/15	7.5	030	Review of defendant's documents related to rfps specifically SST_LIT012224, SST_LIT012529, SST_LIT011667 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/19/15	7.0	020	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time; discussed memo assignment re Orla Bierne with team leader
4291	Mashariki Daniels	SA	06/19/15	10.0	030	continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/19/15	7.0	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/19/15	7.1	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/19/15	7.0	030	Researched Defendant's production [REDACTED]
4422	Ebone Bishop	SA	06/19/15	9.8	030	Conduct topical searches within non-consecutive bates range W. Walsh documents, review documents and draft W. Walsh memorandum.
4424	Jacqueline Grant	SA	06/19/15	7.8	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	06/19/15	10.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.

4426	Tryphena Greene	SA	06/19/15	4.3	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/19/15	7.5	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/19/15	6.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/19/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED] [REDACTED] [REDACTED]
4021	Maureen Flanigan	SA	06/22/15	5.2	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4027	Debra Fouchong	SA	06/22/15	4.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4027	Debra Fouchong	SA	06/22/15	4.5	030	Conference to review and analyze non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4034	Comfort Orji	SA	06/22/15	7.0	030	Worked on research related to comparing revenue from electronic revenue with direct revenue. Ran searches for documents related to Security Settlement and Holdings (SSH) and Services Automated Income Repatriation (AIR) Reviewed emails, presentations, financial statements, spreadsheets, charts etc
4071	Charles Pietrofesa	SA	06/22/15	9.4	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning best execution, Orla Beirne's pricing group, and FX mark-up and pricing procedures.
4148	Albert Powell	SA	06/22/15	9.9	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/22/15	8.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, emails, master custody services contracts, amendments, draft agreements; created searches and saved in catalyst database; updated draft memorandum on topics; reviewed excel spreadsheet for relevant terms and documents.

4244	Judy Watson	SA	06/22/15	6.0	030	Review of defendant's documents related to rfps specifically SSFXDOL-E000080856, SST_KHR_SSGM_E001390072, StateSt_CA_LIT01970657 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/22/15	7.5	030	Reviewed documents associated with the background of the litigation including the operative complaint, plaintiffs' opposition to defendants' motion to dismiss, the transcript of the hearing on the motion to dismiss, and the presentation materials prepared in advance of the May 2014 mediation which referenced the hottest documents identified as of that time.
4291	Mashariki Daniels	SA	06/22/15	7.0	030	continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/22/15	8.3	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/22/15	6.7	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/22/15	8.8	030	Researched production from Defendant re: [REDACTED]
4422	Ebone Bishop	SA	06/22/15	9.7	030	Conduct targeted non consecutive bates range document searches related to W. Walsh memorandum topics, review documents and draft memorandum accordingly.
4424	Jacqueline Grant	SA	06/22/15	10.7	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/22/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/22/15	9.3	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4242	Donato Gianturco	SA	06/22/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4425	Anuj Vaidya	SA	06/22/15	9.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
1179	Michael Rogers	P	06/23/15	0.6	080	Conference with Eric Belfi re: document review
4021	Maureen Flanigan	SA	06/23/15	6.5	030	Review and analyze emails, spreadsheets, market research documents, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.

4034	Comfort Orji	SA	06/23/15	8.7	030	Worked on research related to comparing revenue from electronic revenue with direct revenue. Ran searches for documents related to Security Settlement and Holdings (SSH) and Services Automated Income Repatriation (AIR) Reviewed emails, presentations, financial statements, spreadsheets, charts etc
4071	Charles Pietrofesa	SA	06/23/15	7.6	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning spreads, FX pricing procedures, and Orla Beirne's indirect pricing group.
4089	Todd Kussin	SA	06/23/15	9.4	030	Conferred with Jennifer Hirsh to discuss her assignment to complete memorandum started by former reviewer Nicole Cameron re: Orla Beirne; searched for and identified prior emails to State Street team as well as examples of previously completed memos in order to provide to Ms. Hirsh as an aid in completing memorandum; emails with co-counsel to discuss memo topics available to reviewers who have completed their initial assignment; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's [REDACTED] [REDACTED] conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street; prepared report summarizing assignments and productivity of State Street coders for the week ending June 19, 2015.
4148	Albert Powell	SA	06/23/15	7.2	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/23/15	7.5	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, master custody services contracts, emails, fee schedules, amendments, and draft agreements; created searches and saved in catalyst database; updated draft of memorandum on topics; updated excel spreadsheet with documents and terms.
4027	Debra Fouchong	SA	06/23/15	11.3	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	06/23/15	9.0	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT01086607, StateSt_CA_LIT01088603, StateSt_CA_LIT00700652, StateSt_CA_LIT01082025 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/23/15	8.0	020	Reviewed sample memos, documents gathered referencing Orla Bierne and background docs preparatory to drafting memo re Ms. Bierne's involvement of underlying facts of case.
4291	Mashariki Daniels	SA	06/23/15	11.7	030	Continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/23/15	7.6	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	06/23/15	7.5	030	Researched production of Defendant via targeted searches [REDACTED]

4422	Ebone Bishop	SA	06/23/15	12.5	030	Review thematic development overview memorandum. Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, review documents and draft memorandum accordingly.
4424	Jacqueline Grant	SA	06/23/15	11.1	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/23/15	9.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4394	David Alper	SA	06/23/15	8.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/23/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED] [REDACTED] [REDACTED]
0023	Eric Belfi	P	06/23/15	0.6	080	Attend to document review.
4425	Anuj Vaidya	SA	06/23/15	10.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/24/15	1.0	130	Client communication
0103	Lawrence Sucharow	P	06/24/15	4.7	080	Prepare for Friday mediation session; telephone call with mediator; revise negotiation/mediation strategy; correspond with co - counsel.
1054	Cheryl Boria	PL	06/24/15	2.0	090	Proofed the State Street documents to make sure all of the working was the same in the Stipulation and the supporting documents.
1179	Michael Rogers	P	06/24/15	3.0	080	Analyze documents and data re: prepare for mediation session
4021	Maureen Flanigan	SA	06/24/15	6.6	030	Review and analyze emails, spreadsheets, and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4034	Comfort Orji	SA	06/24/15	9.0	030	Worked on research related to marketing of electronic trading to indirect fx clients. Ran searches for documents related to the reduction of revenue from custody FX and strategies for electrification. Reviewed emails, reports, presentations etc
4071	Charles Pietrofesa	SA	06/24/15	7.8	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Risk Management documents, spreads, FX pricing procedures, and Orla Beirne's indirect pricing group.

4089	Todd Kussin	SA	06/24/15	7.2	030	Analyzed memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, [REDACTED], as well as emails among these entities discussing changes to such documentation; conducted searches on Catalyst among documents produced by defendants in order to identify definitions for acronyms encountered by Jennifer Hirsh while conducting research in support of memo re: Orla Birne; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's [REDACTED]. [REDACTED] conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a CalPERS foreign exchange pricing question, particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street.
4148	Albert Powell	SA	06/24/15	8.0	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4173	Maritza Bolano	SA	06/24/15	6.0	030	Reviewed documents from Defendant's production; non-consecutive Bates numbers; analyzed documents for contracts/rfp topics project; documents included RFPs, RFIs, master custody services contracts, fee schedules, amendments, draft agreements; created searches and saved in catalyst folders; updated and completed topics memorandum; annotated excel spreadsheet with relevant terms.
4244	Judy Watson	SA	06/24/15	10.0	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT06331034, SSFXDOL-E000045541, StateSt_CA_LIT06330432, StateSt_CA_LIT06327690 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/24/15	7.2	030	Reviewed documents related to the Orla Birne's responsibility regarding pricing methodology of fx transactions and their disclosure preparatory to drafting memo regarding Ms. Birne's involvement in underlying facts of the case
4291	Mashariki Daniels	SA	06/24/15	10.2	030	Continued research for memorandum and continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/24/15	8.6	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/24/15	5.6	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/24/15	6.8	030	Researched production from Defendant [REDACTED]
4422	Ebone Bishop	SA	06/24/15	12.1	030	Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, specifically related to Calypso, review documents and draft memorandum accordingly.
4424	Jacqueline Grant	SA	06/24/15	10.6	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	06/24/15	10.7	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/24/15	9.5	030	Conduct searches of hot and relevant documents re: research assignment. Draft memo re: FX pricing and Osler paper.
4394	David Alper	SA	06/24/15	7.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/24/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]
4027	Debra Fouchong	SA	06/24/15	11.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4425	Anuj Vaidya	SA	06/24/15	9.2	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/25/15	1.0	130	Client communication
0103	Lawrence Sucharow	P	06/25/15	4.3	080	Prepare for Friday mediation in NYC
0571	David Goldsmith	P	06/25/15	1.7	090	Discuss with Nicole Zeiss and E. Wierzbowski re: prospective settlement issues; prepare for mediation
0655	Nicole Zeiss	P	06/25/15	1.0	090	Office conference with David Goldsmith and Liz Wierzbowski.
4021	Maureen Flanigan	SA	06/25/15	3.8	030	Review and analyze emails and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4034	Comfort Orji	SA	06/25/15	9.0	030	Worked on research related to marketing of electronic trading to indirect fx clients. Ran searches for documents related to the reduction of revenue from custody FX and strategies for electrification. Reviewed emails, reports, presentations etc
4071	Charles Pietrofesa	SA	06/25/15	5.2	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Orla Beirne documents, which related to pricing documents, auto income repatriation, and best execution.

4089	Todd Kussin	SA	06/25/15	9.2	030	Reviewed, edited, and supplemented memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, [REDACTED], as well as emails among these entities discussing changes to such documentation; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's [REDACTED] [REDACTED] conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum; continued reviewing preliminary draft of memorandum prepared by reviewer Justin Griffin regarding an internal State Street email discussing a [REDACTED] [REDACTED] particularly with respect to the provision of execution costs, as referenced in the complaint filed by the California State Attorney General against State Street.
4148	Albert Powell	SA	06/25/15	9.7	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
1513	Elizabeth Wierzbowski	A	06/25/15	0.4	130	Office conference with David Goldsmith and Nicole Zeiss re status and what case is about.
4027	Debra Fouchong	SA	06/25/15	11.4	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	06/25/15	9.8	030	Review of defendant's documents related to rfps specifically SSFXDOL-E00005680, StateSt_CA_LIT02822509, SSFXDOL-E000049042, StateSt_CA_LIT01242336 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/25/15	4.8	030	Researched for memo. Topic: FX historical margins AIR
4280	Jennifer Hirsh	SA	06/25/15	7.5	030	No relevant docs today. Of note: Very long (10,000 page) doc, of various clients; apparently a spreadsheet.
4291	Mashariki Daniels	SA	06/25/15	12.2	030	Reviewed Orla Bierne documents regarding the pricing methodology using for CFXS transactions and disclosures related thereto preparatory to drafting memo.
4321	Ian Herrick	SA	06/25/15	9.2	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors.
4369	David Pospischil	SA	06/25/15	8.8	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4383	James Griffin	SA	06/25/15	9.0	030	Drafting memo regarding transparency topic.
4385	David Packman	SA	06/25/15	8.0	030	Researched Defendant's production via [REDACTED] [REDACTED]
4422	Ebone Bishop	SA	06/25/15	9.9	030	Reviewed my current draft of the P&L research memo (after a hiatus), and revised and edited a few sections in the introduction and the first method. Continued working on compiling the monthly volumes for method two in a new worksheet within the spreadsheet. Searched and reviewed additional documents in the SST database regarding FXBA and the Seat report.
						Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, specifically related to FX and indirect FX pricing, review documents and draft memorandum accordingly.

4424	Jacqueline Grant	SA	06/25/15	11.3	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/25/15	10.8	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/25/15	9.2	030	Conduct searches of documents re: research assignment. Draft memo re: FX pricing and Osler paper.
4394	David Alper	SA	06/25/15	9.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/25/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents [REDACTED] [REDACTED] Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED] [REDACTED].
4425	Anuj Vaidya	SA	06/25/15	9.7	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/26/15	10.0	080	Mediation
0103	Lawrence Sucharow	P	06/26/15	10.5	080	Prepare for Tuesday mediation session in Boston; review BONY settlement documents re overlapping issues with State Street negotiations.
0571	David Goldsmith	P	06/26/15	8.7	080	Attend mediation session before Jonathan Marks; discussions with co-counsel re: same
1179	Michael Rogers	P	06/26/15	9.0	080	Attend mediation session
4021	Maureen Flanigan	SA	06/26/15	6.5	030	Review and analyze emails and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4034	Comfort Orji	SA	06/26/15	8.0	030	continued to work on research related to marketing of electronic trading to indirect fx clients. Ran searches for documents related to the reduction of revenue from custody FX and strategies for electrification. Reviewed emails, reports, presentations etc
4071	Charles Pietrofesa	SA	06/26/15	8.0	030	Reviewed and analyzed documents previously summarized and edited Memorandum for Mark Snyder; performed searches concerning Orla Beirne documents, which related to pricing documents, auto income repatriation, and best execution.

						Continued reviewing, editing, and supplementing memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, [REDACTED], as well as emails among these entities discussing changes to such documentation; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's [REDACTED]. [REDACTED] conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum.
4089	Todd Kussin	SA	06/26/15	7.7	030	
4148	Albert Powell	SA	06/26/15	9.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4027	Debra Fouchong	SA	06/26/15	11.5	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, and to compose memorandum for attorneys' use in preparation for further litigation
4244	Judy Watson	SA	06/26/15	8.8	030	Review of defendant's documents related to rfps specifically SSFXDOL-E000005393, SSFXDOL-E000005680, SSFXDOL-E000006310, SST_KHR_SSGM_E002870314 and preparation of summary memo regarding same.
4247	Aron Rosenbaum	SA	06/26/15	4.2	030	Researched for memo on assigned topic: historical FX margins Noteworthy docs: E-mail chain detailing customer complaints of excessive FX pricing (already coded Hot)
4280	Jennifer Hirsh	SA	06/26/15	8.0	030	Reviewed and analyzed documents related to Orla Bierne and [REDACTED]. [REDACTED] preparatory to drafting memo.
4291	Mashariki Daniels	SA	06/26/15	7.5	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/26/15	9.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/26/15	6.9	030	Drafting memo regarding transparency topic.
4383	James Griffin	SA	06/26/15	6.0	030	Researched production from Defendant re: [REDACTED] including emails and correspondence, in preparation for memorandum re: [REDACTED]
4385	David Packman	SA	06/26/15	7.0	030	Continued to review SST documents regarding FXBA, volumes, and netting (and edited and added such information and data to the memo) as part of my research memo on State Street's P&L from CFXS transactions.
4422	Ebone Bishop	SA	06/26/15	5.8	030	Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, specifically related to FX and indirect FX pricing, review documents and draft memorandum accordingly.
4424	Jacqueline Grant	SA	06/26/15	12.0	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.

4426	Tryphena Greene	SA	06/26/15	10.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/26/15	9.0	030	Conduct searches of hot and relevant documents re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/26/15	7.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/26/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla took ██████████. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for SSH bps spreads. Looked at many documents that were U.S. Equity research docs and bps. Also there were Custodian Contracts between CalPers and State Street (Custodian). In addition there were pricing documents examined. Numerous Orla Beirne emails explaining the SSH pricing process.
4425	Anuj Vaidya	SA	06/26/15	9.2	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/29/15	3.0	080	Prepared for mediation.
0103	Lawrence Sucharow	P	06/29/15	6.5	080	Prepare for Tuesday mediation session in Boston; travel to Boston for mediation.
0571	David Goldsmith	P	06/29/15	0.3	080	Discuss with Garrett Bradley re: settlement status/strategy; data issues; e-mail to Mike Rogers re: closing down document review
4021	Maureen Flanigan	SA	06/29/15	6.1	030	Review and analyze emails and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4034	Comfort Orji	SA	06/29/15	8.8	030	Ran searches and reviewed documents relevant to research for the acquisition of currenex and development of electronic trading.
4071	Charles Pietrofesa	SA	06/29/15	7.9	030	Performed searches for Mark Snyder's Memo concerning risk management, FX rates, risk committees, and risk guidelines; edited Snyder memo.
4089	Todd Kussin	SA	06/29/15	9.0	030	Continued reviewing, editing, and supplementing memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, ██████████, as well as emails among these entities discussing changes to such documentation; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's ██████████. ██████████ conducted searches on Catalyst platform among documents produced by defendants in order to identify additional documents to be used to supplement memorandum; prepared report summarizing assignments and productivity of State Street reviewers for the week ending June 26, 2015..

4148	Albert Powell	SA	06/29/15	7.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4027	Debra Fouchong	SA	06/29/15	11.2	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4247	Aron Rosenbaum	SA	06/29/15	3.0	030	Researched for memo. Topic: historical FX margins AIR. Many RFPs.
4280	Jennifer Hirsh	SA	06/29/15	7.2	030	Reviewed several batches of non-consecutive documents relating to Orla Bierre's [REDACTED] - collected documents preparatory to drafting memo re same.
4291	Mashariki Daniels	SA	06/29/15	7.0	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/29/15	7.7	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/29/15	7.3	030	Drafting memo regarding transparency topic; conference with T. Kussin regarding Requests for Proposal.
4383	James Griffin	SA	06/29/15	8.8	030	Researched production of Defendant [REDACTED]
4385	David Packman	SA	06/29/15	8.3	030	Reviewed documents in SST's database regarding IBT, netting, spreads and the methodology for calculating spreads, as well as the differences between the seat volume report and FXBA volume reporting. All of these elements are key to using my second method for determining SST's P&L based on aggregating the custody revenue from each location by multiplying the volumes by the spreads. This requires consistent and accurate volumes. Netting complicates the matter.
4422	Ebone Bishop	SA	06/29/15	10.3	030	Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, specifically related to "class hedging" and "calypso"; review documents and draft memorandum accordingly.
4426	Tryphena Greene	SA	06/29/15	10.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/29/15	8.5	030	Conduct document searches re: research assignment. Draft research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/29/15	11.0	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4041	Vivianne Brissett	SA	06/29/15	8.7	030	Continued proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case.

						Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED].
4242	Donato Gianturco	SA	06/29/15	10.0	030	
4425	Anuj Vaidya	SA	06/29/15	7.3	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
0023	Eric Belfi	P	06/30/15	10.0	080	Mediation
0103	Lawrence Sucharow	P	06/30/15	13.7	080	Lead plaintiffs' all day mediation in Boston; travel to NYC.
0571	David Goldsmith	P	06/30/15	0.8	090	E-mails with Larry Sucharow and Eric Belfi re: settlement agreement in principle; review draft term sheet
1179	Michael Rogers	P	06/30/15	2.0	080	Analyze draft term sheet; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Nicole Zeiss re: same
4021	Maureen Flanigan	SA	06/30/15	6.7	030	Review and analyze emails, presenttaions and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials.
4034	Comfort Orji	SA	06/30/15	9.2	030	Researched, ran searches and reviewed documents relevant to the growth strategy for electronic trading and the acquisition of currenex and other electronic platforms.
4071	Charles Pietrofesa	SA	06/30/15	8.6	030	Performed searches for Mark Snyder's Memo concerning revenue attribution, indirect revenue, and Best Execution; edited Snyder memo.
4089	Todd Kussin	SA	06/30/15	6.4	030	Continued reviewing, editing, and supplementing memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, [REDACTED], as well as emails among these entities discussing changes to such documentation; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's [REDACTED]. [REDACTED] conducted secondary review/quality check of hot documents reviewed by coders in order to ensure the accuracy of their designations of priority, issue, and document type.
4148	Albert Powell	SA	06/30/15	8.3	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4027	Debra Fouchong	SA	06/30/15	10.8	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
4244	Judy Watson	SA	06/30/15	9.7	030	Review of defendant's documents related to rfps specifically SSFXDOL-E000008942, StateSt_CA_LIT01082152, StateSt_CA_LIT05777424, SSFXDOL-E000089184 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	06/30/15	7.8	030	Reviewed documents related to Orla Beirne and rating methodology preparatory to drafting memo re same - documents included RFPS, Investment Manager Guides, New Disclosure Guides, Daily FX Pricing Check Reports and emails.

4291	Mashariki Daniels	SA	06/30/15	11.5	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors.
4321	Ian Herrick	SA	06/30/15	8.3	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities.
4369	David Pospischil	SA	06/30/15	7.2	030	Drafting memo regarding transparency topic; searching database for documents relating to transparency topic.
4383	James Griffin	SA	06/30/15	9.5	030	Researched production from Defendant [REDACTED]
4385	David Packman	SA	06/30/15	9.1	030	Completed an exhaustive review of IBT documents in the SST database, and updated my research memo accordingly. I was able to update sections regarding netting and volumes based on the documents within this search.
4422	Ebone Bishop	SA	06/30/15	9.0	030	Conduct targeted, non consecutive bates range document searches related to W. Walsh memorandum topics, specifically related to "class hedging" and trade errors, review documents and draft memorandum accordingly.
4424	Jacqueline Grant	SA	06/30/15	12.0	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	06/30/15	11.1	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	06/30/15	10.0	030	Conduct searches of documents re: research assignment. Draft and revise research memo re: Osler paper and FX pricing.
4394	David Alper	SA	06/30/15	8.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4242	Donato Gianturco	SA	06/30/15	10.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for [REDACTED]. Also there were [REDACTED]
4425	Anuj Vaidya	SA	06/30/15	9.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4041	Vivianne Brissett	SA	06/30/15	10.0	030	Continued proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case.
0023	Eric Belfi	P	07/01/15	2.0	090	Settlement issues.

0103	Lawrence Sucharow	P	07/01/15	6.5	090	Revise draft Term Sheet (3); strategize settlement terms, procedures and definitions; correspondence with co-counsel.
0571	David Goldsmith	P	07/01/15	5.7	090	Discussion with Larry Sucharow re: settlement and mediation; review successive drafts of Term Sheet; e-mails internally and with co-counsel re: same; attention to data and plan of allocation issues
1179	Michael Rogers	P	07/01/15	2.2	090	Conference calls with Eric Belfi and Ray Politano re: document review attorneys; telephone conference with Eric Belfi re: settlement; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, E _____ W, Carl Kravitz, Dan Chiplock, Mike Lesser and Brian McTigue re: settlement agreement
4021	Maureen Flanigan	SA	07/01/15	7.0	030	Review and analyze emails, presenttaions and analyst reports about State Street and other market participant's foreign exchange practices concerning timestamps for FX trades; review complaint and background materials; prepared memorandum regarding timestamp development.
4034	Comfort Orji	SA	07/01/15	9.0	030	Researched, ran searches and reviewed documents relevant to the growth strategy for electronic trading and the acquisition of currenex and other electronic platforms. Drafted memo for electronic trading revenue versus Direct revenue.
4071	Charles Pietrofesa	SA	07/01/15	9.2	030	Performed searches for Mark Snyder's Memo concerning uncoded documents and Hot documents, which concerned FX rates, Best Execution, and risk management; edited Snyder's memo and added additional analysis.
4089	Todd Kussin	SA	07/01/15	9.3	030	Finalized the review, editing, and supplementing of memorandum prepared by reviewer regarding custodial contracts, fee schedules, amendments, and responses to requests for proposals involving State Street, the Arkansas Teacher Retirement System, _____, as well as emails among these entities discussing changes to such documentation; drafted emails to State Street coders requesting initial drafts of previously assigned memos; reviewed and began editing memorandum State Street's processing and drafting of responses to Requests for Proposals that it received from prospective clients from 2009 through December 2011; conferred with reviewer assigned to draft memorandum regarding Anthony Bisegna to discuss search strategies; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing _____
4148	Albert Powell	SA	07/01/15	6.6	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4065	Lisa George	SA	07/01/15	1.0	030	Reviewed and made revisions to memo concerning revenue and P&L issues.
1513	Elizabeth Wierzbowski	A	07/01/15	1.5	090	Review term sheet and give proposed changes to David Goldsmith; review emails from co-counsel re Term Sheet.
4027	Debra Fouchong	SA	07/01/15	11.9	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, and to compose memorandum for attorneys' use in preparation for further litigation

4027	Debra Fouchong	SA	07/01/15	0.1	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation. Write memorandum
4244	Judy Watson	SA	07/01/15	10.3	030	Review of defendant's documents related to rfps specifically SSFXDOL-E00001415, SSFXDOL-E000026994, SSFXDOL-E000036487 and preparation of summary memo regarding same.
4280	Jennifer Hirsh	SA	07/01/15	8.9	030	Reviewed pre-culled documents related to Orla Beirne and drafted memo regarding [REDACTED]
4291	Mashariki Daniels	SA	07/01/15	12.5	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors
4321	Ian Herrick	SA	07/01/15	8.7	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities and drafted memo pertaining to the same.
4369	David Pospischil	SA	07/01/15	9.3	030	Drafting memo regarding transparency topic; conference with T. Kussin regarding memo.
4383	James Griffin	SA	07/01/15	8.8	030	Researched production of Defendant [REDACTED]
4385	David Packman	SA	07/01/15	9.0	030	Complete a spreadsheet of volumes and spread for my P&L research memo (attached to the memo as Appendix A). Revise and edit the research memo in preparation for submission.
4422	Ebone Bishop	SA	07/01/15	10.5	030	Conduct targeted topical, non consecutive bates range searches of W. Walsh documents, review documents and finalize W. Walsh memorandum.
4424	Jacqueline Grant	SA	07/01/15	12.5	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	07/01/15	11.0	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	07/01/15	9.5	030	Conduct document searches re: research assignment. Draft and revise research memo re: Osler paper and FX pricing.
4394	David Alper	SA	07/01/15	9.8	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.

4242	Donato Gianturco	SA	07/01/15	9.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous documents after Orla [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for SSH bps spreads. Looked at many documents that were [REDACTED]. Also there were [REDACTED].
4425	Anuj Vaidya	SA	07/01/15	8.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4041	Vivianne Brissett	SA	07/01/15	3.1	030	Continued proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case.
0571	David Goldsmith	P	07/02/15	1.0	090	Address Plan of Allocation issues; e-mails and follow up with D. Chiplock re same.
1179	Michael Rogers	P	07/02/15	1.1	090	E-mails to/from David Goldsmith, Nicole Zeiss, Elizabeth Rosenberg, Mike Lesser and Dan Chiplock re: settlement papers and plan of allocation; analyze draft settlement term sheet
4021	Maureen Flanigan	SA	07/02/15	10.4	030	Review and analyze emails, presentations and analyst reports about State Street and other [REDACTED]. [REDACTED] review complaint and background materials; prepared memorandum regarding timestamp development.
4034	Comfort Orji	SA	07/02/15	5.0	030	Worked on and completed State Street Memo assignment. Research was for dollar and basis point comparison of e-trading revenue with direct revenue. Ran searches, reviewed financial statements, emals, etc.
4071	Charles Pietrofesa	SA	07/02/15	6.8	030	Edited Mark Snyder's memo and added additional analysis; submitted final copy of memo for Snyder.
4089	Todd Kussin	SA	07/02/15	10.7	030	Finalized the review, editing, and supplementing of memorandum prepared by reviewer regarding State Street's processing and drafting of responses to Requests for Proposals that it receives from potential clients from 2009 through December 2011; drafted emails to State Street coders discussing initial drafts of previously assigned memos; reviewed and began editing, supplementing, and fact-checking memos re: Anthony Bisegna as well as memo regarding State Street's profits and losses; re-organized, re-drafted, fact checked and supplemented memorandum prepared by reviewer discussing State Street's response to a [REDACTED]. [REDACTED] took inventory of all completed memos forwarded by reviewers on their last day.
4148	Albert Powell	SA	07/02/15	3.4	030	Review and analyze documents relating to changes in Investment Management (IM) Guides. Draft memorandum regarding changes in the guides post the California lawsuit becoming public in October 2009.
4065	Lisa George	SA	07/02/15	2.0	030	Reviewed and made revisions to memo concerning revenue and P&L issues.
4244	Judy Watson	SA	07/02/15	5.0	030	Review of defendant's documents related to rfps specifically StateSt_CA_LIT05040752, SSFXDOL-E000001415, SFXDOL-E000026994 and preparation of summary memo regarding same.

4280	Jennifer Hirsh	SA	07/02/15	5.5	030	Finalized memo re Orla Beirne
4291	Mashariki Daniels	SA	07/02/15	7.1	030	Searched for documents showing client inquiries into the California claim and subsequent correspondences. Continued drafting memorandum regarding reports made to the Board of Directors
4321	Ian Herrick	SA	07/02/15	9.5	030	Continued review of State Street's emails and related documents for information pertaining to State Street's responses to regulatory authorities and drafted memo pertaining to the same.
4383	James Griffin	SA	07/02/15	3.5	030	Researched Defendant's production via targeted searches for CalPERS, including emails, RFPs, and documents, in preparation for memorandum re: information provided to CalPERS by Defendant.
4385	David Packman	SA	07/02/15	11.1	030	Review and revise my research memo regarding State Street's P&L. Submit memo. Shred materials.
4422	Ebone Bishop	SA	07/02/15	10.0	030	Finalize W. Walsh memorandum and group case update meeting.
4424	Jacqueline Grant	SA	07/02/15	5.5	030	Conduct review of documents regarding State Street's responses to client/manager complaints/inquiries w/r/t custodial services, including internal emails, and draft responses to complaints/inquiries, for the purpose of drafting of memoranda for attorneys' use in preparation for further litigation.
4426	Tryphena Greene	SA	07/02/15	5.5	030	Review and analysis of non-consecutively bates-numbered documents produced by Defendants consisting of emails, PDFs, reports and Excel spreadsheets; research topic project for Stan Shelton - review documents regarding FX profits/revenue and FX policies returned from search terms, prepare memorandum using these documents to provide background information and indicate whether these documents support the allegations.
4430	Betsy Schulman	SA	07/02/15	8.5	030	Conduct search of documents re: research assignment. Prepare research memo re: Osler paper and FX pricing.
4394	David Alper	SA	07/02/15	4.5	030	Reviewed, and analyzed emails spreadsheets and documents pertaining to the Arkansas Teacher Retirement System v. State Street case in order to create a comprehensive memo outlining Anthony Bisegna's role in the case. These F/X documents are non- consecutive or the Bates range were missing from said documents.
4425	Anuj Vaidya	SA	07/02/15	4.0	020	Reviewed documents, internal emails, drafts of requests for proposals in preparation for a memorandum regarding the use of Automatic Income Repatriation and the allegations of the complaint.
4242	Donato Gianturco	SA	07/02/15	5.0	030	Conducted searches for Historical margins for SSH in preparation for the memo on State Street project. Added searches for SSH and Securities as well. Foldered numerous [REDACTED]. Also foldered a few documents in the pre-Orla folder. My topic involves Historical patterns for SSH bps spreads. Looked at many documents [REDACTED]. Also there were [REDACTED]
4413	Barry Kaplan	SA	07/02/15	3.0	020	Prepared closing memo and removed documents for shredding.
4027	Debra Fouchong	SA	07/02/15	6.0	030	Reviewed and analyzed non-consecutive bates numbered documents produced by Defendants and Defendants' 3rd party, consisting of emails, reports, PDFs, for discussion on FX TCA, Trading Costs and FX TCA Methodologies, within the context of efficacy and competitiveness of rates, for attorneys' use in preparation for further litigation.
0571	David Goldsmith	P	07/05/15	1.5	090	Review BNY FX settlement documents
0103	Lawrence Sucharow	P	07/06/15	2.0	090	Attention to draft Term Sheet; correspondence with W Paine.

0571	David Goldsmith	P	07/06/15	1.0	090	E-mails internally and with co-counsel re: call with defendants; settlement timing and allocation issues
1179	Michael Rogers	P	07/06/15	0.5	090	E-mails to/from David Goldsmith, Nicole Zeiss, Elizabeth Rosenberg, Mike Lesser and Dan Chiplock re: allocation issues
4021	Maureen Flanigan	SA	07/06/15	9.0	030	Reviewed documents concerning Foreign exchange Transaction Cost Analysis and revise memorandum concerning same.
4089	Todd Kussin	SA	07/06/15	10.7	030	Began finalizing all outstanding memos prepared by reviewers regarding individual topics connected to allegations in the complaint; reviewed, edited, fact-checked, supplemented, and finalized memos regarding subjects including 1) paper by Carol Osler re: FX spreads, 2) E-Trading at State Street, 3) RFP Responses by State Street, 4) William Walsh, and 5) FX Transaction Cost Analyses; conferred with Vivianne Abrahams, Maureen Flanigan, and David Pospischil re: editing process for memos and assigned additional memos for quality check including those re: transparency, and Stanley Shelton; prepared report summarizing assignments and productivity of State Street reviewers for the week ending July 2, 2015.
1513	Elizabeth Wierzbowski	A	07/06/15	5.0	090	Review edits to Term Sheet; work on draft Stipulation; review BNY Stipulation; review documents re same.
4369	David Pospischil	SA	07/06/15	3.7	030	Meeting with T. Kussin regarding editing topic memo; editing topic memo regarding Stanley Shelton; conference with T. Kussin regarding transparency topic memo.
4041	Vivianne Brissett	SA	07/06/15	7.8	030	I resumed proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case. I also reviewed documents within the production to perform cite checks,
0103	Lawrence Sucharow	P	07/07/15	1.8	090	Further revisions to Term Sheet and strategize settlement issues.
0571	David Goldsmith	P	07/07/15	1.5	090	Telephone conference with W. Paine, T. Perla, D. Chiplock, M. Lesser, Mike Rogers re Plan of Allocation, data, notice issues, prepare for same; pre-call telephone call with Mike Rogers; discussions with Garrett Bradley re same and status; discussions with E. Rosenberg re all and same
1179	Michael Rogers	P	07/07/15	1.4	090	Telephone conferences and conference calls with and e-mails to/from David Goldsmith, Elizabeth Rosenberg, Mike Lesser, Dan Chiplock, Bill Paine and D. Halston re: allocation issues and date re: same
1450	Reka Viczian	PL	07/07/15	1.2	140	Search for mediation statements for E. Wierzbowski.
4021	Maureen Flanigan	SA	07/07/15	3.0	030	Reviewed documents concerning foreign exchange e-trading revenue and revised memorandum concerning same.

						Continued finalizing all outstanding memos prepared by reviewers regarding individual topics connected to allegations in the complaint; reviewed, edited, fact-checked, supplemented, and finalized memos regarding subjects including 1) Mark Snyder, 2) Stanley Shelton, 3) Profits and Loss calculations; and 4) State Street's responses to regulators; conferred with Vivianne Abrahams, Maureen Flanigan, and David Pospischil re: editing process for memos and assigned additional memos for quality check including those re: transparency, as well as indirect and direct revenue as they relate to profits and losses; communications with Catalyst IT regarding request for total number of documents and pages reviewed by Labaton reviewers over the course of this litigation.
4089	Todd Kussin	SA	07/07/15	10.4	030	
1513	Elizabeth Wierzbowski	A	07/07/15	4.5	090	Call with co-counsel and defense counsel re plan of allocation; post-meeting with David Goldsmith; review documents in preparation for drafting Stipulation.
4369	David Pospischil	SA	07/07/15	7.0	030	Reviewing and editing topic memo regarding Stanley Shelton; conferences with T. Kussin regarding same; conference with T. Kussin regarding transparency topic memo; reviewing notes regarding transparency topic.
4041	Vivianne Brissett	SA	07/07/15	9.4	030	Continued proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case. Conducted searches in the production for additional documentation and to perform citations checks.
0571	David Goldsmith	P	07/08/15	3.5	090	Progress on Term Sheet and settlement strategy; review and comment on defendants' markup of Term Sheet; multiple e-mails internally and with co-counsel re same and various issues including DoL gross/net allocation issue; discussions with E. Rosenberg re all and same.
						Continued finalizing the last of all outstanding memos prepared by reviewers regarding individual topics connected to allegations in the complaint; reviewed, edited, fact-checked, supplemented, and finalized memos regarding subjects including 1) transparency, 2) changes to investment manager guides, 3) Anthony Bisegna, 4) monetization strategies regarding profits and losses, and 5) State Street's knowledge of competitors' practices and policies with respect to indirect pricing; conferred with Vivianne Abrahams and David Pospischil re: editing process for memos and assigned additional memos for quality check including those re: Stanley Shelton, Orla Beirne, reports to the State Board, and time-stamping.
4089	Todd Kussin	SA	07/08/15	10.2	030	
1513	Elizabeth Wierzbowski	A	07/08/15	1.5	090	Review Defendants' mark-up to Term Sheet.
4369	David Pospischil	SA	07/08/15	8.2	030	Reviewing and organizing notes regarding transparency topic; conferences with T. Kussin regarding transparency topic memo; meeting with T. Kussin and V. Abrahams regarding topic memos; drafting additional notes section for transparency topic memo.
4041	Vivianne Brissett	SA	07/08/15	8.9	030	I continued proof reading and editing the topic memos which were assigned to the reviewers requiring them to provide background materials and summaries of documents supporting the allegations involved in this case. Conducted searches in the production for additional documentation and to perform citations checks.
0571	David Goldsmith	P	07/09/15	1.6	090	E-mails with Larry Sucharow, internally and with co-counsel re Term Sheet and settlement issues; review and respond to Dan Chiplock redline of Term Sheet.
1179	Michael Rogers	P	07/09/15	1.9	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Elizabeth Rosenberg, co-counsel and ERISA counsel re: term sheet and draft stipulation of settlement
1513	Elizabeth Wierzbowski	A	07/09/15	4.0	090	Work on Stipulation of Settlement.

0571	David Goldsmith	P	07/10/15	1.5	090	E-mails and disc with E. Rosenberg re Term Sheet issues; e-mails with D. Chiplock re same; review drafts.
1513	Elizabeth Wierzbowski	A	07/10/15	7.0	090	Review Nicole Zeiss' edits to term sheet; work on Stipulation of Settlement.
0571	David Goldsmith	P	07/13/15	0.9	090	E-mails internally and with co-counsel re status of Term Sheet, outstanding issues; markups.
0655	Nicole Zeiss	P	07/13/15	2.0	090	Review of term sheets.
1179	Michael Rogers	P	07/13/15	4.3	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Elizabeth Rosenberg, Dan Chiplock and Brian McTigue re: draft term sheet; analyze draft term sheet
1513	Elizabeth Wierzbowski	A	07/13/15	4.5	090	Work on Stipulation of Settlement; review recent changes to Term Sheet.
0571	David Goldsmith	P	07/14/15	0.5	090	E-mails with co-counsel re: Term Sheet/ERISA issues
1054	Cheryl Boria	PL	07/14/15	1.0	090	Double checked the Exhibit B to make sure that WP converted over the PDF copy to match the word copy of the Judgment.
1179	Michael Rogers	P	07/14/15	2.0	090	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, Elizabeth Rosenberg, Dan Chiplock and Mike Lesser re: draft term sheet
1513	Elizabeth Wierzbowski	A	07/14/15	8.5	090	Work on draft Stipulation of Settlement.
0103	Lawrence Sucharow	P	07/15/15	1.8	090	Continued revision to draft Term Sheet. Attention to ERISA issues.
1513	Elizabeth Wierzbowski	A	07/15/15	5.5	090	Work on Stipulation of Settlement.
1179	Michael Rogers	P	07/16/15	1.5	090	Conference with Larry Sucharow and e-mails to/from Larry Sucharow, David Goldsmith, Lynn Sarko and Dan Chiplock re: term sheet
1513	Elizabeth Wierzbowski	A	07/16/15	4.0	090	Work on Stipulation of Settlement.
0103	Lawrence Sucharow	P	07/16/15	1.5	090	Attention to term sheet.
1513	Elizabeth Wierzbowski	A	07/17/15	3.0	090	Work on Stipulation of Settlement.
0571	David Goldsmith	P	07/20/15	0.3	090	Telephone conference with Larry Sucharow re; setting up call for Tuesday re: DOL issues; set up call; e-mails re: same
1179	Michael Rogers	P	07/20/15	4.0	090	Analyze draft term sheet
4089	Todd Kussin	SA	07/20/15	1.7	050	In response to request by David Goldsmith, reviewed numerical information provided by Catalyst IT regarding total number of pages and documents reviewed by Labaton coders during the course of the litigation, broken down by totals coded from both the California and Hill production and also broken down between narrative and non-narrative documents; prepared charts showing all totals.
1513	Elizabeth Wierzbowski	A	07/20/15	5.5	090	Work on Stipulation of Settlement.
0103	Lawrence Sucharow	P	07/21/15	5.5	090	Attention to settlement issues with DOJ; DOL; SEC and State Street; conference call to plaintiffs counsel; conference call with plaintiffs counsel and defense counsel.
0571	David Goldsmith	P	07/21/15	1.5	090	Telephone conference with Plaintiff's counsel re: DOL settlement issues; post-call discussion with Larry Sucharow and Mike Rogers re: same; follow on e-mails re: same
0655	Nicole Zeiss	P	07/21/15	4.0	090	Worked on settlement agreement.
1179	Michael Rogers	P	07/21/15	3.8	090	Conferences and conference calls with and e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, co-counsel, ERISA counsel, Bill Paine and Jonathan Marks re: DOL and plan of allocation; analyze client materials and communications
1513	Elizabeth Wierzbowski	A	07/21/15	3.5	090	Work on Stipulation of Settlement and send draft to Nicole Zeiss.
0571	David Goldsmith	P	07/22/15	1.6	090	Review comments on Term Sheet; initial review of draft settlement agreement from Nicole Zeiss; e-mails internally re: same; telephone conference with Mike Rogers re: Tuesday call with defendants and co-counsel; research re: timeline of mediation sessions
0655	Nicole Zeiss	P	07/22/15	3.0	090	Worked on settlement agreement; reviewed term sheet.
1179	Michael Rogers	P	07/22/15	8.1	090	Analyze client materials; draft memo re: same; analyze draft term sheet; analyze draft stipulation of settlement; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss and Elizabeth Rosenbeger re: same

0655	Nicole Zeiss	P	07/23/15	1.5	090	Reviewed term sheet; emails; office conference with Michael Rogers.
1179	Michael Rogers	P	07/23/15	5.6	090	Analyze client materials; draft memorandum re: same; analyze draft term sheet; analyze draft stipulation of settlement; edits and comments re: same; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss and Elizabeth Rosenberg re: same; conference with Nicole Zeiss re: same
1179	Michael Rogers	P	07/24/15	5.4	090	Conference call with co-counsel, ERISA counsel and [REDACTED] counsel re: terms of settlement; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, Lynn Sarko, Dan Chiplock and Mike Lesser re: same; telephone conference with Dan Chiplock re: same; conference with Eric Belfi and Gene Hopkins re: same
0571	David Goldsmith	P	07/27/15	0.4	090	E-mails with co-counsel re: settlement issues; set up conference call for Wednesday
1179	Michael Rogers	P	07/27/15	2.0	090	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel re: status of term sheet re: [REDACTED] re: status with State Street and other agencies; analyze and edit draft stipulation of settlement
0103	Lawrence Sucharow	P	07/28/15	4.7	010	Continued analysis of open settlement issues including settlements with [REDACTED] Correspondence with defendant's counsel and mediator.
0103	Lawrence Sucharow	P	07/28/15	2.5	010	Conference call at plaintiffs' counsel on open settlement issues; prepare for conference call; correspondence with defendants' counsel and mediator
1179	Michael Rogers	P	07/28/15	1.8	090	Conference with Garrett Bradley re: status of term sheet and settlement; edit and amend draft stipulation of settlement
0571	David Goldsmith	P	07/29/15	3.7	090	Telephone conference with Larry Sucharow, Mike Rogers, Nicole Zeiss, co-counsel re: settlement and [REDACTED] issues and prepare for same; post-call meeting re: settlement status and strategy; e-mail to co-counsel re: Claims Administrator and telephone conference with Garrett Bradley re: same; review/comment on latest Term Sheet
0655	Nicole Zeiss	P	07/29/15	3.0	090	Worked on settlement agreement and term sheet.
1179	Michael Rogers	P	07/29/15	6.0	090	Conference call with Larry Sucharow, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel re: term sheet, settlement issues and [REDACTED]; conference with Larry Sucharow, David Goldsmith and Nicole Zeiss re: same; analyze draft term sheet; edit and amend same; e-mails to/from Larry Sucharow, David Goldsmith and Nicole Zeiss re: same; telephone conference with Eric Belfi re: today's conference call
0103	Lawrence Sucharow	P	07/29/15	1.0	090	Conference call re: settlement.
0103	Lawrence Sucharow	P	07/30/15	4.5	090	Continued revision to draft Term Sheet; confer with N. Zeiss and M. Rogers.
0571	David Goldsmith	P	07/30/15	0.7	040	Telephone conference with Mike Rogers, Nicole Zeiss, co-counsel, Department of Labor re settlement and plan of allocation issues; pre and post-call discussions with Mike Rogers and Nicole Zeiss; e-mails internally re same and strategy; review draft Term Sheet.
0655	Nicole Zeiss	P	07/30/15	3.0	090	Dealt with term sheet; DDC call.
1179	Michael Rogers	P	07/30/15	4.9	090	Conference call with David Goldsmith, Nicole Zeiss, co-counsel, ERISA counsel and [REDACTED] counsel re: group trusts and allocation; conferences with Larry Sucharow, David Goldsmith and Nicole Zeiss re: same; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel re: same
0571	David Goldsmith	P	07/31/15	0.4	090	Telephone conference with Nicole Zeiss and e-mails internally re: status of Term Sheet negotiations
0655	Nicole Zeiss	P	07/31/15	2.5	090	Dealt with term sheet.
1179	Michael Rogers	P	07/31/15	2.0	090	E-mails to/from Larry Sucharow, Eric Belfi, Nicole Zeiss, Garrett Bradley and Bob Liefre re: term sheet

0103	Lawrence Sucharow	P	08/05/15	2.5	090	Continued discussion re term sheet and content of settlement agreements with [REDACTED]
0571	David Goldsmith	P	08/05/15	1.2	090	Telephone conference with Mike Rogers, Nicole Zeiss, Lynn Sarko, Dan Chiplock, Brian McTigue, [REDACTED] representatives re: settlement, plan of allocation and Group Trust issues; prepare for same; post-call discussions with Mike Rogers re: same
0655	Nicole Zeiss	P	08/05/15	1.0	090	DOL call.
1179	Michael Rogers	P	08/05/15	1.6	080	E-mails to/from Larry Sucharow, Nicole Zeiss, David Goldsmith and Bill Paine re: status of term sheet; conference with Larry Sucharow and Garrett Bradley re: same; conference call with David Goldsmith, Nicole Zeiss, Dan Chiplock, Lynn Sarko, Carl Kravitz, Brian McTigue, Nate Goldstein and Suzanne Reilly re: [REDACTED] e-mails to/from Larry Sucharow, Eric Belfi, Garrett Bradley, David Goldsmith and Nicole Zeiss re: same; analyze SST's comments and edits to draft term sheet; e-mails to/from Larry Sucharow, David Goldsmith and Nicole Zeiss re: same
1179	Michael Rogers	P	08/05/15	0.3	080	E-mails to/from Dan Chiplock, Mike Lesser, Evan Hoffman and K. Dugar re: documents and document hosting
0103	Lawrence Sucharow	P	08/06/15	4.5	090	Revisions to draft Term Sheet; telephone conference with defendants counsel and plaintiffs' counsel re Term Sheet and [REDACTED]; Internal strategy discussions.
0571	David Goldsmith	P	08/06/15	2.2	090	Telephone conference with Larry Sucharow, Mike Rogers, Nicole Zeiss, co-counsel, W. Paine re: Term Sheet issues; prepare for same; post-call discussion with Larry Sucharow, Mike Rogers, Nicole Zeiss re: same; review draft markup of Term Sheet; telephone conference with Tom Glenn re: claims administration
0655	Nicole Zeiss	P	08/06/15	2.0	090	Dealt with term sheet.
1179	Michael Rogers	P	08/06/15	1.7	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Dan Chiplock, Lyn Sarko and Bill Paine re: term sheet; conference call with Larry Sucharow, David Goldsmith, Nicole Zeiss, Dan Chiplock and Bill Paine re: term sheet
1179	Michael Rogers	P	08/09/15	0.5	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel re: term sheet
0655	Nicole Zeiss	P	08/10/15	2.0	090	Drafted ERISA POA concept language.
1179	Michael Rogers	P	08/10/15	0.3	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel re: term sheet
0103	Lawrence Sucharow	P	08/11/15	3.7	090	Conference call Plaintiffs' Counsel; conference call plaintiffs' counsel and [REDACTED] of ERISA claims and allocation of settlement fund.
0571	David Goldsmith	P	08/11/15	2.7	090	Telephone conference with Department of Labor representatives, Larry Sucharow, Mike Rogers, Nicole Zeiss, all co-counsel re: attorney fee issues; pre-call telephone conference with co-counsel; prepare for same; e-mails to co-counsel re: same; post-call discussion with Larry Sucharow, Mike Rogers, Nicole Zeiss
0655	Nicole Zeiss	P	08/11/15	0.5	090	Drafted ERISA POA concept.
1179	Michael Rogers	P	08/11/15	5.5	090	Conferences and conference calls with and e-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Garrett Bradley, Mike Thornton, Lynn Sarko, Bob Loeff, B. McTigue, Dan Chiplock and [REDACTED] re: term sheet re: status of settlement with [REDACTED]
0571	David Goldsmith	P	08/13/15	1.0	090	Telephone conference with [REDACTED], Lynn Sarko, other co-counsel re: Group Trust allocation issues; post telephone conference discussion with Mike Rogers and Nicole Zeiss re: status of settlement issues
0655	Nicole Zeiss	P	08/13/15	1.0	090	[REDACTED] call.

1179	Michael Rogers	P	08/13/15	2.1	090	Conferences with Eric Belfi, David Goldsmith and Nicole Zeiss re: status of term sheet re: governmental agencies; conference call with and e-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Dan Chiplock, Mike Lesser, Lynn Sarko, Carl Kravitz, Brian McTigue, Evan Hoffman and [REDACTED] counsel re: status of term sheet re: plan of allocation; telephone conferences with Lynn Sarko and Evan Hoffman re: same
0571	David Goldsmith	P	08/17/15	0.3	090	E-mails with Nicole Zeiss and Mike Rogers re: status of Plan of Allocation, approaching Thornton
0655	Nicole Zeiss	P	08/17/15	1.5	090	Miscellaneous emails and meetings.
1179	Michael Rogers	P	08/17/15	0.6	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Lynn Sarko, Garrett Bradley, Mike Lesser and Evan Hoffman re: draft plan of allocation
0103	Lawrence Sucharow	P	08/18/15	3.7	090	Continued revisions to settlement agreement / Term Sheet; [REDACTED]; continued discussions among co-counsel; call to depts' counsel.
1513	Elizabeth Wierzbowski	A	08/18/15	8.5	090	Research re Notice requirements for long Notice.
0103	Lawrence Sucharow	P	08/19/15	4.5	090	Continued revisions to settlement agreement / Term Sheet; continued negotiations with DOL; continued discussions among co-counsel; call to depts' counsel
0571	David Goldsmith	P	08/19/15	3.4	090	Meeting with Larry Sucharow and Nicole Zeiss re: issues on fee and expense negotiation with [REDACTED]; telephone conference with Larry Sucharow, Nicole Zeiss, Lynn Sarko, Garrett Bradley re: same; telephone conference with Nicole Zeiss [REDACTED], co-counsel re: Group Trust Plan of Allocation issues; draft proposed revision of Term Sheet re: [REDACTED] fee issues; discussions with Nicole Zeiss re: same, circulate to co-counsel
0655	Nicole Zeiss	P	08/19/15	3.5	090	Office conference with Larry Sucharow and David Goldsmith; DOL call; review ERISA concept.
1179	Michael Rogers	P	08/19/15	1.0	090	E-mails to/from David Goldsmith, Nicole Zeiss, Mike Lesser, Evan Hoffman, Lynn Sarko, Bill Paine and N. Goldstein re: negotiations with [REDACTED] re: status of term sheet
1513	Elizabeth Wierzbowski	A	08/19/15	3.5	090	Research re notice issues and individual recoveries; send email to Nicole Zeiss re same; follow-up research from David Goldsmith re same.
0655	Nicole Zeiss	P	08/20/15	2.0	090	Office conference with Lawrence Sucharow re: open issues; emails.
0655	Nicole Zeiss	P	08/20/15	3.0	090	[REDACTED] call; dealt with POA correspondence.
1179	Michael Rogers	P	08/20/15	0.3	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss and Lynn Sarko re: term sheet; re: DOL negotiations
0655	Nicole Zeiss	P	08/21/15	5.0	090	Revised settlement agreement, blow, orders.
0655	Nicole Zeiss	P	08/21/15	1.0	090	Read POA.
0571	David Goldsmith	P	08/24/15	3.3	090	Review/markup draft Settlement Agreement, Final Judgment, Preliminary Approval Order, Supplemental Agreement, Plan of Allocation; e-mails with Nicole Zeiss and Mike Rogers re: same
0655	Nicole Zeiss	P	08/24/15	4.0	090	Worked on settlement notice.
1179	Michael Rogers	P	08/24/15	2.0	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Bob Lieff, Mike Thornton and Lynn Sarko re: [REDACTED]; e-mails to/from Todd Kussin, Mike Lesser, Dan Chiplock and Evan Hoffman re: document analysis; analyze and comment re: draft stipulation of settlement and other draft settlement papers; e-mails to/from David Goldsmith and Nicole Zeiss re: same
4089	Todd Kussin	SA	08/24/15	0.5	090	Communications with co-counsel and firm's accounting division re: obtaining summary of hours spent daily by individual coders during litigation.
0103	Lawrence Sucharow	P	08/25/15	2.3	090	Continued negotiation and strategy re [REDACTED] and ERISA Allocation.

