

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

James Smith and Jerry Honse, on behalf of  
themselves and all others similarly  
situated, and on behalf of the Triad  
Manufacturing, Inc. Employee Stock  
Ownership Plan,

Plaintiffs,

v.

GreatBanc Trust Company, the Board of  
Directors of Triad Manufacturing, Inc.,  
David Caito, Robert Hardie, Michael  
McCormick, Elizabeth J. McCormick,  
Elizabeth J. McCormick Second  
Amended and Restated Revocable  
Living Trust, Michael K. McCormick  
Second Amended and Restated  
Revocable Living Trust, David M. Caito  
Revocable Trust, and First Amended and  
Restated Robert Hardie Revocable  
Trust,

Defendants.

Civil Action No.: 1:20-cv-02350-RAG

JUDGE RONALD A. GUZMAN

MAGISTRATE JUDGE YOUNG B. KIM

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**PLAINTIFFS' UNOPPOSED MOTION AND INCORPORATED MEMORANDUM OF  
LAW FOR PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION  
OF SETTLEMENT CLASS**

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Plaintiffs James Smith and Jerry Honse, individually and as proposed Class Representatives, hereby move for an order certifying a class for settlement purposes only, preliminarily approving a class action settlement agreement among Plaintiffs and Defendants GreatBanc Trust Company (“GreatBanc”), the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (collectively the “Defendants”), approving notice of the Settlement to the Class, and setting a date for a Fairness Hearing.<sup>1</sup>

### **INTRODUCTION**

This ERISA class action has been pending for almost three years. Plaintiffs now seek preliminary approval of a settlement that provides substantial economic relief to the proposed Class Members and the ESOP, totaling \$14.8 million; this is at the high end of the range of settlements resolving ESOP claims like the ones asserted here. The Settlement was reached after completing fact discovery and was negotiated at arm’s length with the assistance of an experienced mediator. The extensive discovery and settlement negotiations allowed the Parties to fully understand the risks of litigation and the potential recovery for the Class.

Plaintiffs respectfully ask the Court to: (1) certify the proposed class for settlement purposes; (2) grant preliminary approval of the Settlement; (3) direct the Settlement Administrator to send notice to Class Members; (4) set deadlines for the motion for final approval and the motion for attorneys’ fees, expense reimbursements, and service awards; (5) set the deadline for objections; and (6) set the date/time for the Fairness Hearing.

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<sup>1</sup> Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Parties’ Settlement Agreement.

## FACTUAL AND PROCEDURAL BACKGROUND

### I. Nature of the Claims

This class action is brought on behalf of participants and beneficiaries of the Triad Manufacturing, Inc. Employee Stock Ownership Plan (the “ESOP” or the “Plan”). On December 28, 2015, the ESOP’s trustee—GreatBanc Trust Company (“GreatBanc”)—caused the ESOP to purchase 100% of Triad Manufacturing, Inc. (“Triad” or the “Company”) from Defendants David Caito, Robert Hardie, Michael McCormick, and revocable trusts to which they or their spouses are beneficiaries (the “Selling Shareholders”) for \$106.2 million. First Amended Complaint (“FAC”), ECF 99 ¶¶ 4, 43. The Transaction was financed by a \$72.8 million loan made by the Selling Shareholders that carried a 10.5% annual interest rate (the “Seller Notes”). ECF 130-4 at TRIAD-GREATBANC-0000186 - 187. The Seller Notes were issued with warrants that granted the Selling Shareholders the right to purchase 1,029,375 shares of Company common stock for \$2 per share (the “Warrants”). *Id.*

Plaintiffs allege that Defendants violated ERISA in connection with the ESOP’s purchase of Company stock (“ESOP Transaction” or “Transaction”) because, *inter alia*, the agreement to pay the Selling Shareholders \$106.2 million and other consideration for Triad did not account for the contraction within the market for the Company’s retail displays—brick and mortar retail stores—and improperly included a control premium even though the Selling Shareholders retained control over the Company after the Transaction. FAC ¶¶ 3-4, 13-14, 47, 113.

In Counts I and III of the FAC, Plaintiffs asserted that Defendant GreatBanc violated ERISA in connection with the Transaction by, *inter alia*, causing the ESOP to pay more than fair market value for Triad stock. *Id.* ¶¶ 156-67, 173-82. In Count II, Plaintiffs alleged that Defendants Caito, Hardie, and McCormick (the “Board Defendants”) violated ERISA by failing to monitor

GreatBanc. *Id.* at ¶¶ 168-72. In Count IV, Plaintiffs asserted, pursuant to ERISA § 406(a), 29 U.S.C. § 1106(a), that the Selling Shareholders engaged in prohibited transactions. *Id.* ¶¶ 183-96. In Count V, Plaintiffs asserted, pursuant to ERISA § 405(a), 29 U.S.C. §§ 1105(a)(1) and (a)(3), that the Board Defendants are liable as co-fiduciaries for GreatBanc's fiduciary breaches. *Id.* ¶¶ 183-206. In Count VI, Plaintiffs asserted, pursuant to ERISA § 410(a), 29 U.S.C. § 1110(a), that agreements by the Company to indemnify GreatBanc are void under ERISA. *Id.* ¶¶ 207-20.

Defendants deny these allegations and deny any wrongdoing or liability.

## II. Litigation History

### A. Initial Motions Practice and Seventh Circuit Appeal

Plaintiff James Smith filed the original Complaint on April 15, 2020. ECF 1. On June 1, 2020, the Board Defendants filed a motion to compel arbitration or, in the alternative, dismiss the Complaint, and on August 21, 2020, the Court denied this motion. ECFs 49, 51. On June 29, 2020, GreatBanc answered the Complaint. On September 3, 2020, the Triad Defendants filed a notice of appeal and a motion to stay the litigation pending appeal and, on September 21, 2020, the Court granted this motion over Plaintiff Smith's opposition. ECFs 55-56, 61, 62.

After full briefing, including several amicus briefs filed on behalf of both sides, and oral argument, the Seventh Circuit affirmed this Court's denial of the Triad Defendants' motion to compel arbitration. *Smith v. Bd. of Dirs. of Triad Mfg., Inc.*, 13 F.4th 613 (7th Cir. 2021). The Court reasoned that the Plan's arbitration provision prohibited certain plan-wide remedies available under ERISA and thus constituted an impermissible prospective waiver of a party's right to pursue statutory remedies. *Id.* at 621 (internal quotations omitted). District and circuit courts across the country have relied upon this decision's analysis, making it a landmark arbitration decision. *See, e.g., Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 59 F.4th 1090 (10th Cir.

2023); *Burnett v. Prudent Fiduciary Servs. LLC*, 2023 WL 387586 (D. Del. Jan. 25, 2023), *report & recommendation adopted* 2023 WL 2401707 (D. Del. Mar. 8, 2023), *appeal filed* No. 23-1527 (3d Cir. Apr. 3, 2023).

B. Discovery

On October 4, 2021, the Seventh Circuit issued its mandate, and this Action returned to the District Court. ECF 72. Shortly thereafter, Plaintiffs propounded 79 requests for production on the Triad Defendants and GreatBanc and served 13 document subpoenas on third-parties. Declaration of Michelle C. Yau (“Yau Decl.”) ¶ 18; Declaration of Daniel Feinberg (“Feinberg Decl.”) ¶ 15. Plaintiffs also responded to written discovery requests from Defendants and produced documents in response to such requests. Yau Decl. ¶ 19; Feinberg Decl. ¶ 16. In total, Plaintiffs received and reviewed 32,476 documents spanning nearly 250,000 pages, along with more than 14 hours of audio recordings. Yau Decl. ¶ 18; Feinberg Decl. ¶ 15. Working with a valuation expert, Plaintiffs utilized the information received through discovery to obtain an analysis of potential damages, consisting of the difference between what the ESOP paid for Triad stock and the fair market value of those shares (according to Plaintiffs’ expert). Feinberg Decl. ¶ 24.

During discovery, Plaintiffs took fact depositions and defended the depositions of both Named Plaintiffs. Feinberg *Id.* ¶ 15. They engaged in numerous meet and confer conferences with Defendants and third parties to resolve discovery disputes wherein they resolved the vast majority of disputes without motions practice. *Id.* ¶ 17. However, the parties reached an impasse on post-Transaction documents, and Plaintiffs thus moved to compel this discovery. ECF 113. GreatBanc and the Triad Defendants jointly opposed the motion to compel. ECF 114. On May 2, 2022, Magistrate Judge Kim granted Plaintiffs’ motion. ECF 115. Fact discovery closed on September 30, 2022 and, on January 17, 2023, Plaintiffs moved for class certification. ECF 128. Subsequently,

the Parties agreed to the primary settlement terms, and this Court stayed Plaintiffs' motion for class certification to allow the parties to seek approval of the settlement. ECF 134.

### **III. Settlement Discussions**

The Parties first engaged in mediation in the fall of 2020 through the Seventh Circuit mandatory mediation program, which was unsuccessful. Yau Decl. ¶ 16. After the case returned to district court and Fact Discovery was completed, the Parties engaged in a full day of mediation with JAMS mediator Michael Young on December 8, 2022. Feinberg Decl. ¶ 20. The Parties made considerable progress but were not able to resolve the case that day. *Id.* From December 9, 2022 until February 8, 2023, the Parties continued to exchange settlement offers with the assistance of JAMS mediator Michael Young. *Id.* ¶ 21. The Parties then continued negotiating until April 11, 2023 when they reached at an executed term sheet. *Id.*

## **SUMMARY OF THE PROPOSED SETTLEMENT TERMS**

### **I. The Proposed Settlement Class**

The proposed Settlement Class consists of all participants in the Triad ESOP from December 17, 2015 through December 31, 2022 who vested under the terms of the Plan, and those participants' beneficiaries. Class Action Settlement Agreement ("Set Agmt") at 4. Excluded from the Settlement Class are the individual Triad Defendants and their legal representatives, successors, and assigns. *Id.* at 5. Based on class data obtained in discovery, there are approximately 450 participants who qualify as Settlement Class members. *See* Feinberg Decl. ¶ 38.

### **II. Settlement Terms and Benefits to the Class**

The Settlement provides substantial economic benefit to the Class. The Settlement provides approximately \$14.8 million of economic value to the ESOP by increasing the value of the ESOP's Triad stock – and thereby the value of Class Members' individual accounts in the ESOP. *Id.* ¶ 34.

The Settlement provides this economic value through five different components. *First*, the Selling Shareholders will forfeit \$15 million of interest (debt) that Triad owes them from the ESOP Transaction. Set Agmt at 12. Without this concession, Triad would be obligated to pay the Selling Shareholders this \$15 million. Eliminating this debt substantially increases the value of the Triad stock owned by the ESOP by \$9,735,600. Feinberg Decl. ¶ 35.

*Second*, the Selling Shareholders will forfeit 150,000 Warrants they received as part of the Transaction, and Defendants have agreed that no new warrants will be issued within twenty-four months of Final Approval of the Settlement. *Id.* Like the reduction of accrued interest, eliminating 150,000 Warrants increases Triad's equity value, which totals approximately \$2,340,000 in value for ESOP participants. Feinberg Decl. ¶¶ 35-36. Because Triad's stock is the sole asset that Class Members have in their ESOP accounts, this Settlement will cause the value of their retirement accounts to increase by a commensurate amount. *See id.*

*Third*, some Class Members have terminated employment and sold their shares of Triad during the Class Period. To ensure these Class Members also receive an economic benefit from the Settlement, Defendants will pay Class Members \$8.20 per share cashed out during the Class Period. *Id.* ¶ 37. In total, Defendants will pay \$263,769 to these Class Members, which is more than double what they previously received for their ESOP stock. *Id.*

*Fourth*, the Settlement ensures that the Selling Shareholders do not benefit from the increase in Triad's stock price. Without this term, the remaining Warrants owned by the Selling Shareholders would increase from the increased Triad stock price resulting from forfeiture of debt and elimination of 150,000 Warrants. To prevent any "windfall," the Settlement provides that the strike price on the Selling Shareholders' remaining Warrants will substantially increase from \$2.00 to \$9.45. Set Agmt at 12.



*Finally*, Defendants will deposit \$2.5 million into an escrow account for the payment of any court-awarded attorneys' fees and expenses, class representative service awards, and settlement administration expenses. *Id.* at 10. Any amount not awarded by the Court for fees, expenses, or service awards will be paid to the Class rather than revert to Defendants. *Id.* at 18.

These Settlements' components in the aggregate provide approximately \$14.8 million of economic value to the ESOP and its participants.

### **III. Notice and Administration**

The Settlement Administrator shall be responsible for (1) mailing the Class Notice to Class Members and (2) posting the Class Notice on a website for the Settlement Class. Set Agmt at 9. In addition, the Settlement Administrator will set up an email address and toll-free telephone number, staffed with live agents, to answer questions and respond to Class Member inquiries. The email address and toll-free number will be included in the Class Notice.

### **IV. Motion for Attorneys' Fees, Expense Reimbursements, and Service Awards**

Plaintiffs' Counsel will file a motion for attorneys' fees, the reimbursement of litigation expenses incurred to date, and service awards to the Named Plaintiffs. If any such awards are granted by the Court, they shall be paid from an escrow account funded by the Defendants. Set Agmt at 14. The service awards, which will not exceed \$15,000, are sought because the value achieved through the Settlement would be impossible without the Named Plaintiffs who spent time and effort prosecuting the Action. *See* Feinberg Decl. ¶ 33 The amount of attorneys' fees and reimbursement of litigation expenses (together) will not exceed \$2.5 million. Set Agmt at 10-11. As provided for in the Settlement Agreement, the Settlement is not contingent on whether the Court awards any attorneys' fees, expenses, or service awards. *See id.* at 22-23. Any sum remaining

in the Settlement Fund after the payment of taxes, settlement administration expenses, Court-awarded attorneys' fees, expenses, and service awards will not revert to Defendants. *Id.* at 18.

**V. Review by an Independent Fiduciary**

The Settlement is contingent upon approval by an Independent Fiduciary whom the Parties will retain in accordance with Department of Labor Regulations. Set Agmt at 22; *see also* PTE 2003-39, 68 Fed. Reg. 75,632 (Dec. 31, 2003), *as amended*, 75 Fed. Reg. 33,830 (June 15, 2010). This regulation applies to ERISA settlements that release claims brought on behalf of an ERISA-governed plan and requires that an independent fiduciary evaluate the settlement's terms and determine that it is "reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone." PTE 2003-39 at 33,836. The Independent Fiduciary will review the Final Approval and Fee Petitions and may interview Counsel. *See* Set Agmt at 22. If the Independent Fiduciary does not believe the Settlement's terms are reasonable, it will explain why in its written report, and the Parties must attempt to resolve the concerns of the Independent Fiduciary. *Id.* at 22-23. If the concern cannot be resolved, then a material condition of the Settlement fails. The report will be filed with the Court and posted on the Settlement website before the deadline for Class Members to object.

Even if the Independent Fiduciary's written report finds that the Settlement is reasonable based on the factors set forth in the applicable DOL regulation, the ultimate decision of whether to approve the Class Action Settlement and a Final Judgement resolving this Action is within the sole discretion of the Court.

**VI. Release of Claims**

In exchange for the Settlement Benefits from Defendants and satisfaction of the conditions required by the Settlement Agreement, Plaintiffs and the Class will release any claims which were

or could have been asserted in the Lawsuit that arise from the facts and claims alleged in the FAC. Set Agmt at 23-24. The Released Claims are set forth in full in the Settlement Agreement. *Id.*

## ARGUMENT

### **I. The Court Should Certify the Settlement Class.**

As part of the Settlement, Plaintiffs request that the Court certify the proposed Settlement Class, defined in Section I above, for purposes of settlement only. “In those instances where a class has yet to be certified, the court [] has the discretion at the preliminary approval stage to certify the class on a conditional basis for purposes of providing notice to putative class members.” *In re Nat’l Collegiate Athletic Ass’n Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 588 n.6 (N.D. Ill. 2016) (citing Manual for Complex Litig. (Fourth) § 21.632 (2004)). As in numerous other ERISA class actions, the requirements of Rule 23 are easily met here.

#### A. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a).

##### *1. The Class Is Sufficiently Numerous.*

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” The Seventh Circuit has held that “a forty-member class is often regarded as sufficient to meet the numerosity requirement.” *Orr v. Shicker*, 953 F.3d 490, 498 (7th Cir. 2020) (quoting *Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 859 (7th Cir. 2017)). According to Defendants’ records of plan participation, there are approximately 450 Class Members. Feinberg Decl. ¶ 38. The proposed class therefore easily meets the numerosity requirement.

##### *2. There Are Common Questions of Law and Fact.*

Commonality is satisfied where “there are questions of law or fact common to the class.” Fed R. Civ. P. 23(a)(2). Courts in this Circuit have characterized the commonality requirement “as a ‘low hurdle’ [that is] easily surmounted,” *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill.

1996). The Supreme Court has defined a common question of law or fact as one that “is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350.

The central questions in ESOP cases like this one are capable of class-wide resolution: whether the ESOP paid more than fair market value for Company stock, whether the ESOP Trustee engaged in a prudent and loyal due diligence process before approving the ESOP Transaction, whether the Board Defendants breached their fiduciary duties by failing to adequately monitor the Trustee, and how much the ESOP overpaid for Company stock. See FAC ¶¶ 56, 146. Not surprisingly, courts routinely find commonality satisfied in ESOP cases because “Plaintiffs’ allegations all unquestionably stem from the same occurrence—the [ESOP] transaction.” *Neil v. Zell*, 275 F.R.D. 256, 261 (N.D. Ill. 2011).<sup>2</sup> The commonality requirement is easily met here.

3. *The Proposed Class Representatives Are Typical of the Class.*

Typicality under Rule 23(a)(3) complements the question of commonality. See *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998). The distinction between them is that “the commonality inquiry focuses on what characteristics are shared among the whole class while the typicality inquiry focuses on the desired attributes of the class representative.” *Newberg and Rubenstein on Class Actions* § 3:31 (6<sup>th</sup> ed. 2022); accord *Wal-Mart*, 564 U.S. at 349 n.5. Typicality is met if the “plaintiff’s claim . . . arises from the same event or practice . . . that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *Howard v. Cook Cnty. Sheriff’s Off.*, 989 F.3d 587, 605 (7th Cir. 2021) quoting *Keele*, 149 F.3d at 595).

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<sup>2</sup> See also, e.g., *Smith v. Aon Corp.*, 238 F.R.D. 609, 617 (N.D. Ill. 2006) (commonality found in ESOP case); *Godfrey*, 2021 WL 679068, at \*7 (same); *Chesemore v. Alliance Holdings, Inc.*, 276 F.R.D. 506, 518 (N.D. Ill. 2006) (same); *Rogers v. Baxter Int’l Inc.*, 2006 WL 794734, at \*3 (N.D. Ill. Mar. 22, 2006) (finding commonality satisfied by the following common questions: “(1) whether defendants were plan fiduciaries; (2) whether the defendants breached one or more fiduciary duties . . . ; and (3) whether the alleged breaches of fiduciary duty resulted in damage to the Plan”).

By definition, a fiduciary claim brought under 29 U.S.C § 1132(a)(2) is a representational claim that any ESOP participant may assert on behalf of the ESOP as a whole. *See Harrison*, 59 F.4th at 1106. Accordingly, courts generally find such claims meet the typicality requirement because the “action is brought on behalf of the Plan,” and plaintiffs’ claims, “of necessity, are typical of the claims” of class members. *Lively v. Dynegey, Inc.*, 2007 WL 685861, at \*10 (S.D. Ill. Mar. 2, 2007); *Neil*, 275 F.R.D. at 261. In short, here “defendants’ conduct regarding the[] [ESOP] transaction[] could have formed the basis of identical ERISA claims brought by any [ESOP] participant,” and thus the typicality requirement is satisfied. *Godfrey*, 2021 WL 679068, at \*5.

4. *The Proposed Class Representatives and Their Counsel Have and Will Fairly and Adequately Protect the Interests of the Class.*

Adequacy involves two inquiries: “(1) the adequacy of the named plaintiffs as representatives of the proposed class’s myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel.” *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011), *as modified* (Sept. 22, 2011); *Nistra v. Reliance Tr. Co.*, 2018 WL 835341, at \*3 (N.D. Ill. Feb. 13, 2018); *see also* Rule 23(g). Further, the plaintiff’s interests cannot be “antagonistic or conflicting” with those of the absent class members. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992); *Aon Corp.*, 238 F.R.D. at 615.

