UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD.	:	Civil Action No. 12 Civ. 1845 (PGG)

DECLARATION OF JEFFREY P. CAMPISI IN SUPPORT OF (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND (2) PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; (3) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; AND (4) LEAD PLAINTIFF'S REQUEST FOR AN AWARD OF REASONABLE COSTS AND EXPENSES

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1. I am a partner in the law firm of Kaplan Fox & Kilsheimer LLP ("Kaplan Fox"), Court-appointed Co-Lead Counsel in this securities class action (the "Action").[1] I have personal knowledge of the facts detailed herein, having been one of the principal attorneys responsible for the prosecution and resolution of this Action since its inception. I am admitted to United States District Court for the Southern District of New York and am in good standing.

2. This Declaration is respectfully submitted in support of Plaintiffs' motion for final approval of (1) the proposed settlement set forth in the Stipulation of Settlement (ECF No. 39); (2) the Plan of Allocation described in the Class Notice, which was mailed to Settlement Class members commencing on October 24, 2014 (the "Notice"); (3) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses; and (4) Lead Plaintiff's Request for an Award of Reasonable Costs and Expenses.

I. INTRODUCTION

3. Lead Plaintiff Craig Piazza and plaintiff Scott F. Colebourne ("Plaintiffs"), on behalf of the Settlement Class, have entered into the Stipulation of Settlement with Nevsun Resource, Ltd. ("Nevsun" or the "Company"), Clifford T. Davis, Peter J. Hardie and Scott Trebilcock (collectively, the "Defendants") that, if given final approval by the Court, will resolve all of the claims of the Settlement Class against Defendants for $5,995,000 in cash plus interest. The cash component of the Settlement has been paid to Co-Lead Counsel's escrow fund by Defendants' Directors and Officers liability insurance carrier.

4. The proposed Settlement will completely resolve all claims against all Defendants.

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[1] The defined terms herein are those contained in the Stipulation of Settlement dated May 1, 2014 (ECF. No. 39) ("Stipulation of Settlement").

5. The Settlement represent an excellent result as it represents a recovery of approximately 17% of best-case estimated damages. Plaintiffs obtained this result despite facing significant risks in prosecuting this Action.

6. The Settlement was reached only after prolonged, arm's-length settlement negotiations – including two in-person mediation sessions and additional negotiations – facilitated by Jonathan Marks, and retired former Federal Judge Layn R. Phillips, both experienced and highly respected mediators. By the time the Settlement was reached, Plaintiffs had: (1) investigated the claims; (2) reviewed and analyzed all of Nevsun's publicly available filings and financial statements; (3) drafted and filed the initial complaint; (4) filed a motion to appoint lead plaintiff and counsel; (5) worked with experts in the mining industry and in the customs, practices and laws of Eritrea (the location of Nevsun's Bisha mine) in connection with the claims asserted in the Amended Complaint, as well as arguments made in connection with Defendants' motion to dismiss; (6) worked with an investigator to identify and locate relevant witnesses; (7) interviewed numerous confidential sources and fact witnesses; (8) drafted and filed the Amended Complaint; (9) researched and prepared the opposition to Defendants' motion to dismiss the Amended Complaint; (10) worked with an economics expert in connection with the loss of market value of Nevsun common stock and the potential recoverable damages for investors who purchased Nevsun common stock in the United States during the Class Period; (10) prepared mediation submissions; (11) attended 2 mediation sessions (one in New York with Jonathan Marks, and one in Los Angeles with the Hon. Layn Phillips, U.S.D.J. (Ret.)); (12) negotiated the terms of the Stipulation and Agreement of Settlement; (13) worked with Plaintiffs' economic expert to formulate Plan of Allocation; (14) prepared papers in support of the settlement; and (15) oversaw the Claims Administrator in connection with the notice process.

7. On October 6, 2014, this Court entered an Order Preliminarily Approving Settlement (the "Preliminary Approval Order") certifying a Settlement Class, providing for Notice, setting a date of January 22, 2015 for the Settlement Fairness Hearing, and appointing the Garden City Group Inc. ("GCG") as the Claims Administrator. (ECF No. 45).

8. Pursuant to the Preliminary Approval Order, starting on October 24, 2014 approximately 12,000 packets containing the Notice and Proof of Claim form have been mailed or emailed by GCG to Settlement Class members and nominees of Settlement Class members. *See* Aff. of Jose C. Fraga Regarding Mailing of the Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Hearing, (III) Motion for Attorneys' Fees, and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff's Award of Reasonable Costs and Expenses (B) Publication of the Summary Notice, and (C) Requests for Exclusion and Objections Received to Date, sworn to December 17, 2014, ¶¶ 3-10, attached hereto as Exhibit 1 (the "Fraga Aff." or "Fraga Affidavit").

9. The Notice describes the Action; the terms of the Settlement; the estimated average recovery per share if every Settlement Class member entitled to file a Proof of Claim did so; the Proposed Plan of Allocation; and the maximum amount Co-Lead Counsel would seek for attorneys' fees and reimbursement of expenses (the "Request for Attorneys' Fees and Expenses") as required by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)).

10. The Notice and Proof of Claim are set forth in Exhibit A to the Fraga Affidavit.

11. The Notice also explains Settlement Class members' rights and procedures for objecting to the Settlement, the Plan of Allocation and/or the Request for Attorneys' Fees and Expenses, the right of Settlement Class members to appear at the Settlement Fairness Hearing, and the right to request exclusion from the Class. *See* Notice, ¶¶ 13-15; 18-22.

12. The Summary Notice was published in *Investor's Business Daily* and on *PRNewswire* on November 5, 2014. *See* Fraga Aff., Exhibit B.

13. Additionally, copies of the settlement documents, including the Notice and Proof of Claim form are available on the website for the Settlement maintained by GCG (http://www.nevsunresourcessettlement.com/) and on my Firm's website (www.kaplanfox.com). *See* Fraga Aff., ¶ 13.

14. The Notice states that any Settlement Class Member who objects to the Settlement, the Plan of Allocation, and/or the Request for Attorneys' Fees and Expenses must file and serve such objections no later than January 2, 2015. *See* Notice, ¶ 22. To date, neither Co-Lead Counsel nor GCG has received any objections.

15. The deadline for requests for exclusion is December 25, 2014. *See* Notice, ¶ 14. To date neither Co-Lead Counsel nor GCG has received any requests for exclusion.

16. The proposed Settlement represents a significant and positive result for the Settlement Class, as compared with the risk that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future, in which the Defendants would have the opportunity to assert defenses to the claims asserted against them.

17. Further, as explained below, the Plan of Allocation set forth in the Notice, and the requested attorneys' fees of 33⅓%, or $1,998,133.50, of the Settlement Amount, and reimbursement of expenses of $91,357.40 are fair and reasonable and should be approved.

II. BACKGROUND CONCERNING DEFENDANTS' ALLEGED VIOLATIONS OF THE FEDERAL SECURITIES LAWS

18. The Complaint alleges that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 by knowingly, or at least

recklessly, making false and misleading representations to investors during the period beginning March 28, 2011 and through February 6, 2012, inclusive (the "Class Period").

19. The facts and allegations concerning the claims are set forth in Plaintiffs' Consolidated Class Action Complaint for Violations of Federal Securities Laws, (the "Complaint") (ECF No. 18), as well as the Court's decision denying in part and granting in part Defendants motion to dismiss. *See* Exhibit 2, *In re Nevsun Res. Ltd.,* No. 12-cv-1845, 2013 U.S. Dist. LEXIS 162048 (S.D.N.Y. Sept. 27, 2013).

III. BACKGROUND AND HISTORY OF THE LITIGATION

20. On March 13, 2012, the Lead Plaintiff commenced this Action by filing a complaint (ECF No. 1) and issuing a notice to Nevsun investors pursuant to the PSLRA (15 U.S.C. § 78u-4(a)(3)).

21. A related securities class action (1:12-cv-02322-PGG) was filed on March 28, 2012.

22. On May 14, 2012, Mr. Craig F. Piazza moved to consolidate the related securities class action and to appoint a lead plaintiff and appoint lead counsel. (ECF Nos. 12-14).

23. On June 28, 2012, the Court appointed Mr. Piazza as Lead Plaintiff, and appointed Kaplan Fox and Rigrodsky & Long as Co-Lead Counsel. (ECF No. 16).

24. On August 21, 2012, the Lead Plaintiff and additional plaintiff Scott Colebourne filed the Complaint. (ECF No. 18). The Complaint alleges claims under Section 10(b) and 20(a) of the Exchange Act, as well as Rule 10b-5 promulgated pursuant to the Exchange Act. *Id.*

25. During the drafting of the Complaint Co-Lead Counsel (1) investigated the claims; (2) reviewed and analyzed all of Nevsun's publicly available filings and financial statements, including a review and analysis of Nevsun's filings with the U.S. Securities and Exchange

Commission, and the Canadian Securities Administrators; (3) worked with a mining industry expert in connection with the claims asserted in the Amended Complaint and worked with experts concerning the customs, laws and practices in Eritrea (where the Bisha Mine is located); (4) worked with an investigator to identify and locate relevant witnesses; (5) interviewed numerous confidential sources and fact witnesses, including interviews with former employees of Nevsun and the Bisha Mine, and interviews with members of the United Nations Monitoring Group on Somalia and Eritrea which conduct an investigation of Nevsun; and (6) worked with an economics expert in connection with the loss of market value for Nevsun and the potential recoverable damages for investors who purchased Nevsun stock on the New York Stock Exchange or other trading platforms in the United States during the Class Period.

26. On September 20, 2012, Defendants moved to dismiss the Complaint. (ECF No. 19-21).

27. Under the Exchange Act, as amended by the PSLRA, all proceedings, including discovery, were stayed by the filing of the motion to dismiss. 15 U.S.C. § 78u-4(b)(3)(B).

28. On October 22, 2012, Plaintiffs filed their opposition to Defendants' motion to dismiss. (ECF No. 22).

29. On November 7, 2012, Defendants filed their reply to Plaintiffs' opposition. (ECF No. 23)

30. In total, the parties' briefing and exhibits comprised of approximately 1,000 pages.

31. On September 27, 2013, the Court denied in part and granted in part Defendants' Motion to Dismiss. *See* Exhibit 2.

32. On October 8, 2013, the parties conducted a telephonic conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure.

33. The parties negotiated and drafted a confidentiality order, which was signed by the Court on October 22, 2013. (ECF No. 27).

34. Plaintiffs were drafting a case management order and discovery schedule in anticipation of an October 31, 2013 pretrial conference with the Court when Defendants asked Plaintiffs to briefly stay the litigation in an effort to resolve this Action. At the request of the parties, the Court agreed to stay the litigation through February 28, 2014 while the parties attempt to settle this action through mediation. (ECF No. 28).

IV. SETTLEMENT NEGOTIATIONS

35. The parties agreed to retain Jonathan Marks, a mediator with extensive experience in mediating securities class actions. *See* http://marksadr.com/marks_bio.html (last visited Dec. 17, 2014). The parties prepared and exchanged mediation memoranda, and conducted pre-mediation conference calls jointly with the Defendants and separately with Mr. Marks.

36. Further in preparation for the mediation, Co-Lead Counsel and counsel for Defendants conducted conference calls where the parties discussed issues concerning loss causation and damages.

37. On December 9, 2013, all parties participated in a full-day mediation with the assistance of Mr. Marks in New York. During the mediation, the strengths and weaknesses of the claims alleged in the Complaint were discussed and debated.

38. The negotiations were complex because the plaintiffs in a parallel action on behalf of Canadian purchasers of Nevsun common (*Fricke, et al. v. Nevsun et al.*, Court File No. 12-CV-17903) ("Canadian Action") pending in Ontario Superior Court of Justice in Canada, participated in the mediation. The Canadian Action and this Action involved overlapping classes and factual allegations. The Defendants in the Canadian Action and in this Action sought a settlement demand

on behalf both actions in order to negotiate a "global settlement." This required counsel in the Canadian Action and Co-Lead Counsel to engage in negotiations regarding the relative merits of the actions, and the respective damages attributable to purchasers in Canada and purchasers in the U.S. This negotiation was complex as this Action and the Canadian Action involve claims with different elements and standards of proof.

39. Before and throughout the December 9, 2013 mediation, consultants, including individuals with expertise in the estimation of damages and market efficiency advised Plaintiffs and Co-Lead Counsel.

40. During the settlement negotiations with Defendants, Co-Lead Counsel demonstrated a willingness to continue the litigation, rather than accept a settlement that was not in the best interests of the Settlement Class. Defendants repeated the arguments raised in their respective motions to dismiss, as well as raised additional arguments concerning loss causation, damages and materiality.

41. The December 9, 2013 mediation failed to result in settlement of the claims alleged in the Action.

42. On February 2, 2014, at the request of Plaintiffs, the Court lifted the stay and the litigation resumed. (ECF No. 31).

43. On February 28, 2014, Defendants answered the Complaint. (ECF No. 35).

44. Following the December Mediation, the parties continued settlement negotiations and agreed to a second mediation before retired U.S. District Judge Layn R. Phillips. *See* http://www.phillipsadr.com/dnld/bio/PhillipsADR-LaynPhillips.pdf (last visited Dec. 17, 2014).

45. On April 10, 2014, the parties met in Los Angeles, California for a full-day mediation before Judge Phillips. Unlike the December 9, 2013 mediation, this Action and the Canadian Action were mediated separately.

46. During the April 10, 2014 mediation, Co-Lead Counsel again demonstrated a willingness to continue the litigation, rather than accept a settlement that was not in the best interests of the Settlement Class.

47. At the end of the April 10, 2014 mediation, the parties agreed to settle the claims for $5,995,000 in cash, and signed a memorandum of understanding outlining the terms of the settlement.

48. Thereafter, numerous exchanges via e-mail and telephone calls followed so that the settling parties could reach an agreement on the necessary settlement documentation. On May 1, 2014 the parties executed the Settlement Agreement, and on May 12, 2014, Plaintiffs filed the Settlement Agreement with the Court. (ECF No. 39).

V. THE SETTLEMENT AND ITS BENEFITS

A. Benefits of the Settlement

49. The Settlement consists of $5,995,000 in cash plus interest (the "Settlement Fund") for the benefit of the Settlement Class, in exchange for the dismissal and release of the claims against all the Defendants.

50. The Settlement would benefit all purchasers of Nevsun Common Stock on the NYSE or on any other U.S. trading platform. Based on the analysis of Plaintiffs' economic consultant, over 18 million shares of Nevsun common stock were purchased on the NYSE or on another U.S. trading platform and damaged during the Class Period.

B. Risks of Continued Litigation

51. If this litigation were to continue, it is likely that the Settlement Class would recover less or nothing at all. The cash component of the Settlement is $5,995,000, which has been paid to Co-Lead Counsel's escrow fund by Defendants' Directors and Officers liability insurance carrier.

52. The Directors and Officers liability insurance policy is a wasting asset. If the litigation were to continue, there would be less cash from insurance available for settlement or recovery because it will have been used in defense costs to defend this Action as well as the parallel action pending in the Ontario Superior Court of Justice in Canada (*Fricke, et al. v. Nevsun et al.*, Court File No. 12-CV-17903).

C. Risks to Establishing Liability

53. As a result of the investigation conducted by Co-Lead Counsel, and through the extensive briefing of Defendants' motion to dismiss, as well as the give and take during the December 9, 2013 and April 10, 2014 mediations concerning the merits of the claims, Co-Lead Counsel gained a thorough understanding of the arguments and issues critical to the outcome of the Action at the time Lead Plaintiff agreed in principle to settle this Action.

54. Although Co-Lead Counsel believed the case was strong, as explained below, there were significant arguments and defenses raised by Defendants regarding Plaintiffs' claims.

55. The Complaint alleges violations of Section 10(b), Rule 10b-5 and 20(a) of the Exchange Act.

56. To state a Section 10(b) claim under the Exchange Act, Plaintiffs must prove the following elements beyond a preponderance of the evidence: "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or

omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1317-18 (2011) (quoting *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008)).

57. A Section 20(a) claim requires Plaintiffs to prove a violation under Section 10(b) and further that the Defendant Davis, Hardie and Trebilcock controlled Nevsun. *See* 15 U.S.C. § 78t(a).

1. Material misrepresentations or omissions

58. Defendants argued that they did not make any materially false and misleading representations or omit to disclose material facts that they had a duty to disclose.

59. In particular, Defendants argued that under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S.Ct. 2996, 3202 (2011), only those persons with ultimate authority over any statement can be sued for an alleged misrepresentation or omission. In particular, Defendants argued that the key basis for plaintiffs' claims—a false estimate of the gold resources and reserves at Bisha—was a statement made by AMEC, Nevsun's engineering expert, not by Defendants. According to Defendants, under Canadian securities regulations, Nevsun had no control over those estimates, and because only AMEC, as the "Qualified Person," had the authority to make such estimates, Defendants cannot be found to have had the ultimate authority to make the estimates in question.

60. Co-Lead Counsel disagreed with Defendants' arguments under *Janus* and noted that, at the pleading stage, the Court denied Nevsun's motion to dismiss based on *Janus*. Campisi Decl. Ex. 2, 2013 U.S. Dist. LEXIS 162048, at *37. Defendants nevertheless continued to assert this argument during mediation, and indicated that, had the case not settled, Defendants intended

to file a motion for certification of this question under 28 U.S.C. § 1292(b) to the United States Court of Appeals for the Second Circuit.

61. Defendants further argued that, if the Action continued, Plaintiffs would face significant hurdles to proving falsity at trial because Defendants allegedly false statements fell within the "safe harbor" provision of the PSLRA. Defendants also argued that they would prove through discovery and expert testimony that, due to the immateriality of the information, there was no duty to disclose the departure of certain Bisha employees or the engagement of engineering firms to rebuild the block model.

62. Again Plaintiffs disagreed with Defendants' arguments because they had been made in connection with Defendants' motion to dismiss and were, in part, rejected by the Court. *See* Exhibit 2.

2. Scienter

63. Scienter would have been a difficult issue since that element goes directly to Defendants' state of mind and is inherently difficult to prove. Defendants argued that the fact that Nevsun's resource and reserve estimates were prepared and certified by an independent "Qualified Person" pursuant to Canadian law undermined an inference of scienter.

64. Further, Defendants argued that, if the Action continued, the evidence would show that the overestimation of gold reserves and resources by AMEC's block model was not immediately apparent based on the information known to Defendants, and that the Defendants devoted a reasonable amount of time to investigate the possible causes of the reconciliation issues. Moreover, Defendants' argued that their mining expert would testify that at all relevant times Defendants' conduct was in accordance with all applicable industry standards.

65. With respect to the Complaint's allegation of motive and opportunity, Defendants argued that neither Defendants' stock sales, nor the ENAMCO contract negotiations, provided a plausible motive to defraud.

66. Based on these arguments, Defendants argued that discovery would support their defenses and that they would prevail at the summary judgment stage. *See, e.g. Steed Fin. LDC v. Nomura Sec. Int'l, Inc.*, 148 F. App'x 66, 69 (2d Cir. 2005) (where the Second Circuit affirmed a grant of summary judgment on scienter grounds, finding that plaintiffs failed to adduce evidence of scienter because the defendants' expert testified that the methods used by defendants were standard in the industry); *In re Northern Telecom Ltd. Sec. Litig.*, 116 F. Supp. 2d 446, 462 (S.D.N.Y. 2000) (where the court granted defendants' summary judgment motion because the evidence showed "unequivocally" that defendants lacked any motive to commit fraud. Even though the court found that the defendants may have had some knowledge about problems with the business, summary judgment was still appropriate because the company derived no benefits from the alleged misstatements, the individual defendants had "nothing to gain from making the alleged misrepresentations," and the company "had a financial incentive *not* to engage in the alleged fraudulent scheme." *Id.* at 462-63).

67. Co-Lead Counsel disagreed with Defendants' scienter arguments and argued that the Complaint established facts that supported a strong inference of scienter.

3. Loss causation and damages

68. Defendants argued that Lead Plaintiff would be unable to prove loss causation. The key stock drop in this case occurred on February 7, 2012, when Nevsun made an allegedly "corrective" disclosure concerning its estimated resources and reserves for the gold phase of mining at Bisha.

69. Plaintiffs argued that the entire stock drop of $1.94 per share on February 7, 2012 was attributable to the alleged "corrective" disclosure. However Defendants argued that their damages experts determined Nevsun common stock was not inflated by $1.94 per share during the entire Class Period, and that for at least some portion of the Class Period, the amount of price inflation was *zero.*

70. Further, Defendants maintained that Nevsun's experts will establish that the sell-off in Nevsun stock following the February 7, 2012 announcement was partially due to at least two significant uncertainties discussed by the analysts that arguably were unrelated to the alleged fraud: (i) whether issues with the "block model" would adversely affect the resource and reserve estimates for the zinc and copper phases of mining operations at Bisha beyond the gold phase (*i.e.* in the future); and (ii) whether the announcement of a revised resource and reserve estimate for the gold phase would lead to a dispute between Nevsun and ENAMCO.

71. While Plaintiffs disagreed with Defendants' arguments, if Defendants were successful, these and other "confounding" factors would arguably reduce the amount of loss per share for which plaintiffs can claim damages. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 36 (2d Cir. 2009) ("[T]o establish loss causation, *Dura* requires plaintiffs to disaggregate those losses caused by changed economic circumstances, changed investor expectations, new industry-specific or firm specific facts, conditions, or other events, from disclosures of the truth behind the alleged misstatements.") (internal quotation marks omitted). According to Defendants, their experts would prove that a significant percentage of the $1.94 stock drop can be attributed to these other non-fraud factors.

72. Another hurdle concerning loss causation is the recent Supreme Court decision *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014). In *Halliburton*, the

Supreme Court ruled that in order to certify a plaintiff class in a securities class action, Plaintiffs must demonstrate "price impact." While the Supreme Court in *Halliburton* did not delineate what information was required to show price impact, Plaintiffs anticipate that Defendants would argue that price impact must be demonstrated at the time of the alleged misstatement. In other words, Plaintiffs would have to show a material increase in the price of Nevsun stock at the time of the alleged misstatements in order to show price impact.

73. While Plaintiffs disagreed with Defendants interpretation of *Halliburton* and believe that price impact could be shown through the decline in the stock at the end of the Class Period under the "maintenance theory" (*see, e.g., In re Vivendi Universal, S.A. Securities Litigation*, 02-cv-5571 (SAS), Memo. and Order (S.D.N.Y. Aug. 8, 2014) (Exhibit 3)), if Defendants' interpretation were accepted by the Court, it would have been very challenging to demonstrate price impact in this case because the price of Nevsun stock did not materially increase at the time of the alleged misstatements.

4. Additional risks

74. Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Plaintiffs on behalf of the Settlement Class. Defendants would have continued to vigorously defend the Action had there been no settlement, which would have reduced the amount of available insurance.

75. If this case did not settle, Plaintiffs would have had to conduct a significant amount of discovery to prove the claims, much of which would have been taken in Canada, the United Kingdom and in Africa. Nevsun is a foreign issuer, with mining operations in Africa, and witnesses located throughout the world. None of the principal witnesses are located in the United States.

76. As such, if this Action continued, Plaintiffs' would have needed to invest heavily in overcoming the many procedural hurdles necessary to compel deposition testimony from foreign witnesses, many of whom are former Nevsun or employees of the Bisha Mining Share Company ("BMSC") over whom Nevsun purported to have no control.

77. Further, Eritrea is not a party to the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters, a fact that makes discovery in Eritrea very challenging, expensive and time consuming.

78. Many potentially relevant documents belong to BMSC, a foreign company headquartered and located in Eritrea, Africa. Moreover, because BMSC is 40% owned by the government of Eritrea, Plaintiffs would likely face governmental objections or privacy objections to document productions from BSMC, or any of its personnel.

79. Experts would have to be located and designated and expert discovery conducted. Defendants would also likely file motions for summary judgment which would require briefing and argument, a pretrial order would have to be prepared, proposed jury instructions submitted, motions *in limine* filed and argued, and a lengthy and complicated trial conducted. Whatever the outcome at trial, appeals would be expected and would extend the case, thereby delaying any recovery to the Settlement Class for many more years.

80. While Co-Lead Counsel was prepared to fully litigate this Action, Co-Lead Counsel recognizes that they faced risks and that juries are unpredictable. Co-Lead Counsel were well aware that many other securities class actions have been prosecuted in the belief that they were meritorious, only to lose on motions to dismiss, summary judgment, at trial, or on appeal.

D. Risks to Establishing Damages

81. Even if Plaintiffs convinced a jury that they had established all of the elements of liability by a preponderance of the evidence, they would still need to prove damages – an issue that would also be hotly contested at trial. In fact, Plaintiffs and the Defendants did not agree on the average amount of damages per share, if any, that would be recoverable if Plaintiffs had prevailed on each claim alleged. The issues on which the parties disagree include, but are not limited to: (a) the appropriate economic model for determining the amount by which Nevsun's Common Stock was allegedly artificially inflated (if at all) during the Settlement Class Period; (b) the amount by which Nevsun Common Stock was allegedly artificially inflated during the Settlement Class Period; (c) the various market forces influencing the trading price of Nevsun Common Stock at various times during the Settlement Class Period; (d) the extent to which external factors, such as general market conditions, influenced the trading price of Nevsun Common Stock at various times during the Settlement Class Period; (e) the extent to which the various matters that Plaintiffs alleged were false or misleading influenced the trading price of Nevsun Common Stock at various times during the Settlement Class Period; (f) the extent to which the various allegedly material facts that Plaintiffs alleged were omitted influenced the trading price of Nevsun Common Stock at various times during the Settlement Class Period; and (g) whether the statements allegedly made or facts allegedly omitted were actionable under the federal securities laws.

82. Damages would be the subject of expert testimony. Following the preparation and exchange of expert reports, the respective damage experts retained by the parties would be deposed and there would be a battle-of-the-experts.

83. Plaintiffs' damage expert believed that best-case damages for purchasers of Nevsun common stock on the NYSE or other U.S. trading platforms were approximately $35 million and, for the reasons discussed above concerning loss causation and class certification, Defendants believed that damages were substantially less and under certain circumstances there were no damages.

84. The recovery of $5,995,000 is fair, reasonable and adequate when considering that it represents a recovery of approximately 17% of estimated, best-case damages. In comparison, between 2004 and 2013, the median settlement as a percentage of estimated damages in securities class actions was between 2%-3%. *See* Cornerstone Research, Securities Class Action Settlements 2013 Review and Analysis, at 6, Exhibit 4.

85. In addition to considering these risks to establishing liability and damages at trial, Co-Lead Counsel also considered the heavy burden of proof; the length of time and expense necessary to prosecute the Action through trial and the inevitable subsequent appeals; the uncertainties of the outcome at trial and on appeal of this complex litigation; and the significant, immediate benefit provided by the proposed Settlement to the Settlement Class.

86. The Settlement has been agreed to by Plaintiffs. Based on all of these considerations, it is the opinion of Co-Lead Counsel, who have a high level of expertise in the area of class action securities litigation, that given the risk associated with the further prosecution of this Action, the Settlement represents a fair, reasonable and significant result for the Settlement Class, and should be approved by the Court.

VI. THE PLAN OF ALLOCATION

87. The Plan of Allocation proposed by Plaintiffs is set forth in the Notice mailed to Settlement Class members. *See* Notice, ¶ 9. The date for submitting objections to the Plan of

Allocation is January 2, 2014. To date, no objections to the Plan of Allocation have been received by Co-Lead Counsel or GCG.

88. The Plan of Allocation is the product of Co-Lead Counsel's analysis of the applicable law and recognized damage calculation methodologies, in conjunction with analysis from Co-Lead Counsel's economic consultant, Mr. Chad Coffman, MPP, CFA, of Global Economics Group. *See* http://www.globaleconomicsgroup.com/cv/Coffman%202014-02-12.pdf (last visited Dec. 17, 2014).

89. The Plan of Allocation does not grant preferential treatment to the Plaintiffs or any Settlement Class Member. Co-Lead Counsel adopted the Plan of Allocation after considering the import of *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342 (2005). In *Dura*, the Supreme Court held that mere "artificial inflation" in a stock price due to alleged fraud is not sufficient to recover damages, and that a plaintiff must show a connection between the alleged misrepresentations and an adverse disclosure that results in the loss.

90. While there is some debate as to how close a connection there must be between the announcement causing a decline in the price of the stock and the alleged misrepresentations in order to be able to recover damages on the price decline, appellate courts and district courts have interpreted *Dura* to bar a recovery of losses absent a showing that the losses were caused by a public disclosure that at least has some connection to the alleged fraud.

91. Lead Plaintiff's damages expert estimates that, if valid claims for all damaged shares are submitted, the average recovery per damaged share of Nevsun common stock will be approximately $0.33 per share before deduction of attorneys' fees, costs and expenses awarded by the Court and the costs of providing notice and administering the Settlement.

92. As explained in the Notice, all such shares of Nevsun common stock are entitled to payment from the Net Settlement Fund on a *pro rata* basis based on the number of shares purchased by Settlement Class members and the timing of the purchases. *See* Notice, ¶ 9.

93. To the extent any monies remain in the Net Settlement Fund after the Settlement Administrator has caused distributions to be made to all Authorized Claimants, any balance remaining in the Net Settlement Fund after one (1) year after the initial distribution of such funds could be redistributed to Authorized Claimants who have cashed their initial distributions and who would receive at least $10.00 from the re-distribution, after the deduction of any additional fees and expenses that would be incurred. If any funds remain from the Net Settlement Fund, after the above payments, the Court shall, upon motion of Co-Lead Counsel, pay such remaining funds to one or more non-profit or charitable organization.

94. Co-Lead Counsel believe that the Plan of Allocation provides a fair and reasonable allocation of the Net Settlement Fund to those Settlement Class members who could establish damages caused by the misrepresentations at issue.

95. The foregoing Plan of Allocation is fair and reasonable and warrants the Court's approval.

VII. THE MOTION FOR ATTORNEYS' FEES AND EXPENSES

96. The Notice also informed the Settlement Class that Co-Lead Counsel would seek an award of attorneys' fees, not to exceed 33⅓ percent of the Settlement Fund, and unreimbursed expenses of up to $175,000. *See* Notice, ¶ 17. Co-Lead Counsel seeks an award of one-third of the Settlement, or $1,998,133.50, which is a lodestar multiplier of approximately 1.48 of Co-Lead Counsel's combined lodestar of $1,350,472.50. *See* Affidavit of Richard J. Kilsheimer on behalf of Kaplan Fox, dated December 23, 2014 (Exhibit 5) (stating Kaplan Fox's lodestar is

$732,703.75 based on 1,468.75 hours of work); Declaration of Timothy J. MacFall on behalf of Rigrodsky & Long, dated December 23, 2014 (Exhibit 6) (stating Rigrodsky & Long's lodestar is $617,768.75 based on 992.25 hours of work).

97. Starting on October 24, 2014, approximately 12,000 Notices were distributed. To date, no objections have been received to a Request for Attorneys' Fees and Expenses. *See* Fraga Aff., ¶ 10. The deadline for objections is January 2, 2014. *See* Notice, ¶ 18.

98. As outlined above, Co-Lead Counsel's efforts on behalf of the Class included the following: (1) investigating the claims; (2) reviewing and analyzing all of Nevsun's publicly available filings and financial statements; (3) drafting and filing the initial complaint; (4) filing a motion to appoint lead plaintiff and counsel; (5) working with a mining industry expert and experts in Eritrean practices, customs and laws in connection with the claims asserted in the Amended Complaint, as well as assertions made in connection with Defendants' motion to dismiss; (6) working with an investigator to identify and locate relevant witnesses; (7) interviewing numerous confidential sources and fact witnesses; (8) drafting and filing the Amended Complaint; (9) researching and preparing the opposition to Defendants' motion to dismiss the Amended Complaint; (10) working with an economics expert in connection with the loss of market value for Nevsun and the potential recoverable damages for investors who purchased Nevsun stock on exchanges on or other trading platforms in the United States during the Class Period; (10) preparing mediation submissions; (11) participating in two mediation sessions (one with Jonathan Marks in New York, and one with the Hon. Layn Phillips, U.S.D.J. (Ret.) in Los Angeles); (12) negotiating the terms of the Stipulation and Agreement of Settlement; (13) working with Plaintiffs' economic expert to formulate Plan of Allocation; (14) preparing

papers in support of the settlement; and (15) overseeing the Claims Administrator in connection with the notice process.

99. The Settlement was reached only after extensive negotiations during and after the December 9, 2013 and April 10, 2014 mediations. In preparation for the mediation, Co-Lead Counsel prepared a mediation memorandum and participated in conference calls with the mediators and the parties.

100. The parties agreed in principle to settle the Action and signed a memorandum of understanding on April 10, 2014. Following the April 10, 2014 mediation, the Parties continued to negotiate until the Stipulation of Settlement was signed on May 1, 2014.

101. The recovery obtained for the Settlement Class, it is respectfully submitted, is due to the competence, tenacity and perseverance of Co-Lead Counsel in the face of substantial obstacles to any recovery.

A. Risks of No Compensation

102. Co-Lead Counsel undertook this litigation on a wholly contingent basis and have received no compensation during the course of this Action. *See* Exhibit 5, ¶ 3; Exhibit 6, ¶ 3. Any fee award or expense reimbursement has always been at risk and completely contingent on the result achieved and on this Court's exercise of its discretion in making any award. The considerable efforts of Co-Lead Counsel in bringing this case to a successful conclusion are described above. The risks assumed by Co-Lead Counsel are also relevant to an attorney fee award.

103. The risks assumed by Co-Lead Counsel over the course of the litigation before the proposed Settlement was reached, and the time and significant expense incurred without any

payment, were extensive, as described in detail above and in the Memorandum of Law in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, filed herewith.

B. The Action Was Prosecuted Efficiently

104. Co-Lead Counsel managed the prosecution of this litigation to achieve the best result for the Settlement Class in the most efficient manner.

105. After the appointment of Lead Plaintiff and Co-Lead Counsel, Co-Lead Counsel organized a team of attorneys, an in-house investigator and other staff members to begin gathering information in preparation for drafting a consolidated complaint. Kaplan Fox's in-house investigator conducted interviews with former Nevsun employees and other individuals that counsel ascertained had information relevant to Plaintiffs' claims.

106. Co-Lead Counsel also consulted with Mr. Chad Coffman in connection with loss causation and damages, as well as in connection with drafting the Plan of Allocation. Mr. Coffman's resume is attached as Exhibit 7.

107. Further, Co-Lead Counsel consulted with Mr. Marvin Blethen, PE, of Blethen Mining Associates, PC, in connection with customs and practices in the mining industry and to assist in drafting allegations of the Complaint, and Plaintiffs' discovery requests. *See* http://www.blethenminingassociates.com/Our%20Principal.htm (last visited Dec. 17, 2014) (Exhibit 8).

108. Co-Lead Counsel consulted with Mr. Saleh Johar, who is an Eritrean expatriate, to assist with the location and interview of witnesses who were employed at the Bisha Mine in Eretria during the Class Period. *See* http://awate.com/author/admingadi/ (last visited Dec. 17, 2014) (Exhibit 9).

109. I was responsible for conducting settlement negotiations. I did not, however, undertake these activities alone. I consulted with my partners, Frederic S. Fox and Robert N. Kaplan, as well as Tim MacFall of Rigrodsky & Long.

110. Mr. Kaplan was very involved in both the December 9, 2013 and April 10, 2014 mediations, and in negotiating the terms of the Settlement, including numerous telephonic conference calls with the mediators and with Mr. Jon C. Dickey, the lead attorney for Defendants.

111. Co-Lead Counsel prepared the motion for preliminary approval of the Settlement and motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation of Settlement Proceeds. (ECF Nos. 40-42). Further, I prepared this Declaration.

112. With regard to the administration of the Settlement, Co-Lead Counsel interviewed four firms and asked each to submit written responses to a Request for Proposal. After reviewing the responses, Co-Lead Counsel selected GCG.

113. Since then, I have personally supervised GCG in preparing the Notice, Proof of Claim and Summary Notice for dissemination to members of the Settlement Class, in setting up the website for the Settlement where Settlement Class Members can obtain information about the Settlement and file a claim, and in addressing Settlement Class member questions.

C. Competency of Co-Lead Counsel

114. The expertise and experience of Lead Plaintiffs' Counsel is another important factor in setting a fair fee.

115. As demonstrated by the firm resumes of Kaplan Fox's and Rigrodsky & Long, annexed hereto as Exhibits 10-11, counsel for Plaintiffs are highly experienced in complex litigation, including class and securities actions.

116. The quality of the work performed by Co-Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. The Defendants are represented by the firm Gibson, Dunn & Crutcher LLP ("Gibson Dunn").

117. Gibson Dunn has defended many securities class actions. In the face of this formidable opposition, Co-Lead Counsel settled the Action on a basis that is very favorable to the Settlement Class, given the considerable risks described above.

118. Given the complexity and magnitude of the Action, the responsibility undertaken by Co-Lead Counsel, the difficulty of proof on liability and damages, the experience of counsel for Lead Plaintiff and Defendants, and the contingent nature of their agreement to prosecute this litigation, Co-Lead Counsel submit that the Request for Attorneys' Fees and Expenses is fair and reasonable.

119. Co-Lead Counsel respectfully submit that the fee request, 33⅓ percent of the Settlement Fund, or $1,998,133.5, is fair and reasonable given that it represents a modest lodestar multiplier of approximately 1.48.

D. Expenses

120. In addition to legal fees, Co-Lead Counsel seeks reimbursement of expenses reasonably and actually incurred in the prosecution of the Action. Co-Lead Counsel has expended a total of $91,357.40 in unreimbursed expenses in connection with the prosecution of this litigation.

121. These expenses incurred by Co-Lead Counsel pertaining to this case are reflected in the books and records of this firm maintained in the ordinary course of business. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. *See* Affidavit of Richard J. Kilsheimer on behalf of Kaplan Fox, dated

December 23, 2014, ¶ 8 (Exhibit 5); Declaration of Timothy J. MacFall on behalf of Rigrodsky & Long, dated December 23, 2014, ¶ 8 (Exhibit 6).

122. In investigating the factual basis of the Action and in assessing and structuring the Settlement, Co-Lead Counsel incurred expenses for consultants in the mining industry, Eritrean laws and customs, loss causation, and damages. As noted above, consulting with these experts was crucial for investigating the case, and determining a damage calculation.

123. In total, the December 9, 2013 and April 10, 2014 mediations resulted in expenses of $18,223. In total, Plaintiffs' expert consultants (Blethen, Coffman and Soler) resulted in expenses of $44,635. The invoices submitted by each of the mediators and the consultants are attached as Exhibit 12; *see also* Exhibit 5 (Kilsheimer Aff., Ex. C) (stating Kaplan Fox's expenses) and Exhibit 6 (MacFall Decl. Ex. C) (stating Rigrodsky & Long's expenses). Thus, combined, expert and mediation fees are $62,858, approximately 69% of Co-Lead Counsel's unreimbursed expenses.

124. Other expenses include the costs of computerized research for factual and legal research services. *See* Exhibit 5 (Kilsheimer Aff., Ex. C) and Exhibit 6 (MacFall Decl. Ex. C). It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. These database services permitted counsel to access Nevsun's SEC filings and filings with the Canadian securities regulator, perform media searches on Nevsun, obtain analyst reports on Nevsun, assist in developing Plaintiffs' damage analyses, and allowed Plaintiffs' investigator to locate and obtain information on witnesses and defendants, and obtain publicly available information and filings.

125. Robert Kaplan, Tim MacFall and I travelled to Los Angeles, California for the April 10, 2014 mediation and thus incurred the related costs of meals, lodging and transportation.

Other necessary expenses that were incurred in the prosecution of this Action include expenses for photocopying, mediation fees, filing fees, postage and overnight delivery, service of process and third party document requests, and telephone expenses.

126. Since these expenses were necessarily incurred for the prosecution of the Action, and are of the type normally reimbursed by paying clients, I respectfully submit that all of these expenses incurred by Plaintiffs' Counsel in the Action are reasonable in amount and should be reimbursed in full.

127. Attached hereto as Exhibit 13 is the Affidavit of Craig F. Piazza in support of his request for an award of reasonable expenses and costs.

VIII. CONCLUSION

128. In light of the clear benefits to the Settlement Class, I respectfully request that the Court approve the proposed Settlement, the Plan of Allocation, the Request for Attorneys' Fees and Expenses, and Lead Plaintiff's request for an award of reasonable costs and expenses.

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

Executed this 24th day of December, 2014, in New York, New York.

/s/ Jeffrey P. Campisi
JEFFREY P. CAMPISI

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will electronically send notification of such filing to all counsel of record.

Executed on December 24, 2014 in New York, New York.

/s/ Jeffrey P. Campisi
JEFFREY P. CAMPISI

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NEVSUN RESOURCES LTD.	:	Civil Action No. 12 Civ. 1845 (PGG)

AFFIDAVIT OF JOSE C. FRAGA REGARDING MAILING OF THE NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT, (II) SETTLEMENT HEARING, (III) MOTION FOR ATTORNEYS' FEES, AND REIMBURSEMENT OF LITIGATION EXPENSES, AND (IV) MOTION FOR LEAD PLAINTIFF'S AWARD OF REASONABLE COSTS AND EXPENSES, (B) PUBLICATION OF THE SUMMARY NOTICE, AND (C) REQUESTS FOR EXCLUSION AND OBJECTIONS RECEIVED TO DATE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JOSE C. FRAGA, being duly sworn, deposes and says:

1. I am a Senior Director of Operations for The Garden City Group, Inc. ("GCG"). Pursuant to the Court's Order Preliminarily Approving Proposed Settlement, Certifying Class, Providing for Notice, and Scheduling Settlement Hearing, dated October 6, 2014 (the "Preliminary Approval Order"), GCG was appointed as the Claims Administrator in connection with the proposed Settlement of the above-captioned action.[1] The following statements are based on personal knowledge and information provided to me by other experienced GCG employees.

MAILING OF THE NOTICE

2. GCG was responsible for disseminating the Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, (II) Motion for Attorneys'

[1] All capitalized terms not otherwise defined in this document shall have the meaning provided in the Settlement Agreement dated May 1, 2014. ECF No. 39.

Fees and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff's Award of Reasonable Costs and Expenses (the "Notice"), the Proof of Claim Form and Release ("Proof of Claim"), and an enclosed return envelope (collectively, the "Claim Packet") to all persons who purchased or otherwise acquired Nevsun Resources Ltd. ("Nevsun") common stock from March 28, 2011 through February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform (the "Settlement Class"). A true and correct copy of the Claim Packet is attached hereto as Exhibit A.

3. On May 14, 2014, GCG received data from Counsel for Defendants containing the names and last known addresses of 468 shareholders of record of Nevsun. Upon receipt of this data, GCG loaded the data into the database GCG created and now maintains for the purposes of administering this Settlement (the "Settlement Database"). Once the data was loaded, GCG performed an initial analysis of the data and removed all duplicate records. As a result, GCG eliminated 225 duplicate records and maintained the remaining 243 records.

4. Also on May 14, 2014, GCG also received data from Co-Lead Counsel for the Lead Plaintiff containing the names and last known addresses of 122 U.S. Domiciled Institutions who held Nevsun shares during the Settlement Class period as well as the names of 170 Deposit and Trust Company ("DTC") participants.

5. GCG maintains a proprietary database with names and addresses of the largest and most common U.S. banks, brokerage firms, and nominees, including national and regional offices of certain nominees (the "Nominee Database"). Upon receipt of the DTC participant list, GCG compared the 170 entries to its Nominee Database to determine which DTC participants were already included in the Nominee Database. For all DTC participants who were not contained in the Nominee Database, GCG conducted research to determine the address of each

entity so that it could be loaded into the Settlement Database.

6. On October 7, 2014, loaded 113 additional records from the DTC participant lists into the Settlement Database, performed an initial analysis of the data and removed all duplicate records. As a result, GCG maintained 111 records.

7. Pursuant to the Preliminary Approval Order, on October 24, 2014, GCG mailed by first-class mail, postage prepaid, a Claim Packet to each of the 476 shareholders described in paragraphs 3-6.

8. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial owners of the shares of Nevsun common stock whose securities are held in "street name"- i.e., the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. As detailed in paragraph 5, GCG maintains a Nominee Database. The Nominee Database is updated from time to time as new nominees are identified, and others go out of business. At the time of the initial mailing, the Nominee Database contained 1,977 mailing records. On October 24, 2014, GCG caused the Claim Packet, along with an additional "broker letter" which further detailed the Settlement Class and Settlement Class Member eligibility, to be mailed by first-class mail, postage prepaid, to the 1,977 mailing records contained in the Nominee Database.

9. From October 25, 2014 to December 16, 2014, GCG received from nominee holders and others 6,794 additional names and addresses of potential Settlement Class Members. GCG promptly mailed by first-class mail, postage prepaid, a Claim Packet to each such name and address. In addition, during this same time period, GCG received requests from nominee holders for 2,685 Claim Packets to be forwarded by the nominee holders to their clients. GCG

promptly forwarded the requested Claim Packets to the nominee holders for forwarding to their clients.

10. In the aggregate, as of December 16, 2014, GCG mailed 12,052 Claim Packets to Settlement Class Members by first-class mail, postage prepaid. This includes 120 Claim Packets that were remailed due to updated addresses provided by the U.S. Postal Service.

PUBLICATION OF THE SUMMARY NOTICE

11. Pursuant to the Preliminary Approval Order, GCG Communications, the media division of GCG, caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, (II) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff's Award of Reasonable Costs and Expenses (the "Summary Notice") to be published in *The Investor's Business Daily* and on the same day, to be transmitted once over the *PR Newswire*. Attached hereto as Exhibit B is the affidavit of Stephan Johnson for the Publisher of *The Investor's Business Daily*, attesting to the publication of the Summary Notice in that paper on November 5, 2014. Attached hereto as Exhibit C is a confirmation report for the *PR Newswire*, attesting to the issuance of the Summary Notice over that wire service on November 5, 2014.

TELEPHONE HOTLINE

12. Beginning on or about October 24, 2014, GCG established and continues to maintain a toll-free telephone number (1-844-322-8214) and interactive voice response system ("IVR") to accommodate inquiries from Settlement Class Members and to respond to frequently asked questions. The telephone hotline dedicated to the Settlement is accessible 24 hours a day, 7 days a week.

WEBSITE

13. GCG designed, implemented and continues to maintain a website (www.nevsunresourcessettlement.com) dedicated to the Settlement. The website address was included in the Notice mailed to Settlement Class Members. The website lists the objection, claims submission, and exclusion deadlines, as well as the date of the Settlement Fairness Hearing. Also, copies of the Notice, Proof of Claim Form, Electronic Filing Instructions, Settlement Agreement, Preliminary Approval Order, and the Class Action Complaint were posted on the website and may be downloaded by Settlement Class Members. In addition, the website contains answers to "Frequently Asked Questions." The website became operational beginning on October 24, 2014 and is accessible 24 hours a day, 7 days a week.

REQUESTS FOR EXCLUSION

14. The Notice informed Settlement Class Members that written requests for exclusion must be mailed to In re Nevsun Resources Securities Litigation, c/o GCG, PO Box 10073, Dublin, OH 43017-6673, postmarked no later than December 25, 2014. The Notice also set forth the information that must be included in each request for exclusion. GCG has monitored all mail sent to this P.O. Box. As of December 16, 2014, GCG has received no exclusion requests.

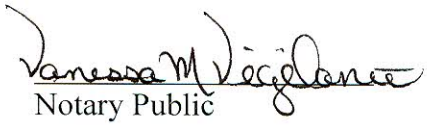
OBJECTIONS TO SETTLEMENT

15. The Notice also informed Settlement Class Members that objections to the Settlement must be mailed or delivered such that they are received by the Court, Co-Lead Counsel for Plaintiffs and Counsel for Defendants no later than January 2, 2015. The Notice set forth the information that must be included in an objection to the Settlement. GCG has been informed by Co-Lead Counsel for Plaintiffs that as of December 16, 2014, no objections have

been received.

Jose C. Fraga

Sworn to before me this
17th day of December, 2014



Notary Public

VANESSA M VIGILANTE
Notary Public, State of New York
No. 01VI6143817
Qualified in Nassau County
Commission Expires April 17, 2018

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD.	:	Civil Action No. 12 Civ. 1845 (PGG)

NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT, (II) SETTLEMENT HEARING, (III) MOTION FOR ATTORNEYS' FEES, AND REIMBURSEMENT OF LITIGATION EXPENSES, AND (IV) MOTION FOR LEAD PLAINTIFF'S AWARD OF REASONABLE COSTS AND EXPENSE

If you purchased or otherwise acquired Nevsun Resources Ltd. common stock from March 28, 2011 through February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform, and are not otherwise excluded from the Class (see Question 6 below), you could get a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.[1]

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

Security and Time Period: Shares of Nevsun Resources Ltd. ("Nevsun" or the "Company") common stock purchased on the New York Stock Exchange or any other U.S. trading platform between March 28, 2011 and February 6, 2012, inclusive (the "Class Period").

Settlement Fund: Subject to approval by the Court, $5,995,000.00 in cash, plus interest earned on that amount. Your recovery will depend on the timing of your purchases and any sales of shares of Nevsun common stock during the Class Period on the New York Stock Exchange or any other U.S. trading platform. Based on the information currently available to Lead Plaintiff and the analysis performed by their damage consultants, it is estimated that if Class Members submit claims for 100% of the shares eligible for distribution under the Plan of Allocation (described below), the estimated average distribution per share will be approximately $0.33 or approximately 19% of estimated recoverable damages before deduction of Court-approved fees and expenses, including the cost of notifying members of the Class and settlement administration. Historically, actual claims rates are less than 100%, which result in higher distributions per share. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's Recognized Claim (as defined below) as compared to the total Recognized Claims of all Class Members who submit valid Proof of Claim and Release Forms ("Proof of Claim Forms").

Reasons for Settlement: Avoids the costs and risks associated with continued litigation, including the danger of no recovery.

If the Case Had Not Settled: Continuing with the case could have resulted in loss at trial or on appeal. The two sides vigorously disagree on both liability and the amount of money that could have been won if Lead Plaintiff prevailed at trial. The parties disagree about: (1) whether Defendants made the statements at issue in the Action; (2) whether Defendants made any misrepresentations or omissions during the Class Period, or did so with the requisite state of mind; (3) whether the alleged misrepresentations and omissions were material; (4) whether the Class can show that each allegedly false statement led to a measurable price impact on the price of Nevsun common stock; (5) whether any alleged losses of Class Members were caused by the alleged misrepresentations or omissions; and (6) the proper measure of alleged damages, if any, caused by any alleged misrepresentations or omissions.

Attorneys' Fees and Expenses: Court-appointed Lead Counsel will ask the Court for attorneys' fees of up to 33 1/3% of the Settlement Fund and expenses not to exceed $175,000 to be paid from the Settlement Fund. Lead Counsel have not received any payment for their work investigating the facts, prosecuting this Action and negotiating this settlement on behalf of Lead Plaintiff and the Class.

Lead Counsel will also ask the Court to approve an award of up to $10,000.00 for the Court-appointed Lead Plaintiff for his representation of the Class. If the above amounts are requested and approved by the Court, the average cost per share will be $0.12.

Deadlines:

Submit Proof of Claim Form:	**JANUARY 22, 2015**
Request Exclusion:	**DECEMBER 25, 2014**
File Objection:	**JANUARY 2, 2015**
Court Hearing on Fairness of Settlement:	**JANUARY 22, 2015 at 10:00 a.m.**

[1] All capitalized terms that are not defined herein are defined in the Stipulation of Settlement dated May 1, 2014, which is available on the website for the Action at **www.nevsunresourcessettlement.com.**

More Information: www.nevsunresourcessettlement.com or

Claims Administrator:

In re Nevsun Resources Securities Litigation
c/o GCG
PO Box 10073
Dublin, OH 43017-6673

Representatives of Lead Plaintiff's counsel:

KAPLAN FOX & KILSHEIMER LLP
JEFFREY P. CAMPISI
850 Third Avenue, 14th Floor
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Tel: (212) 687-1980
Fax: (212) 687-7714

RIGRODSKY & LONG, P.A.
TIMOTHY J. MACFALL
825 East Gate Boulevard, Suite 200
Garden City, New York 11530
Tel: (516) 683-3516
Fax: (302) 654-7530

- **Your legal rights are affected whether you act, or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A PROOF OF CLAIM FORM	The only way to get a payment.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Released Parties concerning the Released Claims.
OBJECT	You may write to the Court if you do not like this settlement, the request for attorneys' fees and expenses, the Plan of Allocation, or Lead Plaintiff's request for costs and expenses.
GO TO A HEARING	You may ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights and be bound by any Judgment or Orders entered by the Court in this Action.

- These rights and options — ***and the deadlines to exercise them*** — are explained in this Notice.
- The Court in charge of this case must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and, if there are any appeals, after appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this notice package?

You or someone in your family may have purchased or acquired shares of Nevsun common stock on the New York Stock Exchange or other U.S. trading platform between March 28, 2011 and February 6, 2012, inclusive.

The Court directed that you be sent this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after any objections or appeals (if there are any) are resolved, the Claims Administrator appointed by the Court will make the payments that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *In re Nevsun Resources Ltd.*, Civ. Action No. 12 Civ. 1845 (PGG). The individual leading the Action, Craig F. Piazza is called the Lead Plaintiff and the company and the individuals he sued are called the Defendants.

2. What is this lawsuit about?

The case involves claims that Defendants[2] violated the federal securities laws by allegedly materially overstating gold reserves at the Company's Bisha Mine, and allegedly failing to disclose material negative trends about the mine's gold production, during the Class Period. As a consequence, it was alleged that the price of the Company's common stock was artificially inflated during the Class Period.

[2] Defendants are Nevsun, Clifford T. Davis, Peter J. Hardie, and Scott Trebilcock.

Defendants deny all of the Lead Plaintiff's allegations and further deny that they did anything wrong. Defendants also deny that the Lead Plaintiff or the Class suffered damages or that the price of shares of Nevsun was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise.

3. Why is this a class action?

In a class action, one or more people called class representatives (in this case, the Court- appointed Lead Plaintiff, Craig F. Piazza, and plaintiff Scott F. Colebourne) sue on behalf of people who have similar claims. All of these people and/or entities are called a class or class members. One judge – in this case, United States District Court Judge Paul G. Gardephe – resolves the settlement issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of the Lead Plaintiff or Defendants. Instead, the lawyers for both sides of the lawsuit have negotiated a settlement that they believe is in the best interests of their respective clients. The settlement allows both sides to avoid the risks and cost of lengthy and uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay. Lead Plaintiff and his attorneys think the settlement is in the best interests of all Class Members.

WHO GETS MONEY FROM THE SETTLEMENT

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

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

The Class includes ***all Persons who purchased or otherwise acquired Nevsun common stock from March 28, 2011 through February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform.***

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

Yes. Excluded from the Class are: (i) Defendants; (ii) any parent or subsidiary of Nevsun; (iii) any present or former director or officer of Nevsun; (iv) any legal representatives, heirs, successors and assigns, and members of the Immediate Family of each Individual Defendant; (v) any firm, trust, corporation or other entity in which any Defendant has or had a majority ownership interest, except for any Investment Vehicle; and (vi) those persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in this Notice.

7. I'm still not sure if I am included.

If you still are not sure whether you are included, you can ask for free help. You can call **(844) 322-8214** or visit **www.nevsunresourcessettlement.com** for more information.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Subject to Court approval, Defendants have agreed to pay or cause to be paid $5,995,000.00 in cash (the "Settlement Fund"). The Settlement Fund, less costs, fees and expenses (the "Net Settlement Fund"), will be divided among all eligible Class Members who send in valid Proof of Claim Forms and whose recovery is permitted under the Settlement ("Authorized Claimants"). Costs, fees and expenses deducted from the Settlement Fund include Court-approved attorneys' fees and expenses, and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper and news wire notices as ordered by the Court.

9. How much will my payment be?

Your share of the Net Settlement Fund will depend on (i) the number of valid Proof of Claim Forms that Class Members send in, (ii) how many shares of Nevsun common stock you purchased or otherwise acquired during the Class Period on the New York Stock Exchange or other U.S. trading platform, (iii) when you bought and sold your shares, and (iv) whether you were damaged as a result of your purchases or acquisitions.

For purposes of determining whether a Claimant has a "Recognized Claim," purchases, acquisitions, and sales of Nevsun common stock on the New York Stock Exchange or any other U.S. trading platform will first be matched on a First In/First Out ("FIFO") basis as set forth below.