						Meeting with Nicole Zeiss re: comments on draft settlement documents; follow-up on various issues and procedural history; e-mails with Nicole Zeiss, Mike Rogers, Mike Lesser re: same and Plan of Allocation issues; review/markup revised draft Plan of Allocation
0571	David Goldsmith	P	08/25/15	4.0	090	
0655	Nicole Zeiss	P	08/25/15	3.0	090	Read and revised POA.
0655	Nicole Zeiss	P	08/25/15	2.0	090	Revised stipulation.
1179	Michael Rogers	P	08/25/15	0.6	090	E-mails to/from David Goldsmith, Nicole Zeiss and Mike Lesser re: plan of allocation
0103	Lawrence Sucharow	P	08/26/15	3.5	090	Revisions to draft settlement documents. Document understanding with [REDACTED] re terms of ERISA Allocation. Confer co-counsel.
						Progress on various settlement issues; telephone conference with [REDACTED] and co-counsel re: Plan of Allocation Group Trust issue, prepare for same, follow-on call with co-counsel re: same and ERISA fee issue; review/markup draft Plan of Allocation; circulate latest term sheet; discussions and e-mails with Nicole Zeiss and Mike Rogers, all co-counsel re: Plan of Allocation, Group Trust and ERISA fee issues; discussion with Garrett Bradley
0571	David Goldsmith	P	08/26/15	4.3	090	
0655	Nicole Zeiss	P	08/26/15	4.0	090	Revised POA; call with [REDACTED]; emails.
0655	Nicole Zeiss	P	08/26/15	4.0	090	Revised term sheet; emails.
1179	Michael Rogers	P	08/26/15	2.3	090	Conference call with David Goldsmith, Nicole Zeiss, co-counsel, ERISA counsel and [REDACTED] counsel re: plan of allocation; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, Garrett Bradley, co-counsel and ERISA counsel re: agreement with [REDACTED]
0103	Lawrence Sucharow	P	08/27/15	2.5	090	Revisions to draft settlement documents; emails co-counsel re documenting settlement terms.
0571	David Goldsmith	P	08/27/15	2.0	090	Progress on settlement issues; review co-counsel comments on ERISA fee and group trust issues; discussions and e-mails with Nicole Zeiss and co-counsel re: same
0655	Nicole Zeiss	P	08/27/15	3.0	090	Revised term sheet; worked on notice.
1179	Michael Rogers	P	08/27/15	5.5	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Dan Chiplock, Mike Lesser, Lynn Sarko, Carl Kravitz and Brian McTigue re: term sheet re: plan of allocation, re: [REDACTED]; analyze drafts of same
0655	Nicole Zeiss	P	08/28/15	3.5	090	Review of Dan's comments; read and revised orders and settlement agreement; emails.
0655	Nicole Zeiss	P	08/28/15	2.0	090	Office conference with Lawrence Sucharow; emails re changes; revised POA.
1179	Michael Rogers	P	08/28/15	3.5	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Dan Chiplock, Mike Lesser, Lynn Sarko, Carl Kravitz and Brian McTigue re: term sheet re: plan of allocation re: [REDACTED]; analyze drafts of same
0655	Nicole Zeiss	P	08/31/15	2.5	090	Revised settlement agreement.
0655	Nicole Zeiss	P	08/31/15	2.5	090	Revised POA; emails.
1179	Michael Rogers	P	08/31/15	5.6	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, co-counsel and ERISA counsel; analyze draft plan of allocation
0571	David Goldsmith	P	09/01/15	0.4	090	Review/catch-up on settlement e-mails
0655	Nicole Zeiss	P	09/01/15	3.0	090	Revised POA.
0655	Nicole Zeiss	P	09/01/15	3.0	090	Revised settlement agreement.
0655	Nicole Zeiss	P	09/01/15	1.0	090	Meetings with team.
1179	Michael Rogers	P	09/01/15	1.4	090	E-mails to/from David Goldsmith, Nicole Zeiss, Mike Lesser and Evan Hoffman re: plan of allocation; analyze same
0655	Nicole Zeiss	P	09/02/15	3.0	090	Reviewed emails; worked on stipulation.
0655	Nicole Zeiss	P	09/02/15	1.0	090	Call with [REDACTED]
1179	Michael Rogers	P	09/02/15	3.2	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Lynn Sarko and Brian McTigue re: plan of allocation and stipulation; conference call with Nicole Zeiss, co-counsel, ERISA counsel and DOL counsel re: plan of allocation

0655	Nicole Zeiss	P	09/03/15	1.0	090	Emails with team.
1179	Michael Rogers	P	09/03/15	1.0	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Lynn Sarko and Brian McTigue re: plan of allocation and stipulation
0655	Nicole Zeiss	P	09/04/15	1.0	090	Dealt with emails.
1179	Michael Rogers	P	09/04/15	0.7	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Lynn Sarko and Brian McTigue re: plan of allocation and stipulation
0571	David Goldsmith	P	09/08/15	0.2	090	Telephone conference with Nicole Zeiss re: status of Term Sheet, Settlement Agreement, [REDACTED]
0103	Lawrence Sucharow	P	09/09/15	2.7	090	Attention to Term Sheet and agreement to execute; attention to POA and status of regulatory agency positions.
0655	Nicole Zeiss	P	09/09/15	2.5	090	Dealt with open issues and term sheet; emails.
0571	David Goldsmith	P	09/10/15	0.8	090	Telephone conference with Nicole Zeiss re: status of Term Sheet, settlement discussions, [REDACTED] discussion
0655	Nicole Zeiss	P	09/10/15	2.5	090	Dealt with term sheet; [REDACTED]; emails.
1054	Cheryl Boria	PL	09/10/15	0.2	090	Assembled the Term sheet for State Street Settlement.
0655	Nicole Zeiss	P	09/11/15	1.5	090	DOL call; emails.
1179	Michael Rogers	P	09/11/15	1.3	090	Conference call with David Goldsmith, Nicole Zeiss, Lynn Sarko, Dan Chiplock, Mike Lesser and DOL counsel re: plan of allocation; analyze same
0571	David Goldsmith	P	09/11/15	3.5	090	Telephone conference with L. Sarko, Nicole Zeiss, Mike Rogers, co-counsel, S. Reilly, N. Goldstein [REDACTED] re: Plan of Allocation issues, prepare for same; post-call telephone conference with L. Sarko, Nicole Zeiss, Mike Rogers re: same; post-call discussion with Nicole Zeiss and Mike Rogers re: same; e-mails with Mike Rogers and Nicole Zeiss re: same; revise draft e-mail to Larry Sucharow re: calendar issues
0571	David Goldsmith	P	09/14/15	0.3	090	E-mails with co-counsel re: [REDACTED] L attorney's fee and term sheet issues
0103	Lawrence Sucharow	P	09/15/15	3.5	090	Attention to revisions to Plan of Allocation; communication with co-counsel; tel conf call with def't's counsel re progress at [REDACTED]; communicate with Mediator.
0571	David Goldsmith	P	09/15/15	2.0	090	Telephone conference with Larry Sucharow, Nicole Zeiss, Mike Rogers, W. Paine, Lynn Sarko re: status of settlement terms with [REDACTED] overall status; prepare for same; post-call discussion with Nicole Zeiss and Mike Rogers re: same
0655	Nicole Zeiss	P	09/15/15	3.0	090	Revised blow agreement; dealt with open issues, settlement documents.
1179	Michael Rogers	P	09/15/15	2.0	090	E-mails to/from Nicole Zeiss, David Goldsmith, Lynn Sarko, Dan Chiplock, Mike Lesser and S. Reilly re: plan of allocation and [REDACTED] analyze drafts of same
0655	Nicole Zeiss	P	09/16/15	3.0	090	Dealt with open issues on settlement papers; office conference with Lawrence Sucharow.
1513	Elizabeth Wierzbowski	A	09/16/15	3.0	090	Work on preliminary approval brief.
0655	Nicole Zeiss	P	09/17/15	4.0	090	Dealt with orders.
0655	Nicole Zeiss	P	09/17/15	1.0	090	[REDACTED] call.
1179	Michael Rogers	P	09/17/15	0.3	090	Conference with Nicole Zeiss re: plan of allocation re: preliminary approval
1513	Elizabeth Wierzbowski	A	09/17/15	1.5	090	Prepare preliminary approval brief.
1513	Elizabeth Wierzbowski	A	09/18/15	1.5	090	Work on preliminary approval brief.
0023	Eric Belfi	P	09/22/15	1.5	130	Client communications
0571	David Goldsmith	P	09/22/15	2.0	090	Telephone conference with Nicole Zeiss, co-counsel, DOL, W. Paine re: Plan of Allocation and release issues; prepare for same; pre-call telephone conference and e-mails with Nicole Zeiss and co-counsel re: Group Trust issues; post-call discussion with Nicole Zeiss re: various POA issues

0571	David Goldsmith	P	09/24/15	2.0	090	Attend settlement hearing in BNY Mellon FX action; discussion with State Street co-counsel; e-mails internally re: same
1179	Michael Rogers	P	09/24/15	0.3	090	E-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Nicole Zeiss re: settlement papers
0571	David Goldsmith	P	09/25/15	1.0	090	Telephone conference with W. Paine, Nicole Zeiss, Mike Rogers, co-counsel re: Plan of Allocation issues; review markup; prepare for same
0655	Nicole Zeiss	P	09/25/15	0.5	090	Call with State Street re POA.
1179	Michael Rogers	P	09/25/15	0.6	090	Conference call with David Goldsmith, Nicole Zeiss, Dan Chiplock, Evan Hoffman, Lynn Sarko, Carl Kravitz and Bill Paine re: same
0571	David Goldsmith	P	10/05/15	1.8	090	Review Nicole Zeiss mark-up of Plan of Allocation; meeting with Nicole Zeiss re: same; pull settlement and fee briefs in BNY
0655	Nicole Zeiss	P	10/05/15	2.0	090	Dealt with POA.
0655	Nicole Zeiss	P	10/13/15	0.5	090	Miscellaneous.
0571	David Goldsmith	P	10/14/15	0.3	090	Telephone conference with Nicole Zeiss re: status of settlement papers; review e-mail from Larry Sucharow
0655	Nicole Zeiss	P	10/14/15	2.5	090	Emails; revised POA.
0655	Nicole Zeiss	P	10/14/15	2.5	090	Emails; revised POA.
0571	David Goldsmith	P	10/16/15	0.8	090	Review B. McTigue comments on Plan of Allocation; e-mails re: same
0655	Nicole Zeiss	P	10/16/15	2.0	090	Miscellaneous emails and reviewed plan of allocation comments.
0655	Nicole Zeiss	P	11/10/15	0.5	090	Emails re POA.
0571	David Goldsmith	P	11/17/15	0.2	090	Telephone conference with Nicole Zeiss re: settlement status
0655	Nicole Zeiss	P	11/17/15	1.0	090	Call with David; email to ERISA counsel.
0655	Nicole Zeiss	P	12/04/15	0.5	090	Dealt with fee issues.
0571	David Goldsmith	P	12/21/15	0.2	090	Initial review of e-mails re: [REDACTED] Plan of Allocation comments; e-mails with Nicole Zeiss
0655	Nicole Zeiss	P	12/21/15	2.0	090	Reviewed POC and POA.
0571	David Goldsmith	P	12/22/15	0.5	090	Review [REDACTED] Plan of Allocation and associated e-mail correspondence; e-mail to Nicole Zeiss and Mike Lesser re: same
0655	Nicole Zeiss	P	01/13/16	2.0	090	Drafted POA glossary.
0571	David Goldsmith	P	01/29/16	0.3	130	E-mails internally and with co-counsel re: class size; start reviewing e-mails re: [REDACTED] on PDA
0655	Nicole Zeiss	P	01/29/16	2.5	090	Reviewed POA.
0571	David Goldsmith	P	02/01/16	1.5	090	Review [REDACTED] comments and questions on Plan of Allocation and Glossary; review Nicole Zeiss and Mike Lesser comments; e-mail to Nicole Zeiss, Mike Rogers and Mike Lesser with reaction and comments
1179	Michael Rogers	P	02/01/16	1.2	090	E-mails to/from David Goldsmith, Nicole Zeiss and Mike Lesser re: draft plan of allocation re: [REDACTED] issues re: same
0571	David Goldsmith	P	02/02/16	0.2	080	Review Nicole Zeiss correspondence to ABData requesting proposal; telephone conference with Nicole Zeiss re: same
0655	Nicole Zeiss	P	02/02/16	2.5	090	Drafted email to Chiplock; letter to AB Data.
1179	Michael Rogers	P	02/02/16	1.1	090	E-mails to/from David Goldsmith, Nicole Zeiss, Dan Chiplock and Mike Lesser re: draft plan of allocation re: [REDACTED] issues re: same
0571	David Goldsmith	P	02/03/16	0.9	090	Telephone conference with T. Glenn, E. Schachter, P. Sauberer, E. Miller, Nicole Zeiss, Mike Rogers, Mike Lesser re: claims administration issues
0655	Nicole Zeiss	P	02/03/16	2.5	090	Mail to Lynn re POC revision; call with AB Data.
1179	Michael Rogers	P	02/03/16	1.3	090	Conferences, conference calls and telephone calls with David Goldsmith, Nicole Zeiss, Mike Lesser, Dan Chiplock, Lynn Sarko and Tom Glenn re: plan of allocation re: data issues re: same

1513	Elizabeth Wierzbowski	A	02/03/16	0.5	090	Call with AB Data.
1179	Michael Rogers	P	03/02/16	0.5	090	E-mails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss and Angelica Crisci re: status of settlement
0571	David Goldsmith	P	03/07/16	0.2	090	E-mails with Nicole Zeiss and Mike Rogers re: settlement and press release issues
0655	Nicole Zeiss	P	03/07/16	1.0	090	Emails re press release.
1179	Michael Rogers	P	03/07/16	0.7	090	E-mails to/from David Goldsmith and Nicole Zeiss re: settlement issues
0571	David Goldsmith	P	03/15/16	0.5	090	Review draft non-ERISA FX instruction letter from client to SST; e-mails with Larry Sucharow, Mike Rogers, Eric Belfi, Garrett Bradley re: same
1179	Michael Rogers	P	03/15/16	1.0	090	Analyze proposed SST FX trading agreement as re: settlement; e-mails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Garrett Bradley re: same
0655	Nicole Zeiss	P	03/16/16	1.5	090	Emails re fee.
0571	David Goldsmith	P	03/17/16	0.4	090	E-mails with Nicole Zeiss and Mike Rogers re expense, vendor, fee percentage issues.
0655	Nicole Zeiss	P	03/17/16	2.5	090	Dealt with expenses and fees.
0655	Nicole Zeiss	P	03/18/16	1.0	090	Dealt with NDA.
1179	Michael Rogers	P	03/18/16	0.5	090	Conference with Nicole Zeiss re: settlement papers
0655	Nicole Zeiss	P	03/21/16	0.5	090	Dealt with press release.
0655	Nicole Zeiss	P	03/23/16	1.0	090	Dealt with NDA.
0655	Nicole Zeiss	P	03/24/16	1.0	090	Dealt with NDA and POA.
1179	Michael Rogers	P	03/24/16	1.2	090	Analyze redline of DOL markup of plan of allocation; e-mails to/from David Goldsmith, Nicole Zeiss and Mike Lesser re: same
0655	Nicole Zeiss	P	03/28/16	0.5	090	Call with Copley.
0655	Nicole Zeiss	P	04/08/16	4.0	090	Call with Wilmer; emails.
1179	Michael Rogers	P	04/08/16	0.7	090	Emails to/from Larry Sucharow, David Goldsmith, Nicole Zeiss, Mike Lesser and Tom Glenn re settlement papers, re data re same
0571	David Goldsmith	P	04/11/16	1.5	090	Review rider to NDA on class data; e-mails with Nicole Zeiss and Mike Rogers re same; review latest markup of Plan of Allocation; meeting with Nicole Zeiss and Mike Rogers re settlement status and strategy, outstanding issues
0655	Nicole Zeiss	P	04/11/16	8.0	090	Dealt with NDA, drafts, emails, meetings.
1179	Michael Rogers	P	04/11/16	1.3	120	Conference with and e-mails to/from Larry Sucharow, Eric Belfi, Nicole Zeiss, David Goldsmith and Dan Chiplock re: settlement papers and data
0103	Lawrence Sucharow	P	04/12/16	4.5	090	Review defendant's comments to settlement papers.
0571	David Goldsmith	P	04/12/16	0.8	090	Telephone conference with T. Perla, E. Miller, M. Harlow, Nicole Zeiss, Dan Chiplock, Mike Lesser re SST data for claims process; prepare for same; post-call telephone conference with Nicole Zeiss re same.
0655	Nicole Zeiss	P	04/12/16	3.0	090	Call re data; review of papers.
1179	Michael Rogers	P	04/12/16	0.8	120	Telephone conference with Larry Sucharow, Eric Belfi and Nicole Zeiss re: settlement papers and notice
0103	Lawrence Sucharow	P	04/13/16	4.5	090	Review defendant's comments to settlement papers.
0571	David Goldsmith	P	04/13/16	2.6	090	Review defendants' comments on Settlement Agreement, Supplemental Agreement, Plan of Allocation, Preliminary Approval Order, Final Judgment; e-mails re POA issues.
0655	Nicole Zeiss	P	04/13/16	2.0	090	Review of papers.
0103	Lawrence Sucharow	P	04/14/16	2.5	090	Conference call with plaintiffs' counsel re defendants' proposed changes to settlement documents; continued review of settlement documents.

0571	David Goldsmith	P	04/14/16	2.5	090	Telephone conference with Larry Sucharow, Nicole Zeiss, Garrett Bradley, Mike Lesser re settlement document policy issues; follow-up telephone conference with Nicole Zeiss and Mike Lesser re settlement document technical and editing issues; prepare for same
0655	Nicole Zeiss	P	04/14/16	2.0	090	Prepare for call; call.
0655	Nicole Zeiss	P	04/14/16	1.0	090	Dealt with NDA and miscellaneous.
0571	David Goldsmith	P	04/15/16	2.5	090	Telephone conference with all plaintiffs' counsel re settlement documents; settlement funding, plan of allocation, other issues; prepare for same post-call e-mails with all counsel; Larry Sucharow and Nicole Zeiss re same; discussions with Nicole Zeiss and Mike Rogers re same.
1179	Michael Rogers	P	04/15/16	0.6	090	Emails to/from Larry Sucharow, Eric Belfi, David Goldsmith and Nicole Zeiss re communications with opposing counsel & co-counsel re settlement papers
0571	David Goldsmith	P	04/19/16	1.5	090	Discussion and e-mails with Nicole Zeiss re status and SEC allocation issues; e-mails with Nicole Zeiss, Mike Rogers, Todd Kussin re document production page and document count issues; e-mails to K. Dugar and co-counsel re inquiry re same; e-mail to Nicole Zeiss re client attendance at mediations.
0655	Nicole Zeiss	P	04/19/16	2.0	090	Conversation with David Goldsmith; emails.
0655	Nicole Zeiss	P	04/19/16	8.0	090	Revised settlement agreement.
1179	Michael Rogers	P	04/19/16	1.0	090	E-mails to/from David Goldsmith, Nicole Zeiss and Todd Kussin re: documents produced in this case
4089	Todd Kussin	SA	04/19/16	1.5	090	Exchanged emails with David Goldsmith, Mike Rogers, and Nicole Zeiss in order to verify number of pages and documents produced by Arkansas Teacher Retirement System ("ATRS") to defendants during the course of this litigation; exchanged emails re: same with vendor Precision Discovery; conducted searches throughout prior emails and documents contained on shared drive in order to determine number of documents produced by ATRS as well as in order to identify production letters to defendants revealing the date of the final production.
1225	Stacy Auer	PL	04/19/16	0.3	090	Convos w/ Todd Kussin and IT re: productions, files and shared drive access;
0571	David Goldsmith	P	04/20/16	1.0	090	Review Nicole Zeiss markup of settlement agreement; telephone conference with Nicole Zeiss re same; e-mails with Nicole Zeiss and Mike Rogers re: mediations client attended.
0655	Nicole Zeiss	P	04/20/16	3.0	090	Worked on settlement agreement.
0655	Nicole Zeiss	P	04/20/16	1.0	090	Worked on expenses and numbers.
1179	Michael Rogers	P	04/20/16	0.6	090	E-mails to/from Todd Kussin and Aaron Patton re: documents produced in this case
0571	David Goldsmith	P	04/21/16	0.4	090	E-mails with Mike Lesser and Nicole Zeiss re Plan of Allocation and de minimus provision issues.
0655	Nicole Zeiss	P	04/21/16	6.0	090	Worked on POA.
0655	Nicole Zeiss	P	04/21/16	3.0	090	Worked on settlement agreement.
1179	Michael Rogers	P	04/21/16	1.8	090	Emails to/from David J. Goldsmith, Nicole M. Zeiss, Dan Chiplock, & Todd Kussin re documents produced and reviewed.
0571	David Goldsmith	P	04/22/16	1.5	010	Telephone conference and e-mails with Nicole Zeiss re settlement agreement and document production issues; discussion with Mike Rogers re same.
0571	David Goldsmith	P	04/22/16	1.5	010	Telephone conference and e-mails with Nicole Zeiss re settlement agreement and document production issues; discussion with Mike Rogers re same
0571	David Goldsmith	P	04/22/16	0.5	090	Telephone conference and e-mails with Nicole Zeiss re settlement agreement and document production issues; discussion with Mike Rogers re same
0655	Nicole Zeiss	P	04/22/16	3.0	090	Revised settlement agreement; emails.
1179	Michael Rogers	P	04/22/16	1.3	090	Analyze draft settlement papers; emails to/from Lawrence Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, Mike Lesser & Dan Chiplock re same.

0103	Lawrence Sucharow	P	04/25/16	3.7	090	Prepare for final drafting session of settlement documents with defendants.
0446	Joel Bernstein	P	04/25/16	4.0	090	Review/markup Plan of Allocation; e-mails with Nicole Zeiss and co-counsel re same; e-mails with Nicole Zeiss and Mike Rogers re co-counsel expenses issues; review markup of Settlement Agreement and Nicole Zeiss comments; prepare for Tuesday call.
0571	David Goldsmith	P	04/25/16	4.0	090	Review/markup Plan of Allocation; e-mails with Nicole Zeiss and co-counsel re same; e-mails with Nicole Zeiss and Mike Rogers re co-counsel expenses issues; review markup of Settlement Agreement and Nicole Zeiss comments; prepare for Tuesday call
1179	Michael Rogers	P	04/25/16	0.8	090	Analyze draft settlement papers; emails to/from Lawrence Sucharow, Eric Belfi, David Goldsmith, Nicole Zeiss, Mike Lesser and Dan Chiplock re same.
0023	Eric Belfi	P	04/26/16	1.0	130	Updated client on the case
0103	Lawrence Sucharow	P	04/26/16	2.5	090	Prepare for and participate in for final drafting session of settlement documents with defendants.
0571	David Goldsmith	P	04/26/16	1.5	090	Telephone conference with T. Perla, Larry Sucharow, Nicole Zeiss, C. Kravitz, D. Chiplock re Settlement Agreement issues; prepare for same; post-call e-mails with Nicole Zeiss re same.
0571	David Goldsmith	P	04/29/16	0.6	080	Review Defendants' Plan of Allocation markup; e-mails re same.
0571	David Goldsmith	P	05/02/16	1.0	080	Review defendants' comments and markup on Settlement Agreement; e-mails with co-counsel.
0655	Nicole Zeiss	P	05/02/16	3.5	090	Reviewed Wilmer comments.
1179	Michael Rogers	P	05/02/16	1.3	090	Emails to/from Lawrence A. Sucharow, David J. Goldsmith, Nicole M. Zeiss, Dan Chiplock, & Mike Lesser re settlement papers.
0655	Nicole Zeiss	P	05/03/16	4.0	090	Dealt with Wilmer comments, review of volume
0655	Nicole Zeiss	P	05/04/16	4.0	090	Dealt with escrow issues, dealt with fee issues.
0655	Nicole Zeiss	P	05/05/16	4.0	090	Call with defendants, reviewed stipulation; email about fee.
0655	Nicole Zeiss	P	05/06/16	3.0	090	Dealt with fee issues.
0655	Nicole Zeiss	P	05/09/16	2.0	090	Office conference with Larry, worked on fee provision, emails.
0655	Nicole Zeiss	P	05/10/16	1.0	090	Miscellaneous emails regarding fee provisions.
0023	Eric Belfi	P	05/11/16	1.0	010	Researched the case.
0655	Nicole Zeiss	P	05/11/16	2.0	090	Emails regarding fee, call with Larry, call with Paine.
0655	Nicole Zeiss	P	05/12/16	1.5	090	Dealt with Department of Labor issues.
0571	David Goldsmith	P	05/13/16	1.1	090	Telephone conference with Nicole Zeiss, Lynn Sarko, D. Copley, C. Kravitz, S. Reilly, N. Goldstein re Plan of Allocation and settlement issues; post-call discussion with Nicole Zeiss
0655	Nicole Zeiss	P	05/13/16	0.8	090	Call with [REDACTED]
0655	Nicole Zeiss	P	05/13/16	1.3	090	Miscellaneous regarding Department of Labor and drafts.
0655	Nicole Zeiss	P	05/14/16	1.5	090	Emails regarding Seth.
1179	Michael Rogers	P	05/16/16	1.4	090	Emails to/from Lawrence A. Sucharow, Eric J. Belfi, David J. Goldsmith, Nicole M. Zeiss and Garrett Bradley re settlement papers.
1225	Stacy Auer	PL	05/17/16	0.2	010	review conflict check;
0655	Nicole Zeiss	P	05/20/16	2.0	090	Emails regarding fees and blow.
0655	Nicole Zeiss	P	05/20/16	3.5	090	Drafted correct agreements.
0655	Nicole Zeiss	P	05/20/16	3.0	090	Revised settlement agreement.
1179	Michael Rogers	P	05/20/16	2.0	090	Emails to/from Lawrence A. Sucharow, Eric J. Belfi, David J. Goldsmith, Nicole M. Zeiss and Garrett Bradley re settlement papers.
0655	Nicole Zeiss	P	05/21/16	2.0	090	Emails regarding blow.
0571	David Goldsmith	P	05/22/16	0.7	090	Review e-mails re opt-out/blow issues; e-mails with Nicole Zeiss

0571	David Goldsmith	P	05/23/16	1.8	090	Discussions with Nicole Zeiss re blow provision/opt-out issues and strategy; e-mails re same; review Nicole Zeiss latest settlement agreement and exhibit markups.
0655	Nicole Zeiss	P	05/23/16	4.0	090	Dealt with settlement documents.
0571	David Goldsmith	P	05/24/16	2.5	090	Discussions with Nicole Zeiss re POA and blow provision issues and strategy; telephone conference with Nicole Zeiss and T. Perla re POA and blow provision issues.
0655	Nicole Zeiss	P	05/24/16	3.5	090	Dealt with revisions.
0655	Nicole Zeiss	P	05/25/16	6.0	090	Dealt with notice.
1179	Michael Rogers	P	05/25/16	1.4	120	Analyze & comment on draft long form notice; emails to/from Christopher J. Keller, Eric J. Belfi, David J. Goldsmith, Nicole M. Zeiss, Garrett Bradley, and Mike Lesser re same.
0655	Nicole Zeiss	P	05/26/16	0.6	090	Dealt with blow; dealt with Department of Labor issues.
0655	Nicole Zeiss	P	05/26/16	0.8	090	Dealt with notices, emails.
1179	Michael Rogers	P	05/26/16	1.0	090	Analyze Mike Lesser's comments to draft notice; emails to/from David J. Goldsmith, Nicole M. Zeiss and Mike Lesser re same.
0571	David Goldsmith	P	05/27/16	0.8	090	E-mails re individual notice issues
0655	Nicole Zeiss	P	05/27/16	3.5	090	Dealt with Wilmer comments, sent revisions to Wilmer and group.
1179	Michael Rogers	P	05/27/16	1.2	090	Emails to/from David J. Goldsmith, Nicole M. Zeiss and Mike Lesser re notice, re settlement papers; analyze same.
0103	Lawrence Sucharow	P	05/30/16	3.0	090	Continued revisions to draft settlement documents; confer with Nicole Zeiss.
0571	David Goldsmith	P	05/30/16	2.0	090	Review latest draft Settlement Agreement; review/markup draft long-form Notice; e-mail to Nicole Zeiss, Mike Lesser, Mike Rogers
0103	Lawrence Sucharow	P	05/31/16	2.5	090	Continue revisions to draft settlement documents; confer with Nicole Zeiss.
0571	David Goldsmith	P	05/31/16	2.0	080	Telephone conference with Larry Sucharow, W. Paine, T. Perla, Garrett Bradley, Nicole Zeiss re settlement, plan of allocation outstanding issues; next steps; post call discussion re same; e-mails with Nicole Zeiss, Mike Lesser, others re various settlement documents issues.
0655	Nicole Zeiss	P	05/31/16	4.0	090	Worked on settlement documents.
1179	Michael Rogers	P	05/31/16	1.4	090	Emails to/from David J. Goldsmith, Nicole M. Zeiss and Mike Lesser re settlement papers and edits thereto.
0103	Lawrence Sucharow	P	06/01/16	5.0	090	Continued revisions to draft settlement documents; telephone call with defendants counsel regarding outstanding issues; continued discussions among Plaintiffs counsel regarding deal terms.
0571	David Goldsmith	P	06/01/16	1.2	090	Review/mark-up latest draft long-form Notice; discussion with Nicole Zeiss re same.
0655	Nicole Zeiss	P	06/01/16	3.0	090	Dealt with settlement documents.
1225	Stacy Auer	PL	06/01/16	0.3	140	Emails and convos re: precision invoice;
0571	David Goldsmith	P	06/02/16	4.1	080	E-mails with Larry Sucharow, Nicole Zeiss, Mike Rogers, Mike Lesser, others re dates for filing preliminary approval motion and hearing, planning for filing, various settlement agreement and plan of allocation issues; review latest draft settlement agreement and plan of allocation; telephone conference with Nicole Zeiss re same; e-mails with Nicole Zeiss and Mike Lesser re preliminary approval brief issues.
0655	Nicole Zeiss	P	06/02/16	6.5	090	Worked on documents, emails.
1179	Michael Rogers	P	06/02/16	4.4	090	Analyze and comment on settlement papers; emails to/from Lawrence A. Sucharow, David J. Goldsmith, Nicole M. Zeiss, Garrett Bradley, and Mike Lesser re preliminary approval; re briefing re same.
0571	David Goldsmith	P	06/03/16	5.0	080	E-mails with Nicole Zeiss, Mike Rogers, Mike Lesser re preliminary approval motion issues and strategy; review BNYM preliminary approval brief; case law research re preliminary approval; discussions with Nicole Zeiss and Mike Rogers re same; attention to various issues.
0655	Nicole Zeiss	P	06/03/16	4.0	090	Worked on brief.

0655	Nicole Zeiss	P	06/03/16	3.0	090	Revised papers.
1179	Michael Rogers	P	06/03/16	1.4	090	Emails to/from David J. Goldsmith, Nicole M. Zeiss and Mike Lesser re plan of allocation; re preliminary approval brief; telephone conference with David J. Goldsmith re same.
0571	David Goldsmith	P	06/05/16	1.5	090	Review case law and materials for preliminary approval motion.
0571	David Goldsmith	P	06/06/16	9.7	090	Research/draft preliminary approval brief; factual research; e-mails with Larry Sucharow, Nicole Zeiss, Mike Rogers, Mike Lesser re percentage-of-recovery issues; address June 2 letter to Court and order re June 23 status conference; e-mail to defendants re status report.
0655	Nicole Zeiss	P	06/06/16	5.0	090	Revised documents, emails.
1179	Michael Rogers	P	06/06/16	2.7	090	Emails to/from David J. Goldsmith, Nicole M. Zeiss and Mike Lesser re settlement papers; emails to/from Lawrence A. Sucharow, David J. Goldsmith, Nicole M. Zeiss and Garrett J. Bradley re court order re preliminary approval and status report; analyze drafts of same.
1225	Stacy Auer	PL	06/06/16	0.4	090	Pull, review and circulate letter to the court re timing of prelim approval papers and requesting hearing; convo re: same; review / maintain emails and update filesite;
4089	Todd Kussin	SA	06/06/16	0.7	090	Per requests by David Goldsmith and Michael Rogers, began reviewing past correspondence with partners and reviewers as well as saved work product by reviewers in order to identify communications revealing the types, sources, and subject matters of documents analyzed by reviewers during the course of the discovery process.
1517	Lawrence Mehringer	PL	06/06/16	0.5	140	Setting up C.Boria and N.Zeiss to receive ECF Notifications for state street case and review of rules regarding need to file all pleadings by 6:00PM in preparation of e-filing of brief for N.Zeiss.
0571	David Goldsmith	P	06/07/16	12.3	090	Research/draft preliminary approval brief; discussions and e-mails with Larry Sucharow, Nicole Zeiss, Mike Rogers; e-mails with co-counsel re timing of motion and hearing.
0655	Nicole Zeiss	P	06/07/16	7.0	090	Revised documents, emails about developments.
1179	Michael Rogers	P	06/07/16	4.1	090	Telephone conference with David J. Goldsmith re document production from ARTS; emails to/from David J. Goldsmith and Todd Kussin re same; analyze State Street Corporation edits to long form notice; emails to/from David J. Goldsmith, Nicole M. Zeiss, and Mike Lesser re same.
1225	Stacy Auer	PL	06/07/16	0.4	090	Review letter to Court and calendar dates; prep for team meeting; convo re: same; update filesite;
4089	Todd Kussin	SA	06/07/16	1.8	090	Per requests by David Goldsmith and Michael Rogers, reviewed past correspondence with partners and reviewers as well as saved work product by reviewers in order to create summary of types, sources, and subject matters of documents analyzed by reviewers during the course of the discovery process as well as the timing of such reviews; drafted email to Messrs. Goldsmith and Rogers describing same; reviewed prior email communications as well as notes in order to supply Mr. Goldsmith with the total number of documents and pages produced by State Street to ARTS during the discovery period as well as the total number of documents and pages produced by ARTS to State Street.
0571	David Goldsmith	P	06/08/16	4.8	090	Circulate preliminary approval brief internally; Telephone conference with Nicole Zeiss re comments; review/revise draft brief; address comments from D. Chiplock and M. Lesser, e-mails re same; draft notice of motion and affidavit
0655	Nicole Zeiss	P	06/08/16	2.5	090	Read and revised preliminary approval brief.
0655	Nicole Zeiss	P	06/08/16	1.5	090	Miscellaneous emails regarding documents.
0655	Nicole Zeiss	P	06/08/16	1.0	090	Call with [REDACTED]
1054	Cheryl Boria	PL	06/08/16	3.5	090	Began Fact Checking and cite checking the State Street Preliminary Approval Brief. Generated a pro hac vice motion for Nicole Zeiss for admission.

1179	Michael Rogers	P	06/08/16	1.0	090	Emails to/from Lawrence A. Sucharow, David J. Goldsmith, Nicole M. Zeiss, and Mike Lesser re preliminary approval brief; re settlement papers; analyze both.
0103	Lawrence Sucharow	P	06/09/16	3.7	090	Continue revisions to settlement documents; conference call [REDACTED]; call defendants' counsel.
0103	Lawrence Sucharow	P	06/09/16	2.5	090	Continue revisions to settlement documents.
0571	David Goldsmith	P	06/09/16	1.0	090	Discussions with Nicole Zeiss re status of settlement papers and preliminary approval brief; e-mails with Larry Sucharow re timing; e-mails with Eric Belfi re client coordination.
0655	Nicole Zeiss	P	06/09/16	4.0	090	Prepared execution set.
1179	Michael Rogers	P	06/09/16	1.0	090	Emails to/from Nicole M. Zeiss, David J. Goldsmith and Mike Lesser re settlement papers and preliminary approval brief.
1225	Stacy Auer	PL	06/09/16	0.5	050	Emails and convos re: prep of prelim approval brief; review same;
0571	David Goldsmith	P	06/10/16	4.5	090	Meeting with Nicole Zeiss re status of settlement papers and preliminary approval motion; recent e-mails; draft DOL letter; e-mail to wider plaintiff group re same; review paralegal edits and TOC/TOC on brief
0655	Nicole Zeiss	P	06/10/16	1.0	090	Miscellaneous emails, call with [REDACTED]
1179	Michael Rogers	P	06/10/16	1.4	090	Emails to/from Nicole M. Zeiss, David J. Goldsmith and Mike Lesser re settlement papers and preliminary approval brief; analyze same.
0571	David Goldsmith	P	06/12/16	0.3	090	Revise preliminary approval motion papers to put into Larry Sucharow name.
0571	David Goldsmith	P	06/12/16	0.3	060	E-mails with Larry Sucharow re June 23 hearing planning.
0571	David Goldsmith	P	06/13/16	3.0	080	Progress on settlement papers and preliminary approval motion; e-mails internally and with co-counsel re status; e-mail to defendants with draft Joint Status Report; discussion with Garrett Bradley re same; review draft DOL letter; e-mail to wider plaintiff group re same; review paralegal edits and TOC/TOC on brief
1179	Michael Rogers	P	06/13/16	1.6	090	Emails to/from Lawrence A. Sucharow, Eric J. Belfi, David J. Goldsmith, Nicole M. Zeiss, co-counsel, and ERISA counsel re settlement papers & status conference.
0103	Lawrence Sucharow	P	06/14/16	3.5	090	Attention to final adjustments to settlement papers; telephone call defendants counsel; updates to plaintiffs counsel.
0571	David Goldsmith	P	06/14/16	2.7	090	Review Joint Status Report and preliminary approval papers; e-mails with T. Perla re certificate of conference; e-mails and discussion with Nicole Zeiss re same and status; e-mails with Larry Sucharow and co-counsel re same.
0571	David Goldsmith	P	06/14/16	2.5	010	Review/analyze ARTRS reimbursement communication from SST; e-mail re analysis of reimbursement of Plymouth and ARTRS SWIFT outside of contractual SOL; research re class cert of contractual claims.
0655	Nicole Zeiss	P	06/14/16	1.0	090	Emails regarding open issues call.
1225	Stacy Auer	PL	06/14/16	0.6	140	Emails re: Exhibits for Preliminary Approval Motion; Convos re: e-filing; prep same; prep for team meeting; pull, review and distribute BNY Mellon FX article from Law360 and accompanying documents;
0103	Lawrence Sucharow	P	06/15/16	3.7	090	Information from defendants counsel that some of the figures for ERISA plans may be incorrect; identification of issues; conference call defendants counsel; telephone, email plaintiffs counsels; attention to new issue and scheduling.
0571	David Goldsmith	P	06/15/16	4.2	090	Attention to settlement issue re potentially misidentified ERISA class members; Telephone conference with Larry Sucharow re same and strategy; discussions, e-mails, Telephone conferences with Nicole Zeiss re same; discussion with Stacy Auer re same; e-mails with co-counsel re same; e-mails with all co-counsel re same; address letter to Court re extension to file Joint Status Report; meeting with G. Hopkins, Eric Belfi, Nicole Zeiss re same and overall status of settlement.
0655	Nicole Zeiss	P	06/15/16	2.0	090	Emails and calls regarding developments, meeting with ARTRS.

1179	Michael Rogers	P	06/15/16	1.3	090	Conferences with Eric J. Belfi, David J. Goldsmith and Nicole M. Zeiss; emails to/from David J. Goldsmith and Nicole M. Zeiss re data analysis, and re potential changes to plan of allocation; re status of settlement briefing.
1225	Stacy Auer	PL	06/15/16	1.4	090	Emails and convos re: SST issues with settlement papers; email w/ managing clerk re: same; pull, circulate and track dates from letter request re: deadline to e-file settlement papers;
1517	Lawrence Mehringer	PL	06/15/16	0.8	140	Calls to court regarding L.Sucharow ECF account issues and review of filing mechanics and format, and drafting and forwarding e-mail re same re Notice of Motion for preliminary Approval of settlement and Status report to be to S.Auer as filing may occur during L.Mehringer absence.
0103	Lawrence Sucharow	P	06/16/16	4.7	090	Continued investigation into new categorization issue and its implications for settlement and scheduling.
0571	David Goldsmith	P	06/16/16	2.5	090	Progress on settlement issues; update Joint Status Report and preliminary approval motion; discussions with Nicole Zeiss re: same; telephone conference with Larry Sucharow, Nicole Zeiss, D. Halston re class member miscategorization issue; pre and post-call discussions with Larry Sucharow and Nicole Zeiss re same; e-mails re same; discs with S. Auer re status and filing issues.
0655	Nicole Zeiss	P	06/16/16	1.3	090	Email to group regarding Department of Labor; call with Wilmer; emails.
1225	Stacy Auer	PL	06/16/16	4.1	050	Emails re: Sucharow's ECF login; mock filings; convos and emails re: same; prep exhibits; review judge's rules and local and ecf rules;
0571	David Goldsmith	P	06/17/16	0.7	080	Telephone conference with Nicole Zeiss; e-mails with Garrett Bradley re settlement status; update preliminary approval brief; discussions with Stacy Auer re filing logistics.
0655	Nicole Zeiss	P	06/17/16	0.6	090	Emails regarding updates, [REDACTED]
0655	Nicole Zeiss	P	06/17/16	0.5	090	Revised press release.
1225	Stacy Auer	PL	06/17/16	3.4	090	Prep / proofread instructions to e-file Joint Status Report and Preliminary Approval Papers; assist in prep of docs; review docs and all titles; mock filing of all docs; various emails and convos w/ David Goldsmith re: same; prep for 6/22/16 team meeting; email to IT re: access to shared drive for Stacy Redman; convos w/ word processing re: hyperlinks in docs for e-filing;
0103	Lawrence Sucharow	P	06/20/16	3.5	090	Attention to final issues regarding settlement and court submissions.
0571	David Goldsmith	P	06/20/16	2.5	090	Address issues re misclassification of Other/ERISA class members; discs and e-mails Larry Sucharow, Nicole Zeiss, others re same; telephone conference with T. Perla and Nicole Zeiss; revise preliminary approval papers and update joint status report; prepare two versions.
0655	Nicole Zeiss	P	06/20/16	6.0	090	Miscellaneous emails, office conference, calls regarding status.
0655	Nicole Zeiss	P	06/20/16	2.0	090	Revised notice, reviewed stipulation, emails.
1179	Michael Rogers	P	06/20/16	0.9	090	Conferences and telephone conferences with Lawrence A. Sucharow, Christopher J. Keller, Nicole M. Zeiss and Garrett J. Bradley re settlement papers and preliminary approval.
0103	Lawrence Sucharow	P	06/21/16	4.8	090	Attention to several new threatening issues regarding [REDACTED] (ERISA claimants) and [REDACTED] telephone defendants' counsel; conference call with plaintiffs counsel. Attention to revised Status report.
0571	David Goldsmith	P	06/21/16	4.0	090	Progress on misclassification of class members issue; meeting with Nicole Zeiss and Garrett Bradley re new [REDACTED] issue; e-mails with co-counsel re same; planning for status conference/preliminary approval hearing; revise proposed Scheduling Order and circulate; negotiate Joint Status Report with defendants, discs and e-mails with defendants and co-counsel, finalize and file; e-mails re same.
0655	Nicole Zeiss	P	06/21/16	3.0	090	Calls regarding status, dealt with report.
1179	Michael Rogers	P	06/21/16	1.5	090	Emails to/from Lawrence A. Sucharow, David J. Goldsmith, Nicole M. Zeiss, Mike Lesser, and Dan Chiplock re preliminary approval and status report.

1517	Lawrence Mehringer	PL	06/21/16	1.0	140	E-filing of Status report for N.Zeiss and D.Goldsmith.
0571	David Goldsmith	P	06/22/16	3.0	060	Prepare for Status Conference; draft proposed order; e-mails re same; telephone conference with co-counsel re status of discussions with [REDACTED]
0655	Nicole Zeiss	P	06/22/16	1.0	090	Call with ERISA, emails.
0571	David Goldsmith	P	06/23/16	11.2	060	Attend/argue Status Conference before Judge Wolf, prepare for same; pre-conference meeting with co-counsel; post-conference discussions with co-counsel; discussion with Law360 reporter; e-mails internally and with co-counsel re same; round-trip travel to Boston
0655	Nicole Zeiss	P	06/23/16	1.0	090	Emails regarding hearing and CAFA.
0571	David Goldsmith	P	06/24/16	1.3	090	Address Order with filing deadline and hearing dates; revise preliminary approval brief; e-mails with co-counsel re same.
0366	Ira Schochet	P	06/27/16	0.1	130	Attend team meeting re: litigation strategy.
0446	Joel Bernstein	P	06/27/16	0.1	130	Attend team meeting re: litigation strategy
0571	David Goldsmith	P	06/27/16	0.1	130	Attend team meeting re: litigation strategy
1225	Stacy Auer	PL	06/27/16	0.5	130	Prep for and attend team meeting re: litigation strategy; review emails and files re settlement; pull, review, and circulate scheduling order and track dates on calendar; review docket and files; update filesite;
1450	Reka Viczian	PL	06/27/16	0.1	130	Attend team meeting re: litigation strategy.
4021	Maureen Flanigan	SA	06/27/16	0.1	130	Attend team meeting re: Litigation Strategy.
0571	David Goldsmith	P	06/29/16	0.3	090	E-mails with E Belfi and N Zeiss re D. Chiplock inquiry on fee request.
0655	Nicole Zeiss	P	06/29/16	0.3	090	Miscellaneous administrative emails.
1450	Reka Viczian	PL	06/29/16	0.4	140	Review emails and update FileSite.
0571	David Goldsmith	P	06/30/16	0.8	090	Review and circulate transcript of Status Conference; review recent e-mails from N Zeiss
0571	David Goldsmith	P	07/01/16	0.2	140	Send status conference transcript to all co-counsel; e-mails with Dan Chiplock.
1450	Reka Viczian	PL	07/05/16	0.4	140	Multiple communications and filling out of papers to obtain hearing transcript.
0571	David Goldsmith	P	07/08/16	1.2	090	E-mails with Larry Sucharow and Garrett Bradley re increase fee request issues; analysis re model for increased fee.
0655	Nicole Zeiss	P	07/12/16	0.5	090	Emails regarding fees; office conference with Larry Sucharow.
1517	Lawrence Mehringer	PL	07/12/16	0.7	140	Review of pro hac vice application of N.Zeiss in preparation for e-filing and then e-filing of same for C.Boria and N.Zeiss.
1517	Lawrence Mehringer	PL	07/12/16	0.4	140	Registering N.Zeiss for an ECF Account after her pro hac vice application had been so ordered in compliance with the court's rules.
0655	Nicole Zeiss	P	07/14/16	0.5	090	Emails regarding brief.
0655	Nicole Zeiss	P	07/14/16	2.0	090	Miscellaneous settlement issues.
0571	David Goldsmith	P	07/18/16	1.8	090	Update preliminary approval motion; telephone conference with Nicole Zeiss re settlement status and open issues.
0571	David Goldsmith	P	07/19/16	2.2	090	Telephone conference with D. Halston, M. Lesser, Nicole Zeiss re preliminary approval brief/BNYM settlement issues; Telephone conference with Larry Sucharow, Nicole Zeiss, C. Kravitz, L. Sarko re status of open issues with [REDACTED]; update preliminary approval papers.
0655	Nicole Zeiss	P	07/19/16	1.0	090	Calls regarding final issues.
0103	Lawrence Sucharow	P	07/20/16	3.5	090	Attention to last minute settlement allocation issues with [REDACTED] and State Street.
0571	David Goldsmith	P	07/20/16	1.0	090	E-mails internally re: settlement issues
1450	Reka Viczian	PL	07/20/16	0.6	140	Review emails and update FileSite; check docket for new filings.
0023	Eric Belfi	P	07/21/16	0.7	130	Provided client an update.
0103	Lawrence Sucharow	P	07/21/16	4.5	090	Attention to last minute settlement allocation issues with [REDACTED] and State Street. Telephone calls.