The Named Plaintiffs have previously filed affidavits showing that they meet the adequacy requirement because they have demonstrated their willingness and ability to vigorously prosecute this action by reviewing the pleadings in the case, sitting for depositions, and responding to discovery. ECF 128-12 (Smith Decl.) ¶ 5; ECF 128-11 (Honse Decl.) ¶ 5. Neither Plaintiffs nor their Counsel are aware of any conflicts of interest between Plaintiffs and other Class Members. *Id.* at ¶ 8; *Feinberg Decl.* ¶ 39; *Yau Decl.* ¶ 24. Accordingly, the adequacy requirement is met.

In addition, Plaintiffs' Counsel in this case is well-qualified. Feinberg Decl. ¶¶ 3-12; Yau Decl. ¶¶ 1-13. Not only do Plaintiffs' Counsel have extensive experience litigating class actions, including numerous ESOP class actions. Here, they have committed significant time and resources to litigate the claims. Feinberg Decl. ¶¶ 13-24; Yau Decl. ¶¶ 14-23. Based on their track record in this and prior cases, Plaintiffs' Counsel satisfy Rule 23(a)(4) and Rule 23(g)(1)(A).

B. The Requirements for Certification under Rule 23(b)(1) Are Met.

In addition to meeting the requirements of Rule 23(a), the action must meet at least one of the three provisions of Rule 23(b). “Most ERISA class action cases are certified under Rule 23(b)(1).” *Caufield v. Colgate-Palmolive Co.*, 2017 WL 3206339, at \*6 (S.D.N.Y. July 27, 2017).<sup>3</sup> Consistent with decisions across the country, courts in this Circuit routinely certify ERISA claims brought by individual participants on behalf of the ESOP under Rule 23(b)(1). *See, e.g., Rush v. GreatBanc Tr. Co.*, 2021 WL 2453070, at \*9 (N.D. Ill. June 16, 2021) (certifying ERISA claims brought on behalf of ESOP under 23(b)(1)); *Godfrey*, 2021 WL 679068, at \*7 (certifying ERISA claims brought on behalf of ESOP under both 23(b)(1)(A) and (b)(1)(B)); *Chesemore*, 276 F.R.D. at 518 (same); *Neil*, 275 F.R.D. at 267-68 (certifying ESOP claims under Rule 23(b)(1)(B)).

1. *Class Certification under Rule 23(b)(1)(A) Is Appropriate*

Courts have repeatedly recognized that ERISA fiduciary claims, such as those raised here, are representative claims brought on behalf of the ESOP, and that certification under Rule 23(b)(1)(A) is necessary to avoid inconsistent judgments. *Rogers v. Baxter Int'l Inc.*, 2006 WL 794734, at \*10 (N.D. Ill. Mar. 22, 2006) (collecting ERISA cases certifying classes under Rule 23(b)(1)). In similar ESOP cases, this Court observed that “[i]nconsistent judgments concerning

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<sup>3</sup> “In light of the derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held.” *In re Schering Plough Corp.*, 589 F.3d 585, 604 (3d Cir. 2009).

how the Plans should have been interpreted or applied would result in prejudice.” *Aon Corp.*, 238 F.R.D. at 617. This case is no different and should be certified under 23(b)(1)(A). *Neil*, 275 F.R.D. at 267-68.

2. *Class Certification under Rule 23(b)(1)(B) Is Appropriate*

Certification under Rule 23(b)(1)(B) is appropriate where “any individual adjudication by a class member disposes of, or substantially affects, the interests of absent class members.” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999) (emphasis added). One example of an action ideally suited for certification under Rule 23(b)(1) is “an action which charges a breach of trust by a [ ] . . . trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust.” Fed. R. Civ. P. 23, advisory committee’s note to 1966 Amendment. This type of action is precisely the type of claims asserted here under 29 U.S.C. § 1132(a)(2) because the relief sought will necessarily affect all ESOP participants in the same way.

Claims involving a fiduciary’s breach of duty or violation of prohibited transaction rules must be brought in a representative capacity on behalf of the plan under § 502(a)(2) for relief under § 409. 29 U.S.C. §§ 1132(a)(2) and 1109; *Nistra*, 2018 WL 835341, at \*3. Further, because Plaintiffs’ § 1132(a)(2) claims are representative by their very nature, any “decision with respect to one Plan participant’s claim necessarily implicates issues relevant to the adjudication of other participants’ claims.” *Rogers*, 2006 WL 794734, at \*10; *Newberg and Rubenstein on Class Actions* § 4:21 (6th ed. 2022) (“because [a]ny decision regarding whether the defendants breached their fiduciary duties would necessarily affect the interests of other participants . . . , courts regularly certify ERISA cases under Rule 23(b)(1)(B).”) (internal quotations omitted).

**II. The Court Should Grant Preliminary Approval of the Settlement Because It Is Fair, Reasonable, and Adequate.**

There is an overriding public interest in the settlement of labor-intensive litigation; this is particularly true in complex class actions. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”). Moreover, at preliminary approval, there is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm’s-length negotiations. *See Newburg and Rubenstein on Class Actions* § 13:45 (6th ed. 2022); *Kleen Prods. LLC v. Int’l Paper Co.*, 2017 WL 5247928, at \*3 (N.D. Ill. Oct. 17, 2017). The initial presumption in favor of such settlements reflects courts’ understanding that vigorous negotiations between experienced counsel advance the fairness concerns embodied in Rule 23(e). In 2018, Rule 23(e) was amended to make express the relevant factors for the determination of whether a proposed class action settlement is fair and reasonable:

- (A) the class representatives and counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see also Nistra v. Reliance Tr. Co.*, 2020 WL 13645290, at \*1.

**A. Class Representatives and Their Counsel Have Adequately Represented the Class.**

Consistent with Fed. R. Civ. P. 23(a)(4), the Settlement Class was adequately represented in this case. Named Plaintiffs Smith and Honse took their roles very seriously and directly participated in the discovery process by turning over their own financial documents and sitting for depositions. ECF 128-12 (Smith Decl.) ¶¶ 5–8; ECF 128-11 (Honse Decl.) ¶¶ 5–8. Class Counsel



also vigorously represented the Settlement Class throughout the litigation, and both firms are well-respected for their ERISA class action expertise. Feinberg Decl. ¶¶ 3-12, Ex. C; Yau Decl. ¶¶ 3-13, Ex. D. Finally, as discussed in detail above, Named Plaintiffs and their Counsel readily meet the adequacy requirements of Rule 23(a). *See supra* pp. 11-12. Where, as here, the named plaintiffs participate in the case diligently, including being subjected to discovery, and class counsel engaged in hard-fought litigation, Rule 23(e)(2)(A) is satisfied. *Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at \*4 (N.D. Ill. May 14, 2019).

B. The Proposed Settlement Is the Product of Arm's Length Negotiations.

Rule 23(e)(2)(B) requires that the Settlement is borne of an arm's-length and non-collusive process. This Settlement was reached after prolonged and adversarial litigation among sophisticated counsel. *Supra* pp. 3-5. Plaintiffs' Counsel is fully aware of the strengths and weaknesses of the case after completing fact discovery and testing Defendants' legal positions. *Supra* pp. 4-5. Moreover, the Parties' negotiations were facilitated by a JAMS neutral and spanned a four-month period. Feinberg Decl. ¶¶ 20-21. These are all the hallmarks of arm's-length negotiations. *Newberg and Rubenstein on Class Actions* § 13:14 (6th ed. 2022); *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014). Plaintiffs therefore satisfy Rule 23(e)(2)(B).

C. The Relief Provided Is Adequate, Taking into Account the Costs, Risks, and Delay of Trial and Appeal.

In ERISA cases challenging an ESOP's purchase of privately held stock, the measure of loss is the difference between what the ESOP paid for the stock and the stock's true fair market value. *See Perez v. Bruister*, 823 F.3d 250, 270-72 (5th Cir. 2016); *Chao v. Hall Holding Co, Inc.*, 285 F.3d 415, 423, 444 (6th Cir. 2002); *Perez v. First Bankers Tr. Servs., Inc.*, 2017 WL 1232527, at \*81 (D.N.J. Mar. 31, 2017); *Neil v. Zell*, 767 F. Supp. 2d 933, 944-45 (N.D. Ill. 2011). Applying this well-established principle, Plaintiffs' valuation expert estimated that the ESOP's overpayment

ranged between \$3 million to \$35 million. Comparing the value of the settlement consideration (approximately \$14.8 million, as discussed further *supra* pp. 5-7) to the Class's potential range of recovery shows that the Settlement is an excellent outcome for the class.

The \$14.8 million in economic value created by the Settlement comes from four different components. *First*, the \$15 million reduction in the debt owed to the Selling Shareholders results in \$9.7 million in increased value for the ESOP because Triad's equity (i.e., the Triad stock owned by the ESOP) increases in value when Triad's debt to the Selling Shareholders is reduced by \$15 million, as the proposed Settlement provides.<sup>4</sup> *Second*, the elimination of 150,000 of the Warrants owned by the Selling Shareholder will increase the value of Company stock by approximately \$2,340,000. *Third*, the proposed Settlement provides that Defendants will pay all former participants \$8.20 per share for the shares of Company stock those participants cashed out on or before December 31, 2022, which totals \$263,769. *Fourth*, the strike price of all the Selling Shareholders' warrants is increased by \$7.45 which ensures that Defendants do not benefit from the reduction in debt and elimination of warrants discussed above. *Fifth*, Defendants will pay \$2.5 million into escrow to fund settlement administration expenses and any court-awarded attorneys' fees, expense reimbursements, service awards, and settlement administration expenses. The total estimated value of the Settlement for the ESOP and the Class is \$14.8 million.

Although much of this Settlement consideration is not cash, the economic value gained by Class Members is equivalent. This Settlement causes the value of Class Members' retirement accounts to increase. When they retire or leave Triad, they will convert this value into cash. This result is identical to cash payments to the plan made in other ERISA settlements involving retirement plans. In many ERISA class action settlements, cash is transferred into the 401(k) plan

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<sup>4</sup> GreatBanc's financial advisor valued the \$15 million debt reduction as worth \$5.32/share. Set Agmt at 13.

accounts of class members and invested in the investments available within the plan, which increases the value of class members' 401(k) accounts. *E.g.*, *Baird v. BlackRock Institutional Tr. Co.*, 2021 WL 5991060, at \*2 (N.D. Cal. July 12, 2021); *Becker v. Wells Fargo & Co.*, 2022 WL 1210948, at \*6 (D. Minn. Apr. 25, 2022).

Further, Department of Labor settlements of ESOP cases, similar to this one, often involve non-cash relief such as loan reductions and elimination of warrants or other forms of synthetic equity. *See, e.g.*, *Scalia v. The Farmers Nat'l Bank of Danville*, 1:20-cv-00674, ECF 5 at 3 (S.D. Ind. April 3, 2020) (DOL settlement with loan reductions in exchange for release of ESOP claims); *Acosta v. Mueller*, 2:13-cv-01302, ECF 226-1 at 8 (E.D. Wis. Dec. 20, 2017) (same); *Walsh v. Reliance Tr. Co. et al*, 17-cv-04540, ECF 313 at 4 (D. Minn. Jan. 5, 2022) (DOL settlement with non-cash relief, including the reduction of synthetic equity).<sup>5</sup>

The Settlement is an excellent outcome for the Class when compared to the value of other ESOP settlements inside and outside this Circuit. *See, e.g.*, *Allen v. GreatBanc Tr. Co.*, No. 1:15-cv-03053 (N.D. Ill. May 6, 2019), ECF 108 (final approval of \$2.25 million ESOP settlement); *Nistra v. Reliance Tr. Co.*, No. 16-04773 (N.D. Ill. Jan. 2020), ECF 290 (final approval of \$13.4 million ESOP settlement); *Foster v. Adams & Assoc., Inc.*, No. 18-02723 (N.D. Cal. Feb. 11, 2022), ECF 244 (final approval of \$3.0 million ESOP settlement), *Scalia v. Prof. Fid. Servs.*, No. 19-07874 (S.D.N.Y. Jan 12, 2021), ECF 29 (entry of DOL consent order/settlement providing for \$0.75 million in cash to ESOP); *Walsh v. Saakvitne*, No. 18-00155 (April 22, 2021), ECF 453 (entry of DOL consent order/settlement for \$1.46 million to ESOP).

Moreover, Defendants vigorously denied all of Plaintiffs' allegations, asserted affirmative defenses, and otherwise defended their actions with respect to the Transaction. Defendants also

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<sup>5</sup> These DOL Settlements are attached as Exhibit E to the Yau Declaration.

would have sought an offset for any monetary recovery the Class obtained after trial because they have already returned over \$13.8 million to the ESOP through a loan reduction before the Action was filed. Absent settlement, “protracted litigation would likely ensue,” leading to greater expenses for the Parties as “[t]he costs associated with discovery in complex class actions can be significant.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). Here, both sides would need to complete costly expert discovery and, given the factual issues, likely proceed to trial. Any monetary recovery would be uncertain (especially given the \$13.8 million offset) and would require a battle of experts where no party could be certain that its expert would carry the day. *See Trs. of Chi. Plastering Inst. Pension Fund v. R.G. Constr. Servs., Inc.*, 2009 WL 1733036, at \*17 (N.D. Ill. 2009) (damages depends on expert calculations).

Regardless of the outcome, there likely would have been appeals that followed, further delaying resolution and causing more expense. A settlement avoids the risks and delays attendant with continued litigation and ensures that the estimated 450 Class Members will each receive a substantial increase in retirement savings while curtailing the Selling Shareholders’ profits from the Transaction. As courts in this Circuit have noted, “[w]hen analyzing whether a proposed settlement is fair, reasonable, and adequate, courts ‘should refrain from resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.’” *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (quoting *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)). Indeed, even recoveries representing a very small percentage of the defendant’s maximum exposure—which is not the case here—may be found to be fair, adequate, and reasonable. *See, e.g., Schulte*, 805 F. Supp. 2d at 583 (reasoning that numerous courts have approved class settlements with recoveries around or below the class’s recovery of approximately 10% and citing cases); *In re Rite Aid Corp. Sec. Litig.*, 146

F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements have typically “recovered between 5.5% and 6.2% of the class members’ estimated losses”).

Plaintiffs and their Counsel believe the proposed Settlement provides substantial economic value to the Class in light of the risks and uncertainty of ongoing litigation and prevailing at trial.

D. Additional Rule 23(e)(2) Factors Support Preliminary Approval.

In addition to the above, Rule 23(e)(2)(C) requires the Court to consider whether the relief provided for the Class is adequate, taking into account (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Finally, Rule 23(e)(2)(D) requires that courts consider whether the proposal treats class members equitably relative to each other.

*First*, the proposed method of distributing relief to the Class is effective. Rule 23(e)(2)(C)(ii) examines the effectiveness of any proposed method of distributing relief to the class, including the method of processing any class member claims. Here, the Settlement Agreement provides that (1) Class Members that still hold Triad stock in their retirement account will automatically receive the Settlement benefits through an increase in their Triad stock, which they will monetize when they leave Triad or retire, and (2) Class Members who have already sold their Triad stock will receive a cash payment of \$8.20 per share. Set Agmt at 12. No claim forms are required. Because all Class Members automatically receive the benefit of the Settlement, the 23(e)(2)(C)(ii) factor weighs strongly in favor of approval.

*Second*, the proposed award of attorneys’ fees is reasonable. Rule 23(e)(2)(C)(iii) looks at the terms of any proposed award of attorneys’ fees, including timing of payment. Plaintiffs’ Counsel will file a motion for attorneys’ fees, expense reimbursement, and service awards, which

together shall not exceed \$2.5 million. Set Agmt at 10-11. The combined attorneys' fees and expenses amount (at most) will represent just 17% of the Settlement's value, which is well below the average contingency fee commonly granted in ERISA class actions, which is over 25%. *See Mezyk v. U.S. Bank Pension Plan*, 2012 WL 13028659, at \*2 (S.D. Ill. Nov. 5, 2012). Because the proposed award of attorneys' fees is reasonable, Rule 23(e)(2)(C)(iii) weighs in favor of approval.

*Third*, there are no side agreements. Because no side agreements exist, Rule 23(e)(2)(C)(iv) weighs strongly in favor of approval.

*Finally*, the proposed Settlement treats Class Members equitably relative to each other. Under Rule 23(e)(2)(D), the Court must consider whether the proposal treats Class Members equitably relative to each other. As noted *supra* p. 6, the Settlement payments to former participants will be based on the number of shares each participant held at the time they cashed out their Triad stock. For current participants, the value of the Settlement increases proportionally based on the number of shares they hold in their ESOP accounts. As a result, this allocation method ensures that Class Members' recoveries are proportional to their exposure to the challenged Transaction and is therefore fair. *Kaplan v. Houlihan Smith & Co., Inc.*, 2014 WL 2808801, at \*3 (N.D. Ill. June 20, 2014) (approving ESOP settlement that allocates recovery "based on the number of shares each class member held"); *Chesemore v. Alliance Holdings, Inc.*, 2014 WL 4415919, at \*1 (W.D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (similar). In sum, the proposed Settlement is a fair compromise of the Class's claims.

### **CONCLUSION**

Plaintiffs respectfully request that the Court enter the Proposed Order.

Dated: April 20, 2023

Respectfully submitted,

/s/ Michelle C. Yau

**COHEN MILSTEIN SELLERS & TOLL PLLC**

Michelle C. Yau (admitted *pro hac vice*)

Daniel R. Sutter (admitted *pro hac vice*)

1100 New York Ave. NW • Fifth Floor

Washington, DC 20005

Tel: (202) 408-4600

Fax: (202) 408-4699

myau@cohenmilstein.com

dsutter@cohenmilstein.com

Caroline E. Bressman (admitted *pro hac vice*)

400 South Fourth Street • #401-26

Minneapolis, MN 55415

(612) 807-1575

cbressman@cohenmilstein.com

Carol V. Gilden, Illinois Bar: 6185530

190 South LaSalle Street • Suite 1705

Chicago, IL 60603

Tel: (312) 357-0370

Fax: (312) 357-0369

cgilden@cohenmilstein.com

**FEINBERG, JACKSON, WORTHMAN &  
WASOW, LLP**

Nina Wasow (admitted *pro hac vice*)

Dan Feinberg (admitted *pro hac vice*)

2030 Addison Street • Suite 500

Berkeley, CA 94704

Tel: (510) 269-7998

Fax: (510) 269-7994

nina@feinbergjackson.com

dan@feinbergjackson.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2023, I served this document and associated exhibits through this Court's ECF/CM and electronic mail on all attorneys of record.

Dated: April 20, 2023

/s/ Daniel R. Sutter

Daniel R. Sutter

**COHEN MILSTEIN SELLERS & TOLL PLLC**

1100 New York Ave., NW • Fifth Floor

Washington, D.C. 20005

Telephone: (202) 408-4600

Fax: (202) 408-4699

dsutter@cohenmilstein.com



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

James Smith and Jerry Honse, on behalf of	)	
themselves and all others similarly	)	
situated, and on behalf of the Triad	)	
Manufacturing, Inc. Employee Stock	)	Civil Action No.: 1:20-cv-02350-RAG
Ownership Plan,	)	
	)	
Plaintiffs,	)	JUDGE RONALD A. GUZMAN
	)	
v.	)	MAGISTRATE JUDGE YOUNG B. KIM
	)	
	)	
GreatBanc Trust Company, the Board of	)	
Directors of Triad Manufacturing, Inc.,	)	
David Caito, Robert Hardie, Michael	)	
McCormick, Elizabeth J. McCormick,	)	
Elizabeth J. McCormick Second	)	
Amended and Restated Revocable	)	
Living Trust, Michael K. McCormick	)	
Second Amended and Restated	)	
Revocable Living Trust, David M. Caito	)	
Revocable Trust, and First Amended and	)	
Restated Robert Hardie Revocable	)	
Trust,	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF DANIEL FEINBERG IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION AND INCORPORATED MEMORANDUM OF LAW  
FOR PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION  
OF SETTLEMENT CLASS**

I, Daniel Feinberg, declare as follows:

1. I am a partner with the law firm of Feinberg, Jackson, Worthman & Wasow LLP (“FJWW”), one of the counsel of record representing Plaintiffs James Smith and Jerry Honse in this case and I am admitted pro hac vice in this matter.