For each share of Nevsun common stock purchased or otherwise acquired during the Settlement Class Period on the New York Stock Exchange or any other U.S. trading platform and sold before the close of trading on May 4, 2012 an "Out of Pocket Loss" will be calculated. Out of Pocket Loss is defined as the purchase price (excluding all fees, taxes, and commissions) minus the sale price (excluding all fees, taxes, and commissions). To the extent that calculation of the Out of Pocket Loss results in a negative number, that number shall be set to zero.

A "Recognized Loss Amount" will be calculated as set forth below for each Nevsun common stock share purchased or otherwise acquired during the Settlement Class Period from March 28, 2011, through February 6, 2012 on the New York Stock Exchange or any other U.S. trading platform, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero.

For each share of Nevsun common stock purchased or acquired between March 28, 2011, and February 6, 2012 on the New York Stock Exchange or any other U.S. trading platform, and

Sold prior to February 7, 2012, the Recognized Loss Amount shall be zero;

Sold on or after February 7, 2012, and before the close of trading on May 4, 2012, the Recognized loss amount shall be the lesser of:

$1.90;

the purchase/acquisition price of each such share (excluding all fees, taxes and commissions) minus the average closing price between February 7, 2012, and the date of sale as set forth in Table 1 below; or

the Out of Pocket Loss.

Held as of the close of trading on May 4, 2012, the Recognized Loss Amount for each share shall be the lesser of:

$1.90; or

the purchase/acquisition price (excluding all fees, taxes, and commissions) minus $3.72 (the average closing price of Nevsun common stock between February 7, 2012, and May 4, 2012, as shown on the last line of Table 1 below).

If a Class Member has more than one purchase/acquisition or sale of Nevsun common stock during the Class Period on the New York Stock Exchange or any other U.S. trading platform, all purchases/acquisitions and sales shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the Nevsun common stock. The date of a "short sale" is deemed to be the date of sale of Nevsun common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" is zero. In the event that a Claimant has an opening short position in Nevsun common stock that were purchased on the New York Stock Exchange or any other U.S. trading platform, the earliest Class Period purchases or acquisitions shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

The sum of a Claimant's Recognized Loss Amounts will be the Claimant's "Recognized Claim." An Authorized Claimant's Recognized Claim shall be the amount used to calculate the Authorized Claimant's pro rata share of the Net Settlement Fund.

If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. The pro rata share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed pro rata to all Authorized Claimants entitled to receive payment.

The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is $10.00 or greater. If the prorated payment 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.

An Authorized Claimant will be eligible to receive a distribution from the Net Settlement Fund only if the Authorized Claimant had a net loss, after all gains from transactions in Nevsun common stock on the New York Stock Exchange or other U.S. trading platform during the Class Period are subtracted from all losses. However, the proceeds from sales of shares which have been matched against shares held at the beginning of the Class Period will not be used in the calculation of such net loss.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Lead Plaintiff, Lead Counsel, any claims administrator or other Person designated by Lead Counsel or Defendants and/or the Related Parties and/or the Released Persons and/or their counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court.

All Class Members who fail to complete and file a valid and timely Proof of Claim Form shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU GET A PAYMENT – SUBMITTING A PROOF OF CLAIM FORM

10. How will I get a payment?

To qualify for a payment, you must send in a Proof of Claim Form. A Proof of Claim Form is enclosed with this Notice. Read the instructions carefully, and sign the Proof of Claim Form if all of the pre-printed information is correct. Alternatively, fill in any missing information, correct any information that is not correct, include supporting documents to the extent that they are required, sign it, and mail it in the enclosed envelope postmarked no later than **January 22, 2015**.

11. When would I get my payment?

The Court will hold a hearing on **January 22, 2015 at 10:00 a.m.**, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to decide whether to approve the settlement. If Judge Gardephe approves the settlement, there may be appeals. It is always uncertain whether these appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. It also takes time for all the Proof of Claim Forms to be processed. Please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself ("opt out") from the Settlement in the manner provided by this Notice, you are staying in the Class. That means that, upon the Effective Date (defined below), you (and your predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them) will be held to have released and forever discharged Defendants and the other Released Parties (as defined below) from all Released Claims (as defined below) and will be barred from suing, continuing to sue or being part of any other lawsuit against the Released Parties relating to the Released Claims.

It also means that if you are a member of the Class, all of the Court's orders will apply to you and legally bind you, which include terms providing for such release of and bar against further suits by Class Members relating to Released Claims against the Released Parties.

"Released Parties" means each Defendant and each and all of a Defendants' past, present or future parents, subsidiaries, affiliates, partners, agents, assigns, attorneys, advisors, representatives, insurers or reinsurers; members of any Individual Defendant's Immediate Family, or any of his executors, estates, administrators, trustees, insurers, heirs, agents or assigns; or any firm, trust, corporation, or other entity in which any of the Defendants has or had a controlling interest.

"Released Claims" means any and all claims (including "Unknown Claims" as defined below), debts, demands, controversies, obligations, losses, rights, liabilities and/or causes of action of any kind or nature whatsoever, including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever, whether based on federal, state, local, foreign, statutory or common law or regulation, whether class or individual in nature, known or unknown, fixed or contingent, direct or derivative, suspected or unsuspected, concealed or hidden, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, that either have been or could have been asserted in this Action by or on behalf of the Plaintiffs or any other Class Member against any of the Released Parties, which (i) arise out of or are based upon or related in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action or the Consolidated Complaint, and (ii) arise out of or are based upon or related in any way to Plaintiffs' or any other Class Member's purchase, acquisition or holding of Nevsun common stock during the Class Period on the New York Stock Exchange or other U.S. trading platform (except for claims to enforce the Settlement).

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

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

The "Effective Date" will occur upon the Court entering the Preliminary Approval Order; the Defendants having paid, or caused to be paid, the Settlement Amount into the Escrow Account pursuant to the Stipulation of Settlement; Defendants not exercising their option to terminate the Settlement pursuant to the Stipulation of Settlement; and the Court entering Judgment substantially in the form provided by the Stipulation of Settlement, and the Judgment has become Final.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue the Defendants on your own about the same issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or is sometimes referred to as opting out of the Class.

13. How do I get out of the Class?

To exclude yourself from the Class, you must send a letter by mail stating that you request exclusion from the Class in *In re Nevsun Resources Ltd*., Civ. Action No. 12 Civ. 1845 (PGG). You must include your name, address, telephone number and your signature. You must also include the number of shares of Nevsun common stock purchased or otherwise acquired on the New York Stock Exchange or any other U.S. trading platform you held as of March 27, 2011; the number of shares of Nevsun common stock you purchased or otherwise acquired between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform; the dates and prices of such purchases; the number of shares of Nevsun common stock you sold between March 28, 2011 and May 6, 2012; and the dates and prices of such sales. You must mail your exclusion request postmarked no later than December 25, 2014 to:

In re Nevsun Resources Securities Litigation
c/o GCG
PO Box 10073
Dublin, OH 43017-6673

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this settlement resolves. Remember, the exclusion deadline is December 25, 2014.

15. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, do not send in a Proof of Claim Form to ask for any money. Once you exclude yourself, you will receive no cash payment even if you also submit a Proof of Claim Form.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed the law firms of Kaplan Fox & Kilsheimer LLP and Rigrodsky & Long, P.A. to represent you and other Class Members. These lawyers are called Lead Counsel. These lawyers will apply to the Court for payment from the Settlement Fund; you will not otherwise be charged for their work. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

At the fairness hearing, Lead Counsel will request the Court to award attorneys' fees of up to 33 1/3% of the Settlement Fund and for expenses up to $175,000, which were incurred in connection with the Action. If awarded, the cost would be $0.12 per share. This compensation will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. To date, Lead Counsel have not received any payment for their services in conducting this litigation on behalf of the Lead Plaintiff and the Class, nor have counsel been paid for their expenses. The fee requested will compensate Lead Counsel for their work in achieving the Settlement Fund and is well within the range of fees awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than this amount.

In addition, Lead Plaintiff may request up to $10,000 for his efforts in representing the Class. If awarded, the cost would be $0.0006 per share. This compensation will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

OBJECTING TO THE SETTLEMENT AND OTHER MATTERS BEFORE THE COURT

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

18. How do I tell the Court that I do not like the settlement or other related matters?

If you are a Class Member (and you have not excluded yourself), you can object to the settlement, the request for attorneys' fees and expenses, the award to Lead Plaintiff, or the Plan of Allocation if you do not like any part of it. You can give reasons why you think the Court should not approve the settlement, the request for attorneys' fees and expenses, the award to Lead Plaintiff or the Plan

of Allocation. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed settlement in *In re Nevsun Resources Ltd.*, Civ. Action No. 12 Civ. 1845 (PGG). Be sure to include your name, address, telephone number, your signature, the number of shares of Nevsun common stock purchased or otherwise acquired between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform, and the reasons you object to the settlement, the requested attorneys' fees and expenses, the award to Lead Plaintiff or the Plan of Allocation, or the award to Lead Plaintiff. Any such objection must be mailed or delivered such that it is received by each of the following no later than January 2, 2015:

Court:

Clerk of the Court
United States District Court
Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, New York 10007

Lead Counsel for Lead Plaintiffs:

KAPLAN FOX & KILSHEIMER LLP
JEFFREY P. CAMPISI
850 Third Avenue, 14th Floor
New York, New York 10022
Tel: (212) 687-1980
Fax: (212) 687-7714

RIGRODSKY & LONG, P.A.
TIMOTHY J. MACFALL
825 East Gate Boulevard;
Suite 200
Garden City, New York 11530
Tel: (516) 683-3516
Fax: (302) 654-7530

Counsel for Defendants:

GIBSON, DUNN & CRUTCHER LLP
JONATHAN C. DICKEY
LEE DUNST
GABRIELLE LEVIN
200 Park Avenue, 48th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

19. What is the difference between objecting and excluding myself from the settlement?

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

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the proposed settlement and other related matters. You may attend, but you do not have to.

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

The Court will hold a hearing at **10:00 am**, on **January 22, 2015**, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also decide whether to approve the payment of fees and expenses to Lead Counsel, whether to award Lead Plaintiff costs and expenses, and the Plan of Allocation. We do not know how long the hearing will take or whether the Court will make its decision on the day of the hearing or sometime later.

21. Do I have to come to the hearing?

No. Lead Counsel will answer questions Judge Gardephe may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that it is your intention to appear in *In re Nevsun Resources Ltd.*, Civ. Action No. 12 Civ. 1845 (PGG). Be sure to include your name, address, telephone number, your signature, and the number of shares of the Nevsun common stock purchased or otherwise acquired between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform. Your notice of intention to appear must be received no later than **January 2, 2015**, by the Clerk of the Court, Lead Counsel, and Defendants' counsel, at the addresses listed in Question 18. You cannot speak at the hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the same issues in this case.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Stipulation of Settlement dated May 1, 2014 ("Stipulation"), which has been filed with the Court. You can get a copy of the Stipulation from the Clerk's office at the United States District Court, Southern District of New York, Clerk of the Court, the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007, during regular business hours, or at **www.nevsunresourcessettlement.com**.

25. How do I get more information?

You can call **(844) 322-8214** or write to a representative of Lead Counsel, or visit the Claims Administrator's website at **www.nevsunresourcessettlement.com**. ***Please do not call the Court or the Clerk of the Court for additional information about the settlement.***

26. Special notice to nominees

If you hold any shares of Nevsun common stock purchased or otherwise acquired between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform, as a nominee for a beneficial owner, then, within twenty (20) days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

In re Nevsun Resources Securities Litigation
c/o GCG
PO Box 10073
Dublin, OH 43017-6673

If you choose to mail the Notice yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: October 6, 2014

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TABLE 1

Nevsun Closing Price and Average Closing Price on the New York Stock Exchange February 7, 2012 — May 4, 2012

Date	Closing Price	Average Closing Price Between February 7, 2012, and Date Shown
2/7/2012	$4.40	$4.40
2/8/2012	$4.22	$4.31
2/9/2012	$4.11	$4.24
2/10/2012	$4.00	$4.18
2/13/2012	$3.93	$4.13
2/14/2012	$3.84	$4.08
2/15/2012	$3.78	$4.04
2/16/2012	$3.90	$4.02
2/17/2012	$3.91	$4.01
2/21/2012	$3.98	$4.01
2/22/2012	$4.24	$4.03
2/23/2012	$4.27	$4.05
2/24/2012	$4.27	$4.07
2/27/2012	$4.15	$4.07
2/28/2012	$4.26	$4.08
2/29/2012	$4.10	$4.09
3/1/2012	$4.12	$4.09
3/2/2012	$4.07	$4.09
3/5/2012	$4.03	$4.08
3/6/2012	$3.90	$4.07
3/7/2012	$3.93	$4.07
3/8/2012	$3.88	$4.06
3/9/2012	$3.87	$4.05
3/12/2012	$3.80	$4.04
3/13/2012	$3.76	$4.03
3/14/2012	$3.50	$4.01
3/15/2012	$3.27	$3.98
3/16/2012	$3.39	$3.96
3/19/2012	$3.51	$3.94
3/20/2012	$3.51	$3.93
3/21/2012	$3.37	$3.91
3/22/2012	$3.25	$3.89
3/23/2012	$3.54	$3.88
3/26/2012	$3.78	$3.88
3/27/2012	$3.71	$3.87
3/28/2012	$3.56	$3.86
3/29/2012	$3.67	$3.86
3/30/2012	$3.68	$3.85
4/2/2012	$3.80	$3.85
4/3/2012	$3.64	$3.85
4/4/2012	$3.47	$3.84
4/5/2012	$3.35	$3.83
4/9/2012	$3.35	$3.82
4/10/2012	$3.53	$3.81
4/11/2012	$3.49	$3.80
4/12/2012	$3.68	$3.80
4/13/2012	$3.67	$3.80
4/16/2012	$3.62	$3.79
4/17/2012	$3.63	$3.79
4/18/2012	$3.57	$3.79
4/19/2012	$3.44	$3.78
4/20/2012	$3.34	$3.77
4/23/2012	$3.33	$3.76
4/24/2012	$3.18	$3.75
4/25/2012	$3.20	$3.74
4/26/2012	$3.37	$3.73
4/27/2012	$3.53	$3.73
4/30/2012	$3.64	$3.73
5/1/2012	$3.70	$3.73
5/2/2012	$3.70	$3.73
5/3/2012	$3.50	$3.72
5/4/2012	$3.42	$3.72

Must be Postmarked or Received No Later Than January 22, 2015

NSU

Nevsun Resources Ltd. Securities Litigation
c/o GCG
P.O. Box 10073
Dublin, OH 43017-6673
(844) 322-8214
www.nevsunresourcessettlement.com

ID Number:

Control Number:

PROOF OF CLAIM AND RELEASE

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Important - *This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:*

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0

PART I - GENERAL INSTRUCTIONS

I. GENERAL INSTRUCTIONS

IF YOU PURCHASED OR OTHERWISE ACQUIRED COMMON STOCK OF NEVSUN RESOURCES LTD. ("NEVSUN") FROM MARCH 28, 2011 THROUGH FEBRUARY 6, 2012, INCLUSIVE, ON THE NEW YORK STOCK EXCHANGE OR ANY OTHER U.S. TRADING PLATFORM, AND SUFFERED LOSSES AS A RESULT OF SUCH PURCHASE OR ACQUISITION, YOU ARE A "CLASS MEMBER" AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS.

IF YOU ARE A CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS FORM IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS.

TO BE ELIGIBLE TO RECEIVE A DISTRIBUTION IN THE SETTLEMENT, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE ("PROOF OF CLAIM") AND MAIL IT BY FIRST CLASS MAIL, POSTAGE PREPAID, **POSTMARKED NO LATER THAN JANUARY 22, 2015**, TO THE CLAIMS ADMINISTRATOR, AT THE FOLLOWING ADDRESS:

Nevsun Resources Ltd. Securities Litigation
c/o GCG
P.O. Box 10073
Dublin, OH 43017-6673
(844) 322-8214

YOUR FAILURE TO TIMELY SUBMIT A COMPLETED PROOF OF CLAIM WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOUR RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

IF YOU ARE NOT A CLASS MEMBER, OR IF YOU FILED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A PROOF OF CLAIM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER OR IF YOU SUBMIT A VALID AND TIMELY REQUEST FOR EXCLUSION.

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

II. CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise acquired shares of Nevsun common stock between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or some other U.S. trading platform, and claim to have suffered losses as a result of such purchase or acquisition. (Note: Do not submit this Proof of Claim if you did not purchase or acquire Nevsun common stock during the designated Class Period on the New York Stock Exchange or some other U.S. trading platform. If some or all of your shares were purchased on the Toronto Stock Exchange or some other non-U.S. trading platform, such shares are not part of the Class as defined in the Stipulation of Settlement.)

2. By submitting this Proof of Claim, I (we) state that I (we) believe in good faith that I am (we are) a Class Member as defined above and in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice;

PART I - GENERAL INSTRUCTIONS (CONTINUED)

and that I (we) have not filed a request for exclusion. (Note: If you are acting in a representative capacity on behalf of a Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)

3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim.

4. I (we) have set forth where requested below all relevant information with respect to each purchase of Nevsun common stock on the New York Stock Exchange or some other U.S. trading platform, during the Class Period, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.

5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase, sale or retention of Nevsun common stock listed below in support of my (our) claim. (Note: IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)

6. I (we) understand that the information contained in this Proof of Claim is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (Note: The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your recognized claim. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)

7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Release of Claims," as defined in the Notice.

8. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All Claimants MUST submit a manually signed paper Proof of Claim form listing all their transactions whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at (844) 322-8214 or visit their website at http://www.gcginc.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

PART II - CLAIMANT IDENTIFICATION

Claimant or Representative Contact Information:

The Claims Administrator will use this information for all communications relevant to this claim (including the check, if eligible for payment). If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Claimant Name(s) (as you would like the name(s) to appear on the check, if eligible for payment):

Street Address:

City: **Last 4 digits of Claimant SSN/TIN:**

State: **Zip Code:** **Country (if Other than U.S.):**

Name of the Person you would like the Claims Administrator to Contact Regarding This Claim (if different from the Claimant Name(s) listed above:):

Daytime Telephone Number: - - **Evening Telephone Number:** - -

Email Address **(Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)**

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

[1]The last four digits of the taxpayer identification number (TIN), consisting of a valid Social Security Number (SSN) for individuals or Employer Identification Number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.

PART III - SCHEDULE OF TRANSACTIONS

NEVSUN RESOURCES LTD. PUBLICLY TRADED COMMON STOCK

A. **COMMON STOCK BEGINNING HOLDINGS:** Number of shares of Nevsun common stock owned at the close of trading on **March 27, 2011** and that were purchased on the New York Stock Exchange or some other U.S. trading platform, long or short. (If none, write "zero" or "0", of other than zero, must be documented):

Number of Shares

B. **COMMON STOCK PURCHASES:** List all <u>purchases and/or acquisitions</u> of Nevsun common stock on the New York Stock Exchange or some other U.S. trading platform during the period from **March 28, 2011** and **May 4, 2012**, inclusive, (must be documented):

Purchase Date(s) List Chronologically (Month/Day/Year)	Number of Shares of Common Stock Purchased	Purchase Price Per Share of Common Stock	Total Amount Paid (Excluding commisions, taxes, and other fees)	Purchased on the Open Market *Please indicate Y for Yes N for No*
/ /		.	.	
/ /		.	.	
/ /		.	.	
/ /		.	.	

C. **COMMON STOCK SALES:** List all <u>sales</u> on the New York Stock Exchange or some other U.S. trading platform, separately list each and every sale of Nevsun common stock during the period **March 28, 2011** and **May 4, 2012**, inclusive (must be documented):

Sale Date(s) List Chronologically (Month/Day/Year)	Number of Shares of Common Stock Sold	Sale Price Per Share of Common Stock	Total Amount Received (Excluding commisions, taxes, and other fees)	Sold on the Open Market *Please indicate Y for Yes N for No*
/ /		.	.	
/ /		.	.	
/ /		.	.	
/ /		.	.	

D. **COMMON STOCK ENDING HOLDINGS:** Number of shares of Nevsun publicly traded common stock *held at the close of trading on* **May 4, 2012**. If there were short sales at the close of trading on May 4, 2012, provide the balance as a negative number. (If none, write "zero" or "0", of other than zero, must be documented):

Number of Shares

Please note: Information requested with respect to your purchases/acquisitions of Nevsun common stock from February 7, 2012 through and including May 4, 2012 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Loss pursuant to the Plan of Allocation for the Settlement.

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX
IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED

PART IV - CERTIFICATION

Definitions

All capitalized terms used but not defined herein shall have the same meanings as in the Notice and the Stipulation and Agreement of Settlement dated May 1, 2014 ("the Stipulation"), which is posted on the Claims Administrator's website at www .gcginc.com. In addition, the following terms shall have the following meanings:

1. "Defendants" means Nevsun Resources Ltd., Clifford T. Davis, Peter J. Hardie, and Scott Trebilcock.

2. "Released Parties" means each and all of Defendants and each and all of their Related Parties (each of a Defendants' past, present or future parents, subsidiaries, affiliates, partners, agents, assigns, attorneys, advisors, representatives, insurers or reinsurers; members of any Individual Defendant's Immediate Family, or any of his executors, estates, administrators, trustees, insurers, heirs, agents or assigns; or any firm, trust, corporation, or other entity in which any of the Defendants has or had a controlling interest).

3. "Released Claims" means any and all claims (including "Unknown Claims" as defined below), debts, demands, controversies, obligations, losses, rights, liabilities and/or causes of action of any kind or nature whatsoever, including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever, whether based on federal, state, local, foreign, statutory or common law or regulation, whether class or individual in nature, known or unknown, fixed or contingent, direct or derivative, suspected or unsuspected, concealed or hidden, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, that either have been or could have been asserted in this Action by or on behalf of the Plaintiffs or any other Class Member against any of the Released Parties, which (i) arise out of or are based upon or related in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Action or the Consolidated Complaint, and (ii) arise out of or are based upon or related in any way to Plaintiffs' or any other Class Member's purchase, acquisition or holding of Nevsun common stock during the Class Period on the New York Stock Exchange or other U.S. trading platform (except for claims to enforce the Settlement).

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

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

Submission to Jurisdiction of Court and Acknowledgements and Affirmations

I (we) submit this Proof of Claim and Release Form under the terms of the Stipulation of Settlement described in the Notice. I (we) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my claim as a Class Member and for purposes of enforcing the release set forth herein. I (we) further acknowledge that I am (we are) bound and subject to the terms of any judgment that may be entered in the Action. I (we) affirm that I (we) purchased or otherwise acquired Nevsun common stock between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or some other U.S. trading platform, and claim to have suffered losses as a result of such purchase or acquisition. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am a (we are) Class Member(s) as defined in the Notice or am (are) acting for such person; that I am (we are) not a Defendant in the Action or anyone excluded from the Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund; that I (we) elect to participate in the proposed Settlement described in the Notice; that I (we) have not filed a request for exclusion; and that I (we) have not submitted any other claim covering the same purchases, acquisitions or sales of Nevsun common stock between March 28, 2011 and February 6, 2012, inclusive, on the New York Stock Exchange or some other U.S. trading platform, and know of no other person having done so on my (our) behalf. I (We) have set forth where requested herein all relevant information with respect to each purchase or acquisition of Nevsun common stock on the New York Stock Exchange or some other U.S. trading platform between March 28, 2011 and February 6, 2012, inclusive. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (we) understand that no discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and in particular that no discovery shall be permitted against any Defendants in connection with any Proof of Claim.

PART V - RELEASE

I (We) hereby acknowledge, on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, and assigns (or, if submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, on behalf of it, him, her or them and on behalf of its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns), full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Parties, and I (we) shall forever be enjoined from prosecuting any or all Released Claims against any Released Parties.

This release shall be of no force or effect unless and until the Court approves the Stipulation and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign, transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Nevsun common stock on the New York Stock Exchange or some other U.S. trading platform that occurred during the Class Period, as well as the number of shares of Nevsun common stock held by me (us) at the beginning of trading on March 28, 2011 and at the close of trading on February 6, 2012.

I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

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

Executed this _____ day of _____ in _____.
(Month) (Year) (City, State, Country)

_____ _____
Signature of Claimant Date

_____
Print your name here

_____ _____
Signature of Joint Claimant, if any Date

_____
Print your name here

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

_____ _____
Signature of person signing on behalf of Claimant Date

_____
Print your name here

_____
Capacity of person signing on behalf of Claimant, if other than an individual
(e.g., Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

REMINDER CHECKLIST

1. Please sign the above release and certification. If this Proof of Claim is submitted on behalf of joint claimants, then both claimants must sign.

2. Remember to attach supporting documentation, if available. DO NOT HIGHLIGHT THE PROOF OF CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.

3. Do NOT send original stock certificates or original brokerage statements.

4. Keep a copy of your Proof of Claim form for your records.

5. The Claims Administrator will acknowledge receipt of your Proof of Claim by mail, within 90 days. Your claim is not deemed submitted until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 90 days, please call the Claims Administrator toll free at (844) 322 -8214.

6. If you move after submitting this Proof of Claim, please notify the Claims Administrator of the change in your address.

7. If you have any questions regarding your Proof of Claim, please contact the Claims Administrator at the address below.

THIS PROOF OF CLAIM FORM MUST BE POSTMARKED OR RECEIVED NO LATER THAN JANUARY 22, 2015 AND MAILED TO:

Nevsun Resources Ltd. Securities Litigation
c/o GCG
P.O. Box 10073
Dublin, OH 43017-6673
(844) 322-8214
www.nevsunresourcessettlement.com

_____

_____

_____

Nevsun Resources Ltd. Securities Litigation
c/o GCG
P.O. Box 10073
Dublin, OH 43017-6673

EXHIBIT B

INVESTOR'S BUSINESS DAILY®

Affidavit of Publication

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

I, **Stephan Johnson**, for the publisher of **Investor's Business Daily**, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice for **The Garden City Group, Inc.** was printed in said publication on the following date:

November 5th, 2014: NEVSUN RESOURCES LTD. SECURITIES LITIGATION

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 5th day of November, 2014, by Stephan Johnson, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____ (Seal)

RICHARD C. BRAND II
Commission # 1923876
Notary Public - California
Los Angeles County
My Comm. Expires Feb 25, 2015

Mutuals continued from A12

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
	JP Morgan A			
	$ 42.9 bil 800–480–4111			
+4	Core Bond	0	11.74	+.00
+10	Equity Idx	+4	43.08	–.13
+10	Equity Inc	+5	13.95	–.03
+7	Gr Advantg r	+5	14.57	–.11
+10	Growth & Inc	+4	45.53	–.14
+11	IntrepidMid	+5	24.57	–.10
+4	Inv Csrv Gr	+1	13.01	–.02
+5	Inv Gr&Inc	+3	17.19	–.05
+7	Inv Growth	+4	19.80	–.08
+5	Invstr Bal	+2	15.31	–.04
+8	Lg Cap Gr	+5	34.36	–.24
+9	Mid Cap Val	+5	37.75	–.08
+8	MidCapGr	+4	27.32	–.21
+4	Small Cap Eq	+7	46.21	–.14
+10	US Equity	+4	15.38	–.09
+10	USLgCorPls	+4	30.38	–.17
+10	ValAdvntg	+4	29.66	–.03
	JP Morgan C			
	$ 7.6 bil 800–480–4111			
+4	Inv Csrv Gr	+1	12.96n	–.02
+9	Mid Cap Val	+5	36.61n	–.07
+10	USLgCorPls	+4	29.67n	–.16
+9	ValAdvntg	+4	29.54n	–.03
	JP Morgan Fds			
	$ 3.9 bil 800–521–5411			
+4	IncBldrA	+1	10.36	–.03
	JP Morgan Instl			
	$ 38.5 bil 800–480–4111			
+12	Disc Equity	+5	24.62n	–.14
–8	Intl Value	+1	14.19n	–.08
+5	IntmTxFrBd	0	11.10n	–.01
+10	Mid Cap Val	+5	38.56n	–.08
+6	SmrtRet2020	+3	18.71n	–.04
+6	SmrtRet2030	+3	19.50n	–.05
+6	SmrtRet2040	+4	20.05n	–.06
+10	TaxAwrDscEq	+4	28.94n	–.14
+3	TxAwrRlRet	–1	9.99n	–.02
+10	US Equity	+4	15.42n	–.09
+4	US Small Co	+9	16.33n	–.05
+10	ValAdvntg	+4	29.88n	–.03
	JP Morgan R5			
	$ 5.6 bil 800–480–4111			
+12	IntrpdAm	+4	38.91n	–.16
+4	SmallCapEq	+7	51.58n	–.16
+10	USEqty	+4	15.43n	–.08
+11	USLgCrPls	+4	30.80n	–.17
	JP Morgan R6			
	$ 18.5 bil 800–480–4111			
+5	Core Bond	0	11.74n	+.00
+12	DiscEquity	+5	24.62n	–.14
+5	High Yield	+1	7.97n	–.01
+1	Sh Dur Bd	0	10.90n	+.00
0	Sml Cap Val	+8	28.27n	–.11
	JP Morgan Selct			
	$ 79.5 bil 800–480–4111			
+4	Core Bond	0	11.73n	+.00
+6	CorePlusBd	0	8.38n	+.00
+12	DscplndEq	+5	24.64n	–.14
+10	Equity Inc	+5	14.15n	–.03
+10	EquityIndex	+4	43.12n	–.12
+7	Gr Advantg r	+5	14.84n	–.11
+4	High Yield	+1	7.97n	–.01
+11	IntrepdVal	+4	38.03n	–.15
+13	Intrepid Gr	+5	39.43n	–.15
+11	IntrepidMid	+5	25.46n	–.11
+12	Intrpd Amer	+4	38.96n	–.16
+10	Lg Cap Val	+4	16.76n	–.08
+8	LgCapGr	+5	34.42n	–.23
+9	Mid Cap Eq	+4	45.33n	–.22
+10	Mid Cap Val	+5	38.14n	–.08
+8	MidCapGr	+4	30.23n	–.24
+1	Sh Dur Bd	0	10.90n	+.00
+4	SmallCapEq	+7	51.45n	–.15
0	Sml Cap Val	+8	28.25n	–.11
+4	TrSmlEqCore	+9	57.68n	–.16
+10	US Equity	+4	15.40n	–.08
+11	USDynmcPlus	+4	18.71n	–.06
+10	USLgCorPls	+4	30.65n	–.17
+10	ValAdvntg	+4	29.81n	–.03
	Keeley Funds			
	$ 3.5 bil 888–933–5391			
–2	SmlCapValA	+6	37.45	–.36
	Kinetics Funds			
	$ 1.5 bil 800–930–3828			
–2	SmCpOpport	+2	39.14n	–.38
	Laudus Rosenberg			
	$ 2.4 bil 800–447–3332			
–5	IntlMktMsSel	+1	22.72n	–.05
	LaudusFunds			
	$ 2.2 bil 800–447–3332			
+6	GrInvUSLgGr	+5	19.71n	–.09
	Lazard Instl			
	$ 22.0 bil 800–823–6300			
+4	EmergMkts	+2	19.35n	+.00
+14	GlbLstInfr	+3	14.67n	–.02
+1	**IntlStratEq**	**+3**	**14.54n**	**+.08**
+9	SmallCap	+7	16.56n	–.08
	Lazard Open			
	$ 4.2 bil 800–823–6300			
+4	EmergMkts	+2	19.81n	+.00
+1	**IntlStratEq**	**+3**	**14.62n**	**+.08**
	Legg Mason			
	$ 3.1 bil 800–822–5544			
+13	CBAggGr	+3	222.54n	–1.67
	Legg Mason A			
	$ 27.9 bil 800–822–5544			
+10	BMSP500IdxA	+4	20.48n	–.05
+13	CBAggGr	+3	204.13	–1.54
+5	CBAllCapVal	+3	17.38	–.05
+8	CBApprec	+4	20.85	–.03
+10	CBEqtyInc	+5	19.79	–.02
+9	CBLgGrA	+4	31.52	–.08
+8	CBLrgVal	+3	28.10	–.14
+5	CBMidCapCr	+6	30.56	–.29
–2	CBSmCapGr	+6	27.85	–.11
+10	WAMgdMuni	0	16.86	+.00
	Legg Mason B			
	$ 814 mil 800–822–5544			
+12	CBAggGr	+3	167.18n	–1.27
	Legg Mason C			
	$ 7.8 bil 800–822–5544			
+12	CBAggGr	+3	172.54n	–1.30
+9	CBEQincbld	+5	19.54n	–.02
+9	CBLgCapGr	+4	26.85n	–.06
+8	OppTr	+8	17.96n	–.05
	Legg Mason I			
	$ 11.7 bil 800–822–5544			
+13	CBAggGr	+3	220.85n	–1.66
+10	CBEQincbld	+5	20.25n	–.02
+10	CBEQincbld	+5	19.81n	–.01
+8	CBLrgVal	+3	28.06n	–.14
+11	CMValTr	+4	76.64n	–.39
+9	OppTr	+8	19.98n	–.05
	Longleaf Prtnrs			
	$ 14.6 bil 800–445–9469			
–10	Intl	+1	16.19n	–.15
+4	Partners	+3	35.07n	–.07
+12	Small Cap	+5	36.41n	–.07
	Loomis Syls			
	$ 42.2 bil 800–633–3330			
+5	Bond Instl	0	15.48n	+.00
+5	Bond Ret	0	15.41n	+.00
+1	GlobBd Inst	–1	16.06n	+.03
+8	**Growth Y**	**+4**	**10.30n**	**+.05**
+3	SmCpValInst	+8	38.64n	–.19
+5	Strat Inc A	+1	16.80	–.01
+5	Strat Inc C	+1	16.90n	–.02
+8	Value Y	+3	28.87n	–.11
	Loomis Syls Inv			
	$ 13.2 bil 800–633–3330			
+5	Fixed Income	0	15.24n	–.01
+5	GradeBondA	0	12.09	+.00
+4	GradeBondC	0	11.99n	+.01
+5	GradeBondY	0	12.10n	+.01
	Lord Abbett A			
	$ 52.3 bil 800–426–1130			
+8	Affiliated	+4	16.62	–.02
+5	BalStrat	+2	12.74	–.03
+3	Bond Deben	+1	8.17	–.02
+8	CaptlStruc	+4	16.39	–.02
+1	DvlpGrwth	+8	25.96	–.16
+1	FloatRate	0	9.30	+.00
+4	FundEqty	+3	15.92	–.06

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
+7	IntmTaxFr	0	10.87	+.00
+11	Natl Tax Fr	0	11.32	–.01
+1	ShrtDurInc	0	4.50	–.01
+5	ValueOpps	+6	21.66	–.08
	Lord Abbett C			
	$ 18.9 bil 800–426–1130			
+3	Bond Deben	+1	8.19n	–.02
0	FloatRate	0	9.31n	+.00
+1	ShrtDurInc	0	4.53n	+.00
	Lord Abbett F			
	$ 22.2 bil 800–426–1130			
+4	Bond Deben	+1	8.16n	–.02
+1	FloatRate	0	9.29n	–.01
+1	ShrtDurInc	0	4.50n	+.00
	Lord Abbett I			
	$ 14.0 bil 800–426–1130			
+9	Affiliated	+4	16.67n	–.03
+1	Dvlp Grwth	+8	28.63n	–.17
+4	High Yield	+1	7.86n	–.02
+1	ShrtDurInc	0	4.50n	+.00
	Lord Abbett R3			
	$ 795 mil 800–426–1130			
+1	Dvlp Grwth	+8	25.59n	–.16
+9	† *LSV Val Eq*	+4	23.61n	–.07
	—M—N—O—			
	MainStay A Fds			
	$ 9.0 bil 800–624–6782			
+3	High Yld Cp	0	5.92	–.01
+10	S&P500 Idx	+4	46.71	–.13
	Mainstay I Fds			
	$ 30.7 bil 800–624–6782			
+6	EpochGlbEql	+2	20.12n	–.05
–4	IcapIntl	0	34.45n	–.04
+5	IcapSelEq	+4	51.24n	–.32
+6	MAP	+3	47.57n	–.19
–11	MarketField	0	16.57n	–.03
+10	S&P500 Idx	+4	47.21n	–.13
	Mairs & Power			
	$ 5.1 bil 800–304–7404			
+5	Growth	+5	115.73n	–.10
	Managers Funds			
	$ 36.2 bil 800–548–4539			
+6	Bond	0	28.18n	+.01
–1	GWKSmCpCr	+8	24.33n	–.07
+1	SkylineSpc	+9	40.25n	–.20
+3	TSSmCapGrFd	+4	19.10n	–.13
+7	YacktFocFd	+2	26.85n	–.01
+7	YacktmanFd	+2	25.19n	–.02
	Manning & Napier Funds			
	$ 13.5 bil 800–466–3863			
–10	WorldOppA	–2	8.06n	–.07
	Marsico Funds			
	$ 2.9 bil 888–860–8686			
+8	21st Century	+5	21.38n	–.05
+3	FlexCapital	+3	18.66n	–.11
	Mass Mutl Instl			
	$ 462 mil 800–542–6767			
+3	SmlCpGrEq S	+8	19.02n	–.06
	Mass Mutl Select			
	$ 15.5 bil 800–542–6767			
+7	BlueChipGrL	+5	17.96n	–.07
+9	DiversVal S	+3	14.69n	–.05
+7	Focus Val S	+3	24.56n	–.11
+8	Grw Opp S	+5	12.18n	–.06
+10	Index Eq I	+4	18.80n	–.06
+3	SmlCpGrEq Z	+8	19.11n	–.07
+3	† *Matthew25*	+2	31.29n	–.29
	Matthews Asia			
	$ 13.6 bil 800–789–2742			
+3	AsGr&IncInv	+1	19.40n	–.02
+3	DividInv	+1	15.77n	–.03
+13	PacTigerInv	+2	28.36n	–.12
0	† *Merger Fund*		–116.06n	–.07
	Meridian Funds			
	$ 2.8 bil 800–446–6662			
+4	Growth	+7	38.89n	–.09
	Metro West			
	$ 40.7 bil 800–241–4671			
+1	Low Dur Bd	0	8.81n	+.00
+2	Low Dur Bd I	0	8.82n	+.00
+5	TotRetBdI	0	10.87n	+.00
+5	TotRetBdM	0	10.87n	+.00
	MFS Funds A			
	$ 63.2 bil 800–637–2929			
+5	Bond	0	14.02	–.01
+4	ConsrvAlloc	+1	14.85	–.03
+8	Core Equity	+4	29.05	–.15
+6	Growth	+4	68.90	–.41
+3	GrowthAlloc	+3	18.51	–.08
–2	Intl Nw Ds	+2	27.64	–.17
+1	Intl Val	+3	34.11	–.13
–2	IntlDivrs A	+1	16.05	–.09
+6	MA Inv Tr	+4	29.23	–.10
+6	MA InvGrSk	+4	24.17	–.06
+6	MidCapVal	+4	20.54	–.09
+4	Mod Alloc	+2	16.81	–.05
+13	Muni Hi Inc	+1	8.09	+.00
+7	Research	+4	39.34	–.17
+6	Total Ret	+2	18.36	–.02
+13	Util	+2	23.14	–.21
+7	Value	+4	34.87	–.03
	MFS Funds I			
	$ 27.8 bil 800–637–2929			
+6	Growth	+4	72.10n	–.43
–2	Intl Nw Ds	+2	28.45n	–.17
+7	Mass Inv Tr	+4	28.64n	–.10
+6	MidCapVal	+4	20.99n	–.09
–4	Rsrch Intl	+1	17.73n	–.14
+7	Value	+4	35.05n	–.03
	MFS Instl Funds			
	$ 7.1 bil 800–637–2929			
–3	Intl Eq	+1	21.72n	–.13
	Morgan Stan Ins			
	$ 18.5 bil 800–548–7786			
+7	CapGr I	+3	41.01n	–.15
+7	CapGrP	+3	40.13	–.16
–4	**IntlEq I**	**0**	**16.22n**	**+.09**
–4	**IntlEqP**	**0**	**15.97**	**+.08**
+2	MdCpGrP	+4	44.35	–.09
+3	MidCapGr I	+4	46.46n	–.10
	Motley Fool Funds			
	$ 638 mil 888–863–8803			
+5	GreatAmer	+7	18.55n	–.03
	Nationwide Funds Instl			
	$ 6.0 bil 800–848–0920			
–4	Intl Idx	+1	8.08n	–.03
+11	S&P500 Idx	+4	15.51n	–.04
	Nationwide Funds Service			
	$ 4.3 bil 800–848–0920			
+10	S&P500 Ins	+4	15.48n	–.04
+10	S&P500 Svc	+4	15.42n	–.04
	Natixis Funds			
	$ 2.0 bil 800–225–5478			
+10	USMltCapEqA	+3	35.89	–.01
	Neubg Brm Instl			
	$ 13.7 bil 800–628–2583			
+11	EqtInc	+4	13.06n	–.06
+3	HiIncBond	0	9.26n	–.03
+2	IntrnVal	+7	14.63n	–.05
+2	LgSt	+2	12.96n	–.06
+4	MltcapOpp	+4	15.97n	–.04
	Neubg Brm Inv			
	$ 13.2 bil 800–877–9700			
+7	Focus	+3	29.36n	–.15
–2	Genesis	+6	41.02n	–.09
–2	Genesis I	+6	60.93n	–.13
+6	Guardian	+4	20.64n	+.02
	Neubg Brm Tr			
	$ 4.1 bil 800–877–9700			
–2	Genesis	+6	63.40n	–.14
	Nicholas Group			
	$ 4.4 bil 800–227–5987			
+10	Nicholas	+5	67.77n	–.08
	NorthCoastAsstMgmt			
	$ 113 mil 800–274–5448			
+5	CAN SLIM Sel	+4	14.41n	–.03
	Northern			
	$ 43.8 bil 800–595–9111			
+5	BondIndex	0	10.70n	+.00
+2	EmMktsEqInd	0	11.51n	–.03
+5	Fixed Income	0	10.39n	+.00
+14	GlbRlEstIdx	+7	10.13n	–.01

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
+4	HiYldFxInc	0	7.46n	–.01
–4	Intl Eq Idx	+1	11.89n	–.07
+6	Intmd Tax Ex	0	10.66n	–.01
+7	Mid Cap Idx	+6	17.99n	–.07
+1	MltMgrEmMk	0	19.32n	–.06
–4	MltMgrIntEq	0	10.51n	–.06
+1	ShInt Tx Ex	0	10.48n	+.00
+4	Sm Cap Val	+9	21.58n	–.07
+11	Stock Index	+4	24.94n	–.07
	Nuveen Cl A			
	$ 13.4 bil 800–257–8787			
+10	Equity Indx	+4	28.78n	–.08
+17	Hi Yld Muni	+1	17.10	–.01
+11	MultLgCpVal	+6	28.31	+.00
	Nuveen Cl C			
	$ 3.2 bil 800–257–8787			
+16	Hi Yld Muni	+1	17.09n	+.00
	Nuveen Cl I			
	$ 24.7 bil 800–257–8787			
+10	Equity Idx	+4	28.77n	–.08
+17	HiYldMuniBd	+1	17.10n	–.01
+7	IntmDurMun	0	9.26n	–.01
+3	LtdTrmMuni	0	11.09n	–.01
+3	NWQSmVal	+8	42.24n	–.07
+28	Real Estate	+11	24.74n	+.02
	Oakmark I			
	$ 82.7 bil 800–625–6275			
+5	Equity & Inc	+3	34.15n	–.12
+1	Glob Sel	+2	16.69n	+.00
0	Global	+1	30.05n	–.01
–7	Intl	0	24.42n	–.02
–7	Intl Sm Cap	0	16.03n	+.03
+9	Oakmark	+3	69.12n	–.24
+13	Select	+3	45.34n	–.23
	Oberweis Funds			
	$ 731 mil 800–323–6166			
–4	IntlOpps	0	18.60n	–.07
	Old Westbury			
	$ 29.0 bil 800–607–2200			
0	GlobalOpp	0	7.90n	+.00
+1	GlobalSmall	+3	17.01n	–.03
+6	LgCapStrat	+4	13.17n	–.02
	Olstein			
	$ 703 mil 800–799–2113			
+9	AllCapValC	+5	20.71n	–.03
	Oppenheimer A			
	$ 87.6 bil 800–225–5677			
+3	ActiveAlloc	+3	12.25	–.04
0	Alloc A	+2	17.36	–.04
+11	Alpha	–3	12.97	–.23
+14	AMTFrMuni	0	6.95	+.00
+12	Cap Apprec	+4	66.86	–.25
+4	Cap Income	0	9.85	–.03
+3	Develop Mkt	+1	39.20	–.09
–6	Discovery	+7	75.36	–.32
+9	Equity	+4	13.47	–.06
+8	EquityInc	+3	33.38	–.23
+4	GlblStrtInc	0	4.13	–.01
–5	Glob Opport	+3	39.02	–.14
+2	Global	+2	80.30	–.12
+14	HiYldMuni	0	7.11	+.00
+6	Inc	–3	11.12	–.18
+2	Intl Bond	0	6.02	+.01
–8	Intl Growth	+1	35.33	–.12
–5	IntlDivers	+2	14.18	–.05
+9	Main Street	+4	52.58	–.18
+10	MainStSC	+5	33.57	–.27
+7	RisingDivs	+4	20.89	–.09
+6	RochLtdMuni	0	14.29	+.00
	Oppenheimer I			
	$ 5.2 bil 800–225–5677			
+10	Sel40I	–3	12.94n	–.25
+11	SelAlphal	–3	13.14n	–.24
	Oppenheimer N			
	$ 4.2 bil 800–225–5677			
+9	MainStSC	+5	32.41n	–.26
	Oppenheimer Y			
	$ 42.2 bil 800–225–5677			
+3	DevelopMkts	+1	38.81n	–.09
+2	Global	+2	80.52n	–.11
+2	IntlBond	0	6.01n	+.00
–8	IntlGr	+1	35.23n	–.13
–1	IntlSmCo	+2	32.13n	–.20
+9	Main Street	+4	52.35n	–.18
+10	MainStSmCp	+5	35.37n	–.28
+7	RisingDivs	+4	21.43n	–.10
	Oppenhmr C&M			
	$ 17.4 bil 800–225–5677			
+2	Devlp Mkt C	+1	37.12n	–.09
+13	HiYldMuni	0	7.09n	+.00
	Oppenhmr Roch			
	$ 9.8 bil 800–225–5677			
+6	LtdTrmNYA	0	3.14	+.00
+13	MuniA	0	15.26	+.00
	Optimum Instl			
	$ 5.6 bil 800–914–0278			
+4	FixedInc	0	9.70n	+.00
+9	LrgCpGrow	+5	17.58n	–.08
	Osterweis Capital			
	$ 8.4 bil 866–236–0050			
+3	Strat Inc	0	11.77n	+.00
	—P—Q—R—			
	Pace Funds P			
	$ 7.1 bil 800–647–1568			
+7	Lrg Co Val	+3	25.88n	–.10
	Parnassus			
	$ 8.3 bil 800–999–3505			
+11	CoreEqIncInv	+5	40.35n	–.03
+9	Parnassus	+5	49.87n	–.03
	Pax World			
	$ 2.3 bil 800–767–1729			
+6	Balance	+2	25.47n	–.03
	Permanent Port			
	$ 7.6 bil 800–531–5142			
0	Portfolio	0	42.99n	–.09
	Perritt Capital Mgmt			
	$ 545 mil 800–331–8936			
–3	Perritt Micro	+6	35.73n	–.10
	PIMCO A			
	$ 33.9 bil 800–426–0107			
+4	All Asset	0	12.30	–.03
+2	AllAsstAuth	–1	9.88	–.03
+1	Low Dur	0	10.32	–.01
+5	Real Return	0	11.37	+.00
+11	StocksPlRet	+4	11.25	–.04
+11	StocksPLUS	+4	10.32	+.00
+4	TotalRetrn	0	10.93	+.00
	PIMCO Admin			
	$ 29.8 bil 800–927–4648			
+1	Short Term	0	9.91n	+.00
+4	TotalRetrn	0	10.93n	+.00
	PIMCO C			
	$ 16.7 bil 800–426–0107			
+3	All Asset	0	12.25n	–.02
+1	AllAsstAuth	–1	9.87n	–.03
+9	FdmntlIndxPlARFd	+4	6.83n	+.00
+3	TotalRetrn	0	10.93n	+.00
	PIMCO D			
	$ 28.7 bil 800–426–0107			
+8	Income	0	12.66n	–.03
+1	Low Dur	0	10.32n	–.01
+3	SmCapStksPLARStr	+9	9.84n	+.00
+11	StksPLAbsolRet		+411.12n	–.04
+4	TotalRetrn	0	10.93n	+.00
	PIMCO Inst I			
	$ 260 bil 800–927–4648			
+4	All Asset	0	12.30n	–.02
+2	AllAsstAuth	–1	9.88n	–.03
–5	Commod RR	–2	5.18n	+.00
–8	ComPLUSStrtgyFd	–4	9.67n	+.00
+3	CredtAbsolRtrnFd		010.73n	+.00
+6	Diverse Inc	+1	11.64n	+.00
+1	EmgLocBdFd	0	9.06n	+.00
–2	EmgMktCurr	–1	9.82n	+.00
+7	Emrg Mkt Bd	+1	11.02n	+.00
+2	ForBondUnhg	–2	10.01n	+.00
+8	FrgnBdHedg	0	11.15n	+.00
+10	FundIdxPlTr	+4	7.42n	+.00
+5	High Yield	+1	9.59n	–.02
+8	Income	0	12.66n	–.03

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
–4	InterFundInxARSt		011.54n	+.00
+8	InvGrCorpBd	0	10.74n	+.00
+16	LgTrmCrdtFd	0	12.91n	+.00
+1	Low Dur	0	10.32n	–.01
+18	**LT US Govt**	**0**	**10.64n**	**+.03**
+3	Mod Duration	0	10.68n	–.01
+5	Real Return	0	11.37n	+.00
+36	RealEstRR	+11	5.00n	+.00
+2	SeniorFloRate	0	10.13n	+.00
+1	Short Term	0	9.91n	+.00
+27	StkPlsLgDur	+4	8.44n	+.00
–9	StockPLSARShtStr	–4	2.46n	+.00
+12	StocksPlRet	+4	11.34n	–.05
+12	StocksPLUS	+4	10.86n	+.00
+4	TotalRetrn	0	10.93n	+.00
+4	TotalRetrnII	0	10.42n	+.00
+4	TotalRetrnIII	0	9.62n	+.00
	PIMCO P			
	$ 31.9 bil 800–426–0107			
+4	All Asset	0	12.32n	–.02
+2	AllAsstAuth	–1	9.89n	–.02
–5	Commod RR	–2	5.17n	+.00
+10	FundIdxPls	+4	7.39n	+.00
+8	Income	0	12.66n	–.03
+1	Low Dur	0	10.32n	–.01
+4	TotalRetrn	0	10.93n	+.00
+3	UnconstrndBdFd		011.27n	–.01
	Pioneer A			
	$ 16.9 bil 800–225–6292			
+8	CoreEq	+4	16.89	–.08
+11	Growth	+5	18.55	–.07
+8	Pioneer	+4	41.97	–.14
+5	SlelectMidCapGrowth	+4	41.11	–.26
+5	Strat Inc	0	11.02	+.00
	Pioneer Y			
	$ 8.4 bil 800–225–6292			
+11	Growth	+5	18.71n	–.06
+5	Strat Inc	0	11.01n	–.01
	PNC Funds			
	$ 3.4 bil 800–551–2145			
+2	SmlCpl b	+9	21.12n	+.05
	Price Advisor			
	$ 22.8 bil 800–638–5660			
+7	Blu Chp Gr	+5	69.07n	–.27
+5	Equity Inc	+3	33.87n	–.10
+7	Growth Stk	+5	55.68n	–.31
+5	Retire 2030	+3	23.62n	–.10
+5	Retire2025	+3	16.11n	–.06
–2	SmlCapVal	+7	49.11n	–.18
+9	Value	+4	36.54n	–.16
	Price Funds			
	$ 560 bil 800–638–5660			
+17	Afrc&MidE	–1	10.52n	–.08
+5	Balanced	+2	24.00n	–.08
+7	BlueChip Gr	+5	67.26n	–.26
+8	BlueChipGr	+5	69.55n	–.28
+9	Cap Opport	+4	23.73n	–.07
+10	CapApprc	+4	28.22n	–.05
+4	DiverSmCapGr		+725.93n	–.10
+8	Dividend Gr	+5	36.15n	–.05
+7	EmergMktBd	+1	12.75n	–.08
+7	EmrgMktStk	+2	34.39n	–.04
+5	Equity Inc	+3	33.95n	–.11
+10	Equity Index	+4	54.27n	–.15
–8	Euro Stk	+1	19.74n	–.08
+5	ExtEqMktIx	+6	25.53n	–.15
+5	FinanclSvc	+5	21.60n	+.00
+23	Global Tech	+5	15.72n	–.21
+5	GNMA	0	9.65n	+.00
+9	Growth & Inc	+5	32.05n	–.04
+7	GrowthStk	+5	56.51n	–.31
+7	GrowthStk R	+5	54.52n	–.30
+26	Health Sci	+8	72.87n	–.19
+4	High Yld	0	7.08n	–.02
+4	HiYld Inst	0	9.61n	–.03
+2	InstFltRt	0	10.15n	+.00
+17	InstlAfME	–1	8.09n	–.06
+9	InstUSRsch	+4	13.55n	–.04
–1	**Intl Bond**	**–2**	**9.23n**	**+.03**
–2	Intl Gr&Inc	+1	15.19n	–.11
+1	Intl Stock	+3	16.49n	–.11
0	IntlDiscov	+1	55.50n	–.43
+8	LgCoreGr I	+5	24.87n	–.09
+7	LgCpGrInstl	+5	29.21n	–.14
+10	LrgCapVal I	+4	20.63n	–.04
+8	MD Tax Fr Bd	0	10.90n	–.01
+4	Media&Telcm	+3	72.57n	–.67
+9	Mid Cap Gr	+6	79.24n	–.22
+7	Mid Cap Val	+3	32.24n	–.18
+9	MidCapEqGrI	+6	44.47n	–.13
+10	New Asia	+2	17.58n	–.06
–2	New Era	–3	43.63n	–.89
+5	New Income	0	9.57n	+.00
+8	NewAmerGr	+5	47.49n	–.14
+3	NewHorizns	+6	47.75n	–.23
–3	OverseasStk	+1	9.82n	–.07
+4	PersnlStrIn	+1	18.86n	–.04
+5	PersonlStrGr	+3	32.03n	–.13
+5	PrsnlStrBal	+2	23.81n	–.07
+26	RealEstate	+11	26.35n	–.01
+5	Ret2020 Adv	+2	21.29n	–.07
+5	Retire 2010	+2	18.69n	–.05
+5	Retire 2020	+2	21.46n	–.07
+5	Retire 2030	+3	23.84n	–.09
+5	Retire 2035	+3	17.17n	–.07
+6	Retire 2040	+3	24.70n	–.11
+5	Retire 2040	+3	24.47n	–.11
+4	Retire Inc	+1	15.22n	–.03
+5	Retire2015	+2	15.05n	–.04
+5	Retire2020R	+2	21.09n	–.07
+5	Retire2025	+3	16.21n	–.06
+5	Retire2030R	+3	23.43n	–.09
+5	Retire2040R	+3	24.30n	–.11
+5	Retire2045	+3	16.46n	–.08
+5	Retire2050	+3	13.77n	–.07
+5	Rtr2005	+1	13.53n	–.03
+12	Sci & Tech	+4	43.86n	–.29
–2	Sm Cap Value	+7	49.56n	–.18
+3	SmCapStk	+8	46.04n	–.09
+3	SmCapStkAd	+8	45.53n	–.10
+4	SmCapStkIn	+8	21.01n	–.04
+5	Spectrum Gr	+3	25.18n	–.12
+4	Spectrum Inc	0	12.96n	–.01
+1	ST Bond	0	4.78n	+.00
+6	SumtMunInt	0	11.94n	–.01
+10	Tax Fr Inc	0	10.41n	+.00
+9	TotEqMktIdx	+4	23.16n	–.08
+13	Tx Fr Hi Yld	+1	11.89n	+.00
+2	Tx Fr Sh Intm	0	5.66n	+.00
+10	Value	+4	37.03n	–.16
	PRIMECAP Odyssey Funds			
	$ 13.6 bil 800–729–2307			
+12	AggrGrowth	+8	33.17n	–.10
+11	Growth	+7	26.19n	–.01
+11	Stock	+4	23.59n	–.01
	Principal Investors			
	$ 83.6 bil 800–222–5852			
+5	Bd & Mtg In	0	10.95n	–.01
–1	DivrsIntlI	+2	11.84n	–.01
+8	GlbDivIncA	+1	14.72	–.04
+4	HiYldI Inst	+1	10.47n	–.02
+8	Lg Val A	+4	13.87	–.04
+8	Lg Val Ins	+4	13.88n	–.03
+7	LgCapGrl I	+5	13.52n	–.08
+11	LgS&P500 I	+4	14.31n	–.04
+10	LgS&P500 J	+4	14.17n	–.04
+10	LgS&P500A	+4	14.30	–.04
+9	LgValIII I	+4	15.70n	–.05
+9	LrgCapGr I	+4	11.84n	–.07
+5	LT 2020 In	+2	14.89n	–.03
+5	LT 2030 I	+3	15.17n	–.03
+5	LT 2040 I	+3	15.67n	–.04
+5	LT 2050 I	+3	15.20n	–.04
+8	MidCpBIndA	+4	21.82	–.13
+8	MidCpBIndJ	+4	21.10n	–.13
+4	MidGrIII I	+5	12.66n	–.06
+9	MidValI I	+4	16.44n	–.08
+11	PrefSecs I	+1	10.44n	+.01
0	SmCpBIndJ	+7	20.90n	–.04
–1	SmGrI Inst	+8	13.99n	–.03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD. Civil Action No. 12 Civ. 1845 (PGG)

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT, (II) SETTLEMENT FAIRNESS HEARING, (III) MOTION ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, AND (IV) MOTION FOR LEAD PLAINTIFF'S AWARD OF REASONABLE COSTS AND EXPENSES

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED COMMON STOCK IN NEVSUN RESOURCES LTD. FROM MARCH 28, 2011 THROUGH FEBRUARY 6, 2012, INCLUSIVE, ON THE NEW YORK STOCK EXCHANGE OR ANY OTHER U.S. TRADING PLATFORM, AND THAT CLAIM TO HAVE SUFFERED LOSSES AS A RESULT OF SUCH PURCHASE OR ACQUISITION.