0655	Nicole Zeiss	P	07/21/16	2.0	090	Dealt with Notice
0103	Lawrence Sucharow	P	07/22/16	8.2	090	Attention to last minute settlement allocation issues with DOL and State Street.
0571	David Goldsmith	P	07/22/16	0.5	090	E-mails with Nicole Zeiss re: settlement issues
0655	Nicole Zeiss	P	07/22/16	11.5	090	Dealt with POA, Notice, revised docs
0103	Lawrence Sucharow	P	07/23/16	3.5	090	New emails between LAS and defendants' counsel, telephone calls with defendants' counsel, emails to plaintiffs' counsel and DOL, regarding problems from miscalculation of ERISA volume and its impact on the POA.
0571	David Goldsmith	P	07/23/16	0.3	090	E-mails with Nicole Zeiss re: settlement issues
0655	Nicole Zeiss	P	07/23/16	1.0	090	Dealt with POA
0103	Lawrence Sucharow	P	07/24/16	2.0	090	Continued attention to issues arising under the POA in light of ERISA volume calculations and new agreement with [REDACTED]
0571	David Goldsmith	P	07/25/16	6.0	090	Revise preliminary approval brief re defendants' comments; review motion papers; task Reka Viczian re finalization of brief; discussions with Nicole Zeiss re settlement and plan of allocation issues; e-mails with co-counsel and defendants re settlement and plan of allocation issues, new language; review defendants' proposed rewrite; review Nicole Zeiss final redlines
0655	Nicole Zeiss	P	07/25/16	6.5	090	Dealt with POA
0023	Eric Belfi	P	07/26/16	1.2	130	Client communications.
0571	David Goldsmith	P	07/26/16	5.6	090	Revise/finalize preliminary approval motion; review final Plan of Allocation revisions and e-mails re same; Telephone conferences with Nicole Zeiss re: same and strategy; e-mails internally and with defendants re same; e-mail with Larry Sucharow re preliminary approval hearing; oversee filing, discussions with Stacy Auer re same.
0655	Nicole Zeiss	P	07/26/16	5.5	090	Finalized settlement agreement and exhibits; conferences
0655	Nicole Zeiss	P	07/26/16	1.5	090	Oversaw filing
1054	Cheryl Boria	PL	07/26/16	1.0	090	Put together the Stip of Settlement for State Street gathered the documents, in preparation for filing.
1225	Stacy Auer	PL	07/26/16	1.3	090	Assist in prep of prelim approval docs and e-file same; various emails and convos re: prep of same; emails re: hard copies of same;
1450	Reka Viczian	PL	07/26/16	0.8	050	Review brief and update ToA.
1450	Reka Viczian	PL	07/26/16	0.4	140	Review emails and update FileSite.
0571	David Goldsmith	P	07/27/16	3.9	090	Meeting with Angelica Crisi and Ivette Delgado re settlement recovery breakdown; [REDACTED] press releases, e-mails internally re same; begin preparing for preliminary approval hearing, Telephone conference with Nicole Zeiss re same
0655	Nicole Zeiss	P	07/27/16	2.0	090	Miscellaneous administrative matters
1450	Reka Viczian	PL	07/27/16	1.0	140	Prepare settlement binder for DJG.
0571	David Goldsmith	P	07/28/16	2.0	090	Prepare for preliminary approval hearing
0571	David Goldsmith	P	07/29/16	0.4	090	Reply to P. Saporoff e-mail re settlement structure; e-mails with Larry Sucharow re same.
0571	David Goldsmith	P	08/01/16	3.0	090	Prepare for preliminary approval hearing; discussion with Nicole Zeiss re same; e-mails with Mike Lesser and Garrett Bradley re same.
1450	Reka Viczian	PL	08/01/16	0.6	140	Review emails and update FileSite.
0571	David Goldsmith	P	08/02/16	0.5	090	Discussion with Garrett Bradley re preliminary approval hearing; e-mails with Garrett Bradley re P. Saporoff; e-mails with Larry Sucharow, Nicole Zeiss, Mike Rogers re staffing for final approval and fee papers.
1179	Michael Rogers	P	08/02/16	0.5	090	Emails to/from Lawrence A. Sucharow, David J. Goldsmith, and Nicole M. Zeiss re final approval papers.
0571	David Goldsmith	P	08/04/16	1.5	090	Prepare for preliminary approval hearing; e-mail Nicole Zeiss

0571	David Goldsmith	P	08/05/16	5.0	090	Prepare for preliminary approval hearing.
0571	David Goldsmith	P	08/06/16	2.0	090	Prepare for preliminary approval hearing
0103	Lawrence Sucharow	P	08/08/16	1.7	090	Attention to report on Court Hearing on Preliminary Approval of settlement and requirement for additional papers.
0571	David Goldsmith	P	08/08/16	14.2	060	Argue preliminary approval hearing before Judge Wolf; prepare for same, pre-hearing meeting with co-counsel re same, discussions and e-mails with Larry Sucharow, Nicole Zeiss, Garrett Bradley; round-trip travel to Boston; status e-mail to Executive Committee; work on revised preliminary approval order and class notices for Wednesday submission.
1179	Michael Rogers	P	08/08/16	0.5	090	Conferences with David J. Goldsmith and Nicole M. Zeiss re settlement papers.
1225	Stacy Auer	PL	08/08/16	0.2	060	Emails re: transcript order and Wednesday's e-filing re: additional settlement info to the Judge per his request; review emails and track settlement dates;
1517	Lawrence Mehringer	PL	08/08/16	0.6	140	Contacting court reporter's office for expedite copy of transcript of settlement hearing of 8/8 for D.Goldsmith and N.Zeiss.
0103	Lawrence Sucharow	P	08/09/16	4.5	090	Revise draft of POA and other disclosures regarding fees and other issues; conference call plaintiffs counsel; confer N. Zeiss, D. Goldsmith.
0571	David Goldsmith	P	08/09/16	9.0	090	Work on revised preliminary approval order and class notices to submit on August 10; prepare cover submission, drafts and redlines, send to co-counsel, defendants, [REDACTED]; discussions and e-mails with Larry Sucharow, Nicole Zeiss, co-counsel; telephone conference with Larry Sucharow, Nicole Zeiss, C. Kravitz
1225	Stacy Auer	PL	08/09/16	0.3	090	Circulate transcript; emails and convos re: e-filing of additional settlement info per Judge's request;
1517	Lawrence Mehringer	PL	08/09/16	0.5	140	Follow up with court reporter re expedited copy of transcript from hearing of 8/8 for D.Goldsmith and obtaining copy re same.
0103	Lawrence Sucharow	P	08/10/16	4.8	090	Continued revisions to POA; confer plaintiffs counsel.
0571	David Goldsmith	P	08/10/16	7.0	090	Joint Submission to Court with revised preliminary approval order and class notices; negotiate draft notice with defendants and [REDACTED]; telephone conferences and e-mails with W. Paine and M. Butler; prepare multiple drafts and circulate to defendants, DOL, co-counsel; discussions and e-mails with Larry Sucharow re same; finalize documents; supervise filing.
1225	Stacy Auer	PL	08/10/16	2.7	090	Emails and convos re: Filing of additional information per Judge's request; prep same; efile same; send same to local counsel; e-file same;
0571	David Goldsmith	P	08/11/16	1.0	090	Address preliminary approval order; e-mails with Larry Sucharow, Nicole Zeiss, co-counsel re same; telephone conference with R. Loeff re same and settlement approval and fee strategy issues; e-mails Dan Chiplock re settlement approval drafting.
0655	Nicole Zeiss	P	08/11/16	0.5	090	Emails regarding preliminary approval.
1054	Cheryl Boria	PL	08/11/16	0.3	140	Circulated and calendared the due dates for State Street.
1225	Stacy Auer	PL	08/11/16	0.4	090	Emails re: final approval schedule and track same; Pull, review, and circulate order granting preliminary approval;
1450	Reka Viczian	PL	08/11/16	0.6	140	Review emails and update FileSite.
0655	Nicole Zeiss	P	08/15/16	1.0	090	Dealt with escrow docs.
1450	Reka Viczian	PL	08/15/16	0.4	140	Review emails and update FileSite.
1643	Roger Yamada	SA	08/15/16	2.7	090	Began proofing the State Street long form notice; corroborated dates, deadlines, and other information with the court filings and docket.
1643	Roger Yamada	SA	08/15/16	3.0	090	Conducted a line-by-line reading of the State Street long form notice for errors and omissions.

0571	David Goldsmith	P	08/16/16	3.5	090	Planning for settlement and fee papers; discussion with Nicole Zeiss; telephone conference with Dan Chiplock re same; e-mails with ABData and Nicole Zeiss re long-form notice; review Group Trust letter.
0571	David Goldsmith	P	08/16/16	1.5	090	Research for fee and expense brief.
0655	Nicole Zeiss	P	08/16/16	3.0	090	Dealt with motion logistics with David and settlement notice.
0655	Nicole Zeiss	P	08/16/16	1.5	090	Dealt with group trust letter, addresses.
1643	Roger Yamada	SA	08/16/16	1.5	090	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from \$200 M to \$400 M as well as the awarded fee.
0571	David Goldsmith	P	08/17/16	5.0	090	Address planning issues for papers due Sept 15; meeting with Nicole Zeiss and Mike Rogers re same; e-mail to Dan Chiplock re assigning final approval brief; research re fee brief issues; e-mails with Mike Lesser re damages issues; e-mails with co-counsel re defendant strategy issues.
0655	Nicole Zeiss	P	08/17/16	1.0	090	Dealt with fee issues.
0655	Nicole Zeiss	P	08/17/16	1.0	090	Dealt with escrow.
0655	Nicole Zeiss	P	08/17/16	1.0	090	Dealt with notice cover letters.
1643	Roger Yamada	SA	08/17/16	3.0	090	Narrowed westlaw results for "common fund" and "class action" in preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from \$200 M to \$400 M as well as the awarded fee.
1643	Roger Yamada	SA	08/17/16	3.0	090	Began preparing a table to add to the brief, or attach as an appendix, reporting class action settlements (consumer and securities) ranging from \$200 M to \$400 M as well as the awarded fee.
0655	Nicole Zeiss	P	08/18/16	1.0	090	Dealt with notice issues and escrow.
0571	David Goldsmith	P	08/19/16	2.5	090	Review research materials for fee brief
0655	Nicole Zeiss	P	08/19/16	2.0	090	Began to work on big declaration.
0655	Nicole Zeiss	P	08/21/16	3.0	090	Worked on big declaration.
0571	David Goldsmith	P	08/22/16	8.8	090	Research/draft fee brief
0571	David Goldsmith	P	08/22/16	1.0	090	E-mails with Dan Chiplock re overlength brief strategy; Marks declaration strategy; e-mails with J. Marks re call re declaration; e-mail to ERISA counsel re plaintiff declarations.
0655	Nicole Zeiss	P	08/22/16	3.0	090	Worked on big declaration.
1643	Roger Yamada	SA	08/22/16	1.0	090	Created a table reporting class action settlements (consumer and securities) ranging from \$200 M to \$400 M and the awarded fee, and began populating the table by running a common fund search on Westlaw.
0571	David Goldsmith	P	08/23/16	14.0	090	Research/draft fee brief; e-mails with M. Miami and D. Chiplock; e-mails with Nicole Zeiss
0655	Nicole Zeiss	P	08/23/16	7.0	090	Worked on big declaration.
0571	David Goldsmith	P	08/24/16	10.2	090	Research/draft fee brief; e-mails with D. Chiplock; disc strategy with G. Bradley.
1643	Roger Yamada	SA	08/24/16	3.0	090	Referenced Westlaw to obtain multiplier and fee information for Tyco, Raytheon, First Databank, Neurontin, Lupron, and CVS cases for David Goldsmith.
1643	Roger Yamada	SA	08/24/16	3.0	090	Reviewed the \$100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
0571	David Goldsmith	P	08/25/16	9.4	090	Research/draft fee brief; e-mails with Roger Yamada.
1643	Roger Yamada	SA	08/25/16	3.0	090	Continued reviewing the \$100+ million settlement cases and determined fee and multiplier information for the settlements table; discussed with David Goldsmith.
1643	Roger Yamada	SA	08/25/16	2.0	090	Reviewed outlier cases encountered in the search for \$100+ million settlement cases; discussed with Nicole Zeiss and included in the settlements chart.
0571	David Goldsmith	P	08/26/16	9.9	090	Research/draft fee brief; review co-counsel draft settlement brief; e-mails re same

0571	David Goldsmith	P	08/27/16	7.7	090	Research/draft fee brief
0571	David Goldsmith	P	08/28/16	11.1	090	Research/draft fee brief; send draft to co-counsel and internally.
0571	David Goldsmith	P	08/29/16	8.7	090	Review/mark-up draft settlement brief and send to LCHB; Telephone conference with Jonathan Marks, Dan Chiplock, Nicole Zeiss re mediator declaration; revise Marks Declaration; revise fee brief per Larry Sucharow comments and recirculate; discussions with Larry Sucharow and Nicole Zeiss re various issues; work on client declaration.
0103	Lawrence Sucharow	P	08/30/16	3.7	090	Revise draft affidavit and brief in support of Settlement.
0571	David Goldsmith	P	08/30/16	5.7	090	Revise Marks Declaration per Dan Chiplock comments, send to Jonathan Marks; finish draft Hopkins Declaration; discussions with Nicole Zeiss re status; review/address Mike Lesser comments on fee brief; review Nicole Zeiss draft firm fee/expense.
0655	Nicole Zeiss	P	08/30/16	1.5	090	Worked on fee declaration.
1643	Roger Yamada	SA	08/30/16	1.7	090	Proofed the WSJ notice against the court submission. Double-checked dates against the docket and court submission.
<b>TOTAL</b>				<b>38,680.4</b>		

Partner (P)  
 Of Counsel (OC)  
 Associate (A)  
 Staff Attorney (SA)  
 Research Analyst (RA)  
 Investigator (I)  
 Paralegal (PL)

Date	Timekeeper Name	Activity	Description	Time Spent	Rate Value	Slip Value
9/14/2011	Emily Peterson	Research		5.69	\$325.00	\$1,849.58
10/1/2011	Emily Peterson	Research		2.00	\$325.00	\$650.00
10/1/2011	J. Brian McTigue, Esq.	Phone Call		0.08	\$725.00	\$60.18
10/2/2011	J. Brian McTigue, Esq.	Meet with		3.92	\$725.00	\$2,842.73
10/3/2011	J. Brian McTigue, Esq.	Research		3.02	\$725.00	\$2,187.33
10/4/2011	J. Brian McTigue, Esq.	Phone Call		0.17	\$725.00	\$121.80
10/4/2011	Bryan Veis	Conference		1.50	\$550.00	\$825.00
10/4/2011	J. Brian McTigue, Esq.	Research		4.02	\$725.00	\$2,912.33
10/5/2011	J. Brian McTigue, Esq.	Draft		1.00	\$725.00	\$725.00
10/5/2011	Bryan Veis	Review		2.50	\$550.00	\$1,375.00
10/5/2011	J. Brian McTigue, Esq.	Draft		1.01	\$725.00	\$732.98
10/5/2011	J. Brian McTigue, Esq.	Draft		0.50	\$725.00	\$362.50
10/5/2011	J. Brian McTigue, Esq.	Draft		2.01	\$725.00	\$1,457.98
10/6/2011	Bryan Veis	Review		0.50	\$550.00	\$275.00
10/7/2011	Bryan Veis	Review		1.25	\$550.00	\$687.50
10/7/2011	Julia Cade	Prepare		1.80	\$200.00	\$359.20
10/8/2011	J. Brian McTigue, Esq.	Research		1.33	\$725.00	\$966.43
10/10/2011	J. Brian McTigue, Esq.	Research		4.01	\$725.00	\$2,909.43
10/10/2011	J. Brian McTigue, Esq.	Meet with		1.50	\$725.00	\$1,087.50
10/10/2011	Bryan Veis	Review		0.25	\$550.00	\$137.50
10/11/2011	J. Brian McTigue, Esq.	Edit		4.01	\$725.00	\$2,910.15
10/11/2011	J. Brian McTigue, Esq.	Meet with		1.50	\$725.00	\$1,087.50
10/11/2011	Bryan Veis	Review		2.58	\$550.00	\$1,420.65
10/11/2011	Julia Cade	Research		1.33	\$200.00	\$266.60
10/12/2011	Julia Cade	Prepare		0.42	\$200.00	\$83.60
10/12/2011	Bryan Veis	Draft		3.25	\$550.00	\$1,787.50
10/12/2011	James Moore	Draft		2.40	\$725.00	\$1,740.00
10/12/2011	J. Brian McTigue, Esq.	Edit		6.00	\$725.00	\$4,350.00
10/12/2011	David Bond	Prepare		2.06	\$325.00	\$670.80
10/13/2011	Emily Peterson	Case Admin		1.56	\$325.00	\$507.33
10/13/2011	David Bond	Case Admin		2.62	\$325.00	\$850.85
10/13/2011	Emily Peterson	Research		5.75	\$325.00	\$1,868.75
10/13/2011	J. Brian McTigue, Esq.	Phone Call		0.18	\$725.00	\$129.05
10/13/2011	J. Brian McTigue, Esq.	Phone Call		1.50	\$725.00	\$1,087.50
10/13/2011	J. Brian McTigue, Esq.	Review		0.14	\$725.00	\$97.88
10/13/2011	Bryan Veis	Phone Call		0.50	\$550.00	\$275.00
10/13/2011	James Moore	Conference		0.80	\$725.00	\$580.00
10/14/2011	Julia Cade	Prepare		0.17	\$200.00	\$33.40
10/14/2011	J. Brian McTigue, Esq.	Research		0.43	\$725.00	\$310.30
10/14/2011	David Bond	Prepare		1.50	\$325.00	\$487.50
10/14/2011	Bryan Veis	Research		4.00	\$550.00	\$2,200.00
10/14/2011	Emily Peterson	Research		7.55	\$325.00	\$2,453.10
10/14/2011	Julia Cade	Research		1.82	\$200.00	\$364.20
10/14/2011	David Bond	Research		2.04	\$325.00	\$661.38
10/14/2011	James Moore	Research		2.00	\$725.00	\$1,450.00
10/15/2011	J. Brian McTigue, Esq.	Phone Call		0.75	\$725.00	\$543.75
10/15/2011	J. Brian McTigue, Esq.	Draft		0.50	\$725.00	\$362.50
10/15/2011	J. Brian McTigue, Esq.	Phone Call		0.75	\$725.00	\$543.75
10/15/2011	Bryan Veis	Phone Call		2.50	\$550.00	\$1,375.00
10/16/2011	J. Brian McTigue, Esq.	E-Mail		0.08	\$725.00	\$60.18
10/16/2011	J. Brian McTigue, Esq.	Draft		2.25	\$725.00	\$1,631.25
10/17/2011	Emily Peterson	Prepare		2.00	\$325.00	\$650.00
10/17/2011	Emily Peterson	Research		3.00	\$325.00	\$975.00
10/17/2011	Emily Peterson	Research		1.19	\$325.00	\$388.05
10/17/2011	Emily Peterson	Case Admin		1.35	\$325.00	\$439.08
10/17/2011	Sarah McGuane	Research		8.00	\$325.00	\$2,600.00
10/17/2011	J. Brian McTigue, Esq.	Draft		2.25	\$725.00	\$1,631.25
10/17/2011	J. Brian McTigue, Esq.	Conference		1.25	\$725.00	\$906.25
10/17/2011	David Bond	Research		2.34	\$325.00	\$761.48
10/17/2011	David Bond	Review		2.81	\$325.00	\$912.93

10/17/2011	James Moore	Draft		3.70	\$725.00	\$2,682.50
10/17/2011	J. Brian McTigue, Esq.	Phone Call		1.50	\$725.00	\$1,087.50
10/17/2011	J. Brian McTigue, Esq.	Case Admin		1.00	\$725.00	\$725.00
10/17/2011	Emily Peterson	Research		1.00	\$325.00	\$325.00
10/17/2011	J. Brian McTigue, Esq.	Phone Call		0.75	\$725.00	\$543.75
10/17/2011	J. Brian McTigue, Esq.	Review		0.16	\$725.00	\$118.90
10/17/2011	Julia Cade	Research		2.03	\$200.00	\$405.80
10/17/2011	Bryan Veis	Review		6.00	\$550.00	\$3,300.00
10/18/2011	Bryan Veis	Review		4.75	\$550.00	\$2,612.50
10/18/2011	Emily Peterson	Research		2.17	\$325.00	\$705.58
10/18/2011	J. Brian McTigue, Esq.	Phone Call		0.21	\$725.00	\$155.15
10/18/2011	David Bond	Prepare		1.78	\$325.00	\$577.53
10/18/2011	J. Brian McTigue, Esq.	Phone Call		0.51	\$725.00	\$369.75
10/18/2011	J. Brian McTigue, Esq.	Review		0.27	\$725.00	\$194.30
10/18/2011	David Bond	Review		1.40	\$325.00	\$456.30
10/18/2011	James Moore	Draft		2.10	\$725.00	\$1,522.50
10/18/2011	Emily Peterson	Research		5.13	\$325.00	\$1,665.95
10/18/2011	J. Brian McTigue, Esq.	Phone Call		1.59	\$725.00	\$1,155.65
10/19/2011	David Bond	Prepare		2.21	\$325.00	\$717.93
10/19/2011	Bryan Veis	Review		2.50	\$550.00	\$1,375.00
10/19/2011	J. Brian McTigue, Esq.	Review		2.93	\$725.00	\$2,122.80
10/19/2011	James Moore	Draft		0.60	\$725.00	\$435.00
10/19/2011	Emily Peterson	Research		7.43	\$200.00	\$1,486.80
10/20/2011	Bryan Veis	Draft		5.50	\$550.00	\$3,025.00
10/20/2011	Joshua Erlich	Edit		2.01	\$325.00	\$653.58
10/20/2011	Emily Peterson	Case Admin		3.89	\$325.00	\$1,265.23
10/20/2011	Emily Peterson	Review		1.80	\$325.00	\$583.38
10/20/2011	James Moore	Draft		0.50	\$725.00	\$362.50
10/21/2011	Emily Peterson	Research		7.94	\$325.00	\$2,581.80
10/21/2011	Bryan Veis	Review		0.75	\$550.00	\$412.50
10/24/2011	Bryan Veis	Review		1.00	\$550.00	\$550.00
10/24/2011	Emily Peterson	Research		0.47	\$325.00	\$151.78
10/24/2011	J. Brian McTigue, Esq.	Phone Call		0.01	\$725.00	\$10.15
10/24/2011	Emily Peterson	Research		7.24	\$325.00	\$2,354.30
10/25/2011	Emily Peterson	Research		2.77	\$325.00	\$901.23
10/25/2011	Emily Peterson	Case Admin		0.31	\$325.00	\$102.05
10/25/2011	J. Brian McTigue, Esq.	Research		0.91	\$725.00	\$659.75
10/26/2011	Emily Peterson	Research		0.78	\$200.00	\$156.40
10/26/2011	Emily Peterson	Meet with		0.64	\$325.00	\$206.38
10/26/2011	Emily Peterson	Draft		2.82	\$325.00	\$915.85
10/26/2011	J. Brian McTigue, Esq.	Conference		4.54	\$725.00	\$3,292.23
10/26/2011	Emily Peterson	Draft		2.73	\$325.00	\$886.60
10/26/2011	Bryan Veis	Conference		3.50	\$550.00	\$1,925.00
10/26/2011	James Moore	Conference		0.90	\$725.00	\$652.50
10/27/2011	J. Brian McTigue, Esq.	Prepare		0.25	\$725.00	\$181.25
10/27/2011	J. Brian McTigue, Esq.	Phone Call		1.00	\$725.00	\$727.90
10/27/2011	Emily Peterson	Research		0.64	\$325.00	\$208.00
10/27/2011	Emily Peterson	Research		1.74	\$325.00	\$564.53
10/27/2011	J. Brian McTigue, Esq.	Draft		1.06	\$725.00	\$766.33
10/27/2011	J. Brian McTigue, Esq.	Prepare		1.25	\$725.00	\$906.25
10/27/2011	J. Brian McTigue, Esq.	Prepare		0.55	\$725.00	\$400.93
10/27/2011	Bryan Veis	Conference		1.75	\$550.00	\$962.50
10/27/2011	J. Brian McTigue, Esq.	Prepare		1.30	\$725.00	\$941.78
10/28/2011	James Moore	Conference		0.30	\$725.00	\$217.50
10/28/2011	Emily Peterson	Research		0.54	\$200.00	\$107.00
10/28/2011	Bryan Veis	Conference		1.50	\$550.00	\$825.00
10/28/2011	Emily Peterson	Research		2.70	\$325.00	\$878.15
10/29/2011	Bryan Veis	Review		0.50	\$550.00	\$275.00
10/30/2011	Bryan Veis	Phone Call		0.42	\$550.00	\$229.35
10/31/2011	Bryan Veis	Review		5.00	\$550.00	\$2,750.00
10/31/2011	David Bond	Review		0.38	\$325.00	\$123.18

10/31/2011	Emily Peterson	Research	0.47	\$325.00	\$154.05
10/31/2011	Emily Peterson	Draft	3.94	\$325.00	\$1,279.53
10/31/2011	David Bond	Research	3.57	\$325.00	\$1,159.28
10/31/2011	J. Brian McTigue, Esq.	Conference	0.43	\$725.00	\$308.85
11/1/2011	Bryan Veis	Research	1.25	\$550.00	\$687.50
11/1/2011	Emily Peterson	Research	0.25	\$325.00	\$80.28
11/1/2011	Emily Peterson	Draft	4.78	\$325.00	\$1,552.85
11/1/2011	Joshua Erlich	Research	5.87	\$325.00	\$1,907.10
11/2/2011	Emily Peterson	Case Admin	0.29	\$325.00	\$92.95
11/2/2011	James Moore	Research	0.30	\$725.00	\$217.50
11/2/2011	J. Brian McTigue, Esq.	Review	0.45	\$725.00	\$323.35
11/2/2011	Joshua Erlich	Research	5.13	\$325.00	\$1,666.93
11/2/2011	Julia Cade	Research	1.00	\$200.00	\$200.00
11/2/2011	Emily Peterson	Draft	7.33	\$325.00	\$2,380.95
11/2/2011	Bryan Veis	Conference Call	0.75	\$550.00	\$412.50
11/3/2011	Emily Peterson	Research	0.27	\$325.00	\$86.78
11/3/2011	Emily Peterson	Draft	2.48	\$325.00	\$806.00
11/3/2011	Emily Peterson	Case Admin	1.14	\$325.00	\$369.85
11/3/2011	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$123.25
11/3/2011	J. Brian McTigue, Esq.	Draft	2.17	\$725.00	\$1,573.98
11/3/2011	James Moore	Research	0.30	\$725.00	\$217.50
11/3/2011	J. Brian McTigue, Esq.	Draft	0.33	\$725.00	\$241.43
11/4/2011	Emily Peterson	Research	0.95	\$325.00	\$307.45
11/4/2011	Emily Peterson	Case Admin	0.70	\$325.00	\$228.15
11/4/2011	Bryan Veis	Conference	0.25	\$550.00	\$137.50
11/4/2011	James Moore	Research	0.30	\$725.00	\$217.50
11/6/2011	J. Brian McTigue, Esq.	Meet with	3.01	\$725.00	\$2,184.43
11/7/2011	Emily Peterson	Research	0.64	\$325.00	\$208.00
11/7/2011	Emily Peterson	Draft	4.62	\$325.00	\$1,501.83
11/8/2011	Emily Peterson	Research	0.17	\$325.00	\$55.25
11/8/2011	J. Brian McTigue, Esq.	Phone Call	0.68	\$725.00	\$490.10
11/8/2011	Emily Peterson	Draft	5.74	\$325.00	\$1,866.80
11/9/2011	Emily Peterson	Research	0.15	\$325.00	\$47.78
11/9/2011	Emily Peterson	Draft	1.86	\$325.00	\$605.80
11/10/2011	Emily Peterson	Research	0.33	\$325.00	\$107.58
11/10/2011	Bryan Veis	Conference	0.25	\$550.00	\$137.50
11/11/2011	Emily Peterson	Research	0.50	\$325.00	\$163.48
11/11/2011	J. Brian McTigue, Esq.	Research	2.58	\$725.00	\$1,872.68
11/11/2011	Bryan Veis	Conference	1.25	\$550.00	\$687.50
11/12/2011	J. Brian McTigue, Esq.	Phone Call	0.76	\$725.00	\$553.90
11/12/2011	J. Brian McTigue, Esq.	Case Admin	1.50	\$725.00	\$1,087.50
11/12/2011	J. Brian McTigue, Esq.	Phone Call	0.43	\$725.00	\$312.48
11/12/2011	J. Brian McTigue, Esq.	Phone Call	0.26	\$725.00	\$189.23
11/13/2011	J. Brian McTigue, Esq.	Research	2.35	\$725.00	\$1,701.58
11/14/2011	Bryan Veis	Conference	0.75	\$550.00	\$412.50
11/14/2011	Julia Cade	Research	1.19	\$200.00	\$237.20
11/14/2011	Emily Peterson	Meet with	0.75	\$325.00	\$243.75
11/14/2011	Emily Peterson	Research	0.36	\$325.00	\$115.70
11/14/2011	Julia Cade	Prepare	3.07	\$200.00	\$613.60
11/15/2011	Joshua Erlich	Research	3.34	\$325.00	\$1,085.83
11/15/2011	Emily Peterson	Research	0.27	\$325.00	\$88.08
11/15/2011	Julia Cade	Research	5.62	\$200.00	\$1,124.40
11/15/2011	David Bond	Prepare	3.32	\$325.00	\$1,079.00
11/15/2011	Emily Peterson	Draft Letter	1.82	\$325.00	\$591.18
11/15/2011	J. Brian McTigue, Esq.	Phone Call	1.75	\$725.00	\$1,268.75
11/15/2011	James Moore	Draft	1.10	\$725.00	\$797.50
11/15/2011	Bryan Veis	Phone Call	2.00	\$550.00	\$1,100.00
11/16/2011	Julia Cade	Research	7.71	\$200.00	\$1,541.20
11/16/2011	Emily Peterson	Research	0.55	\$325.00	\$179.08
11/16/2011	Emily Peterson	Draft Letter	1.83	\$325.00	\$596.05
11/16/2011	David Bond	Review	1.88	\$325.00	\$611.65

11/16/2011	David Bond	Prepare	2.74	\$325.00	\$890.18
11/16/2011	Bryan Veis	Draft	2.25	\$550.00	\$1,237.50
11/16/2011	James Moore	Draft	0.70	\$725.00	\$507.50
11/17/2011	Bryan Veis	Conference	0.50	\$550.00	\$275.00
11/17/2011	J. Brian McTigue, Esq.	Edit	0.26	\$725.00	\$187.05
11/17/2011	Emily Peterson	Research	0.35	\$325.00	\$114.08
11/17/2011	Julia Cade	Research	1.43	\$200.00	\$286.40
11/17/2011	J. Brian McTigue, Esq.	Phone Call	0.21	\$725.00	\$154.43
11/18/2011	Joshua Erlich	Draft	2.50	\$325.00	\$812.83
11/18/2011	Emily Peterson	Research	0.50	\$325.00	\$163.15
11/18/2011	Julia Cade	Prepare	0.52	\$200.00	\$103.20
11/18/2011	J. Brian McTigue, Esq.	Review	0.16	\$725.00	\$115.28
11/18/2011	Bryan Veis	Phone Call	0.25	\$550.00	\$137.50
11/19/2011	J. Brian McTigue, Esq.	Meet with	3.43	\$725.00	\$2,484.58
11/20/2011	J. Brian McTigue, Esq.	Meet with	4.09	\$725.00	\$2,968.15
11/21/2011	James Moore	Conference	0.30	\$725.00	\$217.50
11/21/2011	Julia Cade	Prepare	1.42	\$200.00	\$283.20
11/21/2011	Emily Peterson	Research	0.60	\$325.00	\$194.68
11/21/2011	J. Brian McTigue, Esq.	Conference	4.43	\$725.00	\$3,209.58
11/21/2011	J. Brian McTigue, Esq.	Phone Call	0.01	\$725.00	\$6.53
11/21/2011	Julia Cade	Prepare	1.42	\$200.00	\$283.20
11/21/2011	Julia Cade	Prepare	4.71	\$200.00	\$942.60
11/21/2011	Emily Peterson	Meet with	0.73	\$325.00	\$237.25
11/21/2011	David Bond	Prepare	0.67	\$325.00	\$216.78
11/22/2011	Sarah McGuane	Research	6.35	\$325.00	\$2,064.73
11/23/2011	J. Brian McTigue, Esq.	Phone Call	0.43	\$725.00	\$312.48
11/28/2011	James Moore	Conference	0.40	\$725.00	\$290.00
11/28/2011	Sarah McGuane	Research	7.49	\$325.00	\$2,433.28
11/28/2011	Emily Peterson	Research	0.42	\$325.00	\$137.80
11/28/2011	Emily Peterson	Meet with	0.96	\$325.00	\$313.30
11/28/2011	David Bond	Prepare	2.46	\$325.00	\$798.53
11/29/2011	Sarah McGuane	Research	8.02	\$325.00	\$2,605.85
11/29/2011	Emily Peterson	Research	0.20	\$325.00	\$64.35
11/29/2011	David Bond	Prepare	2.36	\$325.00	\$767.33
11/30/2011	Sarah McGuane	Research	8.03	\$325.00	\$2,610.73
11/30/2011	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$69.60
11/30/2011	Emily Peterson	Research	0.27	\$325.00	\$88.40
11/30/2011	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$142.10
12/1/2011	Bryan Veis	Research	0.75	\$550.00	\$412.50
12/1/2011	Emily Peterson	Research	0.45	\$325.00	\$144.95
12/2/2011	James Moore	Review	1.40	\$725.00	\$1,015.00
12/2/2011	Emily Peterson	Research	0.35	\$325.00	\$112.45
12/5/2011	Bryan Veis	Review	3.75	\$550.00	\$2,062.50
12/5/2011	Emily Peterson	Research	0.59	\$325.00	\$190.45
12/5/2011	Emily Peterson	Draft	4.66	\$325.00	\$1,514.18
12/5/2011	Sarah McGuane	Research	1.89	\$325.00	\$615.23
12/5/2011	James Moore	Research	4.00	\$725.00	\$2,900.00
12/6/2011	Emily Peterson	Research	0.15	\$325.00	\$50.05
12/6/2011	Julia Cade	Prepare	0.76	\$200.00	\$151.20
12/6/2011	Emily Peterson	Draft	3.74	\$325.00	\$1,214.85
12/6/2011	Emily Peterson	Draft	0.84	\$325.00	\$272.68
12/6/2011	James Moore	Research	0.50	\$725.00	\$362.50
12/6/2011	Bryan Veis	Review	3.25	\$550.00	\$1,787.50
12/7/2011	Emily Peterson	Research	0.38	\$325.00	\$123.50
12/7/2011	Julia Cade	Research	1.19	\$200.00	\$238.20
12/7/2011	Emily Peterson	Draft	2.81	\$325.00	\$912.60
12/7/2011	Emily Peterson	Draft	1.66	\$325.00	\$539.83
12/7/2011	James Moore	Research	0.50	\$725.00	\$362.50
12/8/2011	Emily Peterson	Research	0.28	\$325.00	\$90.68
12/8/2011	Emily Peterson	Draft	6.57	\$325.00	\$2,136.55
12/8/2011	David Bond	Prepare	1.47	\$325.00	\$479.05

12/8/2011	James Moore	Conference	0.20	\$725.00	\$145.00
12/9/2011	Emily Peterson	Research	0.34	\$325.00	\$110.83
12/9/2011	Emily Peterson	Draft	6.35	\$325.00	\$2,062.13
12/10/2011	J. Brian McTigue, Esq.	Phone Call	0.13	\$725.00	\$91.35
12/11/2011	J. Brian McTigue, Esq.	Research	0.49	\$725.00	\$355.98
12/11/2011	J. Brian McTigue, Esq.	Research	0.04	\$725.00	\$29.73
12/12/2011	Bryan Veis	Review	0.83	\$550.00	\$458.15
12/12/2011	J. Brian McTigue, Esq.	Research	0.56	\$725.00	\$402.38
12/12/2011	James Moore	Research	0.90	\$725.00	\$652.50
12/12/2011	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$126.15
12/12/2011	J. Brian McTigue, Esq.	Draft	0.59	\$725.00	\$430.65
12/12/2011	J. Brian McTigue, Esq.	Prepare	0.34	\$725.00	\$246.50
12/12/2011	J. Brian McTigue, Esq.	Draft	0.32	\$725.00	\$233.45
12/13/2011	J. Brian McTigue, Esq.	Draft Letter	0.43	\$725.00	\$309.58
12/13/2011	J. Brian McTigue, Esq.	Phone Call	0.26	\$725.00	\$187.78
12/14/2011	Sarah McGuane	Prepare	0.50	\$325.00	\$162.50
12/16/2011	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$301.60
12/17/2011	J. Brian McTigue, Esq.	Phone Call	0.05	\$725.00	\$36.25
12/19/2011	Bryan Veis	Conference	0.25	\$550.00	\$137.50
12/19/2011	Sarah McGuane	Research	3.77	\$325.00	\$1,223.63
12/20/2011	Sarah McGuane	Research	2.47	\$325.00	\$801.78
12/22/2011	James Moore	Research	0.60	\$725.00	\$435.00
12/23/2011	David Bond	Prepare	0.50	\$325.00	\$162.50
12/25/2011	J. Brian McTigue, Esq.	Review	0.08	\$725.00	\$60.18
12/27/2011	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$132.68
12/27/2011	J. Brian McTigue, Esq.	Phone Call	0.02	\$725.00	\$15.95
12/27/2011	J. Brian McTigue, Esq.	Conference	0.15	\$725.00	\$105.85
12/29/2011	James Moore	Conference	0.20	\$725.00	\$145.00
12/29/2011	Sarah McGuane	Research	7.78	\$325.00	\$2,528.18
1/3/2012	David Bond	Review	1.50	\$325.00	\$487.50
1/3/2012	Bryan Veis	Conference	0.25	\$550.00	\$137.50
1/3/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.10	\$725.00	\$72.50
1/3/2012	J. Brian McTigue, Esq.	Conference	6.27	\$725.00	\$4,543.58
1/4/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
1/4/2012	Sarah McGuane	Research	6.17	\$325.00	\$2,004.28
1/4/2012	J. Brian McTigue, Esq.	Phone Call	6.11	\$725.00	\$4,431.93
1/4/2012	Joshua Erlich	Research	6.50	\$325.00	\$2,112.50
1/4/2012	James Moore	Conference	0.40	\$725.00	\$290.00
1/4/2012	Bryan Veis	Conference	0.75	\$550.00	\$412.50
1/5/2012	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$121.08
1/5/2012	Sarah McGuane	Research	0.12	\$325.00	\$38.68
1/5/2012	Joshua Erlich	Research	7.50	\$325.00	\$2,437.50
1/6/2012	Emily Peterson	Research	5.74	\$325.00	\$1,866.15
1/6/2012	Bryan Veis	Conference	0.50	\$550.00	\$275.00
1/9/2012	Sarah McGuane	Research	7.96	\$325.00	\$2,586.03
1/9/2012	J. Brian McTigue, Esq.	Draft	0.18	\$725.00	\$127.60
1/9/2012	Joshua Erlich	Meet with	0.50	\$325.00	\$162.50
1/10/2012	Emily Peterson	Meet with	0.75	\$325.00	\$243.75
1/10/2012	Sarah McGuane	Prepare	7.62	\$325.00	\$2,476.18
1/10/2012	J. Brian McTigue, Esq.	Review	0.68	\$725.00	\$490.10
1/10/2012	Joshua Erlich	Meet with	1.25	\$325.00	\$406.25
1/11/2012	Sarah McGuane	Prepare	1.15	\$325.00	\$373.43
1/11/2012	Sarah McGuane	Research	4.94	\$325.00	\$1,604.85
1/11/2012	Emily Peterson	Meet with	0.48	\$325.00	\$156.00
1/11/2012	J. Brian McTigue, Esq.	Phone Call	1.35	\$725.00	\$978.03
1/11/2012	Emily Peterson	Meet with	1.79	\$325.00	\$581.10
1/11/2012	Emily Peterson	Research	1.91	\$325.00	\$619.13
1/11/2012	Emily Peterson	Research	0.55	\$325.00	\$178.43
1/12/2012	Sarah McGuane	Research	7.51	\$325.00	\$2,440.10
1/12/2012	J. Brian McTigue, Esq.	Review	1.01	\$725.00	\$730.80
1/12/2012	James Moore	Conference	0.80	\$725.00	\$580.00

1/12/2012	Emily Peterson	Research	1.84	\$325.00	\$599.30
1/12/2012	Emily Peterson	Review	0.57	\$325.00	\$186.55
1/13/2012	J. Brian McTigue, Esq.	Review	1.01	\$725.00	\$730.80
1/13/2012	J. Brian McTigue, Esq.	Review	0.84	\$725.00	\$606.10
1/13/2012	Sarah McGuane	Prepare	2.96	\$325.00	\$962.98
1/13/2012	James Moore	Conference	0.40	\$725.00	\$290.00
1/14/2012	J. Brian McTigue, Esq.	Research	1.48	\$725.00	\$1,075.18
1/15/2012	J. Brian McTigue, Esq.	Research	2.18	\$725.00	\$1,580.50
1/15/2012	Joshua Erlich	Phone Call	1.00	\$325.00	\$325.00
1/16/2012	Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
1/17/2012	James Moore	Conference	0.70	\$725.00	\$507.50
1/17/2012	Sarah McGuane	Research	0.91	\$325.00	\$295.43
1/17/2012	J. Brian McTigue, Esq.	Phone Call	4.51	\$725.00	\$3,269.75
1/17/2012	Joshua Erlich	Meet with	1.00	\$325.00	\$325.00
1/17/2012	Sarah McGuane	Prepare	6.88	\$325.00	\$2,235.68
1/17/2012	Bryan Veis	Conference	6.00	\$550.00	\$3,300.00
1/17/2012	Emily Peterson	Case Admin	1.32	\$325.00	\$427.70
1/17/2012	Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
1/17/2012	Emily Peterson	Meet with	2.00	\$200.00	\$400.00
1/18/2012	J. Brian McTigue, Esq.	Prepare	2.09	\$725.00	\$1,518.15
1/18/2012	Bryan Veis	Conference Call	2.75	\$550.00	\$1,512.50
1/18/2012	Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
1/19/2012	Sarah McGuane	Research	5.36	\$325.00	\$1,741.68
1/19/2012	Joshua Erlich	Research	2.50	\$325.00	\$812.50
1/19/2012	Sarah McGuane	Prepare	1.30	\$325.00	\$422.18
1/19/2012	Joshua Erlich	Research	3.50	\$325.00	\$1,137.50
1/19/2012	Emily Peterson	Research	1.64	\$325.00	\$534.30
1/19/2012	J. Brian McTigue, Esq.	Phone Call	2.51	\$725.00	\$1,822.65
1/19/2012	James Moore	Review	0.80	\$725.00	\$580.00
1/19/2012	Bryan Veis	Review	1.75	\$550.00	\$962.50
1/20/2012	J. Brian McTigue, Esq.	Prepare	7.03	\$725.00	\$5,095.30
1/20/2012	James Moore	Review	0.20	\$725.00	\$145.00
1/20/2012	Bryan Veis	Conference	4.00	\$550.00	\$2,200.00
1/20/2012	Joshua Erlich	Research	4.00	\$325.00	\$1,300.00
1/20/2012	Sarah McGuane	Research	4.12	\$325.00	\$1,339.65
1/20/2012	Emily Peterson	Review	2.05	\$325.00	\$665.60
1/20/2012	Emily Peterson	Review	0.23	\$325.00	\$73.78
1/21/2012	J. Brian McTigue, Esq.	Review	1.17	\$725.00	\$849.70
1/22/2012	J. Brian McTigue, Esq.	Review	2.15	\$725.00	\$1,556.58
1/23/2012	Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
1/23/2012	Sarah McGuane	Research	1.29	\$325.00	\$420.23
1/23/2012	David Bond	Prepare	3.50	\$325.00	\$1,137.50
1/23/2012	Bryan Veis	Review	4.00	\$550.00	\$2,200.00
1/23/2012	Emily Peterson	Review	1.31	\$325.00	\$424.13
1/23/2012	Emily Peterson	Meet with	1.78	\$325.00	\$579.48
1/23/2012	David Bond	Research	2.70	\$325.00	\$878.48
1/23/2012	James Moore	Review	0.80	\$725.00	\$580.00
1/23/2012	Joshua Erlich	Meet with	1.25	\$325.00	\$406.25
1/24/2012	Sarah McGuane	Research	1.14	\$325.00	\$370.50
1/24/2012	J. Brian McTigue, Esq.	Phone Call	1.01	\$725.00	\$732.98
1/24/2012	Bryan Veis	Review	6.50	\$550.00	\$3,575.00
1/24/2012	David Bond	Research	2.00	\$325.00	\$650.00
1/24/2012	Joshua Erlich	Research	7.50	\$325.00	\$2,437.50
1/25/2012	Sarah McGuane	Research	6.62	\$325.00	\$2,152.80
1/25/2012	Bryan Veis	Research	5.00	\$550.00	\$2,750.00
1/25/2012	J. Brian McTigue, Esq.	Conference Call	3.41	\$725.00	\$2,471.53
1/25/2012	James Moore	Conference	0.60	\$725.00	\$435.00
1/25/2012	Joshua Erlich	Research	6.50	\$325.00	\$2,112.50
1/26/2012	Emily Peterson	Research	4.37	\$325.00	\$1,419.60
1/26/2012	J. Brian McTigue, Esq.	Conference Call	9.41	\$725.00	\$6,821.53
1/26/2012	Bryan Veis	Research	6.00	\$550.00	\$3,300.00

1/26/2012 Sarah McGuane	Travel	2.75	\$325.00	\$893.75
1/26/2012 David Bond	Prepare	2.00	\$325.00	\$650.00
1/26/2012 Sarah McGuane	Research	2.51	\$325.00	\$816.73
1/26/2012 Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
1/26/2012 Emily Peterson	Research	0.90	\$325.00	\$291.20
1/27/2012 Sarah McGuane	Research	7.66	\$325.00	\$2,489.83
1/27/2012 David Bond	Review	1.34	\$325.00	\$436.48
1/27/2012 J. Brian McTigue, Esq.	Prepare	8.29	\$725.00	\$6,012.43
1/27/2012 Bryan Veis	Research	5.00	\$550.00	\$2,750.00
1/27/2012 David Bond	Research	3.00	\$325.00	\$975.00
1/27/2012 Joshua Erlich	Research	4.00	\$325.00	\$1,300.00
1/28/2012 J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
1/28/2012 J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
1/28/2012 J. Brian McTigue, Esq.	Phone Call	0.07	\$725.00	\$48.58
1/28/2012 J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
1/28/2012 J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
1/29/2012 J. Brian McTigue, Esq.	Case Admin	11.22	\$725.00	\$8,135.23
1/30/2012 J. Brian McTigue, Esq.	Review	0.18	\$725.00	\$126.88
1/30/2012 J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$129.78
1/30/2012 Joshua Erlich	Research	0.64	\$325.00	\$207.03
1/30/2012 J. Brian McTigue, Esq.	Prepare	2.00	\$725.00	\$1,450.00
1/30/2012 J. Brian McTigue, Esq.	Case Admin	0.84	\$725.00	\$611.18
1/30/2012 Joshua Erlich	Research	5.74	\$325.00	\$1,864.53
1/30/2012 Bryan Veis	Research	4.75	\$550.00	\$2,612.50
1/30/2012 J. Brian McTigue, Esq.	Meet with	0.34	\$725.00	\$245.78
1/30/2012 Emily Peterson	Draft	2.21	\$325.00	\$718.58
1/30/2012 Joshua Erlich	Conference	0.25	\$325.00	\$81.25
1/30/2012 Joshua Erlich	Conference	0.25	\$325.00	\$81.25
1/30/2012 Joshua Erlich	Research	0.46	\$325.00	\$148.85
1/30/2012 Joshua Erlich	Conference	0.25	\$325.00	\$81.25
1/30/2012 Sarah McGuane	Research	7.37	\$325.00	\$2,395.90
1/31/2012 Sarah McGuane	Travel	3.00	\$325.00	\$975.00
1/31/2012 Sarah McGuane	Research	2.22	\$325.00	\$722.80
1/31/2012 Joshua Erlich	Research	7.72	\$325.00	\$2,509.00
1/31/2012 Emily Peterson	Draft	6.39	\$325.00	\$2,076.10
1/31/2012 Joshua Erlich	Conference	0.75	\$325.00	\$243.75
1/31/2012 J. Brian McTigue, Esq.	E-Mail	4.82	\$725.00	\$3,490.88
1/31/2012 Bryan Veis	Draft	5.25	\$550.00	\$2,887.50
1/31/2012 Joshua Erlich	Conference	0.25	\$325.00	\$81.25
2/1/2012 J. Brian McTigue, Esq.	Phone Call	0.33	\$725.00	\$236.35
2/1/2012 J. Brian McTigue, Esq.	Research	3.29	\$725.00	\$2,386.70
2/1/2012 Emily Peterson	Review	7.16	\$325.00	\$2,327.33
2/1/2012 Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
2/1/2012 Sarah McGuane	Research	7.96	\$325.00	\$2,588.30
2/1/2012 David Bond	Prepare	3.50	\$325.00	\$1,136.20
2/1/2012 J. Brian McTigue, Esq.	Edit	0.75	\$725.00	\$546.65
2/1/2012 J. Brian McTigue, Esq.	Phone Call	0.71	\$725.00	\$513.30
2/1/2012 Bryan Veis	Review	1.00	\$550.00	\$550.00
2/1/2012 J. Brian McTigue, Esq.	Phone Call	0.76	\$725.00	\$549.55
2/1/2012 J. Brian McTigue, Esq.	Phone Call	0.04	\$725.00	\$31.18
2/2/2012 Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
2/2/2012 Joshua Erlich	Conference	1.25	\$325.00	\$406.25
2/2/2012 Sarah McGuane	Research	7.64	\$325.00	\$2,483.33
2/2/2012 Emily Peterson	Review Doc Prod	4.73	\$325.00	\$1,536.60
2/2/2012 Emily Peterson	Meet with	0.53	\$325.00	\$171.28
2/2/2012 Bryan Veis	Review	7.50	\$550.00	\$4,125.00
2/3/2012 Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
2/3/2012 Sarah McGuane	Research	6.70	\$325.00	\$2,177.18
2/3/2012 Bryan Veis	Research	4.50	\$550.00	\$2,475.00
2/3/2012 J. Brian McTigue, Esq.	Research	2.41	\$725.00	\$1,743.63
2/6/2012 Sarah McGuane	Research	7.70	\$325.00	\$2,501.85

2/6/2012	Joshua Erlich	Research	7.00	\$325.00	\$2,275.00
2/6/2012	J. Brian McTigue, Esq.	E-Mail	0.06	\$725.00	\$40.60
2/6/2012	Emily Peterson	Review Doc Prod	4.02	\$325.00	\$1,305.85
2/6/2012	Bryan Veis	Research	5.00	\$550.00	\$2,750.00
2/7/2012	Sarah McGuane	Research	7.73	\$325.00	\$2,512.58
2/7/2012	J. Brian McTigue, Esq.	Research	0.09	\$725.00	\$64.53
2/7/2012	Bryan Veis	Research	6.75	\$550.00	\$3,712.50
2/7/2012	Joshua Erlich	Research	6.00	\$325.00	\$1,950.00
2/8/2012	Bryan Veis	Research	5.00	\$550.00	\$2,750.00
2/8/2012	Sarah McGuane	Research	7.93	\$325.00	\$2,575.95
2/8/2012	J. Brian McTigue, Esq.	Conference	0.21	\$725.00	\$150.08
2/8/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$70.33
2/8/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$72.50
2/8/2012	J. Brian McTigue, Esq.	Research	3.35	\$725.00	\$2,430.93
2/8/2012	Joshua Erlich	Research	4.00	\$325.00	\$1,300.00
2/8/2012	Emily Peterson	Research	3.55	\$325.00	\$1,153.10
2/9/2012	Sarah McGuane	Research	8.01	\$325.00	\$2,604.23
2/9/2012	J. Brian McTigue, Esq.	Conference	0.38	\$725.00	\$273.33
2/9/2012	Joshua Erlich	Research	6.50	\$325.00	\$2,112.50
2/10/2012	Bryan Veis	Research	4.50	\$550.00	\$2,475.00
2/10/2012	Sarah McGuane	Research	7.16	\$325.00	\$2,327.00
2/10/2012	Emily Peterson	Review Doc Prod	5.14	\$325.00	\$1,670.83
2/11/2012	J. Brian McTigue, Esq.	Prepare	0.53	\$725.00	\$383.53
2/13/2012	Emily Peterson	Review Doc Prod	2.84	\$325.00	\$921.70
2/14/2012	Sarah McGuane	Research	4.52	\$325.00	\$1,469.00
2/14/2012	Emily Peterson	Review Doc Prod	6.37	\$325.00	\$2,068.63
2/14/2012	J. Brian McTigue, Esq.	Draft	0.43	\$725.00	\$308.85
2/14/2012	Bryan Veis	Research	6.00	\$550.00	\$3,300.00
2/14/2012	Joshua Erlich	Research	7.67	\$325.00	\$2,491.78
2/14/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.09	\$725.00	\$66.70
2/14/2012	J. Brian McTigue, Esq.	Phone Call	1.05	\$725.00	\$764.15
2/15/2012	Emily Peterson	Review Doc Prod	1.59	\$325.00	\$516.43
2/15/2012	Bryan Veis	Draft	4.00	\$550.00	\$2,200.00
2/15/2012	Joshua Erlich	Research	6.67	\$325.00	\$2,166.78
2/15/2012	J. Brian McTigue, Esq.	Research	0.70	\$725.00	\$508.23
2/15/2012	Sarah McGuane	Research	7.73	\$325.00	\$2,510.63
2/16/2012	Joshua Erlich	Research	6.50	\$325.00	\$2,112.50
2/16/2012	Sarah McGuane	Research	6.88	\$325.00	\$2,235.35
2/16/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.01	\$725.00	\$5.08
2/17/2012	Joshua Erlich	Review	7.00	\$325.00	\$2,275.00
2/17/2012	Sarah McGuane	Research	6.84	\$325.00	\$2,223.00
2/17/2012	Bryan Veis	Draft	5.25	\$550.00	\$2,887.50
2/17/2012	J. Brian McTigue, Esq.	Prepare	0.74	\$725.00	\$535.78
2/20/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
2/21/2012	Joshua Erlich	Review	6.25	\$325.00	\$2,031.25
2/21/2012	J. Brian McTigue, Esq.	Phone Call	0.77	\$725.00	\$554.63
2/21/2012	Bryan Veis	Conference	1.50	\$550.00	\$825.00
2/21/2012	J. Brian McTigue, Esq.	Review	0.06	\$725.00	\$45.68
2/21/2012	Sarah McGuane	Research	1.71	\$325.00	\$554.45
2/22/2012	James Moore	Draft	2.90	\$725.00	\$2,102.50
2/22/2012	Sarah McGuane	Research	7.05	\$325.00	\$2,289.95
2/22/2012	Emily Peterson	Research	4.39	\$325.00	\$1,427.08
2/22/2012	Bryan Veis	Review	3.75	\$550.00	\$2,062.50
2/22/2012	Joshua Erlich	Review	7.00	\$325.00	\$2,275.00
2/22/2012	J. Brian McTigue, Esq.	Edit	1.50	\$725.00	\$1,088.23
2/22/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.18	\$725.00	\$126.88
2/23/2012	Emily Peterson	Review	2.01	\$325.00	\$652.28
2/23/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
2/23/2012	Emily Peterson	Review	1.82	\$325.00	\$591.50
2/23/2012	James Moore	Conference	0.10	\$725.00	\$72.50
2/23/2012	Bryan Veis	Draft	8.00	\$550.00	\$4,400.00