2. This Declaration is submitted in support of Plaintiffs' Unopposed Motion and Incorporated Memorandum of Law for Preliminary Approval of Settlement and Certification of Settlement Class. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

**Firm's Background and Experience**

3. My former firm, Lewis, Feinberg, Lee & Jackson, P.C. (LFLJ) and its predecessors litigated cases under ERISA from 1976 until the firm closed in 2015. I started my new firm, FJWW, in 2015 with three partners who had worked at LFLJ. LFLJ engaged in litigation and consulting work throughout the United States on behalf of participants, plans, employers, unions, trustees and other fiduciaries, and service providers. The firm handled cases and advised clients of all aspects of employee benefits, including benefit entitlement, fiduciary responsibility, plan design and administration, federal preemption, service-provider malpractice, prohibited transactions, and compliance with the requirements of the Department of Labor, Pension Benefit Guaranty Corporation, IRS and other regulatory agencies. FJWW has continued the same employee benefits practice.

4. I have been litigating ERISA claims since 1989. Since 2008, my practice has consisted predominantly of cases relating to Employee Stock Ownership Plans (ESOPs). At LFLJ and FJWW, I have served as lead counsel or co-lead counsel on more than 20 ESOP class actions. These cases have resulted in more than \$150 million in recoveries on behalf of class members.

5. At LFLJ and FJWW, my partners and I have served as class counsel or co-counsel in numerous ERISA class actions, including, but not limited to, the following:

- ***Gamino v. KPC Healthcare Holdings, Inc.***, 2021 WL 7081190 (C.D. Cal. Aug. 6, 2021). The firm is co-counsel for a class of participants and beneficiaries of the

KPC Healthcare, Inc. ESOP. The plaintiff alleged that the ESOP paid more than fair market value for company stock in a 2015 ESOP transaction. The court has granted final approval to settlements with two groups of Defendants for a total of \$9 million. The court granted summary judgment in favor of the only non-settling defendant, which plaintiff is appealing.

- ***Gamache v. Hogue***, 338 F.R.D. 275 (M.D. Ga. 2021). FJWW is co-counsel for plaintiffs in this certified class action on behalf of participants in the Technical Associates of Georgia Employee Stock Ownership Plan alleging fiduciary violations and prohibited transactions.
- ***Foster v. Adams and Associates, Inc.***, 2019 WL 4305538 (N.D. Cal. Sept. 11, 2019). FJWW was co-counsel for plaintiffs in this class action on behalf of participants in the Adams and Associates, Inc. Employee Stock Ownership Plan alleging fiduciary violations. The settlement, approved in February 2022, resulted in a payment of \$3 million on behalf of the class.
- ***Woznicki v. Raydon Corp.***, No. 618CV2090ORL78GJK , 2020 WL 1270223 (M.D. Fla. Mar. 16, 2020). The firm was co-counsel for a class of participants and beneficiaries of the Raydon Corporation ESOP. The plaintiff alleged that the ESOP paid more than fair market value in a September 2015 ESOP transaction. The case settled for \$2.4 million.
- ***Cunningham v. Wawa, Inc.***, 387 F. Supp. 3d 529 (E.D. Pa. 2019): FJWW was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of the Wawa ESOP. Plaintiffs alleged that 2014 and 2015 amendments and subsequent forced liquidation of the class members' company stock violated

ERISA. The settlement, approved in April 2021, resulted in a payment of \$21.6 million on behalf of the class.

- ***Pfeifer v. Wawa, Inc.***, 214 F. Supp. 3d 366 (E.D. Pa. 2016): FJWW was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of tire Wawa ESOP. Plaintiffs alleged that a 2015 amendment and subsequent forced liquidation of the class members' company stock violated ERISA. The settlement, approved in August 2018, resulted in a payment of \$25 million on behalf of the class.
- ***Guidry v. Wilmington Trust, N.A.***, 333 F.R.D. 324 (D. Del. 2019), FJWW represented as co-counsel a class of participants in the MRMC ESOP. Plaintiff alleged breaches of fiduciary duty and prohibited transactions by the ESOP Trustee in 2012 and 2013 stock purchase transactions, The court granted final approval to a \$19.5 million settlement in 2020.
- ***Kindle v. Dejana***, 238 E. Supp. 3d 353 (E.D.N.Y. 2017): FJWW represented as Co-counsel a class of participants in the Atrium ESOP. Plaintiffs alleged that Defendants breached their fiduciary duties under ERISA by selling the ESOP's Atrium stock to the Company's President and CEO for less than fair market value in 2011. Following one day of trial, the parties agreed to a settlement under which Dejana Defendants paid over \$2.5 million on behalf of the class.
- ***Gough v. Tennyson***, 17-cv-2215-PJH, 2017 WL 4310761 (N.D. Cal. Sept. 28, 2017): FJWW represented a class of participants in the Tennyson Electric ESOP. Plaintiffs alleged that Michael Tennyson, the President of Tennyson Electric, caused the Company to liquidate the ESOP's Tennyson Electric stock for less than

fair market value in a 2015 transaction in which the ESOP received only \$100,000 for its stock. The Court approved a \$1,750,000 settlement in August 2018.

- ***Douglin v. GreatBanc Trust Co.***, 115 F. Supp. 3d 404 (S.D.N.Y. 2015): FJWW was co-counsel for plaintiffs in an ERISA class action alleging breaches of fiduciary duty and prohibited transactions by the trustee of the People Care Holdings, Inc. Employee Stock Ownership Plan (ESOP). Plaintiffs alleged that the trustee caused the ESOP to pay far more than fair market value for stock purchased from the company's top executives. The court certified the class in 2015. The parties settled for \$4.75 million.
- ***Gatto v. Sentry Services, Inc.***, No. 13-cv-5721 (RMB)(GWG), 2014 WL 7338721 (S.D.N.Y. Dec. 19, 2014): LFLJ and later FJWW was co-counsel for plaintiffs in an ERISA action alleging breaches of fiduciary duty and prohibited transactions by the fiduciaries of the Sentry Services, Inc. Employee Stock Ownership Plan (ESOP). *Inter alia*, plaintiffs alleged that the ESOP's administrator failed to provide participants with annual benefit statements and kept the Plan's existence secret. The court granted final approval to a settlement with a total value of approximately \$12 million.
- ***Kaplan v. Smith & C., Inc.***, No. 12-C-5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014): LFLJ and co-counsel represented plaintiffs in an ERISA class action. The complaint alleged breaches of fiduciary duty and prohibited transactions by the fiduciaries of the Houlihan Smith ESOP in a series of transactions spinning off the company's operating assets to other shareholders. In June 2014, the court granted final approval to a \$1,275,000 settlement.

- ***Vincent v. Reser***, No. 11-CV-03572-CRB, 2013 WL 621865 (N.D. Cal. Feb. 19, 2013): LFLJ and co-counsel represented plaintiffs in an ERISA class action. The complaint, filed in July 2011, alleged that the former owner of Southern California Pipeline Construction, Inc. (“SCPC”) sold 100% of SCPC’s stock to the SCPC Employee Stock Ownership Plan (“ESOP”) for more than fair market value in a November 2007 transaction. The SCPC stock owned by the ESOP currently has no value. The settlement, approved in February 2013, provided for a \$5,125,000 payment to the SCPC ESOP for the benefit of the Plan’s participants.
- ***Neil v. Zell***, 275 F.R.D. 256 (N.D. Ill. 2011): LFLJ represented as co-counsel participants and beneficiaries of the Tribune Company ESOP in a certified class action in the Northern District of Illinois. Plaintiffs alleged that defendants breached fiduciary duties and engaged in prohibited transactions in the 2007 leveraged ESOP transaction which permitted Sam Zell to take control of the Tribune Company. Tribune Company filed bankruptcy less than a year after the Transaction, and the ESOP’s stock became worthless. After ruling in Plaintiffs’ favor on several motions, the court approved plaintiffs’ motion for class certification and appointed LFLJ as co-counsel for the class. In January 2012, the court granted approval to a \$32 million settlement.
- ***Fernandez v. K-M Indus. Holding Co., Inc.***, 646 F. Supp. 2d 1150 (N.D. Cal. 2009): LFLJ represented as co-counsel a class of employees of Kelly-Moore Paint Company and CIG (an insurance company which, along with Kelly-Moore, was owned by K-M Industries Holding Co., Inc.) who were participants and beneficiaries of the K-M Industries Holding Co., Inc. ESOP. Plaintiffs alleged that

Defendants breached their fiduciary duties under ERISA by causing the ESOP to purchase sponsoring employer stock at an inflated price. Plaintiffs settled with the Company and the family trust of its founder, William Moore, after briefing but before decision on their motion for summary judgment on the statute of limitations. Plaintiffs settled with the successor trustee of the ESOP after briefing but before decision on a motion for summary judgment on the merits. Class-wide settlements resulted in the payment of \$55 million to the class.

- *Clarke v. Lindeman, et al.*, No. 09-03467 JAM-DAD (E.D. Cal.): LFLJ represented a class of participants in and beneficiaries of the Valley Aggregate Transport, Inc. Employee Stock Ownership Plan. Plaintiff alleged that Defendants breached their fiduciary duties and engaged in prohibited transactions with respect to the ESOP's purchase of employer stock, as well as the sale of the ESOP Note to one of the fiduciaries of the Plan at a discounted price. The court granted final approval of a class-wide settlement of over \$2.2 million.

6. In addition to these class actions, my partners and I have served as counsel while at LFLJ or FJWW in many successful non-class ERISA cases.

### **My Background and Experience**

7. I received a Bachelor of Arts degree, with high honors, from Swarthmore College in 1983. I received a Juris Doctor degree from Berkeley Law (the University of California, Berkeley, School of Law) in 1988. I was hired by the firm then known as Sigman & Lewis as an associate in 1988 and became a partner in 1993. I have specialized in employee benefits law since joining LFLJ. I was named a Fellow of the American College of Employee Benefits Counsel (ACEBC) in 2008. Very few plaintiff-side counsel have been named as Fellows of the ACEBC.

8. In November 2003, The Recorder newspaper gave me honorable mention in the category of top attorney for ERISA plaintiffs in the San Francisco Bay Area. I have also been named a “Northern California Super Lawyer” for the last 17 years and a Top 100 Lawyer by Northern California Super Lawyers each year from 2011 to 2018. I have been appointed as a Lecturer at Berkeley Law, and taught a course entitled “Employee Benefits Law” for the spring semester in 2012, and I have been a frequent guest lecturer at Berkeley Law for over 15 years. In addition, I have served as a private mediator in ERISA-related litigation matters, including a class action in the Middle District of Florida wherein I was appointed Special Master by the Court for settlement purposes and pension class actions in the Districts of Nevada and Arizona. I have also served as an expert witness in ERISA-related litigation and arbitrations.

9. My publications include: ABA Employee Benefits Committee Newsletter, “The Seventh Circuit Revisits Class Certification of Breach of Fiduciary Duty Claims Involving Defined Contribution Plans,” Fall 2013; ERISA Litigation Reporter, “*Abatie v. Alta Health* - A Victory for Plaintiffs on the Standard of Review,” Vol. 14, No. 5, September - October 2006; The Practical Lawyer, “Independent Contractors, Leased Employees and Other Contingent Workers,” Vol. 47, No. 2, March 2001; ERISA Litigation Reporter, “*Wetzel v. Lou Ehlers Cadillac Group LTD*: Distinctions Without a Difference?”, October 2000; ERISA Litigation Reporter, “*Variety Corp. v. Howe*: The Plaintiff’s Perspective,” Vol. 5, No. 2, June 1996 (co-author with Jeffrey Lewis); Labor Center Reporter, “*Variety Corp. v. Howe*,” Vol. 298, Summer 1996 and “Have You Been Denied Health Benefits Recently?”, Vol. 303, Spring 1998 (co-author with Tyler Weaver); Tax Management Compensation Planning Journal, “Claims Against ERISA Plan Service Providers,” Vol. 23, No. 8, August 4, 1995 (co-author with Robert Pizzo).



**Nina Wasow's Background and Experience**

10. Ms. Wasow received a Bachelor of Arts degree, *magna cum laude*, from Columbia University in 2000, and a Juris Doctor degree from New York University School of Law, *magna cum laude*, in 2005. She served as a law clerk for the Honorable Susan Graber of the Ninth Circuit Court of Appeals and the Honorable Sandra Brown Armstrong of the U.S. District Court for the Northern District of California.

11. She has specialized in employee benefits since entering legal practice. Ms. Wasow joined LFLJ as an associate attorney in 2007 and became a shareholder in the firm in 2013, and was one of the founding partners of FJWW. From 2011-2012, she was named a Northern California Rising Star by Super Lawyers Magazine, and from 2013 to the present she has been named a Northern California Super Lawyer by the same publication.

12. Ms. Wasow is a frequent writer and speaker on employee benefits law. Her publications include: Contributing author, Sacher et al., *Employee Benefits Law* (BNA Books); "Appeals Court Considers the Boundaries of Indemnification for ESOP Fiduciaries," ABA Labor and Employment Law Section, Employee Benefits Committee Newsletter, Summer 2009; "Plaintiffs Prevail in Johnson v. Couturier." ABA Labor and Employment Law Section, Employee Benefits Committee Newsletter, Fall 2009; "Commentary to DOL's Proposed Changes on the Definition of 'Fiduciary.'" Employee Benefits Committee Newsletter, Winter 2010; "A Reasonable Proposal: Treat ESOP Valuers as Fiduciaries Under ERISA," BNA Pension & Benefits Reporter Daily, July 8, 2011; "When is a Spouse Not a Spouse: Court to Consider Applicability of DOMA to Spousal Benefits Under ERISA," Employee Benefits Committee Newsletter, Winter 2011; and "Amara and Discretionary Clauses: Is the SPD Enough?," Employee

Benefits Committee Newsletter, Fall 2012; “Montanile: Blessing or Curse?,” Employee Benefits Committee Newsletter, Spring 2016.

### **Settlement Background**

13. Together with our co-counsel, FJWW has vigorously prosecuted this action on behalf of Plaintiffs and the other proposed Class Members.

14. We have engaged in substantial investigation and factual development prior to filing the First Amended Complaint in this case on February 17, 2022.

15. The Parties conducted extensive discovery. Plaintiffs propounded 79 Requests for Production to Defendants and 13 document subpoenas on third-parties, which resulted in the production of approximately 32,476 documents (spanning nearly 250,000 pages) and over 14 hours of audio recordings, which Plaintiffs’ Counsel reviewed. The Parties completed ten (10) depositions of defense fact witness and the two Named Plaintiffs.

16. Defendants propounded written discovery requests to Plaintiffs, to which Counsel and Plaintiffs responded.

17. The Parties have met and conferred numerous times to attempt to resolve disputes without motion practice, which was indeed achieved for the vast majority of issues.

18. To date, FJWW and Cohen Milstein Sellers & Toll PLLC have advanced hundreds of thousands of dollars in litigation costs, including process server fees, filing fees, deposition related fees and expenses, expert fees, mediation fees, and travel costs. We will continue to advance the costs of litigation for our clients on behalf of the ESOP.

19. We have regularly communicated with our clients throughout to keep them apprised of the proceedings and to help Messrs. Smith and Honse to prepare for their depositions, respond to written discovery, and assess the settlement.

20. On December 8, 2022, the Parties engaged in a full-day mediation with Michael Young, from JAMS and who has been involved in several other class actions. The parties were not able to resolve the case that day.

21. Thereafter, the parties continued their negotiations with the assistance of Mr. Young over the course of approximately three months until February 8, 2023. After that point, the parties negotiated on their own until April 11, 2023 to arrive at an executed term sheet.

22. On April 11, 2023 the parties executed a term sheet which would settle the class claims subject to the Court's approval. Thereafter, the Parties negotiated the comprehensive Settlement Agreement that is the subject of this Motion.

23. Because the case was extensively litigated before the Parties signed the term sheet, the Parties had a very good understanding of the strengths and weaknesses of their positions.

24. Working with a valuation expert, Plaintiffs utilized the information obtained through discovery to analyze potential damages consisting of the difference between what the Plan paid for Company shares in the ESOP Transaction and Plaintiffs' expert's opinion regarding the fair market value of those shares.

25. Plaintiffs' valuation expert estimated potential damages of between \$3 million and \$35 million, depending on which changes to the Transaction valuation the Court agreed with.

26. A true and correct copy of the Class Action Settlement Agreement ("Settlement Agreement") is attached hereto as Exhibit A.

27. Both Named Plaintiffs reviewed, considered, and expressed their approval of the Settlement Agreement presented to the Court for approval.

28. Attached to the Proposed Order Preliminarily Approving Class Action Settlement (“Proposed Order”) as Exhibit 1 is the Class Notice that Plaintiffs propose be sent via U.S. Mail to the members of the Settlement Class.

29. The proposed notice provides information to the Settlement Class regarding, among other things: (1) the nature of the claims; (2) the definition of the Class; (3) the terms of the Settlement; (4) Settlement Class members’ right to object to the Settlement or request for attorneys’ fees, expenses and Service Awards and the deadlines for doing so; (5) the Class release; (6) the identity of Class Counsel and the amount of attorneys’ fees and expenses they will seek in connection with the Settlement; (7) the amount of any requested Service Awards; (8) the date, time, and location of the Fairness Hearing; and (9) Settlement Class members’ right to appear at the Fairness Hearing.

30. Additionally, the Settlement Administrator will create a dedicated settlement website that provides access to the Class Notice, the Settlement Agreement, the Plan of Allocation and all Settlement pleadings and documents filed in this Action.

31. Together, these Class notification procedures provide the Settlement Class with the essential information about the Settlement and all information required by Rule 23 to inform the Settlement Class members of their rights and deadlines to act.

32. As permitted by the Settlement, Class Counsel intends to seek an award of attorneys’ fees as well as reimbursement of expenses. See Settlement Agreement § VI. Accordingly, the proposed Class Notice specifically advises Settlement Class members that Class Counsel will make an application for attorneys’ fees, expense reimbursements, settlement administration costs and class representative Service Awards, that together will not exceed \$2,500,000.00. Proposed Order, Ex. 1 at 3.

33. Specifically, the proposed Class Notice advises that Class Counsel will ask the Court to approve Service Awards for each Named Plaintiff of \$15,000 for the time and effort they devoted to prosecuting this Action. Each Plaintiff has demonstrated their willingness and ability to vigorously prosecute this Action by responding to Defendants' written discovery and testifying at deposition. Each Named Plaintiff who seeks to be a Settlement Class Representative understands their responsibilities in serving as class representatives.

34. Prior to entering into this Settlement, Plaintiffs' counsel consulted with a valuation expert to help them value the economic value of the Settlement to the Plan and its participants. Plaintiffs' valuation expert advised that the total economic value of the Settlement to the Plan and its participants is at least \$14,800,000.

35. Stout Risus Ross, LLC—the financial adviser who provides annual valuation services for the ESOP—quantified the economic impact of the Selling Shareholders forfeiting \$15 million of interest they accrued through the Transaction. Under Stout's valuation methodology, the \$15 million reduction of accrued interest will increase Triad's equity value by \$5.32 per share or \$9,735,600. This analysis is attached as Exhibit B.

36. As of December 31, 2022, the Selling Shareholder's warrants reduce Triad's equity value by \$18,530,000. Eliminating 150,000 warrants increases Triad's equity value by at least \$1.28 per share or \$2,340,000.

37. From December 28, 2015 to December 31, 2022, Class members sold 32,166.93 shares of Triad from their ESOP accounts back to the Company. Under the terms of the Settlement Agreement, Defendants will pay Class members \$8.20 per share cashed out during the Class Period. This will result in \$263,769 in payments to these Class members, which is more than double they previously received for their ESOP stock.

38. Defendants produced data on Class membership to Plaintiffs, which indicates there are approximately 450 participants who qualify as Class members.

39. I am not aware of any conflicts of interest that would impair or impede our ability to represent the Class as we have done to date.

40. Based on my experience overseeing this matter and ERISA class actions generally, I believe that this Settlement is in the putative Class's best interest.