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

YOU ARE HEREBY NOTIFIED that pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, (i) that the above-captioned litigation (the "Action") has been certified as a class action on behalf of all persons and entities who purchased common stock in Nevsun Resources Ltd. ("Nevsun") on the New York Stock Exchange or any other U.S. trading platform from March 28, 2011 through February 6, 2012, inclusive (the "Class"), except for certain persons and entities who are excluded from the Class by definition as set forth in the Stipulation of Settlement in the Action; and (ii) that Lead Plaintiff in the Action has reached a proposed settlement with the Defendants for $5,995,000.00 in cash, plus interest thereon if the Settlement is approved by the Court (the "Settlement").

A hearing will be held on January 22, 2015, at 10:00 a.m., before the Honorable Paul G. Gardephe, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, for the purpose of determining: (1) whether the Court should grant final certification of the Class solely for the purposes of the Settlement; (2) whether the proposed settlement of the Action for the sum of $5,995,000.00 in cash should be approved by the Court as fair, reasonable and adequate; (3) whether, thereafter, this Action should be dismissed with prejudice against the Defendants and the Released Parties, as set forth in the Stipulation of Settlement dated as of May 1, 2014; (4) whether the proposed Plan of Allocation of settlement proceeds is fair, reasonable and adequate and therefore should be approved; and (5) whether the application of Lead Counsel for the payment of attorneys' fees and expenses incurred in connection with this Action, together with interest thereon and the reimbursement of lost wages and expenses to Lead Plaintiff for representing the Class should be approved.

If you purchased or otherwise acquired Nevsun common stock from March 28, 2011 through February 6, 2012, inclusive, on the New York Stock Exchange or any other U.S. trading platform, and claim to have suffered losses as a result of such purchase or acquisition, your rights may be affected by this Action and the settlement thereof. If you have not received a detailed Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Hearing, (III) Motion for Attorneys' Fees, and Reimbursement of Litigation Expenses, and (IV) Motion for Lead Plaintiff's Award of Reasonable Costs and Expenses, and the Proof of Claim Form, you may obtain copies by writing to Nevsun Resources Ltd. Securities Litigation, c/o GCG, P.O. Box 10073, Dublin, OH 43017-6673, or by downloading this information at www.nevsunresourcessettlement.com.

If you are a Class Member, in order to be eligible to receive a distribution of the Net Settlement Fund, you must submit a Claim Form postmarked no later than January 22, 2015, establishing that you are entitled to a recovery. If you are a Class Member and do not submit a proper Claim Form, you will not share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgment or orders entered by the Court in the Action.

If you are a Class Member and wish to exclude yourself from the Class, you must submit a request for exclusion such that it is received no later than December 25, 2014, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Class, you will not be bound by any judgment or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objection to any aspect of the proposed Settlement, the proposed Plan of Allocation, any award of attorneys' fees and expenses to Lead Counsel, or any award to Lead Plaintiff for his representation of the Class must be filed with the Clerk of the Court no later than January 2, 2015, and ***received*** by the following no later than January 2, 2015:

KAPLAN FOX & KILSHEIMER LLP
JEFFREY P. CAMPISI
850 Third Avenue, 14th Floor
New York, New York 10022
Tel: (212) 687-1980
Fax: (212) 687-7714

RIGRODSKY & LONG, P.A.
TIMOTHY J. MACFALL
825 East Gate Boulevard; Suite 200
Garden City, New York 11530
Tel: (516) 683-3516
Fax: (302) 654-7530

Counsel for Lead Plaintiff

GIBSON, DUNN & CRUTCHER LLP
JONATHAN C. DICKEY
LEE DUNST
GABRIELLE LEVIN
200 Park Avenue, 48th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Counsel for Defendants

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.

DATED: October 6, 2014

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL HILL, et al., Plaintiffs,
v.
ACCENTIA BIOPHARMACEUTICALS, INC., et al., Defendants.

Case No. 8:13-cv-01945-SDM-EAJ

SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION AND SETTLEMENT FAIRNESS HEARING

TO: ALL PERSONS WHO, DURING THE PERIOD FROM JULY 26, 2008, TO AND THROUGH AUGUST 14, 2012, INCLUSIVE, PURCHASED OR OTHERWISE ACQUIRED THE COMMON STOCK OF ACCENTIA BIOPHARMACEUTICALS, INC., AND/OR THE COMMON STOCK OF BIOVEST INTERNATIONAL, INC., AND WERE DAMAGED THEREBY (THE "SETTLEMENT CLASS")

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the Settlement (the "Settlement") has been preliminarily approved in the above-captioned action. The proposed Settlement provides for the establishment of a settlement fund of $1,250,000.00. A hearing will be held before the Honorable Steven D. Merryday, in the United States District Court for the Middle District of Florida, Sam M. Gibbons U.S. Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, at 9:00 a.m. on January 26, 2015, to determine whether (1) the proposed Settlement is fair, reasonable and adequate and should be approved; and (2) to dismiss with prejudice the Action and the claims of the Settlement Class Members.

The Court will also consider: (1) the proposed Plan of Allocation for distribution of the Settlement proceeds, (2) the application by Plaintiffs' Counsel for an award of attorneys' fees and expenses, which is payable out of the Settlement Fund, and (3) the application for a service award to the Lead Plaintiffs, which is payable out of the Settlement Fund.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and a Proof of Claim and Release form ("Proof of Claim"), you may obtain copies of these documents by identifying yourself as a member of the Class and by contacting: Accentia and Biovest Securities Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914. Toll-Free Phone: 800-766-3330; Fax: 516-931-0810; Website: www.berdonclaims.com; Email: visit www.berdonclaims.com and click on "Contact Us". Inquiries, other than requests for the Notice and Proof of Claim, may be made to Plaintiffs' Lead Counsel: Thomas G. Shapiro; SHAPIRO HABER & URMY LLP, Seaport East, Two Seaport Lane, Boston, MA 02210. Phone: 617-439-3939; Email: cases@shulaw.com.

To participate in the Settlement, you must file a Proof of Claim by mailing it to the Claims Administrator at the address set forth above postmarked no later than February 19, 2015. If you want to exclude yourself from the Class, you must file a request for exclusion received no later than January 5, 2015 in the manner and form explained in the detailed Notice referred to above. **IF YOU ARE A CLASS MEMBER AND DO NOT EXCLUDE YOURSELF AND DO NOT FILE A TIMELY AND PROPER PROOF OF CLAIM, YOU WILL NOT SHARE IN THE SETTLEMENT, BUT YOU WILL STILL BE BOUND BY THE TERMS AND CONDITIONS OF THE SETTLEMENT AND ANY FINAL ORDER AND JUDGMENT OF THE COURT.**

Further information regarding filing a claim, documentation required, etc., may be obtained by contacting the Claims Administrator, as set forth above.

PLEASE DO NOT CONTACT ACCENTIA, BIOVEST, THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

Dated: November 5, 2014 BY ORDER OF THE UNITED STATES DISTRICT COURT

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
+2	SmlS&P600I	+9	25.23n	–.08
+2	SmValII I	+7	14.01n	–.05
+6	StrAsCnGrA	+3	18.79	–.04
+5	StrAstBalA	+3	16.34	–.03
	ProFunds Inv			
	$ 1.8 bil 888–776–3637			
+47	BiotechUltraSector	+16	70.77n	–.90
+31	UltNasdq100	+10	84.22n	–.54
	Prudential A			
	$ 24.8 bil 800–225–1852			
+26	HealthSci	+10	50.88	–.15
+5	MidCapGr	+5	40.90	–.25
–11	NaturlRsrc	–9	43.95	–1.45
+1	Sh Tm Corp	0	11.25	+.00
+20	Utility	+2	17.02	–.26
	Prudential C			
	$ 3.8 bil 800–225–1852			
+7	Eqty Inc	+3	16.62n	–.14
+25	HealthSci	+10	43.28n	–.13
	Prudential Z&I			
	$ 16.6 bil 800–225–1852			
+14	GlbRealEstZ	+8	24.95n	+.02
+9	GrowthZ	+4	31.46n	–.13
+26	HealthSci	+10	53.99n	–.15
+6	MidCapGr	+5	42.74n	–.26
+6	SmallCo	+5	30.43n	–.11
+10	Stock Idx I	+4	45.07n	–.13
+10	Stock Idx Z	+4	45.05n	–.13
+6	TotRetBdZ	0	14.42n	+.00
+20	Utility	+2	17.03n	–.26
	Putnam A			
	$ 47.2 bil 800–225–1581			
+7	Asset All Gr	+3	17.86	–.05
+9	CA Tax Ex	0	8.25	–.01
+6	CapSpec	+4	38.06	–.40
+2	Diversifd Inc	0	7.77	+.00
+2	EqtSpec	+2	42.94	–.59
+10	Equity Inc	+4	22.23	–.06
+24	GlbHlthCre	+6	70.53	+.10
+8	Gr & Inc	+3	21.30	–.09
+11	Growth Opp	+4	26.87	–.18
+11	Investors	+4	21.53	–.09
+6	Mlt Cap Val	+5	20.15	–.10
+10	MltCpGrw	+5	83.57	–.50
+12	Research	+4	25.30	–.12
+7	Voyager	+5	33.70	–.07
	Putnam C			
	$ 5.4 bil 800–225–1581			
+6	CapSpec	+3	37.24n	–.40
+1	EqtSpec	+2	41.53n	–.58
+9	Equity Inc	+4	22.01n	–.06
	Putnam Y			
	$ 11.6 bil 800–225–1581			
+7	CapSpec	+4	38.26n	–.41
+2	EqtSpec	+2	43.29n	–.60
+10	Equity Inc	+4	22.23n	–.06
	Ridgeworth			
	$ 21.4 bil 877–984–7321			
+8	LgValEq A	+4	17.91	+.00
+8	LgValEq I	+4	18.06n	–.01

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
+8	MidValEq I	+4	14.66n	–.03
+2	SFIRtHiIncl	0	8.92n	+.00
–1	SmValEq I	+8	17.70n	–.06
+1	US UlShBd I	0	10.14n	+.00
	Royce Funds			
	$ 19.8 bil 800–221–4268			
–4	Opport I	+6	14.91n	–.08
–2	PA Mutl Inv	+6	14.45n	–.08
–1	PremierInv	+4	21.98n	–.22
–1	SpecialEq I	+9	24.82n	–.09
0	TotlRet I	+6	16.36n	–.06
	RS Funds			
	$ 6.0 bil 800–766–3863			
+7	Growth	+4	20.73	–.08
+9	LrgCpAlpha	+3	64.26	–.39
+2	SmCapGrA	+9	64.99	–.32
	Russell Funds S			
	$ 19.1 bil 800–787–7354			
+3	EmergMkts	0	18.56n	+.00
+3	Glb Eqty	+4	11.72n	+.00
+15	GlbRlEstSec	+8	40.79n	+.00
–4	IntlDvlMkt	+1	35.51n	+.00
+5	Strat Bd	0	11.28n	+.00
+1	USSmlEqt	+9	31.10n	+.00
	Russell Lifepoints C			
	$ 2.9 bil 800–787–7354			
+3	Bal Strat	+2	12.23n	+.00
	Rydex Dynamic			
	$ 624 mil 800–820–0888			
+32	Ndq1002xStH	+10	354.83n	–2.27
	Rydex Investor			
	$ 1.7 bil 800–820–0888			
+29	Biotech	+11	82.54n	–.72
+16	Ndq	+5	24.68n	–.08
	—S—T—U—			
	Schwab Funds			
	$ 56.9 bil 800–435–4000			
+10	1000Idx Inv	+4	53.45n	–.18
+11	Core Equity	+4	25.43n	–.05
+9	Div Eq Sel	+4	19.12n	–.04
+9	FdUSLgInst	+3	15.49n	–.05
+21	Health Care	+7	28.20n	+.05
–4	Intl Idx Sel	+1	19.16n	–.08
+11	Lrg Gr Sel	+5	18.35n	–.03
+11	S&P500 Slct	+4	31.89n	–.09
+1	Sm Cap Select	+8	27.94n	–.12
+4	Sm Eq Sel	+8	25.00n	–.06
+9	TotStkIdxSel	+4	36.83n	–.12
	Scout Funds			
	$ 10.4 bil 800–996–2862			
–4	Intl	+2	35.30n	–.08
+2	Mid Cap	+2	18.15n	–.13
+5	Small Cap	+8	25.11n	–.14
	SEI Portfolios			
	$ 25.1 bil 800–342–5734			
+5	CoreFxdInst A	0	11.54n	+.00
+1	Emrg Mkt A	0	10.80n	–.02
+3	High Yld Bond	0	7.70n	–.02
–5	Intl Equity A	+1	9.70n	–.03
+4	IntlEmrgMkt A		010.21n	–.03

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
+8	Larg Cp Val A	+3	25.94n	–.13
+7	Lge Cp Gr A	+5	34.85n	–.21
+10	S&P 500 Idx A	+4	53.90n	–.16
+10	S&P 500 Idx E	+4	54.20n	–.15
+8	TxMgdLgCp A	+4	19.95n	–.10
+13	VolatilityA	+5	18.11n	–.01
	Selected Funds			
	$ 5.7 bil 800–243–1575			
+4	American D	+3	48.00n	–.24
+3	American S	+3	47.97n	–.25
	Sentinel Group			
	$ 3.8 bil 800–282–3863			
+8	CmmnStk A	+4	45.82	–.08
	Sequoia Fund			
	$ 7.8 bil 800–686–6884			
+3	**Sequoia**	**+4**	**226.90n**	**+.69**
+8	† *SoundShore*	+2	51.83n	–.32
	SSGA Funds			
	$ 3.1 bil 800–647–7327			
+10	IAM b	+4	15.57n	–.04
+10	S&P 500 Idx	+4	32.30n	–.09
	State Frm Asc			
	$ 6.8 bil 309–766–2029			
+9	Balanced	+2	66.86n	–.01
+10	Growth	+3	74.81n	+.03
	Stratton Funds			
	$ 1.6 bil 800–634–5726			
+1	Sm Cap Yield	+4	74.31n	–.42
	SunAmer Foc			
	$ 3.5 bil 800–858–8850			
+7	**Div Strat B**	**+5**	**18.11n**	**+.06**
+7	**Div Strat C**	**+5**	**18.10n**	**+.06**
	Target Funds			
	$ 2.8 bil 800–442–8748			
+3	SmallCapVal	+7	27.70n	–.13
	TCM Funds			
	$ 293 mil 800–536–3230			
+3	TCMSmGr	+7	35.56n	–.20
	TCW Funds			
	$ 18.1 bil 800–386–3829			
+6	Div Foc	+4	16.93n	–.06
+6	EmMktsInc I	+1	8.53n	–.04
+7	RelValLrgI	+4	21.99n	–.10
+5	Select Eq I	+5	26.54n	–.13
+5	TotRetBd I	0	10.31n	+.00
+5	TotRetBd N	0	10.64n	+.00
	TempletonInstl			
	$ 7.0 bil 800–321–8563			
–6	ForeignEqty	–2	21.20n	–.14
	Third Avenue			
	$ 8.4 bil 800–880–8442			
0	FocCredFdInst	–2	10.63n	+.00
+11	RlEstVal I	+4	32.09n	+.01
+4	Value Inst	+2	59.48n	–.21
	Thompson IM			
	$ 3.7 bil 877–886–5777			
+3	Bond	0	11.74n	–.01
	Thornburg A			

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
	$ 12.3 bil 800–847–0200			
0	Core Growth	+4	27.27	–.17
+4	Income Bldr	0	21.09	–.13
–4	Intl Value	+2	29.76	–.16
+3	Ltd Mun Nat	0	14.57	–.01
	Thornburg C			
	$ 9.1 bil 800–847–0200			
+4	Income Bldr	0	21.08n	–.14
	Thornburg I			
	$ 14.8 bil 800–847–0200			
–4	Intl Value	+2	30.36n	–.16
+4	Ltd Trm Inc	0	13.52n	+.00
+3	Ltd Trm Mun	0	14.57n	–.01
	Thrivent Funds A			
	$ 6.8 bil 800–847–4836			
+5	Lrg Cap Stk	+3	27.57	–.13
+9	Muni Bond	0	11.66	+.00
	Thrivent Funds Instl			
	$ 1.2 bil 800–847–4836			
+6	Lrg Cap Val	+3	20.65n	–.12
	TIAA–CREF FUNDS			
	$ 19.9 bil 800–842–2776			
+5	Bond	0	10.56n	+.00
+9	Equity Idx	+4	15.46n	–.05
+9	Growth&Inc	+4	12.90n	–.06
–8	IntlEquity	+2	10.76n	+.00
+6	LgCpValPrem	+3	18.52n	–.07
+9	MdCpValPrm	+5	24.85n	–.10
	TIAA–CREF Instl Retirement			
	$ 14.1 bil 800–223–1200			
+9	Equity Idx	+4	15.65n	–.06
+8	Growth&Inc	+4	13.07n	–.05
+10	LgCpValIdx	+4	18.15n	–.05
+10	LrgCpGrIdx	+4	21.08n	–.09
+9	MidCapValu	+5	24.75n	–.10
+10	S&P500 Idx	+4	22.70n	–.07
	TIAA–CREF Instl Funds			
	$ 42.6 bil 800–842–2776			
+5	Bond Index	0	10.87n	+.00
+5	Bond Plus	0	10.74n	–.01
+8	EnLgGrIdxI	+4	12.13n	–.06
+8	EnLgVlIdxI	+4	11.13n	–.05
+4	HiYldInstl	+1	10.21n	–.03
+4	InflLnkBond	0	11.46n	+.00
–3	IntlEqtyIdx	+1	18.57n	–.07
+6	LargeCpVal	+3	18.57n	–.07
+3	LfCycl 2040	+3	11.18n	–.04
+10	LgCpGrowIdx	+4	20.96n	–.09
+10	LgCpValIdx	+4	17.92n	–.04
+9	LrgCpGrowth	+5	16.55n	–.05
+9	MidCapValu	+5	24.92n	–.10
+11	S&P500 Idx	+4	22.85n	–.06
+4	SmlCapEqty	+8	19.54n	–.09
	TIAA–CREF Instl Funds Reta			
	$ 6.2 bil 800–223–1200			
+9	EquityIndex	+4	15.69n	–.06
+8	Growth&Inc	+4	16.24n	–.07
+8	LrgCpGrowth	+5	16.49n	–.05
+9	MidCapValu	+5	24.40n	–.11
	Tocqueville			
	$ 4.1 bil 800–697–3863			
–5	Delafield	+3	36.07n	–.27

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
–8	Gold	–13	30.22n	–.77
	Touchstone			
	$ 13.0 bil 800–543–0407			
+5	Mid Cap Y	+4	24.16n	–.20
+7	SandCpInsGr	+5	23.84n	–.12
+6	SandSelGrZ	+5	18.57n	–.08
+7	SandsSelGrY	+5	19.04n	–.09
	Tr For Pro Mng			
	$ 2.4 bil			
+8	CnvrgncCrPlsInstl		+518.35n	–.03
+9	GrstnFshrMFGrEqt	+5	18.14n	–.10
+9	SmeadValInstl		+439.58n	–.13
+9	SmeadValInv	+4	39.51n	–.12
	Transamerica A			
	$ 4.6 bil 888–233–4339			
+4	AstAlModGr	+2	15.18	–.04
	Transamerica C			
	$ 4.0 bil 888–233–4339			
+3	AstAllModGr	+2	15.07n	–.03
	Transamerica Partners			
	$ 2.3 bil 800–755–5801			
+7	Lg Value	+4	26.84n	–.16
+10	StockIndex	+4	15.65n	–.05
	Transamerica Partners Instl			
	$ 3.8 bil 800–755–5801			
+8	Mid Value	+5	22.04n	–.06
+10	StkIndex	+4	13.47n	–.04
	Tweedy Browne			
	$ 10.7 bil 800–432–4789			
0	GlblVal	–1	26.69n	–.11
	UBS Investment Fds			
	$ 1.6 bil 800–794–7753			
+2	USSmlGrY	+9	25.88n	+.00
	Undiscovered Mgrs			
	$ 981 mil 888–242–3514			
+4	BehaveVal A	+4	55.04	–.13
+5	BehaveVal I	+4	56.22n	–.13
	USAA Group			
	$ 46.1 bil 800–531–8722			
+4	CornerstModAgg		+126.05n	–.07
+4	Extn Mkt Idx	+6	18.37n	–.11
+10	Growth	+5	25.03n	+.01
+8	Growth&Incm	+3	23.42n	–.07
+6	Hi Inc	0	8.77n	–.02
+6	Income	0	13.29n	+.00
+9	IncomeStk	+4	18.28n	–.03
–4	International	+1	29.28n	–.19
+6	Intm Trm Bd	0	10.91n	–.01
+16	NASDAQ 100	+5	12.00n	–.04
+11	S&P 500	+4	28.84n	+.00
+11	S&P500Rwd	+4	28.85n	+.00
+16	Sci & Tech	+6	22.21n	–.04
+2	Sh Term Bond	0	9.22n	+.00
+7	Tax Ex Intmd	0	13.58n	–.01
+9	Tax Ex LT	0	13.75n	+.00
+1	Tx Ex Sh Trm	0	10.71n	+.00
+3	ViceFund	+4	29.50n	–.12

2014 % Chg	Fund	4 Wk % Chg	Net Asset Value	NAV Chg
	—V—W—X—			
	Value Line			
	$ 1.8 bil 800–223–0818			
+4	EmergOpps	+8	49.18n	–.13
+11	† *ValueTrC*	+4	64.51n	–.33
	Vanguard Admiral			
	$ 861 bil 800–997–2798			
+11	500 Index	+4	185.87n	–.53
+8	Balance Idx	+3	29.26n	–.05
+11	CA LngTxEx	0	12.05n	–.01
+7	CAIntmTxEx	0	11.77n	–.01
+15	Cap Opps r	+7	122.50n	+.04
+6	EmgMkSt r	+1	35.24n	–.04
–6	Energy r	–5	118.14n	–2.42
+9	Equity Inc	+4	66.64n	–.05
–9	EuroStkIdx r	0	66.62n	–.18
+1	Explorer	+6	97.29n	–.62
+5	Ext Mkt Idx	+6	65.58n	–.40
+6	GNMA	0	10.79n	+.00
+11	Growth Idx	+5	52.63n	–.25
+11	Growth&Inc	+4	71.08n	–.19
+5	HiYld Corp r	+1	6.07n	–.01
+10	HiYldTxEx	0	11.21n	–.01
+25	Hlth Care r	+7	94.53n	–.13
+22	HlthcareIdx r	+7	61.91n	–.01
+5	InflProSecs	0	26.38n	+.00
+4	Int Treas	0	11.35n	+.00
–4	Intl Growth r	+2	71.48n	–.48
+6	Intmd Tax Ex	0	14.22n	–.02
+5	IntmdInvGrd	0	9.91n	+.00
+10	LargeCapIdx	+4	46.63n	–.15
+14	LgInvGdAdmr	0	10.63n	+.00
+10	LT Tax Ex	0	11.70n	–.01
+19	LT Treas	0	12.61n	+.02
+2	LtdTrm TxEx	0	11.07n	+.00
+10	Mid Cap Idx	+5	149.60n	–.73
+9	Morgan Gr	+5	86.09n	–.35
+9	NJLngTxEx	0	12.23n	–.01
+10	NYLngTxEx	0	11.75n	–.01
0	Pac Stk Idx r	+3	73.97n	–1.02
+10	PALngTxEx	0	11.67n	–.01
+16	Primecap r	+5	110.68n	+.21
+27	REIT Idx r	+11	113.07n	+.19
+1	Sh Tm TxEx	0	15.86n	+.00
+1	Sh Trm Fed	0	10.77n	+.01
+2	ShrtInvAdmr	0	10.72n	+.00
+1	ShTrmBdIdx	0	10.52n	+.00
+4	Small Idx	+6	55.08n	–.32
+2	SmGthAdml	+6	43.63n	–.31
+1	ST Treas	0	10.71n	+.00
+5	Tot Bd Idx	0	10.85n	+.00
+9	TtlStMktIdx	+4	50.46n	–.18
+10	TxMgdCap r	+4	102.84n	–.37

Mutuals continued on B16

EXHIBIT C

Katie Sparks

From: sfhubs@prnewswire.com
Sent: Wednesday, November 05, 2014 6:00 AM
To: GCGBuyers; Katie Sparks
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Word Count: 983
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Exhibit 2

IN RE: NEVSUN RESOURCES LTD.

12 Civ. 1845 (PGG)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2013 U.S. Dist. LEXIS 162048

September 27, 2013, Decided
September 27, 2013, Filed

COUNSEL: [*1] For Craig F. Piazza, on behalf of himself and all others similarly situated, Lead Plaintiff: Brian D. Long, Roda & Nast, P.C., Lancaster, PA; Frederic Scott Fox, Sr, Jeffrey Philip Campisi, Pamela A. Mayer, Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP (NYC), New York, NY; Scott Jason Farrell, Rigrodsky & Long, P.A. (GARDEN CITY), Garden City, NY; Seth David Rigrodsky, Rigrodsky & Long, P.A., Wilmington, DE; Timothy John MacFall, Rigrodsky & Long, P.A.(LIS), Garden City, NY.

For Scott F. Colebourne, Plaintiff: Brian D. Long, Roda & Nast, P.C., Lancaster, PA; Frederic Scott Fox, Sr, Jeffrey Philip Campisi, Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP (NYC), New York, NY; Seth David Rigrodsky, Rigrodsky & Long, P.A., Wilmington, DE; Timothy John MacFall, Rigrodsky & Long, P.A.(LIS), Garden City, NY.

For Nevsun Resources Ltd., Clifford T. Davis, Peter J. Hardie, Scott Trebilcock, Defendants: Jonathan Cobb Dickey, LEAD ATTORNEY, Gabrielle Frances Levin, Gibson, Dunn & Crutcher, LLP (NY), New York, NY; Lee Gordon Dunst, Gibson, Dunn & Crutcher, L.L.P., New York, NY.

JUDGES: Paul G. Gardephe, United States District Judge.

OPINION BY: Paul G. Gardephe

OPINION

ORDER

PAUL G. GARDEPHE, U.S.D.J.:

This is a consolidated putative [*2] class action brought on behalf of purchasers of Defendant Nevsun Resources Ltd.'s common stock between March 31, 2011 and February 6, 2012 (the "Class Period"). According to the Consolidated Class Action Complaint ("Complaint"), Nevsun and its senior management issued materially false and misleading statements concerning operations at Bisha Mine ("Bisha"), in which Nevsun holds a controlling interest. The Complaint alleges claims under *Sections 10(b)* and *20(a)* of the Securities Exchange Act of 1934 and *Rule 10b-5*. Defendants have moved to dismiss, arguing that the challenged statements are non-actionable forward-looking statements and that Plaintiffs have not pled facts supporting a strong inference of scienter. For the reasons stated below, Defendants' motion to dismiss will be denied.

BACKGROUND

Nevsun is a "natural resource" company based in Vancouver, British Columbia. (Cmplt. ¶¶ 18, 22) Its common shares are traded on both the New York Stock Exchange Amex and the Toronto Stock Exchange. (Id. ¶

18) Nevsun's only revenue-producing property is the Bisha Mine, a gold and base metal (copper and zinc) mine in Eritrea. (Id. ¶¶ 2, 24)

On February 7, 2012, Nevsun issued a press release announcing [*3] that (1) it had overstated gold ore reserves at the Bisha Mine by 30-35%, (or approximately 1.2 million tons); and (2) 2012 gold production at Bisha Mine would be "about half of what Nevsun was previously expecting." (Cmplt. ¶¶ 4, 14, 92-93) Nevsun blamed a "resource estimate used for mine planning" for the overstatement. (Id. ¶ 93) The value of Nevsun's stock dropped nearly 31% in one day, wiping out approximately $388 million in market capitalization. (Id. ¶¶ 96, 166)

Plaintiffs allege that Nevsun; its President and Chief Executive Officer, Cliff F. Davis; its Chief Financial Officer, Peter Hardie; and its Vice President of Business Development and Investor Relations, Scott Trebilcock, violated the Securities Exchange Act through a series of false statements and omissions of material fact about the gold reserves at Bisha. (Id. ¶¶ 27, 31, 34) The alleged Class Period begins on March 28, 2011 -- when Defendants issued what Plaintiffs assert is a misleading press release concerning gold ore reserves at Bisha -- and ends on February 6, 2012 the day before the announcement concerning Bisha's reduced gold production. (Cmplt. ¶¶ 4, 14, 93, 107, 183)

The Complaint alleges that Defendants false [*4] statements of material fact and omissions of material fact include the following:

> (a) Nevsun's reported gold ore reserves were materially overstated by approximately 1.2 to 1.3 million tons, or by 35%, an overstatement of approximately 190,000 to 230,000 ounces of gold, (representing lost sales of approximately $303 to $368 million based on the price of gold per ounce as reported by Nevsun as of June 30, 2012 ($1,599 per ounce));
>
> (b) Defendants failed to disclose that they caused Nevsun to progress through Bisha's Oxide zone materially faster than reported because Defendants encountered pockets of worthless waste rock instead of gold ore, as reflected in an ever increasing Strip Ratio, indicating that Bisha's gold ore reserves would be exhausted sooner than Defendants reported;
>
> (c) Defendants failed to disclose that Bisha's three most senior executives left Nevsun/Bisha Mining Share Company;
>
> (d) Defendants failed to disclose that the Company's Oxide reserve model was materially defective, as evidenced by routine reconciliation reports, actual production at the Bisha Mine and mining statistics that showed the gold ore mined in the Oxide zone at Bisha was materially less than the gold ore [*5] reserves Defendants reported to investors. Indeed, Defendants knew that Nevsun's resource Oxide reserve model was so deficient that in the Fall 2011, Defendants caused two outside engineering firms to review and "rebuild" the model; and
>
> (e) Defendants failed to disclose that, as a result of the overstatement of gold ore reserves, the Company's gold production in 2011 was unsustainable and Nevsun's 2012 and 2013 cash flows were materially negatively affected. Bisha's gold production was ultimately revised downward, to 280,000 to 300,000 ounces for 2012, a decline of between 79,000 to 99,000 ounces (32% to 37%) from the Bisha Mine's 2011 production level of 379,000 ounces, representing a loss of between approximately $126 to $158 million in sales and cash flows in 2012 (at $1,599 per ounce).

(Id. ¶ 106)

I. FACTUAL BACKGROUND[1]

1 The Court's statement of facts is drawn from the Complaint's factual allegations, which are presumed to be true for purpose of this motion. In deciding a motion to dismiss, a Court "may consider any written instrument attached to the complaint, statements or documents incorporated into the complaint by reference, legally required public disclosure documents filed with [*6] the

SEC, and documents possessed by or known to the plaintiff and upon which it relied in bringing the suit." *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007)*. Accordingly, in connection with this motion, the Court has considered the exhibits attached to the Levin Declaration, which fall within this rule.

In December 2007, Nevsun entered into an agreement with the Eritrean National Mining Company ("ENAMCO") in which ENAMCO took a 10% stake in the mine and agreed to purchase an additional 30% interest at market value, once Bisha made its first gold shipment. (Id. ¶ 64)

On January 4, 2011, Nevsun issued a press release announcing the "successful first gold pour" at the Bisha Mine, and the first gold shipment from Bisha took place on January 28, 2011. (Id. ¶¶ 66-67) This shipment triggered a 90-day valuation period for ENAMCO's 30% stake. (Id. ¶ 67)

Nevsun began commercial production of gold at the Bisha Mine on February 22, 2011. (Id. ¶ 68) Bisha has three mining zones: the top or "Oxide" zone, which contains gold ore; the middle or "Supergene" zone, which contains copper; and the lowest or "Primary" zone, which primarily contains zinc. (Id. ¶ 5) After beginning commercial [*7] production of gold on February 22, 2011, the Complaint alleges that Defendants quickly learned that the Oxide Zone -- where the gold ore was located -- contained a much high percentage of waste rock, and a lower percentage of gold ore, than had been anticipated and reported. (Id. ¶¶ 9, 73) This discovery meant that Bisha's gold ore reserves would be exhausted sooner than had been reported, negatively affecting Nevsun's cash flow and valuation. (Id. ¶ 74)

On March 28, 2011, Defendants issued a press release stating that Bisha Mine had gold ore reserves of 4.651 million tons and that there were 919,000 ounces of gold in the Oxide zone of the mine. (Id. ¶ 107) Defendants further represented that Bisha's 2011 Strip Ratio -- the ratio of waste rock mined compared to valuable gold ore -- was 2.71, and that Defendants planned a reserve "restatement" by the end of 2011 that would reflect further increased gold reserves. (Id. ¶¶ 7, 111) The Complaint alleges that the Strip Ratio is an important metric for investors and affects the value of a mining company's stock, because it reflects the time and expense necessary to mine a certain amount of gold. (Id. ¶¶ 7, 57) "A material increase in Strip Ratio [*8] was a red flag because it indicates an increase in expenses, including increased costs and expenses for labor, water and diesel fuel, and importantly, exhaustion of the Oxide zone sooner than reported." (Id. ¶ 57)

Plaintiffs allege that the March 28, 2011 press release contains several materially false statements. Plaintiffs claim that Bisha's gold ore reserves in the Oxide zone were overstated by approximately 1.2-1.3 million tons, or by 35%, and that the ounces of gold in Bisha's Oxide zone were overstated by approximately 190,000 to 230,000 ounces. (Id. ¶ 108) Plaintiffs further represent that, as of late March 2011, Bisha's strip ratio was actually 4.9, approximately 81% higher than the Strip Ratio reported in Defendants' press release. (Id. ¶ 72)

On April 1, 2011, Nevsun filed its 2010 Annual Report with the SEC. The Annual Report represented that Bisha's gold ore reserves were 28.3 million tons, that the mine held 919,000 ounces of gold in the Oxide zone, and "that Bisha's life time Strip Ratio was 4.2." (Id. ¶ 113) Plaintiffs claim that all of these statements were false, for the reasons stated above. (Id. ¶ 114)

On April 6, 2011, Defendants issued a press release discussing operating [*9] highlights for the quarter ending March 31, 2011. (Id. ¶ 117) The press release states that "[t]he Bisha mine continues to perform very well and is now producing over 1,000 oz gold per day." (Id.) On April 14, 2011, Defendant Trebilcock made a presentation at the Denver Gold Group European Gold Forum in Switzerland in which he stated that Nevsun had increased its estimate of gold reserves at Bisha "from 20 to 28 million tonnes," and that Nevsun's "plan is to bring the total reserve table up to 40 million tonnes by the end of the year." (Id. 119) Plaintiffs claim that Trebilock's statements were false and misleading because Bisha's gold reserves were not increasing, and in fact were overstated. (Id. ¶¶ 108, 110, 120)

On May 11, 2011, Nevsun announced its results for the first quarter of 2011. Nevsun reported that the strip ratio for the three-month period ending March 31, 2011 was 4.9, which was "in line with expectations." (Levin Decl., Ex. I (5/11/11 6-K) Management Discussion and Analysis ("MD&A"), at 3) By June 30, 2013, however, the Strip Ratio had increased to 5.1,[2] but Defendants did not disclose the increase to investors. (Cmplt. ¶ 77) Indeed, when asked about the strip ratio [*10] during an

August 11, 2011 conference call with investors, Defendant Davis falsely represented that Bisha was stripping 20,000 tons of rock per day, indicating that the strip ratio was unchanged at 4.9. (Id. ¶ 137) Plaintiffs allege that Bisha was actually stripping 23,000 tons of rock per day -- approximately 15% more than Davis represented -- and that when compared with the amount of gold ore that was mined per day, correlates to a strip ratio of 5.1. (Id.) Throughout the fall of 2011, Defendants represented to investors that Bisha "continues to perform very well" and "in excess of plan," despite knowing that conditions at the mine had deteriorated, as reflected in a steadily increasing strip ratio. (Id. ¶¶ 109-110, 112, 117, 130, 139, 158)

> 2 Defendants dispute that the strip ratio in June 30, 2011 was 5.1, arguing that Plaintiff's math is wrong. (Def. Br. 15 n.17) However, Defendants disclosed the 5.1 number in their August 8, 2012 6-K. (See Levin Decl., Ex. Z at MD&A -- 2012 Second Quarter, at 5)

The Complaint further alleges that Defendants were aware of the true nature of the gold reserves and the true strip ratios because they received real-time information concerning "the Bisha Mine's [*11] mining statistics and production records" through use of specialized computer software. (Id. ¶¶ 58-63, 75) Plaintiffs further allege that the negative trend in strip ratio would have been obvious to Defendants "based on routine reconciliations of actual production to the reported reserves and through the day to day observation of production." (Id. ¶ 75) In addition, the mine's on-site General Manager -- Stanley C. Rogers -- reported directly to Defendants. (Id. ¶ 53)

Plaintiffs allege that Defendants' material misstatements and omissions about the Bisha Mine's gold reserves and the ever-increasing strip ratio were motivated in part by their then ongoing negotiations with ENAMCO to sell it a 30% stake in the mine. The amount of gold reserves and the strip ratio would affect the purchase price. (Id. ¶¶ 4, 78-80) In August 2011, Defendants and ENAMCO agreed to a purchase price of $253 million for ENAMCO's 30% stake, resulting in a personal gain to Defendants Davis, Hardie, and Trebilcock, because their compensation was affected by the sale. (Id. ¶¶ 78-80, 177-179; Levin Decl., Ex. Y (May 2012 Form 6-K), at 5-6) By September 2011, Defendants' transaction with ENAMCO had caused Nevsun's stock [*12] price to reach Class Period-highs. (Id. ¶ 82)

While the stock was trading at record highs, the negative trend in the Strip Ratio and in the amount of gold reserves continued, and no disclosure of this trend was made to investors. For example, Defendants knew that the true Strip Ratio for the second half of 2011 was 6.6, but did not disclose that to investors. (Id. ¶ 160) Meanwhile, Defendants Davis and Hardie sold their holdings in Nevsun's common stock. On September 2 and 6, 2011, Hardie sold all of his 180,000 shares of Nevsun common stock for approximately $1.3 million. (Id. ¶ 82) On September 18, 2011, Davis sold 224,600 shares for $1.5 million. (Id. ¶ 83)

In late 2011, Defendants hired AGP Mining Consultants ("AGP") and another engineering firm to "rebuild Bisha's Oxide reserve model." (Id. ¶ 86) Plaintiffs argue that this step -- which was not disclosed to investors -- demonstrates that Defendant knew that their current model for determining Bisha's gold ore reserves was not reliable. (Id. ¶¶ 86, 144) By November 2011, the three senior executives on-site at the Bisha Mine -- Rogers, Vickers, and Pretorius -- had all left the Company. Their departure was likewise not publicly disclosed. [*13] (Id. ¶¶ 11, 84-85)

On January 10, 2012, Nevsun issued a press release stating that "[t]he Bisha Mine continued to operate in excess of plan for gold recovery and maintained planned milling and gold production rates in Q4." (Id. ¶ 90) Defendant Davis "congratulate[d] the Bisha team for a strong performance." (Id.) The press release did not disclose the overstatement of the gold reserves, the steady increase in Strip Ratio, Defendants' decision to hire two engineering firms to rebuild the Company's model for determining gold ore reserves at the Bisha Mine, or that Bisha's entire on-site senior management team had left the Company. (Id. ¶ 91)

Less than a month later, on February 7, 2012, Defendants disclosed to investors that Nevsun's gold ore reserves in the Oxide zone had been overstated by 35%; that the amount of gold that Bisha would produce in 2012 would be about half of what Nevsun had previously represented to investors; and that they had hired engineers to rebuild their gold ore reserve model. (Id. ¶¶ 14, 92-93) On a conference call with analysts that day, Davis offered this explanation for the overstatement: "we were progressing through the [Oxide zone] much more quickly" and "there [*14] were significant pockets that we would have hoped had been grade and [gold] ore

previously that we ended up sending to the waste pile." (Id. ¶ 95) An analyst on the call asked Davis whether what he was "saying is [that] the strip ratio was basically a lot higher in 2011 than you thought?" Davis answered, "Exactly." (Id.)

The overstatement of gold reserves represents a loss of sales and cash flows of approximately $126 to $158 million for 2012 and 2013. (Id. ¶ 106(e)) By the next day -- February 8, 2012 -- Nevsun's stock had fallen 31%. (Id. ¶ 14)

II. PROCEDURAL HISTORY

On March 13, 2012, the first of two putative securities fraud class action lawsuits was filed on behalf of investors in Nevsun common stock during the Class Period. (Dkt. No. 1) On June 28, 2012, this Court consolidated the two actions and appointed Lead Plaintiff and Lead Counsel. (Dkt. No. 16) The Consolidated Class Action Complaint was filed on August 12, 2012. (Dkt. No. 18) Defendants filed their motion to dismiss on November 7, 2012. (Dkt. No. 19)

DISCUSSION

I. LEGAL STANDARD

A. Motion to Dismiss

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief [*15] that is plausible on its face.'" *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)* (quoting *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007))*. "In considering a motion to dismiss . . . the court is to accept as true all facts alleged in the complaint," *Kassner v. 2nd Ave. Delicatessen Inc., 496 F.3d 229, 237 (2d Cir. 2007)* (citing *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 87 (2d Cir. 2002))*, and must "draw all reasonable inferences in favor of the plaintiff." Id. (citing *Fernandez v. Chertoff, 471 F.3d 45, 51 (2d Cir. 2006))*.

A complaint is inadequately pled "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement,'" *Iqbal, 556 U.S. at 678* (quoting *Twombly, 550 U.S. at 557*), and does not provide factual allegations sufficient "to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Port Dock & Stone Corp. v. Oldcastle NE., Inc., 507 F.3d 117, 121 (2d Cir. 2007)* (citing *Twombly, 550 U.S. at 555*).

"In considering a motion to dismiss for failure to state a claim pursuant to *Rule 12(b)(6)*, a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents [*16] incorporated by reference in the complaint." *DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010)* (citing *Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002)*; *Hayden v. County of Nassau, 180 F.3d 42, 54 (2d Cir. 1999))*. Moreover, "[w]here a document is not incorporated by reference, the court may never[the]less consider it where the complaint 'relies heavily upon its terms and effect,' thereby rendering the document 'integral' to the complaint." *DiFolco, 622 F.3d at 111* (quoting *Mangiafico v. Blumenthal, 471 F.3d 391, 398 (2d Cir. 2006))*. A court may also consider "legally required public disclosure documents filed with the SEC." *ATSI Commc'ns, Inc, 493 F.3d at 98*.

B. Securities Fraud

"A complaint alleging securities fraud pursuant to *Section 10(b)* of the Securities Exchange Act is subject to two heightened pleading standards." *In re Gen. Elec. Co. Sec. Litig., 857 F. Supp. 2d 367, 383 (S.D.N.Y. 2010)*. First, the complaint must satisfy *Federal Rule of Civil Procedure 9(b)*, which requires that "the circumstances constituting fraud . . . shall be stated with particularity." *Fed. R. Civ. P. 9(b)*. Second, the complaint must meet the pleading requirements of the Private [*17] Securities Litigation Reform Act ("PSLRA"), *15 U.S.C. § 78u-4(b)*.

The heightened pleading requirement under *Rule 9(b)* "serves to provide a defendant with fair notice of a plaintiff's claim, safeguard his reputation from improvident charges of wrongdoing, and protect him against strike suits." *ATSI Communications, Inc., 493 F.3d at 99*. Thus, a securities fraud complaint based on misstatements must "'(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.'" *Rombach v. Chang, 355 F.3d 164, 170 (2d Cir. 2004)* (quoting *Mills v. Polar Molecular Corp., 12 F.3d 1170, 1175 (2d Cir. 1993))*.

Moreover, under the PSLRA, a plaintiff must "state with particularity facts giving rise to a strong inference

that the defendant acted with the required state of mind." *15 U.S.C. § 78u-4(b)(2)*; see *Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 313, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007)* ("The PSLRA requires plaintiffs to state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter, i.e., the defendant's intention to deceive, manipulate, [*18] or defraud."). "To qualify as 'strong' within the intendment of [the PLSRA], . . . an inference of scienter must be more than merely plausible or reasonable -- it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." *Tellabs, 551 U.S. at 314*; see also id. ("[T]o determine whether a complaint's scienter allegations can survive threshold inspection for sufficiency, a court governed by [the PLSRA] must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff . . . but also competing inferences rationally drawn from the facts alleged."). "A complaint will survive . . . only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id. at 324*.

I. THE COMPLAINT ADEQUATELY ALLEGES CLAIMS UNDER SECTION 10(B) OF THE EXCHANGE ACT

Defendants contend that Plaintiffs' claims under *Section 10(b)* of the Securities Exchange Act of 1934 must be dismissed because "none of Defendants' alleged misstatements or omissions is actionable as a matter of law." (Def. Br. 8) Defendants argue that the alleged misrepresentations and omissions [*19] concerning Bisha's gold reserves, Strip Ratio, and expected gold production for 2012 are non-actionable "forward-looking statements" and are protected by the "bespeaks caution" doctrine. (Def. Br. 9 & n.11) Defendants further argue that statements that Bisha "continues to perform well" and is operating "in excess of plan" are non-actionable statements of corporate optimism or puffery. (Id. at 11-12) With respect to alleged omissions, Defendants assert that they had no duty to disclose that Vickers, Pretorius, and Rogers had left the company, or that there were "negative trends" at the mine. (Id. at 13-16) Finally, Defendants argue that they did not "make" certain statements pursuant to *Janus Capital Group., Inc. v. First Derivative Traders, 131 S. Ct. 2296, 180 L. Ed. 2d 166 (2011)*. (Id. at 16)

A. Statutory Framework

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful "for any person, directly or indirectly . . . [t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance" in violation of the rules set forth by the Securities and Exchange Commission ("SEC") for the protection of investors. *15 U.S.C. § 78j*. Pursuant [*20] to SEC *Rule 10b-5*, promulgated thereunder, it is unlawful:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

To sustain a private cause of action for securities fraud under *Section 10(b)* and *Rule 10b-5*

> a plaintiff must prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

Stoneridge Inv. Partners, LLC v. Scientific--Atlanta, Inc., 552 U.S. 148, 157, 128 S. Ct. 761, 169 L. Ed. 2d 627 (2008) (citing *Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336, 341-42, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005))*.

B. The Complaint Adequatel Alleges Actionable Misstatements or Omissions

1. The [*21] **PSLRA Safe Harbor for Forward-Looking Statements**

a. Applicable Law

"The PSLRA established a statutory safe-harbor for forward-looking statements." *Slayton v. Am. Exp. Co., 604 F.3d 758, 765 (2d Cir. 2010)*. Under the PSLRA, where a

> private action . . . is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, [a defendant] shall not be liable with respect to any forward-looking statement . . . if and to the extent that --
>
> (A) the forward-looking statement is --
>
> (i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or
>
> (ii) immaterial; or
>
> (B) the plaintiff fails to prove that the forward-looking statement -- . . .
>
> (ii) if made by a business entity; was --
>
> (I) made by or with the approval of an executive officer of that entity; and
>
> (II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

15 U.S.C. § 78u-5(c)(1).

"The safe harbor is written in the disjunctive; that is, a defendant is not liable if [*22] the forward-looking statement is identified and accompanied by meaningful cautionary language or is immaterial or the plaintiff fails to prove that it was made with actual knowledge that it was false or misleading." *Slayton, 604 F.3d at 766*.

b. Analysis

Defendants argue that the statements Plaintiffs cite in Defendants' March 28, 2011 press release are "forward-looking statements" and are accompanied by "meaningful cautionary language." (Def. Br. 9) For example, Defendants' 2010 Form 40-F warns that the Company's reserve figures are "estimates," "inherently uncertain," and are a "prediction of what mineralization might be found to be present." (Levin Decl., Ex. E (2010 40-F) at 3; Annual Information Form ("AIF") at III, 6, 9; MD&A, at 8-9) The Form 40-F also states that there could be a "material downward or upward revision" of the reserve estimates. (Id., AIF at 6, MD&A at 8)

Forward-looking statements include only those which "speak predictively about the future, such as . . . a statement of the plans and objectives of management for future operations." *Gissin v. Endres, 739 F. Supp. 2d 488, 505 (S.D.N.Y. 2010)* Here, the Complaint's factual allegations -- which this Court must accept [*23] as true for purposes of Defendants' motion to dismiss -- include that Defendants knew at the time they issued the March 28, 2011 press release that the gold reserves were overstated and that the Strip Ratio was much less favorable than was represented. (Cmplt. ¶ 76) The Complaint further alleges that Defendants knew that their representations were false because they had access to

real-time mining statistics, and production reconciliation reports, demonstrating that the Strip Ratio was much higher than represented in the press release, and that mining through the Oxide zone was proceeding much faster than reported. (Id. ¶¶ 74-77). Because the statements cited by Plaintiffs are representations of present fact, they do not fall within the PSLRA's safe harbor for forward-looking statements. See *Rombach, 355 F.3d at 173* ("Cautionary words about future risk cannot insulate from liability the failure to disclose that the risk has transpired."); see also *In re Nortel Networks Corp. Sec. Litig., 238 F. Supp. 2d 613, 629 (S.D.N.Y. 2003)*. ("'[I]t is well recognized that even when an allegedly false statement has both a forward-looking aspect and an aspect that encompasses a representation of present [*24] fact, the safe harbor provision of the PSLRA does not apply.'" (quoting *In re APAC Teleservice, Inc. Sec. Litig., No. 97 Civ. 9145, 1999 U.S. Dist. LEXIS 17908, 1999 WL 1052004, at *7 (S.D.N.Y. Nov. 19, 1999)*)).[3]

> 3 In a footnote, Defendants contend that their statements concerning gold reserves are protected by the "bespeaks caution" doctrine, under which alleged misrepresentations are immaterial and therefore not actionable if "it cannot be said that any reasonable investor could consider them important in light of adequate cautionary language." *Halperin v. eBanker USA.com, Inc., 295 F.3d 352, 357 (2d Cir. 2002)*. (Def. Br. 9 n.11) The doctrine does not apply, however, where, as alleged here, "a defendant knew that its statement was false when made." *Gabriel Capital, L.P. v. NatWest Fin., Inc., 122 F. Supp. 2d 407, 419 (S.D.N.Y. 2000)*; see also *Milman v. Box Hill Systems Corp., 72 F. Supp. 2d 220, 231 (S.D.N.Y. 1999)* ("[N]o degree of cautionary language will protect material misrepresentations or omissions where defendants knew their statements were false when made.").

2. Representations that are "Puffery"

Defendants argue that certain statements Plaintiffs rely on -- including that Bisha "continues to perform well," [*25] "in excess of plan," "ha[s] an impeccable record, and is "well positioned" -- are non-actionable statements of corporate optimism or puffery or non-actionable opinion. (Def. Br. 11-12 (citing Cmplt. ¶¶ 109, 117, 130, 139, 148, 156, 158-59))

Statements of "puffery" are not actionable as securities fraud because investors do not rely on "generalizations regarding integrity, fiscal discipline and risk management." *In re JP Morgan Chase Sec. Litig., 363 F. Supp. 2d 595, 633 (S.D.N.Y. 2005)* (citing *Lasker v. N.Y. State Elec. & Gas Corp., 85 F.3d 55, 59 (2d Cir. 1996)* (statements that a company refused to "compromise its financial integrity," that it had a "commitment to create earnings opportunities" and that these "business strategies [would] lead to continued prosperity" constituted "precisely the type of 'puffery' that this and other circuits have consistently held to be inactionable")). "Similarly, statements of 'corporate optimism' do not give rise to securities violations because 'companies must be permitted to operate with a hopeful outlook.'" *In re Ambac Fin. Grp., Inc. Sec. Litig., 693 F. Supp. 2d 241, 272 n.35 (S.D.N.Y. 2010)* (quoting *Rombach, 355 F.3d at 174*).

Similarly, statements [*26] of opinion are generally not-actionable. See *Fait v. Regions Fin. Corp., 655 F.3d 105, 110 (2d Cir. 2011)* (holding that under *Sections 11* and *12* of the Securities Act of 1933, "liability [for opinions] lies only to the extent that the statement was both objectively false and disbelieved by the defendant at the time it was expressed."); *City of Omaha, Neb. Civilian Employees' Ret. Sys. v. CBS Corp., 679 F.3d 64, 67 (2d Cir. 2012)* (extending Fait to claims under *Section 10(b)*).

Here, when examined in context, the statements that Defendants challenge as puffery or expressions of opinion are in fact non-actionable. Moreover, none of these statements address Bisha's gold reserves, strip ratio, or life of mine -- the areas in which Plaintiffs allege Defendants made misrepresentations:

> o On October 6, 2011, Defendants issued a press release stating that "[t]he Bisha Mine continues to operate in excess of plan for mill gold recovery" and that Bisha had an "impeccable track record." (Cmplt. ¶ 139 (emphasis added))
>
> o On November 14, 2011, during a conference call with investors, Davis stated:
>
> I am going to go through a lot of numbers that truly

> demonstrate what a great operation the Bisha Mine really [*27] is. We produced 110,000 ounces of gold in Q3 compared to 93,000 in Q2 and 75,000 in Q1. Our total year-to-date production for 2011 is 278,000 ounces to September 30. We continue to produce at a rate of over 1000 ounces of gold per day, and during October we broke through the 300,000 accumulative ounces produced. Things are going very well, indeed.

(Id. ¶ 148 (emphasis added))

> o On November 21, 2011, Nevsun issued a press release, which quoted Davis as stating: "Nevsun is well positioned to fund growth and provide a dividend return to our shareholders . . . Today's increased dividend further differentiates Nevsun from its peer group and demonstrates our confidence in future cash flow." (Id. ¶ 156 (emphasis added))

> o On January 10, 2012, Nevsun issued a press release which quoted Davis as stating "2011 was a very successful year. . . . I would like to congratulate the Bisha team for a strong performance, producing 379,000 ounces of gold in the first year of operations at Bisha. We look forward to 2012. . . ." (Id. ¶ 159 (emphasis added))

Plaintiffs do not contend that Defendants made misleading statements about actual gold production at Bisha in 2011. Accordingly, to the extent that the [*28] above statements address that issue, they do not provide a basis for liability. Moreover, courts have generally not found actionable statements such as "things are going very well," a company is "well positioned," or operations are "successful," unless the statements addressed concrete and measurable areas of the defendant company's performance. For example, in *Ambac Financial Group, Inc. Securities Litigation*, Defendants reported that "Ambac's CDO portfolio was currently outperforming the market and relevant indices." *693 F. Supp. 2d at 272*. The court held that this statement was not "puffery" or "corporate optimism" because it "convey[ed] something concrete and measurable about Ambac's financial situation, and a reasonable investor could certainly find [such a statement] important to the 'total mix' of information available." Id.