2/23/2012	Joshua Erlich	Review	6.75	\$325.00	\$2,193.75
2/23/2012	J. Brian McTigue, Esq.	Conference	4.26	\$725.00	\$3,089.95
2/23/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.12	\$725.00	\$89.18
2/23/2012	Sarah McGuane	Research	0.41	\$325.00	\$134.55
2/24/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
2/24/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.02	\$725.00	\$12.33
2/24/2012	J. Brian McTigue, Esq.	Edit	2.00	\$725.00	\$1,450.00
2/24/2012	James Moore	Conference	1.40	\$725.00	\$1,015.00
2/24/2012	Emily Peterson	Review	1.88	\$325.00	\$611.65
2/24/2012	David Bond	Review	2.08	\$325.00	\$675.35
2/24/2012	Bryan Veis	Draft	3.75	\$550.00	\$2,062.50
2/24/2012	Joshua Erlich	Review	3.50	\$325.00	\$1,137.50
2/25/2012	J. Brian McTigue, Esq.	Research	4.26	\$725.00	\$3,088.50
2/25/2012	J. Brian McTigue, Esq.	Phone Call	0.19	\$725.00	\$138.48
2/27/2012	Emily Peterson	Research	1.12	\$325.00	\$364.00
2/27/2012	J. Brian McTigue, Esq.	Conference	0.22	\$725.00	\$156.60
2/27/2012	Bryan Veis	Conference	1.75	\$550.00	\$962.50
2/28/2012	J. Brian McTigue, Esq.	Phone Call	8.88	\$725.00	\$6,440.18
2/28/2012	J. Brian McTigue, Esq.	Review	0.18	\$725.00	\$130.50
2/28/2012	Emily Peterson	Draft Letter	2.00	\$325.00	\$651.30
2/28/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$57.28
2/28/2012	David Bond	Research	2.04	\$325.00	\$662.68
2/28/2012	Joshua Erlich	Draft	3.00	\$325.00	\$975.00
2/28/2012	J. Brian McTigue, Esq.	Phone Call	0.21	\$725.00	\$153.70
2/28/2012	Emily Peterson	Phone Call	0.81	\$325.00	\$262.28
2/28/2012	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
2/29/2012	Bryan Veis	Conference	0.25	\$550.00	\$137.50
3/1/2012	Joshua Erlich	Edit	2.68	\$325.00	\$869.38
3/1/2012	J. Brian McTigue, Esq.	Research	0.19	\$725.00	\$138.48
3/1/2012	Bryan Veis	Draft	3.50	\$550.00	\$1,925.00
3/2/2012	Bryan Veis	Conference	1.75	\$550.00	\$962.50
3/2/2012	Joshua Erlich	Review	3.33	\$325.00	\$1,081.60
3/4/2012	J. Brian McTigue, Esq.	Phone Call	0.09	\$725.00	\$65.98
3/4/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
3/5/2012	J. Brian McTigue, Esq.	Prepare	6.98	\$725.00	\$5,059.05
3/5/2012	Sarah McGuane	Office Admin.	2.17	\$325.00	\$704.60
3/5/2012	Sarah McGuane	Research	3.23	\$325.00	\$1,049.10
3/5/2012	David Bond	Review	1.48	\$325.00	\$479.38
3/5/2012	Bryan Veis	Review	4.25	\$550.00	\$2,337.50
3/5/2012	Joshua Erlich	Draft	4.02	\$325.00	\$1,307.48
3/6/2012	Bryan Veis	Research	7.50	\$550.00	\$4,125.00
3/6/2012	Sarah McGuane	Research	6.01	\$325.00	\$1,953.25
3/6/2012	David Bond	Review	2.66	\$325.00	\$865.80
3/6/2012	J. Brian McTigue, Esq.	Phone Call	0.07	\$725.00	\$53.65
3/6/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.09	\$725.00	\$65.98
3/6/2012	Emily Peterson	Research	4.49	\$325.00	\$1,457.95
3/6/2012	Joshua Erlich	Draft	6.00	\$325.00	\$1,950.00
3/7/2012	Joshua Erlich	Draft	5.42	\$325.00	\$1,760.53
3/7/2012	David Bond	Research	1.42	\$325.00	\$461.18
3/7/2012	David Bond	Review	2.65	\$325.00	\$860.60
3/7/2012	Emily Peterson	Research	4.60	\$325.00	\$1,493.38
3/7/2012	J. Brian McTigue, Esq.	Conference	0.33	\$725.00	\$241.43
3/7/2012	Bryan Veis	Research	2.75	\$550.00	\$1,512.50
3/7/2012	J. Brian McTigue, Esq.	Phone Call	0.59	\$725.00	\$429.93
3/7/2012	Sarah McGuane	Research	4.56	\$325.00	\$1,480.70
3/8/2012	Emily Peterson	Meet with	0.20	\$325.00	\$64.35
3/8/2012	J. Brian McTigue, Esq.	Edit	0.32	\$725.00	\$233.45
3/8/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$55.10
3/8/2012	Sarah McGuane	Case Admin	0.68	\$325.00	\$221.33
3/8/2012	Emily Peterson	Review	2.01	\$325.00	\$654.55
3/8/2012	Emily Peterson	Draft	1.07	\$325.00	\$346.78

3/8/2012	J. Brian McTigue, Esq.	Conference	0.19	\$725.00	\$138.48
3/8/2012	David Bond	Review	3.96	\$325.00	\$1,288.30
3/8/2012	Bryan Veis	Research	4.00	\$550.00	\$2,200.00
3/8/2012	Joshua Erlich	Draft	4.58	\$325.00	\$1,489.48
3/9/2012	Bryan Veis	Research	5.00	\$550.00	\$2,750.00
3/9/2012	Joshua Erlich	Draft	5.25	\$325.00	\$1,706.58
3/9/2012	David Bond	Review	0.49	\$325.00	\$159.58
3/9/2012	Emily Peterson	Review	2.17	\$325.00	\$704.60
3/9/2012	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$125.43
3/9/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$126.88
3/11/2012	J. Brian McTigue, Esq.	Phone Call	0.38	\$725.00	\$278.40
3/12/2012	David Bond	Research	1.73	\$325.00	\$562.90
3/12/2012	Bryan Veis	Research	1.50	\$550.00	\$825.00
3/12/2012	Emily Peterson	Draft	3.58	\$325.00	\$1,163.18
3/12/2012	J. Brian McTigue, Esq.	Phone Call	0.34	\$725.00	\$249.40
3/13/2012	Bryan Veis	Research	3.00	\$550.00	\$1,650.00
3/13/2012	Sarah McGuane	Case Admin	0.31	\$325.00	\$102.05
3/14/2012	Bryan Veis	Conference	4.00	\$550.00	\$2,200.00
3/14/2012	David Bond	Research	0.57	\$325.00	\$185.25
3/14/2012	Emily Peterson	Meet with	1.00	\$325.00	\$325.00
3/14/2012	J. Brian McTigue, Esq.	Phone Call	0.34	\$725.00	\$246.50
3/14/2012	J. Brian McTigue, Esq.	Phone Call	0.34	\$725.00	\$248.68
3/16/2012	J. Brian McTigue, Esq.	Review	0.50	\$725.00	\$362.50
3/17/2012	Bryan Veis	Phone Call	0.08	\$550.00	\$45.65
3/17/2012	J. Brian McTigue, Esq.	Prepare	1.46	\$725.00	\$1,054.88
3/17/2012	Bryan Veis	Conference Call	0.50	\$550.00	\$275.00
3/19/2012	Bryan Veis	Phone Call	3.00	\$550.00	\$1,650.00
3/19/2012	J. Brian McTigue, Esq.	Conference	0.18	\$725.00	\$130.50
3/20/2012	David Bond	Review	1.04	\$325.00	\$336.38
3/20/2012	Emily Peterson	Research	0.67	\$325.00	\$216.78
3/21/2012	Bryan Veis	Meet with	0.25	\$550.00	\$137.50
3/21/2012	Emily Peterson	Meet with	0.25	\$325.00	\$81.25
3/21/2012	James Moore	Conference	0.25	\$725.00	\$181.25
3/21/2012	J. Brian McTigue, Esq.	Case Admin	0.26	\$725.00	\$187.78
3/26/2012	J. Brian McTigue, Esq.	Phone Call	0.44	\$725.00	\$318.28
3/27/2012	J. Brian McTigue, Esq.	Draft	2.51	\$725.00	\$1,816.85
3/27/2012	Sarah McGuane	Prepare	0.94	\$325.00	\$305.50
3/28/2012	Sarah McGuane	Office Admin.	0.72	\$325.00	\$234.65
3/28/2012	David Bond	Research	1.00	\$325.00	\$325.00
3/29/2012	J. Brian McTigue, Esq.	Prepare	0.46	\$725.00	\$332.78
3/30/2012	Bryan Veis	Conference Call	3.00	\$550.00	\$1,650.00
3/30/2012	J. Brian McTigue, Esq.	Conference	3.95	\$725.00	\$2,864.48
3/30/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$131.23
3/30/2012	David Bond	Review	1.00	\$325.00	\$325.00
3/30/2012	Emily Peterson	Research	4.61	\$325.00	\$1,498.58
3/30/2012	J. Brian McTigue, Esq.	Review	1.62	\$725.00	\$1,177.40
4/2/2012	Bryan Veis	Draft	1.00	\$550.00	\$550.00
4/2/2012	Emily Peterson	Research	0.51	\$200.00	\$102.80
4/2/2012	Emily Peterson	Review	0.32	\$325.00	\$103.03
4/2/2012	Sarah McGuane	Office Admin.	0.34	\$325.00	\$109.85
4/3/2012	Bryan Veis	Research	1.75	\$550.00	\$962.50
4/3/2012	Emily Peterson	Research	1.65	\$325.00	\$536.25
4/4/2012	Bryan Veis	Review	2.00	\$550.00	\$1,100.00
4/4/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.03	\$725.00	\$18.13
4/4/2012	J. Brian McTigue, Esq.	Phone Call	0.04	\$725.00	\$31.90
4/5/2012	Bryan Veis	Phone Call	5.00	\$550.00	\$2,750.00
4/5/2012	Emily Peterson	Meet with	0.17	\$325.00	\$54.28
4/5/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.24	\$725.00	\$176.18
4/5/2012	Emily Peterson	Review	2.59	\$325.00	\$842.73
4/5/2012	Sarah McGuane	Office Admin.	0.80	\$325.00	\$259.03
4/5/2012	Emily Peterson	Draft	1.94	\$325.00	\$628.88

4/5/2012	J. Brian McTigue, Esq.	Research	0.04	\$725.00	\$31.18
4/5/2012	J. Brian McTigue, Esq.	Phone Call	0.34	\$725.00	\$246.50
4/6/2012	Emily Peterson	Research	0.22	\$325.00	\$69.88
4/6/2012	Emily Peterson	Review	0.85	\$200.00	\$170.20
4/6/2012	Emily Peterson	Research	3.89	\$325.00	\$1,264.58
4/6/2012	J. Brian McTigue, Esq.	Prepare	4.70	\$725.00	\$3,409.68
4/6/2012	Bryan Veis	Review	3.00	\$550.00	\$1,650.00
4/6/2012	Sarah McGuane	Prepare	2.42	\$325.00	\$785.20
4/9/2012	Emily Peterson	Draft Letter	2.01	\$325.00	\$652.93
4/9/2012	Emily Peterson	Research	0.90	\$325.00	\$293.80
4/9/2012	J. Brian McTigue, Esq.	Prepare	3.00	\$725.00	\$2,175.00
4/9/2012	Emily Peterson	Review	2.85	\$325.00	\$924.63
4/9/2012	Bryan Veis	Review	1.50	\$550.00	\$825.00
4/9/2012	David Bond	Research	2.08	\$325.00	\$675.03
4/10/2012	Sarah McGuane	Office Admin.	0.21	\$325.00	\$68.25
4/10/2012	Emily Peterson	Review	2.89	\$325.00	\$939.58
4/10/2012	Emily Peterson	Draft Letter	1.88	\$325.00	\$610.35
4/10/2012	J. Brian McTigue, Esq.	Research	2.50	\$725.00	\$1,812.50
4/10/2012	Sarah McGuane	Research	3.64	\$325.00	\$1,182.68
4/10/2012	David Bond	Review	1.00	\$325.00	\$325.00
4/10/2012	David Bond	Prepare	3.50	\$325.00	\$1,137.50
4/10/2012	Bryan Veis	Review	4.75	\$550.00	\$2,612.50
4/11/2012	Bryan Veis	Review	6.00	\$550.00	\$3,300.00
4/11/2012	Sarah McGuane	Research	4.42	\$325.00	\$1,436.50
4/11/2012	Emily Peterson	Research	2.27	\$325.00	\$738.73
4/11/2012	David Bond	Research	2.76	\$325.00	\$895.70
4/11/2012	J. Brian McTigue, Esq.	Edit	2.01	\$725.00	\$1,457.98
4/11/2012	J. Brian McTigue, Esq.	Prepare	0.53	\$725.00	\$384.98
4/12/2012	David Bond	Prepare	2.10	\$325.00	\$683.48
4/12/2012	Emily Peterson	Review	3.18	\$325.00	\$1,033.50
4/12/2012	Bryan Veis	Research	4.00	\$550.00	\$2,200.00
4/12/2012	Sarah McGuane	Research	2.29	\$325.00	\$744.25
4/13/2012	Bryan Veis	Review	3.08	\$550.00	\$1,695.65
4/13/2012	Sarah McGuane	Research	1.62	\$325.00	\$527.48
4/13/2012	Emily Peterson	Research	2.82	\$325.00	\$916.50
4/13/2012	James Moore	Review	0.70	\$725.00	\$507.50
4/16/2012	Sarah McGuane	Research	4.89	\$325.00	\$1,588.93
4/16/2012	Emily Peterson	Review	4.85	\$325.00	\$1,575.28
4/16/2012	Emily Peterson	Review	1.24	\$325.00	\$402.03
4/16/2012	Bryan Veis	Conference	6.50	\$550.00	\$3,575.00
4/17/2012	David Bond	Review	1.00	\$325.00	\$325.00
4/17/2012	Emily Peterson	Research	1.97	\$325.00	\$640.58
4/17/2012	Sarah McGuane	Office Admin.	0.58	\$325.00	\$189.80
4/17/2012	Sarah McGuane	Conference Call	1.01	\$325.00	\$328.58
4/17/2012	Emily Peterson	Conference Call	1.16	\$325.00	\$377.00
4/17/2012	Emily Peterson	Meet with	0.17	\$325.00	\$54.28
4/17/2012	Sarah McGuane	Prepare	1.08	\$325.00	\$351.00
4/17/2012	J. Brian McTigue, Esq.	Review	1.52	\$725.00	\$1,098.38
4/17/2012	J. Brian McTigue, Esq.	Conference	1.00	\$725.00	\$725.00
4/17/2012	J. Brian McTigue, Esq.	Research	1.00	\$725.00	\$725.00
4/17/2012	Sarah McGuane	Research	1.33	\$325.00	\$430.95
4/17/2012	Emily Peterson	Review	1.62	\$325.00	\$527.80
4/17/2012	Bryan Veis	Conference	4.50	\$550.00	\$2,475.00
4/17/2012	James Moore	Conference Call	1.20	\$725.00	\$870.00
4/18/2012	J. Brian McTigue, Esq.	Research	5.15	\$725.00	\$3,733.03
4/18/2012	Sarah McGuane	Research	1.47	\$325.00	\$476.13
4/18/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
4/18/2012	James Moore	Conference Call	1.50	\$725.00	\$1,087.50
4/18/2012	James Moore	Research	5.75	\$725.00	\$4,168.75
4/18/2012	Emily Peterson	Draft	2.20	\$325.00	\$715.33
4/18/2012	Sarah McGuane	Conference Call	1.25	\$325.00	\$406.25

4/18/2012	Emily Peterson	Conference Call	2.14	\$200.00	\$427.20
4/18/2012	Bryan Veis	Conference	6.00	\$550.00	\$3,300.00
4/19/2012	Emily Peterson	Research	1.61	\$325.00	\$523.90
4/19/2012	Sarah McGuane	Research	0.31	\$325.00	\$100.10
4/19/2012	James Moore	Research	3.67	\$725.00	\$2,658.58
4/19/2012	Bryan Veis	Review	2.75	\$550.00	\$1,512.50
4/20/2012	Emily Peterson	Draft	4.24	\$325.00	\$1,377.35
4/20/2012	J. Brian McTigue, Esq.	Edit	0.46	\$725.00	\$334.95
4/20/2012	David Bond	Research	1.88	\$325.00	\$611.00
4/20/2012	Emily Peterson	Conference Call	1.25	\$325.00	\$407.23
4/20/2012	James Moore	Conference	0.60	\$725.00	\$435.00
4/20/2012	Sarah McGuane	Research	2.06	\$325.00	\$668.53
4/20/2012	J. Brian McTigue, Esq.	Phone Call	1.85	\$725.00	\$1,338.35
4/20/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.01	\$725.00	\$4.35
4/20/2012	Bryan Veis	Conference	5.50	\$550.00	\$3,025.00
4/22/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.02	\$725.00	\$16.68
4/22/2012	J. Brian McTigue, Esq.	Phone Call	0.16	\$725.00	\$113.83
4/23/2012	J. Brian McTigue, Esq.	Conference Call	1.02	\$725.00	\$736.60
4/23/2012	J. Brian McTigue, Esq.	Review	0.67	\$725.00	\$488.65
4/23/2012	J. Brian McTigue, Esq.	Research	0.23	\$725.00	\$167.48
4/23/2012	J. Brian McTigue, Esq.	Review	0.09	\$725.00	\$64.53
4/23/2012	Emily Peterson	Draft	0.47	\$325.00	\$153.40
4/23/2012	James Moore	Conference	1.17	\$725.00	\$846.08
4/23/2012	David Bond	Prepare	0.27	\$325.00	\$87.43
4/23/2012	Emily Peterson	Conference Call	1.51	\$325.00	\$490.43
4/23/2012	Emily Peterson	Draft	1.36	\$325.00	\$442.33
4/23/2012	Sarah McGuane	Office Admin.	0.59	\$325.00	\$190.45
4/23/2012	Emily Peterson	Draft	0.76	\$325.00	\$247.33
4/23/2012	Bryan Veis	Prepare	5.50	\$550.00	\$3,025.00
4/24/2012	Sarah McGuane	Office Admin.	1.22	\$325.00	\$395.85
4/24/2012	Emily Peterson	Meet with	0.98	\$325.00	\$317.85
4/24/2012	Emily Peterson	Review	0.82	\$325.00	\$267.15
4/24/2012	James Moore	Draft	1.60	\$725.00	\$1,160.00
4/24/2012	David Bond	Meet with	1.00	\$325.00	\$325.00
4/24/2012	David Bond	Research	2.00	\$325.00	\$650.00
4/24/2012	Sarah McGuane	Research	1.67	\$325.00	\$541.13
4/24/2012	J. Brian McTigue, Esq.	Draft	3.01	\$725.00	\$2,178.63
4/24/2012	J. Brian McTigue, Esq.	Draft	3.50	\$725.00	\$2,537.50
4/24/2012	Bryan Veis	Draft	5.00	\$550.00	\$2,750.00
4/24/2012	David Bond	Review	1.00	\$325.00	\$325.00
4/25/2012	J. Brian McTigue, Esq.	Prepare	5.08	\$725.00	\$3,681.55
4/25/2012	Sarah McGuane	Office Admin.	0.20	\$325.00	\$65.98
4/25/2012	Sarah McGuane	Research	0.35	\$325.00	\$113.10
4/25/2012	Emily Peterson	Draft	1.32	\$325.00	\$428.35
4/25/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$71.78
4/25/2012	Sarah McGuane	Prepare	2.31	\$325.00	\$750.10
4/25/2012	David Bond	Review	3.47	\$325.00	\$1,127.75
4/25/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
4/25/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
4/25/2012	Bryan Veis	Draft	7.00	\$550.00	\$3,850.00
4/25/2012	James Moore	Research	3.25	\$725.00	\$2,356.25
4/26/2012	Sarah McGuane	Prepare	3.32	\$325.00	\$1,079.33
4/26/2012	David Bond	Review Doc Prod	2.00	\$325.00	\$650.00
4/26/2012	J. Brian McTigue, Esq.	Draft	5.17	\$725.00	\$3,746.08
4/26/2012	James Moore	Research	6.90	\$725.00	\$5,002.50
4/26/2012	David Bond	Review	1.67	\$325.00	\$542.10
4/26/2012	Bryan Veis	Conference	6.00	\$550.00	\$3,300.00
4/27/2012	Sarah McGuane	Research	4.58	\$325.00	\$1,488.18
4/27/2012	J. Brian McTigue, Esq.	Phone Call	3.51	\$725.00	\$2,543.30
4/27/2012	Emily Peterson	Draft	4.74	\$325.00	\$1,541.15
4/27/2012	James Moore	Research	0.17	\$725.00	\$121.08

4/27/2012	Bryan Veis	Research	5.00	\$550.00	\$2,750.00
4/29/2012	J. Brian McTigue, Esq.	Review	1.90	\$725.00	\$1,376.05
4/30/2012	Emily Peterson	Meet with	4.21	\$325.00	\$1,366.63
4/30/2012	Sarah McGuane	Prepare	1.58	\$325.00	\$514.48
4/30/2012	Sarah McGuane	Office Admin.	0.78	\$325.00	\$253.18
4/30/2012	Sarah McGuane	Research	2.75	\$325.00	\$894.73
4/30/2012	J. Brian McTigue, Esq.	Phone Call	5.18	\$725.00	\$3,757.68
4/30/2012	David Bond	Research	3.09	\$325.00	\$1,005.23
4/30/2012	Bryan Veis	Conference	6.25	\$550.00	\$3,437.50
5/1/2012	Bryan Veis	Research	7.50	\$550.00	\$4,125.00
5/1/2012	Emily Peterson	Draft	2.87	\$325.00	\$932.43
5/1/2012	Emily Peterson	Review	1.13	\$325.00	\$367.58
5/1/2012	Emily Peterson	Research	1.99	\$325.00	\$647.73
5/1/2012	David Bond	Review	1.63	\$325.00	\$528.13
5/1/2012	J. Brian McTigue, Esq.	Edit	1.51	\$725.00	\$1,091.85
5/1/2012	David Bond	Review	1.00	\$325.00	\$325.00
5/1/2012	J. Brian McTigue, Esq.	Review	0.08	\$725.00	\$60.18
5/1/2012	David Bond	Review	1.74	\$325.00	\$565.83
5/1/2012	J. Brian McTigue, Esq.	Phone Call	2.00	\$725.00	\$1,450.00
5/1/2012	Sarah McGuane	Office Admin.	6.34	\$325.00	\$2,060.18
5/2/2012	David Bond	Review	0.54	\$325.00	\$174.20
5/2/2012	Sarah McGuane	Office Admin.	4.97	\$325.00	\$1,615.58
5/2/2012	J. Brian McTigue, Esq.	Edit	2.11	\$725.00	\$1,531.93
5/2/2012	Emily Peterson	Draft	1.16	\$325.00	\$375.70
5/2/2012	Emily Peterson	Review	0.32	\$325.00	\$104.00
5/2/2012	J. Brian McTigue, Esq.	Edit	0.51	\$725.00	\$366.85
5/2/2012	James Moore	Review	0.90	\$725.00	\$652.50
5/2/2012	Bryan Veis	Conference	4.50	\$550.00	\$2,475.00
5/2/2012	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$121.08
5/2/2012	Emily Peterson	Draft	3.84	\$325.00	\$1,246.38
5/2/2012	Emily Peterson	Review	0.37	\$325.00	\$118.63
5/2/2012	David Bond	Research	0.44	\$325.00	\$143.98
5/3/2012	Sarah McGuane	Prepare	6.65	\$325.00	\$2,159.95
5/3/2012	J. Brian McTigue, Esq.	Edit	0.39	\$725.00	\$279.13
5/3/2012	J. Brian McTigue, Esq.	Phone Call	0.39	\$725.00	\$279.13
5/3/2012	James Moore	Draft	4.33	\$725.00	\$3,141.43
5/3/2012	Sarah McGuane	Travel	3.00	\$325.00	\$975.00
5/3/2012	Sarah McGuane	Office Admin.	0.33	\$325.00	\$108.23
5/3/2012	Bryan Veis	Draft	4.25	\$550.00	\$2,337.50
5/4/2012	Sarah McGuane	Prepare	4.50	\$325.00	\$1,462.50
5/4/2012	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
5/4/2012	Sarah McGuane	Office Admin.	1.06	\$325.00	\$344.83
5/4/2012	David Bond	Case Admin	2.02	\$325.00	\$657.80
5/4/2012	Emily Peterson	Review	1.29	\$325.00	\$418.93
5/4/2012	Bryan Veis	Draft	4.00	\$550.00	\$2,200.00
5/7/2012	Sarah McGuane	Prepare	4.37	\$325.00	\$1,420.90
5/7/2012	James Moore	Draft	3.33	\$725.00	\$2,416.43
5/7/2012	Bryan Veis	Draft	5.75	\$550.00	\$3,162.50
5/8/2012	David Bond	Review	1.00	\$325.00	\$325.00
5/8/2012	Bryan Veis	Phone Call	0.75	\$550.00	\$412.50
5/8/2012	David Bond	Prepare	3.52	\$325.00	\$1,145.30
5/8/2012	J. Brian McTigue, Esq.	E-Mail	0.18	\$725.00	\$131.23
5/8/2012	Sarah McGuane	Prepare	1.20	\$325.00	\$389.35
5/8/2012	David Bond	Review	1.00	\$325.00	\$325.00
5/8/2012	David Bond	Review	1.13	\$325.00	\$365.63
5/8/2012	James Moore	Draft	4.75	\$725.00	\$3,443.75
5/8/2012	Sarah McGuane	Research	6.09	\$325.00	\$1,979.25
5/9/2012	James Moore	Conference	2.50	\$725.00	\$1,812.50
5/9/2012	Sarah McGuane	Prepare	0.86	\$325.00	\$278.85
5/9/2012	J. Brian McTigue, Esq.	Phone Call	0.01	\$725.00	\$8.70
5/9/2012	Sarah McGuane	Research	5.37	\$325.00	\$1,746.23

5/9/2012	Sarah McGuane	Prepare	0.37	\$325.00	\$120.58
5/9/2012	Emily Peterson	Conference Call	0.66	\$325.00	\$215.48
5/9/2012	Emily Peterson	Draft	2.58	\$325.00	\$836.88
5/10/2012	David Bond	Review Doc Prod	1.20	\$325.00	\$389.03
5/10/2012	Sarah McGuane	Research	6.24	\$325.00	\$2,026.70
5/10/2012	J. Brian McTigue, Esq.	Phone Call	0.56	\$725.00	\$404.55
5/10/2012	David Bond	Research	2.00	\$325.00	\$650.00
5/10/2012	James Moore	Research	4.92	\$725.00	\$3,564.83
5/11/2012	David Bond	Prepare	1.44	\$325.00	\$468.65
5/11/2012	James Moore	Draft	5.83	\$725.00	\$4,228.93
5/11/2012	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
5/11/2012	Sarah McGuane	Research	4.00	\$325.00	\$1,299.68
5/11/2012	J. Brian McTigue, Esq.	Edit	6.11	\$725.00	\$4,431.93
5/14/2012	Bryan Veis	E-Mail	1.92	\$550.00	\$1,054.35
5/14/2012	Sarah McGuane	Office Admin.	0.62	\$325.00	\$201.50
5/14/2012	David Bond	Meet with	0.33	\$325.00	\$108.23
5/14/2012	Sarah McGuane	Research	4.22	\$325.00	\$1,372.15
5/14/2012	James Moore	Conference	1.00	\$725.00	\$725.00
5/15/2012	Sarah McGuane	Office Admin.	1.96	\$325.00	\$637.00
5/15/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
5/16/2012	Sarah McGuane	Travel	1.76	\$325.00	\$570.38
5/16/2012	Sarah McGuane	Office Admin.	1.50	\$325.00	\$487.50
5/16/2012	James Moore	Research	1.17	\$725.00	\$846.08
5/17/2012	Sarah McGuane	Office Admin.	0.42	\$325.00	\$136.83
5/17/2012	Emily Peterson	Draft	5.16	\$325.00	\$1,676.68
5/18/2012	Emily Peterson	Draft	1.15	\$325.00	\$372.78
5/21/2012	Emily Peterson	Draft	3.87	\$325.00	\$1,257.10
5/21/2012	Sarah McGuane	Office Admin.	2.03	\$325.00	\$658.13
5/22/2012	Sarah McGuane	Research	16.82	\$325.00	\$5,466.18
5/22/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
5/22/2012	Sarah McGuane	Office Admin.	1.78	\$325.00	\$577.53
5/22/2012	David Bond	Review	1.00	\$325.00	\$325.00
5/24/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$129.05
5/24/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.06	\$725.00	\$42.05
5/24/2012	J. Brian McTigue, Esq.	Phone Call	0.12	\$725.00	\$83.38
5/25/2012	J. Brian McTigue, Esq.	Conference	0.43	\$725.00	\$312.48
5/25/2012	Bryan Veis	Phone Call	0.25	\$550.00	\$137.50
5/26/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
5/28/2012	J. Brian McTigue, Esq.	Edit	0.50	\$725.00	\$365.40
5/29/2012	David Bond	Research	0.19	\$325.00	\$60.45
5/29/2012	Emily Peterson	Draft	2.66	\$325.00	\$865.80
5/29/2012	James Moore	Conference	1.33	\$725.00	\$966.43
5/29/2012	J. Brian McTigue, Esq.	Conference Call	2.19	\$725.00	\$1,587.75
5/29/2012	James Moore	Review	1.25	\$725.00	\$906.25
5/29/2012	J. Brian McTigue, Esq.	Phone Call	0.19	\$725.00	\$139.20
5/29/2012	Bryan Veis	Conference Call	8.00	\$550.00	\$4,400.00
5/29/2012	Emily Peterson	Conference Call	1.66	\$325.00	\$537.88
5/29/2012	David Bond	Review	1.00	\$325.00	\$325.00
5/29/2012	David Bond	Research	2.04	\$325.00	\$663.00
5/30/2012	Emily Peterson	Draft	3.89	\$325.00	\$1,264.25
5/30/2012	James Moore	Research	2.83	\$725.00	\$2,053.93
5/30/2012	J. Brian McTigue, Esq.	Review	1.48	\$725.00	\$1,073.00
5/30/2012	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$302.33
5/30/2012	Bryan Veis	Review	7.00	\$550.00	\$3,850.00
5/31/2012	Emily Peterson	Draft	4.24	\$325.00	\$1,378.98
5/31/2012	Bryan Veis	Conference	4.00	\$550.00	\$2,200.00
5/31/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.43	\$725.00	\$311.03
6/1/2012	J. Brian McTigue, Esq.	Phone Call	1.48	\$725.00	\$1,073.00
6/1/2012	Bryan Veis	Conference	7.75	\$550.00	\$4,262.50
6/1/2012	Sarah McGuane	Office Admin.	1.48	\$325.00	\$480.68
6/1/2012	Emily Peterson	Conference Call	2.48	\$325.00	\$804.70

6/1/2012	J. Brian McTigue, Esq.	Conference Call	4.01	\$725.00	\$2,910.15
6/4/2012	Sarah McGuane	Research	1.21	\$325.00	\$394.55
6/4/2012	David Bond	Research	2.18	\$325.00	\$709.15
6/4/2012	Emily Peterson	Research	7.30	\$325.00	\$2,371.53
6/4/2012	James Moore	Research	0.67	\$725.00	\$483.58
6/4/2012	Bryan Veis	Conference	7.75	\$550.00	\$4,262.50
6/4/2012	J. Brian McTigue, Esq.	Research	5.85	\$725.00	\$4,239.08
6/5/2012	Emily Peterson	Review	2.12	\$325.00	\$688.68
6/5/2012	J. Brian McTigue, Esq.	Prepare	8.03	\$725.00	\$5,818.13
6/5/2012	Sarah McGuane	Research	16.45	\$325.00	\$5,347.55
6/5/2012	Sarah McGuane	Office Admin.	3.04	\$325.00	\$986.70
6/5/2012	Sarah McGuane	Prepare	3.36	\$325.00	\$1,093.30
6/5/2012	Bryan Veis	Review	7.25	\$550.00	\$3,987.50
6/5/2012	Emily Peterson	Research	4.43	\$325.00	\$1,440.08
6/5/2012	James Moore	Draft	1.00	\$725.00	\$725.00
6/5/2012	David Bond	Review	1.00	\$325.00	\$325.00
6/6/2012	Emily Peterson	Research	3.20	\$200.00	\$639.80
6/6/2012	Emily Peterson	Conference Call	0.57	\$325.00	\$185.90
6/6/2012	James Moore	Draft	5.33	\$725.00	\$3,866.43
6/6/2012	Emily Peterson	Research	3.24	\$325.00	\$1,053.65
6/6/2012	J. Brian McTigue, Esq.	Prepare	10.00	\$725.00	\$7,250.00
6/6/2012	Sarah McGuane	Office Admin.	3.30	\$325.00	\$1,073.80
6/6/2012	David Bond	Research	3.16	\$325.00	\$1,027.98
6/6/2012	Bryan Veis	Conference	8.25	\$550.00	\$4,537.50
6/7/2012	David Bond	Prepare	3.11	\$325.00	\$1,011.73
6/7/2012	Emily Peterson	Research	2.34	\$325.00	\$759.53
6/7/2012	Emily Peterson	Conference Call	0.64	\$325.00	\$206.70
6/7/2012	Emily Peterson	Research	1.48	\$325.00	\$480.68
6/7/2012	Bryan Veis	Conference	8.00	\$550.00	\$4,400.00
6/7/2012	Emily Peterson	Meet with	0.28	\$325.00	\$92.30
6/7/2012	Sarah McGuane	Research	3.20	\$325.00	\$1,038.70
6/7/2012	James Moore	Draft	6.75	\$725.00	\$4,893.75
6/7/2012	J. Brian McTigue, Esq.	Voice Mail Mess	4.54	\$725.00	\$3,293.68
6/8/2012	J. Brian McTigue, Esq.	Case Admin	0.20	\$725.00	\$144.28
6/8/2012	J. Brian McTigue, Esq.	Case Admin	0.03	\$725.00	\$23.93
6/8/2012	David Bond	Prepare	2.57	\$325.00	\$836.23
6/8/2012	Sarah McGuane	Prepare	3.55	\$325.00	\$1,152.45
6/8/2012	Bryan Veis	Draft	3.75	\$550.00	\$2,062.50
6/8/2012	James Moore	Draft	6.42	\$725.00	\$4,652.33
6/8/2012	J. Brian McTigue, Esq.	Draft	0.34	\$725.00	\$245.78
6/11/2012	James Moore	Draft	2.92	\$725.00	\$2,114.83
6/11/2012	Bryan Veis	Phone Call	0.08	\$550.00	\$45.65
6/12/2012	Emily Peterson	Research	2.48	\$325.00	\$806.33
6/12/2012	J. Brian McTigue, Esq.	Research	0.75	\$725.00	\$540.85
6/12/2012	James Moore	Draft	6.03	\$725.00	\$4,373.93
6/12/2012	Bryan Veis	Conference	0.25	\$550.00	\$137.50
6/12/2012	David Bond	Research	1.53	\$325.00	\$495.95
6/12/2012	David Bond	Review	1.00	\$325.00	\$325.00
6/13/2012	J. Brian McTigue, Esq.	Phone Call	0.05	\$725.00	\$39.15
6/13/2012	J. Brian McTigue, Esq.	Review	1.01	\$725.00	\$734.43
6/13/2012	James Moore	Research	5.92	\$725.00	\$4,289.83
6/14/2012	J. Brian McTigue, Esq.	Phone Call	0.77	\$725.00	\$560.43
6/14/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$131.95
6/14/2012	J. Brian McTigue, Esq.	Draft	0.42	\$725.00	\$302.33
6/14/2012	James Moore	Research	7.25	\$725.00	\$5,256.25
6/15/2012	Emily Peterson	Draft	1.95	\$325.00	\$635.05
6/15/2012	James Moore	Research	3.08	\$725.00	\$2,235.18
6/16/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.18	\$725.00	\$127.60
6/18/2012	Emily Peterson	Review	2.08	\$325.00	\$676.65
6/18/2012	James Moore	Review	1.00	\$725.00	\$725.00
6/18/2012	J. Brian McTigue, Esq.	Conference	4.37	\$725.00	\$3,171.15

6/18/2012	J. Brian McTigue, Esq.	Conference	3.87	\$725.00	\$2,808.65
6/18/2012	James Moore	Research	4.42	\$725.00	\$3,202.33
6/18/2012	J. Brian McTigue, Esq.	Conference	0.34	\$725.00	\$243.60
6/18/2012	J. Brian McTigue, Esq.	Phone Call	0.03	\$725.00	\$23.93
6/18/2012	Bryan Veis	Review	3.25	\$550.00	\$1,787.50
6/18/2012	J. Brian McTigue, Esq.	Phone Call	0.60	\$725.00	\$431.38
6/18/2012	David Bond	Research	2.00	\$325.00	\$650.00
6/18/2012	Emily Peterson	Review Doc Prod	4.20	\$325.00	\$1,364.68
6/19/2012	J. Brian McTigue, Esq.	Conference Call	1.53	\$725.00	\$1,108.53
6/19/2012	David Bond	Research	1.50	\$325.00	\$487.83
6/19/2012	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$125.43
6/19/2012	David Bond	Review	1.00	\$325.00	\$325.00
6/19/2012	James Moore	Research	7.50	\$725.00	\$5,437.50
6/19/2012	Bryan Veis	Conference	0.75	\$550.00	\$412.50
6/19/2012	J. Brian McTigue, Esq.	Research	1.61	\$725.00	\$1,165.80
6/19/2012	Emily Peterson	Draft	3.67	\$325.00	\$1,193.73
6/20/2012	J. Brian McTigue, Esq.	Review	4.55	\$725.00	\$3,301.65
6/20/2012	David Bond	Research	3.23	\$325.00	\$1,048.13
6/20/2012	James Moore	Research	6.58	\$725.00	\$4,772.68
6/20/2012	Sarah McGuane	Office Admin.	2.52	\$325.00	\$819.33
6/21/2012	David Bond	Research	1.67	\$325.00	\$542.43
6/21/2012	Emily Peterson	Conference	3.74	\$325.00	\$1,215.83
6/21/2012	J. Brian McTigue, Esq.	Conference	8.20	\$725.00	\$5,941.38
6/21/2012	David Bond	Prepare	1.00	\$325.00	\$325.00
6/21/2012	David Bond	Case Admin	0.72	\$325.00	\$232.70
6/21/2012	Bryan Veis	Prepare	5.00	\$550.00	\$2,750.00
6/21/2012	James Moore	Conference	4.25	\$725.00	\$3,081.25
6/21/2012	James Moore	Draft	3.83	\$725.00	\$2,778.93
6/22/2012	Sarah McGuane	Research	5.28	\$325.00	\$1,716.65
6/22/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.20	\$725.00	\$141.38
6/22/2012	James Moore	Draft	5.33	\$725.00	\$3,866.43
6/22/2012	Bryan Veis	Conference	0.25	\$550.00	\$137.50
6/24/2012	J. Brian McTigue, Esq.	Draft	3.25	\$725.00	\$2,356.25
6/24/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$72.50
6/25/2012	David Bond	Prepare	2.13	\$325.00	\$691.28
6/25/2012	James Moore	Draft	4.92	\$725.00	\$3,564.83
6/25/2012	J. Brian McTigue, Esq.	Research	1.85	\$725.00	\$1,341.98
6/26/2012	James Moore	Draft	6.92	\$725.00	\$5,014.83
6/26/2012	Emily Peterson	Review Doc Prod	2.68	\$325.00	\$871.98
6/26/2012	Sarah McGuane	Research	0.63	\$325.00	\$204.75
6/26/2012	Bryan Veis	Phone Call	1.00	\$550.00	\$550.00
6/27/2012	J. Brian McTigue, Esq.	Phone Call	0.51	\$725.00	\$369.75
6/27/2012	J. Brian McTigue, Esq.	Review	0.33	\$725.00	\$237.08
6/27/2012	J. Brian McTigue, Esq.	Conference	0.76	\$725.00	\$553.18
6/27/2012	Sarah McGuane	Research	4.02	\$325.00	\$1,306.83
6/27/2012	Sarah McGuane	Office Admin.	1.39	\$325.00	\$450.45
6/27/2012	James Moore	Draft	6.92	\$725.00	\$5,014.83
6/27/2012	James Moore	Conference	0.58	\$725.00	\$422.68
6/27/2012	Bryan Veis	Conference	3.50	\$550.00	\$1,925.00
6/28/2012	Sarah McGuane	Research	5.47	\$325.00	\$1,777.75
6/28/2012	Sarah McGuane	Office Admin.	0.50	\$325.00	\$162.83
6/28/2012	Emily Peterson	Draft	3.40	\$325.00	\$1,104.35
6/28/2012	J. Brian McTigue, Esq.	Draft	2.34	\$725.00	\$1,697.23
6/28/2012	J. Brian McTigue, Esq.	Case Admin	0.51	\$725.00	\$368.30
6/28/2012	J. Brian McTigue, Esq.	Phone Call	0.75	\$725.00	\$543.75
6/28/2012	J. Brian McTigue, Esq.	Research	6.51	\$725.00	\$4,718.30
6/28/2012	James Moore	Draft	6.08	\$725.00	\$4,410.18
6/28/2012	Bryan Veis	Review	6.50	\$550.00	\$3,575.00
6/29/2012	Sarah McGuane	Office Admin.	0.43	\$325.00	\$139.10
6/29/2012	Emily Peterson	Draft	0.30	\$325.00	\$98.80
6/29/2012	David Bond	Research	1.26	\$325.00	\$409.50

6/29/2012	Sarah McGuane	Research	3.75	\$325.00	\$1,218.43
6/29/2012	Emily Peterson	Research	5.86	\$325.00	\$1,904.83
6/29/2012	James Moore	Draft	4.25	\$725.00	\$3,081.25
7/1/2012	J. Brian McTigue, Esq.	Research	0.35	\$725.00	\$250.13
7/1/2012	J. Brian McTigue, Esq.	Research	0.08	\$725.00	\$60.18
7/2/2012	J. Brian McTigue, Esq.	Research	1.17	\$725.00	\$846.08
7/2/2012	James Moore	Conference	3.25	\$725.00	\$2,356.25
7/2/2012	Sarah McGuane	Office Admin.	0.99	\$325.00	\$322.08
7/2/2012	Sarah McGuane	Research	3.01	\$325.00	\$977.60
7/2/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
7/2/2012	Emily Peterson	Research	3.09	\$200.00	\$618.20
7/2/2012	Emily Peterson	Review	2.33	\$325.00	\$758.23
7/2/2012	J. Brian McTigue, Esq.	Draft	1.02	\$725.00	\$736.60
7/2/2012	J. Brian McTigue, Esq.	Research	0.73	\$725.00	\$531.43
7/3/2012	Emily Peterson	Meet with	0.49	\$325.00	\$158.28
7/3/2012	Emily Peterson	Draft	0.89	\$325.00	\$289.90
7/3/2012	J. Brian McTigue, Esq.	Conference	0.83	\$725.00	\$601.75
7/3/2012	Sarah McGuane	Office Admin.	1.39	\$325.00	\$451.10
7/3/2012	James Moore	Research	5.00	\$725.00	\$3,625.00
7/3/2012	J. Brian McTigue, Esq.	Edit	2.29	\$725.00	\$1,656.63
7/3/2012	Sarah McGuane	Research	4.00	\$325.00	\$1,300.00
7/3/2012	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
7/3/2012	Emily Peterson	Research	3.89	\$325.00	\$1,262.63
7/4/2012	J. Brian McTigue, Esq.	Edit	1.27	\$725.00	\$918.58
7/5/2012	Emily Peterson	Research	4.53	\$325.00	\$1,471.60
7/5/2012	James Moore	Research	6.25	\$725.00	\$4,531.25
7/6/2012	J. Brian McTigue, Esq.	Draft	1.50	\$725.00	\$1,087.50
7/6/2012	James Moore	Research	7.50	\$725.00	\$5,437.50
7/6/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$122.53
7/7/2012	J. Brian McTigue, Esq.	Research	0.43	\$725.00	\$312.48
7/9/2012	James Moore	Research	4.33	\$725.00	\$3,141.43
7/9/2012	J. Brian McTigue, Esq.	Edit	1.80	\$725.00	\$1,302.83
7/9/2012	J. Brian McTigue, Esq.	Phone Call	0.03	\$725.00	\$18.85
7/9/2012	Emily Peterson	Draft	6.56	\$325.00	\$2,132.00
7/10/2012	James Moore	Research	6.92	\$725.00	\$5,014.83
7/10/2012	Emily Peterson	Research	6.85	\$325.00	\$2,227.55
7/10/2012	David Bond	Prepare	0.75	\$325.00	\$243.75
7/11/2012	Sarah McGuane	Office Admin.	1.34	\$325.00	\$435.18
7/11/2012	Emily Peterson	Research	0.94	\$325.00	\$306.48
7/11/2012	J. Brian McTigue, Esq.	Research	1.26	\$725.00	\$909.88
7/11/2012	James Moore	Research	6.67	\$725.00	\$4,833.58
7/11/2012	David Bond	Research	3.20	\$325.00	\$1,039.68
7/11/2012	Sarah McGuane	Research	2.50	\$325.00	\$811.20
7/11/2012	Emily Peterson	Review	3.62	\$325.00	\$1,175.85
7/11/2012	Emily Peterson	Research	1.04	\$325.00	\$337.35
7/11/2012	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
7/11/2012	J. Brian McTigue, Esq.	Phone Call	2.50	\$725.00	\$1,812.50
7/12/2012	Sarah McGuane	Research	3.67	\$325.00	\$1,193.73
7/12/2012	James Moore	Research	1.00	\$725.00	\$725.00
7/12/2012	David Bond	Research	2.33	\$325.00	\$758.23
7/12/2012	Emily Peterson	Research	6.74	\$200.00	\$1,347.20
7/12/2012	Sarah McGuane	Travel	2.50	\$325.00	\$812.50
7/13/2012	Sarah McGuane	Research	4.83	\$325.00	\$1,569.75
7/13/2012	Sarah McGuane	Office Admin.	0.21	\$325.00	\$67.28
7/13/2012	James Moore	Research	3.17	\$725.00	\$2,296.08
7/13/2012	Emily Peterson	Draft	1.70	\$325.00	\$551.85
7/13/2012	Emily Peterson	Research	4.80	\$325.00	\$1,561.30
7/13/2012	J. Brian McTigue, Esq.	Phone Call	0.87	\$725.00	\$628.58
7/15/2012	J. Brian McTigue, Esq.	Phone Call	0.27	\$725.00	\$192.13
7/16/2012	Sarah McGuane	Research	7.76	\$325.00	\$2,520.38
7/16/2012	James Moore	Research	3.08	\$725.00	\$2,235.18

7/17/2012 Sarah McGuane	Office Admin.		0.95	\$325.00	\$309.73
7/17/2012 James Moore	Draft		5.33	\$725.00	\$3,866.43
7/17/2012 J. Brian McTigue, Esq.	Research		0.26	\$725.00	\$185.60
7/18/2012 James Moore	Draft		7.33	\$725.00	\$5,316.43
7/18/2012 J. Brian McTigue, Esq.	Review		0.60	\$725.00	\$432.83
7/19/2012 James Moore	Draft		6.87	\$725.00	\$4,978.58
7/20/2012 James Moore	Draft		6.50	\$725.00	\$4,712.50
7/20/2012 J. Brian McTigue, Esq.	Phone Call		0.72	\$725.00	\$522.73
7/20/2012 David Bond	Research		1.63	\$325.00	\$530.08
7/20/2012 Sarah McGuane	Office Admin.		0.17	\$325.00	\$54.28
7/20/2012 J. Brian McTigue, Esq.	Phone Call		2.09	\$725.00	\$1,513.08
7/22/2012 J. Brian McTigue, Esq.	Prepare		2.56	\$725.00	\$1,852.38
7/23/2012 James Moore	Draft		5.17	\$725.00	\$3,746.08
7/23/2012 J. Brian McTigue, Esq.	Research		1.19	\$725.00	\$859.85
7/23/2012 Sarah McGuane	Office Admin.		0.45	\$325.00	\$146.25
7/23/2012 Emily Peterson	Research		1.07	\$325.00	\$349.05
7/23/2012 Sarah McGuane	Research		2.12	\$325.00	\$689.98
7/23/2012 J. Brian McTigue, Esq.	Phone Call		0.17	\$725.00	\$125.43
7/24/2012 Emily Peterson	Review		0.56	\$325.00	\$181.35
7/24/2012 Sarah McGuane	Research		1.25	\$325.00	\$407.55
7/24/2012 James Moore	Draft		6.58	\$725.00	\$4,772.68
7/24/2012 Emily Peterson	Research		2.63	\$325.00	\$854.75
7/24/2012 Sarah McGuane	Office Admin.		0.13	\$325.00	\$41.93
7/25/2012 James Moore	Draft		6.83	\$725.00	\$4,953.93
7/25/2012 Sarah McGuane	Research		2.22	\$325.00	\$720.20
7/25/2012 Emily Peterson	Research		0.47	\$200.00	\$94.60
7/26/2012 James Moore	Draft		7.00	\$725.00	\$5,075.00
7/26/2012 Emily Peterson	Draft		7.24	\$325.00	\$2,352.03
7/26/2012 J. Brian McTigue, Esq.	Conference		0.51	\$725.00	\$367.58
7/27/2012 Emily Peterson	Research		0.11	\$325.00	\$36.08
7/27/2012 James Moore	Draft		4.25	\$725.00	\$3,081.25
7/28/2012 J. Brian McTigue, Esq.	Review		0.75	\$725.00	\$543.75
7/29/2012 J. Brian McTigue, Esq.	Review		0.19	\$725.00	\$134.85
7/30/2012 Emily Peterson	Review		1.83	\$325.00	\$594.10
7/30/2012 Sarah McGuane	Research		0.53	\$325.00	\$170.95
7/30/2012 James Moore	Phone Call		1.00	\$725.00	\$725.00
7/30/2012 J. Brian McTigue, Esq.	Review		4.79	\$725.00	\$3,470.58
7/30/2012 Emily Peterson	Conference Call		1.70	\$325.00	\$553.48
7/30/2012 David Bond	Research		2.67	\$325.00	\$866.78
7/30/2012 James Moore	Conference		6.50	\$725.00	\$4,712.50
7/31/2012 Sarah McGuane	Office Admin.		0.76	\$325.00	\$247.98
7/31/2012 David Bond	Research		2.24	\$325.00	\$728.65
7/31/2012 James Moore	Draft		5.92	\$725.00	\$4,289.83
8/1/2012 Emily Peterson	Meet with		1.00	\$325.00	\$325.00
8/1/2012 James Moore	Draft		7.58	\$725.00	\$5,497.68
8/1/2012 J. Brian McTigue, Esq.	Conference Call		0.27	\$725.00	\$192.13
8/1/2012 Emily Peterson	Draft		3.01	\$325.00	\$976.95
8/1/2012 J. Brian McTigue, Esq.	Review		4.10	\$725.00	\$2,971.78
8/1/2012 David Bond	Review		1.40	\$325.00	\$454.03
8/1/2012 Emily Peterson	Draft		2.73	\$325.00	\$886.93
8/2/2012 J. Brian McTigue, Esq.	Phone Call		0.10	\$725.00	\$71.05
8/2/2012 J. Brian McTigue, Esq.	Case Admin		6.63	\$725.00	\$4,807.48
8/2/2012 James Moore	Draft		7.67	\$725.00	\$5,558.58
8/2/2012 David Bond	Review		3.39	\$325.00	\$1,100.78
8/2/2012 Sarah McGuane	Office Admin.		5.79	\$325.00	\$1,881.75
8/2/2012 Emily Peterson	Draft		4.30	\$325.00	\$1,398.48
8/3/2012 Sarah McGuane	Office Admin.		4.35	\$325.00	\$1,412.45
8/3/2012 James Moore	Draft		7.25	\$725.00	\$5,256.25
8/3/2012 David Bond	Review		0.86	\$325.00	\$279.18
8/3/2012 Emily Peterson	Draft		4.84	\$325.00	\$1,573.33
8/3/2012 Emily Peterson	Review		2.34	\$325.00	\$759.85