41. Prior to filing Plaintiffs' Motion for Preliminary Approval of Settlement and Certification of Settlement Class, we conferred with Defendants to determine whether they intend to oppose Plaintiffs' motion. Defense counsel indicated that Defendants do not intend to oppose Plaintiffs' motion.

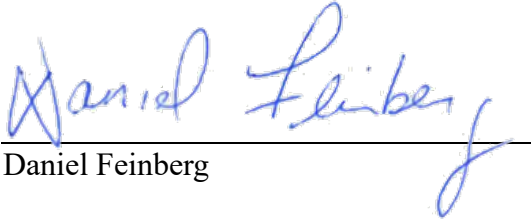
42. Attached hereto as Exhibit A is a true and correct copy of the fully executed Class Action Settlement Agreement between all parties in this matter. The valuation exhibits to the Settlement Agreement are being filed under seal separately as Exhibit B.

43. Attached hereto as Exhibit B is a true and correct copy of Triad Manufacturing, Inc. valuation exhibits as of December 31, 2022, showing the impact of the \$15 million debt reduction and calculation of the increase to the strike price for the warrants as determined by the Trustee's financial advisor. This Exhibit B has been provisionally filed under seal.

44. Attached hereto as Exhibit C is a true and correct copy of a firm-wide curriculum vitae for Feinberg, Jackson, Worthman, & Wasow LLP.

45. I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: April 20, 2023.

By:   
Daniel Feinberg

# **EXHIBIT A**



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

---

JAMES SMITH and JERRY HONSE,

Plaintiffs,

v.

GREATBANC TRUST CO., BOARD OF  
DIRECTORS OF TRIAD  
MANUFACTURING, INC., DAVID  
CAITO, ROBERT HARDIE, MICHAEL K.  
McCORMICK, ELIZABETH J.  
McCORMICK, ELIZABETH J.  
McCORMICK SECOND AMENDED AND  
RESTATED REVOCABLE LIVING  
TRUST, MICHAEL K. McCORMICK  
SECOND AMENDED AND RESTATED  
REVOCABLE LIVING TRUST, DAVID M.  
CAITO REVOCABLE TRUST, and FIRST  
AMENDED AND RESTATED ROBERT  
HARDIE REVOCABLE TRUST,

Defendants

Civ. A. No. 20-02350-RAG-YBK

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**CLASS ACTION SETTLEMENT AGREEMENT**

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## **INTRODUCTION**

Subject to approval by the United States District Court for the Northern District of Illinois, this Class Action Settlement Agreement is made and entered into by and among Plaintiffs James Smith and Jerry Honse, individually and on behalf of the Class, and Defendants GreatBanc Trust Co. (“GreatBanc”), Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (the “Triad Defendants”) (collectively, GreatBanc and the Triad Defendants shall be referred to as the “Defendants”). Plaintiffs agree to settle claims against Defendants, subject to the terms and conditions below. All capitalized terms will have the meaning ascribed thereto in Section I of this Agreement.

## **RECITALS**

WHEREAS, on April 15, 2020, Plaintiff James Smith initiated a class action lawsuit (ECF No. 01), docketed as Case No. 1:20-cv-02350-RAG in the United States District Court for the Northern District of Illinois, asserting claims on behalf of himself and a class of participants of the ESOP for alleged violations of ERISA;

WHEREAS, on June 1, 2020, the Triad Defendants moved to compel arbitration (ECF No. 49) and the District Court denied the motion on August 21, 2020 (ECF No. 51);

WHEREAS, Triad Defendants appealed the denial of their motion to compel arbitration and the Seventh Circuit affirmed the denial of the motion to compel arbitration, *Smith v. Bd. Of Dirs. Of Triad Mfg., Inc.*, 13 F. 4th 613 (7th Cir. 2021);

WHEREAS, Defendants filed their Answers to the Complaint (Dkt. 45 and 79);

WHEREAS, on January 17, 2023, Plaintiffs filed a motion for class certification and Defendants did not oppose such motion. (ECF No. 130);

WHEREAS, Plaintiffs and Defendants conducted arms-length negotiations at a mediation session with Michael Young on December 8, 2022, continued negotiations after the mediation session, and signed a written Settlement Term Sheet on April 11, 2023;

WHEREAS, as part of discovery and prior to mediation and the execution of the Settlement Term Sheet, the Parties conducted extensive discovery regarding the merits and potential recoveries for Plaintiffs' claims;

WHEREAS, Plaintiffs served document subpoenas on Defendants and third parties and reviewed tens of thousands of pages of documents produced by Defendants and third parties in the course of discovery in the Action;

WHEREAS, Plaintiffs and Defendants took depositions of key witnesses;

WHEREAS, as a result of the factual investigation and legal research conducted by Class Counsel concerning the claims asserted in the Action and discovery, Class Counsel have concluded that terms of this Settlement are fair, reasonable, adequate and in the best interests of both the Class and the Plan, and have agreed to settle the Action on the terms set forth herein;

WHEREAS, Defendants deny the material allegations asserted in the Action; deny any wrongdoing or liability whatsoever; and state that they are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation;

WHEREAS, the Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court;

WHEREAS, each of the undersigned counsel represent that their respective clients have been informed of and consent to the provisions set forth below;

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and without any admission or concession as to any matter of fact or law, and intending to be legally bound, do hereby agree as follows:

**I. DEFINITIONS**

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. “2015 ESOP Transaction” means the December 28, 2015 transaction whereby GreatBanc, in its capacity as Trustee of the Triad ESOP, purchased the stock of Triad Manufacturing, Inc., from the Selling Shareholder Defendants.

B. “Action” means the action pending in this Court styled James Smith and Jerry Honse, on behalf of themselves individually and on behalf of all other similarly situated, v. GreatBanc Trust Co., Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust, Case No. 1:20-cv-0250-RAG.

C. “Cash Payment Amount” means two million and five hundred thousand dollars (\$2,500,000.00) paid by or on behalf of Defendants (or their Insurers), described in Section III below.

D. “Class” means: All participants in the Triad ESOP from December 17, 2015 through December 31, 2022 who vested under the terms of the Plan, and those participants’ beneficiaries, excluding the Excluded Persons defined below.

E. “Class Counsel” means Cohen Milstein Sellers & Toll PLLC and Feinberg, Jackson, Worthman & Wasow LLP.

F. “Class Member” means an individual who is a member of the Class.

G. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section II in this Agreement, Rule 23, and as approved by the Court.

H. “Class Representatives” means Plaintiffs.

I. “Complaint” means the Amended Complaint (ECF No. 99) and any subsequent operative complaints filed in this Action.

J. “Court” or “District Court” means the United States District Court for the Northern District of Illinois.

K. “Defendants” means GreatBanc Trust Co. (“GreatBanc”) and the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (collectively the “Triad Defendants”).

L. “Defendants Related Parties” means Defendants and their parents, subsidiaries, affiliates, shareholders and members, and each and all of the respective past, present, and future officers, directors, employees, attorneys, agents, or insurers of any of them, and their respective

predecessors, successors, assigns, successors, heirs, executors and administrators, both individually and in their capacities as directors, officers, fiduciaries, administrators, shareholders, members, employees, agents, insurers and attorneys.

M. “Defense Counsel” means Ford Harrison LLP and Moore & Van Allen PLLC.

N. “Excluded Persons” means the following persons who are excluded from the Class: (a) the individual Defendants (David Caito, Robert Hardie, Michael McCormick, Elizabeth McCormick), and (b) legal representatives, successors, heirs, and assigns of any such excluded persons.

O. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

P. “Escrow Account” an account established by Class Counsel in the name of Triad ESOP Litigation Settlement Fund into which the Cash Payment Amount is to be paid.

Q. “Expense Award” will have the meaning set forth in Section VI of this Agreement.

R. “Fee Award” will have the meaning set forth in Section VI of this Agreement.

S. “Final Approval Motion” means the motion to be filed by Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

T. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section VIII below.

U. “Insurers Related Parties” means any insurance company (“Insurer” or “Insurers”) that makes a payment into the Escrow Account or reimburses Defendants for a payment they made into the Escrow Account and includes such insurance company’s respective past, present and future employees, principals, agents, attorneys, accountants, auditors, advisors, directors,

officers, shareholders, owners, representatives, predecessors, successors, heirs, executors, administrators, trustees, affiliates, parents, subsidiaries, successors, assigns, insurers, reinsurers and any person acting on their behalf.

V. “Non-Appealable” means an order entered by the Court is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form or review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

W. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section VIII.

X. “Plaintiffs” mean James Smith and Jerry Honse.

Y. “Plaintiffs’ Counsel” means Class Counsel.

Z. “Seller Notes” means collectively, the Amended and Restated Junior Subordinated Promissory Notes, dated December 31, 2018, made by Triad Manufacturing, Inc. in favor of the First Amended and Restated Robert Hardie Revocable Trust dated September 5, 2001, the David M. Caito Revocable Trust dated June 20, 1997, the Michael K. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008, and the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008.



AA. “Selling Shareholder Defendants” means David Caito, Michael McCormick, Elizabeth McCormick, Robert Hardie, the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust.

BB. “Service Awards” will have the meaning set forth in Section VI of this Agreement.

CC. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section VIII.

DD. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

EE. “Settlement Administrator” means the person whom Class Counsel may hire, subject to Court approval, who is to be responsible for, among other things, providing Class Notice to Class Members and/or otherwise assisting with the administration of the Settlement.

FF. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

GG. “Settlement Fund” means the Cash Payment Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

HH. “Settling Parties” or “Parties” means Plaintiffs, on behalf of themselves and the Class and the Defendants.

II. “Stout” means Stout Risius Ross, LLC or any other financial advisor retained by GreatBanc to perform the annual valuation of the ESOP.

JJ. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges.

KK. “Term Sheet” means the agreement fully executed on April 11, 2023, signed by Class Counsel on behalf of Plaintiffs and the Class and Defense Counsel on behalf of Defendants.

LL. “Termination Notice” will have the meaning set forth in Section XII of this Settlement Agreement.

MM. “Triad” means Triad Manufacturing, Inc.

NN. “Triad ESOP”, “ESOP”, or the “Plan” means the Triad Manufacturing, Inc. Employee Stock Ownership Plan.

OO. “Warrants” means the Warrants to Purchase Shares of Common Stock, dated as of January 6, 2016 by Triad Manufacturing Inc. to the First Amended and Restated Robert Hardie Revocable Trust dated September 5, 2001, the David M. Caito Revocable Trust dated June 20, 1997, the Michael K. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008, and the Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust Agreement dated December 22, 2008.

## II. CLASS NOTICE

1. **Provision of Class Notice.** Upon the Court's preliminary approval of this Settlement Agreement or by the date specified by the Court, the Settlement Administrator will be responsible for providing Class Notice to the Class Members.

2. **Contents.** The Class Notice will contain a brief description of the claims advanced by the Class, a summary of the terms of the Settlement Agreement, information on the attorneys' fees and costs sought by Class Counsel, describe the consideration received by the Class and the Plan from the proposed Settlement, and provide information about the Final Approval Hearing, in the form approved by the Court.

3. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by either electronic notification (if available and approved by the Court) to all Class Members, or, if unavailable or not approved by the Court, by mailing via first class US Mail to all Class Members, and (b) by posting the Class Notice on websites maintained by Class Counsel and the Settlement Administrator. Defendants will cooperate with Class Counsel to facilitate providing Class Notice and other settlement-related communications by providing any known email addresses and mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

4. **Settlement Administrator.** Class Counsel will select the Settlement Administrator, subject to approval by the Court. The Parties and their counsel will reasonably cooperate with the Settlement Administrator to facilitate providing Notice and other settlement-related communications and administration.

5. **Undeliverable Notices.** In the event that a Class Notice sent by U.S. Mail or electronic mail are returned as undeliverable, the Settlement Administrator will make

reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

6. **Class Data.** Within five (5) business days after this Settlement Agreement is fully executed, Defendants will, to the extent not already disclosed, provide Class Counsel and the Settlement Administrator with the following:

(a) Contact information in electronic form for each person previously identified as a Class Member, to the extent such information is reasonably available in Defendants' files: (1) name (2) a street mailing address; (3) telephone number(s); (4) electronic mail address(es); (5) Social Security number, (6) sufficient information identifying the beneficiary Class Member (including any persons who has a QDRO) for each participant Class Member who is divorced or deceased (including any known contact or other identifying information), (7) the amount of shares and vested shares held by each Class Member as of 12/31/2022; and (8) the number of shares purchased from each Class Member from 2015 through 2022.

(b) Sufficient information to identify the Excluded Persons and excluded the persons from the data in Paragraph 6(a).

(c) Defendants will also provide other information reasonably requested by Class Counsel or the Settlement Administrator.

7. **Class Notice Costs and Expenses.** All costs and expenses for the Settlement Administrator will be paid from the Settlement Fund.

### **III. SETTLEMENT CONSIDERATION**

1. **Payment of Cash Payment Amount into Escrow Account.** As consideration for settlement of the Class's claims, Defendants will pay a total of \$2,500,000 ("Cash Payment") into an escrow account to be established by Class Counsel. Defendants will

pay this amount in three installments. The first installment of \$500,000 is due twenty-one (21) days after the entry of the preliminary approval order. The second installment of \$500,000 is due sixty (60) days after the entry of the preliminary approval order. The third installment of \$1,500,000 is due three (3) business days after the final approval hearing date. If any amount of the Cash Payment is not paid into the escrow account within the time required by this Paragraph, Defendants will pay interest on the unpaid amount at 7% per year from the date the payment was due until the date that the payment is made. The Cash Payment is designated for Plaintiffs' Counsel's attorney fees and expenses, class representative service awards, and settlement administration expenses. Plaintiffs' request for attorney fees and expenses, class representative service awards, and settlement administration expenses shall be subject to Court approval.

2. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be released from the Escrow Account until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement.

3. **Management of the Settlement Fund.** Until three (3) business days after entry of the Final Order if there are no objections from Class Members, or the Final Order becomes Non-Appealable if there are one or more objections from Class Members, or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in the Escrow Account established by Class Counsel, for which an Escrow Agent will act pursuant to the terms of the respective Escrow Agreement or as ordered by the Court. Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the

Final Order. At no time will Defendants have any duty or authority to hold, manage, or invest any portion of the Settlement Fund. Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.

4. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

5. **Reduction of Accrued Interest on Seller Notes.** Upon the Final Order becoming Non-Appealable, the accrued interest on the Seller Notes held by the Selling Shareholder Defendants shall be reduced by a total amount of \$15,000,000.00.

6. **Warrant Reduction.** Upon the Final Order becoming Non-Appealable, the number of Warrants issued by Triad to the Selling Shareholder Defendants will be reduced by 150,000 warrants. No new warrants will be issued to the Selling Shareholder Defendants within twenty-four (24) months of the entry of the Final Order.

7. **Warrant Strike Price.** Upon the Final Order becoming Non-Appealable, the strike price of the Selling Shareholder Defendants’ Warrants will be increased to \$9.45 to offset the increase in equity value associated with the debt reduction in Section III.5 based on the Stout exhibits attached hereto as Exhibit A. Exhibit A shall be kept confidential in accordance with the Confidentiality Order and shall be filed under seal with the Court.

8. **Payments to Class Members Whose Shares Were Repurchased on or Before 12/31/2022.** Within forty-five (45) days of the Final Order becoming Non-Appealable, Defendants shall pay to each Class Member who has already had vested shares repurchased on or before December 31, 2022 an additional \$8.20 per share for each Triad share that he or she sold to the Company and/or ESOP. The Selling Shareholder Defendants shall provide the necessary

funds to the ESOP administrator and the ESOP administrator will send checks to these Class Members. The ESOP administrator shall be responsible for any tax withholding and will report the payments on a Form 1099.

9. **Effectuating Documents.** Within fourteen (14) days of the Final Order becoming Non-Appealable, Defendants shall provide Class Counsel with copies of the documents effectuating the reduction of the accrued interest on the Seller Notes, Warrant reduction, increase in the Warrant strike price, and additional payments to terminated participant Class Members.

10. **Triad Not Paying Cash Payment Amount.** Triad will neither pay the Cash Payment Amount nor provide an indemnification to the Defendants for the Cash Payment Amount. Triad will also not make the payment required in Section III.8 above (Payments of \$8.20 per share to each terminated participant for each share that he or she sold to Triad or the ESOP on or before 12/31/2022). Defendants warrant and represent that neither Triad nor the ESOP will pay the Cash Payment Amount or indemnify or reimburse Defendants for any portion of the Cash Payment Amount or payments to terminated participants.

11. **Defendants' Representation and Warranty Regarding 2022 Annual ESOP Valuation.** Defendants represent and warrant that the exhibits attached as Exhibit A accurately state the updated conclusion of value for the 12/31/2022 annual ESOP valuation. Defendants further represent and warrant that the calculated equity value impact of the \$15 million accrued interest reduction to be \$5.32 per share as of 12/31/2022.

#### **IV. DISTRIBUTIONS FROM THE SETTLEMENT FUND**

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, Class Counsel will be authorized to pay from the Settlement Fund (a) any actual or estimated taxes on any

income earned on the Settlement Fund and, (b) all costs and expenses related to the preparation of such tax filings or payments. Any dispute regarding the reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in no event will the Settling Parties cause or allow the Settlement Fund to fail to make a tax payment in a timely manner.

2. **Attorneys' Fees, Expenses/Costs and Service Awards.** Pursuant to any deadline set by the Court, Class Counsel may file any motion with the Court requesting the payment of attorneys' fees, reimbursement of litigation expenses and costs, and/or service awards to the Class Representatives out of the Settlement Fund. Any amounts awarded by the Court will be paid from the Settlement Fund as directed by Class Counsel.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Class Counsel will be authorized to establish a reserve from the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for expenses related to payment of taxes or filing of tax returns or to the extent that there are other costs of administration of the Settlement.

4. **Costs and Expenses Related to Administration & Distribution.** Defendants will bear any costs and expenses of administration of the Settlement other than Class Notice, including any costs relating to distribution of payments to terminated participant Class Members who had Triad shares repurchased prior to 12/31/2022 and the implementation of the other Settlement consideration terms. No Defendant shall charge the ESOP or any Class Member any fees or expenses for collecting and providing data necessary to provide Class Notice and/or administer the Settlement.



5. **Tax Liability.** The Settling Parties will not have any liability or responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

## V. SETTLEMENT ADMINISTRATION

1. **Appointment of Settlement Administrator.** Class Counsel will select the Settlement Administrator subject to Court approval to administer the Settlement and will report to Class Counsel and the Court. Any Settlement Administrator will have experience providing notice to Class Members in employment or employee benefit class action settlements.

2. **Settlement Administrator's Responsibilities.** The Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement and the Orders of the Court and such other procedures required by the Court or as jointly directed by Class Counsel and Defense Counsel:

- (a) Within fourteen (14) days of the entry of the Preliminary Approval Order, send the Class Notice Packet via U.S. Postal mail and/or email to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Notice Packets or other reasonable steps to locate missing Class Members;
- (b) Provide Counsel for the Settling Parties with copies of any objections to the Settlement (to the extent such objections are not filed with the Court);
- (c) Respond to questions from Class members or refer Class Members to Class Counsel for responses;
- (d) Maintain and staff a toll-free phone number and a web site until at least six (6) months after the date of the Final Order;
- (e) File with the Court a declaration confirming compliance with the

procedures approved by the Court for providing notice to the Class;

- (f) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k)); and
- (g) Any other responsibilities set forth in this Agreement; and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Prohibition on Assessment of Expenses to the Class.** The accounts of the Class Members in the Triad ESOP will not be charged or assessed any amount by Defendants (or their service providers) for any of the following: (1) payment of the Cash Payment Amount, or (2) expenses related to administration or implementation of this Settlement.

4. **Tax Treatment of the ESOP.** Defendants will use their best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the ESOP. Defendants will be responsible for all costs associated with any steps that they undertake to ensure the continued tax qualification of the ESOP with respect to the Settlement.

## **VI. PAYMENT OF FEES, SERVICE AWARDS, AND REIMBURSEMENT OF COSTS AND EXPENSES**

1. **Attorneys' Fees & Expenses from the Settlement Fund.** Class Counsel will be entitled to file a motion on behalf of Plaintiffs seeking an award of attorneys' fees and reimbursement of expenses and costs from the Settlement Fund. On or before the deadline set in the Preliminary Approval Order, Class Counsel will file a motion with the Court for an award from the Settlement Fund of: (a) attorney's fees (the "Fee Award"), (b) service awards for Plaintiffs ("Service Awards"), and (c) reimbursement of litigation costs and expenses (the

“Expense Award”). Any Fee Award, Expense Award or Service Award will be paid solely from the Settlement Fund and is subject to the Court’s approval at the Final Approval Hearing.

2. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Class Counsel to be distributed as directed by Class Counsel. Neither Defendants nor their Insurers will have any input as to the division of such fees and expenses among Plaintiffs’ Counsel.

3. **Payment of Reasonable Settlement Administration Expenses and Taxes.** The Settlement Administrator is authorized to pay all reasonable expenses of administering the Settlement from the Settlement Fund. The Class is responsible for paying all taxes and tax-related expenses incurred in connection with the taxation of the income of the Settlement Fund, and all such taxes and expenses shall be paid out of the Settlement Fund.

4. **Timing of Payment of Attorneys’ Fees, Reimbursement of Expenses and Service Awards.** In the event that this Court grants any request for attorneys’ fees, reimbursement of expenses or a Service Award as part of or at the same time as Final Judgment, disbursement of such payments may be made as follows:

(a) Subject to approval by the Court, if there are no objections to the Settlement or Class Counsel’s request for attorney fees or expenses, Class Counsel will be entitled to take a distribution from the Settlement Fund of the Fee Award and the Expense Award and the Service Awards awarded by the Court three (3) business days after the entry of the Court’s order(s) awarding such fees and expenses.

(b) Subject to approval by the Court, if there are objections to the Settlement or Class Counsel’s request for attorney fees, costs and expenses, Service Awards, or a portion thereof, Class Counsel will be entitled to take a distribution from the Settlement

Fund of the Fee Award, the Expense Award and Service Awards awarded by the Court of such amount of attorneys' fees, expenses/costs, and/or Service Awards as to which there is no appeal thirty-five (35) days after entry of the Final Order and the balance upon the Final Order becoming Non-Appealable.

5. **Non-Materiality of Award of Attorneys' Fees, Reimbursement of Expenses or Service Award to Settlement.** In the event that this Court refuses to award attorneys' fees, allow reimbursement of expenses/costs or permit a service award, in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement and will not provide a basis for any party to withdraw from this Settlement Agreement.

6. **No Reversion of Cash Payment Amount.** No portion of the Cash Payment Amount will revert to Defendants or their Insurers.

7. **Defendants' Attorneys' Fees & Expenses Related to Settlement.** No amounts will be charged by the Triad Defendants to any participants in the ESOP in connection with the administration or distribution of the proceeds of the Settlement to members of the Class. No Defendant shall charge the ESOP or any participants any fees or expenses for collecting and providing data necessary to provide Class Notice and/or administer the Settlement.

## **VII. NO ADMISSION OF WRONGDOING**

1. This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by Defendants or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against Defendants as any admission by any such party with respect to the truth of any fact alleged by Plaintiffs or the

validity of any claim that had been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such party.

2. Neither this Settlement Agreement nor the Term Sheet is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Claims asserted by Plaintiffs and Class Members.

3. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order, and any Party may file this Settlement Agreement and/or the Final Order in any action that may be brought against it or any of the Released Parties to support a claim, a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim assigned pursuant to this Settlement Agreement. Defendants may use and disclose this Settlement Agreement in connection with any proceeding or claim involving any of their insurers or any governmental agency with respect to the ESOP.

### **VIII. PRELIMINARY AND FINAL APPROVAL ORDERS**

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order (“Preliminary Approval Motion”). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for, among other things:

(a) Approval of the Settlement Class.

(b) Preliminary Approval of the Settlement as set forth in this

Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

(c) Approval of the form of Class Notice and the manner of distribution and publication which is consistent with this Agreement, Rule 23 and the requirements of due process;

(d) Set deadlines by which all objections to the Settlement must be made, any exclusions (if any) must be made, or any submissions to the Settlement Administrator regarding their ESOP account data must be made;

(e) Schedule a hearing date at least one hundred (100) days from the date on which the Preliminary Approval Motion is filed for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);

(f) Provide that no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties at least twenty-one (21) days before the Fairness Hearing;

(g) Provide that the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(h) Provide a deadline for filing of a Final Approval Motion and for Class Counsel’s application for Fee Award, Service Awards, and Expense Award; and

(i) Require Defendants to produce the Class Data required pursuant to Section II.6 of this Agreement.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if Class Counsel has not exercised its right to withdraw pursuant to Paragraph IX.2, Class Counsel will file a Final Approval Motion. Defendants will either join in or not oppose the Final Approval Motion. The Final Approval Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

- (a) Order Final Approval of the Settlement set forth in this Settlement Agreement;
- (b) Adjudge that the Settlement is fair, reasonable and adequate to the Class pursuant to Rule 23(e);
- (c) Dismiss the Action against Defendants with prejudice;
- (d) Adjudge that Plaintiffs and the Class will be deemed conclusively to have released and waived any and all Settled Class Claims against the Released Parties as provided in this Settlement Agreement;
- (e) Bar and permanently enjoin the Parties and the Class from prosecuting any and all Settled Claims, as provided in this Settlement Agreement, against any Party for whom they have released claims;
- (f) Determine Class Counsel's request(s) for Fee Award, Service Awards, and Expense Award;
- (g) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii)

disposition of the Settlement Fund; and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and

(h) Find that notice to the appropriate state and federal officials has been provided as required by CAFA and that Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

## **IX. CONDITIONS OF SETTLEMENT**

1. **Court Approval.** Each of the following is an express condition of Settlement: (a) the Court enters a Preliminary Approval Order; (b) the Court enters the Final Order.

2. **Independent Fiduciary Approval.** The Settlement is subject to approval by an Independent Fiduciary consistent with Prohibited Transaction Exemption 2003-39.

(a) Defendants will propose an Independent Fiduciary to Class Counsel for approval, which shall not be unreasonably withheld.

(b) The Independent Fiduciary's fee shall be split evenly between Defendants and the Class subject to a reasonable cap to be agreed upon by all Parties.

(c) Within forty-five (45) days after the Court enters a Preliminary Approval Order, the Independent Fiduciary will issue its final opinion. If the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement, the Parties shall meet and confer within seven (7) days of receipt of the Independent Fiduciary's opinion to try to resolve the issues raised by the Independent Fiduciary. Defendants or Class Counsel will have the right, but not the obligation, to withdraw from the Settlement Agreement so long as such right is exercised within fourteen (14) days of receipt of the Independent Fiduciary's opinion. If either party exercises such right under this provision, then the entire



Settlement Agreement will be void and the parties will revert to their respective positions in the Litigation as of February 8, 2023.

**X. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT**

1. **CAFA Notice.** Pursuant to CAFA, Defendants, at their own expense, will prepare and provide the CAFA Notice, including the notices to the United States Department of Justice, the United States Department of Labor, and to the Attorney Generals of all states in which the Class Members reside, as specified by 28 U.S.C. § 1715, within ten (10) days of the filing of this Settlement Agreement with the District Court.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that the Defendants sent to the Appropriate Officials within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Class Counsel.

**XI. RELEASES**

Upon the Final Order becoming Non-Appealable, and provided that each Party has performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of the Released Parties by the Class.** In consideration for the Settlement Consideration and other consideration described herein, Plaintiffs and the Class, their representatives, spouses, heirs, beneficiaries, dependents and/or assigns will dismiss with prejudice their claims asserted in the Complaint against Defendants and will forever release Defendants and Defendants Related Parties from all claims Plaintiffs and the Class, their representatives, spouses, heirs, beneficiaries, dependents, and/or assigns currently have or may have, of any nature whatsoever, known or unknown, at law in equity, or otherwise, relating to or

arising out of the Litigation, the Complaint or based upon the same factual predicate alleged in the Complaint, including but not limited to any claims for attorneys' fees, costs, expenses or sanctions, whether the Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation, or otherwise. Notwithstanding the foregoing, Plaintiffs and the Class are not releasing (A) any claims to enforce the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; and (B) individual claims for benefits pursuant to the ESOP Plan documents.

2. **Release of Plaintiffs and the Class by Defendants.** Defendants will forever release Plaintiffs, each Class Member, and Class Counsel from (a) each and every claim that could have been asserted in the Litigation related to the filing of the Litigation including any claims for attorneys' fees, costs, expenses or sanctions, that relate to the filing, commencement, prosecution or settlement of the Litigation whether such Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation or otherwise; and (b) any claims challenging the correctness of any Class Member's accounts/benefits relating to the benefit provided by this Settlement Agreement.

## **XII. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

1. **Termination Notice.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or approval of the Settlement is reversed on appeal or materially altered, either Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). In the event that one of the conditions of this Settlement set forth in Section IX is not met and the Final Order has not become Non-Appealable, the Named Plaintiffs and Defendants may void the Settlement within the time period specified herein.

2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the event triggering the Termination Notice to modify this Settlement Agreement to resolve the issue.

3. **Effect of Termination.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or such approval is reversed on appeal and one of the Settling Parties exercises its right to terminate the Settlement Agreement within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not entered into a written modification of the Settlement Agreement within thirty (30) days of such occurrence: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses reasonably incurred by Class Counsel or the Settlement Administrator while in Escrow in connection with administering the Settlement Agreement, including any amounts necessary to prepare tax returns, tax liabilities or monies paid or owing to the Settlement Administrator) will be returned to each payor, pro rata according to the amount of its/his respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) both this Agreement and the Term Sheet will be void *ab initio*; and (d) the Parties' positions, rights and responsibilities will be deemed to have reverted to their respective status in this Action as of February 8, 2023, and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement and the Term Sheet never existed.

4. Class Counsel, the Settlement Administrator, escrow agent, or any other party alleging that they have paid “reasonable expenses” for the purposes of settlement administration which are not returnable to the any payor as set forth in subsection (a) herein shall be required to provide any and all documents demonstrating each “reasonable expense” including but not limited to the reason for the expense, the date the expense was incurred, the amount of the expense, which shall include any hourly bills kept in the regular course of business by Class Counsel, the Settlement Administrator, escrow agent, or any other party, to Defendants within seven (7) business days following a written request by Defendants for such information. To the extent there is a disagreement over whether an expense was “reasonable” and/or solely for the purpose of settlement administration, the Parties shall be required to submit the dispute to the Court presiding over the matter as of February 8, 2023, who shall make a final and binding decision on whether the expense should be returned to the payor.

### **XIII. MISCELLANEOUS PROVISIONS**

1. **Joint Press Release.** The Parties will issue a mutually agreed press release. The parties will not issue any press release regarding the Settlement other than the mutually agreed press release. Other than the mutually agreed press release or communications jointly approved by all Parties or the Court, the Parties and their counsel will not initiate any communications designed to publicize the Settlement with third parties other than Class Members. Nothing in this Agreement will prevent Class Counsel from posting public documents filed with the Court on a website in order to provide information to Class Members or otherwise limit Class Counsel’s communications with Class Members.

2. **Tax Advice Not Provided.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of

this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member.

3. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs and legal representatives of the Settling Parties and Released Parties, provided, however, that no assignment by any Settling Party will operate to relieve such party of its obligations hereunder.

4. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

5. **Exhibits.** Any exhibits attached hereto and identified herein are hereby incorporated by reference as though fully set forth herein.

6. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Class Counsel on behalf of Plaintiffs and the Class and by Defense Counsel on behalf of Defendants or their respective successors in interest.

7. **Representations.** This Settlement Agreement constitutes the entire agreement among the Settling Parties, and no representations, warranties or inducements have

been made to any party concerning this Settlement Agreement or the Term Sheet, other than the representations, warranties, and covenants contained and memorialized in such documents. In the event of any conflicts between this Settlement Agreement, the Term Sheet, or any other document, the Settling Parties agree that this Settlement Agreement will control.

8. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective parties he or she represents.

9. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

10. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of Illinois without regard to its rules of conflicts of law and in accordance with the laws of the United States.

11. **Headings.** The headings in this Settlement Agreement are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Settlement Agreement in any way.

12. **Waiver.** The waiver by one party of any breach of this Settlement Agreement by any other party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected party, or counsel for that party, or orally on the record in court proceedings.

13. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including,

without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily resolved by the Settling Parties will be submitted to the Court for final resolution. The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

14. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify the alleged breaching Party and Counsel in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after fourteen (14) days, the other Party may then file an action to enforce the Settlement Agreement. A Party who achieves success on the merits in demonstrating a breach occurred, that the breach could have been reasonably cured within fourteen (14) days (or another time set forth in the written notification), and that the breach was not cured within that time, will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1).

15. **No Party Is the Drafter.** The Settlement Agreement is deemed to have been drafted by all Settling Parties hereto, as a result of arm's-length negotiations among the Settling Parties. Whereas all Settling Parties have contributed substantially and materially to this Settlement Agreement, it will not be construed more strictly against one party than another.

16. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

17. **Evidentiary Effect.** Neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Claims, or of any wrongdoing, negligence, misrepresentation, violation or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Complaint or Claims asserted by the Class; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal or administrative proceeding in any court, administrative agency, or tribunal, including in this Action. However, this Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the Settlement, or the Final Order; and any Settling Party may file this Settlement Agreement and/or the Final Order in any action to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling



Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

19. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings. Neither prior versions of this Settlement Agreement or the Term Sheet, nor the negotiating history of these terms will be used to aid in any interpretation or construction of those terms.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the dates set forth below.

**[Signature page follows]**

**FOR PLAINTIFFS, CLASS REPRESENTATIVES AND ON BEHALF OF THE CLASS**

Dated: April 19, 2023

**COHEN MILSTEIN SELLERS & TOLL PLLC**

Michelle C. Yau (admitted pro hac vice)

Daniel R. Sutter (admitted pro hac vice)

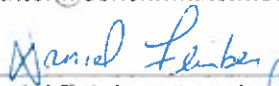
Caroline Bressman (admitted pro hac vice)

1100 New York Ave. NW • Fifth Floor Washington, DC 20005

(202) 408-4600

myau@cohenmilstein.com

dsutter@cohenmilstein.com

  
Daniel Feinberg (*pro hac vice*)

**FEINBERG, JACKSON, WORTHMAN & WASOW LLP**

2030 Addison Street, Suite 500

Berkeley, CA 94704

Tel: (510) 269-7998

Fax: (510) 269-7994

Email: dan@feinbergjackson.com

*Attorneys for Plaintiffs & the Class*

**FOR DEFENDANTS**

Dated: April 19, 2023

  
**FORDHARRISON, LLP**

Matthew D. Grabell (Illinois Bar: 6312929)

271 - 17th Street, NW, Suite 1900

Atlanta, GA 30363

mgrabell@fordharrison.com

Telephone: (404) 888-3820

Benjamin P. Fryer (admitted pro hac vice)

6000 Fairview Road, Suite 1200

Charlotte, NC 28210

bfryer@fordharrison.com

Telephone: (980) 282-1900

Facsimile: (980) 282-1949

*Attorneys for Triad Defendants*

**MOORE & VAN ALLEN PLLC**

Mark A. Nebrig (admitted pro hac vice)

Joseph Piligian (admitted pro hac vice)

**FOR PLAINTIFFS, CLASS REPRESENTATIVES AND ON BEHALF OF THE CLASS**

Dated: April \_\_, 2023

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Michelle C. Yau (admitted pro hac vice)

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Caroline Bressman (admitted pro hac vice)

1100 New York Ave. NW • Fifth Floor Washington, DC 20005

(202) 408-4600

myau@cohenmilstein.com

dsutter@cohenmilstein.com

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Daniel Feinberg (*pro hac vice*)

**FEINBERG, JACKSON, WORTHMAN & WASOW LLP**

2030 Addison Street, Suite 500

Berkeley, CA 94704

Tel: (510) 269-7998

Fax: (510) 269-7994

Email: dan@feinbergjackson.com

*Attorneys for Plaintiffs & the Class*

**FOR DEFENDANTS**

Dated: April \_\_, 2023

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**FORDHARRISON, LLP**

Matthew D. Grabell (Illinois Bar: 6312929)

271 – 17th Street, NW, Suite 1900

Atlanta, GA 30363

mgrabell@fordharrison.com

Telephone: (404) 888-3820

Benjamin P. Fryer (admitted pro hac vice)

6000 Fairview Road, Suite 1200

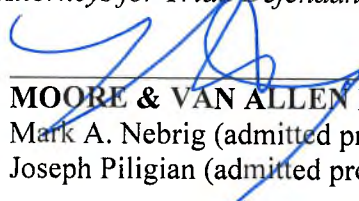
Charlotte, NC 28210

bfryer@fordharrison.com

Telephone: (980) 282-1900

Facsimile: (980) 282-1949

*Attorneys for Triad Defendants*



---

**MOORE & VAN ALLEN PLLC**

Mark A. Nebrig (admitted pro hac vice)

Joseph Piligian (admitted pro hac vice)

100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28205  
Telephone: (704) 331-3602  
Facsimile: (704) 339-5974  
marknebrig@mvalaw.com  
joepiligian@mvalaw.com  
*Attorneys for Defendant GreatBanc Trust Company*

# **EXHIBIT C**

**FEINBERG, JACKSON, WORTHMAN & WASOW LLP**

**Curriculum Vitae**

Feinberg, Jackson, Worthman & Wasow LLP, is a national law firm that represents plaintiffs in individual lawsuits, class actions, and union-affiliated litigation against many of the largest companies and government entities in the United States. The firm's main practice areas are employee benefits, wage and hour rights, civil rights, and labor.

**Wage and Hour Practice**

The firm handles all types of wage and hour litigation, both in California and throughout the United States. These cases include claims for overtime pay arising from an employer's decision to improperly classify groups of salaried employees as exempt from state and federal overtime laws, claims for overtime pay and straight pay where hourly employees are required to perform work "off-the-clock," claims for meal period or rest break pay, and claims for work-related expenses for which employers failed to properly reimburse employees, as well as claims under California's Private Attorneys General Act (PAGA). The firm has represented clients in a range of industries, including computer workers, home care workers, medical sales consultants, and janitors. Todd Jackson, Catha Worthman, Darin Ranahan, Genevieve Casey and Andrea Obando are responsible for much of the firm's wage and hour practice, and Dan Feinberg is active in the vacation pay area.

In addition to these litigation services, members of the firm have written and edited publications on wage and hour law, taught employment law at law school, and spoken at continuing legal education programs on wage and hour matters.

**ERISA and Employee Benefits Practice**

The firm handles cases and advises clients on all aspects of ERISA and employee benefits law. This includes fiduciary conduct with regard to investments and other matters, entitlement of individuals and groups of employees to benefits, federal preemption of state laws, and benefit plan-service provider malpractice. We also handle cases in related areas of law, such as disability rights and benefit-related employment discrimination claims. Our work includes litigation regarding pension plans, 401(k) plans, employee stock ownership plans (ESOPs), disability benefits, vacation pay, and medical benefits. The firm's attorneys have participated in groundbreaking ERISA cases before the U.S. Supreme Court and federal Courts of Appeals as counsel for either a party or amicus curiae.

In addition to these litigation services, Dan Feinberg and Todd Jackson have acted as mediators and Mr. Feinberg has been retained as an expert witness in employee benefits-related litigation. Members of the firm write and edit publications on employee benefits, and have taught courses in employee benefits at Berkeley Law and spoken at continuing legal education programs on a wide variety of benefits issues.

### **Civil Rights Practice**

The firm represents women, people of color, people with disabilities, LGBT people, and individuals in other protected groups in individual cases and class actions against employers who violate state laws that prohibit exclusion and discrimination. We have also represented people with disabilities seeking equal access to places of public accommodation, such as restaurants and stores. The firm is currently part of a group of advocates who have filed a groundbreaking civil rights complaint on behalf of California Medi-Cal enrollees, many of whom are Latino, who have effectively been denied healthcare as a result of Medi-Cal's low reimbursement rates and its failure to adequately monitor access issues.

### **Labor**

The firm works with labor unions on assorted litigation matters in state and federal court related to retirement plans, access to health care, wage and hour rights, and other union advocacy priorities.

## **APPOINTMENTS, PUBLICATIONS AND ACTIVITIES**

In addition to their litigation, the firm's partners frequently speak and publish on the topics of ERISA and employment law and participate in a variety of related civic activities.