Likewise, in *Novak v. Kasaks*, the Second Circuit held that certain statements were not puffery because they were specifically tied to alleged false and misleading statements about retail chain AnnTaylor's inventory. *216 F.3d 300, 315 (2d Cir. 2000)*. In that case, Plaintiffs alleged that Defendants made materially false and misleading statements about AnnTaylor's [*29] financial performance. *Id. at 303*. Plaintiffs complained in particular about AnnTaylor's "so-called 'Box and Hold' practice, whereby a substantial and growing quantity of out-of-date inventory was stored in several warehouses during the Class Period without being marked down." *Id. at 304*. AnnTaylor did not distinguish "Box and Hold" inventory from new inventory, or write-off any of the "Box and Hold" inventory. Instead, the defendants described AnnTaylor's inventory as "'under control,' 'in good shape,' and at 'reasonable' or 'expected' levels; stating that 'no major or unusual markdowns were anticipated'; and attributing rising levels of inventory to growth, expansion, and planned future sales." Id.

The Second Circuit held that these statements were not "puffery" or "corporate optimism," noting that the Complaint alleged that the defendants made these statements "while they allegedly knew that the contrary was true. Assuming, as we must at this stage, the accuracy of the plaintiffs' allegations about AnnTaylor's "Box and Hold" practices, these statements were plainly false and misleading." *Id. at 315*.

Here, by contrast, Defendants' optimistic statements do not address the subjects about [*30] which Plaintiffs claim Defendants made false and misleading statements: Bisha's gold reserves, strip ratio, and life of mine. Statements addressing matters about which Plaintiffs have not claimed that Defendants made misleading statements -- such as Bisha's actual gold production in 2011 -- or statements expressing a general view that "things are going well," that the company is "well positioned," or that a year was "successful" are generally

not actionable. See *Lasker 85 F.3d 55 at 59* (general statements such as touting the company's "commitment to create earnings opportunities" and that certain "business strategies [would] lead to continued prosperity" constituted "precisely the type of 'puffery' that this and other circuits have consistently held to be inactionable")). Moreover, statements that "things are going very well," that Bisha had an "impeccable track record," that Nevsun was "well positioned," and that "2011 was a very successful year" are -- in the context in which they were said here -- non-actionable statements of opinion.

Accordingly, Plaintiffs cannot base their Section 10(b) claim on these statements.

3. Plaintiffs have Pled Materially False Statements or Omissions about [*31] **the Bisha Mine's Operations**

The Court concludes that Plaintiffs have adequately pled materially false statements relating to the Bisha Mine's strip ratio, gold reserves, and life of mine. Plantiffs have pled facts demonstrating that strip ratio is a critical metric for analysts and investors, and that strip ratio has important implications for calculating reserves and life of mine. They have also pleaded facts demonstrating that Defendants repeatedly issued statements that represented Bisha's strip ratio to be lower than they then knew it to be. See *Caiola v. Citibank, N.A., 295 F.3d 312, 331 (2d Cir. 2002)* ("upon choosing to speak, one must speak truthfully . . . [and] accurate[ly]"); *In re Gen. Elec. Co. Secs. Litig., 857 F. Supp. 2d 367, 387 (S.D.N.Y. 2012)* ("once a company chooses to speak . . . 'it has a duty to disclose any additional material fact 'necessary to make the statements [already contained therein] not misleading'") (quoting *In re CitiGroup Inc. Bond Litig., 723 F. Supp. 2d 568, 590 (S.D.N.Y.2010)*); *In re Sanofi-Aventis Secs. Litig., 774 F. Supp. 2d 549, 561 (S.D.N.Y. 2011)* (noting that under *Section 10(b)*, "a duty may arise as a result of the ongoing duty to avoid rendering [*32] existing statements misleading by failing to disclose material facts").

As to Defendants' failure to disclose the departure of its entire on-site management team at Bisha, or its retention of two engineering firms to re-build the reserves model on which prior estimates of gold reserves disseminated to investors had been based, the Court cannot say at this stage of the proceedings that such information would not have been material to investors. See *ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co., 553 F.3d 187, 197 (2d Cir. 2009)* ("'[A] complaint may not properly be dismissed . . . on the ground that the alleged misstatements or omissions are not material unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance.'" (quoting *Ganino v. Citizens Utils. Co., 228 F.3d 154, 162 (2d Cir. 2000)*).[4]

4 The Complaint also alleges that Defendants violated Item 303 of SEC Regulation S-K in failing to disclose the negative trends at the Bisha Mine. (Cmplt. ¶ 194) Defendants argue that Plaintiffs cannot base their Section 10(b) claim on a violation of Item 303, which requires a company in certain [*33] circumstances to disclose "any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." *17 C.F.R. § 229.303(a)(3)(ii)*. (Def. Br. 13) This Court agrees. In the Second Circuit, "[i]t is far from certain that the requirement that there be a duty to disclose under *Rule 10b-5* may be satisfied by importing the disclosure duties from S-K 303." *In re Canandaigua Sec. Litig., 944 F. Supp. 1202, 1209 n.4 (S.D.N.Y. 1996)*; see also *In re Quintel Entm't Inc. Sec. Litig., 72 F. Supp. 2d 283, 293 (S.D.N.Y. 1999)* ("In light of the absence of authority for the position that a failure to comply with the disclosure duties under Item 303 can be the basis of a § 10(b) action, this Court refuses so to hold."); accord *Oran v. Stafford, 226 F.3d 275, 288 (3d Cir. 2000)* (Alito, J.) ("[A] violation of SK-303's reporting requirements does not automatically give rise to a material omission under *Rule 10b-5*."). Accordingly, Plaintiffs cannot base their Section 10(b) claim on a theory that Defendants violated Item 303.

4. Statements Purportedly "Made" by AMEC are Attributable [*34] **to Defendants**

Defendants' March 28, 2011 press release sets forth Bisha Mine gold ore reserve figures, estimates of gold that will be recovered from the Bisha Mine's Oxide zone, and a life of mine estimate of 13 years. These figures are based on a report prepared by AMEC Americas Limited ("AMEC"), an independent engineering firm. (See Levin Decl., Ex. C (Mar. 30, 2011 Form 6-K) at 1-1, 1-10, and

2-1)

Relying on *Janus Capital Group., Inc. v. First Derivative Traders, 131 S. Ct. 2296, 180 L. Ed. 2d 166 (2011)*, Defendants argue that AMEC, and not Defendants, was the "maker" of the alleged false and misleading statements concerning Bisha's gold ore reserves, ultimate expected gold production, and life of mine. (Def. Br. 16-17)

In Janus, the shareholders of parent company Janus Capital Group ("JCG") sued wholly-owned subsidiary Janus Capital Management ("JCM"), a mutual fund investment advisor, alleging that JCM had made misstatements in fund prospectuses in violation of *Rule 10b-5*. The prospectuses were filed with the SEC by the Janus Investment Fund, a separate legal entity owned by mutual fund investors that had no assets apart from those owned by fund investors. The Investment Fund had the same officers [*35] as JCM, but had an independent board of trustees.

The question for the Court was whether JCM had "made" the allegedly misleading statements in the prospectuses under *Rule 10b-5*, given its role as investment advisor to the fund. The Supreme Court held that JCM was not liable under *Rule 10b-5*, because a defendant only "makes" a statement for purposes of a private *Rule 10b-5* action if the defendant "is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus, 131 S. Ct. at 2302*. "[I]n the ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by -- and only by -- the party to whom it is attributed." Id.

Here, although Defendants purported to rely on AMEC's report for certain of their statements, the Complaint alleges that Defendants adopted those statements, filed them with the SEC, and thereafter repeated them to investors. (See Cmplt. ¶¶ 107, 109, 117, 119, 130, 139, 158) That is sufficient for the Court to find that Defendants "made" the statements under Janus. See *Janus, 131 S. Ct. at 2302* ("Even when a speechwriter drafts a speech, [*36] the content is entirely within the control of the person who delivers it. And it is the speaker who takes credit -- or blame -- for what is ultimately said.").[5]

5 Trebilcock argues in a footnote that Plaintiffs have not alleged facts showing that he "made" the challenged statements in Nevsun's press releases and securities filings, given that he did not sign these materials. Trebilcock further argues that if he "made" the statements during investor presentations, he was merely repeating statements from the filings. (Def. Br. 17 n.20) Plaintiffs rely on the "group pleading" doctrine, "which allows a plaintiff to rely on a presumption that written statements that are 'group-published,' e.g., SEC filings and press releases, are statements made by all individuals 'with direct involvement in the everyday business of the company.'" *City of Pontiac Gen. Employees' Ret. Sys. v. Lockheed Martin Corp., 875 F. Supp. 2d 359, 373 (S.D.N.Y. 2012)* (quoting *Camofi Master LDC v. Riptide Worldwide, Inc., No. 10 Civ. 4020 (CM), 2011 U.S. Dist. LEXIS 31237, 2011 WL 1197659, at *6 (S.D.N.Y. Mar. 25, 2011)*). "[M]ost judges in this District have continued to conclude that group pleading is alive and well [after Janus]." *Id. at 374*.

Under [*37] the group pleading doctrine, Trebilcock -- and Davis and Hardie, the other senior executives named in the Complaint -- "made" the statements in Nevsun's press releases and securities filings. As for the statements Trebilcock made to investors during investor conference calls, "[i]n the post-Janus world, an executive may be held accountable . . . where the statement is attributed to the executive." *In re Fannie Mae 2008 Sec. Litig., 891 F. Supp. 2d 458, 473 (S.D.N.Y. 2012)*. In sum, Plaintiffs have adequately alleges that Trebilcock "made" the statements at issue.

C. The Complaint Adequately Pleads Facts Giving Rise to a Strong Inference of Scienter

Defendants argue that "Plaintiffs utterly fail to allege scienter against any Defendant, and therefore fall far short of the stringent pleading requirements of the PSLRA." (Def. Br. 17)

1. Applicable Law

Rule 9(b) reflects a "relaxation" of the specificity requirement in pleading the scienter element of fraud claims, requiring that fraudulent intent need only be "alleged generally." See *Shields v. Citytrust Bancorp,*

Inc., 25 F.3d 1124, 1128 (2d Cir. 1994); *Fed. R. Civ. P. 9(b)*. The Second Circuit has made clear, however, that this "relaxation . [*38] . . 'must not be mistaken for license to base claims of fraud on speculation and conclusory allegations.'" *Shields, 25 F.3d at 1128* (quoting *O'Brien v. Nat'l Prop. Analysts Partners, 936 F.2d 674, 676 (2d Cir. 1991))*. Accordingly, the Second Circuit has long required plaintiffs making securities fraud claims to "allege facts that give rise to a strong inference of fraudulent intent." *Novak v. Kasaks, 216 F.3d 300, 307 (2d Cir. 2000)*; see also *Shields, 25 F.3d at 1128*.

The PSLRA adopts the "strong inference" standard set by the Second Circuit, and provides that "where proof of scienter is a required element . . . a complaint must 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Slayton v. Am. Exp. Co., 604 F.3d 758, 766 (2d Cir. 2010)* (quoting *15 U.S.C. § 78u-4(b)(2)*). "Under this heightened pleading standard for scienter, a 'complaint will survive . . . only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.'" *Slayton, 604 F.3d at 766* (quoting *Tellabs, 551 U.S. at 324*). "In determining whether a strong [*39] inference exists, the allegations are not to be reviewed independently or in isolation, but the facts alleged must be 'taken collectively.'" Id.

"The 'strong inference' standard is met when the inference of fraud is at least as likely as any non-culpable explanations offered." Id. "The plaintiff may satisfy [the PSLRA's heightened pleading] requirement by alleging facts (1) showing that the defendants had both motive and opportunity to commit the fraud or (2) constituting strong circumstantial evidence of conscious misbehavior or recklessness." *ATSI Commc'ns, Inc., 493 F.3d at 99* (citing *Ganino, 228 F.3d at 168-69*).

2. Analysis

a. The Complaint Adequately Alleges that Defendants Had Motive and Opportunity to Commit Fraud

Defendants do not argue that they had no opportunity to commit fraud. Instead, they contend that Plaintiffs have not alleged facts demonstrating motive -- i.e., "'concrete benefits that could be realized by one or more of the false statements and wrongful disclosures alleged.'" (Def. Br. 18 (quoting *Kalnit, 264 F.3d at 139*)) The Court concludes that Plaintiffs have pled sufficient facts to demonstrate that Defendants had both the motive and the opportunity to commit fraud [*40] under the heightened standard set by the PSLRA.

The Complaint alleges that Davis, Hardie, and Trebilcock "derived concrete and personal benefits from the fraud, including massive cash bonuses and sales of Nevsun stock at inflated prices." (Cmplt. ¶ 176) The Complaint further alleges that these Defendants were motivated to overstate the gold reserves at Bisha in order to extract a high price from ENAMCO for the 30% stake it was purchasing in the mine. (Id. ¶ 177)

With respect to bonuses and sales of stock, the Complaint alleges that in September 2011 -- when Nevsun stock was trading at record highs -- Davis sold 224,600 common shares of Nevsun stock for $1.5 million. Davis also received $1.14 million in 2011 compensation, including a $600,000 cash bonus. (Id. ¶ 29) In early September, Hardie likewise sold 180,000 shares -- his entire Nevsun stock holdings -- for $1.3 million. His 2011 compensation was $889,816 including a cash bonus of $125,000. (Id. ¶ 33) Trebilcock earned $556,939 in 2011, including a cash bonus of $150,000.[6] (Id. ¶ 35)

> 6 Rogers -- a "Named Executive Officer" in Nevsun's May 2012 Form 6-K -- also sold 100% of his Nevsun stock in November and December 2011. (Cmplt. ¶ 12) Defendants [*41] argue that Rogers' sale was not suspicious because "it is commonplace, not 'suspicious' or 'unusual' for individuals who depart a company to sell their stock in that company." (Def. Br. 21) While that may be true in some cases -- see *In re Health Mgmt. Sys., Inc. Sec. Litig., No. 97 Civ. 1865 (HB), 1998 U.S. Dist. LEXIS 8061, 1998 WL 283286, at *6 n.4 (S.D.N.Y. June 1, 1998)* ("While defendant McIntyre's sales were quite high during the Class Period, this was most likely on account of the fact that he resigned as an HMS director prior to January 1997 and was divesting himself of his shares.") -- the Court cannot speculate about Rogers' reasons for selling his shares at this stage of the proceedings.

Nevsun's board approved bonuses for the Individual Defendants in December 2011. (Levin Decl., Ex. Y (May 2012 Form 6-K), at 7-8 n.4) Their compensation and bonuses were linked to the success of the Bisha Mine,

and to the transaction with ENAMCO. (Id. at 5 (the "compensation program" for these Defendants "is designed to reward contributions to" inter alia, Bisha's "successful operations [and] expansion of existing assets")) Furthermore, Davis's compensation was based, in part, on "managing Eritrea Government relations [*42] and strategic arrangements" and "achieving successful negotiations in Company transactions." (Id.)

Plaintiffs plausibly allege that the timing and magnitude of Defendants' stock sales support a strong inference of scienter. Defendants' stock sales took place shortly after the transaction with ENAMCO and shortly before (1) Defendants' retention of two engineering firms to re-build their reserve model, and (2) the departure of Bisha Mine's three top on-site executives.[7] See *Stevelman v. Alias Research Inc., 174 F.3d 79, 85 (2d Cir. 1999)* (holding that plaintiff had adequately alleged motive where "during the period of the misrepresentations . . . insiders unloaded large positions in Alias"); *In re SLM Corp. Sec. Litig., 740 F. Supp. 2d 542, 558 (S.D.N.Y. 2010)* (finding motive sufficiently alleged against one defendant "who dumped nearly all of his shares during the Class Period").

> 7 Defendants argue that Davis also purchased Nevsun shares during the Class Period. (Def. Br. 18; see Levin Decl., Ex. BB, at 6, 9) However, the shares Davis purchased were acquired through the exercise of stock appreciation rights and options that were granted to Davis as part of his compensation. He did not [*43] buy any shares on the open market.

Moreover, Plaintiffs' allegation that Defendants were motivated to overstate the gold reserves in order to increase the price paid by ENAMCO for its 30% stake in the mine is sufficient to survive a motion to dismiss. See *Rothman v. Gregor, 220 F.3d 81, 93 (2d Cir. 2000)* ("[T]he artificial inflation of stock price in the acquisition context may be sufficient for securities fraud scienter."); *Glidepath Holding B.V. v. Spherion Corp., 590 F. Supp. 2d 435, 455 (S.D.N.Y. 2007)* ("[A] business seeking to . . . induce a beneficial sale has sufficient motive to commit fraud to raise the requisite 'strong inference' of fraud under *Rule 9(b)*."); *In re Complete Mgmt. Inc. Sec. Litig., 153 F. Supp. 2d 314, 328 (S.D.N.Y. 2001)* (allegation that defendants "sought to maintain the artificially high stock price so that [the company] might use that stock as currency for acquisitions . . . is a sufficiently concrete motive to support a strong inference of scienter").

b. The Complaint Adequately Alleges Conscious Misbehavior or Recklessness

Rule 9(b)'s scienter requirement is also satisfied where a complaint contains factual allegations "'that constitute strong circumstantial [*44] evidence of conscious misbehavior or recklessness.'" *Kalnit, 264 F.3d at 138* (quoting *Acito v. Imcera Group, Inc., 47 F.3d 47, 52 (2d Cir. 1995)*). Plaintiffs proceeding under the "conscious misbehavior or recklessness" theory must allege reckless conduct that is "at the least . . . highly unreasonable and which represents an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Kalnit, 264 F.3d at 142* (quoting *Honeyman v. Hoyt, 220 F.3d 36, 39 (2d Cir. 2000))*.

While this is a "highly fact-based inquiry," securities fraud claims "typically" survive motions to dismiss where a plaintiff has "'specifically alleged defendants' knowledge of facts or access to information contradicting their public statements.'" *Kalnit, 264 F.3d at 142* (quoting *Novak, 216 F.3d at 308*). A failure "to check information [defendants'] had a duty to monitor" may also give rise to a strong inference of recklessness. *Novak, 216 F.3d at 311*; see also *Nathel v. Siegal, 592 F. Supp. 2d 452, 464 (S.D.N.Y. 2008)*. Under such circumstances, "defendants knew or, more importantly, should have known [*45] that they were misrepresenting material facts related to the corporation." *Kalnit, 264 F.3d at 142*.

Where, as here, "information contrary to the alleged misrepresentations is alleged to have been known by defendants at the time the misrepresentations were made, the falsity and scienter requirements are essentially combined." *In re Revlon, Inc. Sec. Litig., No. 99 Civ. 10192 (SHS), 2001 U.S. Dist. LEXIS 3265, 2001 WL 293820, at *7 (S.D.N.Y. March 27, 2001)* (citing *Rothman, 220 F.3d at 89-90*).

As discussed above, Plaintiffs have adequately pled that Defendants "knew or, more importantly, should have known that they were misrepresenting material facts" concerning Bisha Mine's strip ratio, gold reserves, and life of mine. See *Kalnit, 264 F.3d at 142* (citations omitted). Accordingly, Plaintiffs have alleged "strong circumstantial evidence of conscious misbehavior or recklessness." *Id. at 138* (citations omitted).

Defendants' motion to dismiss Plaintiffs' Section 10(b) claim will be denied.

II. THE COMPLAINT ADEQUATELY ALLEGES CLAIMS UNDER SECTION 20(A) OF THE EXCHANGE ACT

Under *Section 20(a)* of the Exchange Act, a person exercising "control" over a person liable under *§ 10(b)* is also liable, subject only to the defense [*46] of "good faith." *15 U.S.C. § 78t(a)*. "'In order to establish a prima facie case of liability under *§ 20(a)*, a plaintiff must show: (1) a primary violation by a controlled person; (2) control of the primary violator by the defendant; and (3) that the controlling person was in some meaningful sense a culpable participant in the primary violation.'" *In re Am. Int'l Grp., Inc. 2008 Sec. Litig., 741 F. Supp. 2d 511, 535 (S.D.N.Y. 2010)* (quoting *Boguslavsky v. Kaplan, 159 F.3d 715, 720 (2d Cir. 1998))*.

Defendants' sole argument for dismissal of this claim is that "Plaintiffs have not properly alleged an underlying primary violation by Nevsun." (Def. Br. 25) Given that this Court has concluded that Plaintiffs have adequately alleged a primary violation of *Section 10(b)*, Defendants' motion to dismiss Plaintiffs' *Section 20(a)* claim will be denied.

CONCLUSION

Defendants' motion to dismiss is DENIED. The Clerk of the Court is directed to terminate the motion (Dkt. No. 19).

Dated: New York, New York

September 27, 2013

SO ORDERED.

/s/ Paul G. Gardephe

Paul G. Gardephe

United States District Judge

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE VIVENDI UNIVERSAL, S.A. SECURITIES LITIGATION

MEMORANDUM OPINION AND ORDER

02-cv-5571 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On July 21, 2014, Vivendi requested that the Court permit it to move for judgment as a matter of law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure.[1] Although Vivendi already moved for judgment as a matter of law, pursuant to Rule 50(b), a motion that was denied more than three years ago,[2] it asserts that it should be permitted to move again because of an intervening change in the law resulting from a June 23, 2014 decision of the United States Supreme Court – *Halliburton Co. et al. v, Erica P. John Fund, Inc.* (*"Halliburton II"*).[3] For

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[1] *See* 7/21/14 Letter from James W. Quinn, Esq. and Paul C. Saunders, Esq., counsel for Vivendi, to the Court [Dkt. No. 1204]. Plaintiffs responded in a July 24, 2014 letter to the Court from Arthur N. Abbey, Esq. asking that defendant's request be denied [Dkt. No. 1205].

[2] *See In re Vivendi, S.A. Sec. Litig.*, 765 F. Supp. 2d 512 (S.D.N.Y. 2011).

[3] 134 S. Ct. 2398 (2014).

the reasons discussed below, defendant's request to file a new Rule 50(b) motion is denied.

In order to rule on defendant's request, this Court is only required to understand what the Supreme Court held in *Halliburton II* and what it did not. In the Supreme Court's own words, it granted certiorari in *Halliburton II* to address two issues: (1) "to resolve a conflict among the Circuits over whether securities fraud defendants may attempt to rebut the *Basic* [*Inc. v. Levinson*] presumption at the class certification stage with evidence of a lack of price impact"; and (2) "to reconsider the presumption of reliance for securities fraud claims that [the Supreme Court] adopted in *Basic*."[4] The Court said yes to the first question and no to the second. Thus, the holding of *Halliburton II* is unambiguous and clear: "[d]efendants must be afforded an opportunity *before class certification* to defeat the [*Basic*] presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."[5]

Nonetheless, Vivendi argues that *Halliburton II* created new law with respect to the requirement that in order to make out a claim under Rule 10b-5 of

---

[4] *Id.* at 2407.

[5] *Id.* at 2417. *See also id.* ("Defendants may seek to defeat the *Basic* presumption at [the class certification] stage through direct as well as indirect price impact evidence.").

the securities laws, a plaintiff must prove that a misleading statement caused an impact on the price of the security. But the Court in *Halliburton II* made clear that this has always been a requirement of a securities fraud case. What *Halliburton II* discussed is when a *defendant* can establish *lack* of price impact.

The Court explained that the *Basic* presumption consists of two separate presumptions. The first is that "if a plaintiff shows that the defendant's misrepresentation was public and material and that the stock traded in a generally efficient market, . . .[there is] a presumption that the misrepresentation affected the stock price [i.e. price impact]."[6] The second presumption is that "if the plaintiff . . . purchased the stock at the market price . . . he is entitled to [the] presumption that he purchased the stock in reliance on the defendant's misrepresentation."[7] The Court declined Halliburton's request that it eliminate the first presumption by noting that defendants have the opportunity to rebut it by showing "that the particular misrepresentation . . . did not affect the stock's market price [i.e. lack of price impact]."[8] Thus, there is no doubt that proof of price impact has always been a part of the equation at the merits stage of a securities fraud case. After

---

6 *Id.* at 2414.

7 *Id.*

8 *Id.*

Halliburton II, it will now also be a consideration at the class certification stage.

Given that the issue of whether Vivendi's misstatements caused an impact on the price of the stock has been litigated twice – once at the trial and once during the post-trial motion practice,[9] there is no reason to permit it to be litigated a third time in the district court. Plaintiffs note in their response to Vivendi's request to file a new Rule 50(b) motion that Vivendi raised the identical issue in its post-trial motion. The district court described Vivendi's argument as "plaintiffs failed to prove that the fifty-seven misstatements on Table A caused inflation in Vivendi's share price."[10] The district court then addressed this argument in its decision under the heading: "Whether the Misstatements Caused Inflation."[11] The district court held that plaintiffs had succeeded in proving price impact by showing that the "misstatement[s] played a role in causing the inflation in the stock price (whether by adding to the inflation or helping to maintain it) . . . ."[12]

---

[9] *See* Defendant's Memorandum of Law in Support of Motion for Judgment as a Matter of Law Pursuant to Rule 50(b) [Dkt. No. 1022], at 41 (arguing that Plaintiffs' inflation evidence "did not correspond in any way to the 57 alleged misstatements.").

[10] *Vivendi*, 765. F. Supp. 2d at 555.

[11] *Id.* at 561.

[12] *Id.* at 562. *See also Livonia Emp. Ret. Sys. v. Wyeth*, 284 F.R.D. 173, 182 (S.D.N.Y. 2012) (holding that "the fact that the stock price *remained consistent* could, in fact, indicate inflation") (emphasis added).

Halliburton II made no mention of how a plaintiff can prove price impact, and certainly did not address the maintenance theory of inflation relied upon by plaintiffs in *Vivendi*. While this is surely an interesting issue, the district court has made its ruling. Vivendi's opportunity to challenge this theory of price impact, and the adequacy of the proof supporting it, lies with the Court of Appeals and perhaps the Supreme Court. Because this issue has already been fully litigated, and there being no intervening change in the law, Vivendi's request to file a new Rule 50(b) motion is DENIED. A conference to address the issues raised in the parties' most recent letters – August 12, 2014 from the plaintiffs [Dkt. No. 1206] and August 14, 2014 from the defendant [Dkt. No. 1207] – will be held on August 21, 2014 at 3:30 p.m.

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: August 18, 2014
New York, New York

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Exhibit 4

CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

Securities Class Action Settlements

2013 Review and Analysis

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HIGHLIGHTS

- Total settlement dollars in 2013 increased substantially—46 percent over 2012 and 60 percent above the average for the prior five years. (page 3)
- There were 67 settlements in 2013 (up from 57 in 2012), the first year-over-year increase since 2009. (page 3)
- Mega settlements pushed settlement dollars up in 2013, accounting for 84 percent of total settlement dollars, the second highest proportion in the last decade. (page 4)
- While mega settlements drove up the 2013 average settlement amount, the median settlement amount declined, reflecting a reduction in the size of more typical cases. (page 5)
- For 2013, the median "estimated damages" declined 48 percent from 2012 and is 17.5 percent lower than the median for post–Reform Act settlements in the prior five years. Since "estimated damages" are the most important factor in determining settlement amounts, this decline was likely a major factor contributing to the substantially lower median settlement in 2013 compared with 2012. (page 7)
- The proportion of settled cases in 2013 involving accounting allegations dipped to a ten-year low, but the settlement as a percentage of "estimated damages" for these cases was much higher than for cases not involving such allegations. (page 13)
- The median settlement in 2013 for cases with a public pension as a lead plaintiff was $23 million, compared with $3 million for cases without a public pension as a lead plaintiff. (page 15)
- New analyses reveal that settlements of $50 million or lower are far less likely to involve accompanying SEC actions or a public pension as a lead plaintiff. (page 18)

FIGURE 1: **SETTLEMENT STATISTICS**
(Dollars in Millions)

	2013	1996–2012
Minimum	$0.7	$0.1
Median	$6.5	$8.3
Average	$71.3	$55.5
Maximum	$2,425.0	$8,358.2
Total Amount	$4,773.9	$73,740.2

Note: Settlement dollars adjusted for inflation; 2013 dollar equivalent figures used.

DEVELOPING TRENDS

The year 2013 saw the highest total dollar value of settlements approved over the last six years. This was due in part to an uptick in the number of cases settled (compared with the prior two years), as well as the relatively high average shareholder losses associated with cases settled in 2013 (the second highest in the last six years). The surrounding economic events are an important backdrop to understanding the settlement trends.

Settlement sizes in 2013 were affected by the resolution of a number of credit crisis cases, which tend to involve relatively large settlement amounts and related investor losses. Pharmaceutical industry sector settlements also contributed to the overall increase.

At the opposite end of the settlement spectrum were settlements of Chinese reverse merger cases. These matters tend to be relatively small. According to *Securities Class Action Filings—2013 Year in Review* released earlier this year by Cornerstone Research, the majority of these cases were filed in 2011 and thus, not surprisingly, a relatively large number (14 cases) were settled in 2013. All but one of these settlements were for amounts less than $10 million.

Despite record enforcement activity by the SEC in the last couple of years, there has not been an increase in securities class action settlements accompanied by SEC actions. This is due in part to the potential lag between the underlying class action settlement and resolution of activity commenced by the SEC. Furthermore, the SEC's enforcement activity includes matters outside the scope of this research. Nevertheless, it is possible there will be an increase in securities class actions accompanied by disclosure-related SEC enforcement actions in the future.

In addition, securities class action filings (i.e., new cases) involving Rule 10b-5, Section 11, and/or Section 12 allegations have been relatively high over the last few years, including a surge in the second half of 2013 (see *Securities Class Action Filings—2013 Year in Review*). Thus, it is unlikely there will be any significant decline in the overall number of cases settled in upcoming years.

Looking ahead, it would be remiss not to mention the *Halliburton Co. v. Erica P. John Fund* matter currently before the U.S. Supreme Court. As has been widely discussed, the case challenges the fraud-on-the-market presumption that was established in 1988 through *Basic Inc. v. Levinson*. The suit has the potential to dramatically affect the entire landscape surrounding securities class actions, including issues that are the focus of this report, such as the damages associated with securities cases, the progression of these cases through the litigation process, and ultimately, the settlement amounts involved.

This report analyzes a sample of securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2013, and explores a variety of factors that influence settlement outcomes. This study focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price). See page 24 for a detailed description of the research sample.

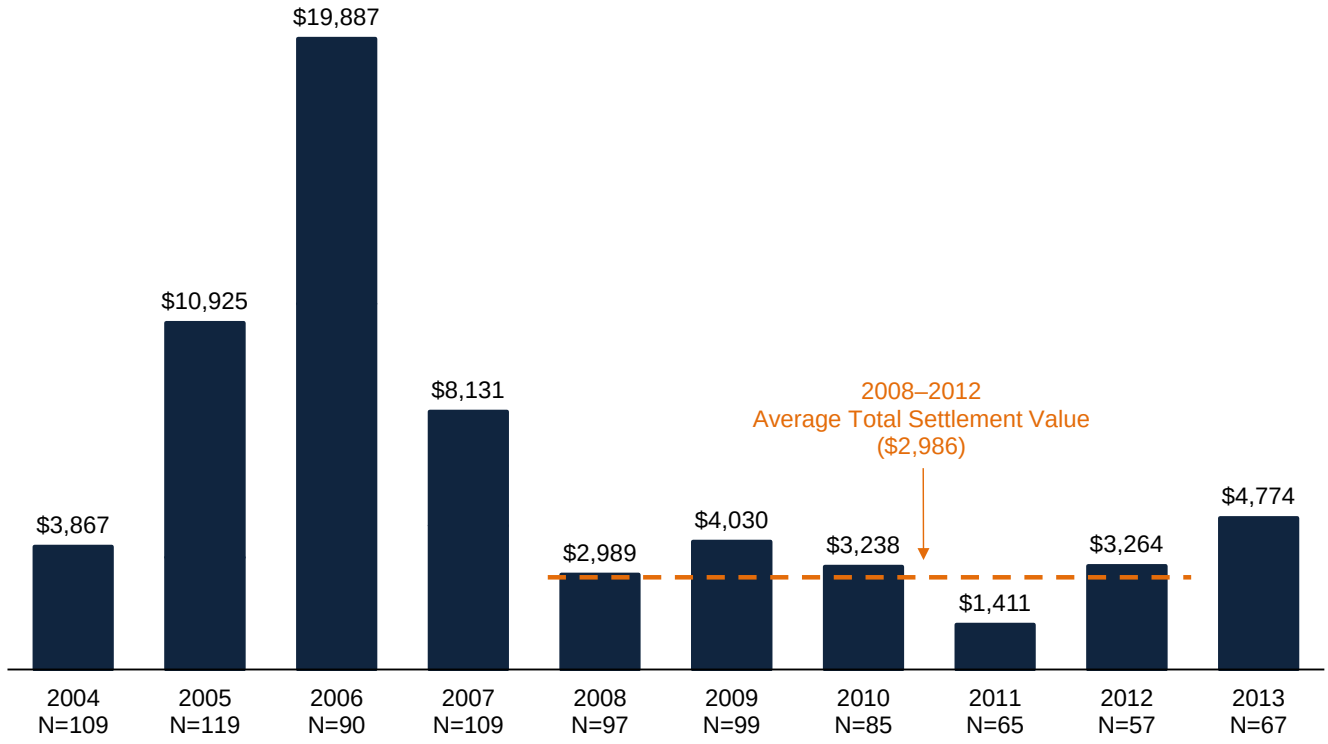
NUMBER AND SIZE OF SETTLEMENTS

TOTAL SETTLEMENT DOLLARS

- In 2013, there were 67 court-approved settlements, a 17.5 percent increase from 2012 and a reversal of the year-over-year decline in the number of settlements observed since 2009.
- The increase in the number of settlements is likely due, in part, to increased securities class action filings during 2010 through 2012.[1] (*See* page 19 for a related discussion of time from filing to settlement.)
- The increase in total settlement dollars in 2013 was largely driven by six mega settlements (settlements at or above $100 million).

Total settlement dollars in 2013 increased 46 percent over 2012.

FIGURE 2: **TOTAL SETTLEMENT DOLLARS**
2004–2013
(Dollars in Millions)



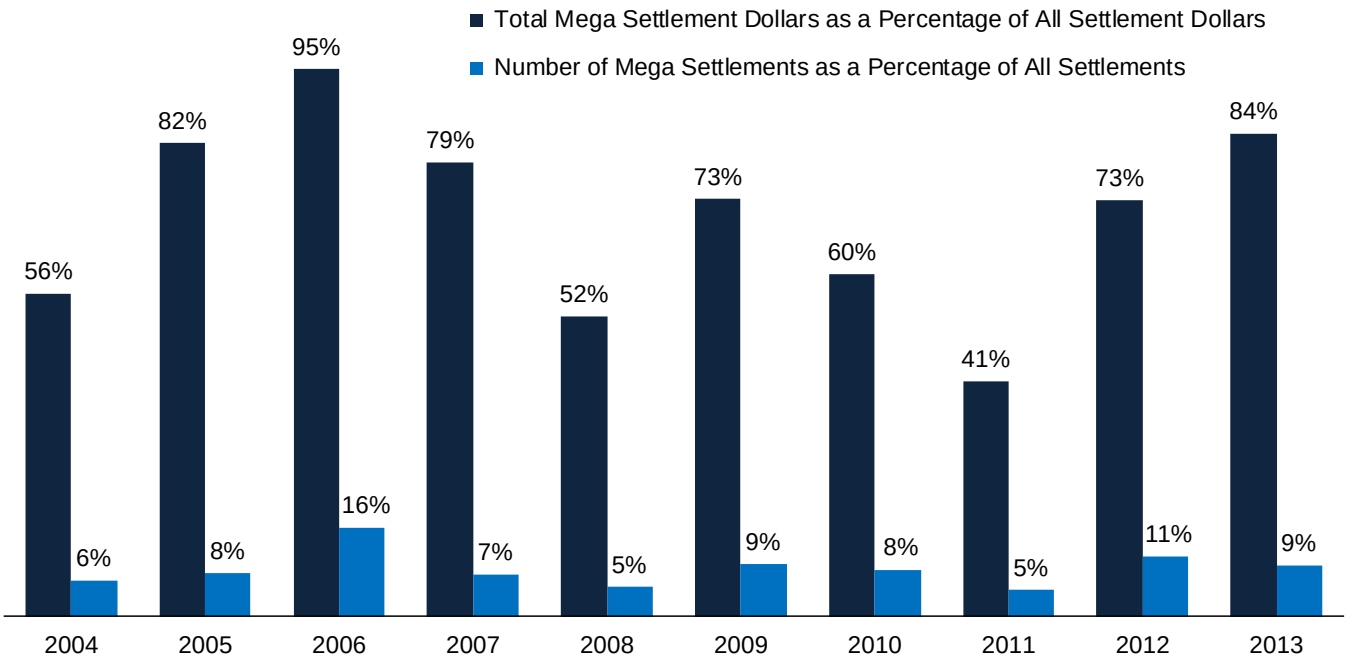
Note: Settlement dollars adjusted for inflation; 2013 dollar equivalent figures used.

MEGA SETTLEMENTS

- The percentage of settlement dollars from mega settlements (settlements at or above $100 million) was the second highest proportion in the last ten years.
- As noted, there were six mega settlements in 2013, including one settlement for more than $2 billion. The remaining five cases settled for between $150 million and $600 million.
- Three mega settlements involved pharmaceutical companies, and three involved financial institutions.

In 2013, six settlements accounted for 84 percent of total settlement dollars.

FIGURE 3: **MEGA SETTLEMENTS**
2004–2013

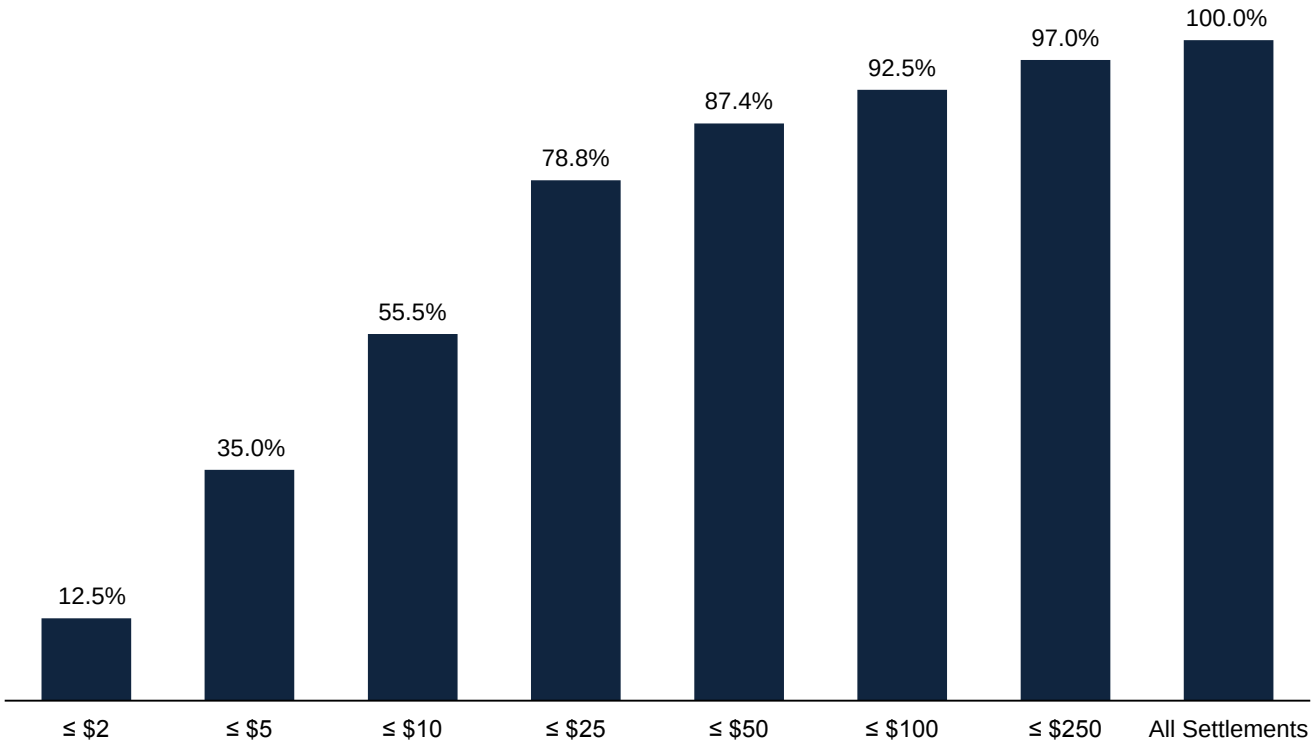


SETTLEMENT SIZE

- In 2013, the settlement size in approximately 60 percent of settled cases was $10 million or less, slightly higher than the cumulative ten-year percentage of about 56 percent.
- This high number of smaller settlements contributed to a 37 percent decline in the median settlement size in 2013 compared with 2012 ($6.5 million in 2013 versus $10.3 million in 2012).
- Roughly 32 percent of settlements less than $10 million in 2013 were for cases involving Chinese reverse mergers.[2]
- A total of 44 cases related to the subprime credit crisis are included in this study.[3] The median settlement for credit crisis–related cases was $30 million and the average settlement was over $140 million. These cases generally settle for higher amounts compared to cases not associated with the credit crisis.

The vast majority of securities class actions settle for less than $50 million.

FIGURE 4: **CUMULATIVE TEN-YEAR SETTLEMENT DISTRIBUTION 2004–2013**
(Dollars in Millions)



Note: Settlement dollars adjusted for inflation; 2013 dollar equivalent figures used.

SETTLEMENT SIZE *continued*

- Overall, 50 percent of post–Reform Act cases have settled for between $3.6 million and $20.6 million.
- Despite recent swings in annual median settlements, the range of settlement values between the 25th and 75th percentiles, with few exceptions, has fluctuated moderately with no discernible trend.

Annual median settlement values have ranged between $6 and $12 million in recent years.

FIGURE 5: **SETTLEMENT PERCENTILES**
(Dollars in Millions)

Year	Average	10th	25th	Median	75th	90th
1996–2013	$42.0	$1.7	$3.6	$8.1	$20.6	$70.6
2013	$71.3	$1.9	$3.0	$6.5	$21.5	$79.5
2012	$57.3	$1.3	$2.8	$10.3	$35.5	$110.6
2011	$21.7	$1.9	$2.6	$6.0	$18.6	$43.3
2010	$38.1	$2.1	$4.5	$12.0	$26.7	$85.0
2009	$40.7	$2.6	$4.2	$8.7	$21.7	$72.1

Note: Settlement dollars adjusted for inflation; 2013 dollar equivalent figures used.

DAMAGES ESTIMATES AND MARKET CAPITALIZATION LOSSES

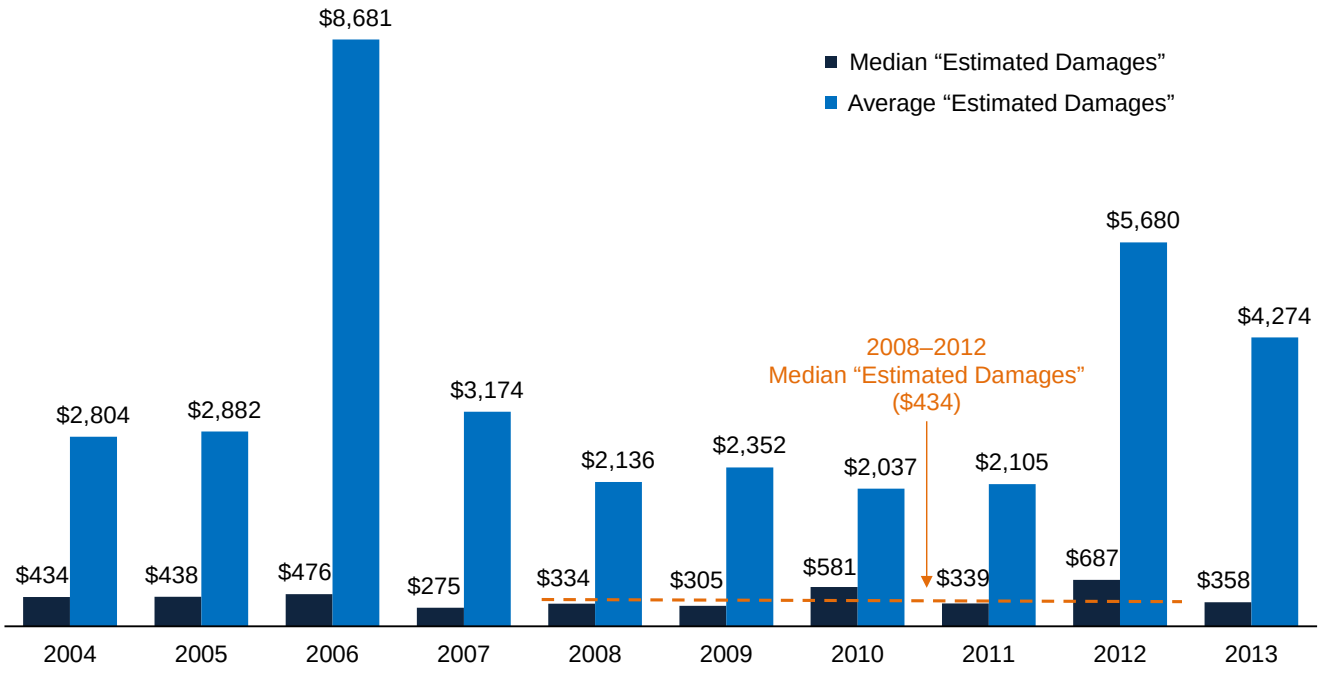
"ESTIMATED DAMAGES"

For purposes of this research and prior Cornerstone Research reports on securities class action settlements, these analyses use simplified calculations of shareholder losses, referred to as "estimated damages." Application of this consistent method allows for the identification and analysis of potential trends. "Estimated damages" are not necessarily linked to the allegations included in the associated court pleadings.[4] Accordingly, damages estimates presented in this report are not intended to be indicative of actual economic damages borne by shareholders.

Median "estimated damages" for 2013 declined 48 percent from 2012.

- Average "estimated damages" for 2013 were the third highest in the post–Reform Act era, due in part to a small number of extremely large cases, two of which related to the credit crisis.
- The decline in median "estimated damages" was likely a major factor contributing to the substantially lower median settlement in 2013 relative to 2012.[5]

FIGURE 6: **MEDIAN AND AVERAGE "ESTIMATED DAMAGES"**
2004–2013
(Dollars in Millions)



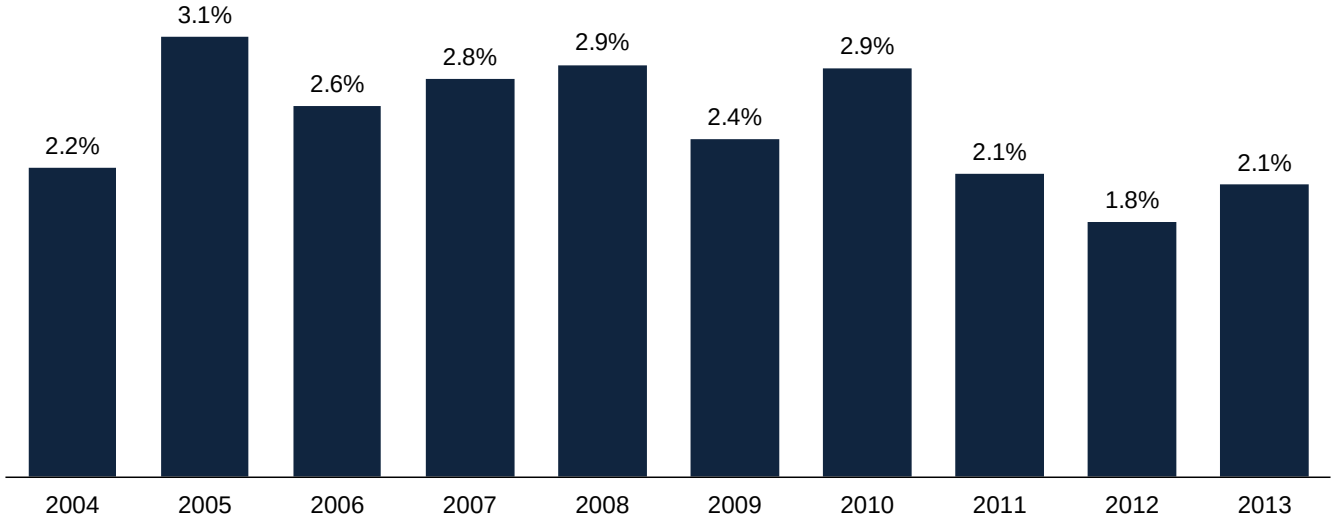
Note: "Estimated damages" are adjusted for inflation based on class period end dates.

"ESTIMATED DAMAGES" *continued*

- In 2013, the median settlement as a percentage of "estimated damages" rebounded slightly from a historic low of 1.8 percent in 2012.
- Median settlements as a percentage of "estimated damages" remained relatively low compared to levels observed over the past decade. Two factors contributed to this: the increased number of extremely large cases and the presence of credit crisis cases.
  - Traditionally, cases with large "estimated damages" have settled for a smaller proportion of those damages.
  - For credit crisis cases settled in 2013, the median settlement as a percentage of "estimated damages" was 0.7 percent, compared with 2.3 percent for all other cases settled in 2013.

Settlements as a percentage of "estimated damages" observed over the last three years are the lowest in the past decade.

FIGURE 7: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" 2004–2013**



"ESTIMATED DAMAGES" *continued*

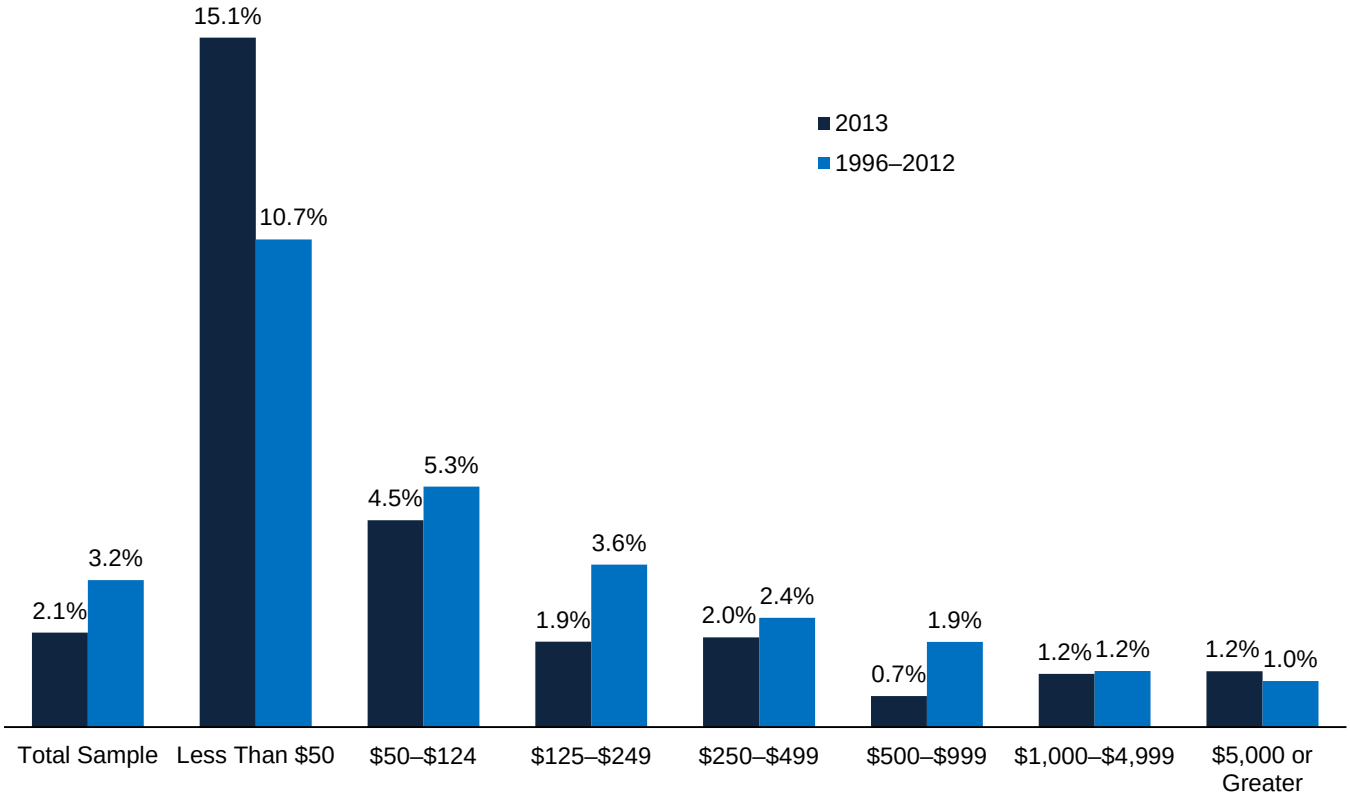
- Settlement amounts are generally larger when "estimated damages" are larger. Yet, as previously mentioned, settlements as a percentage of "estimated damages" tend to be smaller when "estimated damages" are larger.
- In 2013, relatively small cases—those with "estimated damages" of less than $50 million—had a median settlement as a percentage of "estimated damages" of 15.1 percent, compared with 2.1 percent for all 2013 settlements.

In 2013, smaller cases settled at a much higher percentage of "estimated damages."

FIGURE 8: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" BY DAMAGES RANGES**

1996–2013

(Dollars in Millions)



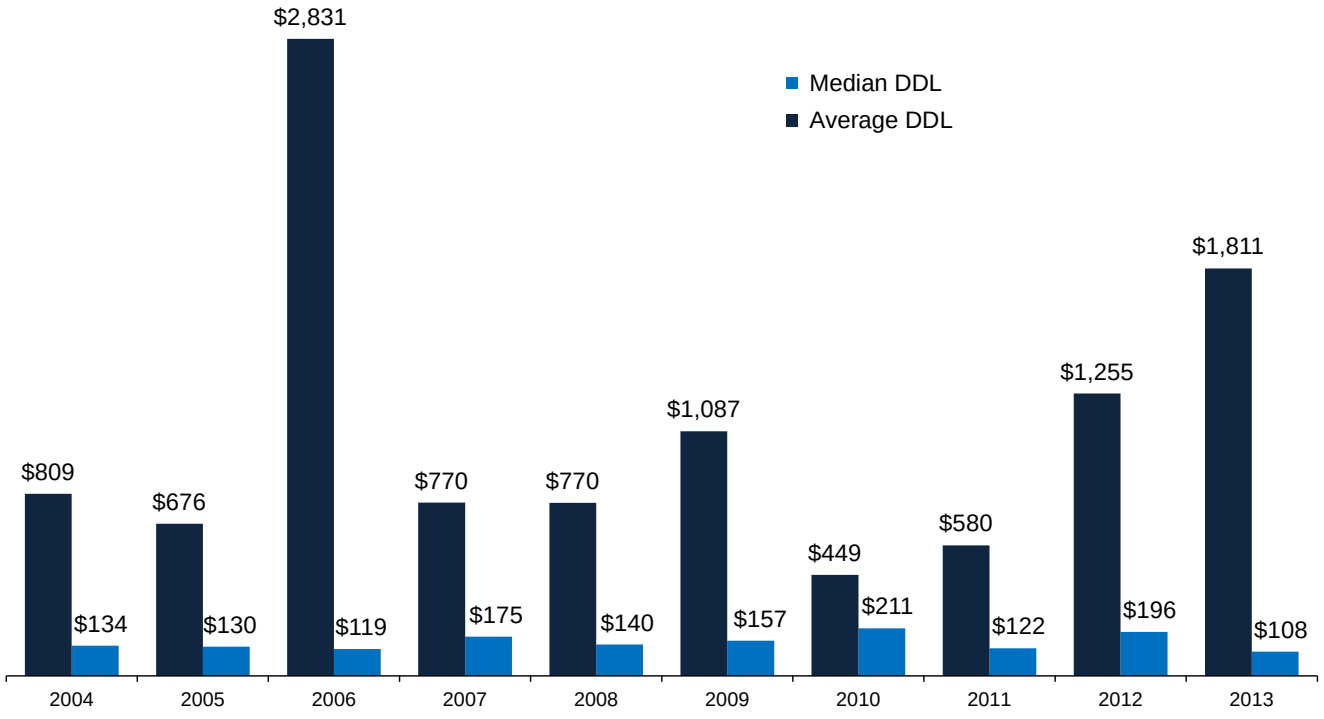
DISCLOSURE DOLLAR LOSS

Disclosure Dollar Loss (DDL) is another simplified measure of shareholder losses and an alternative measure to "estimated damages." DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.[6]

- In contrast to the median DDL, average DDL increased 44 percent from 2012 to $1.8 billion, reflecting the influence of a few very large cases.
- The median market capitalization at the time of settlement for issuers in the top 10 percent of DDL was dramatically higher than the median market capitalization for the next tier of DDL ($133.8 billion compared with $9.2 billion).
- The relationship between settlements and DDL is similar to that between settlements and "estimated damages"—settlements are larger when DDL is larger, yet settlements as a percentage of DDL are generally smaller when DDL is larger.