8/3/2012	J. Brian McTigue, Esq.	Research	4.00	\$725.00	\$2,900.00
8/5/2012	J. Brian McTigue, Esq.	Phone Call	0.41	\$725.00	\$294.35
8/6/2012	J. Brian McTigue, Esq.	Phone Call	0.19	\$725.00	\$139.93
8/6/2012	David Bond	Research	1.00	\$325.00	\$325.00
8/6/2012	J. Brian McTigue, Esq.	Phone Call	0.36	\$725.00	\$260.28
8/6/2012	Sarah McGuane	Office Admin.	3.95	\$325.00	\$1,284.40
8/6/2012	Emily Peterson	Research	7.23	\$325.00	\$2,351.05
8/6/2012	James Moore	Draft	7.50	\$725.00	\$5,437.50
8/6/2012	J. Brian McTigue, Esq.	Case Admin	0.51	\$725.00	\$369.03
8/7/2012	Sarah McGuane	Office Admin.	7.25	\$325.00	\$2,355.28
8/7/2012	James Moore	Draft	6.58	\$725.00	\$4,772.68
8/7/2012	J. Brian McTigue, Esq.	Research	4.47	\$725.00	\$3,242.20
8/7/2012	Emily Peterson	Research	7.39	\$325.00	\$2,401.10
8/7/2012	Jennifer Strouf	Research	1.26	\$325.00	\$408.20
8/8/2012	James Moore	Draft	7.50	\$725.00	\$5,437.50
8/8/2012	Sarah McGuane	Office Admin.	7.01	\$325.00	\$2,277.28
8/8/2012	J. Brian McTigue, Esq.	Review	2.03	\$725.00	\$1,468.85
8/8/2012	Sarah McGuane	Meet with	0.50	\$325.00	\$162.50
8/9/2012	Sarah McGuane	Office Admin.	7.00	\$325.00	\$2,275.00
8/9/2012	Sarah McGuane	Meet with	0.17	\$325.00	\$54.28
8/9/2012	James Moore	Phone Call	0.92	\$725.00	\$664.83
8/9/2012	J. Brian McTigue, Esq.	Case Admin	0.52	\$725.00	\$374.83
8/9/2012	David Bond	Prepare	1.14	\$325.00	\$370.50
8/9/2012	J. Brian McTigue, Esq.	Conference	1.80	\$725.00	\$1,307.18
8/9/2012	James Moore	Draft	7.00	\$725.00	\$5,075.00
8/10/2012	James Moore	Draft	7.42	\$725.00	\$5,377.33
8/10/2012	Sarah McGuane	Office Admin.	7.45	\$325.00	\$2,419.63
8/10/2012	Emily Peterson	Draft	6.05	\$325.00	\$1,966.58
8/10/2012	J. Brian McTigue, Esq.	Conference Call	2.02	\$725.00	\$1,460.88
8/10/2012	J. Brian McTigue, Esq.	Draft	0.67	\$725.00	\$487.93
8/12/2012	J. Brian McTigue, Esq.	Review	2.02	\$725.00	\$1,463.05
8/12/2012	J. Brian McTigue, Esq.	Conference	0.34	\$725.00	\$249.40
8/13/2012	James Moore	Phone Call	2.08	\$725.00	\$1,510.18
8/13/2012	Emily Peterson	Meet with	0.33	\$325.00	\$108.23
8/13/2012	Emily Peterson	Draft	1.00	\$325.00	\$325.98
8/13/2012	J. Brian McTigue, Esq.	Conference Call	0.35	\$725.00	\$253.03
8/13/2012	Emily Peterson	Draft	2.00	\$325.00	\$650.33
8/13/2012	Sarah McGuane	Office Admin.	7.77	\$325.00	\$2,523.95
8/13/2012	Emily Peterson	Review	2.30	\$325.00	\$747.50
8/13/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$71.78
8/13/2012	J. Brian McTigue, Esq.	Conference Call	0.77	\$725.00	\$556.80
8/13/2012	Emily Peterson	Conference Call	1.55	\$325.00	\$504.08
8/13/2012	J. Brian McTigue, Esq.	Draft	3.52	\$725.00	\$2,554.18
8/13/2012	James Moore	Draft	5.42	\$725.00	\$3,927.33
8/14/2012	David Bond	Review	1.00	\$325.00	\$325.00
8/14/2012	J. Brian McTigue, Esq.	Draft	0.61	\$725.00	\$444.43
8/14/2012	J. Brian McTigue, Esq.	Review	1.74	\$725.00	\$1,260.78
8/14/2012	Emily Peterson	Research	4.68	\$325.00	\$1,521.00
8/14/2012	J. Brian McTigue, Esq.	Phone Call	0.24	\$725.00	\$174.73
8/14/2012	Emily Peterson	Draft	2.43	\$325.00	\$791.05
8/14/2012	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$72.50
8/14/2012	Sarah McGuane	Office Admin.	2.00	\$325.00	\$650.00
8/14/2012	James Moore	Research	1.83	\$725.00	\$1,328.93
8/14/2012	James Moore	Draft	5.42	\$725.00	\$3,927.33
8/15/2012	Emily Peterson	Review	0.47	\$325.00	\$153.73
8/15/2012	J. Brian McTigue, Esq.	Review	2.40	\$725.00	\$1,740.00
8/15/2012	Sarah McGuane	Office Admin.	7.70	\$325.00	\$2,500.88
8/15/2012	Emily Peterson	Draft	5.45	\$325.00	\$1,771.90
8/15/2012	James Moore	Draft	7.75	\$725.00	\$5,618.75
8/15/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
8/16/2012	Sarah McGuane	Meet with	0.95	\$325.00	\$307.13

8/16/2012 Sarah McGuane	Office Admin.	5.27	\$325.00	\$1,712.10
8/16/2012 J. Brian McTigue, Esq.	Conference	1.51	\$725.00	\$1,096.93
8/16/2012 J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
8/16/2012 James Moore	Draft	1.67	\$725.00	\$1,208.58
8/16/2012 James Moore	Research	5.83	\$725.00	\$4,228.93
8/17/2012 Sarah McGuane	Office Admin.	7.56	\$325.00	\$2,455.38
8/17/2012 J. Brian McTigue, Esq.	Conference Call	0.68	\$725.00	\$489.38
8/17/2012 J. Brian McTigue, Esq.	Phone Call	0.09	\$725.00	\$68.15
8/17/2012 J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$306.68
8/17/2012 J. Brian McTigue, Esq.	Research	0.42	\$725.00	\$306.68
8/17/2012 James Moore	Draft	7.33	\$725.00	\$5,316.43
8/17/2012 David Bond	Review	1.00	\$325.00	\$325.00
8/18/2012 J. Brian McTigue, Esq.	Research	0.50	\$725.00	\$362.50
8/19/2012 J. Brian McTigue, Esq.	E-Mail	0.04	\$725.00	\$29.00
8/20/2012 David Bond	Review	1.00	\$325.00	\$325.00
8/20/2012 J. Brian McTigue, Esq.	Conference Call	3.03	\$725.00	\$2,199.65
8/20/2012 J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$71.78
8/20/2012 Sarah McGuane	Office Admin.	5.85	\$325.00	\$1,902.55
8/20/2012 James Moore	Conference Call	2.33	\$725.00	\$1,691.43
8/20/2012 James Moore	Research	3.25	\$725.00	\$2,356.25
8/21/2012 J. Brian McTigue, Esq.	Phone Call	0.92	\$725.00	\$669.18
8/21/2012 J. Brian McTigue, Esq.	Conference Call	0.54	\$725.00	\$394.40
8/21/2012 J. Brian McTigue, Esq.	Voice Mail Mess	0.09	\$725.00	\$66.70
8/21/2012 Sarah McGuane	Office Admin.	4.00	\$325.00	\$1,300.00
8/21/2012 Sarah McGuane	Research	0.75	\$325.00	\$243.75
8/21/2012 James Moore	Research	7.58	\$725.00	\$5,497.68
8/22/2012 Sarah McGuane	Office Admin.	5.80	\$325.00	\$1,884.68
8/22/2012 J. Brian McTigue, Esq.	Review	2.12	\$725.00	\$1,539.18
8/22/2012 J. Brian McTigue, Esq.	Conference Call	3.26	\$725.00	\$2,359.88
8/22/2012 J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
8/22/2012 J. Brian McTigue, Esq.	Conference	3.25	\$725.00	\$2,356.25
8/22/2012 J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$123.98
8/22/2012 James Moore	Research	4.83	\$725.00	\$3,503.93
8/22/2012 James Moore	Conference Call	2.75	\$725.00	\$1,993.75
8/22/2012 David Bond	Review	1.00	\$325.00	\$325.00
8/22/2012 Sarah McGuane	Research	1.51	\$325.00	\$491.73
8/22/2012 David Bond	Research	2.00	\$325.00	\$650.00
8/23/2012 Sarah McGuane	Research	2.01	\$325.00	\$654.55
8/23/2012 Sarah McGuane	Case Admin	2.50	\$325.00	\$812.50
8/23/2012 Sarah McGuane	Travel	2.00	\$325.00	\$650.00
8/23/2012 J. Brian McTigue, Esq.	Review	0.26	\$725.00	\$189.23
8/23/2012 J. Brian McTigue, Esq.	Phone Call	0.68	\$725.00	\$492.28
8/23/2012 J. Brian McTigue, Esq.	Case Admin	0.51	\$725.00	\$370.48
8/23/2012 James Moore	Draft	7.58	\$725.00	\$5,497.68
8/23/2012 Sarah McGuane	Research	1.64	\$325.00	\$533.98
8/23/2012 J. Brian McTigue, Esq.	E-Mail	0.18	\$725.00	\$131.95
8/23/2012 J. Brian McTigue, Esq.	Voice Mail Mess	0.17	\$725.00	\$121.08
8/24/2012 J. Brian McTigue, Esq.	Review	0.03	\$725.00	\$23.93
8/24/2012 Sarah McGuane	Case Admin	6.01	\$325.00	\$1,954.55
8/24/2012 J. Brian McTigue, Esq.	Phone Call	1.67	\$725.00	\$1,207.85
8/24/2012 David Bond	Prepare	1.50	\$325.00	\$487.50
8/24/2012 Sarah McGuane	Meet with	0.63	\$325.00	\$205.40
8/24/2012 James Moore	Research	5.08	\$725.00	\$3,685.18
8/24/2012 James Moore	Research	2.58	\$725.00	\$1,872.68
8/24/2012 J. Brian McTigue, Esq.	Phone Call	0.31	\$725.00	\$224.03
8/24/2012 Sarah McGuane	Research	0.47	\$325.00	\$153.73
8/24/2012 David Bond	Review	1.00	\$325.00	\$325.00
8/26/2012 J. Brian McTigue, Esq.	Draft	1.31	\$725.00	\$949.03
8/27/2012 Sarah McGuane	Case Admin	7.44	\$325.00	\$2,417.35
8/27/2012 J. Brian McTigue, Esq.	E-Mail	0.18	\$725.00	\$129.78
8/27/2012 James Moore	Research	3.75	\$725.00	\$2,718.75

8/27/2012	David Bond	Review	1.00	\$325.00	\$325.00
8/28/2012	J. Brian McTigue, Esq.	Conference Call	0.24	\$725.00	\$176.90
8/28/2012	James Moore	Draft	3.42	\$725.00	\$2,477.33
8/28/2012	Sarah McGuane	Case Admin	0.38	\$325.00	\$122.85
8/29/2012	James Moore	Draft	3.67	\$725.00	\$2,658.58
8/29/2012	J. Brian McTigue, Esq.	Conference Call	0.35	\$725.00	\$253.75
8/29/2012	James Moore	Conference	1.50	\$725.00	\$1,087.50
8/30/2012	James Moore	Draft	7.58	\$725.00	\$5,497.68
8/30/2012	Sarah McGuane	Meet with	0.25	\$325.00	\$81.25
8/30/2012	J. Brian McTigue, Esq.	Phone Call	0.03	\$725.00	\$23.93
8/30/2012	David Bond	Review	1.00	\$325.00	\$325.00
8/31/2012	Sarah McGuane	Case Admin	6.18	\$325.00	\$2,007.20
8/31/2012	James Moore	Draft	7.00	\$725.00	\$5,075.00
9/4/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/4/2012	Sarah McGuane	Case Admin	1.23	\$325.00	\$399.43
9/4/2012	James Moore	Conference	3.58	\$725.00	\$2,597.68
9/5/2012	J. Brian McTigue, Esq.	Prepare	1.09	\$725.00	\$787.35
9/5/2012	James Moore	Conference	1.67	\$725.00	\$1,208.58
9/5/2012	Sarah McGuane	Office Admin.	0.89	\$325.00	\$289.90
9/5/2012	James Moore	Draft	5.92	\$725.00	\$4,289.83
9/5/2012	J. Brian McTigue, Esq.	Conference Call	1.18	\$725.00	\$858.40
9/6/2012	J. Brian McTigue, Esq.	Prepare	3.84	\$725.00	\$2,781.10
9/6/2012	James Moore	Draft	7.33	\$725.00	\$5,316.43
9/6/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/7/2012	Sarah McGuane	Office Admin.	0.75	\$325.00	\$244.73
9/7/2012	David Bond	Research	2.27	\$325.00	\$736.45
9/7/2012	James Moore	Research	7.17	\$725.00	\$5,196.08
9/7/2012	J. Brian McTigue, Esq.	Phone Call	1.19	\$725.00	\$862.75
9/7/2012	J. Brian McTigue, Esq.	Phone Call	1.42	\$725.00	\$1,025.88
9/10/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.04	\$725.00	\$31.90
9/10/2012	J. Brian McTigue, Esq.	Review	0.09	\$725.00	\$65.98
9/10/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/10/2012	J. Brian McTigue, Esq.	Phone Call	0.33	\$725.00	\$238.53
9/10/2012	J. Brian McTigue, Esq.	Phone Call	1.04	\$725.00	\$754.73
9/11/2012	J. Brian McTigue, Esq.	Phone Call	0.59	\$725.00	\$427.03
9/11/2012	J. Brian McTigue, Esq.	Prepare	8.33	\$725.00	\$6,041.43
9/11/2012	James Moore	Draft	7.25	\$725.00	\$5,256.25
9/12/2012	James Moore	Draft	2.42	\$725.00	\$1,752.33
9/12/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/13/2012	Sarah McGuane	Office Admin.	0.33	\$325.00	\$108.23
9/13/2012	J. Brian McTigue, Esq.	Prepare	1.75	\$725.00	\$1,269.48
9/13/2012	J. Brian McTigue, Esq.	Phone Call	1.05	\$725.00	\$759.80
9/13/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$125.43
9/13/2012	James Moore	Conference	0.58	\$725.00	\$422.68
9/13/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.08	\$725.00	\$57.28
9/14/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/14/2012	James Moore	Conference	2.17	\$725.00	\$1,571.08
9/16/2012	J. Brian McTigue, Esq.	Phone Call	0.14	\$725.00	\$103.68
9/16/2012	J. Brian McTigue, Esq.	Phone Call	0.12	\$725.00	\$84.83
9/17/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/17/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
9/17/2012	J. Brian McTigue, Esq.	Review	2.50	\$725.00	\$1,812.50
9/17/2012	James Moore	Conference	4.00	\$725.00	\$2,900.00
9/18/2012	James Moore	Conference	1.33	\$725.00	\$966.43
9/18/2012	J. Brian McTigue, Esq.	Phone Call	0.05	\$725.00	\$36.25
9/18/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$129.05
9/18/2012	Sarah McGuane	Case Admin	1.12	\$325.00	\$363.03
9/18/2012	James Moore	Conference	1.00	\$725.00	\$725.00
9/18/2012	J. Brian McTigue, Esq.	Conference Call	1.01	\$725.00	\$728.63
9/19/2012	James Moore	Draft	6.17	\$725.00	\$4,471.08
9/19/2012	J. Brian McTigue, Esq.	Edit	2.02	\$725.00	\$1,465.95

9/19/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/19/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.02	\$725.00	\$12.33
9/19/2012	Sarah McGuane	Research	4.26	\$325.00	\$1,384.83
9/20/2012	J. Brian McTigue, Esq.	Draft	0.17	\$725.00	\$126.15
9/20/2012	James Moore	Draft	7.25	\$725.00	\$5,256.25
9/20/2012	J. Brian McTigue, Esq.	Conference	0.88	\$725.00	\$638.73
9/20/2012	Sarah McGuane	Research	2.01	\$325.00	\$652.60
9/20/2012	J. Brian McTigue, Esq.	Meet & Confer	0.20	\$725.00	\$145.00
9/21/2012	J. Brian McTigue, Esq.	Conference	0.52	\$725.00	\$373.38
9/21/2012	David Bond	Review	1.00	\$325.00	\$325.00
9/21/2012	James Moore	Draft	6.42	\$725.00	\$4,652.33
9/22/2012	J. Brian McTigue, Esq.	E-Mail	0.05	\$725.00	\$36.25
9/22/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.03	\$725.00	\$20.30
9/22/2012	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
9/22/2012	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
9/22/2012	J. Brian McTigue, Esq.	Phone Call	0.22	\$725.00	\$157.33
9/23/2012	J. Brian McTigue, Esq.	Research	2.73	\$725.00	\$1,976.35
9/23/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$132.68
9/23/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.02	\$725.00	\$12.33
9/23/2012	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
9/24/2012	James Moore	Draft	0.67	\$725.00	\$483.58
9/24/2012	J. Brian McTigue, Esq.	Phone Call	0.22	\$725.00	\$157.33
9/24/2012	David Bond	Research	1.00	\$325.00	\$325.00
9/24/2012	J. Brian McTigue, Esq.	Conference Call	0.26	\$725.00	\$187.78
9/24/2012	J. Brian McTigue, Esq.	Draft	1.13	\$725.00	\$819.25
9/25/2012	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$58.00
9/25/2012	Sarah McGuane	Case Admin	4.76	\$325.00	\$1,545.38
9/25/2012	James Moore	Draft	2.83	\$725.00	\$2,053.93
9/25/2012	J. Brian McTigue, Esq.	Edit	0.13	\$725.00	\$96.43
9/26/2012	James Moore	Draft	3.92	\$725.00	\$2,839.83
9/26/2012	James Moore	Research	1.90	\$725.00	\$1,377.50
9/27/2012	James Moore	Draft	0.75	\$725.00	\$543.75
9/27/2012	Sarah McGuane	Case Admin	2.26	\$325.00	\$732.88
9/27/2012	David Bond	Prepare	0.94	\$325.00	\$304.20
9/27/2012	James Moore	Research	6.67	\$725.00	\$4,833.58
9/27/2012	J. Brian McTigue, Esq.	Prepare	1.42	\$725.00	\$1,028.05
9/28/2012	James Moore	Draft	0.25	\$725.00	\$181.25
9/28/2012	J. Brian McTigue, Esq.	Edit	3.90	\$725.00	\$2,823.88
9/28/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.01	\$725.00	\$7.98
9/28/2012	James Moore	Conference	1.67	\$725.00	\$1,208.58
9/28/2012	David Bond	Research	1.00	\$325.00	\$325.00
9/28/2012	James Moore	Research	5.58	\$725.00	\$4,047.68
9/30/2012	J. Brian McTigue, Esq.	Draft	0.02	\$725.00	\$12.33
10/1/2012	James Moore	Draft	6.50	\$725.00	\$4,712.50
10/1/2012	James Moore	Conference	1.00	\$725.00	\$725.00
10/1/2012	J. Brian McTigue, Esq.	Conference	1.66	\$725.00	\$1,200.60
10/1/2012	J. Brian McTigue, Esq.	Phone Call	0.48	\$725.00	\$350.18
10/1/2012	J. Brian McTigue, Esq.	Review	0.72	\$725.00	\$524.18
10/2/2012	James Moore	Prepare	1.75	\$725.00	\$1,268.75
10/2/2012	James Moore	Conference	3.25	\$725.00	\$2,356.25
10/2/2012	David Bond	Prepare	1.34	\$325.00	\$433.88
10/2/2012	J. Brian McTigue, Esq.	Prepare	8.50	\$725.00	\$6,162.50
10/2/2012	James Moore	Draft	2.25	\$725.00	\$1,631.25
10/3/2012	James Moore	Draft	1.92	\$725.00	\$1,389.83
10/3/2012	James Moore	Conference	2.75	\$725.00	\$1,993.75
10/3/2012	David Bond	Review	1.64	\$325.00	\$532.35
10/3/2012	James Moore	Research	2.00	\$725.00	\$1,450.00
10/3/2012	J. Brian McTigue, Esq.	Conference	3.26	\$725.00	\$2,365.68
10/3/2012	J. Brian McTigue, Esq.	Draft	3.51	\$725.00	\$2,546.93
10/4/2012	James Moore	Research	7.50	\$725.00	\$5,437.50
10/4/2012	J. Brian McTigue, Esq.	Draft	1.75	\$725.00	\$1,268.75

10/4/2012 Sarah McGuane	Case Admin		7.65	\$325.00	\$2,487.23
10/4/2012 J. Brian McTigue, Esq.	Review		0.77	\$725.00	\$555.35
10/4/2012 David Bond	Review		2.07	\$325.00	\$674.05
10/4/2012 J. Brian McTigue, Esq.	Conference		0.50	\$725.00	\$364.68
10/5/2012 James Moore	Conference		0.75	\$725.00	\$543.75
10/5/2012 Sarah McGuane	Case Admin		7.24	\$325.00	\$2,354.30
10/5/2012 J. Brian McTigue, Esq.	Review		0.59	\$725.00	\$424.85
10/5/2012 James Moore	Draft		6.75	\$725.00	\$4,893.75
10/5/2012 J. Brian McTigue, Esq.	Conference Call		0.81	\$725.00	\$585.80
10/8/2012 James Moore	Conference		1.58	\$725.00	\$1,147.68
10/8/2012 Sarah McGuane	Case Admin		6.01	\$325.00	\$1,953.58
10/8/2012 James Moore	Draft		5.33	\$725.00	\$3,866.43
10/8/2012 J. Brian McTigue, Esq.	Conference Call		1.30	\$725.00	\$939.60
10/9/2012 James Moore	Draft		7.50	\$725.00	\$5,437.50
10/9/2012 Sarah McGuane	Case Admin		0.81	\$325.00	\$264.55
10/9/2012 J. Brian McTigue, Esq.	Review		3.03	\$725.00	\$2,193.85
10/9/2012 J. Brian McTigue, Esq.	Review		2.80	\$725.00	\$2,029.28
10/9/2012 J. Brian McTigue, Esq.	Voice Mail Mess		0.77	\$725.00	\$554.63
10/10/2012 James Moore	Research		7.75	\$725.00	\$5,618.75
10/10/2012 Sarah McGuane	Case Admin		0.40	\$325.00	\$131.30
10/10/2012 David Bond	Review		1.15	\$325.00	\$375.05
10/10/2012 J. Brian McTigue, Esq.	Phone Call		0.07	\$725.00	\$48.58
10/10/2012 David Bond	Prepare		1.25	\$325.00	\$405.28
10/11/2012 J. Brian McTigue, Esq.	Review		4.20	\$725.00	\$3,047.18
10/11/2012 Sarah McGuane	Case Admin		0.84	\$325.00	\$273.98
10/11/2012 J. Brian McTigue, Esq.	Review		3.05	\$725.00	\$2,214.15
10/11/2012 James Moore	Draft		6.33	\$725.00	\$4,591.43
10/11/2012 David Bond	Case Admin		1.81	\$325.00	\$589.23
10/12/2012 James Moore	Review		0.33	\$725.00	\$241.43
10/12/2012 James Moore	Draft		7.00	\$725.00	\$5,075.00
10/14/2012 J. Brian McTigue, Esq.	Draft		0.01	\$725.00	\$5.80
10/14/2012 J. Brian McTigue, Esq.	Draft		1.53	\$725.00	\$1,105.63
10/14/2012 James Moore	Review		1.00	\$725.00	\$725.00
10/15/2012 James Moore	Draft		1.75	\$725.00	\$1,268.75
10/15/2012 Sarah McGuane	Case Admin		1.83	\$325.00	\$595.08
10/15/2012 James Moore	Meet with		3.33	\$725.00	\$2,416.43
10/15/2012 J. Brian McTigue, Esq.	Conference Call		8.04	\$725.00	\$5,826.10
10/15/2012 James Moore	Prepare		2.67	\$725.00	\$1,933.58
10/15/2012 James Moore	Conference Call		1.25	\$725.00	\$906.25
10/16/2012 James Moore	Draft		6.58	\$725.00	\$4,772.68
10/16/2012 J. Brian McTigue, Esq.	Conference Call		2.01	\$725.00	\$1,457.98
10/17/2012 James Moore	Review		2.75	\$725.00	\$1,993.75
10/17/2012 Sarah McGuane	Case Admin		2.37	\$325.00	\$769.28
10/18/2012 James Moore	Review		5.42	\$725.00	\$3,927.33
10/18/2012 J. Brian McTigue, Esq.	Review		4.93	\$725.00	\$3,574.98
10/18/2012 Sarah McGuane	Office Admin.		1.40	\$325.00	\$454.68
10/19/2012 J. Brian McTigue, Esq.	Review		3.50	\$725.00	\$2,537.50
10/19/2012 James Moore	Research		7.33	\$725.00	\$5,316.43
10/19/2012 Sarah McGuane	Research		2.45	\$325.00	\$796.58
10/19/2012 Sarah McGuane	Case Admin		2.36	\$325.00	\$768.30
10/20/2012 James Moore	Conference Call		0.67	\$725.00	\$483.58
10/20/2012 J. Brian McTigue, Esq.	Review		1.35	\$725.00	\$977.30
10/21/2012 J. Brian McTigue, Esq.	Research		0.10	\$725.00	\$70.33
10/22/2012 James Moore	Prepare		7.58	\$725.00	\$5,497.68
10/22/2012 J. Brian McTigue, Esq.	Prepare		1.87	\$725.00	\$1,352.85
10/22/2012 Sarah McGuane	Case Admin		5.86	\$325.00	\$1,903.20
10/23/2012 James Moore	Travel		3.75	\$725.00	\$2,718.75
10/23/2012 J. Brian McTigue, Esq.	Travel		15.05	\$725.00	\$10,909.08
10/23/2012 James Moore	Conference		5.00	\$725.00	\$3,625.00
10/24/2012 James Moore	Mediate		5.50	\$725.00	\$3,987.50
10/24/2012 James Moore	Travel		4.00	\$725.00	\$2,900.00

10/24/2012	J. Brian McTigue, Esq.	Attend	12.00	\$725.00	\$8,700.00
10/25/2012	James Moore	Research	5.25	\$725.00	\$3,806.25
10/25/2012	J. Brian McTigue, Esq.	Review	0.53	\$725.00	\$382.08
10/26/2012	James Moore	Conference	3.18	\$725.00	\$2,307.68
10/26/2012	J. Brian McTigue, Esq.	Prepare	2.00	\$725.00	\$1,450.00
10/26/2012	J. Brian McTigue, Esq.	Phone Call	0.61	\$725.00	\$445.15
10/26/2012	J. Brian McTigue, Esq.	Conference Call	1.11	\$725.00	\$807.65
10/27/2012	J. Brian McTigue, Esq.	Phone Call	0.52	\$725.00	\$377.00
10/28/2012	James Moore	Draft	0.17	\$725.00	\$121.08
10/28/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.03	\$725.00	\$22.48
10/28/2012	J. Brian McTigue, Esq.	Review	0.75	\$725.00	\$543.75
10/28/2012	J. Brian McTigue, Esq.	Phone Call	1.22	\$725.00	\$884.50
10/29/2012	James Moore	Conference	3.92	\$725.00	\$2,839.83
10/29/2012	J. Brian McTigue, Esq.	Prepare	3.02	\$725.00	\$2,188.05
10/30/2012	James Moore	Review	0.50	\$725.00	\$362.50
10/30/2012	J. Brian McTigue, Esq.	Edit	3.01	\$725.00	\$2,182.25
10/30/2012	J. Brian McTigue, Esq.	Prepare	0.36	\$725.00	\$263.90
10/31/2012	James Moore	Conference	2.75	\$725.00	\$1,993.75
10/31/2012	J. Brian McTigue, Esq.	Prepare	3.76	\$725.00	\$2,726.00
11/1/2012	James Moore	Conference	1.42	\$725.00	\$1,027.33
11/1/2012	J. Brian McTigue, Esq.	Review	2.01	\$725.00	\$1,457.98
11/2/2012	James Moore	Research	2.17	\$725.00	\$1,571.08
11/2/2012	J. Brian McTigue, Esq.	Phone Call	0.75	\$725.00	\$545.93
11/5/2012	J. Brian McTigue, Esq.	Conference	2.83	\$725.00	\$2,052.48
11/7/2012	J. Brian McTigue, Esq.	Phone Call	1.25	\$725.00	\$906.25
11/8/2012	James Moore	Conference	0.92	\$725.00	\$664.83
11/12/2012	James Moore	Research	2.08	\$725.00	\$1,510.18
11/12/2012	J. Brian McTigue, Esq.	Prepare	0.53	\$725.00	\$384.98
11/13/2012	David Bond	Review	0.92	\$325.00	\$298.35
11/14/2012	James Moore	Conference	1.08	\$725.00	\$785.18
11/14/2012	J. Brian McTigue, Esq.	Phone Call	1.26	\$725.00	\$914.95
11/15/2012	J. Brian McTigue, Esq.	Conference Call	1.49	\$725.00	\$1,077.35
11/19/2012	J. Brian McTigue, Esq.	Phone Call	1.08	\$725.00	\$780.10
11/19/2012	J. Brian McTigue, Esq.	Conference Call	0.68	\$725.00	\$490.10
11/19/2012	J. Brian McTigue, Esq.	Phone Call	0.07	\$725.00	\$48.58
11/19/2012	J. Brian McTigue, Esq.	E-Mail	0.10	\$725.00	\$72.50
11/20/2012	J. Brian McTigue, Esq.	Travel	1.50	\$725.00	\$1,090.40
11/20/2012	J. Brian McTigue, Esq.	Travel	9.00	\$725.00	\$6,527.90
11/21/2012	David Bond	Research	1.94	\$325.00	\$630.83
11/21/2012	J. Brian McTigue, Esq.	Research	0.51	\$725.00	\$371.93
11/25/2012	J. Brian McTigue, Esq.	Review	1.76	\$725.00	\$1,275.28
11/26/2012	James Moore	Draft	5.50	\$725.00	\$3,987.50
11/26/2012	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
11/26/2012	J. Brian McTigue, Esq.	Review	0.87	\$725.00	\$630.03
11/26/2012	J. Brian McTigue, Esq.	Review	3.70	\$725.00	\$2,681.78
11/26/2012	David Bond	Research	3.87	\$325.00	\$1,257.75
11/26/2012	J. Brian McTigue, Esq.	Review	1.18	\$725.00	\$852.60
11/27/2012	James Moore	Draft	3.12	\$725.00	\$2,259.83
11/27/2012	J. Brian McTigue, Esq.	Research	7.00	\$725.00	\$5,075.73
11/27/2012	David Bond	Research	2.09	\$325.00	\$680.55
11/28/2012	James Moore	Conference	2.50	\$725.00	\$1,812.50
11/28/2012	David Bond	Research	0.95	\$325.00	\$310.05
11/28/2012	James Moore	Research	2.17	\$725.00	\$1,571.08
11/28/2012	David Bond	Review	2.00	\$325.00	\$650.00
11/28/2012	J. Brian McTigue, Esq.	Conference Call	1.35	\$725.00	\$980.20
11/29/2012	James Moore	Research	5.42	\$725.00	\$3,927.33
11/29/2012	J. Brian McTigue, Esq.	Draft	0.21	\$725.00	\$151.53
11/30/2012	James Moore	Research	5.17	\$725.00	\$3,746.08
11/30/2012	J. Brian McTigue, Esq.	Edit	1.25	\$725.00	\$906.25
11/30/2012	David Bond	Review	2.24	\$325.00	\$727.68
11/30/2012	David Bond	Prepare	1.05	\$325.00	\$342.55

11/30/2012	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$302.33
12/3/2012	James Moore	Research	3.25	\$725.00	\$2,356.25
12/3/2012	David Bond	Prepare	1.55	\$325.00	\$502.78
12/3/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
12/3/2012	J. Brian McTigue, Esq.	Phone Call	0.12	\$725.00	\$84.83
12/4/2012	J. Brian McTigue, Esq.	E-Mail	0.08	\$725.00	\$60.18
12/4/2012	Sarah McGuane	Research	0.41	\$325.00	\$134.55
12/4/2012	David Bond	Review	3.90	\$325.00	\$1,268.80
12/4/2012	J. Brian McTigue, Esq.	Research	0.72	\$725.00	\$520.55
12/5/2012	James Moore	Research	1.58	\$725.00	\$1,147.68
12/5/2012	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$133.40
12/5/2012	J. Brian McTigue, Esq.	Conference	0.08	\$725.00	\$60.18
12/5/2012	David Bond	Review Doc Prod	2.13	\$325.00	\$691.60
12/5/2012	David Bond	Prepare	2.00	\$325.00	\$650.00
12/6/2012	James Moore	Research	3.75	\$725.00	\$2,718.75
12/6/2012	J. Brian McTigue, Esq.	E-Mail	0.07	\$725.00	\$48.58
12/6/2012	James Moore	Conference	0.75	\$725.00	\$543.75
12/6/2012	David Bond	Prepare	4.78	\$325.00	\$1,552.20
12/6/2012	J. Brian McTigue, Esq.	Conference Call	1.40	\$725.00	\$1,015.00
12/6/2012	James Moore	Conference	1.33	\$725.00	\$966.43
12/7/2012	James Moore	Research	1.08	\$725.00	\$785.18
12/7/2012	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
12/7/2012	J. Brian McTigue, Esq.	Phone Call	0.09	\$725.00	\$67.43
12/7/2012	J. Brian McTigue, Esq.	Phone Call	0.03	\$725.00	\$23.93
12/8/2012	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
12/8/2012	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
12/9/2012	J. Brian McTigue, Esq.	Phone Call	0.33	\$725.00	\$241.43
12/9/2012	J. Brian McTigue, Esq.	Phone Call	0.02	\$725.00	\$12.33
12/9/2012	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
12/10/2012	J. Brian McTigue, Esq.	E-Mail	0.07	\$725.00	\$47.13
12/10/2012	David Bond	Research	0.64	\$325.00	\$207.03
12/11/2012	J. Brian McTigue, Esq.	Review	0.03	\$725.00	\$23.93
12/11/2012	J. Brian McTigue, Esq.	Review	0.07	\$725.00	\$53.65
12/12/2012	James Moore	Research	2.58	\$725.00	\$1,872.68
12/12/2012	Sarah McGuane	Research	1.18	\$325.00	\$384.15
12/13/2012	David Bond	Review Doc Prod	3.03	\$325.00	\$984.43
12/16/2012	J. Brian McTigue, Esq.	Review Doc Prod	2.15	\$725.00	\$1,559.48
12/16/2012	J. Brian McTigue, Esq.	Meet with	3.51	\$725.00	\$2,544.03
12/17/2012	J. Brian McTigue, Esq.	Phone Call	1.23	\$725.00	\$891.03
12/17/2012	Sarah McGuane	Research	1.73	\$325.00	\$561.28
12/17/2012	J. Brian McTigue, Esq.	Review Doc Prod	1.46	\$725.00	\$1,058.50
12/17/2012	J. Brian McTigue, Esq.	Phone Call	0.12	\$725.00	\$84.83
12/17/2012	J. Brian McTigue, Esq.	Conference	0.45	\$725.00	\$326.25
12/17/2012	J. Brian McTigue, Esq.	Prepare	1.21	\$725.00	\$874.35
12/17/2012	David Bond	Prepare	3.13	\$325.00	\$1,015.95
12/18/2012	James Moore	Conference	1.17	\$725.00	\$846.08
12/18/2012	David Bond	Prepare	3.52	\$325.00	\$1,143.68
12/19/2012	James Moore	Conference	0.25	\$725.00	\$181.25
12/19/2012	J. Brian McTigue, Esq.	Draft	0.59	\$725.00	\$427.03
12/20/2012	James Moore	Research	2.67	\$725.00	\$1,933.58
12/20/2012	David Bond	Meet with	0.67	\$325.00	\$216.78
12/20/2012	J. Brian McTigue, Esq.	Review	1.18	\$725.00	\$852.60
12/20/2012	David Bond	Prepare	1.44	\$325.00	\$467.35
12/21/2012	James Moore	Research	2.05	\$725.00	\$1,486.25
12/21/2012	J. Brian McTigue, Esq.	Conference Call	1.46	\$725.00	\$1,058.50
12/21/2012	J. Brian McTigue, Esq.	Conference	0.35	\$725.00	\$254.48
12/24/2012	J. Brian McTigue, Esq.	Conference	1.22	\$725.00	\$886.68
12/26/2012	James Moore	Conference	1.75	\$725.00	\$1,268.75
12/26/2012	J. Brian McTigue, Esq.	Review	6.03	\$725.00	\$4,371.75
12/26/2012	David Bond	Research	2.06	\$325.00	\$668.53
12/26/2012	J. Brian McTigue, Esq.	Voice Mail Mess	0.04	\$725.00	\$29.73

12/27/2012	James Moore	Review		0.25	\$725.00	\$181.25
12/27/2012	David Bond	Research		1.00	\$325.00	\$325.00
12/27/2012	J. Brian McTigue, Esq.	Edit		7.26	\$725.00	\$5,265.68
12/27/2012	J. Brian McTigue, Esq.	Phone Call		0.21	\$725.00	\$150.80
12/27/2012	David Bond	Review Doc Prod		1.30	\$325.00	\$422.50
12/27/2012	Sarah McGuane	Research		1.35	\$325.00	\$437.45
12/28/2012	J. Brian McTigue, Esq.	Phone Call		2.71	\$725.00	\$1,966.20
12/30/2012	J. Brian McTigue, Esq.	Voice Mail Mess		0.08	\$725.00	\$60.18
12/31/2012	James Moore	Conference		1.33	\$725.00	\$966.43
12/31/2012	J. Brian McTigue, Esq.	Prepare		0.51	\$725.00	\$368.30
12/31/2012	J. Brian McTigue, Esq.	Phone Call		1.26	\$725.00	\$910.60
1/2/2013	James Moore	Phone Call		0.50	\$725.00	\$362.50
1/2/2013	James Moore	Research		4.67	\$725.00	\$3,383.58
1/2/2013	J. Brian McTigue, Esq.	Conference Call		0.95	\$725.00	\$688.75
1/3/2013	Sarah McGuane	Travel		1.50	\$325.00	\$487.50
1/3/2013	James Moore	Prepare		3.93	\$725.00	\$2,851.43
1/3/2013	J. Brian McTigue, Esq.	Conference Call		4.03	\$725.00	\$2,923.93
1/3/2013	James Moore	Conference Call		1.83	\$725.00	\$1,328.93
1/4/2013	James Moore	Draft		2.00	\$725.00	\$1,450.00
1/4/2013	J. Brian McTigue, Esq.	Review		2.02	\$725.00	\$1,465.23
1/7/2013	James Moore	Draft		2.92	\$725.00	\$2,114.83
1/7/2013	J. Brian McTigue, Esq.	Conference		0.62	\$725.00	\$447.33
1/7/2013	J. Brian McTigue, Esq.	Conference Call		1.16	\$725.00	\$843.18
1/7/2013	David Bond	Review Doc Prod		5.00	\$325.00	\$1,625.98
1/8/2013	James Moore	Draft		4.42	\$725.00	\$3,202.33
1/8/2013	Sarah McGuane	Case Admin		0.33	\$325.00	\$106.60
1/8/2013	J. Brian McTigue, Esq.	Edit		0.56	\$725.00	\$408.90
1/8/2013	David Bond	Review Doc Prod		2.98	\$325.00	\$969.48
1/8/2013	David Bond	Meet with		1.00	\$325.00	\$325.00
1/8/2013	J. Brian McTigue, Esq.	Phone Call		0.85	\$725.00	\$614.08
1/9/2013	James Moore	Conference		3.17	\$725.00	\$2,296.08
1/9/2013	J. Brian McTigue, Esq.	Conference		2.38	\$725.00	\$1,722.60
1/9/2013	David Bond	Review Doc Prod		2.68	\$325.00	\$870.68
1/10/2013	James Moore	Research		0.50	\$725.00	\$362.50
1/10/2013	David Bond	Review Doc Prod		5.10	\$325.00	\$1,658.80
1/10/2013	J. Brian McTigue, Esq.	Review		0.40	\$725.00	\$292.90
1/11/2013	James Moore	Research		4.00	\$725.00	\$2,900.00
1/11/2013	J. Brian McTigue, Esq.	Prepare		4.45	\$725.00	\$3,222.63
1/11/2013	David Bond	Review Doc Prod		3.96	\$325.00	\$1,285.70
1/11/2013	David Bond	Meet with		1.33	\$325.00	\$433.23
1/14/2013	James Moore	Conference		0.25	\$725.00	\$181.25
1/14/2013	David Bond	Review Doc Prod		4.29	\$325.00	\$1,393.60
1/14/2013	David Bond	Meet with		0.74	\$325.00	\$241.80
1/14/2013	J. Brian McTigue, Esq.	Conference Call		1.52	\$725.00	\$1,099.10
1/14/2013	J. Brian McTigue, Esq.	Phone Call		0.13	\$725.00	\$96.43
1/14/2013	J. Brian McTigue, Esq.	Edit		0.26	\$725.00	\$186.33
1/14/2013	J. Brian McTigue, Esq.	Phone Call		0.21	\$725.00	\$155.15
1/15/2013	James Moore	Conference		1.28	\$725.00	\$930.18
1/15/2013	J. Brian McTigue, Esq.	E-Mail		2.56	\$725.00	\$1,856.73
1/15/2013	J. Brian McTigue, Esq.	Phone Call		1.00	\$725.00	\$725.00
1/15/2013	David Bond	Meet with		1.00	\$325.00	\$325.00
1/15/2013	David Bond	Review Doc Prod		5.20	\$325.00	\$1,688.70
1/16/2013	James Moore	Conference		0.92	\$725.00	\$664.83
1/16/2013	J. Brian McTigue, Esq.	Review		3.91	\$725.00	\$2,834.03
1/16/2013	David Bond	Review Doc Prod		4.46	\$325.00	\$1,449.83
1/17/2013	Sarah McGuane	Review Doc Prod		0.25	\$325.00	\$81.25
1/17/2013	James Moore	Review		0.33	\$725.00	\$241.43
1/17/2013	David Bond	Review Doc Prod		6.18	\$325.00	\$2,009.80
1/17/2013	David Bond	Meet with		0.50	\$325.00	\$162.50
1/17/2013	J. Brian McTigue, Esq.	Conference Call		2.62	\$725.00	\$1,900.95
1/17/2013	J. Brian McTigue, Esq.	Review		1.00	\$725.00	\$725.00

1/18/2013	J. Brian McTigue, Esq.	Prepare	5.43	\$725.00	\$3,935.30
1/18/2013	Sarah McGuane	Case Admin	1.01	\$325.00	\$327.93
1/18/2013	David Bond	Review Doc Prod	4.80	\$325.00	\$1,559.68
1/19/2013	J. Brian McTigue, Esq.	Prepare	0.16	\$725.00	\$118.18
1/20/2013	J. Brian McTigue, Esq.	Prepare	0.49	\$725.00	\$353.80
1/21/2013	James Moore	Conference Call	1.92	\$725.00	\$1,389.83
1/21/2013	J. Brian McTigue, Esq.	Prepare	4.02	\$725.00	\$2,916.68
1/22/2013	James Moore	Meet with	2.00	\$725.00	\$1,450.00
1/22/2013	J. Brian McTigue, Esq.	Prepare	0.76	\$725.00	\$548.10
1/22/2013	David Bond	Review Doc Prod	4.89	\$325.00	\$1,588.93
1/22/2013	J. Brian McTigue, Esq.	Review Doc Prod	5.02	\$725.00	\$3,636.60
1/23/2013	James Moore	Prepare	0.42	\$725.00	\$302.33
1/23/2013	J. Brian McTigue, Esq.	Phone Call	0.32	\$725.00	\$234.90
1/23/2013	David Bond	Review Doc Prod	2.60	\$325.00	\$845.00
1/23/2013	J. Brian McTigue, Esq.	Prepare	6.76	\$725.00	\$4,903.90
1/24/2013	James Moore	Conference	1.00	\$725.00	\$725.00
1/24/2013	David Bond	Review Doc Prod	4.50	\$325.00	\$1,461.20
1/24/2013	James Moore	Mediate	3.33	\$725.00	\$2,416.43
1/24/2013	J. Brian McTigue, Esq.	Mediate	7.04	\$725.00	\$5,104.73
1/24/2013	J. Brian McTigue, Esq.	Phone Call	0.76	\$725.00	\$552.45
1/24/2013	Sarah McGuane	Review Doc Prod	1.00	\$325.00	\$325.00
1/24/2013	James Moore	Prepare	2.33	\$725.00	\$1,691.43
1/25/2013	James Moore	Conference	0.17	\$725.00	\$121.08
1/25/2013	J. Brian McTigue, Esq.	Review Doc Prod	4.57	\$725.00	\$3,312.53
1/25/2013	David Bond	Review Doc Prod	5.59	\$325.00	\$1,817.08
1/25/2013	David Bond	Meet with	0.50	\$325.00	\$162.50
1/25/2013	Sarah McGuane	Meet with	0.50	\$325.00	\$162.50
1/27/2013	J. Brian McTigue, Esq.	Review	0.65	\$725.00	\$472.70
1/28/2013	James Moore	Conference	0.33	\$725.00	\$241.43
1/28/2013	J. Brian McTigue, Esq.	Review	7.25	\$725.00	\$5,254.80
1/28/2013	David Bond	Review Doc Prod	5.50	\$325.00	\$1,786.53
1/28/2013	Sarah McGuane	Business Develo	3.54	\$325.00	\$1,151.48
1/28/2013	J. Brian McTigue, Esq.	Phone Call	0.86	\$725.00	\$622.78
1/29/2013	Sarah McGuane	Review Doc Prod	1.00	\$325.00	\$323.70
1/29/2013	J. Brian McTigue, Esq.	Review	10.29	\$725.00	\$7,460.98
1/29/2013	David Bond	Review Doc Prod	4.60	\$325.00	\$1,496.30
1/30/2013	Sarah McGuane	Review Doc Prod	0.46	\$325.00	\$150.48
1/30/2013	David Bond	Review Doc Prod	5.83	\$325.00	\$1,895.08
1/30/2013	J. Brian McTigue, Esq.	Conference	2.17	\$725.00	\$1,575.43
1/31/2013	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$303.05
1/31/2013	J. Brian McTigue, Esq.	Prepare	7.56	\$725.00	\$5,479.55
1/31/2013	David Bond	Review Doc Prod	4.20	\$325.00	\$1,364.68
1/31/2013	Sarah McGuane	Meet with	0.94	\$325.00	\$306.80
1/31/2013	David Bond	Meet with	0.90	\$325.00	\$292.18
2/1/2013	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$123.98
2/1/2013	Sarah McGuane	Case Admin	0.88	\$325.00	\$285.35
2/1/2013	J. Brian McTigue, Esq.	Draft	7.32	\$725.00	\$5,309.90
2/1/2013	David Bond	Review Doc Prod	3.66	\$325.00	\$1,190.48
2/4/2013	Sarah McGuane	Review Doc Prod	0.42	\$325.00	\$135.53
2/4/2013	J. Brian McTigue, Esq.	Review Doc Prod	5.48	\$725.00	\$3,970.10
2/4/2013	J. Brian McTigue, Esq.	Voice Mail Mess	0.99	\$725.00	\$714.85
2/4/2013	J. Brian McTigue, Esq.	Phone Call	1.14	\$725.00	\$824.33
2/5/2013	Sarah McGuane	Case Admin	3.53	\$325.00	\$1,147.90
2/5/2013	J. Brian McTigue, Esq.	Review Doc Prod	3.76	\$725.00	\$2,726.73
2/5/2013	David Bond	Review Doc Prod	6.89	\$325.00	\$2,237.63
2/6/2013	Sarah McGuane	Case Admin	4.31	\$325.00	\$1,401.73
2/6/2013	David Bond	Review Doc Prod	3.80	\$325.00	\$1,233.70
2/6/2013	J. Brian McTigue, Esq.	Review Doc Prod	4.03	\$725.00	\$2,921.75
2/7/2013	Sarah McGuane	Case Admin	2.15	\$325.00	\$697.13
2/7/2013	J. Brian McTigue, Esq.	Review Doc Prod	1.52	\$725.00	\$1,099.83
2/8/2013	Sarah McGuane	Case Admin	1.77	\$325.00	\$574.60

2/8/2013	J. Brian McTigue, Esq.	Review Doc Prod	0.00	\$725.00	\$0.73
2/9/2013	J. Brian McTigue, Esq.	Review Doc Prod	0.95	\$725.00	\$691.65
2/11/2013	J. Brian McTigue, Esq.	Review	0.32	\$725.00	\$231.28
2/11/2013	Sarah McGuane	Case Admin	0.52	\$325.00	\$167.70
2/11/2013	J. Brian McTigue, Esq.	Phone Call	0.07	\$725.00	\$47.13
2/12/2013	Sarah McGuane	Review Doc Prod	1.54	\$325.00	\$500.83
2/12/2013	J. Brian McTigue, Esq.	Review Doc Prod	1.51	\$725.00	\$1,096.93
2/12/2013	David Bond	Review Doc Prod	5.08	\$325.00	\$1,650.68
2/13/2013	J. Brian McTigue, Esq.	Phone Call	0.26	\$725.00	\$190.68
2/13/2013	James Moore	Conference Call	1.00	\$725.00	\$725.00
2/13/2013	J. Brian McTigue, Esq.	Review Doc Prod	4.53	\$725.00	\$3,285.70
2/13/2013	David Bond	Review Doc Prod	5.51	\$325.00	\$1,789.78
2/14/2013	Sarah McGuane	Case Admin	2.61	\$325.00	\$848.58
2/14/2013	David Bond	Review Doc Prod	5.54	\$325.00	\$1,800.83
2/15/2013	David Bond	Review Doc Prod	2.62	\$325.00	\$850.20
2/15/2013	Sarah McGuane	Review Doc Prod	1.93	\$325.00	\$626.28
2/15/2013	J. Brian McTigue, Esq.	Phone Call	0.78	\$725.00	\$564.05
2/18/2013	J. Brian McTigue, Esq.	Research	0.51	\$725.00	\$369.75
2/19/2013	David Bond	Review Doc Prod	1.26	\$325.00	\$410.48
2/19/2013	J. Brian McTigue, Esq.	Edit	3.12	\$725.00	\$2,260.55
2/19/2013	Sarah McGuane	Case Admin	0.82	\$325.00	\$265.20
2/19/2013	David Bond	Review	3.21	\$325.00	\$1,043.25
2/20/2013	J. Brian McTigue, Esq.	Phone Call	5.26	\$725.00	\$3,814.23
2/20/2013	David Bond	Review Doc Prod	5.53	\$325.00	\$1,797.90
2/21/2013	Sarah McGuane	Review Doc Prod	3.05	\$325.00	\$992.55
2/21/2013	David Bond	Review Doc Prod	4.81	\$325.00	\$1,562.28
2/21/2013	J. Brian McTigue, Esq.	Review	7.58	\$725.00	\$5,493.33
2/22/2013	Sarah McGuane	Review Doc Prod	3.43	\$325.00	\$1,115.08
2/24/2013	J. Brian McTigue, Esq.	Review	2.97	\$725.00	\$2,149.63
2/25/2013	Sarah McGuane	Review Doc Prod	2.56	\$325.00	\$832.98
2/25/2013	David Bond	Prepare	3.03	\$325.00	\$985.40
2/25/2013	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$146.45
2/25/2013	J. Brian McTigue, Esq.	Prepare	3.06	\$725.00	\$2,216.33
2/25/2013	David Bond	Review Doc Prod	1.56	\$325.00	\$507.65
2/25/2013	Sarah McGuane	Research	0.19	\$325.00	\$60.78
2/26/2013	J. Brian McTigue, Esq.	Phone Call	1.51	\$725.00	\$1,097.65
2/26/2013	Sarah McGuane	Review Doc Prod	0.66	\$325.00	\$214.83
2/26/2013	David Bond	Prepare	4.21	\$325.00	\$1,367.60
2/27/2013	James Moore	Conference	1.67	\$725.00	\$1,208.58
2/27/2013	J. Brian McTigue, Esq.	Conference Call	2.80	\$725.00	\$2,027.10
2/27/2013	David Bond	Review Doc Prod	4.11	\$325.00	\$1,337.05
2/27/2013	J. Brian McTigue, Esq.	Phone Call	0.54	\$725.00	\$387.88
2/27/2013	David Bond	Meet with	0.50	\$325.00	\$162.50
2/28/2013	James Moore	Conference	0.92	\$725.00	\$664.83
2/28/2013	David Bond	Meet with	0.67	\$325.00	\$216.78
2/28/2013	J. Brian McTigue, Esq.	Research	5.43	\$725.00	\$3,936.03
2/28/2013	David Bond	Review Doc Prod	2.01	\$325.00	\$654.55
2/28/2013	Sarah McGuane	Research	3.58	\$325.00	\$1,164.80
3/1/2013	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
3/1/2013	David Bond	Review Doc Prod	1.56	\$325.00	\$507.00
3/4/2013	David Bond	Prepare	1.74	\$325.00	\$564.85
3/4/2013	J. Brian McTigue, Esq.	Review	0.09	\$725.00	\$68.15
3/5/2013	David Bond	Review Doc Prod	3.26	\$325.00	\$1,060.80
3/6/2013	David Bond	Review Doc Prod	2.00	\$325.00	\$650.00
3/7/2013	J. Brian McTigue, Esq.	Conference Call	3.03	\$725.00	\$2,198.93
3/7/2013	David Bond	Review Doc Prod	2.24	\$325.00	\$728.65
3/7/2013	David Bond	Meet with	0.50	\$325.00	\$162.50
3/11/2013	J. Brian McTigue, Esq.	Phone Call	0.18	\$725.00	\$127.60
3/11/2013	Sarah McGuane	Case Admin	2.68	\$325.00	\$871.33
3/12/2013	James Moore	Draft	2.67	\$725.00	\$1,933.58
3/12/2013	J. Brian McTigue, Esq.	Prepare	8.55	\$725.00	\$6,200.20