Dan Feinberg is the author or co-author of many articles on ERISA topics published in *ERISA Litigation Reporter*, *The Practical Lawyer*, *Tax Management Compensation Planning Journal*, and *Labor Center Reporter*. Mr. Feinberg also has spoken on ERISA topics at many legal conferences. In November 2003, *The Recorder* newspaper gave Mr. Feinberg an honorable mention in the category of Top Attorney for ERISA Plaintiffs in the San Francisco Bay Area. Mr. Feinberg was appointed Special Master for settlement purposes in an ERISA class action by the US. District Court for the Middle District of Florida. He has been named a "Northern California Super Lawyer" in the Employee Benefits/ERISA category each year from 2005 to the present. Super Lawyers magazine has named Mr. Feinberg a Top 100 Northern California Lawyer each year from 2011 to 2018. Mr. Feinberg has also taught a course on Employee Benefits Law at Berkeley Law School (University of California).

Todd Jackson has been a chapter editor of the ABA's "Employee Benefits Law" and of the ABA's "The Fair Labor Standards Act" and has presented numerous articles on ERISA fiduciary rules and wage and hour litigation. He is also the author of the "Mediating Wage and Hour Disputes" in the California Continuing Education of the Bar's California Wage and Hour - Law and Litigation. He is a frequent speaker and writer on wage and hour and ERISA issues as well as trial, class action and general litigation practice at ABA, PLI and other conferences. He has taught Employee Benefits Law and Employment Law at Berkeley Law (University of California). He is a mediator for the Northern District of California's ADR Panel. He has been named a Northern California Super Lawyer every year since 2009.

Catha Worthman is a frequent writer and speaker on wage and hour rights, employee benefits, and civil procedure including class actions. Ms. Worthman is co-chair of the Wage and Hour Committee of the California Employment Lawyers' Association, and the author of "Civil Penalties Under the California Private Attorneys General Act (PAGA)" in *Employment Damages*

*and Remedies*, published by Continuing Education of the Bar – California; “CAFA’s Amount in Controversy: Have You Got What It Takes for Federal Court” in the ABA’s *The Class Action Fairness Act: Law & Strategy*; and “Class Action Strategy” in the ABA publication *Class Action Strategy and Practice Guide*. She is a Rewrite and Contributing Author to Sacher et al., *Employee Benefits Law* (BNA Books). Ms. Worthman was selected as a “Northern California Rising Star” by Super Lawyers magazine from 2011 – 2014, a Super Lawyer from 2015 to the present, and named to the list of Top 50 Women Lawyers of Northern California in 2018.

Nina Wasow advises clients and litigates individual disability and pension benefits claims as well as class-action breach of fiduciary duty claims under ERISA, including claims on behalf of participants and beneficiaries in employee stock ownership plans (ESOPs) and investors in Guaranteed Investment Contracts (GICs). Ms. Wasow is a frequent writer and speaker on employee benefits issues. She is co-chair of the ABA Labor & Employment Law Employee Benefits Committee, Employment Discrimination and Employee Benefits Subcommittee, and a contributing author to Sacher et al., *Employee Benefits Law* (BNA Books). Ms. Wasow was selected as a “Northern California Rising Star” by Super Lawyers magazine in 2011 and 2012 and a Northern California Super Lawyer from 2013 to the present.

Genevieve Casey is active in the firm’s labor practice, including advising union clients on policy and legislative issues as well as litigating on the union’s behalf; she also litigates class and individual wage-and-hour cases and employee background check cases. She regularly speaks on topics such as trial strategy, especially class action trials; the California Private Attorneys General Act; and wage and hour issues.

Darin Ranahan has provided advice and litigated on behalf of a number of individual clients, class action participants, and unions in the areas of wage-and-hour law, employee benefits, civil rights, health law, and wrongful termination. Mr. Ranahan regularly writes on employee benefits issues, including as a former chapter author for Zanglein et al., *ERISA Litigation* (BNA Books) and as an article author for the American Bar Association, Employee Benefits Committee’s newsletter. Mr. Ranahan has been selected as a “Northern California Rising Star” by Super Lawyers magazine from 2016 to the present.

## **EDUCATION AND JUDICIAL CLERKSHIPS**

### **Partners**

#### **Dan Feinberg**

J.D., 1988, Berkeley Law School (University of California)

B.A., 1983, Swarthmore College, Swarthmore, Pennsylvania

#### **Todd Jackson**

1998-1999, Law Clerk to the Honorable Judith N. Keep

J.D., 1998, Berkeley Law School (University of California)



B.A., 1991, Johns Hopkins University, Baltimore, Maryland

**Catha Worthman**

2003-2004, Law Clerk to the Honorable William A. Fletcher

J.D., 2003, Berkeley Law School (University of California)

M.A., 2003, University of California, Berkeley, California

B.A., 1990, University of California, Berkeley, California

**Nina Wasow**

2005-2006, Law Clerk to the Honorable Susan Graber

2006-2007, Law Clerk to the Honorable Sandra Brown Armstrong

J.D., 2005, New York University School of Law

B.A., 2000, Columbia University, New York, New York

**Genevieve Casey**

J.D., 2008, Berkeley Law School (University of California)

B.A., 2002, Smith College, Northampton, Massachusetts

**Darin Ranahan**

2012-2013, Law Clerk to the Honorable Edward M. Chen

J.D., 2010, Berkeley Law School (University of California)

B.A., 2005, Brown University, Providence, Rhode Island

**Associate**

**Andrea Obando**

J.D., 2016, Berkeley Law School (University of California)

B.A., 2010, Dartmouth College, Hanover, New Hampshire

**BAR ADMISSIONS AND PROFESSIONAL ORGANIZATIONS**

**Dan Feinberg**

**State Bar of California**

**U.S. District Courts**

Northern District of California

Eastern District of California

Central District of California

Southern District of California

**U.S. Court of Appeals**

Fourth Circuit

Ninth Circuit

Eleventh Circuit

**U.S. Supreme Court**

**Bar Associations**

American College of Employee Benefits Counsel

American Bar Association, Employee Benefits Committee, Labor and Employment Law Section

National Employment Lawyers Association

**Todd Jackson**

**State Bar of California**

**U.S. District Courts**

Northern District of California

Eastern District of California

Central District of California

Southern District of California

**U.S. Court of Appeals**

Ninth Circuit

**Bar Associations**

American Bar Association, Labor and Employment Section, Litigation Section

American Bar Association, Employee Benefits Committee, Labor and Employment Law Section

American Bar Association, Fair Labor Standards Legislation Committee, Labor and Employment Law Section

National Employment Lawyers Association

**Catha Worthman**

**State Bar of California**

**U.S. District Courts**

Northern District of California

Eastern District of California

Central District of California

**U.S. Court of Appeals**

Second Circuit

Fourth Circuit

Fifth Circuit

Ninth Circuit

**U.S. Supreme Court**

**Bar Associations**

American Bar Association, Labor and Employment Section, Employee Benefits Committee

National Employment Lawyers Association

California Employment Lawyers Association, Wage & Hour Committee (Co-Chair)

**Nina Wasow**

**State Bar of California**

**U.S. District Courts**

Northern District of California

Eastern District of California

Central District of California

**U.S. Court of Appeals**

Fifth Circuit

Eighth Circuit

**Bar Associations**

American Bar Association, Labor and Employment and Litigation Sections

**Genevieve Casey**

**State Bar of California**

**US. District Courts**

Northern District of California

Central District of California

**U.S. Court of Appeals**

Ninth Circuit

**Bar Associations**

National Lawyers Guild

California Employment Lawyers Association

**Darin Ranahan**

**State Bar of California**

**US. District Courts**

Northern District of California

Eastern District of California

Central District of California

**Bar Associations**

American Bar Association, Labor and Employment Section

National Lawyers Guild, Labor & Employment Committee

National Employment Lawyers Association

**Andrea Obando**

**State Bar of California**

**US. District Courts**

Eastern District of California

Northern District of California

**Bar Associations**

American Bar Association, Labor and Employment Section

California Employment Lawyers Association

## CLASS ACTION LITIGATION

Feinberg, Jackson, Worthman & Wasow LLP specializes in litigation of employment and discrimination issues on behalf of workers and other plaintiffs. The following list includes a sample of class action and complex multi-plaintiff employment and civil rights cases litigated by the firm's attorneys at Feinberg, Jackson, Worthman & Wasow LLP and at their previous firm, Lewis, Feinberg, Lee & Jackson, P.C.

### Wage and Hour Cases

*Rosenburg v. Int'l Bus. Machines Corp.*, No. 06-cv-00430-PJH, 2007 WL 2043855 (N.D. Cal. July 12, 2007): In July 2007, the United States District Court for the Northern District of California granted final approval of a settlement of \$65 million for a class of present and former technology workers employed by IBM.

*Gutierrez v. Schmid Insulation Contractors, et al.*, No. 08-cv-6010-DSF (C.D. Cal. March 9, 2009): On March 9, 2009, the Central District of California granted final approval of a settlement of \$8.5 million for a class of present and former California installers for Schmid Insulation Contractors and Masco Contractor Services of California. The class had asserted that they were denied minimum wage and overtime and subject to unlawful wage deductions.

*Cancilla v. Ecolab*, Case No. 12-cv-03001 (N.D. Cal. 2016). In January 2016, the Northern District of California granted final approval of a class action settlement of \$7.5 million for a class of more than 1,000 workers who asserted that they were misclassified as exempt employees).

*Rogers v. Kindred Healthcare, Inc.*, No. RG14729507 (Super. Ct. Alameda County) (final approval granted Oct. 7, 2016). The Alameda County Superior Court approved a class action settlement of \$2.465 million on behalf of a class of over 2,700 Personal Care Attendants who asserted that their employer did not provide them with required meal and rest breaks when working in licensed healthcare facilities, failed to pay them earned wages and overtime premiums, and issued noncompliant paystubs.

*Lindell v. Synthes, Inc.*, No. 111CV02053LJOBAM, 2017 WL 6417209, at \*2 (E.D. Cal. Jan. 9, 2017). In January 2017, the Eastern District of California granted final approval of a class settlement of \$5 million on behalf of 186 Sales Consultants who worked for Synthes, Inc. in California. The case settled claims for unreimbursed business expenses under Labor Code § 2802 and unlawful wage deductions.

*Strauch v. CSC*, No. 14-cv-00956 (D. Conn.) (final approval granted July 12, 2021). Attorneys from the firm and co-counsel represented a group of current and former technical support workers in a Fair Labor Standards Act collective as well as workers in two certified Rule 23 classes with parallel state-law claims. Plaintiffs alleged that Defendant willfully misclassified them as exempt from federal and state overtime laws and therefore failed to compensate them for overtime hours as required by law. Plaintiffs won a jury verdict on liability in December 2017 and the case settled on appeal for \$9.5 million.

*Castro v. ABM Industries, Inc.*, No. 4:17-cv-03026 (N.D. Cal.) (final approval granted September 3, 2019). Attorneys from the firm, along with co-counsel, represented three certified classes of janitorial employees. Plaintiffs alleged that Defendants had a company-wide policy of not reimbursing or indemnifying putative class members for out-of-pocket expenses for work-related use of their personal cell phones, in violation of California law. A \$5.4 million settlement was approved by the Court in September 2019.

*Gama v. Able Services*, No. RG15773582 (Super. Ct. Alameda County) (filed June 10, 2015). Attorneys from the firm, along with co-counsel, represent plaintiffs in claims brought on behalf of a putative class and PAGA group of janitorial employees seeking reimbursement of out-of-pocket expenses for work-related use of their personal cell phones, in violation of California law. The case is currently before the Orange County Superior Court.

*Sosa v. Marriott International, Inc.*, No. 18CV335342 (Super. Ct. Santa Clara County) (final approval granted June 25, 2021). Attorneys from the firm, along with co-counsel, represented plaintiffs in claims brought on behalf of a putative class of approximately 1,500 housekeepers. Among other claims, Plaintiffs alleged that Defendants failed to provide rest periods or pay premium wages for missed rest periods. A \$3.95 million settlement was approved by the Court in June 2021.

### **Employee Benefits Cases**

*Pfeifer v. Wawa, Inc.*, 2018 WL 4203880 (E.D. Pa. Aug. 31, 2018): Dan Feinberg was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of the Wawa ESOP. Plaintiffs alleged that a 2015 amendment and subsequent forced liquidation of the class members' company stock in 2015 violated ERISA. The settlement, approved in August 2018, resulted in a payment of \$25 million on behalf of the class.

*Cunningham v. Wawa, Inc.*, 2021 WL 1626482 (E.D. Pa. April 21, 2021): Dan Feinberg was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of the Wawa ESOP. Plaintiffs alleged that a 2015 amendment and subsequent forced liquidation of the class members' company stock from 2016 – 2019 violated ERISA. The settlement, approved in April 2021, resulted in a payment of \$21.6 million on behalf of the class.

*Kindle v. Dejana*, 238 F. Supp. 3d 353 (E.D.N.Y. 2017): Attorneys from the firm represented as co-counsel a class of participants in the Atrium ESOP. Plaintiffs alleged that Defendants breached their fiduciary duties under ERISA by selling the ESOP's Atrium stock to the Company's President and CEO for less than fair market value in 2011. Following one day of trial, the parties agreed to a settlement under which Dejana Defendants paid over \$2.5 million on behalf of the class.

*Choate v. Wilmington Trust*, 333 F.R.D. 324 (D. Del. 2019): Dan Feinberg, Todd Jackson and Darin Ranahan served as co-counsel for plaintiff in this class action on behalf of participants in the MRMC ESOP. Plaintiffs alleged that the ESOP's trustee breached its fiduciary duties and caused the ESOP to enter into prohibited transactions in connection with two stock purchases. Shortly before trial, the parties agreed to a \$19.5 million settlement which was approved in 2020.

*Gough v. Tennyson*, No. 17-cv-2215-PJH, 2017 WL 4310761 (N.D. Cal. Sept. 28, 2017): Attorneys from the firm represented a class of participants in the Tennyson Electric ESOP. Plaintiffs alleged that Michael Tennyson, the President of Tennyson Electric, caused the Company to liquidate the ESOP's Tennyson Electric stock for less than fair market value in a 2015 transaction in which the ESOP received only \$100,000 for its stock. The Court approved a \$1,750,000 settlement in August 2018.

*Fernandez v. K-M Indus. Holding Co., Inc.*, 646 F. Supp. 2d 1150 (N.D. Cal. 2009): Todd Jackson and Nina Wasow served as lead counsel for a class of employees of Kelly-Moore Paint Company and CIG (an insurance company which, along with Kelly-Moore, was owned by K-M Industries Holding Co., Inc.) who were participants and beneficiaries of the K-M Industries Holding Co., Inc. ESOP. Plaintiffs alleged that Defendants breached their fiduciary duties under ERISA by causing the ESOP to purchase employer stock at an inflated price. Plaintiffs settled with the Company and the family trust of its founder, William Moore, after briefing but before decision on their motion for summary judgment on the statute of limitations. Plaintiffs settled with the successor trustee of the ESOP after briefing but before decision on a motion for summary judgment on the merits. Class-wide settlements resulted in the payment of \$55 million to the class.

*Neil v. Zell*, 275 F.R.D.256 (N D. Ill. 2011): Dan Feinberg, Nina Wasow and Todd Jackson represented participants and beneficiaries of the Tribune Company ESOP in a certified class action pending in the Northern District of Illinois. Plaintiffs alleged that defendants breached fiduciary duties and engaged in prohibited transactions in the 2007 Leveraged ESOP Transaction which permitted Sam Zell to take control of the Tribune Company. Tribune Company filed bankruptcy less than a year after the Transaction, and the ESOP's stock is now worthless. After ruling in Plaintiffs' favor on several motions, the court approved Plaintiffs' motion for class certification. A class-wide settlement of \$32 million was approved in January 2012.

*Vincent v. Reser*, No. 11-cv-03572-CRB, 2013 WL 621865 (N.D. Cal. Feb. 19, 2013): Dan Feinberg represented plaintiffs in this ERISA class action. The complaint, filed in July 2011, alleged that the former owner of the Southern California Pipeline Construction, Inc. ("SCPC") Employee Stock Ownership Plan ("ESOP") sold 100% of SCPC's stock to the ESOP for more than fair market value in a November 2007 transaction. The SCPC stock owned by the ESOP currently has no value. The settlement, approved in February 2013, provided for a \$5,125,000 payment to the SCPC ESOP for the benefit of the Plan's participants.

*Kaplan v. Houlihan Smith & Co., Inc.*, No. 12-C-5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014): Dan Feinberg represented plaintiffs in this ERISA class action. The complaint alleged breaches of fiduciary duty and prohibited transactions by the fiduciaries of the Houlihan Smith ESOP in a series of transactions spinning off the company's operating assets to other shareholders. In June 2014, the court granted final approval to a \$1,275,000 settlement.

*Clarke v. Lindeman*, No. 09-03467 JAM-DAD (E.D. Cal. Jan. 11, 2012): Dan Feinberg and Nina Wasow represented a class of participants in and beneficiaries of the Valley Aggregate Transport, Inc. Employee Stock Ownership Plan. Plaintiff alleged that Defendants breached their fiduciary duties and engaged in prohibited transactions with respect to the ESOP's purchase of



employer stock, as well as the sale of the ESOP Note to one of the fiduciaries of the Plan at a discounted price. The court granted final approval of a class-wide settlement of over \$2.2 million.

*Udd v. Vidinsky*, No. CV 04-05080 JW (N.D. Cal. Feb. 29, 2008): Todd Jackson and Dan Feinberg represented participants and beneficiaries of the Valin Corporation Amended Employee Stock Ownership Plan, alleging breach of fiduciary duties and a prohibited transaction with respect to a July 12, 2001 purchase by the plan of Valin shares from the family trust of its founder and president, Alan Vidinsky. Mr. Vidinsky acted on behalf of both his family trust and the plan in the transaction, and the suit alleged that the \$6 million the plan paid for 77,250 shares was too high a price. Pursuant to a settlement approved in 2006, the plan received an additional 53,327 shares worth approximately \$3.13 million including interest.

*In re Indymac ERISA Litigation*, No. 08-04579 (C.D. Cal. Aug. 21, 2012). Todd Jackson served as co-lead-counsel in this consolidated action regarding pension plans sponsored by Indymac Bank. Indymac was one of the major lenders caught up in the collapse of the subprime and Alt-A mortgage market, which ultimately caused the bank to be taken into receivership by the FDIC. The complaint asserted breaches of fiduciary duty arising out of the plan fiduciaries' failure to act prudently with regard to plan investments in company stock while those fiduciaries knew or should have known that the stock was an imprudent asset for retirement savings due to the bank's dire financial situation. The district court granted final approval to a \$7 million settlement.

*Paulsen v. CNF, Inc.*, 559 F.3d 1061 (9th Cir. 2009). Catha Worthman was co-class counsel in this case representing salaried retirees of Consolidated Freightways Corporation ("CFC") whose pensions were reduced when the CFC Pension Plan was trustee by the Pension Benefit Guaranty Corporation. In 2011, the district court granted final approval of a \$9.2 million settlement of the actuarial malpractice claims.

*Taylor v. ANB Bancshares, Inc.*, No. 08-5170 (W.D. Ark. 2010). Catha Worthman was co-class counsel in this action regarding pension plans sponsored by Arkansas National Bank, which was taken over by the FDIC in 2008. The complaint asserted breaches of fiduciary duty arising out of the failure to act prudently with regard to plan investments in bank stock even while those fiduciaries knew or should have known that the risk of investing in bank stock had increased substantially due to the bank's aggressive expansion into real estate and construction lending. The district court granted final approval of a \$2 million settlement.

*Horn v. McQueen*, 215 F. Supp. 2d 867 (W.D. Ky. 2002): Todd Jackson represented as co-counsel a group of employees of the U.S. Corrections Corp. of America. After trial, the Court held that defendants had breached their fiduciary responsibilities under ERISA by causing the ESOP plan to purchase sponsoring employer stock at an inflated price. Class-wide settlements resulted in the payment of over \$13 million.

### **Civil Rights and Other Employment Rights Cases**

*National Association of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012)  
This case resulted in a consent decree requiring Netflix to closed-caption the streaming videos on

its popular Watch Instantly service, thereby making it fully accessible to the deaf and hard of hearing. In denying Netflix's motion for judgment on the pleadings, the Court held that Netflix is a place of public accommodation under the ADA, holding that the ADA applies to website-only businesses. Catha Worthman (then at Lewis, Feinberg, Lee & Jackson) represented Plaintiffs along with Bill Lann Lee, co-counsel Disability Rights Education and Defense Fund (DREDF), and Sugarman, Rogers, Barshak & Cohen.