The median DDL associated with settled cases in 2013 decreased 45 percent from 2012.

FIGURE 9: **MEDIAN AND AVERAGE DISCLOSURE DOLLAR LOSS 2004–2013**
(Dollars in Millions)



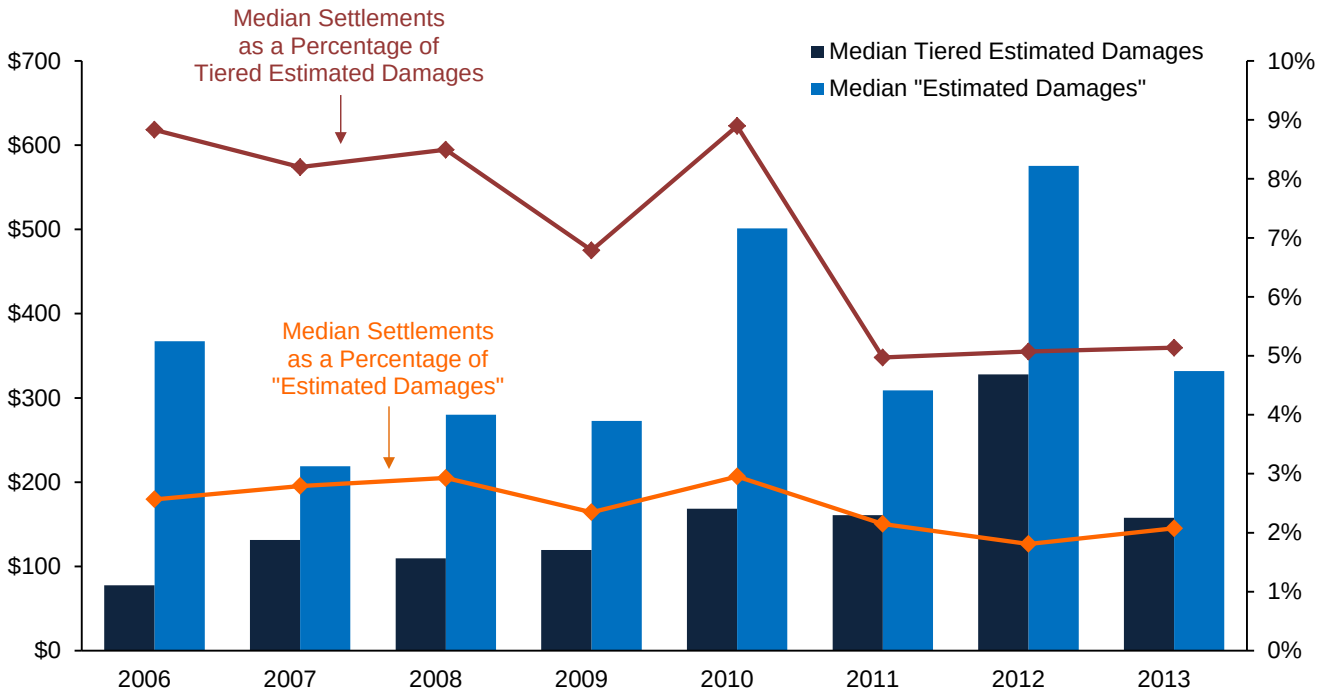
Note: DDL adjusted for inflation based on class period end dates.

TIERED ESTIMATED DAMAGES

The landmark decision in 2005 by the U.S. Supreme Court in *Dura Pharmaceuticals Inc. v. Broudo* (*Dura*) determined that plaintiffs must show a causal link between alleged misrepresentations and the subsequent actual losses suffered by plaintiffs. As a result of this decision, damages cannot be associated with shares sold before information regarding the alleged fraud reaches the market. Accordingly, this report considers the influence of *Dura* on securities class action damages calculations by exploring an alternative measure of damages in settlements research. This alternative measure, referred to here as tiered estimated damages, is based on the stock-price drops on alleged corrective disclosure dates as described in the plan of allocation for the settlement.[7] It utilizes a single value line when there is only one alleged corrective disclosure date (at the end of the class period) or a tiered value line when there are multiple alleged corrective disclosure dates.

This alternative measure has been calculated for a subsample of cases settled after 2005. As noted in past reports, tiered estimated damages has not yet surpassed the traditional measure of "estimated damages" used in this series of reports in terms of its power as a predictor of settlement outcomes. However, it is highly correlated with settlement amounts and provides an alternative measure of investor losses for more recent securities class action settlements.

FIGURE 10: **TIERED ESTIMATED DAMAGES**
2006–2013
(Dollars in Millions)



ANALYSIS OF SETTLEMENT CHARACTERISTICS

NATURE OF CLAIMS

- The number of cases settled in 2013 involving only Section 11 and/or Section 12(a)(2) claims is consistent with the increased activity in the U.S. IPO market in recent years.[8] There were eight such cases in 2013 compared with only four in 2012.
- The median settlement as a percentage of "estimated damages" is higher for cases involving only Section 11 and/or Section 12(a)(2) claims compared with cases involving only Rule 10b-5 claims.

"Estimated damages" are typically smaller for cases involving only Section 11 and/or Section 12(a)(2) claims.

FIGURE 11: **SETTLEMENTS BY NATURE OF CLAIMS**
1996–2013
(Dollars in Millions)

	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Section 11 and/or 12(a)(2) Only	80	$3.4	$46.7	7.4%
Both Rule 10b-5 and Section 11 and/or 12(a)(2)	246	$11.7	$402.3	3.4%
Rule 10b-5 Only	1,049	$6.8	$272.2	2.9%
All Post–Reform Act Settlements	1,376	$7.0	$257.1	3.1%

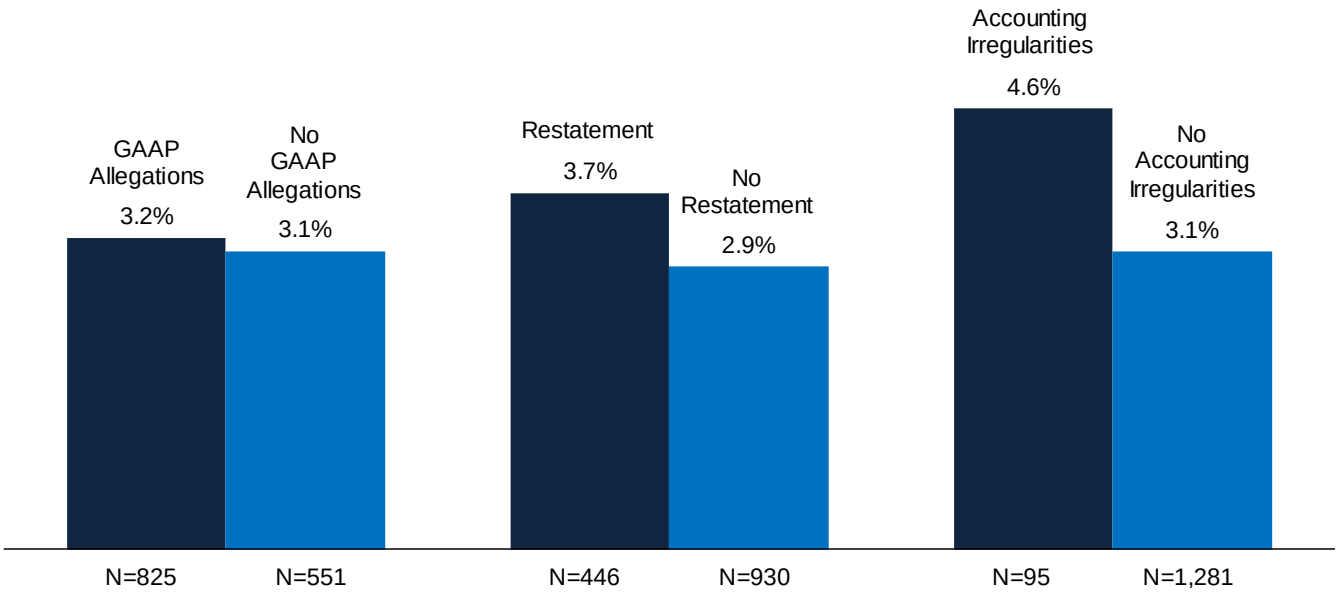
ACCOUNTING ALLEGATIONS

This research examines three types of accounting allegations among settled cases: (1) alleged GAAP violations, (2) restatements, and (3) reported accounting irregularities.[9]

- Cases involving accounting allegations are typically associated with higher settlement amounts and higher settlements as a percentage of "estimated damages."
- Cases alleging GAAP violations settled for only a slightly higher percentage of "estimated damages" than cases not alleging GAAP violations.
- Restatement cases settled for a higher percentage of "estimated damages" compared with GAAP cases not involving restatements.
- In 2013, 55 percent of settled cases alleged GAAP violations, 21 percent were associated with restatements, while only 4 percent involved reported accounting irregularities.
- Although relatively few settlements in 2013 involved reported accounting irregularities, these cases settled for a much larger percentage of "estimated damages" compared with cases not involving accounting irregularities.

The proportion of settled cases in 2013 involving accounting allegations dipped to a ten-year low.

FIGURE 12: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND ACCOUNTING ALLEGATIONS**
1996–2013

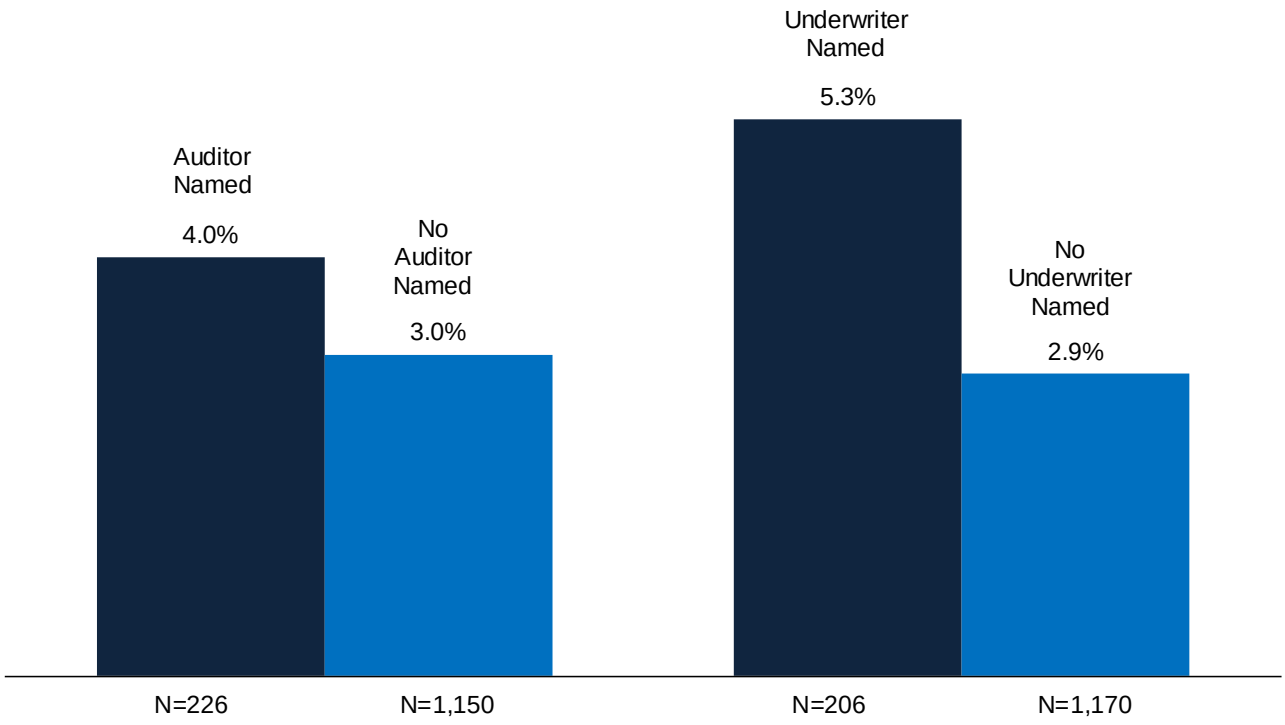


THIRD-PARTY CODEFENDANTS

- Third parties, such as an auditor or an underwriter, are often named as codefendants in larger, more complex cases and provide an additional source of settlement funds.
- Outside auditor defendants are often associated with cases involving restatements of financial statements or alleged GAAP violations, while the presence of underwriter defendants is highly correlated with the inclusion of Section 11 claims.
- In 2013, 32 percent of accounting-related cases had a named auditor defendant, while 76 percent of cases with Section 11 claims had a named underwriter defendant.

Cases with third-party codefendants have higher settlements as a percentage of "estimated damages."

FIGURE 13: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND THIRD-PARTY CODEFENDANTS**
1996–2013

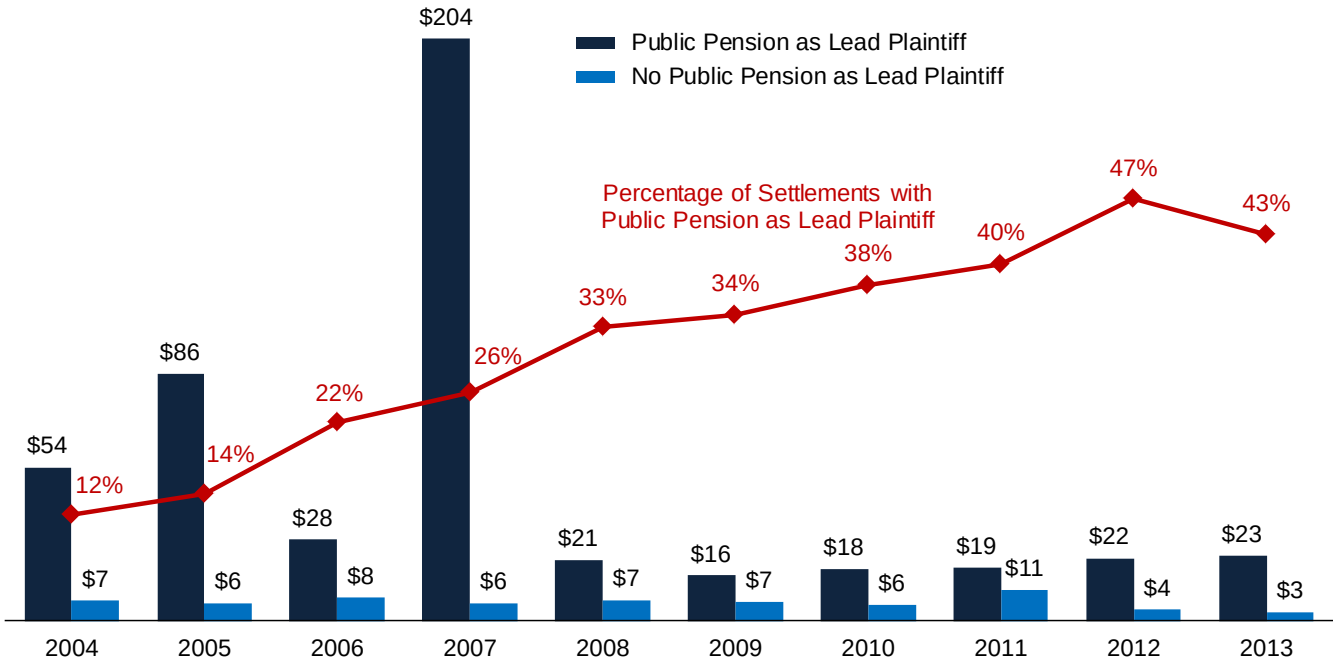


INSTITUTIONAL INVESTORS

- Since 2006, more than half of the settlements in any given year have involved institutional investors as lead plaintiffs.
- Among institutional investors, public pensions are the most active, involved as lead plaintiffs in over 55 percent of settlements with an institutional investor lead plaintiff since 2006.
- In 2013, public pensions served as a lead plaintiff in 43 percent of settled cases, slightly lower than in 2012 (47 percent), but nearly four times the 2004 figure (12 percent).
- The median settlement in 2013 for cases with a public pension as a lead plaintiff was $23 million, compared with $3 million for cases without a public pension as a lead plaintiff.

The presence of a public pension as a lead plaintiff is associated with higher settlements.

FIGURE 14: **MEDIAN SETTLEMENT AMOUNTS AND PUBLIC PENSIONS 2004–2013**
(Dollars in Millions)



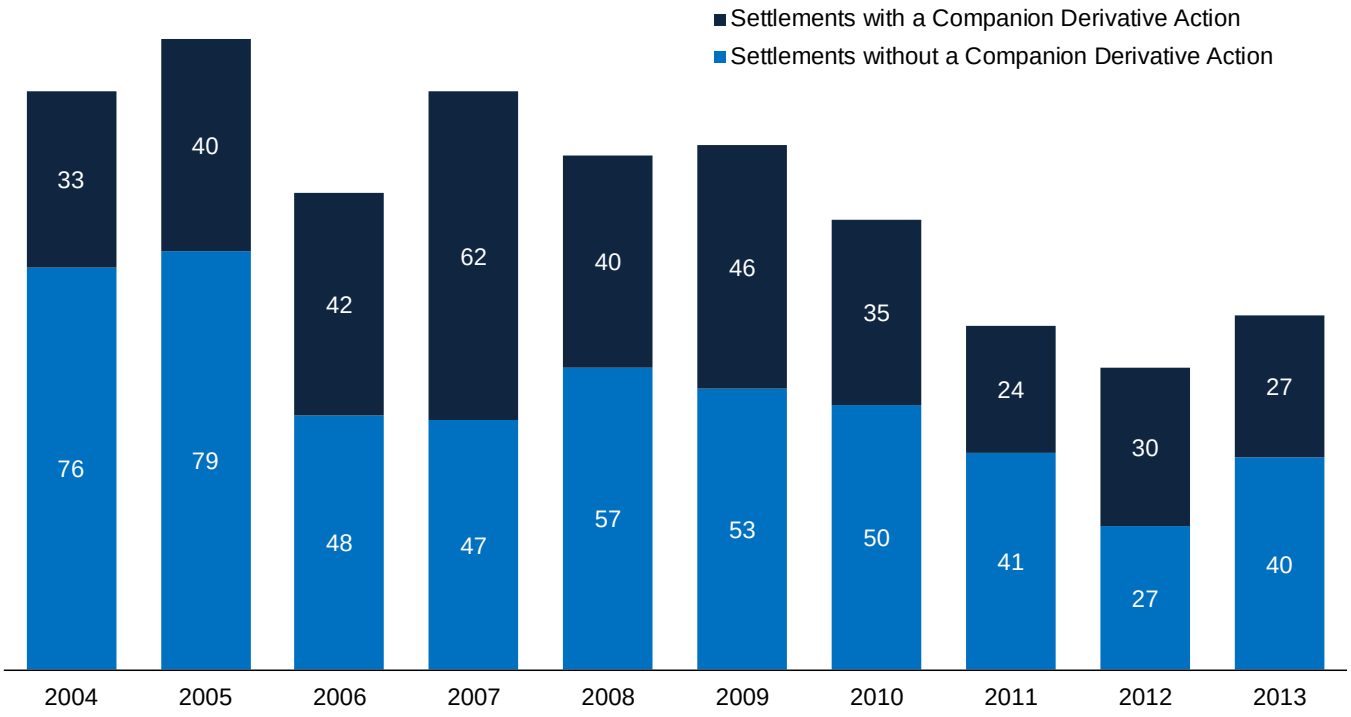
Note: Settlement dollars adjusted for inflation; 2013 dollar equivalent figures used.

DERIVATIVE ACTIONS

- "Estimated damages" for cases with accompanying derivative actions are typically higher compared to cases with no identifiable derivative action.[10]
- In 2013, 40 percent of settled cases were accompanied by derivative actions, compared with 53 percent of settled cases in 2012, and 32 percent of settled cases in prior post–Reform Act years.
- In recent years, cases in the sample have included far fewer simultaneous class and derivative settlements than in prior years.[11] In fact, during 2013, only two securities class actions settled simultaneously with the related derivative action.

Settlement amounts for class actions accompanied by derivative actions are significantly higher.

FIGURE 15: **FREQUENCY OF DERIVATIVE ACTIONS**
2004–2013



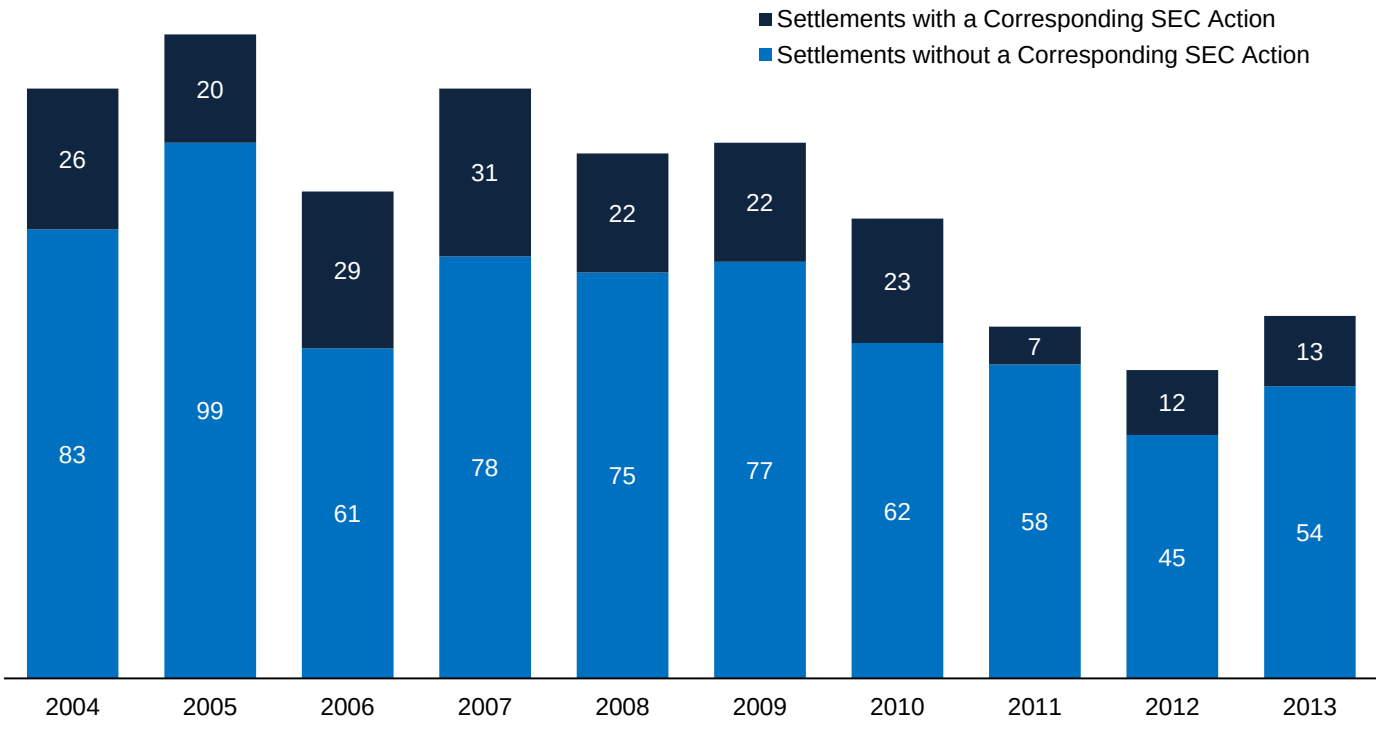
CORRESPONDING SEC ACTIONS

Cases that involve a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding prior to the settlement of the class action) are associated with significantly higher settlement amounts and have higher settlements as a percentage of "estimated damages."[12]

- In 2013, 19 percent of settled cases involved a corresponding SEC action, compared with 21 percent in 2012, and 23 percent of settled cases in prior post–Reform Act years.
- The median settlement for cases with an SEC action among all post–Reform Act years ($12.9 million) was more than two times the median settlement for cases without a corresponding SEC action.
- Record enforcement activity by the SEC in 2011 and 2012 was followed by a modest decrease in 2013.[13] SEC enforcements focus on a large scope of allegations, beyond those that may be included in the types of cases examined in this report. However, the SEC is placing sufficient emphasis on disclosure-related fraud and securities offerings such that the rate of securities class action settlements with corresponding SEC actions may increase.[14]

The recent decline in corresponding SEC actions may result from the reported slowdown in financial fraud investigations by the SEC during 2008–2010.

FIGURE 16: **FREQUENCY OF SEC ACTIONS**
2004–2013



COMPARISON OF SETTLEMENT CHARACTERISTICS BY SIZE

Several of the characteristics highlighted in this report are more prevalent for larger cases than smaller cases. For example, among the small proportion of post–Reform Act cases that settled for more than $50 million, 63 percent had a companion derivative action and 52 percent involved a third party as a codefendant. However, for the vast majority of cases in the sample that settled for less than $50 million, only 29 percent had a companion derivative action and only 24 percent involved a third-party as a codefendant.

- In addition, 57 percent were associated with GAAP allegations, compared with 79 percent for larger cases.
- 16 percent had a public pension as a lead plaintiff, compared with 62 percent for larger cases.

Settlements of $50 million or lower are far less likely to involve corresponding SEC actions or public pensions as lead plaintiffs.

FIGURE 17: **COMPARISON OF SETTLEMENT CHARACTERISTICS BY SIZE**
2004–2013

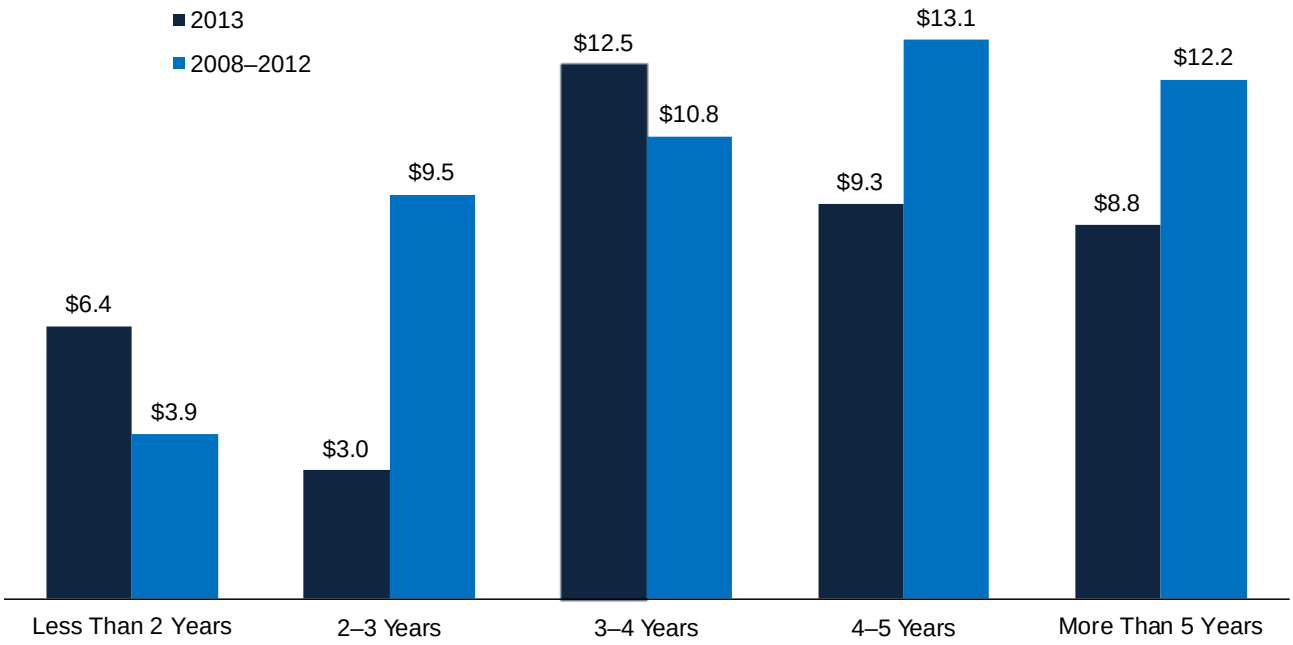
	Corresponding SEC Action	Accompanying Derivative Action	GAAP Allegations	Named Third-Party Codefendant	Public Pension as Lead Plaintiff
$50 Million or Less	19%	29%	57%	24%	16%
More Than $50 Million	54%	63%	79%	52%	62%

TIME TO SETTLEMENT

- Overall, the average time to reach settlement (as measured by the settlement hearing date) has been higher in recent years compared with the early post–Reform Act period.
- However, despite the longer settlement resolutions in recent years, in 2013, a substantial portion of settlements (37 percent) were resolved within 30 months of filing, the highest proportion in the past decade.
- Larger cases (as measured by "estimated damages") and cases involving larger firms tend to take longer to reach settlement.

In 2013, the median time to settlement was 3.2 years.

FIGURE 18: **MEDIAN SETTLEMENTS BY DURATION FROM FILING DATE TO SETTLEMENT HEARING DATE**
2008–2013
(Dollars in Millions)



LITIGATION STAGES

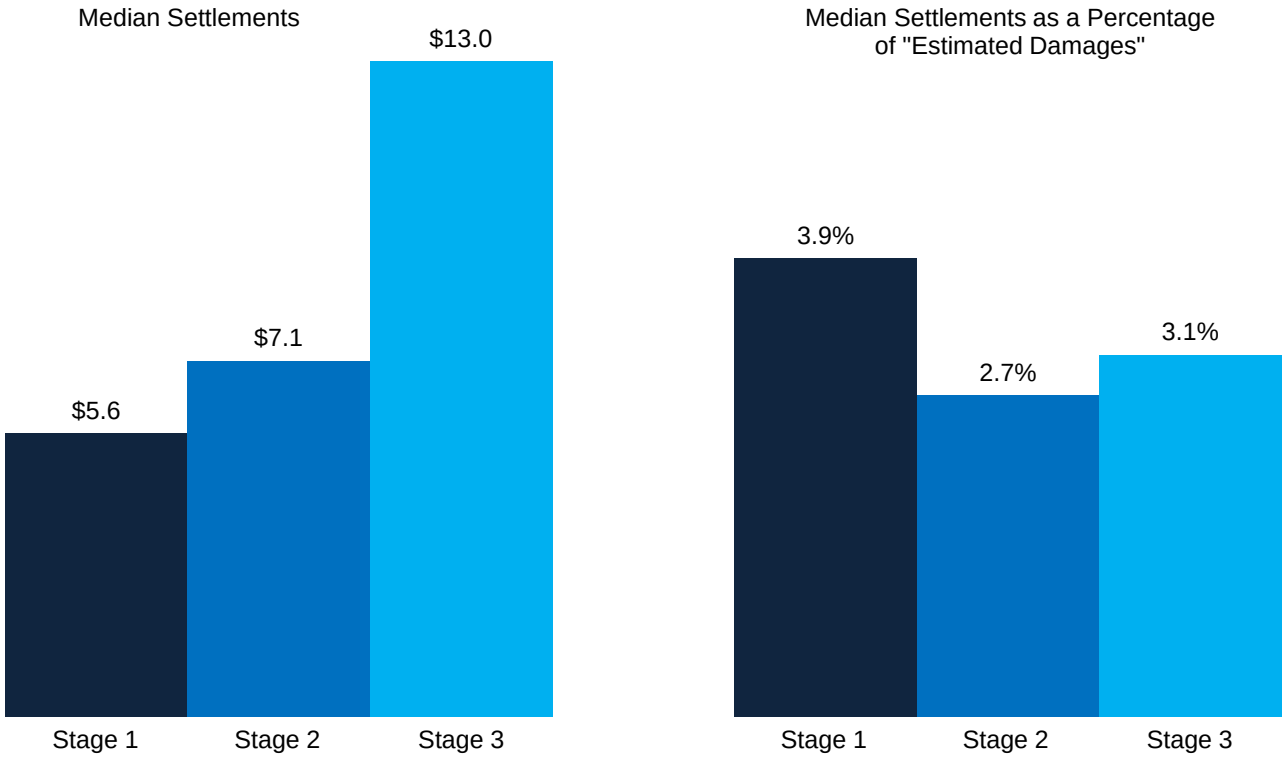
Advancement of cases through the litigation process may be considered an indication of the merits of a case (e.g., surviving a motion to dismiss) and/or the time and effort invested by the plaintiff counsel. This report studies three stages in the litigation process:

Stage 1: Settlement before the first ruling on a motion to dismiss
Stage 2: Settlement after a ruling on motion to dismiss, but before a ruling on motion for summary judgment
Stage 3: Settlement after a ruling on motion for summary judgment[15]

- Settlement amounts tend to increase as litigation progresses.
- Cases settling in Stage 1 settled for the highest percentage of "estimated damages," while there was only a small difference in the percentage between cases settling in Stage 2 versus Stage 3.
- Larger cases tend to settle at more advanced stages of litigation and tend to take longer to reach settlement. Through 2013, cases reaching Stage 3 had median "estimated damages" of more than three and a half times the median "estimated damages" of cases settling in Stage 1.

Settlements occurring early in the litigation process have smaller "estimated damages."

FIGURE 19: **LITIGATION STAGES**
1996–2013
(Dollars in Millions)



INDUSTRY SECTORS

The financial industry continues to rank the highest in median settlement value across all post–Reform Act years. However, industry sector is not a significant determinant of settlement amounts when controlling for other variables that influence settlement outcomes (such as "estimated damages," asset size, and the presence of third-party codefendants).

- Resolution of credit crisis–related cases has comprised a large portion of settlement activity in the financial sector in recent years—22 percent of settlements in 2013, 30 percent in 2012, and 18 percent in 2011.
- The next most prevalent sectors, in terms of the number of cases settled in 2013, were pharmaceuticals (18 percent) and technology (9 percent). In comparison, pharmaceuticals and technology comprised 6 percent and 24 percent, respectively, of cases settled during 1996 through 2012.
- The shift of settled cases to the pharmaceutical sector is consistent with the larger share of filing activity in the consumer non-cyclical sector (which includes healthcare, biotechnology, and pharmaceutical companies, among others) observed in recent years.[16]

The proportion of settled cases involving pharmaceutical firms was higher in 2013 relative to prior years.

FIGURE 20: **SETTLEMENTS BY SELECT INDUSTRY SECTORS**
1996–2013
(Dollars in Millions)

Industry	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Financial	169	$12.5	$575.4	3.1%
Telecommunications	141	8.0	340.6	2.4%
Pharmaceuticals	94	8.1	434.0	2.2%
Healthcare	56	6.3	212.1	3.5%
Technology	324	6.0	236.7	3.0%
Retail	117	5.8	171.0	4.3%

FEDERAL COURT CIRCUITS

- The highest concentration of settled cases in the Ninth Circuit in 2013 was in the technology and pharmaceutical sectors, each representing 9 percent of all cases. In prior post–Reform Act years, 38 percent of cases in this circuit involved technology firms, while only 6.5 percent related to pharmaceuticals.
- The number of docket entries can illustrate the complexity of a case and is correlated with the length of time from filing to settlement. Interestingly, the Second Circuit, one of the most active circuits, reports a median number of docket entries that ranks among the lowest.
- Generally, settlement approval hearings are held within four to seven months following the public announcement of a tentative settlement.

The Second and Ninth Circuits continue to lead the other circuits in number of settlements.

FIGURE 21: **SETTLEMENTS BY FEDERAL COURT CIRCUIT**
2009–2013
(Dollars in Millions)

Circuit	Number of Settlements	Median Number of Docket Entries	Median Duration from Tentative Settlement to Approval Hearing *(in months)*	Median Settlements	Median Settlements as a Percentage of "Estimated Damages"
First	11	104	7.3	$6.0	2.7%
Second	95	123	6.5	$11.4	2.4%
Third	34	144	5.8	$10.1	2.4%
Fourth	14	183	4.3	$8.8	1.8%
Fifth	19	168	5.2	$6.5	1.6%
Sixth	16	116	4.0	$13.6	4.1%
Seventh	22	158	4.8	$6.2	2.5%
Eighth	8	178	5.9	$6.5	4.0%
Ninth	110	167	6.0	$8.0	2.3%
Tenth	9	180	6.4	$7.5	3.4%
Eleventh	19	154	5.5	$6.3	2.1%
DC	2	603	4.9	$83.3	3.7%

CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Characteristics of securities cases that may affect settlement outcomes are often correlated. Regression analysis makes it possible to examine the effects of these factors simultaneously. As part of this ongoing analysis of securities class action settlements, regression analysis was applied to study factors associated with settlement outcomes. Based on this research sample of post–Reform Act cases settled through December 2013, the variables that were important determinants of settlement amounts included the following:

- "Estimated damages"
- Disclosure Dollar Loss (DDL)
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether the issuer reported intentional misstatements or omissions in financial statements
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether the plaintiffs named an auditor as codefendant
- Whether the plaintiffs named an underwriter as codefendant
- Whether a companion derivative action was filed
- Whether a public pension was a lead plaintiff
- Whether noncash components, such as common stock or warrants, made up a portion of the settlement fund
- Whether the plaintiffs alleged that securities other than common stock were damaged
- Whether criminal charges/indictments were brought with similar allegations to the underlying class action
- Whether Section 11 claims accompanied Rule 10b-5 claims
- Whether the issuer traded on a nonmajor exchange

Settlements were higher when "estimated damages," DDL, defendant asset size, or the number of docket entries were larger. Settlements were also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a restatement of financials, a corresponding SEC action, an underwriter and/or auditor named as codefendant, an accompanying derivative action, a public pension involved as lead plaintiff, a noncash component to the settlement, filed criminal charges, or securities other than common stock alleged to be damaged. Settlements were lower if the settlement occurred in 2004 or later, and if the issuer traded on a nonmajor exchange.

While the primary approach of these analyses is designed to better understand and predict the total settlement amount, these analyses also are able to estimate the probabilities associated with reaching alternative settlement levels. These probabilities can be useful analyses for clients in considering the different layers of insurance coverage available and likelihood of contributing to the settlement fund. Regression analysis can also be used to explore hypothetical scenarios, including but not limited to the effects on settlement amounts given the presence or absence of particular factors found to significantly affect settlement outcomes.

RESEARCH SAMPLE

- The database used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,396 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2013. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[17]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[18] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[19]

DATA SOURCES

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

ENDNOTES

1 See *Securities Class Action Filings—2013 Year in Review,* Cornerstone Research, 2014. This report, *Securities Class Action Settlements—2013 Review and Analysis,* excludes merger and acquisition cases since those cases do not meet the sample criteria.

2 See *Investigations and Litigation Related to Chinese Reverse Merger Companies*, Cornerstone Research, 2011; and *Securities Class Action Filings—2013 Year in Review,* Cornerstone Research, 2014.

3 For further discussion and case details for subprime credit crisis matters, see the *D&O Diary* at www.dandodiary.com.

4 The simplified "estimated damages" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are calculated using a market-adjusted, backward-pegged value line. For cases involving only Section 11 and/or Section 12(a)(2) claims, damages are calculated using a model that caps the purchase price at the offering price. Volume reduction assumptions are based on the exchange on which the issuer's common stock traded. Finally, no adjustments for institutions, insiders, or short sellers are made to the underlying float.

5 Twenty settlements out of the 1,396 cases in the sample were excluded from calculations involving "estimated damages" due to stock data availability issues. The WorldCom settlement was also excluded from these calculations because most of the settlement in that matter related to liability associated with bond offerings (and this research does not compute damages related to securities other than common stock).

6 DDL captures the price reaction—using closing prices—of the disclosure that resulted in the first filed complaint. This measure does not incorporate additional stock price declines during the alleged class period that may affect certain purchasers' potential damages claims. Thus, as this measure does not isolate movements in the defendant's stock price that are related to case allegations, it is not intended to represent an estimate of investor losses. The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.

7 The dates used to identify the applicable inflation bands may be supplemented with information from the operative complaint at the time of settlement.

8 See *Securities Class Action Filings—2013 Year in Review,* Cornerstone Research, 2014. Annual U.S. IPO activity in 2010–2012 was significantly higher than in 2008–2009.

9 The three categories of accounting allegations analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

10 This is true whether or not the settlement of the derivative action coincides with the settlement of the underlying class action, or occurs at a different time.

11 Typically, the resolution of derivative suits lags settlement of an accompanying class action. The common practice of seeking a stay in a parallel derivative suit contributes to this lag in the resolution of derivative suits when compared with accompanying class actions.

12 It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement.

13 "SEC Announces Enforcement Results for FY 2013," SEC press release, December 17, 2013, http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540503617#.UrCA_tJUeuI.

14 *See* Sara E. Gilley and David F. Marcus, Cornerstone Research, "The Changing Nature of SEC Enforcement Actions," *Law360*, October 8, 2013.

15 Litigation stage data obtained from Stanford Law School's Securities Class Action Clearinghouse. Sample does not add to 100 percent as there is a small sample of cases with other litigation stage classifications.

16 See *Securities Class Action Filings—2013 Year in Review,* Cornerstone Research, 2014.

17 Available on a subscription basis.

18 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports. Additionally, four cases, omitted from 2012 settlements, were added to the data sample.

19 This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

ABOUT THE AUTHORS

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Laarni Bulan is a manager in Cornerstone Research's Boston office, where she specializes in finance. She has consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, merger valuations, insider trading, asset-backed commercial paper conduits, and credit default swaps. Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan was an assistant professor of finance at the International Business School and in the economics department of Brandeis University.

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Ellen Ryan is a manager in Cornerstone Research's Boston office, where she works in the securities practice. Ms. Ryan has consulted on economic and financial issues in a variety of cases, including securities class actions, financial institution breach of contract matters, and antitrust litigation. She also has worked with testifying witnesses in corporate governance and breach of fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently she focuses on post–Reform Act settlement research as well as general practice area business and research.

Laura E. Simmons

Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor in Cornerstone Research's Washington, DC, office. She is a certified public accountant (CPA) and has more than twenty years of experience in accounting practice and economic and financial consulting. She has focused on damages and liability issues in litigation, as well as on accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, research on securities lawsuits, and other issues involving empirical analyses.

Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at settlement.database@cornerstone.com.

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Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD.	:	Civil Action No. 12 Civ. 1845 (PGG)

AFFIDAVIT OF RICHARD J. KILSHEIMER IN SUPPORT OF APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Richard J. Kilsheimer, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice before this Court, and I am a partner of Kaplan Fox & Kilsheimer LLP ("Kaplan Fox"), court-appointed Co-Lead Counsel for the Lead Plaintiff.

2. I make this affidavit in support of Kaplan Fox's application for an award of attorney's fees and reimbursement of expenses for services rendered on behalf of the Class in the course of the above-captioned securities class action (the "Action").

3. My firm's compensation for services rendered in this Action was wholly contingent on the success of this Action, and was totally at risk.

4. A description of the identification and background of my firm and its members is attached hereto as Exhibit A.

5. During the period from February 2012 through today my firm has been involved in all aspects of the prosecution of this Action. All of the work was reasonable and necessary to the prosecution of this litigation and its successful conclusion.

6. In the course of this litigation, my firm has expended a total of 1,468.75 hours. The total lodestar for my firm at current rates is $732,703.75. Attached hereto as Exhibit B is a chart

that sets forth the time spent by my firm broken down by partner, associate and paralegal through December 23, 2014, and setting forth for each person their lodestar at current hourly rates.

7. Through December 23, 2014, my firm has expended a total of $75,414.90 in unreimbursed expenses in connection with the prosecution of this Action. Attached hereto as Exhibit C is a chart setting forth my firm's unreimbursed expenses.

8. The expenses incurred pertaining to this Action are reflected in the books and records of this firm maintained in the ordinary course of business. These books and records are prepared from expense vouchers and check records are an accurate record of the expenses incurred.

Richard J. Kilsheimer

Sworn to before me this
23 day of December, 2014

Notary Public

JAMIE LEE FEDERICO
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01FE6164373 - QUALIFIED IN SUFFOLK COUNTY
MY COMMISSION EXPIRES APRIL 16, 2015

EXHIBIT A

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History of Kaplan Fox & Kilsheimer LLP

Leo Kaplan and James Kilsheimer founded "Kaplan & Kilsheimer" in 1954, making the firm one of the most established litigation practices in the country. James Kilsheimer was a celebrated federal prosecutor in the late 1940s and early 1950s in New York who not only successfully tried some of the highest profile cases in the country, but also handled the U.S. Attorney's Office's criminal appeals to the Second Circuit.

Now known as "Kaplan Fox & Kilsheimer LLP," the early commitment to high-stakes litigation continues to define the firm to the present day. In 2009, Portfolio Media's *Law360* ranked Kaplan Fox's securities litigation practice as one of the top 5 in the country (plaintiff side). For 2012 and 2013, 5 of the firm's attorneys – including attorneys on both coasts – were rated "Super Lawyers." And in March 2013, the *National Law Journal* included Kaplan Fox on its list of the top 10 "hot" litigation boutiques, a list that includes both plaintiff and defense firms.

The firm has three primary litigation practice areas (antitrust, securities, and consumer protection), and the firm is a leader in all three. To date, we have recovered more than **$5 billion** for our clients and classes. In addition, the firm has expanded its consumer protection practice to include data privacy litigation, and few other firms can match Kaplan Fox's recent leadership in this rapidly emerging field. The following describes Kaplan Fox's major practice areas, its most significant recoveries and its personnel.

Antitrust Litigation

Kaplan Fox has been at the forefront of significant private antitrust actions, and we have been appointed by courts as lead counsel or member of an executive committee for plaintiffs in some of the largest antitrust cases throughout the United States. This commitment to leadership in the antitrust field goes back to at least 1967, when firm co-founder Leo Kaplan was appointed by the Southern District of New York to oversee the distribution of all ASCAP royalties under the 1950 antitrust consent decree in ***United States v. American Society of Composers, Authors and Publishers***, 41-CV-1395 (SDNY), a role he held for 28 years until his death in 1995. To this day, ASCAP awards the "Leo Kaplan Award" to an outstanding young composer in honor of Leo's 28 years of service to ASCAP.

Members of the firm have also argued before federal Courts of Appeals some of the most significant decisions in the antitrust field in recent years. For example, Robert Kaplan, son of co-founder Leo Kaplan, argued the appeal in ***In re Flat Glass Antitrust Litigation***, 385 F. 3d 350 (3d Cir. 2004), and Greg Arenson argued the appeal in ***In re High Fructose Corn Syrup Antitrust Litigation***, 295 F. 3d 651 (7th Cir. 2002). In a recent survey of defense counsel, in-house attorneys and individuals involved in the civil justice reform movement, both were named among the 75 best plaintiffs' lawyers in the country based on their expertise and influence.

Over the years, Kaplan Fox has recovered over **$2 billion** for our clients in antitrust cases. Some of the larger more recent antitrust recoveries include:

In re High Fructose Corn Syrup Antitrust Litigation, MDL No. 1087, Master File No. 95-1477 (C.D. Ill) ($531 million recovered)

In re Brand Name Prescription Drugs Antitrust Litigation, MDL 997 (N.D. Ill.) ($720 plus million recovered)

In re Infant Formula Antitrust Litigation, MDL 878 (N.D.Fla.) ($126 million recovered)

In re Flat Glass Antitrust Litigation, MDL 1200 (W.D. Pa.) ($122 plus million recovered)

In re Hydrogen Peroxide Antitrust Litigation, MDL 1682 (E.D. Pa.) ($97 million recovered)

In re Air Cargo Shipping Services Antitrust Litigation, MDL 1775 (E.D.N.Y.) (over $700 million recovered so far; case still pending)

In re Plastics Additives Antitrust Litigation, 03-CV-1898 (E.D. Pa.) ($46.8 million recovered)

In re Medical X-Ray Film Antitrust Litigation, CV 93-5904 (E.D.N.Y.) ($39.6 million recovered)

In re NBR Antitrust Litigation, MDL 1684 (E.D. Pa.) ($34.3 million recovered)

Securities Litigation

Over the past 35 years, Kaplan Fox has been a leader in prosecuting corporate fraud —ranging from cases concerning accounting fraud to those involving complicated and complex financial instruments. Since the passage of the Private Securities Litigation Reform Act in 1995, Kaplan Fox has emerged as one of the foremost securities litigation firms representing institutional investors of all sizes, including many of the world's largest public pension funds.

Kaplan Fox was named by Portfolio Media's Law360 as one of the five top securities litigation firms (plaintiff side) for 2009. This selection was based, in part, on the representation of public pension funds in high profile and complex securities class actions including *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, In re Bank of America Corp. Sec., ERISA & Derivative Litigation, In re Fannie Mae Securities Litigation* and *In re Ambac Financial Group, Inc. Securities Litigation*. Some of the firm's most significant securities recoveries are listed below:

In re Bank of America Corp. Securities, Derivative, and ERISA Litigation, MDL 2058 (S.D.N.Y.) ($2.425 billion recovered)

In re Merrill Lynch & Co., Inc. Securities Litigation, Master File No. 07-CV-9633 (JSR) (S.D.N.Y.) ($475 million recovered)

In re 3Com Securities Litigation, No. C-97-21083-EAI (N.D. Ca) ($259 million recovered)

In re MicroStrategy Securities Litigation, No. CV-00-473-A (E.D. Va.) ($155 million recovered)

AOL Time Warner Cases I & II (Opt-out) Nos. 4322 & 4325 (Cal. State Court, LA County) ($140 million recovered)

In re Informix Securities Litigation, C-97-129-CRB (N.D. Cal.) ($136.5 million recovered)

In re Xcel Energy, Inc. Securities Litigation, Master File No. 02-CV-2677-DSD (D. Minn.) ($80 million recovered)

In re Elan Corporation Securities Litigation, No. 02-CV-0865-RMB (S.D.N.Y.) ($75 million recovered)

Barry Van Roden, *et al.* v. Genzyme Corp., *et al.* No. 03-CV-4014-LLS (S.D.N.Y.) ($64 million recovered)

In re Sequenom, Inc. Securities Litigation No. 09-cv-921 (S.D. Cal.) ($57 million recovered)

Consumer Protection and Data Privacy Litigation

The Consumer Protection Practice is headquartered in Kaplan Fox's San Francisco office, which opened in 2000, and is led by Laurence King, an experienced trial lawyer and former prosecutor. Mr. King also recently served as a Vice-Chair, and then Co-Chair, of the American Association for Justice's Class Action Litigation Group.

Mr. King and our other effective and experienced consumer protection litigators regularly champion the interests of consumers under a variety of state and federal consumer protection laws. Most frequently, these cases are brought as class actions, though under certain circumstances an individual action may be appropriate.

Kaplan Fox's consumer protection attorneys have represented victims of a broad array of misconduct in the manufacturing, testing, marketing and sale of a variety of products and services, and have regularly been appointed as lead or co-lead counsel, or as a member of a committee of plaintiffs' counsel, in consumer protection actions by courts throughout the nation. Among our significant achievements are highly recognized cases including ***In re Baycol Products Litigation***, MDL 1431-MJD/JGL (D. Minn.) (victims have recovered $350 million recovered to date); ***In re Providian Financial Corp. Credit Card Terms Litigation***, MDL No. 1301-WY (E.D. Pa.) ($105 million recovered); ***In re Thomas and Friends Wooden Railway Toys Litig.***, No. 07-cv-3514 (N.D. Ill.) ($30 million settlement obtained for purchasers of recalled "Thomas Train" toys painted with lead paint); ***In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation***, No. 4:09-md-2086 (W.D. Mo.) (settlements obtained where consumers will receive substantially in excess of actual damages and significant injunctive relief); and ***Berry v.***

Mega Brands Inc., No. 08-CV-1750 (D.N.J.) (class-wide settlement obtained where consumers will receive full refunds for defective products).

Data privacy is a fairly new area of law and broadly encompasses two scenarios. In a data breach case, a defendant has lawful custody of data, but fails to safeguard it or use it in an appropriate manner. In a tracking case, the defendant intercepts or otherwise gathers digital data to which it is not entitled in the first place.

Kaplan Fox is an emerging leader in both types of data privacy litigation. For example, Laurence King filed and successfully prosecuted one of very first online data breach cases, ***Syran v. LexisNexis Group***, No. 05-cv-0909 (S.D. Cal.), and is court-appointed liaison counsel in a pending data breach case against LinkedIn. *See* ***In re: LinkedIn User Privacy Litigation***, 12-cv-3088-EJD (N.D. Cal.) (Davila, J.). The firm is also an industry leader in the even newer field of email and internet tracking litigation. Current cases include ***In re: Facebook Internet Tracking Litigation***, 5:12-md-02314-EJD (N.D. Cal.) (Davila, J.), and a Kaplan Fox attorney, David Straite, was one of two attorneys to argue on behalf of the plaintiffs at oral arguments on Facebook's Motion to Dismiss (decision is pending). Finally, Kaplan Fox is also leading an internet tracking case in New York against PulsePoint, Inc., an online advertising company accused of hacking Safari's privacy protections. *See* ***Mount v. PulsePoint, Inc***., No. 13-cv-6592 (SDNY) (Buchwald, J.). In addition, Kaplan Fox was recently appointed Co-Lead Class Counsel in a digital privacy class action against Yahoo!, Inc., related to Yahoo's alleged practice of scanning emails for content. See In re: Yahoo Mail Litigation, 5:13-cv-04980-LHK (N.D. Cal.)

ATTORNEY BIOGRAPHIES

PARTNERS

ROBERT N. KAPLAN is widely recognized as a leading antitrust litigator. He has led the prosecution of numerous antitrust class actions. He also has earned a reputation as a leading litigator in securities fraud class actions. Mr. Kaplan has been with Kaplan Fox for 35 years, joining in 1971.

Mr. Kaplan honed his litigation skills as a trial attorney with the Antitrust Division of the Department of Justice. There, he gained significant experience litigating both civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then chief judge of the U.S. District Court for the Southern District of New York.

Mr. Kaplan's published articles include: "Supreme Court Divide Hampers Nearly All Class Actions," *Law360*, January 2014, "Complaint and Discovery In Securities Cases," *Trial*, April 1987; "Franchise Statutes and Rules," *Westchester Bar Topics*, Winter 1983; "Roots Under Attack: *Alexander v. Haley* and *Courlander v. Haley*," *Communications and the Law*, July 1979; and "Israeli Antitrust Policy and Practice," *Record of the Association of the Bar*, May 1971.

In addition, Mr. Kaplan served as an acting judge of the City Court for the City of Rye, N.Y., from 1990 to 1993.

Mr. Kaplan sits on the boards of several community organizations, including the Board of Directors of the Carver Center in Port Chester, N.Y., the Board of Directors of the Rye Free Reading Room in Rye, N.Y. and a Member of the Dana Farber Visiting Committee Thoracic Oncology.

Education:

- B.A., Williams College (1961)
- J.D., Columbia University Law School (1964)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1964)
- U.S. Supreme Court

- U.S. Courts of Appeals for the Second, Third, Seventh, Ninth, and Eleventh Circuits
- U.S. District Courts for the Southern, Eastern, and Northern Districts of New York, the Central District of Illinois, and the District of Arizona

Professional Affiliations:

- Committee to Support the Antitrust Laws (past President)
- National Association of Securities and Commercial Law Attorneys (past President)
- Advisory Group of the U.S. District Court for the Eastern District of New York
- American Bar Association
- Association of Trial Lawyers of America (Chairman, Commercial Litigation Section, 1985-86)
- Association of the Bar of the City of New York (served on the Trade Regulation Committee; Committee on Federal Courts)

Mr. Kaplan can be reached by email at: RKaplan@kaplanfox.com

FREDERIC S. FOX first associated with Kaplan Fox in 1984, and became a partner in the firm in 1991. He has concentrated his work in the area of class action litigation. Mr. Fox has played important roles in many major class action cases. He was one of the lead trial lawyers in two recent securities class actions, one of which was the first case tried to verdict under the Private Securities Litigation Reform Act of 1995.