3/12/2013	David Bond	Review Doc Prod	2.00	\$325.00	\$650.00
3/13/2013	James Moore	Conference	4.75	\$725.00	\$3,443.75
3/13/2013	J. Brian McTigue, Esq.	Prepare	7.00	\$725.00	\$5,075.00
3/13/2013	David Bond	Review Doc Prod	4.15	\$325.00	\$1,347.78
3/14/2013	J. Brian McTigue, Esq.	Phone Call	0.31	\$725.00	\$226.93
3/14/2013	J. Brian McTigue, Esq.	Draft	0.18	\$725.00	\$129.78
3/15/2013	J. Brian McTigue, Esq.	Research	2.00	\$725.00	\$1,450.73
3/15/2013	Sarah McGuane	Review Doc Prod	2.34	\$325.00	\$759.53
3/17/2013	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
3/18/2013	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$302.33
3/18/2013	J. Brian McTigue, Esq.	E-Mail	0.18	\$725.00	\$127.60
3/19/2013	J. Brian McTigue, Esq.	Phone Call	0.65	\$725.00	\$473.43
3/21/2013	J. Brian McTigue, Esq.	Conference	1.50	\$725.00	\$1,087.50
3/22/2013	David Bond	Review Doc Prod	1.64	\$325.00	\$532.35
3/25/2013	J. Brian McTigue, Esq.	Review	0.43	\$725.00	\$308.85
3/26/2013	David Bond	Review Doc Prod	2.08	\$325.00	\$677.30
3/27/2013	Sarah McGuane	Review Doc Prod	2.20	\$325.00	\$715.65
3/28/2013	Sarah McGuane	Review Doc Prod	3.97	\$325.00	\$1,290.58
3/28/2013	J. Brian McTigue, Esq.	Phone Call	0.65	\$725.00	\$469.80
4/1/2013	James Moore	Conference Call	1.17	\$725.00	\$846.08
4/1/2013	J. Brian McTigue, Esq.	Conference Call	1.41	\$725.00	\$1,024.43
4/4/2013	J. Brian McTigue, Esq.	Phone Call	0.81	\$725.00	\$589.43
4/5/2013	James Moore	Draft	0.50	\$725.00	\$362.50
4/5/2013	J. Brian McTigue, Esq.	Conference Call	0.67	\$725.00	\$488.65
4/5/2013	Sarah McGuane	Review Doc Prod	2.26	\$325.00	\$734.18
4/8/2013	James Moore	Draft	2.42	\$725.00	\$1,752.33
4/8/2013	James Moore	Draft	0.50	\$725.00	\$362.50
4/8/2013	J. Brian McTigue, Esq.	Review	1.23	\$725.00	\$888.85
4/9/2013	James Moore	Conference	0.83	\$725.00	\$603.93
4/9/2013	J. Brian McTigue, Esq.	Case Admin	4.00	\$725.00	\$2,898.55
4/10/2013	J. Brian McTigue, Esq.	Conference Call	1.45	\$725.00	\$1,049.80
4/10/2013	David Bond	Meet with	0.83	\$325.00	\$270.73
4/11/2013	Sarah McGuane	Research	1.14	\$325.00	\$370.18
4/11/2013	David Bond	Review Doc Prod	3.84	\$325.00	\$1,249.30
4/12/2013	Sarah McGuane	Research	1.24	\$325.00	\$403.65
4/12/2013	David Bond	Research	1.43	\$325.00	\$465.08
4/15/2013	James Moore	Draft	4.17	\$725.00	\$3,021.08
4/15/2013	David Bond	Review Doc Prod	2.79	\$325.00	\$906.75
4/15/2013	J. Brian McTigue, Esq.	Prepare	3.20	\$725.00	\$2,320.00
4/16/2013	J. Brian McTigue, Esq.	Review	0.26	\$725.00	\$187.05
4/16/2013	David Bond	Review Doc Prod	1.49	\$325.00	\$482.63
4/18/2013	David Bond	Review	1.50	\$325.00	\$487.50
4/22/2013	J. Brian McTigue, Esq.	E-Mail	0.10	\$725.00	\$69.60
4/22/2013	J. Brian McTigue, Esq.	Review	0.06	\$725.00	\$43.50
4/23/2013	J. Brian McTigue, Esq.	Phone Call	0.09	\$725.00	\$61.63
4/26/2013	Sarah McGuane	Review Doc Prod	2.81	\$325.00	\$911.95
4/26/2013	J. Brian McTigue, Esq.	Review	0.34	\$725.00	\$248.68
4/29/2013	J. Brian McTigue, Esq.	Meet with	2.00	\$725.00	\$1,450.00
4/29/2013	Sarah McGuane	Review Doc Prod	1.94	\$325.00	\$629.20
4/30/2013	James Moore	Draft	0.33	\$725.00	\$241.43
5/6/2013	J. Brian McTigue, Esq.	Phone Call	0.65	\$725.00	\$469.80
5/8/2013	Sarah McGuane	Office Admin.	4.88	\$325.00	\$1,584.70
5/15/2013	J. Brian McTigue, Esq.	Review	0.34	\$725.00	\$248.68
5/16/2013	J. Brian McTigue, Esq.	Review	0.18	\$725.00	\$129.78
5/23/2013	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$123.25
5/29/2013	J. Brian McTigue, Esq.	Conference Call	1.41	\$725.00	\$1,021.53
5/30/2013	David Bond	Review Doc Prod	0.50	\$325.00	\$162.50
5/31/2013	J. Brian McTigue, Esq.	Conference	0.06	\$725.00	\$42.05
6/3/2013	James Moore	Conference Call	2.42	\$725.00	\$1,752.33
6/3/2013	J. Brian McTigue, Esq.	Conference Call	0.76	\$725.00	\$551.73
6/4/2013	David Bond	Review Doc Prod	2.00	\$325.00	\$650.00

6/5/2013	David Bond	Review Doc Prod	4.28	\$325.00	\$1,391.98
6/6/2013	David Bond	Review Doc Prod	2.75	\$325.00	\$894.73
6/10/2013	David Bond	Review Doc Prod	1.00	\$325.00	\$325.00
6/11/2013	James Moore	Draft	3.33	\$725.00	\$2,416.43
6/11/2013	David Bond	Review Doc Prod	0.85	\$325.00	\$275.60
6/12/2013	James Moore	Draft	1.00	\$725.00	\$725.00
6/14/2013	James Moore	Draft	0.50	\$725.00	\$362.50
6/17/2013	James Moore	Draft	1.67	\$725.00	\$1,208.58
6/18/2013	James Moore	Draft	6.42	\$725.00	\$4,652.33
6/19/2013	James Moore	Draft	4.75	\$725.00	\$3,443.75
6/19/2013	J. Brian McTigue, Esq.	Voice Mail Mess	0.08	\$725.00	\$56.55
6/20/2013	James Moore	Draft	2.50	\$725.00	\$1,812.50
6/20/2013	David Bond	Research	0.67	\$325.00	\$216.78
6/24/2013	James Moore	Draft	5.33	\$725.00	\$3,866.43
6/25/2013	James Moore	Draft	6.83	\$725.00	\$4,953.93
6/25/2013	J. Brian McTigue, Esq.	Review	0.13	\$725.00	\$92.80
6/26/2013	James Moore	Draft	6.08	\$725.00	\$4,410.18
6/26/2013	J. Brian McTigue, Esq.	Edit	0.45	\$725.00	\$324.80
6/27/2013	James Moore	Conference Call	1.42	\$725.00	\$1,027.33
6/27/2013	J. Brian McTigue, Esq.	Conference Call	0.90	\$725.00	\$654.68
6/28/2013	James Moore	Conference Call	1.75	\$725.00	\$1,268.75
6/28/2013	J. Brian McTigue, Esq.	Conference Call	0.83	\$725.00	\$598.13
7/1/2013	James Moore	Research	1.08	\$725.00	\$785.18
7/1/2013	J. Brian McTigue, Esq.	Phone Call	1.18	\$725.00	\$852.60
7/2/2013	James Moore	Draft	1.58	\$725.00	\$1,147.68
7/2/2013	J. Brian McTigue, Esq.	Prepare	0.68	\$725.00	\$493.73
7/6/2013	J. Brian McTigue, Esq.	Review	0.08	\$725.00	\$60.18
7/9/2013	J. Brian McTigue, Esq.	Travel	7.50	\$725.00	\$5,437.50
7/10/2013	J. Brian McTigue, Esq.	Review	0.07	\$725.00	\$52.93
7/15/2013	J. Brian McTigue, Esq.	Research	0.25	\$725.00	\$181.25
7/21/2013	J. Brian McTigue, Esq.	E-Mail	0.25	\$725.00	\$181.25
7/25/2013	James Moore	Research	0.25	\$725.00	\$181.25
7/28/2013	J. Brian McTigue, Esq.	Phone Call	0.15	\$725.00	\$108.03
8/1/2013	J. Brian McTigue, Esq.	Phone Call	0.02	\$725.00	\$12.33
8/1/2013	James Moore	Conference	0.33	\$725.00	\$241.43
8/2/2013	J. Brian McTigue, Esq.	Phone Call	0.13	\$725.00	\$92.80
8/5/2013	J. Brian McTigue, Esq.	Phone Call	0.07	\$725.00	\$51.48
8/7/2013	J. Brian McTigue, Esq.	Phone Call	0.35	\$725.00	\$251.58
8/13/2013	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$72.50
8/22/2013	J. Brian McTigue, Esq.	Phone Call	0.22	\$725.00	\$160.23
8/29/2013	J. Brian McTigue, Esq.	Edit	1.02	\$725.00	\$742.40
8/29/2013	James Moore	Review	1.67	\$725.00	\$1,208.58
8/30/2013	J. Brian McTigue, Esq.	Conference Call	0.39	\$725.00	\$280.58
9/4/2013	James Moore	Review	0.33	\$725.00	\$241.43
9/5/2013	J. Brian McTigue, Esq.	Conference Call	0.97	\$725.00	\$703.25
9/5/2013	J. Brian McTigue, Esq.	Conference Call	0.50	\$725.00	\$358.88
9/6/2013	J. Brian McTigue, Esq.	Review	1.62	\$725.00	\$1,172.33
9/6/2013	James Moore	Conference	2.08	\$725.00	\$1,510.18
9/8/2013	J. Brian McTigue, Esq.	Case Admin	2.08	\$725.00	\$1,505.10
9/9/2013	J. Brian McTigue, Esq.	Edit	0.82	\$725.00	\$597.40
9/10/2013	J. Brian McTigue, Esq.	Edit	1.66	\$725.00	\$1,199.88
9/10/2013	James Moore	Conference	0.50	\$725.00	\$362.50
9/11/2013	J. Brian McTigue, Esq.	Review	0.35	\$725.00	\$254.48
9/11/2013	James Moore	Research	1.33	\$725.00	\$966.43
9/11/2013	J. Brian McTigue, Esq.	Voice Mail Mess	0.04	\$725.00	\$31.18
9/12/2013	J. Brian McTigue, Esq.	Review	0.69	\$725.00	\$497.35
9/13/2013	J. Brian McTigue, Esq.	Conference Call	0.75	\$725.00	\$546.65
9/13/2013	James Moore	Conference Call	2.25	\$725.00	\$1,631.25
9/17/2013	J. Brian McTigue, Esq.	Attend	11.51	\$725.00	\$8,343.30
9/17/2013	James Moore	Phone Call	0.25	\$725.00	\$181.25
9/18/2013	James Moore	Conference	0.33	\$725.00	\$241.43

10/1/2013	J. Brian McTigue, Esq.	Phone Call	0.75	\$725.00	\$543.75
10/1/2013	James Moore	Various	1.03	\$725.00	\$748.93
10/2/2013	J. Brian McTigue, Esq.	Review	0.79	\$725.00	\$572.03
10/14/2013	James Moore	Conference	0.08	\$725.00	\$60.18
10/17/2013	J. Brian McTigue, Esq.	Phone Call	0.33	\$725.00	\$241.43
10/17/2013	James Moore	Various	1.00	\$725.00	\$725.00
10/17/2013	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$121.08
10/21/2013	James Moore	Conference	0.08	\$725.00	\$60.18
10/22/2013	James Moore	Conference	0.15	\$725.00	\$108.75
10/23/2013	J. Brian McTigue, Esq.	Phone Call	0.71	\$725.00	\$514.03
10/23/2013	James Moore	Conference	0.33	\$725.00	\$241.43
10/24/2013	J. Brian McTigue, Esq.	Phone Call	0.75	\$725.00	\$543.75
10/28/2013	J. Brian McTigue, Esq.	Conference Call	1.21	\$725.00	\$877.98
10/29/2013	J. Brian McTigue, Esq.	Conference	0.10	\$725.00	\$72.50
10/29/2013	J. Brian McTigue, Esq.	E-Mail	0.08	\$725.00	\$60.18
11/10/2013	J. Brian McTigue, Esq.	Review	2.15	\$725.00	\$1,558.03
11/11/2013	J. Brian McTigue, Esq.	E-Mail	0.50	\$725.00	\$362.50
11/12/2013	J. Brian McTigue, Esq.	Conference Call	0.67	\$725.00	\$486.48
11/12/2013	James Moore	Various	1.20	\$725.00	\$870.00
11/13/2013	J. Brian McTigue, Esq.	Mediate	11.00	\$725.00	\$7,975.00
11/14/2013	J. Brian McTigue, Esq.	Conference	1.00	\$725.00	\$725.00
11/14/2013	James Moore	Conference	0.08	\$725.00	\$60.18
11/18/2013	James Moore	Review	0.13	\$725.00	\$96.43
11/26/2013	J. Brian McTigue, Esq.	Draft	0.50	\$725.00	\$362.50
12/10/2013	James Moore	Review	0.25	\$725.00	\$181.25
12/11/2013	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$302.33
12/11/2013	James Moore	Review	0.42	\$725.00	\$302.33
12/31/2013	James Moore	Review	0.83	\$725.00	\$603.93
1/3/2014	J. Brian McTigue, Esq.	Review	1.00	\$725.00	\$725.00
1/9/2014	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
1/16/2014	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
2/13/2014	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
3/5/2014	J. Brian McTigue, Esq.	Meet with	12.00	\$725.00	\$8,700.00
3/5/2014	James Moore	Conference	0.50	\$725.00	\$362.50
3/13/2014	J. Brian McTigue, Esq.	Research	1.65	\$725.00	\$1,199.15
5/6/2014	J. Brian McTigue, Esq.	Prepare	2.03	\$725.00	\$1,469.58
5/6/2014	James Moore	Various	1.42	\$725.00	\$1,027.33
5/7/2014	James Moore	Various	0.83	\$725.00	\$603.93
5/8/2014	James Moore	Various	1.75	\$725.00	\$1,268.75
5/9/2014	J. Brian McTigue, Esq.	Mediate	8.00	\$725.00	\$5,800.00
5/9/2014	J. Brian McTigue, Esq.	Travel	2.25	\$725.00	\$1,631.25
5/9/2014	James Moore	Draft	0.25	\$725.00	\$181.25
5/12/2014	J. Brian McTigue, Esq.	Travel	3.00	\$725.00	\$2,175.00
5/12/2014	J. Brian McTigue, Esq.	Conference	0.20	\$725.00	\$145.00
5/12/2014	James Moore	Draft	0.22	\$725.00	\$157.33
5/13/2014	James Moore	Draft	0.33	\$725.00	\$241.43
5/23/2014	James Moore	Various	0.42	\$725.00	\$302.33
5/27/2014	James Moore	Research	1.72	\$725.00	\$1,244.83
5/28/2014	J. Brian McTigue, Esq.	Conference	0.17	\$725.00	\$121.08
10/6/2014	J. Brian McTigue, Esq.	Phone Call	0.10	\$725.00	\$71.05
10/30/2014	James Moore	Draft	0.58	\$725.00	\$422.68
10/31/2014	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
12/15/2014	J. Brian McTigue, Esq.	Conference Call	0.42	\$725.00	\$302.33
12/15/2014	James Moore	Conference	0.33	\$725.00	\$241.43
1/15/2015	James Moore	Conference	0.50	\$725.00	\$362.50
1/21/2015	James Moore	Conference	1.05	\$725.00	\$761.25
1/21/2015	J. Brian McTigue, Esq.	E-Mail	0.17	\$725.00	\$121.08
1/27/2015	J. Brian McTigue, Esq.	Phone Call	0.05	\$725.00	\$36.25
1/27/2015	J. Brian McTigue, Esq.	Phone Call	0.19	\$725.00	\$139.20
1/28/2015	J. Brian McTigue, Esq.	Phone Call	0.20	\$725.00	\$145.00
2/1/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.03	\$725.00	\$23.93

2/1/2015	J. Brian McTigue, Esq.	E-Mail	0.05	\$725.00	\$36.25
2/1/2015	J. Brian McTigue, Esq.	Phone Call	0.23	\$725.00	\$168.93
2/2/2015	J. Brian McTigue, Esq.	Phone Call	0.37	\$725.00	\$266.80
2/2/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.37	\$725.00	\$268.25
2/3/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
2/3/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.03	\$725.00	\$23.93
2/3/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$122.53
2/3/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.10	\$725.00	\$72.50
2/3/2015	J. Brian McTigue, Esq.	Phone Call	0.02	\$725.00	\$12.33
2/3/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$122.53
2/3/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$122.53
2/6/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.11	\$725.00	\$78.30
2/6/2015	J. Brian McTigue, Esq.	Voice Mail Mess	0.08	\$725.00	\$60.18
2/6/2015	Sarah McGuane	Case Admin	0.50	\$325.00	\$163.80
2/7/2015	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
2/19/2015	J. Brian McTigue, Esq.	Case Admin	0.33	\$725.00	\$241.43
2/23/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
2/25/2015	J. Brian McTigue, Esq.	Mediate	11.00	\$725.00	\$7,975.00
2/25/2015	J. Brian McTigue, Esq.	Travel	5.00	\$725.00	\$3,625.00
2/27/2015	J. Brian McTigue, Esq.	Review	2.05	\$725.00	\$1,486.25
3/2/2015	J. Brian McTigue, Esq.	Conference Call	0.58	\$725.00	\$422.68
3/4/2015	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$121.08
3/9/2015	James Moore	Draft	0.33	\$725.00	\$241.43
3/9/2015	J. Brian McTigue, Esq.	Conference	0.23	\$725.00	\$167.48
3/9/2015	J. Brian McTigue, Esq.	Conference Call	0.62	\$725.00	\$452.40
3/11/2015	J. Brian McTigue, Esq.	Conference Call	1.25	\$725.00	\$906.25
3/27/2015	J. Brian McTigue, Esq.	E-Mail	0.25	\$725.00	\$181.25
4/1/2015	J. Brian McTigue, Esq.	Review	0.33	\$725.00	\$241.43
4/2/2015	J. Brian McTigue, Esq.	Review	0.33	\$725.00	\$238.53
4/6/2015	Regina M. Markey	Case Admin	0.17	\$625.00	\$104.38
4/7/2015	J. Brian McTigue, Esq.	Conference Call	0.75	\$725.00	\$543.75
4/7/2015	Regina M. Markey	Case Admin	2.62	\$625.00	\$1,636.88
4/8/2015	Regina M. Markey	Case Admin	0.07	\$625.00	\$41.88
4/9/2015	J. Brian McTigue, Esq.	Review	0.00	\$725.00	\$2.18
4/9/2015	Regina M. Markey	Case Admin	0.26	\$625.00	\$163.13
4/13/2015	J. Brian McTigue, Esq.	Conference Call	0.75	\$725.00	\$543.75
4/13/2015	Regina M. Markey	Conference Call	0.31	\$625.00	\$191.25
4/13/2015	Regina M. Markey	Conference Call	0.87	\$625.00	\$542.50
4/14/2015	James Moore	Review	0.08	\$725.00	\$60.18
4/15/2015	Regina M. Markey	Conference Call	0.29	\$625.00	\$183.13
4/17/2015	J. Brian McTigue, Esq.	E-Mail	0.13	\$725.00	\$96.43
4/17/2015	J. Brian McTigue, Esq.	Prepare	0.17	\$725.00	\$121.08
4/17/2015	Regina M. Markey	Conference	0.03	\$625.00	\$21.25
4/20/2015	Regina M. Markey	Conference Call	0.08	\$625.00	\$46.88
4/20/2015	Regina M. Markey	Case Admin	0.54	\$625.00	\$338.13
4/20/2015	Regina M. Markey	Conference	0.24	\$625.00	\$150.00
4/20/2015	Regina M. Markey	Case Admin	0.74	\$625.00	\$463.75
4/20/2015	Regina M. Markey	Conference Call	0.81	\$625.00	\$507.50
4/20/2015	J. Brian McTigue, Esq.	Conference Call	0.67	\$725.00	\$483.58
4/27/2015	Regina M. Markey	Case Admin	0.09	\$625.00	\$56.25
4/28/2015	Regina M. Markey	Prepare	2.11	\$625.00	\$1,317.50
4/29/2015	J. Brian McTigue, Esq.	Prepare	8.00	\$725.00	\$5,800.00
4/29/2015	James Moore	Research	0.50	\$725.00	\$362.50
4/29/2015	Regina M. Markey	Conference Call	1.16	\$625.00	\$726.25
4/29/2015	Regina M. Markey	Conference	0.08	\$625.00	\$47.50
4/29/2015	Regina M. Markey	Conference Call	0.30	\$625.00	\$188.75
4/29/2015	Regina M. Markey	Conference	0.60	\$625.00	\$376.25
4/29/2015	Rachel J. Kaplan	Case Admin	3.00	\$250.00	\$750.25
4/29/2015	David Bond	Prepare	1.17	\$325.00	\$379.28
4/29/2015	Regina M. Markey	Travel	5.00	\$625.00	\$3,125.00
4/30/2015	David Bond	Research	1.00	\$325.00	\$325.00

4/30/2015	J. Brian McTigue, Esq.	Mediate	13.00	\$725.00	\$9,425.00
4/30/2015	Regina M. Markey	Travel	5.83	\$625.00	\$3,646.25
4/30/2015	Regina M. Markey	Mediate	6.00	\$625.00	\$3,750.00
4/30/2015	Regina M. Markey	Conference	0.80	\$625.00	\$500.00
4/30/2015	Regina M. Markey	Conference	0.50	\$625.00	\$312.50
4/30/2015	J. Brian McTigue, Esq.	Mediate	1.00	\$725.00	\$725.00
5/1/2015	James Moore	Conference	0.42	\$725.00	\$302.33
5/1/2015	Regina M. Markey	Conference	0.25	\$625.00	\$156.25
5/1/2015	Regina M. Markey	Conference Call	0.23	\$625.00	\$145.63
5/1/2015	Regina M. Markey	Conference Call	0.67	\$625.00	\$416.88
5/1/2015	Regina M. Markey	Research	3.61	\$625.00	\$2,255.00
5/4/2015	J. Brian McTigue, Esq.	E-Mail	0.23	\$725.00	\$168.93
5/5/2015	Regina M. Markey	Conference Call	1.00	\$625.00	\$625.00
5/12/2015	Regina M. Markey	Conference Call	0.42	\$625.00	\$261.25
5/13/2015	James Moore	Conference	0.42	\$725.00	\$302.33
5/13/2015	J. Brian McTigue, Esq.	Conference Call	0.42	\$725.00	\$302.33
5/13/2015	Regina M. Markey	Conference	0.43	\$625.00	\$271.25
5/14/2015	J. Brian McTigue, Esq.	Conference Call	0.42	\$725.00	\$302.33
5/14/2015	Regina M. Markey	Conference Call	0.79	\$625.00	\$493.13
5/18/2015	James Moore	Conference	0.17	\$725.00	\$121.08
5/18/2015	J. Brian McTigue, Esq.	Conference Call	0.67	\$725.00	\$483.58
5/18/2015	Regina M. Markey	Conference Call	0.61	\$625.00	\$379.38
5/18/2015	Regina M. Markey	Conference	0.20	\$625.00	\$122.50
5/19/2015	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$181.25
5/22/2015	James Moore	Conference Call	1.17	\$725.00	\$846.08
5/22/2015	J. Brian McTigue, Esq.	Conference Call	1.50	\$725.00	\$1,087.50
5/22/2015	Regina M. Markey	Review	0.05	\$625.00	\$31.25
5/22/2015	Regina M. Markey	Conference Call	1.58	\$625.00	\$986.88
5/24/2015	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
5/28/2015	Regina M. Markey	Conference	0.07	\$625.00	\$41.25
5/29/2015	J. Brian McTigue, Esq.	Conference Call	2.00	\$725.00	\$1,450.00
5/29/2015	Regina M. Markey	Conference Call	1.50	\$625.00	\$937.50
6/8/2015	J. Brian McTigue, Esq.	Mediate	5.00	\$725.00	\$3,625.00
6/8/2015	Regina M. Markey	Travel	3.00	\$625.00	\$1,875.00
6/8/2015	Regina M. Markey	Review	0.02	\$625.00	\$15.00
6/8/2015	J. Brian McTigue, Esq.	Prepare	0.17	\$725.00	\$121.08
6/8/2015	Regina M. Markey	Prepare	0.95	\$625.00	\$596.25
6/8/2015	J. Brian McTigue, Esq.	Conference Call	1.33	\$725.00	\$966.43
6/8/2015	Regina M. Markey	Conference Call	1.39	\$625.00	\$868.13
6/9/2015	J. Brian McTigue, Esq.	Mediate	4.00	\$725.00	\$2,900.00
6/9/2015	Regina M. Markey	Travel	5.00	\$625.00	\$3,125.00
6/9/2015	Regina M. Markey	Mediate	3.00	\$625.00	\$1,875.00
6/9/2015	Regina M. Markey	Review	0.90	\$625.00	\$562.50
6/9/2015	Regina M. Markey	Conference	0.50	\$625.00	\$312.50
6/9/2015	Regina M. Markey	Meet with	0.20	\$625.00	\$125.00
6/9/2015	J. Brian McTigue, Esq.	Travel	4.00	\$725.00	\$2,900.00
6/10/2015	Regina M. Markey	Case Admin	0.12	\$625.00	\$75.63
6/10/2015	Regina M. Markey	Conference Call	0.91	\$625.00	\$570.00
6/10/2015	Regina M. Markey	Research	1.13	\$625.00	\$703.13
6/10/2015	Regina M. Markey	Phone Call	0.05	\$625.00	\$31.25
6/10/2015	Regina M. Markey	Prepare	3.45	\$625.00	\$2,158.13
6/10/2015	J. Brian McTigue, Esq.	Conference	25.84	\$725.00	\$18,735.45
6/10/2015	J. Brian McTigue, Esq.	Conference	0.33	\$725.00	\$241.43
6/10/2015	J. Brian McTigue, Esq.	Conference Call	0.75	\$725.00	\$543.75
6/11/2015	J. Brian McTigue, Esq.	Prepare	4.00	\$725.00	\$2,900.00
6/11/2015	Regina M. Markey	Review	0.14	\$625.00	\$90.00
6/11/2015	Regina M. Markey	Research	1.57	\$625.00	\$982.50
6/11/2015	Regina M. Markey	Phone Call	0.66	\$625.00	\$412.50
6/11/2015	Regina M. Markey	Review	4.22	\$625.00	\$2,637.50
6/12/2015	Regina M. Markey	Conference Call	0.25	\$625.00	\$156.25
6/12/2015	Regina M. Markey	Conference Call	2.60	\$625.00	\$1,625.00

6/12/2015	J. Brian McTigue, Esq.	Conference Call	1.00	\$725.00	\$725.00
6/12/2015	J. Brian McTigue, Esq.	Conference Call	1.00	\$725.00	\$725.00
6/15/2015	James Moore	Conference	0.08	\$725.00	\$60.18
6/16/2015	Regina M. Markey	Review	1.46	\$625.00	\$910.63
6/17/2015	J. Brian McTigue, Esq.	Conference Call	1.00	\$725.00	\$725.00
6/17/2015	Regina M. Markey	Conference Call	0.63	\$625.00	\$395.63
6/17/2015	Regina M. Markey	Conference Call	1.83	\$625.00	\$1,145.63
6/17/2015	J. Brian McTigue, Esq.	Conference Call	1.50	\$725.00	\$1,087.50
6/19/2015	Regina M. Markey	Conference	0.23	\$625.00	\$145.63
6/24/2015	J. Brian McTigue, Esq.	Prepare	0.83	\$725.00	\$603.93
6/24/2015	Sarah McGuane	Case Admin	3.01	\$325.00	\$976.95
6/25/2015	Regina M. Markey	Travel	2.40	\$625.00	\$1,500.00
6/25/2015	Sarah McGuane	Case Admin	0.57	\$325.00	\$185.25
6/25/2015	Sarah McGuane	Travel	2.00	\$325.00	\$650.00
6/26/2015	J. Brian McTigue, Esq.	Mediate	8.00	\$725.00	\$5,800.00
6/26/2015	Sarah McGuane	Case Admin	2.87	\$325.00	\$933.73
6/26/2015	Regina M. Markey	Travel	1.70	\$625.00	\$1,062.50
6/26/2015	Regina M. Markey	Mediate	9.00	\$625.00	\$5,625.00
6/26/2015	J. Brian McTigue, Esq.	Research	4.00	\$725.00	\$2,900.00
6/29/2015	J. Brian McTigue, Esq.	Prepare	6.00	\$725.00	\$4,350.00
6/29/2015	Regina M. Markey	Case Admin	2.98	\$625.00	\$1,864.38
6/29/2015	Regina M. Markey	Prepare	2.50	\$625.00	\$1,561.25
6/30/2015	J. Brian McTigue, Esq.	Travel	4.00	\$725.00	\$2,900.00
6/30/2015	Regina M. Markey	Review	0.50	\$625.00	\$312.50
6/30/2015	Regina M. Markey	Phone Call	0.38	\$625.00	\$238.75
6/30/2015	Regina M. Markey	Phone Call	0.20	\$625.00	\$125.00
6/30/2015	Regina M. Markey	Phone Call	0.30	\$625.00	\$187.50
6/30/2015	Regina M. Markey	Review	0.23	\$625.00	\$145.63
6/30/2015	Regina M. Markey	Review	0.15	\$625.00	\$91.25
6/30/2015	Regina M. Markey	Review	0.45	\$625.00	\$283.75
6/30/2015	J. Brian McTigue, Esq.	Mediate	8.00	\$725.00	\$5,800.00
6/30/2015	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
6/30/2015	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
6/30/2015	Regina M. Markey	Review	1.50	\$625.00	\$937.50
7/1/2015	Regina M. Markey	Review	1.11	\$625.00	\$690.63
7/1/2015	Regina M. Markey	Review	1.72	\$625.00	\$1,075.00
7/1/2015	James Moore	Review	0.67	\$725.00	\$483.58
7/2/2015	Regina M. Markey	Review	0.15	\$625.00	\$92.50
7/7/2015	J. Brian McTigue, Esq.	Phone Call	0.28	\$725.00	\$205.18
7/10/2015	James Moore	Review	2.37	\$725.00	\$1,716.08
7/10/2015	Regina M. Markey	Review	0.44	\$625.00	\$272.50
7/10/2015	Regina M. Markey	Review	0.16	\$625.00	\$102.50
7/10/2015	J. Brian McTigue, Esq.	Review	0.98	\$725.00	\$712.68
7/13/2015	James Moore	Review	3.42	\$725.00	\$2,477.33
7/13/2015	Regina M. Markey	Conference	0.16	\$625.00	\$100.00
7/13/2015	J. Brian McTigue, Esq.	Edit	1.28	\$725.00	\$927.28
7/13/2015	Regina M. Markey	Conference	1.31	\$625.00	\$820.00
7/13/2015	J. Brian McTigue, Esq.	Phone Call	0.62	\$725.00	\$445.88
7/14/2015	James Moore	Review	3.08	\$725.00	\$2,235.18
7/14/2015	Regina M. Markey	Review	0.08	\$625.00	\$48.75
7/14/2015	Regina M. Markey	Conference	0.37	\$625.00	\$230.00
7/14/2015	Regina M. Markey	Review	0.24	\$625.00	\$152.50
7/14/2015	Regina M. Markey	Review	0.41	\$625.00	\$256.88
7/14/2015	J. Brian McTigue, Esq.	Review	2.00	\$725.00	\$1,450.00
7/14/2015	Regina M. Markey	Review	0.82	\$625.00	\$514.38
7/15/2015	Regina M. Markey	Conference Call	1.15	\$625.00	\$719.38
7/15/2015	Regina M. Markey	Conference	0.90	\$625.00	\$562.50
7/17/2015	Regina M. Markey	Conference Call	0.10	\$625.00	\$65.00
7/17/2015	J. Brian McTigue, Esq.	Conference Call	1.40	\$725.00	\$1,015.00
7/17/2015	Regina M. Markey	Prepare	0.39	\$625.00	\$243.13
7/17/2015	Regina M. Markey	Conference Call	1.53	\$625.00	\$958.75

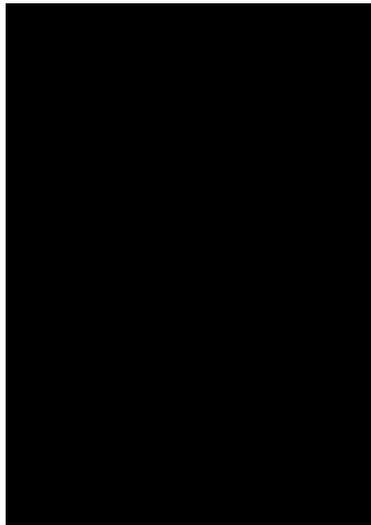
7/21/2015	James Moore	Conference Call	0.67	\$725.00	\$483.58
7/21/2015	Regina M. Markey	Conference Call	0.95	\$625.00	\$593.75
7/21/2015	Regina M. Markey	Review	0.29	\$625.00	\$178.75
7/21/2015	Regina M. Markey	Conference Call	1.13	\$625.00	\$707.50
7/22/2015	Regina M. Markey	Conference	0.09	\$625.00	\$58.13
7/23/2015	Regina M. Markey	Conference Call	0.61	\$625.00	\$382.50
7/23/2015	Regina M. Markey	Conference	0.17	\$625.00	\$107.50
7/24/2015	J. Brian McTigue, Esq.	Conference Call	1.20	\$725.00	\$870.00
7/24/2015	Regina M. Markey	Review	0.45	\$625.00	\$279.38
7/24/2015	Regina M. Markey	Conference Call	1.35	\$625.00	\$841.88
7/27/2015	Regina M. Markey	Review	0.12	\$625.00	\$71.88
7/29/2015	Regina M. Markey	Conference	0.06	\$625.00	\$37.50
7/29/2015	J. Brian McTigue, Esq.	Conference	0.95	\$725.00	\$690.20
7/29/2015	Regina M. Markey	Conference Call	1.40	\$625.00	\$875.00
7/29/2015	Regina M. Markey	Conference Call	0.06	\$625.00	\$36.25
7/29/2015	J. Brian McTigue, Esq.	Conference Call	1.25	\$725.00	\$906.25
7/29/2015	Regina M. Markey	Review	1.42	\$625.00	\$884.38
7/30/2015	J. Brian McTigue, Esq.	Review	0.22	\$725.00	\$157.33
7/30/2015	J. Brian McTigue, Esq.	Conference Call	0.83	\$725.00	\$603.93
7/30/2015	Regina M. Markey	Conference Call	0.50	\$625.00	\$312.50
8/5/2015	Regina M. Markey	Conference Call	0.43	\$625.00	\$266.25
8/5/2015	Sarah McGuane	Case Admin	0.67	\$325.00	\$217.75
8/5/2015	J. Brian McTigue, Esq.	Prepare	1.17	\$725.00	\$846.08
8/6/2015	James Moore	Conference	0.28	\$725.00	\$205.18
8/6/2015	J. Brian McTigue, Esq.	Review	0.41	\$725.00	\$300.15
8/6/2015	Sarah McGuane	Case Admin	2.85	\$325.00	\$925.28
8/7/2015	J. Brian McTigue, Esq.	Review	0.05	\$725.00	\$36.25
8/10/2015	James Moore	Conference	0.08	\$725.00	\$60.18
8/10/2015	Miyuki Britton	Case Admin	0.50	\$325.00	\$162.50
8/10/2015	Regina M. Markey	Conference	0.21	\$625.00	\$128.75
8/11/2015	James Moore	Conference Call	0.58	\$725.00	\$422.68
8/11/2015	Regina M. Markey	Conference	0.09	\$625.00	\$55.63
8/11/2015	J. Brian McTigue, Esq.	Conference Call	1.82	\$725.00	\$1,317.33
8/11/2015	J. Brian McTigue, Esq.	Conference Call	0.50	\$725.00	\$362.50
8/11/2015	J. Brian McTigue, Esq.	Conference Call	1.05	\$725.00	\$761.25
8/11/2015	Regina M. Markey	Conference Call	0.51	\$625.00	\$316.88
8/11/2015	Regina M. Markey	Conference Call	1.20	\$625.00	\$750.00
8/11/2015	Regina M. Markey	Conference Call	0.50	\$625.00	\$312.50
8/11/2015	Regina M. Markey	Conference	0.50	\$625.00	\$312.50
8/12/2015	Regina M. Markey	Conference Call	0.50	\$625.00	\$312.50
8/12/2015	J. Brian McTigue, Esq.	Phone Call	0.83	\$725.00	\$603.93
8/13/2015	Regina M. Markey	Conference Call	0.69	\$625.00	\$431.88
8/14/2015	Regina M. Markey	Phone Call	0.12	\$625.00	\$77.50
8/18/2015	James Moore	Conference	0.83	\$725.00	\$603.93
8/18/2015	Regina M. Markey	Phone Call	0.44	\$625.00	\$271.88
8/18/2015	Regina M. Markey	Conference	0.27	\$625.00	\$166.88
8/18/2015	Miyuki Britton	Case Admin	0.33	\$325.00	\$108.23
8/19/2015	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
8/19/2015	Regina M. Markey	Conference Call	0.80	\$625.00	\$500.00
8/19/2015	Regina M. Markey	Review	0.27	\$625.00	\$170.00
8/19/2015	J. Brian McTigue, Esq.	Conference Call	0.87	\$725.00	\$633.65
8/19/2015	Regina M. Markey	Review	0.16	\$625.00	\$101.25
8/20/2015	J. Brian McTigue, Esq.	Conference Call	0.62	\$725.00	\$447.33
8/20/2015	Miyuki Britton	Meet with	0.75	\$325.00	\$243.75
8/20/2015	Regina M. Markey	Review	0.55	\$625.00	\$341.88
8/20/2015	J. Brian McTigue, Esq.	Office Admin.	0.33	\$725.00	\$241.43
8/20/2015	Regina M. Markey	Conference	0.29	\$625.00	\$181.25
8/24/2015	Regina M. Markey	Conference	0.15	\$625.00	\$94.38
8/25/2015	J. Brian McTigue, Esq.	Review	0.33	\$725.00	\$241.43
8/26/2015	Miyuki Britton	Case Admin	0.50	\$325.00	\$162.50
8/26/2015	J. Brian McTigue, Esq.	Conference Call	1.75	\$725.00	\$1,268.75

8/26/2015	Regina M. Markey	Conference	0.05	\$625.00	\$32.50
8/26/2015	Regina M. Markey	Review	0.55	\$625.00	\$340.63
8/26/2015	Regina M. Markey	Review	2.04	\$625.00	\$1,273.13
8/26/2015	Regina M. Markey	Conference Call	0.47	\$625.00	\$293.75
8/27/2015	Regina M. Markey	Review	0.21	\$625.00	\$133.13
8/28/2015	James Moore	Review	1.25	\$725.00	\$906.25
8/28/2015	Regina M. Markey	Review	0.60	\$625.00	\$375.63
8/28/2015	Regina M. Markey	Conference	0.26	\$625.00	\$163.13
8/31/2015	James Moore	Draft	1.75	\$725.00	\$1,268.75
8/31/2015	J. Brian McTigue, Esq.	Prepare	0.83	\$725.00	\$603.93
8/31/2015	Regina M. Markey	Conference	0.10	\$625.00	\$60.00
8/31/2015	Regina M. Markey	Review	0.04	\$625.00	\$23.75
8/31/2015	Miyuki Britton	Research	0.33	\$325.00	\$108.23
9/1/2015	James Moore	Draft	0.67	\$725.00	\$483.58
9/1/2015	J. Brian McTigue, Esq.	Edit	1.00	\$725.00	\$725.00
9/1/2015	J. Brian McTigue, Esq.	Edit	2.17	\$725.00	\$1,575.43
9/1/2015	Regina M. Markey	Conference	0.18	\$625.00	\$112.50
9/1/2015	Miyuki Britton	Research	1.00	\$325.00	\$325.00
9/1/2015	Regina M. Markey	Conference	0.80	\$625.00	\$500.00
9/2/2015	J. Brian McTigue, Esq.	Phone Call	0.99	\$725.00	\$719.20
9/2/2015	Regina M. Markey	Case Admin	0.05	\$625.00	\$33.75
9/2/2015	Regina M. Markey	Conference Call	0.38	\$625.00	\$236.88
9/2/2015	Regina M. Markey	Review	0.25	\$625.00	\$155.63
9/2/2015	James Moore	Draft	0.58	\$725.00	\$422.68
9/2/2015	J. Brian McTigue, Esq.	Prepare	1.65	\$725.00	\$1,196.25
9/2/2015	Regina M. Markey	Conference Call	0.31	\$625.00	\$195.63
9/2/2015	Regina M. Markey	Case Admin	0.17	\$625.00	\$107.50
9/3/2015	J. Brian McTigue, Esq.	Draft	0.25	\$725.00	\$181.25
9/3/2015	Regina M. Markey	Conference Call	0.03	\$625.00	\$21.25
9/3/2015	Regina M. Markey	Review	0.03	\$625.00	\$20.00
9/9/2015	Regina M. Markey	Review	0.02	\$625.00	\$12.50
9/10/2015	J. Brian McTigue, Esq.	E-Mail	0.50	\$725.00	\$362.50
9/10/2015	Regina M. Markey	Review	0.89	\$625.00	\$553.75
9/11/2015	Regina M. Markey	Conference Call	0.98	\$625.00	\$611.88
9/11/2015	J. Brian McTigue, Esq.	Prepare	2.00	\$725.00	\$1,450.00
9/14/2015	Regina M. Markey	Conference Call	0.07	\$625.00	\$41.88
9/14/2015	Regina M. Markey	Conference	0.10	\$625.00	\$62.50
9/15/2015	Regina M. Markey	Review	0.07	\$625.00	\$43.75
9/16/2015	Miyuki Britton	Research	1.00	\$325.00	\$325.00
9/17/2015	Regina M. Markey	Review	0.85	\$625.00	\$532.50
9/22/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
9/22/2015	Regina M. Markey	Conference	0.30	\$625.00	\$188.13
9/30/2015	Regina M. Markey	Conference Call	0.55	\$625.00	\$342.50
10/14/2015	Regina M. Markey	Review	0.03	\$625.00	\$17.50
10/16/2015	Regina M. Markey	Draft	0.98	\$625.00	\$611.88
10/16/2015	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
10/16/2015	Regina M. Markey	Phone Call	0.18	\$625.00	\$111.88
10/16/2015	Regina M. Markey	Review	1.60	\$625.00	\$999.38
10/27/2015	J. Brian McTigue, Esq.	Phone Call	0.08	\$725.00	\$60.18
10/29/2015	Regina M. Markey	Conference Call	0.39	\$625.00	\$242.50
12/13/2015	J. Brian McTigue, Esq.	Phone Call	0.25	\$725.00	\$179.80
12/21/2015	Regina M. Markey	Review	0.06	\$625.00	\$38.13
12/22/2015	J. Brian McTigue, Esq.	Review	0.43	\$725.00	\$313.93
12/22/2015	Regina M. Markey	Phone Call	0.28	\$625.00	\$177.50
1/7/2016	J. Brian McTigue, Esq.	Conference Call	1.67	\$725.00	\$1,208.58
1/7/2016	Regina M. Markey	Meet with	0.05	\$625.00	\$33.75
1/7/2016	Regina M. Markey	Conference Call	1.67	\$625.00	\$1,045.63
1/28/2016	Regina M. Markey	Review	0.42	\$625.00	\$263.13
2/12/2016	Regina M. Markey	Conference Call	0.09	\$625.00	\$56.25
2/14/2016	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
3/9/2016	Regina M. Markey	Meet with	0.02	\$625.00	\$11.25

3/9/2016	Regina M. Markey	Review	1.99	\$625.00	\$1,244.38
3/9/2016	Regina M. Markey	Meet with	0.42	\$625.00	\$261.25
3/9/2016	J. Brian McTigue, Esq.	E-Mail	1.00	\$725.00	\$725.73
3/10/2016	Brooke Edwards	Research	2.00	\$400.00	\$800.00
3/10/2016	Brooke Edwards	Conference	1.43	\$400.00	\$573.20
3/10/2016	Regina M. Markey	Meet with	0.06	\$625.00	\$36.88
3/10/2016	Regina M. Markey	Meet with	0.55	\$625.00	\$341.25
3/10/2016	Regina M. Markey	Research	0.62	\$625.00	\$390.00
3/10/2016	J. Brian McTigue, Esq.	Review	2.08	\$725.00	\$1,510.18
3/11/2016	J. Brian McTigue, Esq.	Phone Call	0.23	\$725.00	\$168.93
3/17/2016	Regina M. Markey	Review	0.89	\$625.00	\$556.25
3/22/2016	J. Brian McTigue, Esq.	Phone Call	1.50	\$725.00	\$1,087.50
3/22/2016	Brooke Edwards	Conference	0.67	\$400.00	\$268.00
3/22/2016	Regina M. Markey	Review	0.10	\$625.00	\$64.38
3/22/2016	Regina M. Markey	Review	1.32	\$625.00	\$823.13
3/23/2016	James Moore	Review	0.25	\$725.00	\$181.25
3/23/2016	Brooke Edwards	Research	0.14	\$400.00	\$57.60
3/23/2016	Regina M. Markey	Review	0.15	\$625.00	\$91.25
3/23/2016	Regina M. Markey	Conference Call	0.91	\$625.00	\$568.75
3/23/2016	Brooke Edwards	Conference	1.00	\$400.00	\$400.00
3/23/2016	Regina M. Markey	Meet with	0.34	\$625.00	\$209.38
3/23/2016	J. Brian McTigue, Esq.	Phone Call	1.82	\$725.00	\$1,318.05
3/25/2016	Regina M. Markey	Review	1.40	\$625.00	\$871.88
4/1/2016	Regina M. Markey	Phone Call	0.35	\$625.00	\$218.13
4/4/2016	James Moore	Research	0.58	\$725.00	\$422.68
4/5/2016	James Moore	Research	0.25	\$725.00	\$181.25
4/8/2016	Regina M. Markey	Review	1.63	\$625.00	\$1,016.88
4/11/2016	James Moore	Conference	2.00	\$725.00	\$1,450.00
4/11/2016	David Bond	Prepare	1.33	\$325.00	\$433.23
4/11/2016	J. Brian McTigue, Esq.	Research	8.03	\$725.00	\$5,820.30
4/11/2016	Regina M. Markey	Review	0.04	\$625.00	\$25.00
4/11/2016	Regina M. Markey	Meet with	1.00	\$625.00	\$625.00
4/11/2016	Brooke Edwards	Conference	0.53	\$400.00	\$213.60
4/12/2016	James Moore	Conference	1.00	\$725.00	\$725.00
4/12/2016	Regina M. Markey	Review	1.51	\$625.00	\$944.38
4/12/2016	Regina M. Markey	Review	1.03	\$625.00	\$641.25
4/12/2016	Regina M. Markey	Review	1.76	\$625.00	\$1,098.75
4/12/2016	J. Brian McTigue, Esq.	Review	9.13	\$725.00	\$6,617.80
4/12/2016	Regina M. Markey	Review	0.17	\$625.00	\$106.88
4/13/2016	Regina M. Markey	Review	0.59	\$625.00	\$365.63
4/13/2016	Brooke Edwards	E-Mail	0.05	\$400.00	\$20.00
4/14/2016	James Moore	Conference	0.50	\$725.00	\$362.50
4/14/2016	J. Brian McTigue, Esq.	Review	1.02	\$725.00	\$740.95
4/15/2016	James Moore	Conference	1.17	\$725.00	\$846.08
4/15/2016	J. Brian McTigue, Esq.	Review	0.25	\$725.00	\$181.25
4/15/2016	Regina M. Markey	Review	0.08	\$625.00	\$51.88
4/15/2016	Regina M. Markey	Conference Call	1.53	\$625.00	\$958.75
4/21/2016	James Moore	Review	1.12	\$725.00	\$809.83
4/21/2016	J. Brian McTigue, Esq.	Edit	2.50	\$725.00	\$1,814.68
4/21/2016	Regina M. Markey	Review	2.08	\$625.00	\$1,298.75
4/22/2016	Regina M. Markey	Meet with	0.80	\$625.00	\$496.88
4/25/2016	James Moore	Conference	0.17	\$725.00	\$121.08
4/25/2016	J. Brian McTigue, Esq.	Phone Call	0.33	\$725.00	\$241.43
4/25/2016	Regina M. Markey	Meet with	0.50	\$625.00	\$312.50
4/26/2016	Regina M. Markey	Review	0.43	\$625.00	\$270.00
4/28/2016	J. Brian McTigue, Esq.	Phone Call	1.11	\$725.00	\$805.48
4/28/2016	Regina M. Markey	E-Mail	0.03	\$625.00	\$19.38
4/29/2016	J. Brian McTigue, Esq.	Edit	0.50	\$725.00	\$362.50
5/4/2016	James Moore	Review	0.17	\$725.00	\$121.08
5/4/2016	J. Brian McTigue, Esq.	E-Mail	0.50	\$725.00	\$362.50
5/4/2016	Regina M. Markey	Review	0.02	\$625.00	\$13.13