*Connor v. First Student, Inc.*, 5 Cal.5th 1026 (2018). The California Supreme Court upheld the constitutionality of one of California's background check statutes, the Investigative Consumer Reporting Agencies Act ("ICRAA"), affirming the judgment of the Court of Appeal on behalf of the bellwether plaintiff, Eileen Connor. With co-counsel, Todd Jackson, Catha Worthman, and Genevieve Casey represented a group of over 1,400 school bus drivers and aides in consolidated cases who filed suit challenging the unlawful background checks. Plaintiffs' claims are pending before the Los Angeles County Superior Court.

*Jimenez Perea v. California Department of Health Care Services*, No. RG17867262 (Super. Ct. Alameda County) (filed July 12, 2017), No. A165134 (Cal. App. Ct., 1st Dist.) (opening brief filed Feb. 14, 2023). FJWW, along with co-counsel from the Mexican American Legal Defense and Educational Fund and Fox & Robertson, P.C., represent several individual and organizational plaintiffs in a case alleging that the State of California has disinvested from the Medi-Cal program as the program's population has become more Latino, in violation of state civil rights law. The case is currently on appeal in the First District of the California Court of Appeal.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

James Smith and Jerry Honse, on behalf of themselves and all others similarly situated, and on behalf of the Triad Manufacturing, Inc. Employee Stock Ownership Plan,	)	
	)	
	)	
	)	Civil Action No.: 1:20-cv-02350-RAG
	)	
Plaintiffs,	)	JUDGE RONALD A. GUZMAN
	)	
v.	)	MAGISTRATE JUDGE YOUNG B. KIM
	)	
	)	
GreatBanc Trust Company, the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust,	)	
	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF MICHELLE C. YAU IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION AND INCORPORATED MEMORANDUM OF LAW  
FOR PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION  
OF SETTLEMENT CLASS**

I, Michelle C. Yau, declare as follows:

1. I am a partner at Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) and Chair of Cohen Milstein’s ERISA litigation practice group. Together with Feinberg, Jackson, Worthman and Wasow LLP, our firm is counsel for Plaintiffs and the putative class in this action. I am a

member in good standing of the State Bar of Massachusetts and the District of Columbia, and I am admitted to practice before this Court *pro hac vice*.

2. My firm has prosecuted this litigation on behalf of Plaintiffs since its inception. This declaration is submitted in support of Plaintiffs' Unopposed Motion and Incorporated Memorandum of Law for Preliminary Approval of Settlement and Certification of Settlement Class. I make this declaration based on personal knowledge and, if called at trial, could and would testify competently to the facts stated herein.

3. I graduated from Harvard Law School where I was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to public service. I graduated Phi Beta Kappa with a B.A. in Mathematics from the University of Virginia.

4. Prior to joining Cohen Milstein, I was an Honors Program Attorney at the Department of Labor where I enforced and administered a variety of labor statutes, including ERISA. Before law school, I also worked as a financial analyst on Wall Street where I received training in many areas, including finance, accounting, financial modeling, and stock valuation techniques. For the past eighteen years, my practice has consisted entirely of ERISA class action litigation. I am a senior editor of the fiduciary chapter of Employee Benefits Law, which is a well-known ERISA treatise published by *Bloomberg BNA*. I am also a frequent speaker on ERISA issues at conferences and webinars sponsored by the American Bar Association and the Practicing Law Institute as well as other organizations.

5. Cohen Milstein is a leader in class action litigation generally and has a premier ERISA class action practice that is nationally recognized. Based on its many successes, Cohen Milstein was named as one of the ten "Most Feared Plaintiffs Firms" by *Law360*, and *Forbes* has

called my firm a “class action powerhouse.” The 2022 Edition of *U.S. News – Best Lawyers* “Best Law Firms” recognized Cohen Milstein among the “Top Firms Nationally.” And last year, *The American Lawyer* named Cohen Milstein a finalist for the “National Boutique / Specialty Litigation Department of the Year Award.” In 2021, Cohen Milstein was named an “Elite Trial Lawyer” finalist in eight practice areas by *The National Law Journal*.

6. Cohen Milstein’s ERISA Practice Group, which I lead, has been devoted exclusively to litigating complex ERISA class actions for over twenty years and has played a significant role in the development of employee benefits law. Based on these successes, our ERISA team was named by *Law360* as “Practice Group of the Year – Benefits” three of the last four years (2020, 2021 and 2022). Also, in 2022, the leading attorney-ranking service *Chambers USA* gave Cohen Milstein its highest ranking for ERISA litigation on behalf of plaintiffs nationwide (Band 1). In conferring this honor, *Chambers USA* noted that “Cohen Milstein Sellers & Toll is highly regarded for its representation of plaintiffs in ERISA class actions. The firm is regularly sought out to represent plan participants and beneficiaries in a range of ERISA claims including breach of fiduciary duty.”

7. My team has successfully secured hundreds of millions of dollars for ERISA classes in lawsuits alleging fiduciary breach and prohibited transaction violations. For example, as lead trial counsel in an ERISA class action, I obtained a \$32.5 million settlement in *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016 (D. Minn. 2022). The \$32.5 million class-wide settlement was finally approved by the Court last year. More recently, my firm represented a class of ESOP participants in *Ahrendsen v. Prudent Fiduciary Services., LLC*, No. 2:21-cv-02157-HB, ECF 86 (E.D. Pa. Jan. 31, 2023), where preliminary approval has been granted for an \$8.7 million ESOP settlement.

8. Cohen Milstein also served as co-lead counsel in *In re: Merrill Lynch, & Co., Inc. Securities, Derivative and ERISA Litigation*, No. 07-cv-10268 (S.D.N.Y. 2009), which involved a public ESOP and claims that Merrill Lynch fiduciaries imprudently purchased and held inflated Merrill stock. We achieved a \$75 million settlement for the class of ERISA plan participants.

9. We represented an ERISA certified class in *In re Beacon Associates Litigation*, No. 09-cv-0777 (S.D.N.Y. 2013). At the fairness hearing, Judge McMahon praised the settlement: “And, yes, the fact that there was no objection to it reflects the hard work that all of you put into trying to get a global resolution of all of these cases[.] The settlement process really was quite extraordinary.” She also applauded the outcome, stating: “[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience.”

10. I am currently representing ESOP participants asserting ERISA fiduciary breach and prohibited transaction claims similar to those here. *E.g.*, *Hensiek v. Bd. of Dirs. of Casino Queen Holding Co.*, No. 3:20-cv-00377 (S.D. Ill. filed Apr. 27, 2020); *Harrison v. Envision Mgmt. Holding, Inc. Bd. Of Dirs.*, No. 1:21-cv-00304 (D. Colo. filed Jan. 29, 2021); *Zavala v. Kruse-Western, Inc.*, No. 1:19-cv-00239 (E.D. Cal. filed Feb. 19, 2019); *Burnett v. Prudent Fiduciary Servs. LLC*, No. 1:22-cv-00270 (D. Del. filed Feb. 28, 2022); *Lloyd v. Argent Tr. Co.*, No. 1:22-cv-04129 (S.D.N.Y. filed May 23, 2022).

11. We have achieved favorable pretrial rulings in several of these cases. *Lloyd v. Argent Tr. Co.*, No. 1:22-cv-04129, 2022 WL 17542071 (S.D.N.Y. Dec. 6, 2022) (denying motion to compel arbitration and motion to dismiss for lack of standing); *Hensiek v. Bd. of Dirs. of Casino Queen Holding Co., Inc.*, No. 3:20-CV-00377, 2022 WL 263321 (S.D. Ill. Jan. 28, 2022) (denying motion to dismiss); *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 593 F. Supp. 3d 1078

(D. Colo. 2022) (denying motion to compel arbitration); *Zavala v. Kruse-Western, Inc.*, 562 F. Supp. 3d 1059 (E.D. Cal. 2021) (denying motion for judgment on the pleadings and motion for summary judgment); *id.*, 398 F. Supp. 3d 731 (E.D. Cal. 2019) (denying in part motions to dismiss).

12. We have attained important and favorable opinions at the Courts of Appeals, and I personally have litigated two cases in the Supreme Court of the United States. *Smith v. Bd. of Dirs. of Triad Mfg., Inc.*, 13 F.4th 613 (7th Cir. 2021); *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 59 F.4th 1090 (10th Cir. 2023); *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615 (2020); *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468 (2017).

13. In addition to the cases referenced above, Cohen Milstein's Employee Benefits Practice Group has served as class counsel in numerous other ERISA class actions, including the following:

- *Krohnengold v. New York Life Ins. Co.*, No. 1:21-cv-01778 (S.D.N.Y. filed March 3, 2021);
- *Sweeney v. Nationwide Mut. Ins. Co.*, No. 2:20-cv-01569 (S.D. Ohio filed March 26, 2020);
- *Baird v. BlackRock Institutional Tr. Co.*, No. 17-CV-01892-HSG, 2021 WL 5113030 (N.D. Cal. Nov. 3, 2021);
- *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758 (2022);
- *Fuller v. SunTrust Banks, Inc.*, No. 1:11-cv-784 (N.D. Ga. July 20, 2020), ECF 302;
- *Overall v. Ascension*, No. 2:13-cv-11396 (E.D. Mich. Nov. 20, 2015), ECF 115;
- *Chavies v. Catholic Health E.*, No. 13-1645 (E.D. Pa. Apr. 29, 2016) (consolidated for settlement purposes with *Lann v. Trinity Health Corp.*, 8:14-cv-02237 (D. Md. May 31, 2017), ECF 111));
- *Lann v. Trinity Health Corp.*, No. 8:14-cv-02237 (D. Md. May 31, 2017), ECF 111;
- *Medina v. Cath. Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017);
- *Griffith v. Providence Health & Servs.*, 2:14-cv-01720 (W.D. Wash. Mar. 21, 2017), ECFs 69, 70;
- *Holcomb v. Hosp. Sisters Health Sys.*, No. 3:16-cv-03282 (C.D. Ill. Feb. 25, 2019), ECF 67);
- *In re Wheaton Franciscan ERISA Litig.*, No. 16-04232 (N.D. Ill. Jan. 16, 2018), ECF 107);
- *Carver v. Presence Health Network*, No. 15-2905 (N.D. Ill. May 31, 2018), ECF 134;
- *Garbaccio v. St. Joseph's Hosp. Sys. & Med. Ctr. & Subsidiaries*, 2:16-cv-02740 (D.N.J. Mar. 6, 2018), ECF 116;
- *Sanzone v. Mercy Health*, No. 16-cv-923 (E.D. Mo.);

- *Smith v. OSF Healthcare Sys.*, 349 F. Supp. 3d 733 (S.D. Ill. 2018), *vacated and remanded*, 933 F.3d 859 (7th Cir. 2019);
- *Owens v. St. Anthony Med. Ctr., Inc.*, No. 14-cv-4068 (N.D. Ill. Aug. 14, 2019), ECF 308;
- *Dooley v. Saxton*, No. 1:12-CV-1207, 2015 WL 13660568 (D. Or. Oct. 19, 2015);
- *Hodges v. Bon Secours Health Sys., Inc.*, No. 16-1079 (D. Md. Dec. 21, 2017), ECF 117);
- *Banyai v. Mazur*, No. 1:00-cv-09806 (S.D.N.Y. Nov. 18, 2008), ECF 223;
- *Chesemore v. All. Holdings, Inc.*, No. 09-CV-413-WMC, 2014 WL 4415919 (W.D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016);
- *Hans v. Tharaldson*, No. 3:05-CV-00115, 2010 WL 1856267 (D.N.D. May 7, 2010);
- *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, No. 3:05-cv-01151, 2016 WL 11575090 (D.N.J. June 28, 2016);
- *Slipchenko v. Brunel Energy, Inc.*, No. 4:11-cv-01465, 2015 WL 338358 (S.D. Tex. Jan. 23, 2015);
- *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455 (E.D. Pa. 2008);
- *Simpson v. Fireman's Fund Ins. Co.*, 4:05-cv-00225 (N.D. Cal. Mar. 30, 2007), ECF 85;
- *Pfeifer v. Wawa, Inc.*, No. 2:16-cv-00497, 2018 WL 4203880 (E.D. Pa. Aug. 31, 2018);
- *Redington v. Goodyear Tire & Rubber Co.*, No. 5:07CV1999, 2008 WL 3981461 (N.D. Ohio Aug. 22, 2008).

14. Together with co-counsel, Cohen Milstein has vigorously prosecuted this action on behalf of Plaintiffs and the ESOP.

15. Prior to filing the action in April 2020, we conducted a thorough investigation of the relevant facts and claims. This included interviewing ESOP participants about the relevant facts and answering their questions about the litigation and drafting the original complaint.

16. The Parties first engaged in mediation in the fall of 2020 through the Seventh Circuit mandatory mediation program. The Parties did not reach a resolution through this mediation.

17. We succeeded in defeating both a motion to compel arbitration in August 2020 and obtaining Seventh Circuit affirmance of that ruling in 2021. *Smith v. Greatbanc Tr. Co.*, 2020 WL 4926560 (N.D. Ill. Aug. 21, 2020), *aff'd sub nom. Smith v. Bd. of Dirs. of Triad Mfg., Inc.*, 13 F.4th 613 (7th Cir. 2021).



18. The Parties conducted extensive discovery. Plaintiffs propounded 79 Requests for Production to Defendants and 13 document subpoenas on third-parties, which resulted in the production of approximately 32,476 documents (spanning nearly 250,000 pages) and over 14 hours of audio recordings, which Plaintiffs' Counsel reviewed. The Parties completed ten (10) depositions of defense fact witness and the two Named Plaintiffs.

19. Defendants propounded written discovery requests to Plaintiffs, to which Counsel and Plaintiffs responded.

20. The Parties have met and conferred numerous times to attempt to resolve disputes without motion practice, which was indeed achieved for the vast majority of issues.

21. Fact Discovery was completed on September 30, 2022.

22. We have regularly communicated with our clients throughout to keep them apprised of the proceedings and to help Messrs. Smith and Honse to prepare for their depositions, respond to written discovery, and assess the settlement.

23. To date, Cohen Milstein and Feinberg, Jackson, Worthman & Wasow LLP have advanced hundreds of thousands of dollars in litigation costs, including process server fees, filing fees, deposition related fees and expenses, expert fees, mediation fees, and travel costs. We will continue to advance the costs of litigation for our clients on behalf of the ESOP.

24. I am not aware of any conflicts of interest that would impair or impede our ability to represent the Class as we have done to date.

25. Based on my experience overseeing this matter and ERISA class actions generally, I believe that this Settlement is in the putative Class's best interest

26. Attached hereto as Exhibit D is a true and correct copy of firm-wide resume for Cohen Milstein Sellers & Toll PLLC.

27. Attached hereto as Exhibit E is a true and correct copy of Department of Labor Consent Orders and Judgements that have been cited in Plaintiffs' Motion.

28. I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: April 20, 2023.



By: \_\_\_\_\_  
Michelle C. Yau

# **EXHIBIT D**

# COHENMILSTEIN

## COHEN MILSTEIN SELLERS & TOLL PLLC

For decades, Cohen Milstein Sellers & Toll PLLC has represented individuals, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States for violations of the antitrust, securities, consumer protection, civil rights/discrimination, ERISA, employment, and human rights laws. Cohen Milstein is also at the forefront of numerous innovative legal actions that are expanding the quality and availability of legal recourse for aggrieved individuals and businesses both domestic and international. Over its history, Cohen Milstein has obtained many landmark judgments and settlements for individuals and businesses in the United States and abroad. The firm's most significant successes include:

- Jock et al. v. Sterling Jewelers Inc. No. 11 160 0065508 (AAA; S.D.N.Y.): On November 15, 2022, the Arbitrator granted final approval of a \$175 million settlement in this rare, closely watched certified class arbitration, filed under Title VII of the Civil Rights Act of 1964 (Title VII) and the Equal Pay Act ("EPA"). The lawsuit, which involved approximately 70,000 claimants, was litigated before the AAA, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit and involved novel legal issues and rulings related to class certification, class arbitration, and the threshold role of an arbitrator. On October 5, 2020, the Supreme Court declined to hear the petition for certiorari, allowing the case to move forward to trial as a certified class arbitration before the AAA.
- In re Ranbaxy Generic Drug Application Antitrust Litigation No. 1:19-md-02878-NMG (MDL No. 2878) (D. Mass.): On September 19, 2022, the Court granted final approval of a \$485 million global settlement to resolve claims against Ranbaxy in this antitrust, federal RICO, and state consumer protection MDL for allegedly manipulating the U.S. Food and Drug Administration's generic drug approval process to block competitors from coming to market and forcing purchasers to pay supracompetitive prices for its valganciclovir hydrochloride and valsartan products. Of the \$485 million global settlement, \$340 million will go to the certified class of Direct Purchasers. Cohen Milstein represented the certified Direct Purchaser Class.
- FirstEnergy Shareholder Derivative Litigation (S.D. Ohio, N.D. Ohio): On August 23, 2022, the Court granted final approval of a \$180 million global settlement of all shareholder derivative cases, including Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, IBEW v. Charles E. Jones, FirstEnergy Corp., et al., (S.D. Ohio) that of Miller v. Anderson (N.D. Ohio) and In re FirstEnergy Corp., Stockholder Derivative Litigation, (Crt. of Common Pleas, Summit County). Plaintiffs represent that the settlement is "among the largest derivative recoveries ever achieved" in the United States and "three times greater than any prior derivative recovery in the history of the Sixth Circuit." Moreover, under the terms of the settlement, FirstEnergy will commit to a series of internal governance reforms, including the departure of six Directors, active Board oversight of FirstEnergy's political spending and lobbying activities, specific disclosures in the annual proxy statement issued to shareholders.
- Dignity Health Church Plan Litigation No. 3:13-cv-01450 (N.D. Cal.): Cohen Milstein is co-counsel to a class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over \$1.2 billion. In June 2017, the Supreme Court reversed previous rulings on consolidated church plan cases and ordered plaintiffs, in this case, to file an amended complaint. On July 15, 2022, the Court granted final approval to the \$100 million settlement.
- In re Pinterest Derivative Litigation No. 3:20-cv-08331-WHA (N.D. Cal.): On June 9, 2022, the Court granted final approval of a \$50 million settlement in this consolidated shareholder derivative lawsuit. The settlement is the first of its kind to embrace diversity goals around a company's product. It also requires Pinterest to

commit \$50 million to a holistic set of workplace and Board-level reforms designed to protect employees from discriminatory treatment and to promote diversity, equity, and inclusion (DEI) throughout its workplace and product.

- L Brands, Inc. Derivative Litigation No. 2:20-cv-03068-MHW-EPD (S.D. Ohio): Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria's Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest \$45 million each, for a total of \$90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils. On May 16, 2022, the Court granted final approval of this watershed settlement.
- In re Broiler Chicken Antitrust Litigation No. 1:16-cv-08637 TMD (N.D. Ill.): On December 20, 2021, the Court granted final approval to settlements worth \$181 million with six chicken processors, Tyson Foods, Fieldale Farms, Peco Foods, George's Inc., Pilgrim's Price Corp. and Mar-Jac, to resolve consumer claims that they conspired to inflate broiler chicken prices since 2009 and that Agri Stats, Inc., a third-party vendor, facilitated their unlawful scheme. Litigation against the dozen remaining defendants continues. Cohen Milstein was Co-Lead Settlement Class Counsel.
- In re Flint Water Cases No. 16-cv-10444 (E.D. Mich.): On November 10, 2021, the Court granted final approval of a landmark \$626.25 million settlement between Flint residents and businesses and multiple governmental defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in this environmental toxic tort class action, affecting over 90,000 Flint residents and businesses. Litigation continues against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency will also continue. Cohen Milstein's is Interim Co-Lead Class Counsel in this litigation.
- Sutter Health Antitrust Litigation No. CSG 14-538451 (Sup. Ct., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a \$575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds against Sutter Health. California's Attorney General joined the suit in March 2018.
- National Opioids Litigation: On July 21, 2021, the state Attorneys General of Indiana, New Jersey, and Vermont announced historic settlement agreements, totaling \$704.8 million as a part of a \$26 billion national agreement with the nation's three major pharmaceutical distributors, Cardinal Health, McKesson, and AmerisourceBergen, and opioids manufacturer Johnson & Johnson for their roles in promulgating the opioid epidemic in each of their states. (New Jersey's settlement with J&J/Janssen – \$137.8 million; Indiana's settlement with the distributors and J&J/Janssen – \$507 million; Vermont's settlement with the distributors and J&J/Janssen – \$60 million) In addition, the courts ordered numerous injunctive relief requirements of the Defendants. Cohen Milstein represented the state Attorneys General of Indiana, New Jersey\*, and

Vermont in investigations and litigation against these entities. \*J&J/Janssen only. Final approval of the resolution in the litigation against Purdue Pharma and the Sackler family is pending in bankruptcy court.