Mr. Fox currently represents many institutional investors including governmental entities in both class actions and individual litigation, including *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which was recently settled for $475 million. Mr. Fox is currently serving as lead counsel on behalf of major public pension funds in pending securities litigation arising out of Bank of America's acquisition of Merrill Lynch. Mr. Fox also represents institutional clients in pending securities litigation involving Fannie Mae, Sequenom, Ambac and Credit Suisse and in the past has served as lead counsel in numerous cases, including *In re Merrill Lynch Research Reports Securities Litigation* (S.D.N.Y.) (arising from analyst reports issued by Henry Blodget); *In re Salomon Analyst*

Williams Litigation (S.D.N.Y.) and *In re Salomon Focal Litigation* (S.D.N.Y.) (both actions stemming from analyst reports issued by Jack Grubman). Mr. Fox is a frequent speaker and panelist in both the U.S and abroad on a variety of topics including securities litigation and corporate governance.

In the consumer protection area, he served on the Plaintiffs' Steering Committee in the *Baycol Products Litigation* where there have been more than $350 million in settlements. Additionally, he is serving as one of the Co-lead Counsel in *In re RC2 Corp. Toy Lead Paint Products Liability Litigation* pending in the Northern District of Illinois.

Mr. Fox is listed in the current editions of New York Super Lawyers and is recognized in Benchmark Litigation 2010 as a New York "Litigation Star."

Mr. Fox is the author of "Current Issues and Strategies in Discovery in Securities Litigation," ATLA, 1989 Reference Material; "Securities Litigation: Updates and Strategies," ATLA, 1990 Reference Material; and "Contributory Trademark Infringement: The Legal Standard after Inwood Laboratories, Inc. v. Ives Laboratories," University of Bridgeport Law Review, Vol. 4, No. 2.

During law school, Mr. Fox was the notes and comments editor of the University of Bridgeport Law Review.

Education:

- B.A., Queens College (1981)
- J.D., Bridgeport School of Law (1984)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1985)
- U.S. Courts of Appeals for the Fourth, Fifth, and Sixth Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- American Bar Association
- Association of the Bar of the City of New York
- Association of Trial Lawyers of America (Chairman, Commercial Law Section, 1991-92)

Mr. Fox can be reached by email at: FFox@kaplanfox.com

RICHARD J. KILSHEIMER first associated with Kaplan Fox in 1976 and became a partner in the firm in 1983. His practice is concentrated in the area of antitrust litigation. During his career, Mr. Kilsheimer has played significant roles in a number of the largest successful antitrust class actions in the country, and he is serving as co-lead counsel for plaintiffs in several currently pending cases. He also practices in the areas of securities fraud and commercial litigation.

In December 2007, Mr. Kilsheimer was a speaker on the subject "Elevated Standards of Proof and Pleading: Implications of *Twombly* and *Daubert*" at the American Antitrust Institute Symposium on the Future of Private Antitrust Enforcement held in Washington, D.C. Mr. Kilsheimer has also served on the Antitrust and Trade Regulation Committee of the Association of the Bar of the City of New York (2004-2007).

Prior to joining the firm, Mr. Kilsheimer served as law clerk to the Hon. Lloyd F. MacMahon (1975-76), formerly Chief Judge of the U.S. District Court for the Southern District of New York.

Mr. Kilsheimer is co-author of "Secondary Liability Developments," ABA Litigation Section, Subcommittee on Secondary Liability, 1991-1994.

Education:

- A.B., University of Notre Dame (1972)
- J.D., *cum laude*, St. John's University (1975)

Bar Affiliations and Court Admissions:

- State of New York (1976)
- U.S. Court of Appeals for the Second (1983), Third (2002), Sixth (2002) and D.C. (2005) Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York (1976) and the Northern District of Indiana (1987)

Professional Affiliations:

- Association of the Bar of the City of New York (Member: Antitrust and Trade Regulation Committee (2004-2007))
- Federal Bar Council
- Committee to Support the Antitrust Laws

Mr. Kilsheimer can be reached by email at: RKilsheimer@kaplanfox.com

GREGORY K. ARENSON is a seasoned business litigator with experience representing clients in a variety of areas, including antitrust, securities, and employee termination. His economics background has provided a foundation for his recognized expertise in handling complex economic issues in antitrust cases, both as to class certification and on the merits. He argued the appeals in *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651 (7th Cir. 2002), and *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2009).

Mr. Arenson has been a partner in the firm since 1993. Prior to joining Kaplan Fox, Mr. Arenson was a partner with Proskauer Rose. Earlier in his career, he was a partner with Schwartz Klink & Schreiber, and an associate with Rudnick & Wolfe (now DLA Piper).

Mr. Arenson writes frequently on discovery issues and the use of experts. His published articles include: "Rule 8 (a)(2) After *Twombly*: Has There Been a Plausible Change?" 14 NY LITIGATOR 23 (2009); "Report on Proposed Federal Rule of Evidence 502," 12 NY LITIGATOR 49 (2007); "Report: Treating the Federal Government Like Any Other Person: Toward a Consistent Application of Rule 45," 12 NY LITIGATOR 35 (2007); "Report of the Commercial and Federal Litigation Section on the Lawsuit Abuse Reduction Act of 2005," 11 NY LITIGATOR 26 (2006); "Report Seeking To Require Party Witnesses Located Out-Of-State Outside 100 Miles To Appear At Trial Is Not A Compelling Request," 11 NY LITIGATOR 41 (2006); "Eliminating a Trap for the Unwary: A Proposed Revision of Federal Rule of Civil Procedure 50," 9 NY LITIGATOR 67 (2004); "Committee Report on Rule 30(b)(6)," 9 NY LITIGATOR 72 (2004); "Who Should Bear the Burden of Producing Electronic Information?" 7 FEDERAL DISCOVERY NEWS, No. 5, at 3 (April 2001); "Work Product vs. Expert Disclosure – No One Wins," 6 FEDERAL DISCOVERY NEWS, No. 9, at 3 (August 2000); "Practice Tip: Reviewing Deposition Transcripts," 6 FEDERAL DISCOVERY NEWS, No. 5, at 13 (April 2000); "The Civil Procedure Rules: No More Fishing Expeditions," 5 FEDERAL DISCOVERY NEWS, No. 9, at 3 (August 1999); "The Good, the Bad and the Unnecessary: Comments on the Proposed Changes to the Federal Civil Discovery Rules," 4 NY LITIGATOR 30 (1998); and "The Search for Reliable Expertise: Comments on Proposed Amendments to the Federal Rules of Evidence," 4 NY LITIGATOR 24 (1998). He was co-editor of FEDERAL RULES OF CIVIL PROCEDURE, 1993 AMENDMENTS, A PRACTICAL GUIDE,

published by the New York State Bar Association; and a co-author of "Report on the Application of Statutes of Limitation in Federal Litigation," 53 ALBANY LAW REVIEW 3 (1988).

Mr. Arenson's *pro bono* activities include being vice chair of the New York State Bar Association Commercial and Federal Litigation Section; a co-chair of the New York State Bar Association Task Force on the State of Our Courthouses, whose report was approved by the New York State Bar Association House of Delegates on June 20, 2009; a member of the New York State Bar Association Special Committee on Standards for Pleadings in Federal Litigation, whose report was approved New York State Bar Association House of Delegates on June 19, 2010; and a member of the New York State Bar Association Special Committee on Discovery and Case Management in Federal Litigation, whose Interim Report on Preservation and Spoliation was adopted by the Executive Committee of the New York State Bar Association on July 15, 2011. He is a member of The Sedona Conference® Working Group 1 on Electronic Document Retention and Production. He also serves as a mediator in the U.S. District Court for the Southern District of New York. In addition, he is an active alumnus of the Massachusetts Institute of Technology, having served as a member of the Corporation, a member of the Corporation Development Committee, vice president of the Association of Alumni/ae, and member of the Alumni/ae Fund Board (of which he was a past chair).

Education:

- S.B., Massachusetts Institute of Technology (1971)
- J.D., University of Chicago (1975)

Bar Affiliations and Court Admissions:

- Bar of the State of Illinois (1975)
- Bar of the State of New York (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third and Seventh Circuits
- U.S. District Courts for the Northern and Central Districts of Illinois, and the Southern and Eastern Districts of New York
- U.S. Tax Court

Professional Affiliations:

- New York State Bar Association, Commercial and Federal Litigation Section, Vice-Chair (2011-12), and Committee on Federal Procedure (Chairman since 1997)
- New York State Bar Association, Task Force on the State of Our Courthouses, Co-Chair
- New York State Bar Association, Special Committee on Discovery and Case Management in Federal Litigation (2010-)
- New York State Bar Association, Special Committee on Standards for Pleadings in Federal Litigation (2008-09)
- Association of the Bar of the City of New York
- American Bar Association
- The Sedona Conference® Working Group 1 on Electronic Document Retention and Production
- Member, advisory board, FEDERAL DISCOVERY NEWS (1999 – present)

Mr. Arenson can be reached by email at: GArenson@kaplanfox.com

LAURENCE D. KING first associated with Kaplan Fox in 1994, and became a partner in the firm in 1998. Mr. King initially joined the firm in New York, but in 2000 relocated to San Francisco to open the firm's first West Coast office. He is now partner-in-charge of the firm's San Francisco and Los Angeles offices.

Mr. King practices primarily in the areas of consumer protection litigation and securities litigation, the latter with an emphasis on institutional investor representation. In both of these practice areas, he has played a substantial role in cases that have resulted in some of the largest recoveries ever obtained by Kaplan Fox, including *In re Bank of America Corp. Securities, Derivative, and ERISA Litigation* (S.D.N.Y.), *In re Baycol Products Litigation* (E.D. Pa.), *In re 3Com Securities Litigation* (N.D. Cal.), *In re Informix Securities Litigation* (N.D. Cal.), *AOL Time Warner Cases I & II* (Ca. Super. Ct., L.A. Cty.) and *Providian Credit Card Cases* (Ca. Super. Ct., S.F. Cty.).

An experienced trial lawyer, prior to joining Kaplan Fox Mr. King served as an assistant district attorney under the legendary Robert Morgenthau in the Manhattan (New

York County, New York) District Attorney's office, where he tried numerous felony prosecutions to a jury verdict. At Kaplan Fox, he was a member of the trial team for two class actions tried to verdict, *In re Biogen Securities Litigation* (D. Mass.) and *In re Health Management Securities Litigation* (E.D.N.Y.). Mr. King has also participated in trial preparation for numerous other cases in which favorable settlements were achieved for our clients on or near the eve of trial.

Mr. King was selected for inclusion in Northern California *SuperLawyers* for 2012 and 2013, and from 2011-13, he served as a Vice-Chair, and then as Co-Chair, of the American Association for Justice's Class Action Litigation Group.

Education:

- B.S., Wharton School of the University of Pennsylvania (1985)
- J.D., Fordham University School of Law (1988)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1989)
- Bar of the State of California (2000)
- U.S. District Courts for the District of New Jersey, the Eastern District of Pennsylvania, the Southern and Eastern Districts of New York, and the Northern, Central and Southern Districts of California

Professional Affiliations:

- Bar Association of San Francisco
- American Bar Association
- American Association for Justice
- San Francisco Trial Lawyers' Association
- American Business Trial Lawyers

Mr. King can be reached by email at: LKing@kaplanfox.com

JOEL B. STRAUSS first associated with Kaplan Fox in 1992, and became a partner of the firm in 1999. He practices in the area of securities and consumer fraud class action litigation, with a special emphasis on accounting and auditing issues.

Prior to joining Kaplan Fox, Mr. Strauss served as a senior auditor with one of the former "Big Eight" accounting firms. Combining his accounting background and legal

skills, he has played a critical role in successfully prosecuting numerous securities class actions across the country on behalf of shareholders. Mr. Strauss was one of the lead trial lawyers for the plaintiffs in the first case to go to trial and verdict under the Private Securities Litigation Reform Act of 1995.

More recently Mr. Strauss has been involved in representing the firm's institutional clients in the following securities class actions, among others: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (S.D.N.Y.) ($475 million settlement); *In re Prestige Brands Holdings Inc. Securities Litigation* (S.D.N.Y.) ($11 million settlement); *In re Gentiva Securities Litigation* (E.D.N.Y.); and *In re Sunpower Securities Litigation* (N.D. Cal.) ($19.7 million). He has also served as lead counsel for lead plaintiffs in *In re OCA, Inc. Securities Litigation* (E.D. La.) ($6.5 million settlement) and *In re Proquest Company Securities Litigation* (E.D. Mich.) ($20 million settlement). Mr. Strauss also played an active role for plaintiff investors in *In re Countrywide Financial Corporation Securities Litigation* (C.D. Cal.) which settled for more than $600 million.

In the consumer protection area, Mr. Strauss served as Chair of Plaintiffs' Non-Party Discovery Committee in the *Baycol Products Litigation*, where there were more than $350 million in settlements.

Although currently practicing exclusively in the area of law, Mr. Strauss is a licensed Certified Public Accountant in the State of New York.

Mr. Strauss has also been a guest lecturer on the topics of securities litigation, auditors' liability and class actions for seminars sponsored by the Practicing Law Institute and the Association of the Bar of the City of New York.

Education:

- B.A., Yeshiva University (1986)
- J.D., Benjamin N. Cardozo School of Law (1992)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey
- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey
- U.S. Court of Appeals for the Third Circuit

Professional Affiliations:

- American Bar Association (member, Litigation Section, Rule 23 Subcommittee)
- Association of the Bar of the City of New York
- New York State Bar Association
- American Institute of Certified Public Accountants

Mr. Strauss can be reached by email at: JStrauss@kaplanfox.com

HAE SUNG NAM first associated with Kaplan Fox in 1999 and became a partner in the Firm in 2005. She practices in the areas of securities and antitrust litigation, mainly focusing in the Firm's securities practice.

Since joining the Firm, Ms. Nam has been involved in all aspects of securities practice, including case analysis for the Firm's institutional investor clients as well as being a key member of the litigation team representing a number of institutional clients in securities litigation. She is currently part of the team prosecuting securities claims against Bank of America Corporation, Fannie Mae and Ambac Financial Group, Inc. She also has a focus in prosecuting opt-out actions on behalf of the Firm's clients and has played a significant role in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.) and *State Treasurer of the State of Michigan v. Tyco International, Ltd., et al.* The recoveries for the Firm's institutional clients in both of these cases were multiples of what they would have received had they remained members of the class action.

Prior to joining the Firm, Ms. Nam was an associate with Kronish Lieb Weiner & Hellman LLP, where she trained as transactional attorney in general corporate securities law and mergers and acquisitions.

Ms. Nam graduated, magna cum laude, with a dual degree in political science and public relations from Syracuse University's Maxwell School and S.I. Newhouse School of Public Communications. Ms. Nam obtained her law degree, with honors, from George Washington University Law School. During law school, Ms. Nam was a member of the George Washington University Law Review. She is the author of a case note, "Radio – Inconsistent Application Rule," 64 Geo. Wash. L. Rev. (1996). In addition, she also served as an intern for the U.S. Department of Justice, Antitrust Division.

Education:

- B.A., magna cum laude, Syracuse University (1994)

- J.D., with honors, George Washington University School of Law (1997)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1998)
- U.S. District Court for the Eastern District of Wisconsin

Professional Affiliations:

- New York State Bar Association
- American Bar Association

Ms. Nam can be reached by email at: HNam@kaplanfox.com

DONALD R. HALL has been associated with Kaplan Fox since 1998, and became a partner of the firm in 2005. He practices in the areas of securities, antitrust and consumer protection litigation. Mr. Hall is actively involved in maintaining and establishing the Firm's relationship with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the Firm's numerous institutional investors.

Mr. Hall currently represents a number of the Firm's institutional investor clients in securities litigation actions including, *In re Bank of America Corp. Litigation*, *In re Fannie Mae 2008 Securities Litigation*, *In re Ambac Financial Group, Inc. Securities Litigation*, *In Re Credit Suisse – AOL Securities Litigation*. Recently Mr. Hall has successfully represented institutional clients in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which was recently settled for $475 million; *In re Majesco Securities Litigation*; and *In re Escala Securities Litigation*. Additionally, he was a member of the litigation team in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.), an opt-out action brought by institutional investors that settled just weeks before trial. This action, stemming from the 2001 merger of America Online and Time Warner, resulted in a recovery of multiples of what would have been obtained if those investors had remained members of the class action.

Mr. Hall has played a key role in many of the Firm's securities and antitrust class actions resulting in substantial recoveries for the Firm's clients, including *In re Merrill Lynch Research Reports Securities Litigation* (arising from analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* and *In re Salomon Focal*

Litigation (both actions stemming from analyst reports issued by Jack Grubman); *In re Flat Glass Antitrust Litigation*; and *In re Compact Disc Antitrust Litigation*.

Mr. Hall graduated from the College of William and Mary in 1995 with a B.A. in Philosophy and obtained his law degree from Fordham University School of Law in 1998. During law school, Mr. Hall was a member of the Fordham Urban Law Journal and a member of the Fordham Moot Court Board. He also participated in the Criminal Defense Clinic, representing criminal defendants in federal and New York State courts on a pro-bono basis.

Education:

- B.A., College of William and Mary (1995)
- J.D., Fordham University School of Law (1998)

Bar Affiliations and Court Admissions:

- Bar of the State of Connecticut (2001)
- Bar of the State of New York (2001)
- U.S. District Court for the Southern District of New York

Professional Affiliations:

- American Bar Association
- Association of Trial Lawyers of America
- New York State Bar Association

Mr. Hall can be reached by email at: DHall@kaplanfox.com

JEFFREY P. CAMPISI joined Kaplan Fox in 2004 and became a partner of the firm in 2013. He practices in the area of securities litigation.

Mr. Campisi currently represents state pension funds in pending securities class actions against Monsanto Company (*Rochester Laborers Pension Fund v. Monsanto Company, et al.*) (10cv1380) (E.D. Mo.) and in *In re 2008 Fannie Mae Securities Litigation* (08cv7831) (S.D.N.Y.). Jeff recently represented shareholders in the following securities class actions: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (07cv9633) (S.D.N.Y.) ($475 million settlement); *In re Sequenom, Inc. Securities Litigation* (S.D. Cal.) (09cv921) ($48 million in cash and stock recovered).

Mr. Campisi served as law clerk for Herbert J. Hutton, United States District Court Judge for the Eastern District of Pennsylvania.

Education:

- B.A., cum laude, Georgetown University (1996)
- J.D., summa cum laude, Villanova University School of Law (2000)
  Member of Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2001)
- U.S. Dist. Court for the Southern District of New York (2001)
- U.S. Dist. Court for the Eastern District of New York (2001)

Professional affiliations:

- American Bar Association
- New York State Bar Association
- American Association for Justice
- Nassau County Bar Association

Mr. Campisi can be reached by email at: jcampisi@kaplanfox.com

MELINDA CAMPBELL became associated with Kaplan Fox in September 2004 and became a partner of the firm in 2013. She practices in the areas of antitrust, securities and other areas of civil litigation.

While attending law school, Ms. Rodon provided pro bono legal services to the Philadelphia community through the Civil Practice Clinic of the University of Pennsylvania Law School as well as the Homeless Advocacy Project. She also conducted pro bono legal research for the Southern Poverty Law Center.

Education:

- B.A., University of Missouri (2000)
- J.D., University of Pennsylvania Law School (2004)

Bar Affiliations and Court Admissions:

- Bar of the State of New York, (2005)
- U.S. District Courts for the Southern and Eastern Districts of New York

Ms. Campbell can be reached by email at: MCampbell@kaplanfox.com

OF COUNSEL

GARY L. SPECKS practices primarily in the area of complex antitrust litigation. He has represented plaintiffs and class representatives at all levels of litigation, including appeals to the U.S. Courts of Appeals and the U.S. Supreme Court. In addition, Mr. Specks has represented clients in complex federal securities litigation, fraud litigation, civil RICO litigation, and a variety of commercial litigation matters. Mr. Specks is resident in the firm's Chicago office.

During 1983, Mr. Specks served as special assistant attorney general on antitrust matters to Hon. Neil F. Hartigan, then Attorney General of the State of Illinois.

Education:

- B.A., Northwestern University (1972)
- J.D., DePaul University College of Law (1975)

Bar Affiliations and Court Admissions:

- Bar of the State of Illinois (1975)
- U.S. Courts of Appeals for the Third, Fifth, Seventh, Ninth and Tenth Circuits
- U.S. District Court for the Northern District of Illinois, including Trial Bar

Professional Affiliations:

- American Bar Association
- Illinois Bar Association
- Chicago Bar Association

Mr. Specks can be reached by email at: GSpecks@kaplanfox.com

W. MARK MCNAIR practices in the area of securities litigation with a special emphasis on institutional investor involvement. He associated with the firm in 2003, and is resident in Washington, D.C. Prior to entering private practice, he was an attorney at the Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Education:

- B.A. with honors, University of Texas at Austin (1972)
- J.D. University of Texas at Austin (1975)
- L.L.M. (Securities) Georgetown University (1989)

Mr. McNair can be reached at MMcnair@kaplanfox.com

LINDA M. FONG practices in the areas of general business and consumer protection class action litigation. She has been associated with Kaplan Fox since 2001, and is resident in the firm's San Francisco office. Ms. Fong served on the Board of the San Francisco Trial Lawyers Association from 2000 to 2011. She was selected for inclusion to the Northern California Super Lawyers list for 2011 through 2013.

Education:

- J.D., University of San Francisco School of Law (1985)
- B.S., with honors, University of California, Davis
- Elementary Teaching Credential, University of California, Berkeley

Bar affiliations and court admissions:

- Bar of the State of California (1986)
- U.S. District Courts for the Northern, Southern and Eastern Districts of California
- U.S. Court of Appeals for the Ninth Circuit

Professional affiliations:

- San Francisco Trial Lawyers Association
- Asian American Bar Association
- American Association for Justice

Awards:

- Presidential Award of Merit, Consumer Attorneys of California

Ms. Fong can be reached by email at: lfong@kaplanfox.com

WILLIAM J. PINILIS practices in the areas of commercial, consumer and securities class action litigation.

He has been associated with Kaplan Fox since 1999, and is resident in the firm's New Jersey office.

In addition to his work at the firm, Mr. Pinilis has served as an adjunct professor at Seton Hall School of Law since 1995, and is a lecturer for the New Jersey Institute for Continuing Legal Education. He has lectured on consumer fraud litigation and regularly teaches the mandatory continuing legal education course Civil Trial Preparation.

Mr. Pinilis is the author of "Work-Product Privilege Doctrine Clarified," *New Jersey Lawyer*, Aug. 2, 1999; "Consumer Fraud Act Permits Private Enforcement," *New Jersey Law Journal*, Aug. 23, 1993; "Lawyer-Politicians Should Be Sanctioned for Jeering Judges," *New Jersey Law Journal*, July 1, 1996; "No Complaint, No Memo – No Whistle-Blower Suit," *New Jersey Law Journal*, Sept. 16, 1996; and "The *Lampf* Decision: An appropriate Period of Limitations?" *New Jersey Trial Lawyer*, May 1992.

Education:

- B.A., Hobart College (1989)
- J.D., Benjamin Cardozo School of Law (1992)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (1992)
- Bar of the State of New York (1993)
- U.S. District Courts for the District of New Jersey, and the Southern and Eastern Districts of New York

Professional Affiliations:

- Morris County Bar Association
- New Jersey Bar Association
- Graduate, Brennan Inn of Court

Mr. Pinilis can be reached by email at: WPinilis@kaplanfox.com

JUSTIN B. FARAR joined Kaplan Fox in March 2008. He practices in the area of securities and antitrust litigation with a special emphasis on institutional investor involvement. He is located in the Los Angeles office. Prior to joining the firm, Mr. Farar was a litigation associate at O'Melveny & Myers, LLP and clerked for the Honorable Kim McLane Wardlaw on the Ninth Circuit Court of Appeals. Mr. Farar also currently serves as a Commissioner to the Los Angeles Convention and Exhibition Authority.

Education:

- J.D., order of the coif, University of Southern California Law School (2000)
- B.A., with honors, University of California, San Diego

Bar Affiliations and Court Admissions:

- Bar of the State of California (2000)

- U.S. Court of Appeals for the Ninth Circuit (2000)
- U.S. District Court for the Central of California (2000)

Awards:

- The American Society of Composers, Authors and Publishers' Nathan Burkan Award Winner, 2000 for article titled "Is the Fair Use Defense Outdated?"

Ms. Farar can be reached by email at: JFarar@kaplanfox.com

DAVID STRAITE joined Kaplan Fox in 2013. He focuses on securities, corporate governance, hedge fund, antitrust and digital privacy litigation and is resident in the firm's New York office. Prior to joining the Firm, Mr. Straite helped launch the US offices of London-based Stewarts Law LLP, where he was the global head of investor protection litigation, the partner in residence in New York, and a member of the US executive committee. He also worked in the Delaware office of Grant & Eisenhofer and the New York office Skadden Arps.

Mr. Straite is a frequent speaker and panelist in the U.S. and abroad. Most recently, he spoke on the hedge fund panel at the February 6, 2013 meeting of the National Association of Public Pension Attorneys in Washington, D.C. ("*Structuring Investments – Do I Get to Go to the Cayman Islands?*"); debated the General Counsel of Meetup, Inc. during 2013 Social Media Week ("*David vs. Goliath: the Global Fight for Digital Privacy*"); and gave a guest lecture on the Legal Talk Network's "Digital Detectives" podcast. He has also given interviews to Channel 10 (Tel Aviv), BBC World News (London), SkyNews (London), and CBS News Radio (Philadelphia).

Mr. Straite's recent work includes representing investors in the Harbinger Capital hedge fund litigation and the Citigroup CSO hedge fund litigation in New York federal court; pursuing digital privacy claims as court-appointed co-lead counsel in *In re: Facebook Internet Tracking Litigation* in California and *In re: Google Inc. Cookie Placement Consumer Privacy Litigation* in Delaware; pursuing corporate governance claims in Delaware Chancery Court in *In re: Molycorp Derivative Litigation*; and helping to develop the first multi-claimant test of the UK's new prospectus liability statute in a case against the Royal Bank of Scotland in the English courts. Mr. Straite has also authored *Netherlands: Amsterdam Court of Appeal Approves Groundbreaking Global Settlements*

Under the Dutch Act on the Collective Settlement of Mass Claims, in The International Lawyer's annual "International Legal Developments in Review" (2009), co-authored *Google and the Digital Privacy Perfect Storm* in the E-Commerce Law Reports (UK) (2013), and was a contributing author for Maher M. Dabbah & K.P.E. Lasok, QC, Merger Control Worldwide (2005).

Education:

- B.A., Tulane University, Murphy Institute of Political Economy (1993)
- J.D., *magna cum laude*, Villanova University School of Law (1996), Managing Editor, Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2000)
- Bar of the State of Delaware (2009)
- Bar of the State of Pennsylvania (1996)
- Bar of the State of New Jersey (1996)
- Bar of the District of Columbia (2008)
- U.S. District Courts for the Southern and Eastern Districts of New York; Eastern District of Pennsylvania; and the District of Delaware
- U.S. Court of Appeals for the Third Circuit

Professional affiliations:

- American Bar Association (Section of Litigation and Section of International Law)
- Delaware Bar Association
- New York American Inn of Court (Master of the Bench)
- Royal Society of St. George (Delaware Chapter)
- Internet Society

Mr. Straite can be reached by email at: dstraite@kaplanfox.com

DEIRDRE A. RONEY joined the San Francisco office of Kaplan Fox as Of Counsel in 2013. Deirdre's focus is in the area of institutional investor participation in securities litigation.

Prior to joining Kaplan Fox, Deirdre represented governmental entities in public finance and public-private partnership transactions as an associate at Hawkins, Delafield & Wood in New York. Before that, she served as a Law Clerk in the U.S. Court of International Trade and a trial attorney for the U.S. Federal Maritime Commission.

Education:

- J.D., George Washington University School of Law (2003)

Bar affiliations and court admissions:

- Bar of the State of New York
- Bar of the State of California

Ms. Roney can be reached by email at: droney@kaplanfox.com

GEORGE F. HRITZ joined Kaplan Fox in 2014. He has extensive experience in both New York and Washington D.C. handling sophisticated litigation, arbitration and other disputes for well-known corporate clients and providing crisis management and business-oriented legal and strategic advice to a broad range of U.S. and international clients, including those with small or no U.S. legal departments, often acting as de facto U.S. general counsel. Mr. Hritz has tried, managed and otherwise resolved large-scale matters for major financial and high-tech institutions and others in numerous venues throughout the U.S. and overseas. While he never hesitates to take matters to trial, he regularly looks for solutions that go beyond expensive victories. He has had great success in resolving disputes creatively by effectively achieving consensus among all of the parties involved, often with considerable savings for his clients.

Mr. Hritz clerked for a federal district judge in New York and spent his associate years at Cravath, Swaine & Moore, one of the leading business litigation firms in the world. In 1980, Mr. Hritz became one of the seven original partners in Davis, Markel, Dwyer & Edwards, which ultimately grew to over 50 lawyers and became the New York litigation group of Hogan & Hartson, then Washington, D.C.'s oldest major law firm. Since 2011, Mr. Hritz has represented both defendants and plaintiffs in resolving international disputes and provided strategic advice and assisted clients on managing of other counsel, including monitoring law firm and consultant performance and billing.

Education:

- A.B., Princeton University, History (1969)
- J.D., Columbia University School of Law (1973) (Harlan Fiske Stone Scholar)

Bar affiliations and court admissions:

- Bars of the State of New York (1974) and District of Columbia (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third, Fourth, Eleventh and D.C. Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York, the District of Columbia and others

Professional affiliations:

- D.C. Bar Association
- Federal Bar Council (2d Circuit)
- Advisory Group of the U.S. District Court for the Eastern District of New York

Mr. Hritz can be reached by email at: hritz@kaplanfox.com

ASSOCIATES

ELANA KATCHER has been associated with Kaplan Fox since July 2007. She practices in the area of complex commercial litigation.

Education:

- B.A. Oberlin College (1994)
- J.D., New York University (2003)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2004)
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association
- New York City Bar Association

Ms. Katcher can be reached by email at: ekatcher@kaplanfox.com

MATTHEW P. McCAHILL was associated with Kaplan Fox from 2003 – 2005 and rejoined the firm in 2013 after working at a prominent plaintiffs' firm in Philadelphia. He practices primarily in antitrust, securities and complex commercial litigation. Mr. McCahill's *pro bono* work includes representing Army and Marine Corps veterans in benefits proceedings before the U.S. Department of Veterans' Affairs. During law school, Mr. McCahill was a member of the *Fordham Urban Law Journal*.

Education:

- B.A., History, *summa cum laude*, Rutgers College (2000)
- J.D., Fordham Law School (2003)

Bar Affiliations and Court Admissions:

- Bars of the State of New York and the Commonwealth of Pennsylvania
- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania

Professional Affiliations:

- New York State Bar Association
- American Bar Association
- Association of the Bar of the City of New York

Mr. McCahill can be reached by email at: mmccahill@kaplanfox.com

MARIO M. CHOI is a resident of the San Francisco office of Kaplan Fox and practices in the area of complex civil litigation. Prior to joining the firm in February 2009, Mr. Choi was a litigation associate at Pryor Cashman LLP and a law clerk to the Hon. Richard B. Lowe, III, Justice of the New York Supreme Court, Commercial Division.

Education:

- B.A., Boston University (2000)
- M.A., Columbia University (2001)
- J.D., Northeastern University (2005)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2006)
- Bar of the State of California (2006)
- U.S. Courts of Appeals for the Ninth Circuits

- U.S. District Courts for the Northern, Southern and Central Districts of California and the Southern District of New York

Professional Affiliations:

- American Bar Association
- Asian American Bar Association – Bay Area
- Bar Association of San Francisco

Mr. Choi can be reached by email at: mchoi@kaplanfox.com

PAMELA MAYER has been associated with Kaplan Fox since February 2009. She practices in the area of securities litigation.

Prior to joining Kaplan Fox, Ms. Mayer was a securities investigation and litigation attorney for a multinational investment bank. Utilizing her combined legal and business background, including her M.B.A., Ms. Mayer focuses on the research and analysis of securities claims on behalf of our firm's individual and institutional clients and is dedicated full-time to the firm's Portfolio Monitoring and Case Evaluation Program. Ms. Mayer also has substantial litigation experience in the area of intellectual property.

Education:

- B.S., The University of Rochester
- J.D., The George Washington University
- M.B.A., Finance, The University of Michigan

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association

Ms. Mayer can be reached by email at: pmayer@kaplanfox.com

LAUREN I. DUBICK joined Kaplan Fox in 2013. She practices in the areas of antitrust and securities litigation, as well as complex commercial litigation. Prior to joining Kaplan Fox, Ms. Dubick served as a trial attorney with the Antitrust Division of the United States Department of Justice where she investigated and prosecuted violations of civil

and criminal antitrust laws. During her tenure at the Justice Department, Ms. Dubick played significant roles on some of the Division's largest investigations and litigations and led two software merger investigations.

Ms. Dubick also served as a Special Assistant U.S. Attorney in the Eastern District of Virginia where she gained substantial trial experience prosecuting white collar crimes and other offenses. During that time, she first-chaired two trials, both of which led to verdicts for the government. Earlier in Ms. Dubick's career, she clerked for the late Hon. Ann Aldrich of the U.S. District Court for the Northern District of Ohio.

Ms. Dubick has been a guest lecturer on judicial discretion and co-authored an article on consumer protection, "*Perspective on Marketing, Self-Regulation and Childhood Obesity: FTC and HHS Call on Industry to Market More Responsibly*," 13.2 *American Bar Association Consumer Protection Update* 19 (2006). She is admitted to practice in the state courts of New York and Ohio as well as the Fourth Circuit Court of Appeals. Prior to law school, Ms. Dubick spent several years working in software and new media.

Education:

- B.A., *cum laude*, Harvard College (2000)
- J.D., *magna cum laude*, The Ohio State University Moritz College of Law (2007), Editor of *The Ohio State Law Review* and Member of the Order of the Coif

Bar Affiliations and Court Admissions:

- Bar of the State of Ohio (2007)
- Bar of the State of New York (2013)
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York

Ms. Dubick can be reached by email at: ldubick@kaplanfox.com

DAMIEN H. WEINSTEIN has been associated with Kaplan Fox since September 2011. He practices in the areas of securities, antitrust, and other areas of civil litigation. During law school, Mr. Weinstein was an Associate Editor on both the *Fordham Law Review* and Moot Court programs.

Education:

- B.A., *summa cum laude*, University of Massachusetts Amherst (2007)
- J.D., *cum laude*, Fordham University School of Law (2011)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (2011)
- Bar of the State of New York (2012)
- U.S. District Courts for the Southern and Eastern Districts of New York

Mr. Weinstein can be reached by email at: dweinstein@kaplanfox.com

EXHIBIT B

NEVSON RESOURCES LTD. LITIGATION

TIME REPORT

FIRM NAME: Kaplan Fox & Kilsheimer LLP

REPORTING PERIOD: Inception through December 23, 2014

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
RN Kaplan (P)	66.75	$ 925	$ 61,743.75
FS Fox (P)	20.00	$ 850	$ 17,000.00
LD King (P)	3.00	$ 775	$ 2,325.00
JB Strauss (P)	4.00	$ 765	$ 3,060.00
JP Campisi (P)	750.00	$ 615	$ 461,250.00
PA Mayer (A)	35.50	$ 580	$ 20,590.00
MP McCahill (A)	1.00	$ 550	$ 550.00
DH Weinstein (A)	21.00	$ 315	$ 6,615.00
M Guippone (LC)	110.75	$ 230	$ 25,472.50
KM Cosgrove (I)	141.00	$ 305	$ 43,005.00
H Sargent (I)	221.25	$ 300	$ 66,375.00
M Moonsammy (PL)	4.50	$ 305	$ 1,372.50
K Weiland (PL)	14.00	$ 300	$ 4,200.00
W Gomes (PL)	46.50	$ 260	$ 12,090.00
TN Harvey (PL)	21.50	$ 250	$ 5,375.00
MM Ng (PL)	4.00	$ 230	$ 920.00
J Lo (PL)	4.00	$ 190	$ 760.00
TOTALS	1468.75		$ 732,703.75

EXHIBIT B

EXHIBIT C

NEVSON RESOURCES LTD.LITIGATION

EXPENSE REPORT

FIRM NAME: Kaplan Fox & Kilsheimer LLP

REPORTING PERIOD: Inception through December 23, 2014

CATEGORY	CUMULATIVE EXPENSES	
Air Express/Postage/Messengers	$	745.24
Telephone	$	1.55
Photocopies	$	28.80
Experts:		
Blethen	$	6,250.00
Saleh Johar	$	6,500.00
Global Economics	$	15,942.50
Mediation:		
Irell	$	9,075.00
Marks ADR	$	9,148.50
Process Services	$	339.00
Filing Fees	$	350.00
On-Line Research	$	15,243.18
Class Notices	$	1,130.00
Travel/Meals	$	10,661.13
TOTALS	$	75,414.90

EXHIBIT C

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD.	:	Civil Action No. 12 Civ. 1845 (PGG)

DECLARATION TIMOTHY J. MACFALL OF IN SUPPORT OF APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

TIMOTHY J. MACFALL hereby declares that:

1. I am an attorney at law, duly admitted to practice before this Court, and a member of Rigrodsky & Long, P.A. ("Rigrodsky & Long"), court-appointed Co-Lead Counsel for the Lead Plaintiff.

2. I make this declaration in support of Rigrodsky & Long's application for an award of attorney's fees and reimbursement of expenses for services rendered on behalf of the Class in the course of the above-captioned securities class action (the "Action").

3. My firm's compensation for services rendered in this Action was wholly contingent on the success of this Action, and was totally at risk.

4. A description of the identification and background of my firm and its members is attached hereto as Exhibit A.

5. During the period from February 2012 through today my firm has been involved in all aspects of the prosecution of this Action. All of the work was reasonable and necessary to the prosecution of this litigation and its successful conclusion.

6. In the course of this litigation, my firm has expended a total of 992.25 hours. The total lodestar for my firm at current rates is $617,768.75. Attached hereto as Exhibit B is a chart that sets forth the time spent by my firm broken down by partner, associate and paralegal through December 15, 2014, and setting forth for each person their lodestar at current hourly rates.

7. Through December 15, 2014, my firm has expended a total of $15,942.50 in unreimbursed expenses in connection with the prosecution of this Action. Attached hereto as Exhibit C is a chart setting forth my firm's unreimbursed expenses.

8. The expenses incurred pertaining to this Action are reflected in the books and records of this firm maintained in the ordinary course of business. These books and records are prepared from expense vouchers and check records are an accurate record of the expenses incurred.

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

Executed this 23rd day of December, 2014, in Garden City, York, New York.

/s/ *Timothy J. MacFall*
TIMOTHY J. MACFALL

EXHIBIT A

RIGRODSKY & LONG, P.A.

IN RE: NEVSUN RESOURCES LTD. SECS. LITIG.

Time Report Inception through December 23, 2014

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Seth D. Rigrodsky (P)	44.5	$ 750.00	$ 33,375.00
Brian D. Long (P)	15.5	$ 650.00	$ 10,075.00
Timothy J. MacFall (P)	703.75	$ 700.00	$ 492,625.00
Scott J. Farrell (P)	3.75	$ 525.00	$ 1,968.75
Marc A. Rigrodsky (OC)	51.5	$ 600.00	$ 30,900.00
Corrine E. Amato (A)	41.75	$ 350.00	$ 14,612.50
Gina M. Serra (A)	41.5	$ 350.00	$ 14,525.00
Jeremy J. Riley (A)	28.5	$ 275.00	$ 7,837.50
Peter Allocco (PL)	55.5	$ 200.00	$ 11,100.00
Anne Steel (PL)	4.5	$ 125.00	$ 562.50
Anthony Gruzdis (PL)	1.5	$ 125.00	$ 187.50
TOTALS	**992.25**		**$ 617,768.75**

EXHIBIT B

RIGRODSKY & LONG, P.A.

IN RE: NEVSUN RESOURCES LTD. SECS. LITIG.

Expense Report Inception through December 23, 2014

EXPENSE CATEGORY	AMOUNT
Photocopying	$ 277.75
Computer Research	$ 397.14
Travel/Meals	$ 2,740.30
Court Fees	$ 35.00
Experts	$ 15,942.50
Total Expenses	**$ 19,392.69**

Exhibit 7

CHAD W. COFFMAN, MPP, CFA

Global Economics Group, LLC
140 South Dearborn Street, Suite 1000
Chicago, IL 60603
Office: (312) 470-6500
Mobile: (815) 382-0092
Email: ccoffman@globaleconomicsgroup.com

EMPLOYMENT:

Global Economics Group, LLC
President (2008 - Current)

Global Economics Group specializes in the application of economics, finance, statistics, and valuation principles to questions that arise in a variety of contexts, including litigation and policy matters throughout the world. With offices in Chicago, Boston, and New York, Principals of Global Economics Group have extensive experience in high-profile securities, antitrust, labor, and intellectual property matters.

Market Platform Dynamics, LLC
Chief Financial Officer & Chief Operating Officer (2010 – Current)

Market Platform Dynamics is a management consulting firm that specializes in assisting platform-based companies profit from industry disruption caused by the introduction of new technologies, new business models and/or new competitive threats. MPD's experts include economists, econometricians, product development specialists, strategic marketers and recognized thought leaders who apply cutting-edge research to the practical problems of building and running a profitable business.

Chicago Partners, LLC
Principal (2007 – 2008)
Vice President (2003 – 2007)
Director (2000 – 2003)
Senior Associate (1999 – 2000)
Associate (1997 – 1999)
Research Analyst (1995 – 1997)

EDUCATION:

CFA Chartered Financial Analyst, 2003

M.P.P. University of Chicago, 1997
Masters of Public Policy, with a focus in economics including coursework in Finance, Labor Economics, Econometrics, and Regulation

B.A. Knox College, 1995
Economics, Magna Cum Laude
Graduated with College Honors for Paper entitled "Increasing Efficiency in Water Supply Pricing: Using Galesburg, Illinois as a Case Study"
Dean's List Every Term
Phi Beta Kappa

PROFESSIONAL EXPERIENCE:

Securities, Valuation, and Market Manipulation Cases:

- Testifying Expert in numerous high-profile class action securities matters including, but not limited to:
    - In Re: Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation. Parties settled for $2.4 billion in which I served as Plaintiffs' damages and loss causation expert.
    - In Re: Schering-Plough Corporation/ Enhance Securities Litigation. Parties settled for $473 million in which I served as Plaintiffs' damages and loss causation expert.
    - In Re: REFCO Inc. Securities Litigation. Parties settled for $367 million in which I served as Plaintiffs' damages and loss causation expert.
    - In Re: Computer Sciences Corporation Securities Litigation. Parties settled for $98 million in which I served as Plaintiffs' damages and loss causation expert.
    - Full list of testimonial experience is provided below
- Engaged several dozen times as a neutral expert by prominent mediators to evaluate economic analyses of other experts.
- Expert consultant for the American Stock Exchange (AMEX) where I evaluated issues related to multiple listing of options. Performed econometric analysis of various measures of option spread using tens of millions of trades.
- Performed detailed audit of CDO valuation models employed by a banking institution to satisfy regulators – non-litigation matter.
- Played significant role in highly-publicized internal accounting investigations of two Fortune 500 companies. One led to restatement of previously issued financial statements and both involved SEC investigations.

Testimony:

- Testifying expert in the matter of Kuo, Steven Wu v. Xceedium Inc, Supreme Court of New York, County of New York, Index No. 06-100836. Filed report re: the fair value of Mr. Kuo's shares. Case settled at trial.
- Testifying expert in the matter of Pallas, Dennis H. v. BPRS/Chestnut Venture Limited Partnership and Gerald Nudo, Circuit Court of Cook County, Illinois, County Department, Chancery Division.

Filed report re: fair value of Pallas shares. Report: July 9, 2008. Deposition August 6, 2008. Court Testimony February 11, 2009.

- Testifying expert in Washington Mutual Securities Litigation, United States District Court, Western District of Washington, at Seattle, No. 2:08-md-1919 MJP, Lead Case No. C08-387 MJP. Filed declaration August 5, 2008 re: plaintiffs' loss causation theory. Filed expert report April 30, 2010. Filed rebuttal expert report August 4, 2010.

- Testifying expert in DVI Securities Litigation, Case No. 2:03-CV-05336-LDD, United States District Court for the Eastern District of Pennsylvania. Filed expert report October 1, 2008 re: damages. Filed rebuttal expert report December 17, 2008. Deposition January 27, 2009. Filed rebuttal expert report June 24, 2013.

- Testifying expert in Syratech Corporation v. Lifetime Brands, Inc. and Syratech Acquisition Corporation, Supreme Court of the State of New York, Index No. 603568/2007. Filed expert report October 31, 2008.

- Expert declaration in Jacksonville Police and Fire Pension Fund, et al. v. AIG, Inc., et al., No. 08-CV-4772-LTS; James Connolly, et al. v. AIG, Inc., et al., No. 08-CV-5072-LTS; Maine Public Employees Retirement System, et al. v. AIG, Inc., et al., No. 08-CV-5464-LTS; and Ontario Teachers' Pension Plan Board, et al. v. AIG, Inc., et al., No. 08-CV-5560-LTS, United States District Court, Southern District of New York. Filed declaration February 18, 2009.

- Expert declaration in Connetics Securities Litigation, Case No. C 07-02940 SI, United States District Court for the Northern District of California, San Francisco Division. Filed expert report March 16, 2009.

- Testifying expert in Boston Scientific Securities Litigation, Master File No. 1:05-cv-11934 (DPW), United States District Court District of Massachusetts. Filed expert report August 6, 2009. Deposition October 6, 2009.

- Expert declaration in Louisiana Sheriffs' Pension and Relief Fund, et al. v. Merrill Lynch & Co, Inc., et al., Case Number 08-cv-09063, United States District Court, Southern District of New York. Filed declaration October, 2009.

- Testifying expert in Henry J. Wojtunik v. Joseph P. Kealy, John F. Kealy, Jerry A. Kleven, Richard J. Seminoff, John P. Stephen, C. James Jensen, John P. Morbeck, Terry W. Beiriger, and Anthony T. Baumann. Filed expert report on January 25, 2010.

- Testifying expert in REFCO Inc. Securities Litigation, Case No. 05 Civ. 8626 (GEL), United States District Court for the Southern District of New York. Filed expert report February 2, 2010. Filed rebuttal expert report March 12, 2010. Deposition March 26, 2010.

- Expert declaration in New Century Securities Litigation, Case No. 07-cv-00931-DDP, United States District Court Central District of California. Filed declaration March 11, 2010.

- Testifying expert in Louisiana Municipal Police Employees' Retirement System, et. al. v. Tilman J. Fertitta, Steven L. Scheinthal, Kenneth Brimmer, Michael S. Chadwick, Michael Richmond, Joe Max Taylor, Fertitta Holdings, Inc., Fertitta Acquisition Co., Richard Liem, Fertitta Group, Inc.

and Fertitta Merger Co, C.A. No. 4339-VCL, Court of Chancery of the State of Delaware. Filed expert report April 23, 2010.

- Testifying expert in Edward E. Graham and William C. Nordlund, individually and d/b/a Silver King Capital Management v. Eton Park Capital Management, L.P., Eton Park Associates, L.P. and Eton Park Fund, L.P. Case No. 1:07-CV-8375-GBD, Circuit Court of Shelby County, Alabama. Filed rebuttal expert report July 8, 2010. Deposition September 1, 2010. Filed supplemental rebuttal expert report August 22, 2011.

- Testifying expert in Moody's Corporation Securities Litigation. Case No. 1:07-CV-8375-GBD), United States District Court for the Southern District of New York. Filed rebuttal expert report August 23, 2010. Deposition October 7, 2010. Filed rebuttal reply report November 5, 2010. Filed expert report May 25, 2012.

- Testifying expert in Minneapolis Firefighters' Relief Association v. Medtronic, Inc., et al. Civil No. 08-6324 (PAM/AJB), United States District Court, District of Minnesota. Filed expert report January 14, 2011.

- Testifying expert in Schering-Plough Corporation/ENHANCE Securities Litigation Case No.2:08-cv-00397 (DMC) (JAD), United States District Court, District of New Jersey. Filed declaration February 7, 2011. Filed expert report September 15, 2011. Filed rebuttal expert report October 28, 2011. Filed declaration January 30, 2012. Deposition November 15, 2011 and November 29, 2011.

- Testifying expert in Fannie Mae 2008 Securities Litigation, Master File No. 08 Civ. 7831 (PAC), United States District Court for the Southern District of New York. Filed expert report July 18, 2011.

- Testifying expert in Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058 (PKC), United States District Court for the Southern District of New York. Filed expert report August 29, 2011. Filed rebuttal expert report September 26, 2011. Filed expert report March 16, 2012. Filed rebuttal expert report April 9, 2012. Filed rebuttal expert report April 29, 2012. Deposition October 14, 2011 and May 24, 2012.

- Testifying expert in Toyota Motor Corporation Securities Litigation, Case No. 10-922 DSF (AJWx), United States District Court, Central District of California. Filed expert report February 17, 2012. Deposition March 28, 2012. Filed rebuttal expert report August 2, 2012. Filed declaration re: Plan of Allocation, January 28, 2013.

- Testifying expert in The West Virginia Investment Management Board and the West Virginia Consolidated Public Retirement Board v. The Variable Annuity Life Insurance Company, Civil No. 09-C-2104, Circuit Court of Kanawha County, West Virginia. Filed expert report June 1, 2012. Deposition June 19, 2013.

- Testifying expert in Aracruz Celulose S.A. Securities Litigation, Case No. 08-23317-CIV-LENARD, United States District Court, Southern District of Florida. Filed expert report July 20, 2012. Deposition September 14, 2012. Filed rebuttal expert report October 29, 2012. Filed declaration re: Plan of Allocation, May 20, 2013.

- Testifying expert in In Re Computer Sciences Corporation Securities Litigation, CIV. A. No. 1:11-cv-610-TSE-IDD, United States District Court, Eastern District of Virginia, Alexandria Division. Filed expert report November 9, 2012. Filed supplemental report February 18, 2013. Filed rebuttal expert report March 25, 2013. Deposition March 27, 2013. Filed declaration re: Plan of Allocation, August 7, 2013.

- Testifying expert in In Re Weatherford International Securities Litigation, Case 1:11-cv-01646-LAK, United States District Court for the Southern District of New York. Filed expert report April 1, 2013. Deposition April 26, 2013.

- Testifying expert in In Re: Regions Morgan Keegan Closed-End Fund Litigation, Case 2:07-cv-02830-SHM-dkv, United States District Court for the Western District of Tennessee Western Division. Court testimony April 12, 2013.

- Testifying expert in City of Roseville Employees' Retirement System and Southeastern Pennsylvania Transportation Authority, derivatively on behalf of Oracle Corporation, Plaintiff, v. Lawrence J. Ellison, Jeffrey S. Berg, H. Raymond Bingham, Michael J. Boskin, Safra A. Catz, Bruce R. Chizen, George H. Conrades, Hector Garcia-Molina, Donald L. Lucas, and Naomi O. Seligman, Defendants, and Oracle Corporation, Nominal Defendant, C.A. No. 6900-CS, Court of Chancery of the State of Delaware. Filed expert report May 13, 2013. Filed rebuttal expert report June 21, 2013. Deposition July 17, 2013.

- Testifying expert in In Re BP plc Securities Litigation, No. 4:10-md-02185, Honorable Keith P. Ellison, United States District Court for the Southern District of Texas, Houston Division. Filed expert report June 14, 2013. Deposition July 25, 2013. Filed rebuttal expert report October 7, 2013. Filed Declaration re: Plaintiff accounting losses November 17, 2013. Filed expert report January 6, 2014. Deposition January 22, 2014.

- Testifying expert in In Re Celestica Inc. Securities Litigation, Civil Action No. 07-CV-00312-GBD, United States District Court for the Southern District of New York. Filed expert report June 14, 2013. Filed rebuttal expert report September 10, 2013. Deposition September 24, 2013.

- Testifying expert in In Re Dendreon Corporation Class Action Litigation, Master Docket No. C11-01291JLR, United States District Court for the Western District of Washington at Seattle. Filed declaration re: Plan of Allocation, June 14, 2013.

- Testifying expert in In Re Hill v. State Street Corporation, Master Docket No. 09-cv12146-GAO, United States District Court for the District of Massachusetts. Filed expert report October 28, 2013.

- Testifying expert in In Re BNP Paribas Mortgage Corporation and BNP Paribas v. Bank of America, N.A., Master Docket No. 09-cv-9783-RWS, United States District Court for the Southern District of New York. Filed expert report November 25, 2013.

- Testifying expert in Stan Better and YRC Investors Group v. YRC Worldwide Inc., William D. Zollars, Michael Smid, Timothy A. Wicks and Stephen L. Bruffet, Civil Action No. 11-2072-KHV, United States District Court for the District of Kansas. Filed declaration re: Plan of Allocation, February 5, 2014.

Experience in Labor Economics and Discrimination-Related Cases:

- Expert consultant for Cargill in class action race discrimination matter in which class certification was defeated.
- Expert consultant for 3M in class action age discrimination matter.
- Expert consultant for Wal-Mart in class action race discrimination matter.
- Expert consultant on various other significant confidential labor economics matters in which there were class action allegations related to race, age and gender.
- Expert consultant for large insurance company related to litigation and potential regulation resulting from the use of credit scores in the insurance underwriting process.

Testimony:

- Testifying expert in Shirley Cohens v. William Henderson, Postmaster General, C.A 1:00CV-1834 (TFH) United States Postal Service. United States District Court for the District of Columbia.– Filed report re: lost wages and benefits.
- Testifying expert in Richard Akins v. NCR Corporation. Before the American Arbitration Association – Filed report re: lost wages.
- Testifying expert in Maureen Moriarty v. Dyson, Inc., Case No. 09 CV 2777, United States District Court for the Northern District of Illinois, Eastern Division. Filed expert report October 12, 2011. Deposition November 10, 2011.

Selected Experience in Antitrust, General Damages, and Other Matters:

- Expert consultant in high-profile antitrust matters in the computer and credit card industries.
- Expert consultant for plaintiffs in re: Brand Name Drugs Litigation. Responsible for managing, maintaining and analyzing data totaling over one billion records in one of the largest antitrust cases ever filed in the Federal Courts.
- Served as neutral expert for mediator (Judge Daniel Weinstein) in allocating a settlement in an antitrust matter.
- Expert consultant in Seminole County and Martin County absentee ballot litigation during disputed presidential election of 2000.
- Expert consultant for sub-prime lending institution to determine effect of alternative loan amortization and late fee policies on over 20,000 customers of a sub-prime lending institution. Case settled favorably at trial immediately after the testifying expert presented an analysis I developed showing fundamental flaws in opposing experts calculations.

TEACHING EXPERIENCE:

KNOX COLLEGE, Teaching Assistant - Statistics, (1995)
KNOX COLLEGE, Tutor in Mathematics, (1992 - 1993)

PUBLICATIONS:

Coffman, Chad and Mary Gregson, "Railroad Construction and Land Value." *Journal of Real Estate and Finance*, 16:2, pp. 191-204 (1998).

Coffman, Chad, Tara O'Neil, and Brian Starr, Ed. Richard D. Kahlenberg, "An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities," *Affirmative Action for the Rich: Legacy Preferences in College Admissions*; pp. 101-121 (2010).

PROFESSIONAL AFFILIATIONS:

Associate Member CFA Society of Chicago
Associate Member CFA Institute
Phi Beta Kappa

AWARDS:

1994 Ford Fellowship Recipient for Summer Research.
1993 Arnold Prize for Best Research Proposal.
1995 Knox College Economics Department Award.

PERSONAL ACTIVITIES:

- Pro bono consulting for Cook County State's Attorney's Office.
- Pro bono consulting for Cook County Health & Hospitals System – Developed method for hospital to assess real-time patient level costs to assist in improving care for Cook County residents and prepare for implementation of Affordable Care Act.
- Pro bono consulting for Chicago Park District to analyze economic impact of park district assets and assist in developing strategic framework for decision-making.

Exhibit 8

Blethen Mining Associates, PC

"Mining Consultants giving you Mining Engineering Solutions for the 21st Century"

217 West Commerce Street Bridgeton, New Jersey 08302 - Work Phone/Fax: 856-459-3517 - Mobile: 856-392-6402

Marvin Blethen, PE holds a MS in Mining Engineering from the University of Idaho, an MBA from Troy State University and graduated cum laude with a BS in Mining Engineering from West Virginia University Institute of Technology.

He is a licensed member of the National Society of Professional Engineers and a Founding Registered Member of the Society for Mining, Metallurgy, and Exploration.

Registered Professional Engineer in Mining in Alabama, New Jersey, Florida, Wisconsin, Ohio, Texas, West Virginia, Pennsylvania, Wisconsin, New York, Colorado and New Mexico.