5/4/2016	Regina M. Markey	Conference Call	0.07	\$625.00	\$45.63
5/4/2016	Regina M. Markey	Review	0.11	\$625.00	\$71.25
5/5/2016	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
5/5/2016	J. Brian McTigue, Esq.	Voice Mail Mess	0.08	\$725.00	\$60.18
5/9/2016	Regina M. Markey	Review	0.03	\$625.00	\$19.38
5/11/2016	Regina M. Markey	Review	0.02	\$625.00	\$10.00
5/16/2016	Regina M. Markey	Edit	0.68	\$625.00	\$424.38
5/16/2016	Regina M. Markey	Edit	0.83	\$625.00	\$517.50
5/16/2016	J. Brian McTigue, Esq.	Review	0.42	\$725.00	\$302.33
5/17/2016	J. Brian McTigue, Esq.	Review	0.17	\$725.00	\$121.08
5/23/2016	Regina M. Markey	Review	0.02	\$625.00	\$14.38
5/23/2016	Regina M. Markey	Review	0.53	\$625.00	\$333.75
5/23/2016	J. Brian McTigue, Esq.	Review	2.34	\$725.00	\$1,699.40
5/23/2016	James Moore	Review	0.58	\$725.00	\$422.68
5/24/2016	J. Brian McTigue, Esq.	Travel	4.00	\$725.00	\$2,900.00
5/24/2016	Regina M. Markey	Review	0.47	\$625.00	\$292.50
5/24/2016	J. Brian McTigue, Esq.	Edit	5.11	\$725.00	\$3,707.65
5/25/2016	J. Brian McTigue, Esq.	Attend	15.00	\$725.00	\$10,875.00
5/26/2016	J. Brian McTigue, Esq.	Case Admin	1.50	\$725.00	\$1,087.50
5/26/2016	J. Brian McTigue, Esq.	Conference	1.25	\$725.00	\$908.43
5/26/2016	Regina M. Markey	Review	0.50	\$625.00	\$312.50
5/31/2016	J. Brian McTigue, Esq.	Review	1.00	\$725.00	\$727.18
5/31/2016	Regina M. Markey	Review	0.12	\$625.00	\$77.50
6/2/2016	Regina M. Markey	Review	1.07	\$625.00	\$668.13
6/2/2016	J. Brian McTigue, Esq.	Phone Call	0.17	\$725.00	\$121.08
6/6/2016	Regina M. Markey	Review	0.29	\$625.00	\$183.13
6/13/2016	J. Brian McTigue, Esq.	Review	1.13	\$725.00	\$817.80
6/13/2016	Regina M. Markey	Meet with	0.13	\$625.00	\$81.25
6/14/2016	J. Brian McTigue, Esq.	Phone Call	2.50	\$725.00	\$1,812.50
6/15/2016	Regina M. Markey	Phone Call	0.83	\$625.00	\$515.63
6/15/2016	J. Brian McTigue, Esq.	Review	3.00	\$725.00	\$2,175.00
6/17/2016	Regina M. Markey	Conference Call	1.28	\$625.00	\$798.75
6/20/2016	J. Brian McTigue, Esq.	Prepare	1.50	\$725.00	\$1,087.50
6/20/2016	Regina M. Markey	Review	0.42	\$625.00	\$262.50
6/20/2016	J. Brian McTigue, Esq.	Review	3.00	\$725.00	\$2,175.00
6/20/2016	Regina M. Markey	Review	3.42	\$625.00	\$2,138.13
6/21/2016	Regina M. Markey	Review	1.14	\$625.00	\$713.75
6/21/2016	J. Brian McTigue, Esq.	Research	3.52	\$725.00	\$2,553.45
6/21/2016	Regina M. Markey	Conference Call	0.68	\$625.00	\$424.38
6/22/2016	Regina M. Markey	Review	0.65	\$625.00	\$408.75
6/22/2016	J. Brian McTigue, Esq.	Voice Mail Mess	0.20	\$725.00	\$145.00
6/22/2016	Brooke Edwards	Conference	1.00	\$400.00	\$400.00
6/22/2016	Regina M. Markey	Conference Call	0.06	\$625.00	\$34.38
6/24/2016	Regina M. Markey	Review	0.02	\$625.00	\$14.38
6/25/2016	J. Brian McTigue, Esq.	Conference Call	1.03	\$725.00	\$743.13
6/26/2016	J. Brian McTigue, Esq.	Case Admin	0.15	\$725.00	\$108.75
7/1/2016	J. Brian McTigue, Esq.	Review	3.24	\$725.00	\$2,351.18
7/18/2016	Regina M. Markey	Review	0.18	\$625.00	\$114.38
7/21/2016	Regina M. Markey	Conference Call	1.20	\$625.00	\$750.00
7/21/2016	J. Brian McTigue, Esq.	Review	3.00	\$725.00	\$2,175.00
7/22/2016	David Bond	Phone Call	0.70	\$325.00	\$227.50
7/22/2016	J. Brian McTigue, Esq.	Phone Call	0.42	\$725.00	\$301.60
7/23/2016	J. Brian McTigue, Esq.	Review	0.20	\$725.00	\$145.00
7/23/2016	Regina M. Markey	Review	0.17	\$625.00	\$104.38
7/25/2016	Regina M. Markey	Review	3.80	\$625.00	\$2,377.50
7/25/2016	J. Brian McTigue, Esq.	Review	0.50	\$725.00	\$362.50
7/26/2016	Regina M. Markey	Review	1.04	\$625.00	\$650.63
7/26/2016	J. Brian McTigue, Esq.	Review	1.50	\$725.00	\$1,087.50
7/27/2016	Regina M. Markey	Review	0.22	\$625.00	\$137.50
8/4/2016	J. Brian McTigue, Esq.	Draft	0.67	\$725.00	\$483.58
8/8/2016	J. Brian McTigue, Esq.	Attend	8.00	\$725.00	\$5,800.00

8/9/2016 J. Brian McTigue, Esq.	E-Mail	2.00	\$725.00	\$1,450.00
8/9/2016 Miyuki Britton	Case Admin	2.00	\$325.00	\$650.00
8/9/2016 Regina M. Markey	Meet with	1.57	\$625.00	\$981.88
8/9/2016 Regina M. Markey	Review	0.78	\$625.00	\$487.50
8/10/2016 Michele Chasse	Case Admin	1.49	\$325.00	\$484.58
8/10/2016 J. Brian McTigue, Esq.	Phone Call	0.68	\$725.00	\$490.83
8/10/2016 Regina M. Markey	Review	0.90	\$625.00	\$563.75
8/10/2016 Regina M. Markey	Conference Call	0.75	\$625.00	\$468.75
8/11/2016 Regina M. Markey	Review	0.13	\$625.00	\$79.38
8/29/2016 James Moore	Review	0.50	\$725.00	\$362.50
8/30/2016 Regina M. Markey	E-Mail	0.21	\$625.00	\$130.63
8/31/2016 Regina M. Markey	Review	0.08	\$625.00	\$52.50
9/1/2016 J. Brian McTigue, Esq.	Review	0.27	\$725.00	\$192.13
9/1/2016 Regina M. Markey	Review	0.80	\$625.00	\$497.50
9/6/2016 Regina M. Markey	Draft	0.28	\$625.00	\$173.75



<u>SUBJECT TO PROTECTIVE ORDER</u>					
<u>State Street Time Detail Through 8/31/16</u>					
<u>Date</u>	<u>Initials</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>	
8/28/2012	946	Carl S. Kravitz	0.10	[REDACTED]	
9/10/2012	1512	Dwight P. Bostwick	0.30	[REDACTED]	
9/12/2012	1512	Dwight P. Bostwick	2.00	[REDACTED]	
9/12/2012	946	Carl S. Kravitz	1.00	[REDACTED]	
9/13/2012	946	Carl S. Kravitz	1.00	[REDACTED]	
9/13/2012	410	Marshall S. Wolff	5.00	[REDACTED]	



	9/18/2012	1512	Dwight P. Bostwick	1.00	[REDACTED]	
	12/22/2016				[REDACTED]	
	9/19/2012	946	Carl S. Kravitz	1.30	[REDACTED]	
	9/19/2012	410	Marshall S. Wolff	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/20/2012	946	Carl S. Kravitz	1.00	[REDACTED]	
					[REDACTED]	
	9/20/2012	1512	Dwight P. Bostwick	2.00	[REDACTED]	
	9/21/2012	947	Graeme W. Bush	1.50	[REDACTED]	
	9/21/2012	410	Marshall S. Wolff	1.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/21/2012	1512	Dwight P. Bostwick	0.50	[REDACTED]	
	9/23/2012	410	Marshall S. Wolff	1.00	[REDACTED]	
					[REDACTED]	
	9/23/2012	947	Graeme W. Bush	2.00	[REDACTED]	





	10/2/2012	410	Marshall S. Wolff	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/2/2012	1512	Dwight P. Bostwick	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/3/2012	1512	Dwight P. Bostwick	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/3/2012	410	Marshall S. Wolff	3.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/3/2012	947	Graeme W. Bush	5.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/3/2012	946	Carl S. Kravitz	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/4/2012	947	Graeme W. Bush	2.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	10/4/2012	410	Marshall S. Wolff	0.50	[REDACTED]	
					[REDACTED]	
	10/4/2012	1512	Dwight P. Bostwick	5.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/5/2012	1512	Dwight P. Bostwick	3.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/5/2012	1451	Afton B. Hodge	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/5/2012	410	Marshall S. Wolff	2.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/5/2012	947	Graeme W. Bush	2.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/5/2012	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	10/7/2012	1512	Dwight P. Bostwick	2.50	[REDACTED]	
					[REDACTED]	
	10/8/2012	1512	Dwight P. Bostwick	1.50	[REDACTED]	
	10/8/2012	946	Carl S. Kravitz	1.00	[REDACTED]	
	10/8/2012	410	Marshall S. Wolff	2.25	[REDACTED]	
	10/9/2012	410	Marshall S. Wolff	0.50	[REDACTED]	
	10/9/2012	946	Carl S. Kravitz	1.40	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/9/2012	947	Graeme W. Bush	2.10	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/9/2012	1512	Dwight P. Bostwick	4.00	[REDACTED]	

10/10/2012	1512	Dwight P. Bostwick	5.20	[REDACTED]	
				[REDACTED]	
10/10/2012	947	Graeme W. Bush	1.30	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
10/10/2012	946	Carl S. Kravitz	0.60	[REDACTED]	
				[REDACTED]	
10/10/2012	410	Marshall S. Wolff	0.50	[REDACTED]	
				[REDACTED]	
10/11/2012	946	Carl S. Kravitz	2.50	[REDACTED]	
				[REDACTED]	
10/11/2012	947	Graeme W. Bush	0.50	[REDACTED]	
				[REDACTED]	
10/11/2012	1512	Dwight P. Bostwick	2.80	[REDACTED]	
				[REDACTED]	

10/11/2012	1451	Afton B. Hodge	3.00	[REDACTED]
				[REDACTED]
				[REDACTED]
10/12/2012	1451	Afton B. Hodge	0.50	[REDACTED]
				[REDACTED]
10/12/2012	1512	Dwight P. Bostwick	2.20	[REDACTED]
				[REDACTED]
10/12/2012	947	Graeme W. Bush	0.90	[REDACTED]
				[REDACTED]
				[REDACTED]
				[REDACTED]
10/12/2012	946	Carl S. Kravitz	0.80	[REDACTED]
				[REDACTED]
				[REDACTED]
				[REDACTED]
10/14/2012	947	Graeme W. Bush	3.50	[REDACTED]
				[REDACTED]
10/15/2012	947	Graeme W. Bush	4.30	[REDACTED]
				[REDACTED]
				[REDACTED]
				[REDACTED]

10/15/2012	946	Carl S. Kravitz	4.80	[REDACTED]	
				[REDACTED]	
10/15/2012	1566	Adam L. Fotiades	3.00	[REDACTED]	
				[REDACTED]	
10/15/2012	1512	Dwight P. Bostwick	7.30	[REDACTED]	
				[REDACTED]	
10/15/2012	1451	Afton B. Hodge	2.00	[REDACTED]	
				[REDACTED]	
10/16/2012	1451	Afton B. Hodge	0.75	[REDACTED]	
				[REDACTED]	
10/16/2012	1512	Dwight P. Bostwick	5.80	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	

	10/16/2012	1566	Adam L. Fotiades	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/16/2012	947	Graeme W. Bush	2.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/16/2012	946	Carl S. Kravitz	1.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/17/2012	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/17/2012	947	Graeme W. Bush	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/17/2012	1566	Adam L. Fotiades	3.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/17/2012	1512	Dwight P. Bostwick	5.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/17/2012	1451	Afton B. Hodge	1.75	[REDACTED]	

					[REDACTED]	
					[REDACTED]	
	10/18/2012	1512	Dwight P. Bostwick	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/18/2012	1566	Adam L. Fotiades	7.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/18/2012	947	Graeme W. Bush	0.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/18/2012	946	Carl S. Kravitz	6.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/19/2012	946	Carl S. Kravitz	3.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/19/2012	947	Graeme W. Bush	2.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	10/19/2012	1566	Adam L. Fotiades	3.50	[REDACTED]	
					[REDACTED]	

					[REDACTED]
					[REDACTED]
	10/19/2012	1512	Dwight P. Bostwick	8.00	[REDACTED]
					[REDACTED]
	10/20/2012	1512	Dwight P. Bostwick	1.30	[REDACTED]
					[REDACTED]
	10/20/2012	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	10/20/2012	947	Graeme W. Bush	2.40	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/21/2012	946	Carl S. Kravitz	1.50	[REDACTED]
					[REDACTED]
	10/21/2012	947	Graeme W. Bush	0.50	[REDACTED]
					[REDACTED]
	10/22/2012	947	Graeme W. Bush	1.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/22/2012	946	Carl S. Kravitz	5.70	[REDACTED]
					[REDACTED]

	10/22/2012	1512	Dwight P. Bostwick	4.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/22/2012	1451	Afton B. Hodge	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/23/2012	1512	Dwight P. Bostwick	8.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/23/2012	947	Graeme W. Bush	1.00	[REDACTED]
					[REDACTED]
	10/24/2012	947	Graeme W. Bush	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/24/2012	946	Carl S. Kravitz	6.00	[REDACTED]
					[REDACTED]
	10/24/2012	1512	Dwight P. Bostwick	8.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/25/2012	1512	Dwight P. Bostwick	5.00	[REDACTED]
					[REDACTED]
	10/25/2012	946	Carl S. Kravitz	3.20	[REDACTED]
					[REDACTED]

					[REDACTED]
10/25/2012	410	Marshall S. Wolff	0.75		[REDACTED]
					[REDACTED]
10/26/2012	410	Marshall S. Wolff	1.00		[REDACTED]
					[REDACTED]
					[REDACTED]
10/26/2012	946	Carl S. Kravitz	3.00		[REDACTED]
					[REDACTED]
					[REDACTED]
10/26/2012	1512	Dwight P. Bostwick	5.80		[REDACTED]
					[REDACTED]
10/27/2012	1512	Dwight P. Bostwick	0.80		[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
10/29/2012	1512	Dwight P. Bostwick	2.20		[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
10/29/2012	1451	Afton B. Hodge	0.50		[REDACTED]

					[REDACTED]
					[REDACTED]
					[REDACTED]
	10/29/2012	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/30/2012	946	Carl S. Kravitz	1.30	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/30/2012	1512	Dwight P. Bostwick	2.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/31/2012	1512	Dwight P. Bostwick	5.50	[REDACTED]
					[REDACTED]
	10/31/2012	1451	Afton B. Hodge	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	10/31/2012	946	Carl S. Kravitz	1.90	[REDACTED]
					[REDACTED]
	10/31/2012	1566	Adam L. Fotiades	2.50	[REDACTED]
					[REDACTED]
					[REDACTED]

					[REDACTED]
					[REDACTED]
					[REDACTED]
	11/1/2012	1034	Kimberley Wilson	1.50	[REDACTED]
					[REDACTED]
	11/1/2012	1566	Adam L. Fotiades	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/1/2012	946	Carl S. Kravitz	0.70	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/1/2012	1512	Dwight P. Bostwick	4.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/2/2012	1512	Dwight P. Bostwick	7.00	[REDACTED]
					[REDACTED]
	11/2/2012	1451	Afton B. Hodge	1.50	[REDACTED]
					[REDACTED]

					[REDACTED]	
	11/2/2012	946	Carl S. Kravitz	2.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/2/2012	1566	Adam L. Fotiades	0.75	[REDACTED]	
					[REDACTED]	
	11/2/2012	410	Marshall S. Wolff	0.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/2/2012	1034	Kimberley Wilson	0.50	[REDACTED]	
					[REDACTED]	
	11/5/2012	1566	Adam L. Fotiades	2.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/5/2012	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/5/2012	947	Graeme W. Bush	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/5/2012	1451	Afton B. Hodge	0.50	[REDACTED]	
					[REDACTED]	

	11/5/2012	1512	Dwight P. Bostwick	5.80	[REDACTED]
					[REDACTED]
	11/6/2012	1512	Dwight P. Bostwick	5.70	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/6/2012	1451	Afton B. Hodge	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/6/2012	1566	Adam L. Fotiades	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/7/2012	1512	Dwight P. Bostwick	4.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/8/2012	1512	Dwight P. Bostwick	1.80	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	11/12/2012	1512	Dwight P. Bostwick	4.50	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]

					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/12/2012	1451	Afton B. Hodge	0.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/12/2012	946	Carl S. Kravitz	2.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/13/2012	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/13/2012	1451	Afton B. Hodge	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/13/2012	1512	Dwight P. Bostwick	5.60	[REDACTED]	
					[REDACTED]	



					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/16/2012	946	Carl S. Kravitz	2.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/16/2012	947	Graeme W. Bush	0.40	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/17/2012	946	Carl S. Kravitz	2.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/18/2012	946	Carl S. Kravitz	0.40	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/19/2012	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/19/2012	1512	Dwight P. Bostwick	7.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	11/20/2012	1512	Dwight P. Bostwick	6.50	[REDACTED]	



					[REDACTED]
					[REDACTED]
					[REDACTED]
	11/21/2012	1512	Dwight P. Bostwick	7.50	[REDACTED]
					[REDACTED]
	11/25/2012	1512	Dwight P. Bostwick	1.80	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	11/25/2012	946	Carl S. Kravitz	0.70	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/26/2012	946	Carl S. Kravitz	2.50	[REDACTED]
					[REDACTED]
	11/26/2012	1566	Adam L. Fotiades	2.25	[REDACTED]
					[REDACTED]
	11/26/2012	1512	Dwight P. Bostwick	6.50	[REDACTED]
					[REDACTED]

11/27/2012	1512	Dwight P. Bostwick	6.20	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/27/2012	1451	Afton B. Hodge	1.75	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/27/2012	1451	Afton B. Hodge	0.50	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/27/2012	1566	Adam L. Fotiades	0.50	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/27/2012	946	Carl S. Kravitz	3.30	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/28/2012	946	Carl S. Kravitz	1.10	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
11/28/2012	1566	Adam L. Fotiades	2.25	[REDACTED]	
				[REDACTED]	



	12/4/2012	946	Carl S. Kravitz	1.00	[REDACTED]	
	12/4/2012	1566	Adam L. Fotiades	4.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/4/2012	410	Marshall S. Wolff	0.50	[REDACTED]	
					[REDACTED]	
	12/4/2012	1596	Patrick Schmidt	0.80	[REDACTED]	
					[REDACTED]	
	12/4/2012	1512	Dwight P. Bostwick	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/5/2012	1512	Dwight P. Bostwick	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/5/2012	1566	Adam L. Fotiades	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	



12/7/2012	1451	Afton B. Hodge	0.50	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
				[REDACTED]	
12/10/2012	1451	Afton B. Hodge	0.50	[REDACTED]	
				[REDACTED]	
12/10/2012	1566	Adam L. Fotiades	2.75	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
12/11/2012	1566	Adam L. Fotiades	3.00	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
12/11/2012	1034	Kimberley Wilson	0.25	[REDACTED]	
				[REDACTED]	
12/11/2012	1512	Dwight P. Bostwick	3.50	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
12/12/2012	1512	Dwight P. Bostwick	3.80	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
12/13/2012	1512	Dwight P. Bostwick	2.00	[REDACTED]	



					[REDACTED]	
					[REDACTED]	
	12/19/2012	1512	Dwight P. Bostwick	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/19/2012	1566	Adam L. Fotiades	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/19/2012	354	Cyril V. Smith	0.40	[REDACTED]	
					[REDACTED]	
	12/20/2012	1566	Adam L. Fotiades	1.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/20/2012	946	Carl S. Kravitz	1.40	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/20/2012	1512	Dwight P. Bostwick	4.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/20/2012	1451	Afton B. Hodge	0.75	[REDACTED]	
					[REDACTED]	

	12/21/2012	1512	Dwight P. Bostwick	3.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/21/2012	1566	Adam L. Fotiades	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/21/2012	1034	Kimberley Wilson	0.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/22/2012	1512	Dwight P. Bostwick	0.40	[REDACTED]	
					[REDACTED]	
	12/26/2012	1512	Dwight P. Bostwick	0.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/26/2012	1512	Dwight P. Bostwick	0.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	12/26/2012	1566	Adam L. Fotiades	0.25	[REDACTED]	
					[REDACTED]	





	1/7/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/7/2013	1566	Adam L. Fotiades	4.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/8/2013	1566	Adam L. Fotiades	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/8/2013	946	Carl S. Kravitz	1.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/8/2013	1512	Dwight P. Bostwick	5.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	



	1/10/2013	1512	Dwight P. Bostwick	6.50	[REDACTED]
					[REDACTED]
	1/11/2013	1512	Dwight P. Bostwick	4.80	[REDACTED]
					[REDACTED]
	1/11/2013	1451	Afton B. Hodge	1.25	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	1/11/2013	1566	Adam L. Fotiades	4.00	[REDACTED]
					[REDACTED]
	1/14/2013	1566	Adam L. Fotiades	4.50	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]

					[REDACTED]
1/14/2013	946	Carl S. Kravitz	0.70		[REDACTED]
					[REDACTED]
1/14/2013	1451	Afton B. Hodge	4.00		[REDACTED]
					[REDACTED]
1/14/2013	1512	Dwight P. Bostwick	6.50		[REDACTED]
					[REDACTED]
1/15/2013	1512	Dwight P. Bostwick	5.50		[REDACTED]
					[REDACTED]
1/15/2013	1451	Afton B. Hodge	6.25		[REDACTED]
					[REDACTED]

					[REDACTED]
	1/15/2013	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/15/2013	1566	Adam L. Fotiades	4.00	[REDACTED]
					[REDACTED]
	1/16/2013	1566	Adam L. Fotiades	4.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/16/2013	946	Carl S. Kravitz	2.10	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/16/2013	1451	Afton B. Hodge	6.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/16/2013	1512	Dwight P. Bostwick	5.70	[REDACTED]
					[REDACTED]
	1/17/2013	1512	Dwight P. Bostwick	3.80	[REDACTED]
					[REDACTED]



	1/18/2013	1451	Afton B. Hodge	4.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/18/2013	1512	Dwight P. Bostwick	4.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/21/2013	1512	Dwight P. Bostwick	0.20	[REDACTED]	
					[REDACTED]	
	1/21/2013	1566	Adam L. Fotiades	2.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/21/2013	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/22/2013	1566	Adam L. Fotiades	4.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	1/22/2013	1512	Dwight P. Bostwick	5.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	



	1/24/2013	1512	Dwight P. Bostwick	6.00	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	1/25/2013	1512	Dwight P. Bostwick	4.70	[REDACTED]
					[REDACTED]
	1/25/2013	1566	Adam L. Fotiades	1.25	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	1/28/2013	946	Carl S. Kravitz	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/28/2013	1512	Dwight P. Bostwick	4.50	[REDACTED]
					[REDACTED]
	1/28/2013	1451	Afton B. Hodge	0.30	[REDACTED]
					[REDACTED]

	1/29/2013	1451	Afton B. Hodge	3.75	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/29/2013	1512	Dwight P. Bostwick	2.80	[REDACTED]
					[REDACTED]
	1/29/2013	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/30/2013	1566	Adam L. Fotiades	1.25	[REDACTED]
					[REDACTED]
	1/30/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]
					[REDACTED]
					[REDACTED]
	1/31/2013	1566	Adam L. Fotiades	1.25	[REDACTED]
					[REDACTED]

	2/2/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
	2/4/2013	1566	Adam L. Fotiades	0.50	[REDACTED]	
	2/4/2013	946	Carl S. Kravitz	1.00	[REDACTED]	
	2/4/2013	1451	Afton B. Hodge	0.75	[REDACTED]	
	2/4/2013	1512	Dwight P. Bostwick	2.40	[REDACTED]	
	2/4/2013	1428	Rey Caling	1.33	[REDACTED]	
	2/5/2013	1566	Adam L. Fotiades	0.75	[REDACTED]	

					[REDACTED]	
					[REDACTED]	
	2/6/2013	1566	Adam L. Fotiades	3.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/6/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/7/2013	1512	Dwight P. Bostwick	4.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/8/2013	1566	Adam L. Fotiades	3.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/11/2013	1566	Adam L. Fotiades	3.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	2/11/2013	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
	2/11/2013	1512	Dwight P. Bostwick	2.60	[REDACTED]	
					[REDACTED]	
	2/11/2013	1451	Afton B. Hodge	3.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/12/2013	1512	Dwight P. Bostwick	1.00	[REDACTED]	
					[REDACTED]	
	2/13/2013	1512	Dwight P. Bostwick	3.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/13/2013	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
	2/13/2013	1566	Adam L. Fotiades	3.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/14/2013	1566	Adam L. Fotiades	3.50	[REDACTED]	
					[REDACTED]	





	2/20/2013	1428	Rey Caling	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/20/2013	946	Carl S. Kravitz	0.10	[REDACTED]	
	2/21/2013	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
	2/21/2013	1512	Dwight P. Bostwick	1.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/21/2013	1566	Adam L. Fotiades	2.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/21/2013	1451	Afton B. Hodge	3.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/22/2013	1451	Afton B. Hodge	4.00	[REDACTED]	

					[REDACTED]
	2/22/2013	1566	Adam L. Fotiades	2.25	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/22/2013	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/22/2013	1512	Dwight P. Bostwick	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/24/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/25/2013	1512	Dwight P. Bostwick	1.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/25/2013	946	Carl S. Kravitz	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	2/25/2013	1566	Adam L. Fotiades	7.50	[REDACTED]
					[REDACTED]



	2/27/2013	1512	Dwight P. Bostwick	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/27/2013	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	2/27/2013	1566	Adam L. Fotiades	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/4/2013	1566	Adam L. Fotiades	0.50	[REDACTED]	
					[REDACTED]	
	3/4/2013	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/4/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	
					[REDACTED]	
	3/4/2013	1451	Afton B. Hodge	0.30	[REDACTED]	
					[REDACTED]	
	3/6/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	3/7/2013	946	Carl S. Kravitz	4.20	[REDACTED]	
					[REDACTED]	



	3/11/2013	946	Carl S. Kravitz	2.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/11/2013	1566	Adam L. Fotiades	8.50	[REDACTED]
					[REDACTED]
	3/11/2013	1512	Dwight P. Bostwick	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/11/2013	1451	Afton B. Hodge	0.10	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/12/2013	1451	Afton B. Hodge	4.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/12/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/12/2013	1566	Adam L. Fotiades	2.75	[REDACTED]

					[REDACTED]	
					[REDACTED]	
	3/12/2013	946	Carl S. Kravitz	1.00	[REDACTED]	
					[REDACTED]	
	3/13/2013	946	Carl S. Kravitz	4.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/13/2013	1566	Adam L. Fotiades	2.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/13/2013	1512	Dwight P. Bostwick	3.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/13/2013	1451	Afton B. Hodge	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/14/2013	1566	Adam L. Fotiades	2.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/14/2013	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	

					[REDACTED]
					[REDACTED]
	3/15/2013	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	3/15/2013	1566	Adam L. Fotiades	4.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/15/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]
					[REDACTED]
	3/18/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]
					[REDACTED]
	3/18/2013	1566	Adam L. Fotiades	8.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/18/2013	946	Carl S. Kravitz	3.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	3/19/2013	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	3/19/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]
					[REDACTED]

	3/25/2013	946	Carl S. Kravitz	1.70	[REDACTED]	
	3/25/2013	1566	Adam L. Fotiades	0.50	[REDACTED]	
					[REDACTED]	
	3/26/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
	3/28/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
	3/29/2013	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/31/2013	946	Carl S. Kravitz	1.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	4/1/2013	946	Carl S. Kravitz	3.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	

					[REDACTED]
	4/1/2013	1512	Dwight P. Bostwick	2.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/2/2013	1512	Dwight P. Bostwick	1.50	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	4/2/2013	946	Carl S. Kravitz	2.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/4/2013	1512	Dwight P. Bostwick	2.80	[REDACTED]
					[REDACTED]
	4/5/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]
					[REDACTED]
	4/5/2013	946	Carl S. Kravitz	0.20	[REDACTED]
					[REDACTED] II.
					[REDACTED]
	4/8/2013	1512	Dwight P. Bostwick	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/9/2013	946	Carl S. Kravitz	1.50	[REDACTED]
					[REDACTED]

	4/10/2013	946	Carl S. Kravitz	0.30	[REDACTED]	
					[REDACTED]	
	4/12/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	4/13/2013	946	Carl S. Kravitz	0.20	[REDACTED]	
					[REDACTED] s.	
	4/14/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
	4/15/2013	1512	Dwight P. Bostwick	0.75	[REDACTED]	
					[REDACTED]	
	4/21/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
					[REDACTED]	
	4/22/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
					[REDACTED]	
	4/22/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	4/24/2013	410	Marshall S. Wolff	0.50	[REDACTED]	
					[REDACTED]	
	4/25/2013	410	Marshall S. Wolff	1.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	4/25/2013	1512	Dwight P. Bostwick	0.20	[REDACTED]	
	4/29/2013	1512	Dwight P. Bostwick	1.25	[REDACTED]	
					[REDACTED]	
	4/29/2013	946	Carl S. Kravitz	1.50	[REDACTED]	
	5/1/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
	5/1/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
					[REDACTED]	
	5/2/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
					[REDACTED]	
	5/5/2013	1512	Dwight P. Bostwick	0.75	[REDACTED]	
					[REDACTED]	
	5/6/2013	1512	Dwight P. Bostwick	1.20	[REDACTED]	
					[REDACTED] s.	
	5/6/2013	946	Carl S. Kravitz	1.10	[REDACTED]	
					[REDACTED]	
	5/6/2013	410	Marshall S. Wolff	0.25	[REDACTED]	
	5/7/2013	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
	5/8/2013	1512	Dwight P. Bostwick	0.60	[REDACTED]	

5/9/2013	1512	Dwight P. Bostwick	1.50	[REDACTED]	
				[REDACTED]	
5/9/2013	946	Carl S. Kravitz	2.50	[REDACTED]	
5/10/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
5/14/2013	946	Carl S. Kravitz	1.60	[REDACTED]	
				[REDACTED]	
				[REDACTED]	
5/15/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
				[REDACTED]	
5/16/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
5/16/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
				[REDACTED]	
5/16/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
5/16/2013	946	Carl S. Kravitz	0.30	[REDACTED]	
				[REDACTED]	
				[REDACTED]	

	5/16/2013	946	Carl S. Kravitz	0.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	5/16/2013	946	Carl S. Kravitz	0.20	[REDACTED]	
	5/17/2013	946	Carl S. Kravitz	0.10	[REDACTED]	
	5/20/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
	5/23/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
					[REDACTED] le.	
	5/27/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]	
					[REDACTED]	
	5/27/2013	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
	5/28/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
	5/29/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	5/31/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	5/31/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	
					[REDACTED]	
	6/3/2013	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
	6/4/2013	1566	Adam L. Fotiades	1.75	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	6/4/2013	1512	Dwight P. Bostwick	1.30	[REDACTED]	
					[REDACTED]	
	6/5/2013	946	Carl S. Kravitz	0.60	[REDACTED]	
	6/13/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
	6/17/2013	1512	Dwight P. Bostwick	1.20	[REDACTED]	
	6/24/2013	1512	Dwight P. Bostwick	1.00	[REDACTED]	
	6/24/2013	1566	Adam L. Fotiades	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	6/25/2013	1566	Adam L. Fotiades	1.25	[REDACTED]	
					[REDACTED]	



	6/28/2013	1566	Adam L. Fotiades	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	6/28/2013	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
	7/1/2013	1512	Dwight P. Bostwick	2.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	7/1/2013	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
	7/2/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
					[REDACTED]	
	7/2/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	7/8/2013	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
	7/9/2013	946	Carl S. Kravitz	7.00	[REDACTED]	
					[REDACTED]	
	7/9/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
					[REDACTED]	
	7/10/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	

					[REDACTED] on.	
7/10/2013	1566	Adam L. Fotiades	0.75	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
7/19/2013	946	Carl S. Kravitz	1.30	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
7/19/2013	1512	Dwight P. Bostwick	0.70	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/14/2013	1512	Dwight P. Bostwick	0.25	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/19/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/21/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/22/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/22/2013	946	Carl S. Kravitz	0.50	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/28/2013	946	Carl S. Kravitz	0.30	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	
8/28/2013	1512	Dwight P. Bostwick	0.70	[REDACTED]	[REDACTED]	
				[REDACTED]	[REDACTED]	

	8/29/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/29/2013	1512	Dwight P. Bostwick	2.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/29/2013	1566	Adam L. Fotiades	1.25	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/29/2013	946	Carl S. Kravitz	3.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/30/2013	946	Carl S. Kravitz	1.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/30/2013	1566	Adam L. Fotiades	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	

	8/30/2013	1512	Dwight P. Bostwick	1.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/31/2013	946	Carl S. Kravitz	0.70	[REDACTED]	
	9/3/2013	946	Carl S. Kravitz	1.60	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/3/2013	1512	Dwight P. Bostwick	0.30	[REDACTED]	
	9/5/2013	946	Carl S. Kravitz	1.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/5/2013	1512	Dwight P. Bostwick	1.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/6/2013	1512	Dwight P. Bostwick	0.80	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	9/6/2013	946	Carl S. Kravitz	3.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	

					[REDACTED]
	9/8/2013	946	Carl S. Kravitz	1.30	[REDACTED]
					[REDACTED]
	9/9/2013	946	Carl S. Kravitz	0.60	[REDACTED]
					[REDACTED]
					[REDACTED]
	9/10/2013	946	Carl S. Kravitz	0.20	[REDACTED]
					[REDACTED]
	9/10/2013	1512	Dwight P. Bostwick	1.00	[REDACTED]
					[REDACTED]
	9/11/2013	1512	Dwight P. Bostwick	1.30	[REDACTED]
					[REDACTED]
					[REDACTED]
	9/11/2013	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	9/12/2013	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	9/12/2013	1512	Dwight P. Bostwick	0.40	[REDACTED]
					[REDACTED]
	9/13/2013	1512	Dwight P. Bostwick	0.70	[REDACTED]
					[REDACTED]
	9/13/2013	946	Carl S. Kravitz	2.60	[REDACTED]g



					[REDACTED]
	11/11/2013	946	Carl S. Kravitz	0.30	[REDACTED]
					[REDACTED]
	11/12/2013	946	Carl S. Kravitz	5.30	[REDACTED]
					[REDACTED]
					[REDACTED]
	11/13/2013	946	Carl S. Kravitz	6.00	[REDACTED]
					[REDACTED]
	12/9/2013	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	12/11/2013	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	12/13/2013	1512	Dwight P. Bostwick	0.25	[REDACTED]
					[REDACTED]
	12/17/2013	946	Carl S. Kravitz	5.00	[REDACTED]
					[REDACTED]
	12/18/2013	946	Carl S. Kravitz	6.00	[REDACTED]
					[REDACTED]
	12/19/2013	946	Carl S. Kravitz	6.00	[REDACTED]
					[REDACTED]
	12/30/2013	946	Carl S. Kravitz	0.50	[REDACTED]

12/31/2013	946	Carl S. Kravitz	0.50	[REDACTED]	
				[REDACTED]	
1/16/2014	1512	Dwight P. Bostwick	1.50	[REDACTED]	
				[REDACTED]	
3/4/2014	946	Carl S. Kravitz	10.00	[REDACTED]	
				[REDACTED]	
3/5/2014	1512	Dwight P. Bostwick	0.30	[REDACTED]	
				[REDACTED]	
5/8/2014	946	Carl S. Kravitz	1.10	[REDACTED]	
				[REDACTED]	
5/9/2014	946	Carl S. Kravitz	10.00	[REDACTED]	
				[REDACTED]	
5/14/2014	1512	Dwight P. Bostwick	0.25	[REDACTED]	
				[REDACTED]	
6/9/2014	1512	Dwight P. Bostwick	0.50	[REDACTED]	
				[REDACTED]	
6/23/2014	1512	Dwight P. Bostwick	0.75	[REDACTED]	
				[REDACTED]	
12/30/2014	946	Carl S. Kravitz	1.20	[REDACTED]	
				[REDACTED]	
1/4/2015	946	Carl S. Kravitz	2.00	[REDACTED]	

	1/5/2015	946	Carl S. Kravitz	7.00	[REDACTED]
	1/21/2015	946	Carl S. Kravitz	0.50	[REDACTED]
	1/22/2015	946	Carl S. Kravitz	0.50	[REDACTED]
	2/3/2015	946	Carl S. Kravitz	7.00	[REDACTED]
	2/4/2015	946	Carl S. Kravitz	7.00	[REDACTED]
	2/12/2015	946	Carl S. Kravitz	0.20	[REDACTED]
	2/13/2015	946	Carl S. Kravitz	0.10	[REDACTED]
	2/16/2015	946	Carl S. Kravitz	0.50	[REDACTED]
	2/18/2015	946	Carl S. Kravitz	0.80	[REDACTED]
	2/19/2015	946	Carl S. Kravitz	0.50	[REDACTED]

	2/24/2015	946	Carl S. Kravitz	1.20	[REDACTED]	
	2/25/2015	946	Carl S. Kravitz	6.50	[REDACTED]	
					[REDACTED]	
	2/26/2015	946	Carl S. Kravitz	10.00	[REDACTED]	
					[REDACTED]	
	2/27/2015	946	Carl S. Kravitz	2.20	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/2/2015	946	Carl S. Kravitz	1.40	[REDACTED]	
					[REDACTED]	
	3/4/2015	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
	3/6/2015	946	Carl S. Kravitz	0.80	[REDACTED]	
					[REDACTED]	
	3/9/2015	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
	3/10/2015	946	Carl S. Kravitz	0.80	[REDACTED]	
					[REDACTED]	
	3/11/2015	946	Carl S. Kravitz	0.50	[REDACTED]	

	3/12/2015	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	3/13/2015	946	Carl S. Kravitz	0.80	[REDACTED]	
					[REDACTED]	
	3/16/2015	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	3/26/2015	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
	3/31/2015	946	Carl S. Kravitz	0.40	[REDACTED]	
					[REDACTED]	
	4/1/2015	946	Carl S. Kravitz	0.70	[REDACTED]	
					[REDACTED]	
	4/3/2015	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	4/5/2015	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	4/6/2015	946	Carl S. Kravitz	0.80	[REDACTED]	
					[REDACTED]	
	4/7/2015	946	Carl S. Kravitz	2.10	[REDACTED]	
					[REDACTED]	

					[REDACTED]
					[REDACTED]
	4/8/2015	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	4/9/2015	946	Carl S. Kravitz	1.70	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/13/2015	946	Carl S. Kravitz	1.40	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/15/2015	946	Carl S. Kravitz	0.60	[REDACTED]
					[REDACTED]
					[REDACTED]
	4/16/2015	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	4/20/2015	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	4/24/2015	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
	4/27/2015	946	Carl S. Kravitz	0.90	[REDACTED]
					[REDACTED]
	4/29/2015	946	Carl S. Kravitz	6.00	[REDACTED]

					[REDACTED]
					[REDACTED]
	4/30/2015	946	Carl S. Kravitz	7.20	[REDACTED]
					[REDACTED]
	5/1/2015	946	Carl S. Kravitz	1.80	[REDACTED]
	5/5/2015	946	Carl S. Kravitz	0.60	[REDACTED]
	5/13/2015	946	Carl S. Kravitz	1.00	Con [REDACTED]
	5/14/2015	946	Carl S. Kravitz	1.30	Te [REDACTED]
	5/15/2015	946	Carl S. Kravitz	0.90	[REDACTED]
	5/22/2015	946	Carl S. Kravitz	3.10	[REDACTED]
	5/26/2015	946	Carl S. Kravitz	2.30	[REDACTED]
	5/27/2015	946	Carl S. Kravitz	0.60	[REDACTED]
	6/5/2015	946	Carl S. Kravitz	1.50	[REDACTED]

6/8/2015	946	Carl S. Kravitz	1.50		
6/9/2015	946	Carl S. Kravitz	2.00		
6/10/2015	946	Carl S. Kravitz	1.50		
6/16/2015	946	Carl S. Kravitz	0.80		
6/17/2015	946	Carl S. Kravitz	2.60		
6/24/2015	946	Carl S. Kravitz	1.00		
6/26/2015	946	Carl S. Kravitz	12.00		
6/29/2015	946	Carl S. Kravitz	0.90		
6/30/2015	946	Carl S. Kravitz	14.00		

					[REDACTED]	
7/1/2015	946	Carl S. Kravitz	1.60		[REDACTED]	
					[REDACTED]	
7/8/2015	946	Carl S. Kravitz	0.50		[REDACTED]	
					[REDACTED]	
7/9/2015	946	Carl S. Kravitz	1.30		[REDACTED]	
					[REDACTED]	
7/10/2015	946	Carl S. Kravitz	1.30		[REDACTED]	
					[REDACTED]	
7/13/2015	946	Carl S. Kravitz	0.60		[REDACTED]	
					[REDACTED]	
7/14/2015	946	Carl S. Kravitz	0.50		[REDACTED]	
					[REDACTED]	
7/16/2015	946	Carl S. Kravitz	0.20		[REDACTED]	
					[REDACTED]	
7/17/2015	946	Carl S. Kravitz	1.50		[REDACTED]	
					[REDACTED]	
7/21/2015	946	Carl S. Kravitz	0.80		[REDACTED]	
					[REDACTED]	
7/24/2015	946	Carl S. Kravitz	1.10		[REDACTED]	

	7/28/2015	946	Carl S. Kravitz	0.80	
	7/29/2015	946	Carl S. Kravitz	0.70	
	7/30/2015	946	Carl S. Kravitz	1.50	
	7/31/2015	946	Carl S. Kravitz	1.50	
	8/12/2015	946	Carl S. Kravitz	0.50	
	8/13/2015	946	Carl S. Kravitz	0.60	
	8/17/2015	946	Carl S. Kravitz	0.80	
	8/19/2015	946	Carl S. Kravitz	1.00	
	8/20/2015	946	Carl S. Kravitz	2.80	
	8/21/2015	946	Carl S. Kravitz	0.80	
	8/22/2015	946	Carl S. Kravitz	1.20	

					[REDACTED]
8/26/2015	946	Carl S. Kravitz	1.30	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
8/27/2015	946	Carl S. Kravitz	1.00	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
8/28/2015	946	Carl S. Kravitz	0.70	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/1/2015	946	Carl S. Kravitz	0.70	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/2/2015	946	Carl S. Kravitz	1.00	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/3/2015	946	Carl S. Kravitz	0.90	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/9/2015	946	Carl S. Kravitz	0.40	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/13/2015	946	Carl S. Kravitz	0.50	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]
9/14/2015	946	Carl S. Kravitz	0.60	[REDACTED]	[REDACTED]
				[REDACTED]	[REDACTED]

	9/21/2015	946	Carl S. Kravitz	0.60	[REDACTED]	
					[REDACTED]	
	9/25/2015	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	11/10/2015	946	Carl S. Kravitz	0.70	[REDACTED]	
					[REDACTED]	
	2/1/2016	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
	2/2/2016	946	Carl S. Kravitz	1.20	[REDACTED]	
					[REDACTED]	
	2/8/2016	946	Carl S. Kravitz	1.00	[REDACTED]	
					[REDACTED]	
	2/19/2016	946	Carl S. Kravitz	1.50	[REDACTED]	
					[REDACTED]	
	3/11/2016	946	Carl S. Kravitz	1.10	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	4/12/2016	946	Carl S. Kravitz	0.40	[REDACTED]	
					[REDACTED]	
	4/14/2016	946	Carl S. Kravitz	1.20	[REDACTED]	
					[REDACTED]	

	4/15/2016	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
	4/21/2016	946	Carl S. Kravitz	1.40	[REDACTED]	
	4/22/2016	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	4/25/2016	946	Carl S. Kravitz	2.10	[REDACTED]	
					[REDACTED]	
	4/26/2016	946	Carl S. Kravitz	1.10	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	4/27/2016	946	Carl S. Kravitz	0.20	[REDACTED]	
					[REDACTED]	
	4/28/2016	946	Carl S. Kravitz	1.80	[REDACTED]	
	4/29/2016	946	Carl S. Kravitz	0.50	[REDACTED]	
					[REDACTED]	
	5/2/2016	946	Carl S. Kravitz	1.30	[REDACTED]	
					[REDACTED]	
	5/3/2016	946	Carl S. Kravitz	2.90	[REDACTED]	



	5/13/2016	946	Carl S. Kravitz	0.40	[REDACTED]
	5/18/2016	946	Carl S. Kravitz	0.10	[REDACTED]
	5/23/2016	946	Carl S. Kravitz	0.50	[REDACTED]
	5/24/2016	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	5/25/2016	946	Carl S. Kravitz	1.40	[REDACTED]
	5/28/2016	946	Carl S. Kravitz	0.30	[REDACTED]
					[REDACTED]
	5/31/2016	946	Carl S. Kravitz	2.10	[REDACTED]
					[REDACTED]
					[REDACTED]
	6/1/2016	946	Carl S. Kravitz	0.40	[REDACTED]
					[REDACTED]
					[REDACTED]
	6/3/2016	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	6/6/2016	946	Carl S. Kravitz	1.80	[REDACTED]
					[REDACTED]
					[REDACTED]

	6/7/2016	946	Carl S. Kravitz	1.00	[REDACTED]	
					[REDACTED]	
	6/9/2016	946	Carl S. Kravitz	0.70	[REDACTED]	
					[REDACTED]	
	6/10/2016	946	Carl S. Kravitz	1.20	[REDACTED]	
					[REDACTED]	
	6/13/2016	946	Carl S. Kravitz	1.40	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	6/14/2016	946	Carl S. Kravitz	1.10	[REDACTED]	
					[REDACTED]	
	6/15/2016	946	Carl S. Kravitz	3.70	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	6/16/2016	946	Carl S. Kravitz	2.00	[REDACTED]	
					[REDACTED]	
					[REDACTED]	
					[REDACTED]	



					[REDACTED]
	6/22/2016	946	Carl S. Kravitz	1.10	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	6/23/2016	946	Carl S. Kravitz	1.40	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	6/24/2016	946	Carl S. Kravitz	1.10	[REDACTED]
					[REDACTED]
					[REDACTED]
	6/27/2016	946	Carl S. Kravitz	0.60	[REDACTED]
					[REDACTED]
					[REDACTED]
	6/28/2016	946	Carl S. Kravitz	0.60	[REDACTED]
					[REDACTED]
					[REDACTED]
	6/29/2016	946	Carl S. Kravitz	0.20	[REDACTED]
					[REDACTED]
					[REDACTED]
	7/5/2016	946	Carl S. Kravitz	0.30	[REDACTED]
					[REDACTED]
					[REDACTED]
	7/6/2016	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
					[REDACTED]
	7/7/2016	946	Carl S. Kravitz	1.20	[REDACTED]
					[REDACTED]

					[REDACTED]
					[REDACTED]
	7/8/2016	946	Carl S. Kravitz	0.10	[REDACTED]
					[REDACTED]
	7/11/2016	946	Carl S. Kravitz	0.10	[REDACTED]
					[REDACTED]
	7/11/2016	946	Carl S. Kravitz	0.50	[REDACTED]
					[REDACTED]
	7/12/2016	946	Carl S. Kravitz	0.30	[REDACTED]
					[REDACTED]
	7/13/2016	946	Carl S. Kravitz	0.90	[REDACTED]
					[REDACTED]
	7/14/2016	946	Carl S. Kravitz	0.30	[REDACTED]
					[REDACTED]
	7/18/2016	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
					[REDACTED]
	7/19/2016	946	Carl S. Kravitz	1.00	[REDACTED]
					[REDACTED]
					[REDACTED]
					[REDACTED]
	7/20/2016	946	Carl S. Kravitz	2.40	[REDACTED]
					[REDACTED]



					[REDACTED]	
					[REDACTED]	
					[REDACTED]	
	8/10/2016	946	Carl S. Kravitz	2.00	[REDACTED]	
	8/30/2016	946	Carl S. Kravitz	1.20	[REDACTED]	
				1,409.93		-

**SUBJECT TO PROTECTIVE ORDER****State Street Costs Through 8/31/16**

<u>Date</u>	<u>Code</u>	<u>Quantity</u>	<u>Rate</u>	<u>Amount</u>	<u>Description</u>
9/13/2012	886	2	20.00	\$ 40.00	CD/DVD Creation (Copies)
9/20/2012	450	1	9.48	\$ 9.48	Telephone Reimbursed - - Vendor: Soundpath Conferencing
9/20/2012	450	1	16.44	\$ 16.44	Telephone Reimbursed - - Vendor: Soundpath Conferencing
10/15/2012	830	328	0.20	\$ 65.60	Photocopy
10/15/2012	250	1	23.40	\$ 23.40	Transcripts - - Vendor: Richard H. Romanow, RHR
10/16/2012	830	50	0.20	\$ 10.00	Photocopy
10/16/2012	830	79	0.20	\$ 15.80	Photocopy

10/17/2012	830	13	0.20	\$	2.60	Photocopy
10/17/2012	830	5	0.20	\$	1.00	Photocopy
10/17/2012	830	319	0.20	\$	63.80	Photocopy
10/17/2012	830	571	0.20	\$	114.20	Photocopy
10/18/2012	780	1	8.00	\$	8.00	Miscellaneous - - Vendor: Graeme W. Bush
10/23/2012	830	799	0.20	\$	159.80	Photocopy
10/31/2012	920	1	518.06	\$	518.06	Westlaw Research
11/5/2012	205	1	9,360.62	\$	9,360.62	Transcripts - - Vendor: McTigue Law LLP
11/5/2012	510	1	69.00	\$	69.00	Local Transportation - - Vendor: Ana Limousine
11/5/2012	520	1	779.60	\$	779.60	Non-local Travel - - Vendor: Dwight Bostwick

a/f - Boston, MA

11/5/2012	520	1	121.00	\$	121.00	Non-local Travel - - Vendor: Dwight Bostwick taxi
11/5/2012	520	1	332.32	\$	332.32	Non-local Travel - - Vendor: Dwight Bostwick hotel
11/5/2012	520	1	309.18	\$	309.18	Non-local Travel - - Vendor: Dwight Bostwick meals
11/5/2012	830	22	0.20	\$	4.40	Photocopy
11/6/2012 12/22/2016	520	1	649.60	\$	649.60	Non-local Travel - - Vendor: Carl S. Kravitz a/f-Boston, MA
11/6/2012	520	1	62.45	\$	62.45	Non-local Travel - - Vendor: Carl S. Kravitz taxi
11/6/2012	520	1	952.07	\$	952.07	Non-local Travel - - Vendor: Carl S. Kravitz hotel

11/6/2012	520	1	35.00	\$	35.00	Non-local Travel - - Vendor: Carl S. Kravitz meals
11/19/2012	510	1	144.00	\$	144.00	Local Transportation - - Vendor: Ana Limousine Service
11/19/2012	510	1	7.25	\$	7.25	Local Transportation - - Vendor: Arnow Transportation Unlimited
11/19/2012	520	1	650.60	\$	650.60	Non-local Travel - - Vendor: Carl S. Kravitz a/f - Boston, MA
11/19/2012	520	1	57.18	\$	57.18	Non-local Travel - - Vendor: Carl S. Kravitz taxi
11/19/2012	450	1	21.85	\$	21.85	Telephone Reimbursed - - Vendor: Soundpath Conferencing

11/19/2012	450	1	24.12	\$	24.12	Telephone Reimbursed - - Vendor: Soundpath Conferencing
11/19/2012	450	1	11.59	\$	11.59	Telephone Reimbursed - - Vendor: Soundpath Conferencing
11/19/2012	450	1	5.64	\$	5.64	Telephone Reimbursed - - Vendor: Soundpath Conferencing
11/19/2012 4/21/2016	450	1	25.52	\$	25.52	Telephone Reimbursed - - Vendor: Soundpath Conferencing
11/30/2012	920	1	258.69	\$	258.69	Westlaw Research
12/17/2012	510	1	7.25	\$	7.25	Local Transportation - - Vendor: ASAP Courier Service, Inc.

12/17/2012	120	1	336.82	\$	336.82	Court costs - - Vendor: West Group
12/18/2012	830	18	0.20	\$	3.60	Photocopy
12/26/2012	235	1	34.80	\$	34.80	Courier - - Vendor: ASAP Courier Service, Inc.
12/31/2012	920	1	160.70	\$	160.70	Westlaw Research
1/3/2013	830	38	0.20	\$	7.60	Photocopy
1/11/2013	235	1	36.30	\$	36.30	Courier - - Vendor: ASAP Courier Service, Inc.
1/11/2013	800	1	382.66	\$	382.66	Reference Materials - - Vendor: Wolters Kluwer Law & Business
1/15/2013	235	1	39.30	\$	39.30	Courier - - Vendor: ASAP Courier Service, Inc.

1/22/2013	450	1	19.01	\$	19.01	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/22/2013	450	1	7.82	\$	7.82	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/22/2013	450	1	24.44	\$	24.44	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/22/2013	450	1	25.23	\$	25.23	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/22/2013	450	1	3.55	\$	3.55	Telephone Reimbursed - - Vendor: Soundpath Conferencing

1/24/2013 4/21/2016	830	24	0.20	\$	4.80	Photocopy
1/31/2013	450	1	4.47	\$	4.47	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/31/2013	450	1	14.88	\$	14.88	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/31/2013	450	1	23.73	\$	23.73	Telephone Reimbursed - - Vendor: Soundpath Conferencing
1/31/2013	450	1	12.76	\$	12.76	Telephone Reimbursed - - Vendor: Soundpath Conferencing
2/15/2013	830	999	0.20	\$	199.80	Photocopy
2/15/2013	830	280	0.20	\$	56.00	Photocopy
2/15/2013	830	289	0.20	\$	57.80	Photocopy

2/19/2013	830	172	0.20	\$	34.40	Photocopy
2/20/2013	830	181	0.20	\$	36.20	Photocopy
2/26/2013	230	1	10.90	\$	10.90	Express Delivery - - Vendor: UPS
2/28/2013	885	1	40.00	\$	40.00	CD/DVD Creation (Original)
2/28/2013	886	3	20.00	\$	60.00	CD/DVD Creation (Copies)
2/28/2013	885	1	40.00	\$	40.00	CD/DVD Creation (Original)
2/28/2013	886	1	20.00	\$	20.00	CD/DVD Creation (Copies)
3/7/2013	230	1	34.98	\$	34.98	Express Delivery - - Vendor: Fedex
3/11/2013	475	1	130.60	\$	130.60	Pacer - Docket Research - - Vendor: Pacer Service Center

3/11/2013	475	1	8.90	\$	8.90	Pacer - Docket Research - - Vendor: Pacer Service Center
3/13/2013	830	48	0.20	\$	9.60	Photocopy
3/13/2013	830	128	0.20	\$	25.60	Photocopy
3/13/2013	830	174	0.20	\$	34.80	Photocopy
3/13/2013	850	1	0.12	\$	0.12	Long Distance
3/13/2013	830	983	0.20	\$	196.60	Photocopy
3/14/2013	830	16	0.20	\$	3.20	Photocopy
3/18/2013	850	1	0.12	\$	0.12	Long Distance
3/19/2013	510	1	70.00	\$	70.00	Local Transportation - - Vendor: Carl S. Kravitz NY - trip cancelled
3/20/2013	850	1	0.24	\$	0.24	Long Distance

3/22/2013	205	1	5,087.50	\$	5,087.50	Expert/Consultant Fee -- Vendor: McTigue Law LLP
4/2/2013	850	1	0.12	\$	0.12	Long Distance
4/4/2013	850	1	0.12	\$	0.12	Long Distance
4/4/2013	850	1	0.36	\$	0.36	Long Distance
4/5/2013	850	1	4.20	\$	4.20	Long Distance
4/5/2013	850	1	1.08	\$	1.08	Long Distance
4/10/2013	780	1	10.00	\$	10.00	Miscellaneous -- Vendor: Sharon Garrett
4/12/2013	850	1	0.24	\$	0.24	Long Distance
4/16/2013	780	1	20.00	\$	20.00	Miscellaneous -- Vendor: Independence Legal Support

4/16/2013	780	1	60.00	\$	60.00	Miscellaneous - - Vendor: Independence Legal Support
6/10/2013	475	1	8.50	\$	8.50	Pacer - Docket Research - - Vendor: Pacer Service Center
6/18/2013	850	1	0.12	\$	0.12	Long Distance
6/25/2013	850	1	3.36	\$	3.36	Long Distance
7/19/2013	520	1	388.00	\$	388.00	Non-local Travel - - Vendor: Carl S. Kravitz Amtrak - NY
7/19/2013	520	1	107.98	\$	107.98	Non-local Travel - - Vendor: Carl S. Kravitz taxi
8/29/2013	850	1	0.36	\$	0.36	Long Distance
8/29/2013	850	1	0.24	\$	0.24	Long Distance

8/30/2013	850	1	0.36	\$	0.36	Long Distance
9/11/2013	850	1	0.12	\$	0.12	Long Distance
9/11/2013	850	1	1.32	\$	1.32	Long Distance
9/11/2013	850	1	3.00	\$	3.00	Long Distance
9/11/2013	850	1	0.96	\$	0.96	Long Distance
9/11/2013	850	1	0.24	\$	0.24	Long Distance
10/17/2013	450	1	4.18	\$	4.18	Telephone Reimbursed -- Vendor: Soundpath Conferencing
11/20/2013	520	1	464.00	\$	464.00	Non-local Travel -- Vendor: Carl S. Kravitz New York
11/20/2013	520	1	619.36	\$	619.36	Non-local Travel -- Vendor: Carl S. Kravitz hotel
11/20/2013	520	1	106.73	\$	106.73	Non-local Travel -- Vendor: Carl S. Kravitz

meals

1/8/2014	520	1	1,539.80	\$	1,539.80	Non-local Travel - - Vendor: Carl S. Kravitz a/f - San Francisco, CA & NY
1/8/2014	286	1	220.77	\$	220.77	Auto Rental - - Vendor: Carl S. Kravitz San Francisco
1/8/2014	520	1	38.00	\$	38.00	Non-local Travel - - Vendor: Carl S. Kravitz taxi
1/8/2014	520	1	629.20	\$	629.20	Non-local Travel - - Vendor: Carl S. Kravitz hotel
1/8/2014	520	1	21.90	\$	21.90	Non-local Travel - - Vendor: Carl S. Kravitz meals
3/12/2014	520	1	913.99	\$	913.99	Non-local Travel - - Vendor: Carl S. Kravitz a/f - NY

3/13/2014	510	1	144.00	\$	144.00	Local Transportation - - Vendor: Ana Limousine Service
3/20/2014 12/22/2016	510	1	101.63	\$	101.63	Local Transportation - - Vendor: Lotus Partners
3/20/2014	510	1	64.04	\$	64.04	Local Transportation - - Vendor: Lotus Partners
5/20/2014	520	1	32.00	\$	32.00	Non-local Travel - - Vendor: Carl S. Kravitz NYC - car service
7/31/2014 12/22/2016	475	1	2.30	\$	2.30	Pacer - Docket Research - - Vendor: Pacer Service Center
1/26/2015	520	1	534.00	\$	534.00	Non-local Travel - - Vendor: Carl S. Kravitz Amtrak - NYC
1/26/2015	520	1	74.50	\$	74.50	Non-local Travel - - Vendor: Carl S. Kravitz taxi

1/26/2015	520	1	304.60	\$	304.60	Non-local Travel - - Vendor: Carl S. Kravitz hotel
1/26/2015	520	1	14.04	\$	14.04	Non-local Travel - - Vendor: Carl S. Kravitz meals
2/9/2015	520	1	836.20	\$	836.20	Non-local Travel - - Vendor: Carl S. Kravitz a/f Boston
2/9/2015	520	1	145.93	\$	145.93	Non-local Travel - - Vendor: Carl S. Kravitz taxi
2/9/2015	520	1	603.60	\$	603.60	Non-local Travel - - Vendor: Carl S. Kravitz hotel
2/9/2015	520	1	31.60	\$	31.60	Non-local Travel - - Vendor: Carl S. Kravitz meal
3/10/2015	240	1	736.81	\$	736.81	Professional Services - - Vendor: MarksADR, LLC

3/18/2015	520	1	534.00	\$	534.00	Non-local Travel - - Vendor: Carl S. Kravitz Amtrak - NY
3/18/2015	520	1	76.39	\$	76.39	Non-local Travel - - Vendor: Carl S. Kravitz taxi
3/18/2015	520	1	422.33	\$	422.33	Non-local Travel - - Vendor: Carl S. Kravitz hotel
4/7/2015	520	1	35.00	\$	35.00	Non-local Travel - - Vendor: Carl S. Kravitz Boston, MA - (trip cancelled)
5/6/2015	520	1	801.20	\$	801.20	Non-local Travel - - Vendor: Carl S. Kravitz a/f - Boston, MA
5/6/2015	520	1	109.00	\$	109.00	Non-local Travel - - Vendor: Carl S. Kravitz parking
5/6/2015	520	1	429.19	\$	429.19	Non-local Travel - - Vendor: Carl S. Kravitz hotel

5/6/2015	520	1	35.41	\$	35.41	Non-local Travel - - Vendor: Carl S. Kravitz meal
5/6/2015	520	1	15.00	\$	15.00	Non-local Travel - - Vendor: Carl S. Kravitz misc expense
6/17/2015	520	1	35.00	\$	35.00	Non-local Travel - - Vendor: Carl S. Kravitz Boston trip cancelled
6/30/2015	520	1	928.15	\$	928.15	Non-local Travel - - Vendor: Carl S. Kravitz a/f - New York
6/30/2015	520	1	54.05	\$	54.05	Non-local Travel - - Vendor: Carl S. Kravitz taxi
7/7/2015	520	1	891.20	\$	891.20	Non-local Travel - - Vendor: Carl S. Kravitz a/f - Boston, NY
7/7/2015	520	1	71.10	\$	71.10	Non-local Travel - - Vendor: Carl S. Kravitz

taxi

7/7/2015	520	1	452.08	\$	452.08	Non-local Travel - - Vendor: Carl S. Kravitz hotel
7/15/2015	510	1	95.88	\$	95.88	Local Transportation - - Vendor: Lotus Partners
9/21/2015	240	1	1,800.00	\$	1,800.00	Professional Services - - Vendor: Keller Rohrback L.L.P.
7/11/2016	780	1	35.00	\$	35.00	Miscellaneous - - Vendor: Carl S. Kravitz flight was canceled
8/10/2016	520	1	917.96	\$	917.96	Non-local Travel - - Vendor: Carl S. Kravitz a/f - Boston, MA
8/10/2016	520	1	78.32	\$	78.32	Non-local Travel - - Vendor: Carl S. Kravitz taxi
			Total	\$	38,847.06	

# **EX. 240**

**Report of Bruce A. Green**  
**Re: Labaton Sucharow**  
**March 25, 2018**

### **BACKGROUND**

I am a full-time Professor at Fordham Law School, where I hold the Louis Stein Chair and direct the Louis Stein Center for Law and Ethics. I have been retained as an expert on behalf of Labaton Sucharow (“Labaton”) to provide objective opinions regarding certain questions of professional conduct under review by Special Master Rosen.

### **QUALIFICATIONS**

I am an attorney admitted to practice in the State of New York. As reflected in my curriculum vitae, which is attached to this report as Exhibit A, I have been a member of the full-time faculty of Fordham Law School since 1987, having previously served as a law clerk to Judge James L. Oakes of the U.S. Court of Appeals for the Second Circuit, as a law clerk to Justice Thurgood Marshall of the U.S. Supreme Court, and as an Assistant United States Attorney for the Southern District of New York.

I have regularly taught courses in the area of lawyers’ professional conduct at Fordham Law School and elsewhere since 1987, I speak frequently at CLE programs on the subject of lawyers’ professional conduct, and I have authored a variety of scholarly articles and other writings on this subject. I have also co-authored a casebook on this subject which is now in its third edition (*Professional Responsibility, A Contemporary Approach* (West 3d ed. 2017)).

I have engaged in various other professional activities relating to lawyers’ professional conduct. On the state and local level, I currently chair the New York City Bar’s Committee on Professional Ethics, and I serve as a member and past chair of the New York State Bar

Association's Committee on Professional Ethics – both of which issue opinions interpreting the New York Rules of Professional Conduct. I previously served as a member of the Departmental Disciplinary Committee of the New York State Supreme Court, Appellate Division, First Department.

Nationally, I serve on the Multistate Professional Responsibility Examination drafting committee and previously served for three years on the American Bar Association (“ABA”) Standing Committee on Ethics and Professional Responsibility. I also previously chaired the ethics committees of both the ABA Litigation Section and the ABA Criminal Justice Section, served on the ABA Litigation Section's Task Force on Settlement Ethics, served as reporter to the ABA Commission on Multijurisdictional Practice and to the ABA Task Force on Attorney-Client Privilege, and chaired the Section on Professional Responsibility of the Association of American Law Schools.

I occasionally provide expert opinions on questions of lawyers' professional conduct, including in the context of litigation in which the applicable standards of professional conduct are disputed. I provide opinions in my individual capacity and do not speak on behalf of any of the above-listed entities or other entities with which I have worked. I am being compensated at my regular rate of \$950 per hour for my work on this matter, including for preparing this report. My compensation is not contingent on my opinions or on the outcome of this matter.

#### **RELEVANT FACTS**

I have no first-hand knowledge of the relevant facts. For purposes of forming opinions in this case, I have been asked to rely on the facts set forth below. Additionally, I have reviewed the following: (1) Response by Labaton Sucharow LLP to Special Master's September 7, 2017 Request for Supplemental Submission, (2) Professor Stephen Gillers's “Ethical Report for

Special Master Gerald E. Rosen,” (3) Expert Declaration of Camille F. Sarrouf, and (4) Declaration of George Hopkins.

### ASSUMED FACTS

#### 1. Background

Labaton Sucharow (“Labaton”) is a plaintiffs’ law firm that focuses on large-scale and complex class action litigation, which often involves securities matters. In the context of its securities work, Labaton frequently acts as “monitoring counsel” for its clients. In that role, Labaton monitors the client’s portfolio of securities investments for signs of possible securities law violations, such as a drop in stock price. *See, e.g.*, Portfolio Monitoring and Case Evaluation<sup>1</sup>; LBS017739-41. In doing so, Labaton uses sophisticated in-house investigators and analysts to monitor the securities market. Keller Dep. Day 1 35:2-14. If Labaton believes a client’s portfolio may have been involved in a securities violation that could lead to a viable case, Labaton may ask the client whether it would be interested in serving as lead plaintiff in a class action case. Portfolio Monitoring and Case Evaluation; LBS017739-41. If the client agrees, Labaton may represent the client in the litigation. *Id.*; *see also* Sucharow 2d Dep. 115:13-116:15.

Because of its complex role as monitoring counsel, it “takes a while for people to . . . understand [Labaton’s work] to the point where it can be useful to them.” Keller Dep. Day 1 24:20-23. Thus, Labaton relies on informational presentations that explain Labaton’s work to potential clients, such as institutional investors. Keller Dep. Day 1 21:8-18, 24:10-27:10. These presentations are often the first step in Labaton’s retention by a potential client. From there,

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<sup>1</sup> Available at <http://www.labaton.com/en/practiceareas/Institutional-Investor-Protection-Services.cfm> (last visited March 9, 2018).

Labaton typically participates in a submission process before being selected to represent an institutional investor. Keller Dep. Day 1 37:19-38:10.

## **II. Labaton's Relationship with Damon Chargois**

Chargois & Herron was a law firm based in Little Rock, Arkansas. Labaton's relationship with Chargois & Herron originated through Labaton partner, Eric Belfi. Belfi met Damon Chargois, a partner at Chargois & Herron, in approximately 2004, when Belfi worked at a different law firm and came into contact with Chargois during a litigation matter pending in the Southern District of New York. *See* Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) Supplemental Interrogatories to Labaton Sucharow LLP ("Response to Supplemental Interrogatories") at 4; Belfi 2d Dep. 12:21-13:4.<sup>2</sup>

Belfi joined Labaton Sucharow in 2006. He focused on building and maintaining client relationships for Labaton. Belfi Dep. 9:7-23. Early in Belfi's tenure at Labaton, he was approached by Chargois, who told him that he had "some opportunities" to introduce Labaton to "pension plans in the Texas, Arkansas, Oklahoma region." Belfi 2d Dep at 13:10-13. Belfi "asked him to proceed." *Id.* By mid-2007, Chargois was focused on introducing Labaton to the Arkansas Teachers Retirement System ("ARTRS"), along with other entities that may have been interested in Labaton's services. Keller Dep. Day 1 156:6-13; LBS031465. In addition, beginning in spring of 2007, Chargois served as local counsel for Labaton on a class action case pending in Texas. Keller Dep. Day 1 146:8-149:19; LBS017411. In that role, Chargois

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<sup>2</sup> Chargois apparently did not recall this meeting during his deposition, because he testified that he first met Belfi through a friend, when Belfi was already working at Labaton. Chargois Dep. 16:8-23.

participated in mediation and performed other legal work. Chargois Dep. 17:7-18:22; 121:4-22:12; Keller Dep. Day 1 175:20-176:11; LBS031585.

### **III. Labaton's Early Contact with ARTRS**

Tim Herron, Chargois's partner in his Little Rock office, knew Steve Farris, an Arkansas state senator who served in an oversight role with respect to ARTRS. *See* LBS040318; LBS017432; Chargois Dep. 33:16-21; Hopkins 2d Dep. 35:6-36:8 (explaining that Farris served on the Arkansas legislature's Joint Committee on Public Retirement and Social Security Programs); Ark. Code Ann. §§ 10-3-701 and 10-3-703 (2017) (assigning oversight responsibilities to the joint committee).

Herron arranged for Belfi and his Labaton partner Chris Keller to meet with Senator Farris in August of 2007. Keller viewed this initial meeting as educational in nature and designed to explain Labaton's work as monitoring counsel to Senator Farris. Keller Dep. Day 1 20:3-21:18. In connection with that meeting, Chargois informed Belfi and Keller that they would need to "impress[] the Senator with [their] firm's credentials" in order to have a chance to retain ARTRS as a client. Keller Dep. Day 1 157:6-159:9; LBS017432. Apparently, Chargois remarked after the meeting that Belfi and Keller "did well" and "represent[ed] the firm very well" in the meeting with Senator Farris. LBS040322; LBS017438; Keller Dep. Day 1 20:3-10. Chargois later stated that he and Herron felt "very optimistic about Labaton firm's doing a lot of good things in Arkansas. This is thanks to [Belfi and Keller] representing the firm very well" to Farris. LBS017437.<sup>3</sup>

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<sup>3</sup> The testimony regarding this initial meeting is somewhat inconsistent. Chargois testified that, at Senator Farris' suggestion, he placed a "cold" telephone call to ARTRS director Paul Doane. Chargois Dep. 33:12-35:7. During this conversation, Chargois explained that Chargois & Herron was a local firm working with a New York firm specializing in representing

After this initial meeting, Senator Farris and/or Herron introduced Belfi and Keller to Paul Doane, the Executive Director of ARTRS at the time. Belfi 2d Dep. 38:10-15. In September or October 2007, Doane visited Labaton's offices in New York City while he was in the area on other business. Belfi 2d Dep. 38:2-6, 41:11-13. Belfi was traveling at the time, so Doane met with Keller during that trip. Keller Dep. Day 1 33:10-34:18; LBS040524-A. Keller introduced Doane to members of the firm and showed him the office. Keller Dep. Day 1 35:2-23. Doane expressed interest in Labaton after the meeting but explained that retention of Labaton would require further review by ARTRS and a request for proposals. LBS040524-A; Keller Dep. Day 1 180:7-21.

According to Chargois, during the fall of 2007 Senator Farris maintained contact with Doane regarding the possibility that Labaton would represent ARTRS as monitoring counsel. LBS017442.<sup>4</sup> Chargois and Tim Herron continued to relay information regarding Senator Farris' contact with ARTRS and other funds that could potentially be interested in Labaton's services. LBS017450; Keller Dep. Day 1 193:2-196:2. Similarly, in spring of 2008, Herron communicated information regarding Senator Farris' contact with Doane and the possibility that ARTRS would retain Labaton. LBS017451; LBS017453; Keller Dep. Day 1 218:18-224:16.

#### **IV. ARTRS' Retention of Labaton**

In mid-2008, ARTRS issued a Request for Qualifications ("RFQ") which invited firms to submit qualifications to become additional monitoring counsel to the fund. Labaton and

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institutional investors. *Id.* As a result, according to Chargois, Doane met with Eric Belfi and possibly Chris Keller in Little Rock. Chargois Dep. 35:8-36:20. However, while Keller testified that he met Senator Farris in Little Rock, he does not believe that Doane was present. Keller Dep. Day 1 32:12-33:23.

Chargois & Herron submitted a joint RFQ response on July 30, 2008. LBS017738-55; LBS017756-67. Labaton contemplated that, if selected as panel monitoring counsel, both firms would work on the litigation, if any, filed on ARTRS's behalf. Belfi 2d Dep. 18:14-19; Keller Dep. Day 1 47:24-49:3. Labaton would serve as the lead counsel, and Chargois & Herron would work with ARTRS in Little Rock. Belfi 2d Dep. 26:15-27:15; Keller Dep. Day 1 44:8-46:21.

On October 13, 2008, ARTRS's Chief Counsel, Christa Clark, emailed Belfi and informed him that "ATRS has selected Labaton Sucharow as an additional monitoring counsel for our system." LBS017456. Clark further stated:

I would like to speak with you regarding the additional firm on your submission Chargois & Herron. This is a little awkward, but since your firms are not legally affiliated, we are unable to process the state contract form with both firms listed.

If your firm is doing the monitoring and providing the financial backing for the cases, I think it is most appropriate that we add your firm independently to the list of approved firms. Your firm may affiliate that firm or utilize them as independent contractors, if you deem is appropriate [*sic*], on a case by case basis. There would be no requirement that you use them if it was not a necessary and appropriate expense of a case. I don't know how to best handle this point but the state procurement process is not conducive to a joint proposal.

*Id.*<sup>5</sup>

After receiving this email, Belfi had a telephone conversation with Clark. Belfi 2d Dep. 114:2-22, 117:20-118:10. Belfi explained to Clark that Labaton "would be working with Chargois & Herron" and that Chargois & Herron "were going to be involved in the relationship." Belfi 2d Dep 117:20-118:10.

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<sup>4</sup> Concurrently, Chargois purportedly continued to seek introductions for Labaton with other entities. *E.g.*, LBS031472 ("Damon is really moving [on] all of the fronts.").

<sup>5</sup> Given the nature of the relationship, discussed below, the payment to Chargois & Herron was never an "expense of a case." Keller Dep. Day 2 302:24-304:8. Except where they appeared as counsel in Court, Chargois & Herron only received a portion of Labaton's attorneys' fees, which themselves were awarded on a percentage basis that were unrelated to "expenses."

In October 2008, very shortly after ARTRS selected Labaton as monitoring counsel, Doane departed as ARTRS's executive director. *See* Arkansas Times, "Doane to depart," Oct. 28, 2008.<sup>6</sup> The new Executive Director, George Hopkins, began in or about December 2008. Hopkins Dep. 10:17-21. Meanwhile, Clark – ARTRS' Chief Counsel – remained in her position at ARTRS until approximately October 2009. *See* Arkansas Democrat-Gazette, "Faulted on Contracts, Teacher-System Lawyer Quits," October 22, 2009.<sup>7</sup>

Unlike Doane, Hopkins did not know Tim Herron or the Chargois & Herron firm. Hopkins 2d Dep. 21:5-10. A few months after Hopkins began at ARTRS, Belfi and then-managing partner Lawrence Sucharow met with him in Little Rock. Belfi 2d Dep. 27:18-21. Because Belfi got along well with Hopkins, and because Hopkins desired a direct relationship without intermediaries, Belfi became Hopkins' primary contact with regard to Labaton's monitoring relationship. Belfi 2d Dep. 27:21-28:7, 56:22-57:10; Hopkins 2d Dep. 60:8-62:16. Thus, Chargois & Herron were uninvolved with ARTRS as Belfi's relationship with Hopkins developed. Belfi 2d Dep. 57:5-19.

On September 24, 2010, Belfi sent Hopkins a draft retention letter for the State Street matter, which contained the following provision:

Arkansas Teacher agrees that Labaton may divide fees with other attorneys for serving as local counsel, as referral fees, or for other services performed in connection with the litigation. The division of attorneys' fees with other counsel may be determined upon a percentage basis or upon time spent in assisting the prosecution of an action. The division of fees with other counsel is Labaton's sole

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<sup>6</sup> Available at <https://www.arktimes.com/ArkansasBlog/archives/2008/10/23/doane-to-depart> (last visited March 9, 2018).

<sup>7</sup> Available at <https://www.pressreader.com/usa/arkansas-democrat-gazette/20091022/283927403838722> (last visited March 9, 2018).

responsibility and will not increase the fees payable upon a successful resolution of the litigation.

LBS019948-50. On February 8, 2011, Belfi sent a slightly revised, final retention letter to Hopkins with a modified first sentence to the quoted paragraph: “Arkansas Teacher agrees that Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation.” LBS011061. Throughout this case, Chargois & Herron’s portion of the State Street fee has been referred to by witnesses and in documents as, among other things, a “referral fee,” a “local counsel” fee, and a “liaison fee.”

During Labaton’s representation of ARTRS, Belfi spoke with Hopkins about “how fees worked.” Belfi 2d Dep. 23:17-23. According to Belfi, Hopkins said that “he only wanted to deal with [Labaton] and wasn’t concerned about how [Labaton] would cut fees up if [they were] working with other firms.” *Id.* Hopkins was only interested in the aggregate attorney fee amount, rather than allocations of that aggregate fee among various firms. *Id.* at 23:24-24:5. According to Belfi, Hopkins “was not concerned with who [Labaton was] splitting fees with.” *Id.* at 120:11-22. Belfi believed that Hopkins “didn’t want to deal with” allocations of fees between lawyers. *Id.* Hopkins’ testimony supports this belief. Hopkins 2d Dep. 68:23-69:3 (“I told Eric if I ever want to know about your attorney fees and who all you hired, I’ll ask you. And, you know, on any case because I intentionally didn’t want to know a whole lot.”); *id.* at 73:11-19 (“I don’t feel misled because I made it real clear to them that I didn’t want to be the gatekeeper on all this attorney relationship. And I think if they thought I wanted to know, they would have told me because Eric always said if you ever want to see how we do all these fees, just let me know. And I said that’s fine.”); *see also id.* at 74:10-75:8.

**V. Labaton's Agreement with Chargois**

Early in the relationship between Labaton and Chargois & Herron, Belfi, Keller, and Damon Chargois discussed the terms of an agreement between the two firms. The crux of the agreement was that when Chargois & Herron facilitated the introduction between Labaton and a client, Chargois & Herron would receive up to 20% of the gross attorney fees Labaton earned representing that client, if the client was a named plaintiff and Labaton was appointed lead or co-lead counsel. *See, e.g.*, LBS031185; Keller Dep. Day 1 42:15-46:14; Chargois Dep. 50:11-52:24, 162:19-164:2. Initially, the understanding was that Chargois would play a local counsel role relative to the entities with which he facilitated introductions, and that he would be active assisting in litigating Labaton's cases if needed. *See* Belfi 2d Dep. 26:15-23, 27:11-15; Keller Dep. Day 1 44:8-46:21.

Labaton's agreement with Chargois was never reduced to a formal written contract. However, as Labaton's relationship with ARTRS developed, Chargois and Labaton began to formalize their agreement. In February 2009, Chargois indicated that he expected a relatively informal arrangement, but expressed the terms as he understood them in a written email. LBS030990. Roughly one week later, Chargois inquired whether a written "letter agreement" would be necessary. LBS030993; Keller Dep. Day 1 255:16-257:4. Chargois and Keller discussed via email the terms of the potential contract. LBS031492; Keller Dep. Day 1 258:8-19. In April 2009, Chargois sent a draft letter agreement to Belfi and Keller seeking to memorialize the previous discussions in writing. LBS030985-87. Keller edited the document and sent a return draft that, among other things, inserted an arbitration clause. LBS031192-95. While a written agreement was never finalized (Response to Supplemental Interrogatories at 8), Chargois at least viewed it as enforceable. LBS031137; Belfi 2d Dep. 58:1-22. As time passed,

Labaton and Chargois maintained the basic referral arrangement of an 80/20 fee split, if ARTRS became a named plaintiff and Labaton was appointed lead or co-lead counsel.<sup>8</sup>

Because ARTRS was the only named plaintiff in Civil Action No. 11-cv-10230 MLW, i.e., the action on behalf of the putative class of customers of State Street,<sup>9</sup> the three Customer Class Law Firms (Labaton, Lief Cabraser, and the Thornton Law Firm) agreed in 2013 that they would share in paying the allocation to Chargois & Herron from their own fee awards.

LBS027776. Garrett Bradley of the Thornton firm handled the discussions with Lief Cabraser and Chargois regarding this point. *Id.*; Bradley 2d Dep. 53:14-54:10.<sup>10</sup>

In June 2016, well after a settlement agreement-in-principle had been reached, Bradley reached out to Chargois for further discussions regarding Chargois's fee allocation. TLF-SST-060973. Bradley negotiated an agreement that Chargois & Herron would receive an amount equal to 5.5% of the total fee award (basically, a percentage that would be approximately equivalent to 20% of Labaton's anticipated share of the total fee), which would be funded by the

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<sup>8</sup> Although it became apparent that Chargois's total contribution would be limited to the initial assistance in introducing Labaton to ARTRS, Chargois maintained that he was entitled to 20% of any fee earned by Labaton. LBS017594; LBS030876; Belfi 2d Dep. 58:5-15. Chargois intimated that he would seek legal redress to vindicate his perceived contractual right, if necessary. Belfi 2d Dep. 58:5-59:22; Chargois Dep. 59:6-60:4; Keller Dep. Day 1 130:19-131:12. Labaton was concerned by the possibility of litigation in Texas state court. *See* Belfi 2d Dep. 58:16-59:22; Keller Dep. Day 1 130:22-132:3; Keller Dep. Day 2 541:19-543:23.

<sup>9</sup> Civil Action Nos. 11-cv-12049 MLW and 12-cv-11698 MLW, involving the ERISA Plaintiffs, were consolidated with the customer action for pre-trial purpose.

<sup>10</sup> Bradley explained that he took on the role of negotiating with Chargois & Herron because he had a friendly relationship with Chargois, and he wanted to reach agreement out of concern that, because ARTRS was the only named (non-ERISA) plaintiff, Chargois could say his firm was entitled to 20% of the overall fee award, not just the portion that Labaton Sucharow received. Bradley 2d Dep. 53:14-54:10; *see also* Belfi 2d Dep. 94:5-23; Keller Dep. Day 1 122:6-124:19.

three Customer Class Law Firms, by agreement, from their respective shares of the award.

LBS040924; Bradley 2d Dep. 93:16-22.<sup>11</sup>

Given his desire not to be informed of the allocation of fees among counsel (Hopkins Dec. at ¶¶10-12, 14), George Hopkins personally was unaware of the Chargois agreement until August or September of 2017. *Id.* ¶ 7. Thereafter, when informed of the details of the fee-sharing agreement between the Customer Class Law Firms and Chargois in this case, Hopkins expressly consented to and ratified the agreement. *Id.* at ¶¶ 16-17.

The fee-sharing arrangement was not disclosed to the Court or to the class. No local rule or court rule required disclosure to the Court, nor did the Court have a standing order, or case specific order, requiring disclosure.

## OPINIONS

### 1. Summary of Opinions

For purposes of this report, the parties have agreed that the applicable professional conduct rules are those of the Massachusetts Rules of Professional Conduct (“Massachusetts Rules”). The governing rule for fee divisions was Massachusetts Rule 1.5(e), as it existed prior to March 15, 2011. The text of that rule required client consent but did not require a writing or specify when the consent needed to be obtained.

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<sup>11</sup> In that June 21, 2016 email to Chargois cited above, Bradley discussed ERISA counsel and what percentage would be allocated to them in the context of his dialogue with Chargois about what percentage would be paid to Chargois & Herron. TLF-SST-060973. No Labaton lawyers were copied on this communication, and there is no evidence in the record suggesting that lawyers from Labaton saw it before this investigation. *Id.* Bradley explained that he was simply providing the context of the ERISA firms as background and as a negotiating point with Chargois. Bradley 2d Dep. 84:9-85:20; Keller Dep. Day 2 534:23-535:24. Bradley’s reference in that 2016 conversation did nothing to change the agreement that the ERISA lawyers had struck with Customer Counsel more than two years earlier.

As explained below, Massachusetts Rule 7.2(b), a subsection of the Massachusetts advertising rule, is not applicable to this case; and, if it were, Labaton did not violate it for two independent reasons. First, Labaton did not compensate Chargois (or anyone else) “for recommending [Labaton’s] services” to ARTRS. Second, a payment pursuant to a fee-sharing agreement generally permitted by Rule 1.5(e) would not be subject to sanction under Rule 7.2(b).

Furthermore, Rule 1.5(e) – as in effect in February 2011 – permitted Labaton to divide its legal fees in the State Street Bank class action with lawyers of other firms, including Chargois, as long as (1) Labaton’s total fee was reasonable, which it was, and (2) Labaton satisfied the Rule’s procedural requirement of notice and consent before dividing the fee. ARTRS knew that multiple law firms would divide fees in the class action and authorized Labaton in writing to “allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation.” This notice and consent appears to have been satisfactory on the face of the Rule as it existed at that time. Moreover, nothing suggests that ARTRS was inadequately informed or misled or that Labaton intended to mislead it. When ARTRS learned of Chargois’s compensation, it had no objection and acknowledged that it did not previously want or need further detail.

Given the relative insubstantiality of any alleged omission by Labaton, any monetary or reputational sanction would be excessive. In fee disputes, as the District Court discussed at length in *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 178 F. Supp. 2d 9 (D. Mass. 2001), courts may take different approaches to “imperfect fee-splitting agreements.” Under Massachusetts law, imperfect compliance with Rule 1.5(e) does not call for invalidating a fee-sharing agreement. *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F.

Supp. 2d 115 (D. Mass. 2002). Further, from a disciplinary perspective, a single procedural imperfection, as alleged in this case, would ordinarily not be sanctioned.

Finally, Rule 1.5(a) does not apply to the fee division between Labaton and Chargois.

**2. Rule 7.2(b) is inapplicable**

Rule 7.2(b) of the Massachusetts Rules provides, subject to exception, that “[a] lawyer shall not give anything of value to a person for recommending the lawyer’s services.” It is based on Rule 7.2(b) of the ABA Model Rules of Professional Conduct (“ABA Model Rules”), on which other states have based similar rules.

Rule 7.2(b), the advertising rule, serves several conceivable purposes. It protects a prospective client from being influenced by a self-interested recommendation or from being misled to believe the recommendation is disinterested when in fact it is financially motivated. Additionally, the financial incentive may conceivably motivate the person recommending the lawyer to solicit prospective clients in ways that are otherwise impermissible.

Rule 7.2(b) does not apply here for two independent reasons: (1) Labaton did not compensate Chargois “for recommending” its services; and (2) in any event, Rule 7.2(b) does not apply to recommendations made by lawyers pursuant to imperfect fee-sharing arrangements.

a. *Labaton did not compensate Chargois “for recommending” its services.*

Labaton’s fee sharing arrangement did not violate the letter of Rule 7.2(b). As Comment [5] to Rule 7.2 states: “A communication contains a recommendation if it endorses or vouches for a lawyer’s credentials, abilities, competence, character, or other professional qualities.” Based on the facts provided for my consideration, Chargois did not endorse or vouch for Labaton’s professional qualities. Chargois simply facilitated an introduction. In 2007, Chargois introduced Labaton to Senator Farris who in turn introduced Labaton to Paul Doane, ARTRS’s

then-Executive Director. ARTRS selected Labaton in 2008 through an RFQ process to serve as one of ARTRS's monitoring counsel. Labaton agreed to compensate Chargois for initiating these introductions and for its anticipated work as co-counsel in future litigations. By February of 2011, by which time ARTRS had formally retained Labaton in this lawsuit against State Street Bank, ARTRS already knew Labaton from its ongoing work as monitoring counsel. Labaton had no need for a recommendation and none was made by Chargois, who at that point had no relationship with ARTRS. ARTRS engaged Labaton as monitoring counsel (and, later, in the class action) based on Labaton's qualifications and experience, as advanced by Labaton itself in meetings and via the RFQ process. Thus, the original fee-sharing arrangement was not compensation "for recommending" Labaton but for helping Labaton secure an opportunity to pitch its own services as well as for anticipated future work by Chargois.

Nor did Labaton's fee sharing arrangement violate the purpose of Rule 7.2(b). There is nothing to suggest that ARTRS relied on a self-interested recommendation, that Labaton or Chargois misled ARTRS, or that Chargois otherwise overstepped in helping Labaton secure a new client.

b. *Rule 7.2(b) does not apply to imperfect fee-sharing arrangements.*

Even assuming for argument's sake that Labaton agreed to share legal fees with Chargois in part to compensate Chargois "for recommending" its services, Labaton did not violate Rule 7.2(b). Notwithstanding the ordinary restriction on paying for recommendations, Rule 7.2(b)(5) expressly provides that "a lawyer may . . . pay fees permitted by Rule 1.5(e)." The provision makes explicit that Rule 7.2(b) does not apply to fees shared pursuant to fee-sharing arrangements between lawyers of different firms under Rule 1.5(e). This exception is only implicit in ABA Model Rule 7.2(b), which does not specifically refer to Rule 1.5(e).

Professor Gillers reads Rule 7.2(b)(5) to mean that when one lawyer recommends another's services in connection with a fee-sharing agreement permitted by Rule 1.5(e), but the lawyers do not then fully comply with Rule 1.5(e)'s requirement of notice and/or written consent,<sup>12</sup> the lawyer dividing his or her fees violates not only Rule 1.5(e) but also Rule 7.2(b)(5). This reading is not compelled by the language of Rule 7.2(b)(5), which can just as plausibly be read to mean that the solicitation rule excepts fee sharing pursuant to arrangements of the type that are generally "permitted by Rule 1.5(e)."<sup>13</sup>

Chargois's recommendation (if one was made) and Labaton's compensation for it would not in themselves have been impermissible. At worst, this was what *Daynard*, 188 F. Supp. 2d at 123, called "imperfect fee splitting," where a lawyer fails to give adequate notice or properly obtain consent. While a lawyer may be subject to sanction under Rule 1.5(e) for noncompliance with its procedural requirement, there is no reason why drafters or adopters of the Massachusetts Rules or similar rules would want the lawyer to be subject to sanction under Rule 7.2(b) as well, based solely on the lack of notice and/or written consent. It would be unfair and misleading to say that the lawyer's failing involved an improper solicitation, and it would be disproportionately harsh to subject the lawyer to an additional sanction for an improper solicitation under Rule 7.2(b), which mis-describes and overstates the lawyer's lapse.

I am unaware of any judicial decision arising in the disciplinary setting or any other context, or any secondary authority holding that compensating a lawyer for a referral in the

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<sup>12</sup> Professor Gillers appears to rely upon the language or the subsequent version of Massachusetts Rule 1.5(e), rather than the version actually in effect in February of 2011.

<sup>13</sup> I am unaware of any drafting history suggesting that the Massachusetts drafters intended Rule 7.2(b) to apply where lawyers enter into fee division agreements that are generally permitted by Rule 1.5(e) but that do not fully satisfy Rule 1.5(e)'s procedural requirement.

context of an imperfect fee-sharing arrangement violates Rule 7.2(b). Nor have I found any ethics opinion of the Massachusetts or Boston bar associations to this effect. While courts have leeway to interpret professional conduct rules liberally, to address a question on which the professional conduct rules are otherwise silent, there is no good reason to break new ground in this case, where another rule already addresses the challenged conduct.

**3. At worst, Labaton complied imperfectly with Rule 1.5(e)**

At the time the State Street engagement began, Rule 1.5(e) provided that: “A division of a fee between lawyers who are not in the same firm may be made only if, after informing the client that a division of fees will be made, the client consents to the joint participation and the total fee is reasonable.” Rule 1.5(e) was not amended into its current form until March 15, 2011 – a month after formalization of the ARTRS engagement of Labaton.<sup>14</sup>

Under Rule 1.5(e), Labaton could agree to pay Chargois a portion of its fee in the State Street Bank class action, as long as Labaton complied with the substantive and procedural requirements of the Rule. The Rule does not forbid fee sharing for any legitimate purpose and has always been interpreted to allow referrals (as expressly contemplated in the current version of the Rule). *See Massachusetts Legal Ethics: Substance and Practice* at 185 (2017) (explaining that “[u]nlike almost every other jurisdiction in the nation, Massachusetts permits an attorney’s fee to be divided with a lawyer who does not practice in the firm of the primary lawyer (i.e., a referral fee), even if the referring lawyer does nothing more than refer the matter,” which is

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<sup>14</sup> The current rule provides: “A division of a fee (including a referral fee) between lawyers who are not in the same firm may be made only if the client is notified before or at the time the client enters into a fee agreement for the matter that a division of fees will be made and consents to the joint participation in writing and the total fee is reasonable.”

“quintessentially a Massachusetts practice and tradition.”)<sup>15</sup> When the fee-sharing agreement was first made, Labaton contemplated that Chargois would serve essentially as liaison counsel, but this was not required under the Massachusetts Rules. Unlike ABA Model Rule 1.5(e), Massachusetts Rule 1.5(e) does not require lawyers receiving a portion of a fee to have a role or responsibility regarding the matter.<sup>16</sup> Labaton could agree to share its fee with Chargois without any expectation of work or responsibility on Chargois’s part. The payment would be permissible as compensation for the boost Chargois previously gave to Labaton’s retention as ARTRS’s monitoring counsel, for Chargois’s availability to provide legal services, as a settlement of Chargois’s potential claim against Labaton, or for any other lawful purpose.

The substantive requirement of Rule 1.5(e) is that “the total fee [be] reasonable.” Since the District Court would and did determine class counsel’s fee pursuant to Rule 23 and related case law, there could be no doubt about the reasonableness of Labaton’s fee, whether viewed at the time ARTRS engaged Labaton to pursue the class action against State Street Bank or in hindsight. ARTRS’s current Executive Director, George Hopkins, has affirmed that he believes the total fee was fair and reasonable given Labaton’s outstanding work, and that the fee-sharing arrangement with Chargois “had no effect on the interests of the class.”

Procedurally, Rule 1.5(e), as in effect in February 2011, required that the client be informed “that a division of fees will be made” and “consent[] to the joint participation” before the fee is divided. Labaton met these requirements. ARTRS unarguably knew that Labaton would divide fees with “lawyers who are not in the same firm” – that is, with other class counsel

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<sup>15</sup> Available at [https://bbopublic.blob.core.windows.net/web/f/BBO\\_Draft\\_Treatise.pdf](https://bbopublic.blob.core.windows.net/web/f/BBO_Draft_Treatise.pdf).

<sup>16</sup> See *Daynard*, 188 F. Supp. at 124 n.5 (noting the relative leniency of the Massachusetts rule).

at the very least, and consented to fee sharing. Moreover, after it selected Labaton as monitoring counsel, ARTRS was aware that Labaton would be working with Chargois & Herron moving forward. Thus, before any fee was divided, ARTRS was aware that Labaton would be dividing its fees and knew that Chargois & Herron, along with other firms, may be sharing in the fees. Labaton therefore complied with the relevant version of Rule 1.5(e).

Labaton complied with the procedural requirement of Rule 1.5(e). ARTRS agreed in writing that “Labaton Sucharow may allocate fees to other attorneys who serve as local or liaison counsel, as referral fees, or for other services performed in connection with the Litigation.” Rule 1.5(e) did not require detail about the various lawyers’ precise roles or about how the fees will be divided between or among them.<sup>17</sup> Nor did it explicitly require Labaton to identify all the lawyers outside the firm who would be compensated out of the court-awarded legal fee.

The state Supreme Judicial Court’s decision in *Saggese v. Kelley*, 445 Mass. 434, 443 (2005), called for the client’s consent to a fee-sharing agreement to be “secure[d]” in writing, although Rule 1.5(e), at that time, did not so require. I understand that the Special Master has raised a question whether the retention letter adequately secured ARTRS’s consent to fee-sharing in that there is an argument that the phrase, “Labaton Sucharow *may* allocate fees to other attorneys” (emphasis added), simply referred to the factual possibility that Labaton would share fees with other lawyers, and was not meant to acknowledge ARTRS’s permission for Labaton to do so. (The definition of “may” states that the word expresses both possibility and permission.)

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<sup>17</sup> At least in the latter respect, Massachusetts Rule 1.5(e) was intended to be less demanding than ABA Model Rule 1.5(e), which expressly requires the client’s agreement “to the [fee-sharing] arrangement, including the share each lawyer will receive.” In contrast, the “Massachusetts rule does not explicitly require disclosure of the proportionate share of the fee to be taken by each lawyer.” Chief Justice Herbert P. Wilkins, *The New Massachusetts Rules of Professional Conduct: An Overview*, 82 MASS. L. REV. 261, 261 (1997). This was not an

Particularly in the context of a retention letter setting forth the parties' respective rights and responsibilities, it seems reasonably plain to me that the sentence in question in fact memorializes ARTRS's permission. But even assuming that this was an instance of ambiguous or imperfect drafting, that is of no moment. ARTRS, acting through Mr. Hopkins, in fact consented to Labaton engaging, and sharing fees with, other counsel. ARTRS does not assert that it misunderstood the retainer letter. It does not contest that, by this writing, it meant to memorialize its consent.

Further, the purposes of the procedural requirements were adequately served. In general, the notice-and-consent requirement of Rule 1.5(e), and the writing requirement of *Saggese*, enable the client to make an informed decision whether to retain counsel. Upon being informed, a client may disapprove of a division of labor under a proposed fee-sharing agreement or, in theory, may seek to negotiate a more favorable fee agreement without fee sharing. Or the client may request additional detail about the fee-sharing arrangement that the particular client may find relevant to the client's choice of counsel and the terms of the engagement. Memorializing the client's consent minimizes the likelihood of later disagreements over whether the client received the required notification and approved the arrangement. In this case, ARTRS knew in general that multiple counsel would be involved in the class action and would divide fees, and its consent was memorialized in writing, which in any event was not required by the text of Rule 1.5(e) at the time. ARTRS knew, in particular, that, in its role as monitoring counsel, Labaton was working with Chargois. There is nothing to suggest that ARTRS wanted or needed more information about how class counsel's court-awarded fees would be divided. Labaton's arrangement with Chargois had no implications for the division of labor in the class action, since,

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oversight but the resolution of a heavily debated question. *Id.* at 261, 263.

by the time of the class action lawsuit, Chargois had no relationship with ARTRS and would not serve as liaison counsel, as originally contemplated. And there was no realistic possibility that ARTRS would seek to negotiate a different fee arrangement based on further information. Consistent with standard practice in securities class actions, class counsel's fee if the class action succeeded would be determined by the District Court and paid by the defendants. ARTRS considered it irrelevant how the legal fee would be divided and Mr. Hopkins declined Labaton's offer to explain specifically how legal fees would be divided among counsel. Based on the facts provided to me, neither ARTRS nor the class was prejudiced by Labaton's failure to persist.

**4. Labaton's imperfect fee-sharing agreement does not warrant sanction**

In general, the Massachusetts Rules are not meant to establish rights in civil litigation but to provide "a basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority." Massachusetts Rules, Scope ¶ [6]. Therefore, even if Labaton's retention letter did not perfectly comply with the *Saggese* Court's requirement of a writing, it does not follow that Labaton's fee-sharing agreement with Chargois, or its fee agreement with ARTRS, is unenforceable. The leading case of *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 188 F. Supp. 2d 115 (D. Mass. 2002), illustrates the point. Applying Massachusetts law, the *Daynard* Court enforced an oral fee-sharing agreement between a law firm representing states in tobacco litigation and a lawyer-professor hired as a consultant, even though the states were not informed of the agreement.<sup>18</sup> While it is true that

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<sup>18</sup> The Court observed that "[f]ee-splitting agreements, subject to certain procedural requirements, are perfectly legal," *id.* at 129, and that the failure to inform all of the clients was, in the context of the case, "less egregious than the more typical hidden fee-splitting agreement that led to the development of" Rule 1.5(e). *Id.* at 130. While there are inevitable factual distinctions between this case and *Daynard*, they are both cases where the alleged omissions under Rule 1.5(e) may fairly be characterized as "insubstantial." *See also Saggese*, 445 Mass. at

*Daynard* involved a dispute between the lawyers who entered into the imperfect fee-sharing agreement, nothing in *Daynard* suggests that the law firm should forfeit its fee, or have its fee reduced, because it failed to give complete notice under Rule 1.5(e). There was no intimation that the District Court should deny the disputed amount to both the lawyer and the law firm and return it to the states. (Like the clients in *Daynard*, ARTRS has not sought to invalidate or reduce its lawyer's fee based on the alleged failure to give adequate information about a fee-splitting arrangement. ARTRS believes that Labaton's fee was well earned.)<sup>19</sup>

Moreover, from a disciplinary perspective, even if Labaton's compliance with Rule 1.5(e)'s procedural requirement or with the *Saggese* Court's writing requirement was somehow imperfect, which I do not believe it was, a sense of proportionality and the exercise of prudent judgment are warranted here. It goes without saying that not all violations of ethics rules should be treated the same. The purpose of discipline is to protect the public. Lawyers, like all people, are imperfect, and disciplinary lapses vary in significance. Imperfect compliance with a prophylactic procedural requirement of a professional conduct rule (as construed by a court

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442 (concluding "that the fee-sharing agreement was not void as against public policy or unenforceable for failure to comply with the applicable fee-sharing rule").

<sup>19</sup> A lawyer may be denied compensation because of serious misconduct related to the representation that "impaired the value of the client's cause of action or otherwise imperiled the client's right to relief." *Kourouvacilis v. Am. Fed. of State, Cty. and Mun. Employees*, 841 N.E.2d 1273, 1282 (2006). But a violation of Rule 1.5(e), standing alone, ordinarily does not rise to that level – and certainly the arguable disclosure violation in this case does not. There is nothing to suggest that Labaton's failure to disclose its specific arrangement with Chargois had any impact on the quality of its work or the outcome of the lawsuit. A fee reduction would be a penalty out of proportion to the alleged wrong. See, e.g., *In re: Austrian and German Bank Holocaust Litigation*, 317 F.3d 191, 200-05 (2d Cir. 2003) ("Whatever deficiency might be thought to arise from [a potential conflict] or from Class Counsel's failure to alert the Court to the potential conflict, the circumstances of this case would not warrant the equitable remedy of fee forfeiture. There is not the slightest indication that any of the Class Counsel who were engaged in this enormously complicated undertaking acted with anything less than the utmost

opinion) is unlikely to signify that the lawyer in question poses a threat to future clients or to the public generally. Some wrongs deserve to be sanctioned more seriously than others, and some do not deserve sanction at all, because they are not serious and do not reflect adversely on the lawyer's honesty, trustworthiness or fitness. For example, courts often become aware of lawyers' professional conduct that violates conflict-of-interest rules, rules against frivolous filings, rules against improper arguments, and others, but professional misconduct in litigation is sanctioned selectively and infrequently.

Even egregious misconduct that threatens serious harm, which is not present here, does not necessarily call for professional discipline, if it is aberrational and unlikely to be repeated. A good illustration is provided by Judge Wolf's decision in *United States v. Jones*, 686 F. Supp. 2d 147, 152-58 (D. Mass. 2010). The District Court found that the prosecutor engaged in egregious non-disclosures that threatened to deprive a defendant of due process. But the Court declined to sanction the prosecutor, after determining that her misconduct was not intentional, she was sincerely contrite, and she had undertaken training to prevent future violations. In my experience (based principally on New York practice), a disciplinary authority would conclude that Labaton's alleged misconduct is similarly undeserving of discipline. Likewise, the example of *United States v. Jones*, which, unlike this case, involved serious and prejudicial misconduct, suggests that a court would not impose a sanction pursuant to its supervisory authority in a case like this one.

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good faith. They achieved extraordinarily beneficial results for their clients.”).

**5. Labaton's fee-sharing with Chargois did not violate Rule 1.5(a)**

In his deposition testimony, Professor Gillers expressed the view that Chargois's portion of Labaton's court-awarded legal fee must be analyzed independently under Rule 1.5(a), which provides: "A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee . . . ." The rule lists various factors to be considered, including, first, "the time and labor required." Professor Gillers's implication is that it was unethical for Chargois, having expended no time or labor on the class action, to accept a significant amount out of Labaton's fee.

Professor Gillers's premise is wrong. It is true that where two different lawyers are independently retained pursuant to separate fee agreements, neither lawyer's fee may be "clearly excessive" under Rule 1.5(a). But the analysis is different where one lawyer enters into a fee agreement with the client and shares his fees with another lawyer. No separate analysis is appropriate under Rule 1.5(a) in circumstances where a fee division relates to a referral fee. In the latter instance, the analysis regarding the propriety of the referral fee is under Rule 1.5(e).

When one lawyer shares a legal fee with another, Rule 1.5(e) expressly provides that the "total fee" must be "reasonable." But the rule does not say or intimate that if the fee is then shared with others, no share may be "excessive", and the rules provide no benchmarks for calculating whether a lawyer who makes a referral (or who, in a state adopting the ABA Model Rule formulation, assumes "joint responsibility") is receiving a "clearly excessive" portion of an otherwise reasonable fee. This goes to the fairness of the division among lawyers, not to the fairness of the client's fee, and is a matter for the lawyers to work out among themselves. The professional conduct rules are meant to protect clients and the public, not to protect lawyers from over-reaching by their colleagues.

Professor Gillers cites no judicial or bar opinions supporting his theory of independent analysis of each lawyer's share of a fee under Rule 1.5(a). I am unaware of any. One can assume that Professor Gillers's understanding has not been adopted in Massachusetts.

Dated: March 25, 2018



Bruce A. Green