Marvin R. Blethen, PE, MBA, MS

Blethen Mining Associates, PC was founded by Marvin R. Blethen, PE, MBA, MS who worked as an industry insider on the front lines and in executive and advisory positions for over 32 years. A registered professional engineer in Mining Engineering and who holds a Masters Degree in Mining Engineering from the University of Idaho.

There are only an estimated 100 professional mining engineers holding a Masters Degree working as consultants in the United States today. We haven't been able to even ascertain how few hold both a Masters in Mining Engineering and an MBA.

Marvin Blethen is a hands on technical engineer with a strong background in business. Marvin has the unique advantage of understanding the relevance of technical choices. He understands how they will impact upon your operations today, tomorrow and in the future.

Marvin R. Blethen, PE, MBA, MS has real life experience as an engineer in sand, aggregates, coal, fire clay, kaolin, novaculite, quartz, precious metals, magnesite, bauxite, graphite and industrial minerals mining and brings a high level of technical experience to a business he understands.

National Society of Professional Engineers
NSPE Licensed Member

SME

This page was last updated on May 10, 2012

mblethen@blethenminingassociates.com

Exhibit 9

Author: Saleh "Gadi" Johar

Born and raised in Keren, Eritrea, now a US citizen residing in California, Mr. Saleh “Gadi” Johar is founder and publisher of awate.com. Author of Miriam was Here, Of Kings and Bandits, and Simply Echoes. Saleh is acclaimed for his wealth of experience and knowledge in the history and politics of the Horn of Africa. A prominent public speaker and a researcher specializing on the Horn of Africa, he has given many distinguished lectures and participated in numerous seminars and conferences around the world. Activism Awate.com was founded by Saleh “Gadi” Johar and is administered by the Awate Team and a group of volunteers who serve as the website’s advisory committee. The mission of awate.com is to provide Eritreans and friends of Eritrea with information that is hidden by the Eritrean regime and its surrogates; to provide a platform for information dissemination and opinion sharing; to inspire Eritreans, to embolden them into taking action, and finally, to lay the groundwork for reconciliation whose pillars are the truth. Miriam Was Here This book that was launched on August 16, 2013, is based on true stories; in writing it, Saleh has interviewed dozens of victims and eye-witnesses of Human trafficking, Eritrea, human rights, forced labor.and researched hundreds of pages of materials. The novel describes the ordeal of a nation, its youth, women and parents. It focuses on violation of human rights of the citizens and a country whose youth have become victims of slave labor, human trafficking, hostage taking, and human organ harvesting--all a result of bad governance. The main character of the story is Miriam, a young Eritrean woman; her father Zerom Bahta Hadgembes, a veteran of the struggle who resides in America and her childhood friend Senay who wanted to marry her but ended up being conscripted. Kings and Bandits Saleh “Gadi” Johar tells a powerful story that is never told: that many "child warriors" to whom we are asked to offer sympathies befitting helpless victims and hostages are actually premature adults who have made a conscious decision to stand up against brutality and oppression, and actually deserve our admiration. And that many of those whom we instinctively feel sympathetic towards, like the Ethiopian king Emperor Haile Sellassie, were actually world-class tyrants whose transgressions would normally be cases in the World Court. Simply Echoes A collection of romantic, political observations and travel poems; a reflection of the euphoric years that followed Eritrean Independence in 1991.

Exhibit 10

KAPLAN FOX

KAPLAN FOX & KILSHEIMER LLP
FIRM AND ATTORNEY BIOGRAPHIES

Kaplan Fox & Kilsheimer LLP is a firm engaged in the general practice of law with an emphasis on complex and class action securities litigation, as well as antitrust, consumer protection and product liability litigation. The firm has actively participated in numerous complex class actions throughout the country for over twenty years. It is presently active in major litigations pending in federal and state courts throughout the country.

The firm and its members have served as lead or co-lead counsel, as executive committee members or as liaison counsel, and have made significant contributions in many complex class and other multi-party actions in which substantial recoveries were obtained as detailed in the attached list of recoveries.

The following are the attorneys of the firm who regularly engage in complex litigation:

PARTNERS

ROBERT N. KAPLAN has been with Kaplan Fox for more than 40 years, joining in 1971. Mr. Kaplan is widely recognized as a leading securities litigator and has led the prosecution of numerous securities fraud class actions and shareholder derivative actions, recovering billions of dollars for the victims of corporate wrongdoing. Recently, he was listed by defense and corporate counsel as one of the top 75 plaintiffs' attorneys in the United States for all disciplines. Mr. Kaplan was listed as one of the top five attorneys for securities litigation. He was also recognized by Legal 500 as one of the top six securities litigators in the United States for 2011, 2012 and 2013. He also has earned a reputation as a leading litigator in the antitrust arena. Mr. Kaplan has a peer review rating of 5 in Martindale-Hubbell.

Mr. Kaplan has played a significant role in most of the firm's major cases, both securities and antitrust matters, including: *In re Bank of America Corp. Sec., ERISA & Der. Litig.*, No. 09-MDL-2058 (S.D.N.Y); *In re Merrill Lynch & Co., Inc. Sec., Deriv. & ERISA Litig.*, No. 07-cv-9633 (S.D.N.Y.); *In re High Fructose Corn Syrup Antitrust Litigation*, MDL 1087 (C.D. Ill.)*; In re 3Com Securities Litigation* No. C-97-21083 (N.D. Ca.)*; AOL Time Warner Cases I & II*; *In re Informix Securities Litigation*, C-97-129 (N.D. Ca.); and *In re Flat Glass Antitrust Litigation*, MDL 120 (W.D.P.), among others. Recently, he was appointed as one of two co-lead counsel in the Sandridge Energy Inc. Shareholder Derivative Litigation pending in the United States District Court for the Western District of Oklahoma.

Mr. Kaplan honed his litigation skills as a trial attorney with the U.S. Department of Justice. There, he gained significant experience litigating both civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then Chief Judge of the U.S. District Court for the Southern District of New York.

Mr. Kaplan's published articles include: "Complaint and Discovery In Securities Cases," *Trial*, April 1987; "Franchise Statutes and Rules," *Westchester Bar Topics*, Winter 1983; "Roots Under Attack: *Alexander v. Haley* and *Courlander v. Haley*," *Communications and the Law*, July 1979; and "Israeli Antitrust Policy and Practice," *Record of the Association of the Bar*, May 1971.

In addition, Mr. Kaplan served as an acting judge of the City Court for the City of Rye, N.Y., from 1990 to 1993.

Mr. Kaplan sits on the boards of several community organizations, including the Board of Directors of the Carver Center in Port Chester, N.Y., the Board of Directors of the Rye Free Reading Room in Rye, N.Y. and the Board of Directors of the Carver Center Member Visiting Committee for Thoracic Oncology at the Dana Farber Cancer Center in Boston, Massachusetts.

Education:

- B.A., Williams College (1961)
- J.D., Columbia University Law School (1964)

Bar affiliations and court admissions:

- Bar of the State of New York (1964)
- Bar of the District of Columbia (2013)
- U.S. Supreme Court
- U.S. Courts of Appeals for the First, Second, Third, Seventh, Ninth, and Eleventh Circuits
- U.S. District Courts for the Southern, Eastern, and Northern Districts of New York, the Central District of Illinois, and the District of Arizona

Professional affiliations:

- National Association of Securities and Commercial Law Attorneys (past President)
- Committee to Support the Antitrust Laws (past President)
- Member of the Advisory Group Committee of the U.S. District Court for the Eastern District of New York
- American Bar Association
- American Association for Justice (Chairman, Commercial Litigation Section, 1985-86)
- Association of the Bar of the City of New York (served on the Trade Regulation Committee; Committee on Federal Courts)

Mr. Kaplan can be reached by email at: rkaplan@kaplanfox.com

FREDERIC S. FOX first associated with Kaplan Fox in 1984, and became a partner of the firm in 1991. He has concentrated his work for 30 years in the area of class action litigation and individual securities litigation. Mr. Fox has played important roles in many major securities class action cases, including as a senior member of the litigation and trial team in *In re Bank of America Corp. Sec., ERISA & Der. Litig.*, No. 09-MDL-2058 (S.D.N.Y) ("*In re Bank of America*")

arising out of Bank of America's acquisition of Merrill Lynch, which recently settled for $2.425 billion. Mr. Fox was also a member of the litigation and trial team for one of the first cases tried to verdict under the Private Securities Litigation Reform Act of 1995.

Mr. Fox is actively involved in maintaining and establishing the firm's relationships with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the firm's numerous public pension funds and other institutional investors. Mr. Fox currently represents many institutional investors including governmental entities in both class actions and individual litigation, including serving as lead or co-lead counsel on behalf of major public pension funds in pending securities litigation involving Bank of America, Fannie Mae, SunPower Corporation and Gentiva Health Services Inc. Mr. Fox is also Lead Counsel to a large public pension fund system in a derivative action against the directors of Wal-Mart Stores Inc. ("Wal-Mart") involving alleged bribery and fraud at Wal-Mart's Mexican subsidiary. In the past, Mr. Fox has served as the lead attorney in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which was settled for $475 million, *In re Merrill Lynch Research Reports Securities Litigation* (S.D.N.Y.) (arising from false and misleading analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* (S.D.N.Y.) and *In re Salomon Focal Litigation* (S.D.N.Y.) (both actions stemming from false and misleading analyst reports issued by Jack Grubman). Mr. Fox is a frequent speaker and panelist in both the U.S. and abroad on a variety of topics including securities litigation and corporate governance.

In the consumer protection area, he served on the Plaintiffs' Steering Committee in the *Baycol Products Litigation* where there have been more than $350 million in settlements. Additionally, he served as one of the Co-lead Counsel in *In re RC2 Corp. Toy Lead Paint Products Liability Litigation* in the Northern District of Illinois.

Mr. Fox is listed in the current editions of New York *Super Lawyers* and was recognized in Benchmark Litigation 2010 as a New York "Litigation Star."

Mr. Fox is the author of "Current Issues and Strategies in Discovery in Securities Litigation," ATLA, 1989 Reference Material; "Securities Litigation: Updates and Strategies," ATLA, 1990 Reference Material; and "Contributory Trademark Infringement: The Legal Standard after *Inwood Laboratories, Inc. v. Ives Laboratories*," University of Bridgeport Law Review, Vol. 4, No. 2.

During law school, Mr. Fox was the notes and comments editor of the University of Bridgeport Law Review.

Education:

- B.A., Queens College (1981)
- J.D., Bridgeport School of Law (1984)

Bar affiliations and court admissions:

- Bar of the State of New York (1985)

- Bar of the District of Columbia (2013)
- U.S. Courts of Appeals for the First, Second, Fourth, Fifth, Sixth and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and for the District of Columbia.

Professional affiliations:

- American Bar Association
- Association of the Bar of the City of New York
- American Association for Justice (Chairman, Commercial Law Section, 1991-92)

Mr. Fox can be reached by email at: ffox@kaplanfox.com

RICHARD J. KILSHEIMER first associated with Kaplan Fox in 1976 and became a partner of the firm in 1983. His practice is concentrated in the area of antitrust litigation. During his career, Mr. Kilsheimer has played significant roles in a number of the largest successful antitrust class actions in the country, and he is serving as co-lead counsel for plaintiffs in several currently pending cases. He also practices in the areas of securities fraud and commercial litigation.

In December 2007, Mr. Kilsheimer was a featured speaker on the subject "Elevated Standards of Proof and Pleading: Implications of *Twombley* and *Daubert*" at the American Antitrust Institute Symposium on the Future of Private Antitrust Enforcement held in Washington, D.C. Mr. Kilsheimer has also served on the Antitrust and Trade Regulation Committee of the Association of the Bar of the City of New York (2004-2007).

Prior to joining the firm, Mr. Kilsheimer served as law clerk to the Hon. Lloyd F. MacMahon (1975-76), formerly Chief Judge of the U.S. District Court for the Southern District of New York.

Mr. Kilsheimer is co-author of "Secondary Liability Developments," ABA Litigation Section, Subcommittee on Secondary Liability, 1991-1994.

Education:

- A.B., University of Notre Dame (1972)
- J.D., *cum laude*, St. John's University (1975)

Bar affiliations and court admissions:

- State of New York (1976)
- U.S. Court of Appeals for the Second Third, Sixth and D.C. Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and the Northern District of Indiana

Professional affiliations:

- Association of the Bar of the City of New York
- Federal Bar Council

- Committee to Support the Antitrust Laws
- American Association for Justice

Mr. Kilsheimer can be reached by email at: rkilsheimer@kaplanfox.com

LAURENCE D. KING first joined Kaplan Fox as an associate in 1994. He became a partner of the firm in 1998. While Mr. King initially joined the firm in New York, in 2000 he relocated to San Francisco to open the firm's first West Coast office. He is now partner-in-charge of the firm's San Francisco and Los Angeles offices.

Mr. King practices primarily in the areas of securities litigation, with an emphasis on institutional investor representation and consumer protection litigation. He has also practiced in the area of employment litigation. Mr. King has played a substantial role in cases that have resulted in some of the largest recoveries ever obtained by Kaplan Fox, including *In re 3Com Securities Litigation* (N.D. Ca.), *In re Informix Securities Litigation* (N.D. Ca.), and *AOL Time Warner Cases.* In addition, Mr. King was a member of the trial team for two securities class actions tried to verdict, as well as numerous other cases where a favorable settlement was achieved for our clients on or near the eve of trial.

An experienced trial lawyer, prior to joining Kaplan Fox Mr. King served as an assistant district attorney under the legendary Robert Morgenthau in the Manhattan (New York County) District Attorney's Office, where he tried numerous felony prosecutions to jury verdict.

Education:

- B.S., Wharton School of the University of Pennsylvania (1985)
- J.D., Fordham University School of Law (1988)

Bar affiliations and court admissions:

- Bar of the State of New York (1989)
- Bar of the State of California (2000)
- U.S. District Courts for the District of New Jersey, the Eastern District of Pennsylvania, the Southern and Eastern Districts of New York, and the Northern, Central, and Southern Districts of California

Professional affiliations:

- New York State Bar Association
- New Jersey State Bar Association
- San Francisco Bar Association
- American Bar Association
- American Association for Justice
- San Francisco Trial Lawyers' Association

Mr. King can be reached by email at: lking@kaplanfox.com

JOEL B. STRAUSS first associated with Kaplan Fox in 1992, and became a partner in the firm in 1999. He practices in the area of securities and consumer fraud class action litigation, with a special emphasis on accounting and auditing issues. He has been repeatedly selected for inclusion to the New York *Super Lawyers* list (Securities Litigation) (2007-2010, 2014).

Prior to joining Kaplan Fox, Mr. Strauss served as a senior auditor at the international accounting firm of Coopers & Lybrand (n/k/a PricewaterhouseCoopers). Combining his accounting background and legal skills, he has played a critical role in successfully prosecuting numerous securities class actions across the country on behalf of shareholders. Mr. Strauss was one of the lead trial lawyers for the plaintiffs in the first case to go to trial and verdict under the Private Securities Litigation Reform Act of 1995.

More recently, Mr. Strauss has been involved in representing the firm's institutional clients in the following securities class actions, among others: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (S.D.N.Y.) ($475 million settlement); *In re Prestige Brands Holdings Inc. Securities Litigation* (S.D.N.Y.) ($11 million settlement); *In re Gentiva Securities Litigation* (E.D.N.Y.); and *In Re SunPower Securities Litigation* (N.D.Cal) ($19.7 million settlement). He has also served as lead counsel for lead plaintiffs in *In re OCA, Inc. Securities Litigation* (E.D. La.) ($6.5 million settlement) and *In re Proquest Company Securities Litigation* (E.D. Mich.) ($20 million settlement). Mr. Strauss also played an active role for plaintiff investors in *In Re Countrywide Financial Corporation Securities Litigation* (C.D.Cal), which settled for more than $600 million.

Although currently practicing exclusively in the area of law, Mr. Strauss is a licensed Certified Public Accountant in the State of New York.

Mr. Strauss has also been a guest lecturer on the topics of securities litigation, auditors' liability and class actions for seminars sponsored by the Practicing Law Institute and the Association of the Bar of the City of New York and is an adjunct instructor in the Political Science department at Yeshiva University.

In June 2014 Mr. Strauss was appointed to serve as a member of the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

Among his various communal activities, Mr. Strauss currently serves on the Board of Directors of Yavneh Academy in Paramus, NJ, is a member of Yeshiva University's General Counsel's Council, and serves as Chair of the Career Guidance and Placement Committee of Yeshiva University's Undergraduate Alumni Council.

In March 2001 the New Jersey State Assembly issued a resolution recognizing and commending Mr. Strauss for his extensive community service and leadership.

Education:

- B.A., Yeshiva University (1986)
- J.D., Benjamin N. Cardozo School of Law (1992)

Bar Affiliations and Court Admissions

- Bar of the State of New Jersey
- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey
- U.S. Court of Appeals for the First, Second and Third Circuits

Professional Affiliations:

- Association of the Bar of the City of New York
- New York State Bar Association
- American Institute of Certified Public Accountants

Mr. Strauss can be reached by email at: jstrauss@kaplanfox.com

DONALD R. HALL has been associated with Kaplan Fox since 1998, and became a partner of the firm in 2005. He practices in the areas of securities, antitrust and consumer protection litigation. Mr. Hall is actively involved in maintaining and establishing the firm's relationships with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the firm's numerous institutional investors.

Mr. Hall currently represents a number of the firm's institutional investor clients in securities litigation actions including *In re Bank of America Corp. Litigation*, which recently settled for $2.425 billion, *In re Fannie Mae 2008 Securities Litigation* and *In Re Credit Suisse – AOL Securities Litigation.* Recently, Mr. Hall successfully represented institutional clients in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, which settled for $475 million; *In re Majesco Securities Litigation*; *In re Escala Securities Litigation*; and *In re Ambac Financial Group, Inc. Securities Litigation.* Additionally, he was a member of the litigation team in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.), an opt-out action brought by institutional investors that settled just weeks before trial. This action, stemming from the 2001 merger of America Online and Time Warner, resulted in a recovery of multiples of what would have been obtained if those investors had remained members of the class action.

Mr. Hall has played a key role in many of the firm's securities and antitrust class actions resulting in substantial recoveries for the firm's clients, including *In re Merrill Lynch Research Reports Securities Litigation* (arising from false and misleading analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* and *In re Salomon Focal Litigation* (both actions stemming from false and misleading analyst reports issued by Jack Grubman); *In re Flat Glass Antitrust Litigation*; and *In re Compact Disc Antitrust Litigation*.

Mr. Hall graduated from the College of William and Mary in 1995 with a B.A. in Philosophy and obtained his law degree from Fordham University School of Law in 1998. During law school, Mr. Hall was a member of the Fordham Urban Law Journal and a member of the

Fordham Moot Court Board. He also participated in the Criminal Defense Clinic, representing criminal defendants in federal and New York State courts on a pro-bono basis.

Education:

- B.A., College of William and Mary (1995)
- J.D., Fordham University School of Law (1998)

Bar affiliations and court admissions:

- Bar of the State of Connecticut (2001)
- Bar of the State of New York (2001)
- U.S. Supreme Court
- U.S. Court of Appeals for the Second and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional affiliations:

- Executive Committee of the National Association of Securities and Commercial Law
- American Bar Association
- American Association for Justice
- New York State Bar Association

Mr. Hall can be reached by email at: dhall@kaplanfox.com

HAE SUNG NAM first associated with Kaplan Fox in 1999 and became a partner of the firm in 2005. She practices in the areas of securities and antitrust litigation, mainly focusing in the firm's securities practice.

Since joining the firm, Ms. Nam has been involved in all aspects of securities practice, including case analysis for the firm's institutional investor clients. She is also a key member of the litigation teams prosecuting the firm's highest profile cases, including securities and derivative actions against Bank of America that recently settled for $2.425 billion, Wal-Mart, and Fannie Mae, among others. She also has a focus in prosecuting opt-out actions on behalf of the firm's clients and has played a significant role in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.) and *State Treasurer of the State of Michigan v. Tyco International, Ltd., et al.* The recoveries for the firm's institutional clients in both of these cases were multiples of what they would have received had they remained members of the class action.

Prior to joining the firm, Ms. Nam was an associate with Kronish Lieb Weiner & Hellman LLP, where she trained as transactional attorney in general corporate securities law and mergers and acquisitions.

Ms. Nam graduated, *magna cum laude*, with a dual degree in political science and public relations from Syracuse University's Maxwell School and S.I. Newhouse School of Public Communications. Ms. Nam obtained her law degree, with honors, from George Washington University Law School. During law school, Ms. Nam was a member of the George Washington

University Law Review. She is the author of a case note, "Radio – Inconsistent Application Rule," 64 Geo. Wash. L. Rev. (1996). In addition, she also served as an intern for the U.S. Department of Justice, Antitrust Division.

Education:

- B.A., *magna cum laude*, Syracuse University (1994)
- J.D., with honors, George Washington University Law School (1997)

Bar affiliations and court admissions:

- Bar of the State of New York (1998)
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Wisconsin

Professional affiliations:

- New York State Bar Association
- Asian American Bar Association of New York
- National Association of Women Lawyers

Ms. Nam can be reached by email at: hnam@kaplanfox.com

JEFFREY P. CAMPISI joined Kaplan Fox in 2004 and became partner of the firm in 2012. He practices in the area of securities litigation. Mr. Campisi has been involved in all aspects of securities practice, including case analysis for the firm's numerous public pension fund and institutional investor clients.

Mr. Campisi currently represents public pension funds in *In re 2008 Fannie Mae Securities Litigation* (08cv7831) (S.D.N.Y.) and *In re 2008 Gentiva Securities Litigation,* No. 10-cv-5064 (E.D.N.Y.). Mr. Campisi recently represented institutional investors in the following securities class actions: *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation* (07cv9633) (S.D.N.Y.) ($475 million settlement) and *In re Sequenom, Inc. Securities Litigation* (S.D. Cal.) (09cv921) (more than $60 million in cash and stock recovered).

Mr. Campisi served as law clerk for Herbert J. Hutton, United States District Court Judge for the Eastern District of Pennsylvania.

Education:

- B.A., *cum laude*, Georgetown University (1996)
- J.D., *summa cum laude*, Villanova University School of Law (2000), Member of Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2001)
- U.S. District Court for the Southern and Eastern Districts of New York

Professional affiliations:

- American Bar Association
- New York State Bar Association
- American Association for Justice
- Nassau County Bar Association

Mr. Campisi can be reached by email at: jcampisi@kaplanfox.com

MELINDA CAMPBELL has been associated with Kaplan Fox since September 2004 and became a partner of the firm in 2012. She represents investors and institutions in securities fraud class action litigation.

Ms. Campbell's current noteworthy cases include: *In re Bank of America Corp. Securities Litigation*, No. 09-md-2058(DC) (S.D.N.Y.); *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411(NRB) (S.D.N.Y.); *In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831(PAC) (S.D.N.Y.), and *In re Credit Suisse-AOL Securities Litigation*, No. 02-cv-12146(NG) (D. Mass.).

Ms. Campbell obtained her J.D. from the University of Pennsylvania Law School. While attending law school, she successfully represented clients of the Civil Practice Clinic of the University of Pennsylvania Law School, and provided pro bono legal services through organizations including the Southern Poverty Law Center. Ms. Campbell obtained her undergraduate degree from the University of Missouri (*cum laude*).

Ms. Campbell is an active member in the Federal Courts Committee of the New York County Lawyers Association and served as a panelist in a continuing legal education course offered by the Committee concerning waiver of attorney-client privilege under Federal Rule of Evidence 501. Additionally, Ms. Campbell is a member of the New York State Bar Association, the National Association of Women Lawyers, and the New York Women's Bar Association.

Education:

- B.A., University of Missouri (2000)
- J.D., University of Pennsylvania Law School (2004)

Bar affiliations and court admissions:

- Bar of the State of New York (2005)
- U.S. Court of Appeals for the First and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York and Massachusetts

Professional affiliations:

- American Bar Association
- New York State Bar Association
- New York County Lawyers Association
- New York Women's Bar Association

- National Association of Women Lawyers

Ms. Campbell can be reached by email at: mcampbell@kaplanfox.com

GREGORY K. ARENSON is a seasoned business litigator with experience representing clients in a variety of areas, including antitrust, securities, and employee termination. His economics background has provided a foundation for his recognized expertise in handling complex economic issues in antitrust cases, both as to class certification and on the merits.

Prior to joining Kaplan Fox, Mr. Arenson was a partner with Proskauer Rose. Earlier in his career, he was a partner with Schwartz Klink & Schreiber, and an associate with Rudnick & Wolfe (now Piper Marbury).

Mr. Arenson writes frequently on discovery issues and the use of experts. Recently published articles include: "Who Should Bear the Burden of Producing Electronic Information?" 7 *Federal Discovery News*, No. 5, at 3 (April 2001); "Work Product vs. Expert Disclosure – No One Wins," 6 *Federal Discovery News*, No. 9, at 3 (August 2000); "Practice Tip: Reviewing Deposition Transcripts," 6 *Federal Discovery News*, No. 5, at 13 (April 2000); and "The Civil Procedure Rules: No More Fishing Expeditions," 5 Federal Discovery News, No. 9, at 3 (August 1999). He was also co-author of "The Good, the Bad and the Unnecessary: Comments on the Proposed Changes to the Federal Civil Discovery Rules," 4 *NYLitigator* 30 (December 1998); co-author of "The Search for Reliable Expertise: Comments on Proposed Amendments to the Federal Rules of Evidence," 4 *NYLitigator* 24 (December 1998); co-editor of *Federal Rules of Civil Procedure, 1993 Amendments, A Practical Guide*, published by the New York State Bar Association; and a co-author of "Report on the Application of Statutes of Limitation in Federal Litigation," 53 *Albany Law Review* 3 (1988).

Mr. Arenson's pro bono activities include being a co-chair of the New York State Bar Association Task Force on the State of Our Courthouses, whose report was approved June 20, 2009, and a member of the New York State Bar Association Special Committee on Standards for Pleadings in Federal Litigation. He also serves as a mediator in the U.S. District Court for the Southern District of New York. In addition, he is an active alumnus of the Massachusetts Institute of Technology, having served as a member of the Corporation, a member of the Corporation Development Committee, vice president of the Association of Alumni/ae, and member of the Alumni/ae Fund Board (of which he was a past chair).

Education:

- S.B., Massachusetts Institute of Technology (1971)
- J.D., University of Chicago (1975)

Bar affiliations and court admissions:

- Bar of the State of Illinois (1975)
- Bar of the State of New York (1978)

- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third and Seventh Circuits
- U.S. District Courts for the Northern and Central Districts of Illinois, and the Southern and Eastern Districts of New York
- U.S. Tax Court

Professional affiliations:

- New York State Bar Association, Task Force on the State of Our Courthouses, Co-chair
- New York State Bar Association, Federal Litigation Section, Committee on Federal Procedure (Chairman since 1997)
- Association of the Bar of the City of New York
- American Bar Association
- Member, advisory board, Federal Discovery News (1999 – present)

Mr. Arenson can be reached by email at: garenson@kaplanfox.com

ASSOCIATES

ELANA KATCHER has been associated with Kaplan Fox since July 2007. She practices in the area of complex commercial litigation.

Education:

- B.A. Oberlin College (1994)
- J.D., New York University (2003)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2004)
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association
- New York City Bar Association

Ms. Katcher can be reached by email at: ekatcher@kaplanfox.com

MATTHEW P. McCAHILL was associated with Kaplan Fox from 2003 – 2005 and rejoined the firm in 2013 after working at a prominent plaintiffs' firm in Philadelphia. He practices primarily in antitrust, securities and complex commercial litigation. Mr. McCahill's *pro bono* work includes representing Army and Marine Corps veterans in benefits proceedings before the U.S. Department of Veterans' Affairs. During law school, Mr. McCahill was a member of the *Fordham Urban Law Journal*.

Education:

- B.A., History, *summa cum laude*, Rutgers College (2000)
- J.D., Fordham Law School (2003)

Bar Affiliations and Court Admissions:

- Bars of the State of New York and the Commonwealth of Pennsylvania
- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania

Professional Affiliations:

- New York State Bar Association
- American Bar Association
- Association of the Bar of the City of New York

Mr. McCahill can be reached by email at: mmccahill@kaplanfox.com

MARIO M. CHOI is a resident of the San Francisco office of Kaplan Fox and practices in the area of complex civil litigation. Prior to joining the firm in February 2009, Mr. Choi was a litigation associate at Pryor Cashman LLP and a law clerk to the Hon. Richard B. Lowe, III, Justice of the New York Supreme Court, Commercial Division.

Education:

- B.A., Boston University (2000)
- M.A., Columbia University (2001)
- J.D., Northeastern University (2005)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2006)
- Bar of the State of California (2006)
- U.S. Courts of Appeals for the Ninth Circuits
- U.S. District Courts for the Northern, Southern and Central Districts of California and the Southern District of New York

Professional Affiliations:

- American Bar Association
- New York State Bar Association
- Asian American Bar Association – Bay Area, New York

Mr. Choi can be reached by email at: mchoi@kaplanfox.com

PAMELA MAYER has been associated with Kaplan Fox since February 2009. She practices in the area of securities litigation.

Prior to joining Kaplan Fox, Ms. Mayer was a securities investigation and litigation attorney for a multinational investment bank. Utilizing her combined legal and business background, including her M.B.A., Ms. Mayer focuses on the research and analysis of securities claims on behalf of our firm's individual and institutional clients and is dedicated full-time to the firm's Portfolio Monitoring and Case Evaluation Program. Ms. Mayer also has substantial litigation experience in the area of intellectual property.

Education:

- B.S., The University of Rochester
- J.D., The George Washington University
- M.B.A., Finance, The University of Michigan

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association

Ms. Mayer can be reached by email at: pmayer@kaplanfox.com

LAUREN I. DUBICK joined Kaplan Fox in 2013. She practices in the areas of antitrust and securities litigation, as well as complex commercial litigation. Prior to joining Kaplan Fox, Ms. Dubick served as a trial attorney with the Antitrust Division of the United States Department

of Justice where she investigated and prosecuted violations of civil and criminal antitrust laws. During her tenure at the Justice Department, Ms. Dubick played significant roles on some of the Division's largest investigations and litigations and led two software merger investigations.

Ms. Dubick also served as a Special Assistant U.S. Attorney in the Eastern District of Virginia where she gained substantial trial experience prosecuting white collar crimes and other offenses. During that time, she first-chaired two trials, both of which led to verdicts for the government. Earlier in Ms. Dubick's career, she clerked for the late Hon. Ann Aldrich of the U.S. District Court for the Northern District of Ohio.

Ms. Dubick has been a guest lecturer on judicial discretion and co-authored an article on consumer protection, "*Perspective on Marketing, Self-Regulation and Childhood Obesity: FTC and HHS Call on Industry to Market More Responsibly*," 13.2 *American Bar Association Consumer Protection Update* 19 (2006). She is admitted to practice in the state courts of New York and Ohio as well as the Fourth Circuit Court of Appeals. Prior to law school, Ms. Dubick spent several years working in software and new media.

Education:

- B.A., *cum laude*, Harvard College (2000)
- J.D., *magna cum laude*, The Ohio State University Moritz College of Law (2007), Editor of *The Ohio State Law Review* and Member of the Order of the Coif

Bar Affiliations and Court Admissions:

- Bar of the State of Ohio (2007)
- Bar of the State of New York (2013)
- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York

Ms. Dubick can be reached by email at: ldubick@kaplanfox.com

DAMIEN H. WEINSTEIN has been associated with Kaplan Fox since September 2011. He practices in the areas of securities, antitrust, and other areas of civil litigation. During law school, Mr. Weinstein was an Associate Editor on both the *Fordham Law Review* and Moot Court programs.

Education:

- B.A., *summa cum laude*, University of Massachusetts Amherst (2007)
- J.D., *cum laude*, Fordham University School of Law (2011)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (2011)
- Bar of the State of New York (2012)
- U.S. District Courts for the Southern and Eastern Districts of New York

Mr. Weinstein can be reached by email at: dweinstein@kaplanfox.com

OF COUNSEL

W. MARK MCNAIR has been associated with Kaplan Fox since 2003. He practices in the area of securities litigation. Mr. McNair is actively involved in maintaining and establishing the Firm's relationship with institutional investors and is active in the Firm's Portfolio Monitoring and Case Evaluation Program for the Firm's numerous institutional investors.

Mr. McNair is a frequent speaker at various institutional events, including the National Conference of Public Employee Retirement Systems and the Government Finance Office Association.

Prior to entering private practice, Mr. McNair was Assistant General Counsel to the Municipal Securities Rulemaking Board where he dealt in a wide range of issues related to the trading and regulation of municipal securities. Previously, he was an attorney in the Division of Market Regulation at the Securities and Exchange Commission. At the Commission his work focused on the regulation of the options markets and derivative products.

Education:

- B.A. with honors, University of Texas at Austin (1972)
- J.D. University of Texas at Austin (1975)
- L.L.M. (Securities) Georgetown University (1989)

Bar Affiliations and Court Admissions:

- Bar of the States of Texas
- Bar of the State of Maryland
- Bar of the State of Pennsylvania
- Bar of the District of Columbia

Mr. McNair can be reached at mmcnair@kaplanfox.com

JUSTIN B. FARAR practices in the area of securities litigation and antitrust litigation with a special emphasis on institutional investor involvement. He is located in the Los Angeles office. Prior to working at Kaplan Fox, Mr. Farar was a litigation associate at O'Melveny & Myers, LLP and clerked for the honorable Kim McLane Wardlaw on the Ninth Circuit Court of Appeals. Mr. Farar also currently serves as a Commissioner to the Los Angeles Convention and Exhibition Authority.

Education:

- J.D., order of the coif, University of Southern California Law School (2000)
- B.A., with honors, University of California, San Diego

Bar Affiliations and Court Admissions:

- Bar of the State of California (2000)
- U.S. Supreme Court

- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the Central of California

Awards:

- The American Society of Composers, Authors and Publishers' Nathan Burkan Award Winner, 2000 for article titled "Is the Fair Use Defense Outdated?"

Mr. Farar can be reached by email at: jfarar@kaplanfox.com

LINDA FONG practices in the areas of general business and consumer protection class action litigation. She joined Kaplan Fox in 2001, and is resident in the firm's San Francisco office. Ms. Fong served on the Board of the San Francisco Trial Lawyers Association from 2000 to 2011. She was selected for inclusion to the California *Super Lawyers* list for 2011.

Education:

- J.D., University of San Francisco School of Law
- B.S., with honors, University of California, Davis
- Elementary Teaching Credential, University of California, Berkeley

Bar Affiliations and Court Admissions:

- Bar of the State of California
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Courts for the Northern, Central, Eastern and Southern Districts of California

Professional Affiliations:

- San Francisco Trial Lawyers Association
- Asian American Bar Association
- American Association for Justice

Awards:

- Presidential Award of Merit, Consumer Attorneys of California, 2000

Ms. Fong can be reached by email at: LFong@kaplanfox.com

GARY L. SPECKS practices primarily in the area of complex antitrust litigation. He has represented plaintiffs and class representatives at all levels of litigation, including appeals to the U.S. Courts of Appeals and the U.S. Supreme Court. In addition, Mr. Specks has represented clients in complex federal securities litigation, fraud litigation, civil RICO litigation, and a variety of commercial litigation matters. Mr. Specks is resident in the firm's Chicago office.

During 1983, Mr. Specks served as special assistant attorney general on antitrust matters to Hon. Neil F. Hartigan, then Attorney General of the State of Illinois.

Education:

- B.A., Northwestern University (1972)

- J.D., DePaul University College of Law (1975)

Bar affiliations and court admissions:

- Bar of the State of Illinois (1975)
- U.S. Courts of Appeals for the Third, Fifth, Seventh, Ninth and Tenth Circuits
- U.S. District Court for the Northern District of Illinois, including Trial Bar

Professional affiliations:

- Illinois Bar Association
- Chicago Bar Association

Mr. Specks can be reached by email at: gspecks@kaplanfox.com

WILLIAM J. PINILIS practices in the areas of commercial, consumer and securities class action litigation. He has been associated with Kaplan Fox since 1999, and is resident in the firm's New Jersey office.

In addition to his work at the firm, Mr. Pinilis has served as an adjunct professor at Seton Hall School of Law since 1995, and is a lecturer for the New Jersey Institute for Continuing Legal Education. He has lectured on consumer fraud litigation and regularly teaches the mandatory continuing legal education course Civil Trial Preparation.

Mr. Pinilis is the author of "Work-Product Privilege Doctrine Clarified," *New Jersey Lawyer*, Aug. 2, 1999; "Consumer Fraud Act Permits Private Enforcement," *New Jersey Law Journal*, Aug. 23, 1993; "Lawyer-Politicians Should Be Sanctioned for Jeering Judges," *New Jersey Law Journal*, July 1, 1996; "No Complaint, No Memo – No Whistle-Blower Suit," *New Jersey Law Journal*, Sept. 16, 1996; and "The *Lampf* Decision: An Appropriate Period of Limitations?" *New Jersey Trial Lawyer*, May 1992.

Education:

- B.A., Hobart College (1989)
- J.D., Benjamin Cardozo School of Law (1992)

Bar affiliations and court admissions:

- Bar of the State of New Jersey (1992)
- Bar of the State of New York (1993)
- U.S. District Courts for the District of New Jersey, and the Southern and Eastern Districts of New York

Professional affiliations:

- Morris County Bar Association
- New Jersey Bar Association
- Graduate, Brennan Inn of Court

Mr. Pinilis can be reached by email at: wpinilis@kaplanfox.com

DAVID STRAITE joined Kaplan Fox in 2013. He focuses on securities, corporate governance, hedge fund, antitrust and digital privacy litigation and is resident in the firm's New York office. Prior to joining the Firm, Mr. Straite helped launch the US offices of London-based Stewarts Law LLP, where he was the global head of investor protection litigation, the partner in residence in New York, and a member of the US executive committee. He also worked in the Delaware office of Grant & Eisenhofer and the New York office Skadden Arps.

Mr. Straite is a frequent speaker and panelist in the U.S. and abroad. Most recently, he spoke on the hedge fund panel at the February 6, 2013 meeting of the National Association of Public Pension Attorneys in Washington, D.C. ("Structuring Investments – Do I Get to Go to the Cayman Islands?"); debated the General Counsel of Meetup, Inc. during 2013 Social Media Week ("David vs. Goliath: the Global Fight for Digital Privacy"); and gave a guest lecture on the Legal Talk Network's "Digital Detectives" podcast. He has also given interviews to Channel 10 (Tel Aviv), BBC World News (London) and SkyNews (London).

Mr. Straite's recent work includes representing investors in the Harbinger Capital hedge fund litigation and the Citigroup CSO hedge fund litigation in New York federal court; pursuing digital privacy claims as court-appointed co-lead counsel in *In re: Facebook Internet Tracking Litigation* in California and *In re: Google Inc. Cookie Placement Consumer Privacy Litigation* in Delaware; pursuing corporate governance claims in Delaware Chancery Court in *In re: Molycorp Derivative Litigation*; and helping to develop the first multi-claimant test of the UK's new prospectus liability statute in a case against the Royal Bank of Scotland in the English courts. Mr. Straite has also authored *Netherlands: Amsterdam Court of Appeal Approves Groundbreaking Global Settlements Under the Dutch Act on the Collective Settlement of Mass Claims*, in The International Lawyer's annual "International Legal Developments in Review" (2009), and was a contributing author for Maher M. Dabbah & K.P.E. Lasok, QC, Merger Control Worldwide (2005).

Education:

- B.A., Tulane University, Murphy Institute of Political Economy (1993)
- J.D., *magna cum laude*, Villanova University School of Law (1996), Managing Editor, Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2000)
- Bar of the State of Delaware (2009)
- Bar of the State of Pennsylvania (1996)
- Bar of the State of New Jersey (1996)
- Bar of the District of Columbia (2008)
- U.S. District Courts for the Southern and Eastern Districts of New York; Eastern District of Pennsylvania; and the District of Delaware

- U.S. Court of Appeals for the Third Circuit

Professional affiliations:

- American Bar Association (Section of Litigation and Section of International Law)
- Delaware Bar Association
- New York American Inn of Court (Master of the Bench)
- Royal Society of St. George (Delaware Chapter)
- Internet Society

Mr. Straite can be reached by email at: dstraite@kaplanfox.com

DEIRDRE A. RONEY joined the San Francisco office of Kaplan Fox as Of Counsel in 2013. Deirdre's focus is in the area of institutional investor participation in securities litigation.

Prior to joining Kaplan Fox, Deirdre represented governmental entities in public finance and public-private partnership transactions as an associate at Hawkins, Delafield & Wood in New York. Before that, she served as a Law Clerk in the U.S. Court of International Trade and a trial attorney for the U.S. Federal Maritime Commission.

Education:

- J.D., George Washington University School of Law (2003)

Bar affiliations and court admissions:

- Bar of the State of New York
- Bar of the State of California

Ms. Roney can be reached by email at: droney@kaplanfox.com

GEORGE F. HRITZ joined Kaplan Fox in 2014. He has extensive experience in both New York and Washington D.C. handling sophisticated litigation, arbitration and other disputes for well-known corporate clients and providing crisis management and business-oriented legal and strategic advice to a broad range of U.S. and international clients, including those with small or no U.S. legal departments, often acting as de facto U.S. general counsel. Mr. Hritz has tried, managed and otherwise resolved large-scale matters for major financial and high-tech institutions and others in numerous venues throughout the U.S. and overseas. While he never hesitates to take matters to trial, he regularly looks for solutions that go beyond expensive victories. He has had great success in resolving disputes creatively by effectively achieving consensus among all of the parties involved, often with considerable savings for his clients.

Mr. Hritz clerked for a federal district judge in New York and spent his associate years at Cravath, Swaine & Moore, one of the leading business litigation firms in the world. In 1980, Mr. Hritz became one of the seven original partners in Davis, Markel, Dwyer & Edwards, which ultimately grew to over 50 lawyers and became the New York litigation group of Hogan & Hartson, then Washington, D.C.'s oldest major law firm. Since 2011, Mr. Hritz has represented

both defendants and plaintiffs in resolving international disputes and provided strategic advice and assisted clients on managing of other counsel, including monitoring law firm and consultant performance and billing.

Education:

- A.B., Princeton University, History (1969)
- J.D., Columbia University School of Law (1973) (Harlan Fiske Stone Scholar)

Bar affiliations and court admissions:

- Bars of the State of New York (1974) and District of Columbia (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third, Fourth, Eleventh and D.C. Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York, the District of Columbia and others

Professional affiliations:

- D.C. Bar Association
- Federal Bar Council (2d Circuit)
- Advisory Group of the U.S. District Court for the Eastern District of New York

Mr. Hritz can be reached by email at: hritz@kaplanfox.com

LIST OF RECOVERIES

In re Bank of America Corp. Securities, Derivative, and ERISA Litigation
MDL 2058 (S.D.N.Y.) ($2.425 billion recovered)

In re High Fructose Corn Syrup Antitrust Litigation,
MDL 1087 (C.D. Ill.) ($531 million recovered)

In re Brand Name Prescription Drugs Antitrust Litigation,
MDL 997 (N.D. Ill.) ($720 plus million recovered)

In re Merrill Lynch & Co., Inc. Securities Litigation,
Master File No. 07-CV-9633 (JSR) (S.D.N.Y.) ($475 million recovered)

In re Baycol Products Litigation,
MDL 1431-MJD/JGL (D. Minn.) ($350 million recovered to date)

In re 3Com Securities Litigation,
No. C-97-21083-EAI (N.D. Ca) ($259 million recovered)

In re MicroStrategy Securities Litigation,
No. CV-00-473-A (E.D. Va) ($155 million recovered)

AOL Time Warner Cases I & II (Opt-out)
Nos. 4322 & 4325 (Cal. State Court, LA County) ($140 million recovered)

In re Informix Securities Litigation,
C-97-129-CRB (N.D. Ca) ($136.5 million recovered)

In re Infant Formula Antitrust Litigation,
MDL 878 (N.D. Fla) ($126 million recovered)

In re Flat Glass Antitrust Litigation,
MDL 1200 (W.D. Pa.) ($121 million recovered)

In re Providian Financial Corp. Credit Card Terms Litigation,
MDL No. 1301-WY (E.D. Pa.) ($105 million recovered)

In re Xcel Energy, Inc. Securities Litigation,
Master File No. 02-CV-2677-DSD (D. Minn.) ($80 million recovered)

In re Elan Corporation Securities Litigation,
No. 02-CV-0865-RMB (S.D.N.Y.) ($75 million recovered)

Barry Van Roden, *et al.* v. Genzyme Corp., *et al.*
No. 03-CV-4014-LLS (S.D.N.Y.) ($64 million recovered)

In re Sequenom, Inc. Securities Litigation
No. 09-cv-921 (S.D. Ca.) ($57 million recovered)

In re L.A. Gear Securities Litigations,
CV-90-2832-KN (Bx), *et al.* (C.D. Ca.) ($50 million plus recovered)

Rosen, et al. v. Macromedia, Inc., et al.,
Case No. 988526 (Sup. Ct., SF County Ca.) ($48 million recovered)

In re Ames Department Stores Securities Litigation,
MDL No. 924 (S.D.N.Y.) ($46 million recovered)

In re Salomon Analyst Metromedia Litigation,
02-cv-7966 (S.D.N.Y.) ($35 million recovered)

In re Ambac Financial Group, Inc. Securities Litigation
08-cv-411 (S.D.N.Y.) ($33 million recovered)

In re Genentech, Inc. Securities Litigation,
C-88-4038-DLJ (N.D. Ca.) ($29 million recovered)

In re Tele-Communications, Inc. Securities Litigation,
C-97-421(C.D. Ca.) ($26.5 million recovered)

Michigan Department of Treasury v. Tyco International, Ltd., et al. (Opt-out)
08-cv-1340 (E.D. Mich) ($25.5 million recovered)

In re Sun Healthcare Group, Inc. Litigation,
C-95-7005-JC/WWD (D.N.M.) ($24 million recovered)

In re Centennial Technologies Litigation,
97-10304-REK (D. Mass.) ($21.5 million recovered and other consideration)

In re PepsiCo Securities Litigation,
82 Civ. 8288 (S.D.N.Y.) ($21 million recovered)

In re Proquest Company Securities Litigation,
06-cv-10619 (E.D. Mich.) ($20 million recovered)

In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation – Excite@Home Corporation,
02-cv-3042 (S.D.N.Y.) ($19 million recovered)

Scheatzle, et al. v. Eubanks, et al.,
C-92-20785-JW (EAI) (N.D.Ca.) ($18.6 million recovered)

In re Escala Group, Inc. Securities Litigation,
06-cv-3518 (S.D.N.Y.) ($18 million recovered)

Kensington Capital Management v. Oakley, Inc., et. al.,
No. SACV97-808 GLT (Eex) (C.D. Ca.) ($17.5 million recovered)

In re Computer Memories Securities Litigation,
No. C-85-2335 (A)-EFL (N.D. Ca.) ($15.5 million recovered)

In re Wyse Technology Securities Litigation,
C-89-1818-WHO (N.D. Ca.) ($15.5 million recovered)

Provenz v. Miller, et al.,
C-92-20159-RMW (N.D.Ca.) ($15 million recovered)

In re Gupta Corporation Securities Litigation,
C-94-1517-FMS (N.D. Ca.) ($14.25 million recovered)

In re MicroPro Securities Litigation,
C-85-7428-EFL (N.D. Ca.) ($14 million recovered)

In re Immunex Securities Litigation,
C-92-48 WD (W.D. Wa.) ($14 million recovered)

Barry Hallet, Jr. v. Li & Fung, Ltd., et al.,
95 Civ. 8917 (S.D.N.Y.) ($13.65 million recovered)

LACERA v. Citigroup, Inc., et al. (Salomon Analyst – Focal Communications, Inc.),
04-cv-5854 (S.D.N.Y.) ($13 million recovered)

In re Salomon Analyst Williams Securities Litigation,
02-cv-8156 (S.D.N.Y.) ($12.5 million recovered)

Stuart Markus v. The North Face, Inc., et al.,
No. 97-Z-473 (D. Co) ($12.5 million recovered)

Mel Klein v. Laura L. King, et al.,
C-88-3141-FMS (N.D.Ca.) ($11.65 million recovered)

In re Prestige Brands Holdings, Inc. Securities Litigation
05-cv-6924 (S.D.N.Y.) ($11 million recovered)

Igor Cheredrichenko, et al. v. Quarterdeck Corp., et al.,
Case No. 97-4320 (GHK) (C.D. Ca.) ($11 million recovered)

In re Cheyenne Software, Inc. Securities Litigation,
94 Civ. 2771 (E.D.N.Y.) ($10.25 million recovered)

Exhibit 11

RIGRODSKY & LONG P.A.

Attorneys at Law

www.rigrodskylong.com

Seth D. Rigrodsky
Admitted in DE, NY

Brian D. Long
Admitted in DE, PA

Timothy J. MacFall
Admitted in NY

Marc A. Rigrodsky
Admitted in CT, DC

Corinne E. Amato
Admitted in DE, NJ, PA

Gina M. Serra
Admitted in DE, NJ, PA

Jeremy J. Riley
Admitted in DE, FL

FIRM RESUME

THE FIRM

Rigrodsky & Long, P.A. (the "Firm") is a law firm that focuses on the representation of institutional and individual investors and consumers in class action and shareholder derivative litigation involving securities laws, corporate law, the Employees Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act ("FLSA"), and consumer fraud statutes. The Firm's offices are located in Delaware and New York. The Firm regularly practices before state and federal courts located throughout the United States. The Firm's attorneys have decades of experience litigating complex corporate and class action lawsuits.

Our mission is to provide legal services of the highest quality through the dedicated efforts of a team of highly skilled professionals and support staff working together and drawing upon significant expertise and experience. As discussed below in the "Select Firm Accomplishments" section, the Firm has achieved precedent-setting victories for thousands of victims of corporate wrongdoing.

THE FIRM'S PROFESSIONALS

Seth D. Rigrodsky, a shareholder in the Firm, has over twenty-one years of legal experience. Mr. Rigrodsky is a *magna cum laude* graduate of both Brandeis University and the Georgetown University Law Center. While at Georgetown, he served as Articles Editor of the *Georgetown Law Review.* Mr. Rigrodsky began

his legal career as a law clerk to the Honorable Andrew G.T. Moore, II, of the Delaware Supreme Court. Following his clerkship, Mr. Rigrodsky was associated with the law firms of Wachtell, Lipton, Rosen & Katz in New York City, and Morris, Nichols, Arsht & Tunnell LLP in Wilmington, Delaware, where he concentrated his practice on corporate and complex business litigation. In 1994, Mr. Rigrodsky joined Morris and Morris in Wilmington, Delaware, where he became a partner in January 2000, and represented investors in numerous federal and state class and shareholder lawsuits. Mr. Rigrodsky joined the law firm of Milberg LLP in 2001 and founded its Delaware office. Mr. Rigrodsky is a member of the bars of the States of Delaware and New York, the United States District Courts for Delaware, the Southern District of New York, and Colorado, and the United States Courts of Appeals for the Second, Third, Fourth, and Sixth Circuits.

Among the significant cases in which Mr. Rigrodsky participated at Morris and Morris are: ***Orman v. America Online, Inc.,*** Civ. Action No. 97-264-A (E.D. Va.) ($35 million settlement of class securities fraud litigation); ***In re Merrill Lynch Sec. Litig.,*** Civ. Action No. 94-5343 (DRD) (D.N.J.) (Nasdaq Market Makers securities fraud litigation); ***In re Columbia Gas Sec. Litig.,*** Consol. Civ. Action No. 91-357 (D. Del.) ($36.5 million settlement of class securities fraud litigation); and ***Schaffer v. Nat'l Med. Enters., Inc.,*** Civ. Action No. 93-5224 TJH (BX) (C.D. Cal.) ($11,650,000 settlement of class securities fraud litigation). Among other things, while at Milberg, Mr. Rigrodsky was one of the plaintiffs' lead trial counsel in ***In re The Walt Disney Co. Derivative Litig.,*** Consol. C.A. No. 15452 (Del. Ch. 2005), a 37-day trial involving allegations that The Walt Disney Company's directors breached their fiduciary duties in connection with the hiring and firing of Michael Ovitz, and the payment of a package of benefits that was worth approximately $140 million. Also, while at Milberg, Mr. Rigrodsky did extensive work on the following securities class action litigations: ***In re Deutsche Telekom AG Sec. Litig.,*** No. 00 Civ. 9475 (SHS) (S.D.N.Y.) ($120 million settlement of securities class action litigation); and ***In re Charter Comm., Inc. Sec. Litig.,*** MDL Docket No. 1506 (CAS) ($146,250,000 settlement of securities class action litigation).

Since co-founding the Firm in 2006, Mr. Rigrodsky has served as Co-Chair of Plaintiffs' Executive Committee in ***In re Lear Corp. S'holders Litig.,*** Consol. C.A. No. 2728-VCS (Del. Ch.), in which plaintiffs successfully obtained a preliminary injunction enjoining a shareholder vote on a proposed merger pending the issuance of remedial and supplemental disclosures. Mr. Rigrodsky also served as Co-Lead Counsel for Plaintiffs in ***In re The Topps Co., Inc. S'holders Litig.,*** Consol. C.A. No. 2786-VCS (Del. Ch.). After Mr. Rigrodsky made the argument for plaintiffs, the Delaware Court of Chancery issued a landmark decision granting plaintiffs'

injunction motion. 926 A.2d 58 (Del. Ch. 2007). The Court enjoined the merger vote until after The Topps Co. ("Topps") granted the competing bidder The Upper Deck Company ("Upper Deck") a waiver of the standstill agreement to make a tender offer, and allowed Upper Deck to communicate with Topps' stockholders about its bid and its version of events. Significant securities fraud class action cases Mr. Rigrodsky participated in at the Firm include: ***In re MBNA Corp. Sec. Litig.,*** C.A. No. 05-272 (GMS) (D. Del) and ***In re Molson Coors Brewing Co. Sec. Litig.,*** Consol. C.A. No. 05-294 (GMS) (D. Del.). In the ***MBNA*** litigation, Mr. Rigrodsky represented institutional plaintiffs Activest Investmentgesellschaft mbH's and Société Générale Securities Services Kapitalanlagegesellschaft mbH and assisted in securing a $25 million fund for the benefit of MBNA Corporation shareholders. In the ***Molson Coors*** matter, Mr. Rigrodsky assisted in securing a $6 million settlement fund on behalf of plaintiffs Metzler Investment GmbH, Drywall Acoustic Lathing and Insulation Local 675 Pension Fund, and the other shareholders of Molson Coors Brewing Co.

Brian D. Long is a founding shareholder of the Firm and a partner in its Wilmington, Delaware office. He has over fifteen years of experience representing plaintiffs in complex class action litigation in state and federal courts throughout the nation, with a focus on representing stockholders asserting claims for breaches of fiduciary duties in the Delaware Court of Chancery. Mr. Long also has successfully served as lead or co-lead counsel in numerous stockholder derivative actions challenging harm to public corporations based, among other things, on a lack of oversight or malfeasance by corporate directors. Among the notable results in which Mr. Long has played a lead or substantial role include:

- ***In re CNX Gas Corp. Shareholders Litigation,*** **Consol. C.A. No. 5377-VCL (Del. Ch.):** The *CNX Gas* matter involved a class action against the directors of CNX Gas Corp. and its controlling stockholder that was resolved, just days before trial, for additional consideration of $42.73 million to stockholders not affiliated with the company.

- ***In re Mediacom Communications Corporation Shareholders Litigation,*** **Consol. C.A. No. 5537-VCS (Del. Ch.):** The *Mediacom* litigation involved a challenge to an attempt by the company's controlling stockholder to take it private. The class action was successfully resolved when the controller agreed to pay an additional $10 million above what the company's special committee had negotiated.

- ***In re American Pharmaceutical Partners, Inc. Shareholders Litigation*, Consol. C.A. No. 1823-VCL (Del. Ch.):** Defendants agreed to pay additional consideration of $14.3 million to resolve claims in this class action arising from a going-private transaction that had been approved by a majority of insider directors.

- ***In re Metrologic Instruments, Inc. Shareholders Litigation*, Docket No. L-6430-06 (N.J. Super.):** In the *Metrologic* class action, plaintiffs challenged a going-private transaction that closed in 2006. In 2013, plaintiffs and defendant Metrologic Instruments, Inc. ("Metrologic"), in addition to the individual members of Metrologic's board of directors, reached a partial settlement in exchange for a payment of $11.95 million, which was approved by the Court on December 16, 2013. That partial settlement excluded parties alleged to be Metrologic's controlling stockholders, and plaintiffs currently are continuing to press claims against those remaining entities, seeking additional cash consideration from them.

- ***In re Complete Genomics, Inc. Shareholder Litigation*, Consol. C.A. No. 7888-VCL (Del. Ch.):** Mr. Long served as Co-Chair of Plaintiffs' Executive Committee and successfully enjoined a "don't-ask-don't-waive" standstill agreement that precluded a potentially interested buyer from making a topping bid. The Court also enjoined the transaction pending disclosure of significant additional information, including certain restrictions that impaired the directors' ability to achieve the highest value possible, as well as potential conflicts by certain company insiders involved in negotiating the deal.

- ***Forgo v. Health Grades, Inc.*, C.A. No. 5716-VCS (Del. Ch.):** In *Health Grades*, after expedited injunction proceedings and a hearing, the parties settled for extensive modification to the terms of the challenged transaction, including a twenty-day extension of the challenged tender offer; the agreement of certain officers who had entered into tender and support agreements to similarly support a better deal; a 22% reduction in the termination fee; a 40% reduction in the buyer's matching rights; the creation of an independent committee to negotiate with bidders and approve offers free from the influence of the allegedly self-interested chief executive; and the imposition of a requirement that a majority of the disinterested stockholders tender in order for the deal to go through. While another bidder did not

> emerge, the Court praised the efforts of plaintiffs' counsel for leveling the playing field for potential bidders and ensuring that other bidders could do so in a meaningful way.

Among the significant cases in which Mr. Long has participated are ***In re MBNA Corp. Sec. Litig.,*** C.A. No. 05-272 (GMS) (D. Del.) and ***In re Molson Coors Brewing Co. Sec. Litig.,*** Consol. C.A. No. 05-294 (GMS) (D. Del.).

Mr. Long is admitted to practice before the Courts of the State of Delaware and the Commonwealth of Pennsylvania, as well as several federal district and appellate Courts in those States. He has argued numerous occasions before the Delaware Supreme Court and also frequently serves as Delaware counsel to out-of-State law firms seeking guidance on issues regarding the State's corporation laws, as well as practice and procedure in Delaware's nationally renowned Court of Chancery. Mr. Long also has experience assisting in the representation of securities fraud plaintiffs in collateral proceedings in the United States Bankruptcy Court for the District of Delaware.

Timothy J. MacFall is a partner in the Firm and has more than twenty-nine years of legal experience. Mr. MacFall is a *cum laude* graduate of Brooklyn College of the City University of New York and a graduate of Brooklyn Law School. Upon his graduation from law school, Mr. MacFall served as an Assistant District Attorney in the Narcotics Bureau of the Kings County District Attorney's Office. In 1987, he joined the Immigration & Naturalization Service as a Trial Attorney in the Alien Criminal Apprehension Program. Mr. MacFall was subsequently cross-designated as a Special Assistant United States Attorney for the Eastern District of New York, Criminal Division. In 1988, Mr. MacFall was appointed as a Special Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of New York. As a government attorney, Mr. MacFall tried numerous cases to verdict and argued more than a dozen cases before the United States Court of Appeals for the Second Circuit. Mr. MacFall was also a speaker at a United States Department of State Conference on pending extradition litigation and the 1986 *Supplementary Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland*; he has served as a lecturer at Immigration & Naturalization Service Special Agent training seminars; and assisted in the preparation of a New York City Police Department trial testimony training film.

Mr. MacFall has focused his practice primarily on complex class action litigation in state and federal courts since 1992. Since that time, Mr. MacFall has

represented individual investors, union pension funds, and state pension funds in transactional and federal securities class actions throughout the United States. Mr. MacFall joined the Firm in April 2009. Mr. MacFall is a member of the bar of the State of New York and is also admitted to practice in the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, and the United States Court of Appeals for the Second Circuit.

Among the securities class action litigations in which Mr. MacFall has had significant involvement are: ***In re Marsh & McLennan Cos., Inc. Sec. Litig.,*** C.A. No. 04-CV-08144 (CM) (S.D.N.Y. 2009) ($400 million cash settlement); ***In re Royal Dutch/Shell Transport Sec. Litig.,*** C.A. No. 04-374 (JAP) (D.N.J. 2008) (minimum value to the class of U.S. shareholders of $130 million, with a potential value of more than $180 million, in addition to a $350 million European settlement for which the U.S. litigation was recognized as a "substantial factor"); ***In re Cigna Corp. Sec. Litig.,*** Master File No. 2:02-CV-8088 (E.D. Pa. 2006) ($93 million cash settlement); ***In re Evergreen Ultra Short Opportunities Fund Secs. Litig.***, 1:08-cv-11064-NMG (D. Mass. 2008) ($25 million cash settlement); ***In re Taser Int'l, Inc. Sec. Litig.,*** No. C05-0115-PHX-SRB (D. Ariz. 2006) ($20 million cash settlement); ***In re Terayon Commc'n Sys., Inc. Sec. Litig.,*** Master File No. C-00-1967-MHP (N.D. Cal. 2006) ($15 million cash settlement); ***In re Take-Two Interactive Software, Inc. Sec. Litig.,*** C.A. No. 1:01-CV-09919 (DLC) (S.D.N.Y. 2002) ($7.5 million cash settlement); ***In re Turnstone Sys., Inc. Sec. Litig.,*** No. 4:01-CV-01256-SBA (N.D. Cal. 2003) ($7 million cash settlement); ***In re NCI Bldg. Sys., Inc. Sec. Litig.,*** Master File No. H-01-1280 (S.D. Tex. 2004) ($7 million cash settlement); ***In re The St. Paul Cos., Inc. Sec. Litig.,*** Civil File No. 02-3825 (PAM/RLE) (D. Minn. 2004) ($6.325 million cash settlement); ***In re Sipex Corp. Sec. Litig.,*** Master File No. 05-CV-00392-WHA (N.D. Cal. 2006) ($6 million cash settlement); ***In re Telik, Inc. Sec. Litig.,*** C.A. No. 07-CV-4819 (CM) (S.D.N.Y. 2008) ($5 million cash settlement); and ***In re Fidelity Holdings Sec. Litig.***, No. CV 00 5078 (CPS) (VVP) (E.D.N.Y. 2003) ($4.45 million cash settlement).

Mr. MacFall was selected for inclusion in the ***2010, 2011, 2013*** and ***2014 New York Super Lawyers - Metro Edition*** magazines for his work in securities litigation.

Marc A. Rigrodsky, Of Counsel to the Firm, has over twenty-seven years of legal experience. Mr. Rigrodsky is a graduate of Cornell University and a *summa cum laude* graduate of the Benjamin N. Cardozo School of Law. While at Cardozo, he served on the *Cardozo Law Review*. Mr. Rigrodsky began his legal career as a law clerk to the Honorable Thomas J. Meskill, of the United States Court of Appeals for the Second Circuit. Following his clerkship, Mr. Rigrodsky was associated with the law firm of Robinson & Cole in Hartford, Connecticut. He worked for

the Department of the Navy from 1986 to 1988, the Department of the Treasury from 1992 to 2003, and the Department of Transportation from 2003 to 2007. He was part of Digital Equipment Corporation's law department from 1989 to 1991, and worked as a full-time consultant for the District of Columbia Retirement Board from 2007 to 2009. Mr. Rigrodsky is a member of the bars of the State of Connecticut and the District of Columbia, and is also admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit, and the United States District Court for the District of Connecticut.

Corinne Elise Amato is an associate at the Firm. Ms. Amato is a *magna cum laude* graduate of both Franklin & Marshall College and Widener University School of Law in Wilmington, Delaware. While at Widener Law, Ms. Amato served on the administrative board of *The Delaware Journal of Corporate Law*, was a member of Phi Kappa Phi National Honor Society, and served as a judicial extern to the Honorable Gregory M. Sleet, Chief United States District Court Judge for the District of Delaware. Upon graduation from law school, Ms. Amato began her legal career as an associate in the Corporate & Commercial Litigation Department of Morris James LLP. While at Morris James, Ms. Amato focused on claims that involved complex corporate, commercial, and fiduciary issues. For example, she counseled a special litigation committee tasked with investigating derivative claims arising out of an interested stock exchange merger and negotiated a global settlement, obtaining cash and non-cash consideration for the company. She also advised a Fortune 500 Company on fiduciary responsibilities of conflicted directors in a proposed financing transaction and successfully avoided litigation. Specifically, before the Delaware Court of Chancery, Ms. Amato enforced terms of a limited liability company agreement by obtaining a temporary restraining order against a managing member, seeking to dilute the ownership of minority members, without providing adequate notice and disclosure of material facts for the impending transaction; defended clients against claims that they provided false or misleading information purportedly triggering a material adverse change clause; and represented clients in other expedited litigation and advancement and books and records requests. Before the Delaware District Court, Ms. Amato defeated a motion for summary judgment on eight counts of liability for a client's alleged violation of non-compete and non-solicitation provisions. Ms. Amato joined the Firm in June 2014. Ms. Amato presently serves as the Secretary of the Richard S. Rodney American Inn of Court and Vice-Chair of the Indemnification Sub-Committee of the Director & Officer Liability Committee, Business Law Section of the American Bar Association. From 2009 to 2012, Ms. Amato served as an Associate Member of the Board of Bar Examiners of the Supreme Court of the State of Delaware. Ms. Amato was recognized in the 2014 edition of Super Lawyers,

Delaware as a Rising Star in Business Litigation. Ms. Amato is a member of the bars of the State of Delaware, the State of New Jersey, and the Commonwealth of Pennsylvania. Ms. Amato is also admitted to practice in the United States District Court for the District of Delaware and the Third Circuit Court of Appeals.

Gina M. Serra is an associate at the Firm. Ms. Serra is a *cum laude* graduate of both Rowan University and Widener University School of Law in Wilmington, Delaware. While at Widener Law, Ms. Serra was a member of the *Widener Law Review* and Vice President of the Moot Court Honor Society and the Justinian Society. During law school, she was also a judicial intern for the Honorable Henry duPont Ridgely of the Supreme Court of Delaware, and obtained a Trial Advocacy Certificate with honors. Ms. Serra began her legal career as the judicial law clerk to the Honorable Fred S. Silverman of the Superior Court of Delaware. She also was a member of the Richard S. Rodney American Inn of Court. Ms. Serra joined the Firm in September 2010. Ms. Serra is a member of the bars of the State of Delaware, New Jersey, and the Commonwealth of Pennsylvania. She is also admitted to practice in the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Districts of Delaware and Colorado.

Jeremy J. Riley is an associate at the Firm. Mr. Riley is a graduate of the University of Delaware and a *magna cum laude* graduate of Widener University School of Law in Wilmington, Delaware. While at Widener Law, Mr. Riley was an Articles Editor for *The Delaware Journal of Corporate Law*. He also served as a Wolcott Fellow to the Honorable Jack B. Jacobs of the Delaware Supreme Court. Upon graduating from law school, Mr. Riley served as a judicial law clerk to the Honorable James T. Vaughn, Jr., President Judge of the Delaware Superior Court. Mr. Riley joined the Firm in September 2013. He is also a member of the Richard S. Rodney American Inn of Court. Mr. Riley is a member of the bars of the State of Delaware and the State of Florida. Mr. Riley is also admitted to practice in the United States District Court for the District of Delaware.

SELECT FIRM ACCOMPLISHMENTS

In re CNX Gas Corp. S'holders Litig.,
Consol. C.A. No. 5377-VCL (Del. Ch.)
The Firm was lead counsel in a class action before the Delaware Court of Chancery brought on behalf of the shareholders of CNX Gas ("CXG") who alleged that they suffered financial injury in connection with the "going-private"

acquisition of CXG by its controlling parent company owner, CONSOL Energy, Inc. ("CONSOL"). After expedited proceedings, on May 26, 2010, the Court ruled that plaintiffs had made a sufficient showing that the action should move forward to trial. In so doing, the Court issued an important opinion clarifying and defining the rights of shareholders in the context of a "going-private" tender offer by a controlling shareholder. *In re CNX Gas Corp. S'holders Litig.*, 4 A.3d 397 (Del. Ch. 2010). Following mediation, defendants increased the tender offer price by 7.2%, resulting in a $42.73 million cash payment to the Class.

In re Metrologic Instruments, Inc. Shareholders Litig.,
Dkt. No. L-6430-06 (N.J. Super. Ct. Law Div.)

The Firm serves as sole lead counsel on behalf of Metrologic, Inc. ("Metrologic" or the "Company") shareholders. This case is a class action that arose from the transaction to cash out the Company's minority shareholders in a merger for alleged inadequate consideration, negotiated through coercive means. Plaintiffs allege that the board of directors unanimously approved Metrologic's acquisition by entities owned and affiliated with Francisco Partners II, L.P., C. Harry Knowles (the Company's founder and Chairman of the Board), and Elliott Associates, L.P. and Elliott International, L.P. (collectively, "Elliott"). C. Harry Knowles and Elliott (the "Knowles Group") were together controlling shareholders of Metrologic. The Knowles Group entered into voting agreements to vote their 49% in favor of the deal in addition to an undisclosed group of the Company's directors and executive officers that agreed to vote their 1.1% in favor of the deal. Therefore, 50.1% of the shares were contractually committed to voting in favor of the transaction. Furthermore, the proxy allegedly failed to disclose that even though the Knowles Group was receiving the same consideration for their shares being cashed out, they were also receiving additional consideration for the shares that they rolled over for equity in the surviving entity. On April 17, 2009, the Court denied defendants' motion to dismiss the case. ***In re Metrologic Instruments, Inc. S'holders Litig.,* Docket No. L-6430-06 (N.J. Super. Ct. Apr. 17, 2009) (Order).** In 2013, plaintiffs and defendant Metrologic, in addition to the individual members of Metrologic's board of directors, reached a partial settlement in exchange for a payment of $11.95 million, which was approved by the Court on December 16, 2013. That partial settlement excluded the parties alleged to be Metrologic's controlling stockholders, and plaintiffs currently are continuing to press claims against those remaining entities, seeking additional cash consideration from them

In re HSBC Bank USA, N.A. Debit Card Overdraft Fee Litig.,
2:13-md-02451-ADS-AKT
The Firm was appointed Co-interim Class Counsel in this multidistrict litigation pending in the United States District Court of the Eastern District of New York. This litigation was brought on behalf of a national class of checking account customers of HSBC Bank USA, N.A. ("HSBC") who were improperly charged overdraft fees on debit card transactions as a result of HSBC's deceptive overdraft fee practices. On March 5, 2014, the United States District Court for the Eastern District of New York granted, in part, and denied, in part, defendants' motion to dismiss plaintiffs' complaint. On April 21, 2014, the District Court granted Plaintiffs' motion for reconsideration of the dismissal of certain claims and reinstated those claims. The litigation is presently ongoing.

In re Nevsun Resources Ltd.
12 Civ. 1845 (PGG) (S.D.N.Y.)
The Firm was appointed co-lead counsel in this federal securities class action litigation brought on behalf of the shareholders of Nevsun Resources Ltd. against the Company and certain of its officers. Plaintiffs allege that, during the Class Period, Defendants made materially false and misleading statements by overstating the gold reserves at the Company's Bisha Mine in Eritrea, Africa. On September 27, 2013, the District Court denied, in substantial part, Defendants' motion to dismiss the complaint. The litigation is ongoing.

In re Mediacom Communications Corporation Shareholders Litigation,
Consol. C.A. No. 5537-VCS (Del. Ch.)
The Firm was one of the lead counsel and one of the primary negotiators of a settlement that resulted in an additional $10 million paid to stockholders. In *Mediacom*, plaintiffs' counsel eschewed multiple invitations to negotiate simultaneously with the special committee of the Mediacom Communications Corporation's ("Mediacom") board of directors, and instead favored the approach of focusing their litigation efforts on increasing the consideration to stockholders only after the merger agreement had been negotiated and approved by the Mediacom board (as recommended by its special committee). As such, the stipulation of settlement reflected that the efforts of plaintiffs' counsel were the sole cause of that price bump.

Dannis v. Nichols,
Case No. 13-CI-00452 (Ky. Cir. Ct.)
The Firm was one of the lead counsel that litigated and negotiated the settlement. Plaintiffs challenged the fairness of a proposed going-private squeeze-out merger by NTS Realty Holdings Limited Partnership's ("NTS") controlling unitholder

and Chairman of the Board. The action settled for additional consideration of $7,401,487, or more than $1.75 per unit of NTS. The settlement was approved by the Court on April 24, 2014.

Minerva Group LP v. Keane,
Index No. 800621/2013 (N.Y. Sup. Ct.)
The Firm served as co-lead counsel in a class action brought on behalf of the public stockholders of Mod-Pac Corp. ("Mod-Pac" or the "Company") against members of Mod-Pac's board of directors, including the Company's controlling stockholders, for alleged breaches of fiduciary duties in connection with the controlling stockholders' offer to acquire all of the outstanding shares of Mod-Pac that they did not already own through an unfair process and for an unfair price. The parties reached an agreement to settle the action, which the Court approved on December 13, 2013, pursuant to which defendants agreed to pay Mod-Pac's stockholders an additional $2.4 million, which was an increase from $8.40 per share to $9.25 per share.

Forgo v. Health Grades, Inc.,
C.A. No. 5716-VCS (Del. Ch.)
The Firm was among the lead counsel in *Health Grades*, where, after an injunction hearing, the parties settled for extensive modification to the terms of the challenged transaction. These modifications included: a "Fort Howard" press release; a twenty-day extension of the challenged tender offer; the agreement of certain officers who had entered into tender and support agreements to similarly support a better deal; a 22% reduction in the termination fee; a 40% reduction in the buyer's matching rights; the creation of an independent committee to negotiate with bidders and approve offers free from the influence of the allegedly self-interested chief executive; and the imposition of a requirement that a majority of the disinterested stockholders tender in order for the deal to go through.

In re Lear Corp. Shareholders Litigation,
Consol. C.A. No. 2728-VCS (Del. Ch.)
The Firm served as Co-Chair of Plaintiffs' Executive Committee in this class action brought on behalf of the public shareholders of Lear Corporation ("Lear" or the "Company") in connection with its sale to American Real Estate Partners, L.P. ("AREP"). The Firm represented Classic Fund Management AG (Lear's sixth largest holder) who, along with other significant shareholders, had expressed its concern regarding the price AREP offered to acquire Lear. Despite the opposition voiced by its major institutional shareholders, Lear entered into a merger agreement with AREP following a sales process that was tilted in favor of

AREP. Among other things, Lear could not terminate the merger agreement without first providing the other bidder's terms to AREP and AREP had the right to top any other offer. As a result, plaintiffs alleged that no rival bidder was likely to emerge. Moreover, plaintiffs believed that the Company's intrinsic value was more than the $36 per share offered by AREP. The Firm obtained a preliminary injunction, which prohibited a stockholder vote on the merger until Lear made additional disclosures. ***In re Lear Corp. S'holders Litig.*, 926 A.2d 94 (Del. Ch. 2008)**. As a result of the Firm's efforts, Lear made substantial and remedial disclosures in its June 18, 2007 proxy supplement, which allowed stockholders to consequentially reject the merger in July 2007. In March 2008, after the shareholders rejected the proposed merger, the Court dismissed the class action as moot.

***In re The Topps Company, Inc. S'holders Litig.*,**
Consol. C.A. No. 2786-VCS (Del. Ch.)
The Firm served as Co-Lead Counsel for Plaintiffs in this class action brought on behalf of the public shareholders of The Topps Company, Inc. ("Topps" or the "Company") in connection with its sale to Madison Dearborn Partners and Michael Eisner's The Tornante Company, LLC (collectively, "Tornante"). Plaintiffs alleged that the transaction lacked many of the hallmarks of financial fairness and that the price was unfair and achieved through a process designed to benefit Tornante, to the detriment of Topps' public shareholders. The Firm moved the Court to issue a preliminary injunction to stop the deal. In June 2007, the Court issued a landmark decision granting plaintiffs' injunction motion. ***In re The Topps Co., Inc. S'holders Litig.*, 926 A.2d 58 (Del. Ch. 2007)**. The Court enjoined the merger vote until after Topps granted the competing bidder The Upper Deck Company ("Upper Deck") a waiver of the standstill agreement to make a tender offer, and allowed Upper Deck to communicate with Topps' stockholders about its bid and its version of events.

***Manville Personal Injury Trust v. Blankenship*,**
Case No. 07-C-1333 (W. Va. Cir.)
The Firm served as counsel for plaintiff in this shareholder derivative action brought on behalf of Massey Energy Company ("Massey" or the "Company") against its board of directors and certain of its officers for breach of fiduciary duties arising out of the defendants' alleged conscious failures to cause Massey to comply with applicable environmental and worker-safety laws and regulations. Plaintiff argued that defendants caused severe injury to the Company by consciously ignoring Massey's legal obligations to comply with federal and state law, thereby exposing the Company to a substantial threat of monetary liability for violations. This litigation, filed in the Circuit Court of

Kanawha County, West Virginia, caused Massey to implement significant corporate reforms, including improvements to its corporate policies. The parties reached a settlement that, among other things, required Massey to: (i) implement limitations on the length of service of and enhanced membership and meeting attendance requirements for members of the Safety, Environmental and Public Policy Committee ("SEPPC") of the board of directors; (ii) grant the SEPPC authority to retain independent, outside consultants to assist it with its duties; (iii) require that the SEPPC recommend enhancements to the Company's safety and environmental procedures and reporting, including shareholder reporting; (iv) establish certain safety and environmental compliance oversight positions; and (v) implement enhanced employee reporting mechanisms for safety and environmental issues. In June 2008, the Circuit Court approved the settlement. ***Manville Personal Injury Trust v. Blankenship,* Case No. 07-C-1333 (W. Va. Cir. June 30, 2008) (Order)**.

In re Chiquita Brands International, Inc., Alien Tort Statute and Shareholder Derivative Litigation,
No. 08-01916-MD (S.D. Fla.)
The Firm acted as counsel for plaintiff City of Philadelphia Public Employees' Retirement System in a shareholder derivative and class action brought on behalf of the public shareholders of Chiquita Brands International, Inc. ("Chiquita" or the "Company"). Plaintiffs alleged that the Company repeatedly and systematically violated federal law prohibiting transactions with recognized global terrorist organizations. Plaintiffs alleged that these breaches of fiduciary duty, along with the resultant violations of federal law, had substantially injured the Company in that, among other things, the Company consented to a criminal guilty plea. After years of litigation, on October 15, 2010, the federal District Court entered an Order approving a settlement of the litigation. ***In re Chiquita Brands Int'l, Inc., Alien Tort Statute & S'holder Derivative Litig.*, No. 08-01916-MD (S.D. Fla. Oct. 15, 2010) (Order)**. Among other things, the settlement provided substantial and important corporate governance reforms relating to the Chiquita board's oversight and management of the Company's compliance with federal law involving Chiquita's overseas business.

In re MBNA Corp. Securities Litigation,
Consol. C.A. No. 05-CV-00272 (GMS) (D. Del.)
The Firm served as liaison counsel for lead plaintiff and the members of the class in this securities class action brought on behalf of all persons who purchased or otherwise acquired the publicly traded securities of MBNA Corp. ("MBNA" or the "Company") during the period January 20, 2005 through April 20, 2005, inclusive (the "Class Period"). Plaintiffs alleged that: (i) MBNA deceived the

market by reporting that MBNA would achieve annual earnings growth of 10%; (ii) the Company failed to disclose that increases in interest rates, which had commenced before the Class Period and continued throughout, were driving down the proper carrying value of the Company's interest-rate only strips, such that the value of the Company's reported assets were materially overstated; and (iii) the Company did not adjust as appropriate the assumptions and estimates used in determining the fair value of the interest-only strip receivable. As a result, on April 21, 2005, MBNA was forced to reveal that: (i) it had to take almost a $207 million write down of its interest-only strip receivable; (ii) its first quarter income was down 93% year-over-year, including the restructuring charge; and (iii) it expected full year earnings to be significantly below the 10% growth objective. On July 6, 2007, the Court denied defendants' motion to dismiss the amended complaint. ***Baker v. MBNA Corp.*, Consol. C.A. No. 05-cv-00272 (GMS) (D. Del Jul. 6, 2007) (Mem. Op.).** Subsequently, after substantial litigation, the parties settled the litigation resulting in the creation of a $25 million fund to compensate injured investors. ***Baker v. MBNA Corp.*, Consol. C.A. No. 05-cv-00272 (GMS) (D. Del. Oct. 6, 2009) (Order).**

In re Molson Coors Brewing Co. Securities Litigation,
Consol. C.A. No. 05-CV-00294 (GMS) (D. Del.)
The Firm served as liaison counsel on behalf of lead plaintiffs Drywall Acoustic Lathing and Insulation Local 675 Pension Fund, Metzler Investment GmbH and the members of the class in this securities class action brought on behalf of all persons who were: (i) former shareholders of Molson Coors ("Molson Coors") as a result of the February 9, 2005 merger of Molson with and into Coors; (ii) open market purchasers of Coors common stock from July 22, 2004 through February 9, 2005; and (iii) open market purchasers of Molson Coors common stock, from the completion of the merger through April 27, 2005, inclusive. Plaintiffs alleged that Molson Coors made false and misleading statements, including: (i) the cost saving synergies represented by Molson Coors were impossible to achieve because, among other things, Coors' rapidly increasing distribution costs would adversely effect the potential cost saving synergies; (ii) Molson and Coors were already distributing each other's products, further reducing the possibility of cost saving synergies; (iii) the merger would actually incur significant post-merger expenses due to the expected exodus of Coors senior executives who would be paid millions of dollars in benefits; and (iv) Molson Coors would inherit Molson's Brazilian operations, which were an unmitigated failure that eventually necessitated a $500 million post-merger charge and the sale of Molson's Brazilian interests at a fraction of their cost. After extensive litigation efforts in both the United States and Canadian actions, the parties settled the lawsuits resulting in the creation of a $6 million fund for the payment of investor claims. ***In re Molson***

***Coors Brewing Co. Sec. Litig.*, Civ. A. No. 05-cv-00294-GMS (Consolidated) (D. Del. May 19, 2009)**.

County of York Employees Retirement Plan v. Merrill Lynch & Co., Inc.,
C.A. No. 4066-VCN (Del. Ch.)
The Firm served as lead counsel for plaintiff in this class action brought on behalf of the public shareholders of Merrill Lynch & Co. ("Merrill" or the "Company") in connection with its sale to Bank of America Corporation ("BofA"). Plaintiff County of York Employees Retirement Plan alleged that the individual defendants hastily agreed to sell the Company over the course of a weekend without adequately informing themselves of the true value of the Company or the feasibility of securing a viable alternative transaction that would be more beneficial to shareholders than the proposed acquisition. On October 28, 2008, the Court granted, in part, plaintiff's motion to expedite discovery and denied defendants' motion to stay or dismiss. ***Cnty. of York Emps. Ret. Plan v. Merrill Lynch & Co., Inc.*, C.A. No. 4066-VCN, 2008 Del. Ch. LEXIS 162 (Del. Ch. Oct. 28, 2008).** Subsequently, the Firm engaged in expedited discovery. After engaging in arm's-length negotiations, the parties reached a settlement whereby defendants made additional, substantive disclosures in their definitive proxy. Thereafter, the shareholders of Merrill and BofA approved the merger.

David B. Shaev IRA v. Sidhu,
No. 00983, November Term 2005 (Phila. C.C.P., Commerce Div.)
The Firm served as co-lead counsel in this shareholder derivative and class action brought on behalf of the public shareholders of Sovereign Bancorp, Inc. ("Sovereign" or the "Company"). Sovereign completed its two-part transaction (the "Santander Transaction") whereby Sovereign sold 19.8% of the Company to Banco Santander Central Hispano, S.A., and used the proceeds to fund its acquisition of Independence Community Bancorp. Plaintiffs alleged that Sovereign's board of directors purposely structured the Santander Transaction to be below the 20% change in control threshold established by the New York Stock Exchange. Additionally, plaintiffs alleged the board members had improper motives of entrenchment and participated in protection of their own self interests and the improper subversion of a proxy contest launched by Sovereign's largest shareholder, Relational Investors, LLC. Following the close of the sale in May 2006, the Firm helped negotiate a settlement of the litigation, which conferred substantial benefits on the Company and class members, including substantial corporate governance changes adopted by the Company. The Court approved the settlement. ***David B. Shaev IRA v. Sidhu*, No. 00983 (Phila C.P., Commerce Div. Oct. 28, 2008) (Order).** The Supreme Court of Pennsylvania upheld the settlement, which had been challenged in both the trial court and the

intermediate appellate court. ***Shaev v. Sidhu*, Pennsylvania Docket No. 470 EAL 2010 (Pa. Dec. 21, 2010) (Order)**.

***Winfield v. Citibank, N.A.*,**
C.A. No. 10-civ-7304-JGK (S.D.N.Y.)
The Firm brought an action under the Fair Labor Standards Act ("FLSA") on behalf of current and former Personal Bankers employed by Citibank, N.A. (the "Company"), whose job responsibilities made it necessary for them to work, and who did work, in excess of forty hours per week, but were improperly denied overtime compensation. The litigation is ongoing.

***Helaba Invest Kapitalanlagegsellschaft mbH v. Fialkow*,**
C.A. No. 2683-N (Del. Ch.)
The Firm served as counsel for lead plaintiff Helaba Invest Kapitalanlagegsellschaft mbH (a European institutional investor) in this class action on behalf of the public shareholders of National Home Health Care Corp. ("National Home" or the "Company"). The litigation sought to enjoin the proposed acquisition of National Home by a consortium composed of Angelo, Gordon & Co. and Eureka Capital Partners ("Angelo Gordon") for inadequate consideration. The plaintiff alleged that certain defendants, who collectively held more than fifty percent of the National Home's outstanding stock, agreed to vote in favor of the deal and that certain of these defendants would receive benefits from National Home and Angelo Gordon not shared by National Home's minority, public shareholders. As a result of the Firm's negotiations with defendants, the parties reached a settlement by which additional, curative disclosures were made in National Home's amended proxy statements and after holding meetings with the Company's special committee and board of directors, Angelo Gordon agreed to pay an additional $1.35 per share, a financial benefit of more than $3.76 million to National Home's shareholders. In addition, even after the merger agreement was approved, the Firm continued to advocate on behalf of shareholders, and Angelo Gordon agreed to allow the Company to increase its next quarterly dividend, representing approximately $260,000 in additional value. The Court approved the settlement. ***Helaba Invest Kapitalanlagegsellschaft mbH v. Fialkow*, C.A. No. 2683-N (Del. Ch. Mar. 12, 2008) (Order).**

***Neil L. Sclater-Booth v. SCOR S.A. and Patinex AG*,**
C.A. No. 07-CV-3476-GEL (S.D.N.Y.)
The Firm served as co-lead counsel for plaintiff in this class action brought on behalf of the public shareholders of Converium Holding AG ("Converium" or the "Company") and holders of the Company's American Depository Shares

against SCOR S.A. ("SCOR") and Patinex AG ("Patinex") in connection with SCOR and Patinex's acquisition of Converium. Plaintiff alleged that the acquisition was unfair to the Class. As a result of the Firm's action, SCOR agreed to settle the litigation by increasing its offer price by 7.9%, or $259.6 million. Citing the efforts of plaintiff's counsel, the Court approved the settlement. ***Neil L. Sclater-Booth v. SCOR S.A. and Patinex AG*, C.A. No. 3476-GEL (S.D.N.Y. Feb. 8, 2008) (Order).**

Plymouth Co. Retirement System v. MacDermid, Inc.,
C.A. No. 2006CV9741 (Colo. Dist. Ct. - Denver Co.)
The Firm served as co-lead counsel on behalf of lead plaintiff Plymouth County Retirement System and the class of MacDermid, Inc. ("MacDermid" or the "Company") shareholders. This case was a class action arising from the proposed acquisition of MacDermid by Daniel H. Leever (the Company's Chairman and Chief Executive), Court Square Capital Partners II, L.P., and Weston Presidio V, L.P. Among other things, plaintiff alleged that the Company's proxy did not disclose that the directors who approved the proposed transaction would receive more than $17 million for certain options, the amount or value that certain directors would be able to invest after completion of the proposed transaction, and certain facts and assumptions underlying the fairness opinion. As a result of the Firm's negotiations with defendants, MacDermid made additional disclosures in its definitive proxy statement, including but not limited to, the compensation and involvement of key company insiders, information regarding competing bidders, and financial analyses by Merrill Lynch. The Court approved the settlement. ***Plymouth Co. Ret. Sys. v. MacDermid, Inc.*, C.A. No. 2006CV9741 (Colo. Dist. Ct. – Denver Co. Dec. 10, 2007) (Order).**

Schultze Asset Management LLC v. Washington Group International, Inc.,
C.A. No. 3261-VCN (Del. Ch.)
The Firm served as co-counsel for plaintiff in this class action brought on behalf of the public shareholders of Washington Group International, Inc. ("Washington Group" or the "Company") in connection with its sale to URS Corporation. Plaintiff alleged that the transaction was financially and procedurally unfair to Washington Group's shareholders. In addition, plaintiff alleged that the Company's definitive proxy statement was materially misleading because, among other things, it failed to explain why Washington Group used overly conservative financial projections to support the Fairness Opinion issued in connection with the transactions. As a result of the Firm's negotiations with defendants, Washington Group agreed to and made additional curative disclosures in the definitive proxy statement. Specifically, the Company agreed to disclose additional information concerning the potential impact of existing contract claims asserted by the Company and their impact on the Company's valuation, the Company's efforts to solicit potential acquirers, and the analyses performed by Goldman Sachs (the Company's financial advisor) in support of the merger, among other things. Additionally, Washington Group amended the merger agreement whereby it increased the amount of consideration paid to each Washington Group shareholder. The Court approved the settlement. ***Schultze Asset Mgmt. LLC v. Wash. Grp. Int'l, Inc.,* C.A. No. 3261-VCN (Del. Ch. May 22, 2008) (Order).**

In re American Pharmaceutical Partners, Inc. Shareholders Litigation,
Consol. C.A. No. 1823-VCL (Del. Ch.)
The Firm served as one of co-lead counsel in this class action brought on behalf of the public shareholders of American Pharmaceutical Partners, Inc. ("APP" or the "Company") in connection with its acquisition of American BioScience, Inc. Plaintiffs alleged that the acquisition would have diluted the voting rights of each share of the Company, to the detriment of minority shareholders. Plaintiffs also asserted claims derivatively on behalf of the Company, which was directly harmed, among other things, when the Company's investors fled *en masse* upon announcement of the merger, and because the merger transferred the bulk of the Company's value to defendant Dr. Patrick Soon-Shiong for allegedly inadequate consideration. In April 2006, the merger was completed and subsequently plaintiffs filed their First Consolidated Class Action Complaint in June 2006. After nearly eighteen months of arm's-length negotiations and the production of thousands of pages of documents in response to plaintiffs' subpoenas, the parties agreed to mediation and an agreement-in-principle to settle the action. In July 2008, the parties agreed to settle the action for $14.3 million, to be paid by defendants, which represented approximately $0.60 per damaged minority share

for the shareholders. The Court approved the settlement. ***In re Am. Pharm. Partners, Inc. S'holders Litig.,* Consol. C.A. No. 1823-VCL (Del. Ch. Dec. 16, 2008) (Order).**

Sheetmetal Workers' National Pension Fund v. Hill,
C.A. No. 07-cv-2269 (RBK) (D.N.J.)
The Firm served as counsel for plaintiff Sheetmetal Workers' National Pension Fund in this shareholder derivative and class action brought on behalf of the public shareholders of Commerce Bancorp, Inc. ("Commerce" or the "Company") in connection with two regulatory investigations of Commerce and its subsequent acquisition by PNC Bank in a merger transaction (the "Merger"). Plaintiff alleged that the members of the board of directors of Commerce violated their fiduciary duties to the Company by approving a course of conduct whereby Commerce made unsafe loans and engaged in questionable related party transactions with its officers and directors and that the price offered in the Merger was unfair. Plaintiff requested the Court to issue an injunction to stop the Merger and sought expedited discovery. After extensive discovery, the Firm helped negotiate a settlement, which resulted in a $77 million reduction in the termination fee, and numerous additional disclosures in the definitive proxy statement. The Court approved the settlement. ***Sheetmetal Workers' Nat'l Pension Fund v. Hill,* C.A. No. 07-cv-269 (D.N.J. May 9, 2008) (Order).**

Virgin Islands Government Employees' Retirement System v. Alvarez,
C.A. No. 3976-VCS (Del. Ch.)
The Firm served as counsel for plaintiff in this derivative and class action brought on behalf of the public shareholders of UnionBanCal Corporation ("UnionBanCal" or the "Company") against its board of directors and certain officers for breach of fiduciary duties arising from the defendants' repeated and systematic failure to implement anti-money laundering procedures and policies, in violation of federal laws including the Bank Secrecy Act. The class action claims arose in connection with a tender offer launched by Mitsubishi UFJ Financial Group ("MUFG") and Bank of Tokyo-UFJ Ltd. Plaintiff Virgin Islands Government Employees' Retirement System alleged that the merger consideration was unfair in a number of respects, including the fact that the Company's share price was substantially depressed as a result of defendants' egregious failures to comply with anti-money laundering laws and regulations. The Firm coordinated efforts with a similar litigation in California, reviewing document production, deposing key witnesses, and negotiating a settlement in which UnionBanCal agreed to and made additional material disclosures concerning the transaction. The Court approved the settlement. ***V.I. Gov.***

***Employees' Ret. Sys. v. Alvarez,* C.A. No. 3976-VCS (Del. Ch. Dec. 2, 2008) (Order).**

Exhibit 12

Global Economics
GROUP

140 South Dearborn Street
Suite 1000
Chicago, IL 60603

Invoice

Invoice #:	Invoice Date:	Due Date:
2784	5/6/2014	6/5/2014

Nevsun

Case Name	Nevsun
Account #	0822
Bill To:	
Kaplan Fox & Kilsheimer LLP Jeff Campisi 805 Third Avenue, 22nd Floor New York, NY 10022	

PAID
5/14/14
CK# 36064 1091.25

Serviced	Description	Hours/Qty	Rate	Amount
4/17/2014	Hedstrom Analyzed data and documents.	0.5	325.00	162.50
4/17/2014	Marmer Reviewed data and documents.	2	410.00	820.00
4/28/2014	Giancarlo Analyzed data and documents.	0.5	200.00	100.00
4/28/2014	Marmer Reviewed data and documents.	0.5	410.00	205.00
4/29/2014	Marmer Reviewed data and documents.	1.5	410.00	615.00
4/29/2014	Coffman Expert analysis.	0.5	550.00	275.00

REMIT TO:
Global Economics Group
140 S Dearborn Street
Suite 1000
Chicago, IL 60603

WIRE/ACH INSTRUCTIONS:
Account Name: Global Economics Group LLC
Account No.: 978261295
ABA Routing No.: 071000013
SWIFT Code: CHASUS33
Bank Info: JP Morgan Chase, 10 S Dearborn
Chicago, IL 60603

Total	$2,177.50
Payments/Credits	$0.00
Balance Due	$2,177.50
Customer Balance Total	$2,182.50

Global Economics
GROUP

140 South Dearborn Street
Suite 1000
Chicago, IL 60603

Invoice

Invoice #:	Invoice Date:	Due Date:
2667	1/22/2014	2/21/2014

Case Name	Nevsun
Account #	0822
Bill To:	
Kaplan Fox & Kilsheimer LLP Jeff Campisi 805 Third Avenue, 22nd Floor New York, NY 10022	

Serviced	Description	Hours/Qty	Rate	Amount
12/2/2013	Coffman Expert analysis.	1.25	550.00	687.50
12/2/2013	Giancarlo Analyzed data and documents.	0.75	180.00	135.00
12/3/2013	Coffman Expert analysis.	0.5	550.00	275.00
12/5/2013	Coffman Expert analysis.	0.75	550.00	412.50

2/20/14
755.00
ck 37500

REMIT TO:
Global Economics Group
140 S Dearborn Street
Suite 1000
Chicago, IL 60603

WIRE/ACH INSTRUCTIONS:
Account Name: Global Economics Group LLC
Account No.: 978261295
ABA Routing No.: 071000013
SWIFT Code: CHASUS33
Bank Info: JP Morgan Chase, 10 S Dearborn
Chicago, IL 60603

Total	$1,510.00
Payments/Credits	$0.00
Balance Due	$1,510.00
Customer Balance Total	$29,702.50

Global Economics
GROUP

140 South Dearborn Street
Suite 1000
Chicago, IL 60603

Invoice

Invoice #:	Invoice Date:	Due Date:
2638	12/31/2013	1/30/2014

Case Name	Nevsun
Account #	0822
Bill To:	
Kaplan Fox & Kilsheimer LLP Jeff Campisi 805 Third Avenue, 22nd Floor New York, NY 10022	

Serviced	Description	Hours/Qty	Rate	Amount
10/31/2013	Khatri Analyzed Data and Documents	6	150.00	900.00
10/31/2013	Hedstrom Analyzed data and documents.	3.5	325.00	1,137.50
11/1/2013	Khatri Analyzed Data and Documents	8.5	150.00	1,275.00
11/1/2013	Hedstrom Analyzed data and documents.	1.5	325.00	487.50
11/4/2013	Hedstrom Analyzed data and documents.	1.25	325.00	406.25
11/4/2013	P Hickey Analyzed data and documents	0.5	375.00	187.50
11/4/2013	Khatri Analyzed Data & Documents	7.25	150.00	1,087.50
11/5/2013	Hedstrom Analyzed data and documents.	1.25	325.00	406.25
11/5/2013	Khatri Analyzed Data & Documents	4.25	150.00	637.50
11/5/2013	P Hickey Analyzed data and documents	0.5	375.00	187.50
11/5/2013	Coffman Expert analysis.	0.5	550.00	275.00
11/6/2013	Hedstrom Analyzed data and documents.	2.5	325.00	812.50
11/6/2013	Khatri Analyzed Data & Documents	8.5	150.00	1,275.00
11/7/2013	Hedstrom Analyzed data and documents.	2	325.00	650.00
11/7/2013	Khatri Analyzed Data & Documents	5	150.00	750.00

4/15/14
14,096.25
c/c 37885

REMIT TO:	WIRE/ACH INSTRUCTIONS:	
Global Economics Group 140 S Dearborn Street Suite 1000 Chicago, IL 60603	Account Name: Global Economics Group LLC Account No.: 978261295 ABA Routing No.: 071000013 SWIFT Code: CHASUS33 Bank Info: JP Morgan Chase, 10 S Dearborn Chicago, IL 60603	**Total** **Payments/Credits** **Balance Due** **Customer Balance Total**

BLETHEN MINING ASSOCIATES, PC
217 WEST COMMERCE STREET
BRIDGETON, NEW JERSEY 08302

INVOICE

Bill To:
Mr. Jeffrey P. Campisi, Esq.
Kaplan, Fox & Kilsheimer, LLP
850 Third Avenue
14th Floor
New York, NY 10022

Date	Invoice No.	Due Date	Terms	Project
10/17/12	155	11/06/12	Net 20	Nevsun Resources

Serviced	Item	Description	Quanti	Rate	Amount
07/05/12	Expert Witness	Document Review	2	250.00	500.00
07/06/12	Expert Witness	Document Review	6	250.00	1,500.00
07/07/12	Expert Witness	Document Review	2	250.00	500.00
07/17/12	Expert Witness	Conference Call	1	250.00	250.00
07/24/12	Expert Witness	Document Review	2	250.00	500.00
07/27/12	Expert Witness	Conference Call	1	250.00	250.00
07/30/12	Expert Witness	Memo Report	4	250.00	1,000.00
09/10/12	Expert Witness	Document Review	4	250.00	1,000.00
09/11/12	Expert Witness	Document Review	1	250.00	250.00
09/12/12	Expert Witness	Conference Call	1	250.00	250.00
09/12/12	Expert Witness	Document Review	1	250.00	250.00

Total	$6,250.00

Thank you for your business. Make all checks payable to:
Blethen Mining Associates, PC

Saleh Johar
9950 Bruceville Rd. # 351
Elk Grove, CA 95757

INVOICE

Mr. Jeff Campisi
Kaplan Fox & Kilsheimer
50 Third Avenue, New York, NY 10022

Invoice #	2013/4
Invoice Date	04/30/2013
Due Date	04/30/2013

Item	Description	Unit Price	Quantity	Amount
Hours	Preparations and networking	250.00	4.00	1,000.00
Hours	actual interview	250.00	5.00	1,250.00
	Transcribing and editing	250.00	7.00	1,750.00

Subtotal	4,000.00
Total	4,000.00
Amount Paid	0.00
Balance Due	$4,000.00

MARKSADR, LLC

4833 Rugby Avenue
Suite 301
Bethesda, MD 20814
(main) 301-907-4712
(fax) 301-907-4719
www.marksadr.com

Retainer Invoice – November 27, 2013

To:

Jeffrey P. Campisi, Esquire Kaplan Fox 850 Third Avenue, 14th Floor New York, NY 10022 **On behalf of Plaintiffs**	**Jonathan C. Dickey, Esquire** Gibson, Dunn & Crutcher 200 Park Avenue New York, NY 10166 **On behalf of Nevsun**

This is the retainer invoice for MARKSADR's professional services, expenses and case management fees in connection with the mediation in the matter involving ***Nevsun USA Mediation***. This retainer amount is based on the budget provided in the Budget Memorandum dated November 27, 2013.

Total Retainer:	$18,297.00

* *

Amounts owed:

Due from Plaintiffs	$ 9,048.50
Due from Nevsun	$ 9,048.50

INVOICE TOTAL IS DUE AND PAYABLE NO LATER THAN DECEMBER 3, 2013.

PLEASE MAKE CHECKS PAYABLE TO: MARKSADR, LLC
FEDERAL ID #: 52-2224266
PLEASE SEND CHECKS TO:
4833 Rugby Avenue, Suite 301
Bethesda, MD 20814

For proper credit, please return a copy of this invoice with payment.

David G. O'Brien
Peabody & Arnold LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2261
dobrien@peabodyarnold.com

Re: *Nevsun* Mediation

Dear Counsel:

This letter sets forth the terms upon which we will provide mediation services on behalf of the undersigned parties. It is your request that former United States District Judge Layn R. Phillips, a partner in this firm, provide mediation services rendered under this agreement.

1. The mediation services have been scheduled for **9:00 a.m. PST, on Thursday, April 10, 2014,** at the offices of Gibson Dunn, 2029 Century Park East, Suite 4000, Los Angeles, CA 90067-3026.

2. Judge Phillips will review all documents, case citations and other materials you indicate as relevant. The parties will send their prior mediation submissions as soon as possible. Nevsun's supplemental brief should be filed with our office (adr@irell.com) and exchanged among the parties via e-mail by **3:00 p.m. (PT), on Friday, March 28, 2014** (simultaneous briefing), and shall be limited to 10 pages (excluding exhibits). Plaintiffs briefs should be filed with Judge Phillips and exchanged by e-mail **by 3:00 p.m. (PT), on Friday, April 4, 2014**, and should be limited to 10 pages (excluding exhibits). All exhibits should be compiled in a three-ring binder with a descriptive table of contents and sent by overnight mail for delivery on the following business day. Page limitations may be modified by mutual agreement of counsel without the need for Judge Phillips' approval. However, Judge Phillips' staff should be notified of any such modifications in advance of the filing deadline.

3. As further described below, we require an initial retainer of $33,000 in order to undertake the above-described mediation. Therefore, depending on how you have decided to split the costs of this mediation, **please remit a check or checks as the case may be in the amount of $33,000 on or before March 28, 2014.** Please advise us by email as to how the parties have agreed to share the costs.

Of this $33,000 retainer, $15,000 covers the 1 day (10 hours) of mediation you have requested, which amount is non-refundable, except as set forth below. The remaining balance includes $15,000, which represents my preliminary estimate for 10 hours of preparation in connection with pre-mediation communications, the review of case related materials, exhibits and cited case law, and is refundable to the extent less than 10 hours is

spent in preparation for this mediation. We have also included in the initial retainer amount 2 hours of travel time that will be incurred by Judge Phillips for travel to/from Los Angeles in the amount of $3,000. If additional time is required in excess of the anticipated 10 hours preparation, and/or the 10 hours scheduled for the mediation itself, or the out-of pocket expenses, the parties will be notified and an additional bill for the excess will be submitted and paid by the parties within 30 days of the date billed.

4. PLEASE READ CAREFULLY. If the mediation is cancelled or rescheduled more than 30 days prior to the scheduled session, there is no cancellation charge. However, if the mediation is cancelled or rescheduled less than 30 calendar days prior to the scheduled session, 100% of the full fee will be charged to the parties, unless Judge Phillips is able to schedule a new mediation for the date that was cancelled or changed.

5. Additional costs incurred by the mediator (i.e., out-of-pocket travel expenses, if applicable, computer research or photocopying to the extent necessary) will be billed to the parties following the mediation and due and payable within 30 days of the date billed.

6. The payment of the retainer shall be presented and/or divided in a manner agreed upon by the parties, and the check or checks should be made payable to **Irell & Manella LLP** (Fed. Tax I.D. No. 95-1946111), **not** Judge Layn R. Phillips.

7. The fee bills will be based on Judge Phillips' mediation rate of $1,500 per hour for all time spent on the matter including conference calls, review of submitted materials and related research, as well as the scheduled mediation and caucus sessions, the issuance of any mediation opinions or reports, and any time devoted to enforcement of any settlement arising out of the mediation. Judge Phillips' legal support staff will bill their hourly rates for assisting Judge Phillips with these tasks.

8. As a mediator, Judge Phillips agrees to keep all information received in connection with any mediation proceedings in confidence. At the conclusion of the mediation, Judge Phillips will either destroy or return to the group and its members all materials provided to him during the course of the mediation, and shall destroy all other documents in his possession concerning the mediation with the exception of his personal notes.

9. Notwithstanding any other provision in this agreement, the parties agree that Judge Phillips will not be placed into any attorney/client relationship by virtue of this mediation, that they are not represented by the partnership in any capacity, and that the law firm of Irell & Manella LLP will not be precluded from undertaking representations in other matters adverse to or in support of any of the parties or adverse to or in support of any of the attorneys other than with respect to this particular dispute even while the mediation is in process. Also, generally, I&M may now or in the future represent clients who are adverse to the parties or counsel involved in the mediation, including in litigation, and the parties agree that by virtue of conducting this mediation they will not try to use the mediation to

disqualify I&M in any such matter. The parties further agree not to sue or make any claims arising out of this matter against the mediator or any entity with which the mediator is affiliated.

If you have any questions concerning these arrangements, please contact me immediately.

Please indicate your agreement to the foregoing by dating and signing this letter where indicated, and returning the signed original to me. **Please note that the mediation cannot commence until all parties have executed this agreement and the retainer has been paid in full.**

We appreciate your bringing this interesting matter to us, and we look forward to working with you on it.

Sincerely,

Meghan Lettington

Meghan Lettington
ADR Case Manager

SIGNATURE PAGE

WE HAVE READ THE ATTACHED RETENTION LETTER AND WE UNDERSTAND AND AGREE TO ITS TERMS

Dated: March 28, 2014

Name: JEFF CANIS
Representing: U.S. Plaintiffs

Dated:_____

Name:_____
Representing: Canadian Plaintiffs

Dated:_____

Name:_____
Representing: Nevsun

Exhibit 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NEVSUN RESOURCES LTD.	Civil Action No. 12 Civ. 1845 (PGG)

DECLARATION OF CRAIG F. PIAZZA IN SUPPORT OF FINAL APPROVAL THE PROPOSED CLASS ACTION SETTLEMENT, APPROVAL OF THE AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND APPROVAL OF THE AWARD OF COSTS TO LEAD PLAINTIFF

CRAIG F. PIAZZA hereby declares that:

1. I am the Court-appointed Lead Plaintiff in the above-captioned litigation (the "Litigation" or "Action"). I have personal knowledge of the facts detailed herein.

2. I submit this Declaration in support of the final approval of the proposed class action settlement, the approval of the award of fees to my counsel, and the award of costs to Lead Plaintiff.

3. As detailed more fully below, I have maintained close contact and have been in constant communication with Co-Lead Counsel throughout the course of the Litigation. I have reviewed all significant pleadings, as well as mediation submissions, in the Action. I have had numerous telephone calls with Co-Lead Counsel during which I have asked questions and voiced any concerns I had about the Action and the mediation process. Co-Lead Counsel have also provided me with consistent updates regarding the status of the Litigation over the past two-years.

4. Based on those communications, I fully support the final approval of the proposed class action settlement in this Litigation (the "Settlement"), as well as Co-Lead Counsel's

application of the award of attorneys' fees and the reimbursement of reasonable expenses expended in the prosecution of the Action.

5. In addition, I respectfully request the award of costs to me in the amount of $8,500.00 as compensation for lost time and business opportunities I incurred in connection with my role in initiating the Action and supervising Co-Lead Counsel throughout the Litigation on behalf of the Class as described below.

6. In early February 2012, after the drop in the price of the common stock of Nevsun Resources Ltd. ("Nevsun" or the "Company") due to its revised its gold and resource estimates, I spent approximately 5 days over several weeks contacting numerous law firms in an effort to find one which would be willing to pursue litigation against the Company.

7. Because I own and operate my own landscaping business, which among other services, provides snow removal services in northern Vermont, I could not work for substantial portions of those days due to sporadic, or non-existent, cell phone service in the field. Instead, I made telephone calls to these law firms using a landline at my home.

8. In late February 2012, I spoke with attorneys at Rigrodsky & Long, P.A. ("Rigrodsky & Long"), one of the Co-Lead Counsel in the Action. After several conversations and email correspondence, I decided to retain that firm to represent me and the Class in the Litigation. Shortly thereafter, I approved the retention of Kaplan & Kilsheimer LLP to work with Rigrodsky & Long as co-counsel in the Litigation.

9. After retaining Co-Lead Counsel to pursue the Litigation on behalf of myself and the Class, I spent many hours retrieving my trading records, reviewing various pleadings in the Action prior to filing, and discussing various issues with Co-Lead Counsel. Among the issues discussed telephonically and by email were: 1) the terms of retention; 2) the method for

calculating losses; 3) initiating the action as a class action; 4) my fiduciary duties and responsibilities as a lead plaintiff and representative of the Class; 5) document retention; 6) the allegations of the initial complaint and the factual basis for these allegations; 7) the motion for appointment as lead plaintiff; 8) the Court's Order appointing Lead Plaintiff and Co-Lead Counsel; 9) the reasons filing an amended complaint; 10) the addition of Scott F. Colebourne as a named plaintiff in the Action; 11) the retention of an industry expert; 12) the use of an investigator; 13) the results of Co-Lead Counsel's investigatory efforts; 14) Defendants' motion to dismiss and the arguments asserted therein; 15) the opposition to the motion to dismiss; 16) the Court's decision denying the motion to dismiss; 16) discussions with Defendants concerning the possibility of mediation and the agreement to stay proceedings; 17) the retention of an economic expert in connection with the calculation of class-wide damages; 18) the impact of the parallel Canadian litigation; 19) the parties' mediation submissions; 20) the mediation session with Jonathan Marks; 21) continuing discussions with Defendants regarding the possible resolution of the Litigation; 22) the proposed mediation session with the Hon. Layn R. Phillips, U.S.D.J. (Ret.); 23) the parties' mediation submissions to Judge Phillips; 24) the proposed resolution of the Litigation; 25) the Stipulation of Settlement; 26) the motion for preliminary approval of the Settlement; and 27) the scheduling of the hearing for final approval of the proposed settlement. I estimate that I spent in excess of 60 hours in connection with the foregoing.

10. During the Litigation, I had no fewer than 15 telephonic conferences with Co-Lead Counsel. As indicated above, for each of these telephonic conferences, I had to utilize my home landline due to cell phone reception issues in the field. Because those calls occurred during normal business hours, I was unable to attend to my business during those times. I

estimate that I spent approximately 8 hours on telephonic conferences with Co-Lead Counsel during the course of the Litigation.

11. In addition, I made myself available to consult with Co-Lead Counsel by telephone for each of the two mediation sessions. On those days, I was unable to conduct any business because it was necessary to ensure that I had access to a landline for calls with Co-Lead Counsel.

12. In view of the substantial time and effort I expended to help achieve this outstanding result on behalf of the Class, as well as the lost business I incurred for the Class's benefit, I respectfully request the award of $8,500.00 in costs in connection with the Litigation.

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

Executed this 23RD day of December, 2014

Craig F. Piazza