- State Attorneys General PBM Investigations & Litigation: We serve as special counsel to more than a dozen state Attorneys General in their respective investigations of the pharmacy benefit managers (PBMs) that provide pharmacy benefits and services to their state's Medicaid program and state employee health plans. The PBMs under investigation include Centene's Envolve Pharmacy Solutions, OptumRx, Express Scripts, and CVS Caremark. In Ohio alone, the investigations have led to litigation against Centene, OptumRx and Express Scripts, for their alleged role in breaching provider agreements with the state. Since June 2021, we have helped achieve over \$400 million in settlements with Centene for our state Attorney General clients, including: Ohio, Mississippi, Illinois, Arkansas, and New Mexico. We are working with other state Attorneys General to finalize their settlements with Centene that will return hundreds-of-millions of dollars back to these states
- Jien, et al. v. Perdue Farms, Inc., et al., No. 1:19-cv002521-ELH (D. Md.): Since July 20, 2021, the Court has preliminarily approved the first seven settlements against more than a dozen of the nation's largest poultry producers, totaling \$134.6 million, in this novel wage-fixing conspiracy class action. Plaintiffs allege that, since 2000, Tyson Foods Inc., Perdue Farms Inc. and other poultry processors conspired to depress the compensation of poultry processing workers in violation of the federal antitrust laws. The case is at the vanguard of the movement in antitrust law to protect workers. The Department of Justice filed a case against certain poultry processors based on the class action complaint which was the result of an independent private factual investigation. Cohen Milstein serves as Interim Co-Lead Counsel.
- Breen v. U.S. Department of Transportation and Federal Aviation Administration No. 1:05-cv-00654 (D.D.C.): In April 2021, the U.S. Department of Transportation and Federal Aviation Administration agreed to a record-breaking \$43.8 million settlement – the largest age discrimination settlement ever involving the federal government, ending a 16-year-old age discrimination lawsuit involving 670 former Flight Service Specialists, who were laid off in 2005 when the FAA conducted a reduction in force. More than 90% of these workers were over 40 years old and many lost their federal pension benefits.
- In re Alphabet Shareholder Derivative Litigation No. 19CV341522 (Sup. Ct. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in this shareholder derivative action seeking to hold Alphabet's leadership accountable for a "culture of concealment," which involved covering up pervasive gender discrimination and sexual harassment and approving secretive, multi-million dollar payouts to high-level executives credibly accused of serious sexual misconduct against junior employees. In November 2020, the Court granted final approval of a historic settlement, which includes a \$310 million funding commitment and sweeping reforms to eliminate practices that silence victims and implement new measures to improve workplace equity and board oversight.
- Department of Homeland Security, et al. v. Regents of the University of California, et al. No. 18-587 (U.S. Supreme Court): In June 2020, the Supreme Court blocked the Trump Administration's plan to rescind the Deferred Action for Childhood Arrivals (DACA) program, preserving immigration protections for approximately 650,000 current DACA recipients aka "Dreamers." The Court's 5-4 ruling upheld the partial summary judgment in Cohen Milstein's NAACP case (D.D.C.) – one of three cases consolidated before the Supreme Court. The Opinion stated that the Court's affirmance of the NAACP order vacating the rescission made it unnecessary to examine the propriety of the nationwide preliminary injunctions that were issued in the consolidated cases. Cohen Milstein's case: NAACP, et al. v. Donald J. Trump, as President of the United States, et al., No. 1:17-cv-01907 (D.D.C.) was consolidated with and re-named: Trustees of Princeton University, et al. v. U.S. et al., No. 1:17-cv-02325 (D.D.C.).

- LL E One, LLC v. Facebook No.: 4:16-cv-06232-JSW (N.D. Cal.): In June 2020, the Court granted final approval of a \$40 million settlement in a consolidated, consumer class action against Facebook. The final approval also certified a class of U.S.-based Facebook account holders (advertisers) who paid for video ads on the platform from February 15, 2015, until September 23, 2016 and confirmed the appointment of Cohen Milstein as Co-Class Counsel. Plaintiffs alleged that Facebook misled them about viewer engagement of video ads by using inflated video-viewing metrics.
- Wynn Resorts, Ltd. Derivative Litigation No. A-18-770013-B (Eighth Jud. Dist. Ct., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Steve Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of female employees. In March 2020, the Court granted final approval of a \$90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.
- National Association of the Deaf v. Harvard & MIT (D. Mass.): In February 2020 and June 2020, Cohen Milstein and co-counsel successfully settled the second of two groundbreaking class actions on behalf and deaf and hearing-impaired individuals. The landmark settlements are historic because they require two of the most lauded academic research institutions in the world to include closed captioning on all content, including videos and podcasts, available to the public online, establishing a precedent for academia and business worldwide.
- In Re Equifax, Inc., Customer Data Security Breach Litigation No. 1:17-md-2800-TWT (N.D. Ga.): On December 19, 2019 the court granted final approval a landmark \$1.5 billion settlement concluding this data breach class action affecting more than 147 million people in the U.S. The settlement consists of a record-breaking \$425 million in monetary and injunctive benefits and requires Equifax to spend \$1 billion to upgrade its security and technology. Cohen Milstein was on the Plaintiffs' Steering Committee.
- New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group PLC et al. No. 1:08-cv-05310-DAB-HBP (S.D.N.Y.): On March 8, 2019, the Honorable Deborah A. Batts granted final approval to a \$165 million all-cash settlement, bringing this lawsuit, the last of 11 MBS class actions Cohen Milstein successfully handled, to conclusion. Cohen Milstein was lead counsel in this certified MBS class action.
- In re Lidoderm Antitrust Litigation No. 3:14-md-02521 (N.D. Cal.): Plaintiffs allege that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, plaintiffs obtained final approval of a \$104.75 million settlement – more than 40% of plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Domestic Drywall Antitrust Litigation No. 2:13-md-02437 (E.D. Pa.): Cohen Milstein served as co-lead counsel for a class of direct purchasers of drywall against drywall manufacturers for price-fixing. The court approved settlements that total more than \$190 million. The court commented that it had sided with plaintiffs because of counsel's "outstanding work," and that plaintiffs' counsel had a "sophisticated and highly professional approach." It complemented the attorneys as "highly skilled" and noted that their performance on class action issues was "imaginative." It also stated, "Few cases with no government action, or investigation, result in class settlements as large as this one."
- In re Anthem Data Breach Litigation No. 15-MD-02617-LHK (N.D. Cal.): On August 16, 2018, the Honorable Lucy H. Koh in the U.S. District Court for the Northern District of California granted final approval to a \$115 million settlement – the largest data breach settlement in U.S. history – ending claims that Anthem Inc., one



of the nation's largest for-profit managed health care companies, put 78.8 million customers' personal information, including social security numbers and health data, at risk in a 2015 data breach. Cohen Milstein was co-lead counsel.

- Relvas v. The Islamic Republic of Iran, et al. No. 1:14-cv-01752-RCL (D.D.C.): On February 28, 2018 U.S. District Court Judge Royce C. Lamberth, for the District of Columbia, ordered the Republic of Iran to pay \$920 million to 80 families of soldiers and other military service members who were killed or injured in the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. The Beirut Marine Barracks bombing, which killed 241 American servicemembers and injured numerous others, was the deadliest state-sponsored terrorist attack against United States citizens before September 11, 2001.
- Moody's Litigation: Represented the co-lead state Mississippi and represented New Jersey in the \$864 million consumer fraud settlement achieved in January 2017 by 22 states and the U.S. Department of Justice with Moody's Corporation, Moody's Investors Service, Inc., and Moody's Analytics, Inc. Together with the S&P settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than \$2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.
- S&P Litigation: Represented co-lead state Mississippi in the \$1.375 billion-dollar consumer fraud settlement achieved in 2015 by 20 states and the U.S. Department of Justice with Standard & Poor's. Together with the Moody's settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than \$2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.
- In re BP Securities Litigation No. 4:10-MD-02185 (S.D. Tex.): Cohen Milstein represented the New York State Common Retirement Fund as co-lead plaintiff in a securities class action filed in 2010, alleging that BP injured investors by intentionally downplaying the severity of the Deepwater Horizon oil spill and preventing investors from learning the magnitude of the disaster. After successfully arguing for class certification to the district court, Cohen Milstein presented plaintiffs' defense of that court's decision to the U.S. Court of Appeals for the Fifth Circuit, which affirmed the class. The case settled for \$175 million a few weeks before trial was set to begin.
- Providence Health Services Church Plan Litigation No. 2:14-cv-01720-JCC (W.D. Wash.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Providence's health & Service Case Balance Retirement Plan who alleged that fiduciaries underfunded the pension plan because they improperly operated it under the ERISA "church plan" exemption. In March 2017, the court granted final approval of a \$315.9 million settlement, one of the largest settlements of its kind, and requires Providence to continue making minimum plan contributions that aim to fully fund the plan by 2029.
- Bon Secours Health System Church Litigation No. 1:16-cv-01079-RDB (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over \$102 million, one of the largest settlements of its kind.
- In re Animation Workers Litigation No. 5:14-cv-04062 (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily through no poach agreements. The court granted final approval of \$168.95 million in settlements. To our knowledge, this is the most successful no-poach class action, achieving an average recovery per class member of nearly \$17,000.

- Mincey v. Honda Motor Company, et al. No. 22787197 (Circ. Ct. Duval Cty, Fla.): On July 15, 2016, Cohen Milstein resolved a closely watched lawsuit against the Japanese company and airbag maker, Takata, involving the injury and eventual death of a woman whose car was involved in a minor accident in 2014. The confidential resolution was announced moments before a critical hearing in which a judge in Jacksonville, Fla., could have considered allowing punitive damages and for the company's chief executive, Shigehisa Takada, to submit a civil deposition.
- HEMT MBS Litigation No. 1:08-cv-05653 (S.D.N.Y.): On May 10, 2016, U.S. District Judge Paul A. Crotty finally approved a \$110 million settlement in the mortgage-backed securities class action brought by investors against Credit Suisse AG and its affiliates. This settlement ends claims brought by the New Jersey Carpenters Health Fund and other investors who claimed that the offering documents for the mortgage-backed securities at issue violated the Securities Act as they contained false and misleading misstatements concerning compliance with underwriting standards.
- In re Urethane Antitrust Litigation (Polyether Polyol Cases) MDL No: 1616 (D. Kan.): Cohen Milstein served as co-lead counsel on behalf of a class of direct purchasers of chemicals used to make many everyday products, from mattress foam to carpet cushion, who were overcharged as a result of a nationwide price-fixing conspiracy. On February 25, 2016, Cohen Milstein reached an agreement with The Dow Chemical Company to settle the case against Dow for \$835 million. Combined with earlier settlements obtained from Bayer, Huntsman, and BASF, the Dow settlement pushed the total settlements in the case to \$974 million. The settlement was approved on July 29, 2016.
- United States of America et al., ex rel. Lauren Kieff, v. Wyeth No. 03-12366 (D. Mass.): Cohen Milstein was co-lead counsel in this False Claims Act whistleblower case against pharmaceutical giant Wyeth (subsequently acquired by Pfizer), in which the whistleblowers alleged that Wyeth defrauded Medicaid, the joint federal/state healthcare program for the poor, when it reported falsely inflated prices for its acid suppression drug Protonix from 2001 through 2006 for Medicaid rebate purposes. Weeks before trial, in February 2016, in one of the largest qui tam settlements in U.S. history, Wyeth agreed to pay \$784.6 million to the U.S. government and the over 35 intervening states.
- RALI MBS Litigation No. 08-8781 (S.D.N.Y.): On July 31, 2015, Judge Katherine Failla gave final approval to a \$235 million settlement with underwriters Citigroup Global Markets Inc., Goldman Sachs & Co., and UBS Securities LLC. She also approved a plan for distribution to investors of those funds as well as the previously approved \$100 million settlement with RALI, its affiliates, and the individual Defendants that was reached in 2013. This global settlement marks an end to a long and complicated class action over MBS offerings that RALI and certain of its affiliates issued and sold to the New Jersey Carpenters Health Fund and other investors from 2006 through 2007. The case took seven years of intense litigation to resolve.
- In re: Bear Stearns Mortgage Pass-Through Certificates Litigation No. 08-08093 (S.D.N.Y.): On May 27, 2015, U.S. District Judge Laura Taylor Swain finally approved a class action settlement with JPMorgan Chase & Co., which agreed to pay \$500 million and up to an additional \$5 million in litigation-related expenses to resolve claims arising from the sale of \$27.2 billion of mortgage-backed securities issued by Bear Stearns & Co. during 2006 and 2007 in 22 separate public offerings.
- Harborview MBS Litigation No. 08-5093 (S.D.N.Y.): In February 2014, Cohen Milstein reached a settlement with the Royal Bank of Scotland (RBS) in the Harborview MBS Litigation, resolving claims that RBS duped investors into buying securities backed by shoddy home loans. The \$275 million settlement is the fifth largest class action settlement in a federal MBS case. This case is one of eight significant MBS actions that

Cohen Milstein has been named lead or co-lead counsel by courts and one of three that were nearly thrown out by the court, only to be revived in 2012.

- In Re Electronic Books Antitrust Litigation No. 11-md-02293 (S.D.N.Y.): In August 2014, a New York federal judge approved a \$400 million antitrust settlement in the hotly contested ebooks price-fixing suit against Apple Inc. Combined with \$166 million in previous settlements with five defendant publishing companies, the final settlement totaled more than \$560 million. The settlement resolves damages claims brought by a class of ebook purchasers and attorneys general from 33 U.S. states and territories.
- Countrywide MBS Litigation No. 2:10-cv-00302 (C.D. Cal.): In April 2013, plaintiffs in the landmark mortgage-backed securities (MBS) class action litigation against Countrywide Financial Corporation and others, led by Lead Plaintiff, the Iowa Public Employees' Retirement System (IPERS), agreed to a \$500 million settlement. It is the nation's largest MBS-federal securities class action settlement. The settlement was approved in December 2013 and brings to a close the consolidated class action lawsuit brought in 2010 by multiple retirement funds against Countrywide and other defendants for securities violations involving the packaging and sale of MBS. The settlement is also one of the largest (top 20) class action securities settlements of all time.
- In re Beacon Associates Litigation No. 09-cv-0777 (S.D.N.Y.): Class action settlement of \$219 million for trustees and participants in ERISA-covered employee benefit plans whose assets were lost through investments made on their behalf by Beacon Associates LLC I & II in the investment schemes of Bernard Madoff.
- In re Plasma-Derivative Protein Therapies Antitrust Litigation No. 09 C 7666 (N.D. Ill.): After four years of litigation, in October of 2013, CSL Limited, CSL Behring LLC, CSL Plasma, Inc. (collectively, "CSL"), and the Plasma Protein Therapeutics Association ("PPTA") agreed to pay \$64 million dollars to settle a lawsuit brought by the University of Utah Hospital and other health care providers alleging that CSL, the PPTA, and Baxter agreed between 2003-2009 to restrict the supply of immunoglobulin and albumin and thereby increase the prices of those therapies. Two months later, Baxter International Inc. and Baxter Healthcare Corp. (collectively "Baxter") agreed to pay an additional \$64 million to settle these claims – bringing the total recovery to the class to \$128 million.
- Keepseagle v. Vilsack Civil Action No. 1:99CV03119 (D.D.C.): A class of Native American farmers and ranchers allege that they have been systematically denied the same opportunities to obtain farm loans and loan servicing that have been routinely afforded white farmers by the USDA. A class was certified in 2001 by Judge Emmet Sullivan, District Judge for the U.S. District Court for the District of Columbia, and the D.C. Circuit declined USDA's request to review that decision. On October 19, 2010, the case reached a historic settlement, with the USDA agreeing to pay \$680 million in damages to thousands of Native American farmers and ranchers and forgive up to \$80 million worth of outstanding farm loan debt.
- In re Parmalat Securities Litigation No. 1:04-md-1653 (S.D.N.Y.): Cohen Milstein, as co-lead counsel, successfully negotiated several settlements totaling approximately \$90 million, including two settlements with Parmalat's outside auditors. Judge Lewis A. Kaplan remarked that plaintiffs' counsel "did a wonderful job here for the class and were in all respects totally professional and totally prepared. I wish I had counsel this good in front of me in every case." Parmalat's bankruptcy filing was the biggest corporate bankruptcy in Europe, and in December 2003, the U.S. Securities and Exchange Commission filed a suit charging Parmalat with "one of the largest and most brazen corporate financial frauds in history." During the litigation, the company subsequently emerged from bankruptcy, as a result we added "New Parmalat" as a defendant because of the egregious fraud committed by the now-bankrupt old Parmalat. New Parmalat strenuously objected and Judge Kaplan of the Southern District of New York ruled in the class plaintiffs'

favor, a ruling which was affirmed on appeal. This innovative approach of adding New Parmalat enabled the class to obtain an important additional source of compensation, as we subsequently settled with New Parmalat for shares worth approximately \$26 million.

- Dukes v. Wal-Mart Stores, Inc. No. C-01-2252 (N.D. Cal.): Cohen Milstein is co-lead counsel in this sex discrimination case. In 2004, the U.S. District Court certified a nationwide class action lawsuit for all female employees of Wal-Mart who worked in U.S. stores anytime after December 26, 1998. This was the largest civil rights class action ever certified against a private employer, including approximately 1.5 million current and former female employees. That ruling was appealed, and while affirmed by the Ninth Circuit, was reversed by the Supreme Court in June 2011. Cohen Milstein argued the case for the plaintiffs-respondents in the Supreme Court. Since then, the *Dukes* action has been amended to address only the Wal-Mart regions that include stores in California, and other regional class cases have been or are soon to be filed. This litigation to resolve the merits of the claims – whether Wal-Mart discriminates against its female retail employees in pay and promotions – continues.
- Rubin v. MF Global, Ltd. No. 08-CV-02233 (S.D.N.Y.): Acting as co-lead counsel in this class action, the Firm represented the Central States, Southeast and Southwest Areas Pension Fund which was one of the co-lead plaintiffs in the case. In September 2010, as a result of Plaintiffs’ decision to appeal, the U.S. Second Circuit Court of Appeals vacated in part the lower court’s dismissal of the case and remanded the case for further proceedings. In overturning the District Court decision, the Second Circuit issued a decision which differentiated between a forecast or a forward-looking statement accompanied by cautionary language -- which the Appellate Court said would be insulated from liability under the bespeaks caution doctrine -- from a factual statement, or non-forward-looking statement, for which liability may exist. Importantly, the Second Circuit accepted Plaintiffs’ position that where a statement is mixed, the court can sever the forward-looking aspect of the statement from the non-forward-looking aspect. The Court further stated that statements or omissions as to existing operations (and present intentions as to future operations) are not protected by the bespeaks caution doctrine. Mediation followed this decision and resulted in a settlement comprised of \$90 million in cash.
- Hughes v. Huron Consulting Group No. 09-CV-04734 (N.D. Ill.): Cohen Milstein represented lead plaintiffs the Public School Teachers’ Pension & Retirement Fund of Chicago and the Arkansas Public Employees Retirement System (“APERS”) in this case against Huron Consulting Group, founded by former Arthur Anderson personnel following its collapse in the wake of the Enron scandal. In August 2010, the District Court for the Northern District of Illinois denied defendants' motions to dismiss in their entirety and upheld plaintiffs’ allegations that defendants intentionally improperly accounted for acquisition-related payments, which allowed plaintiffs to move forward with discovery. The case was settled for \$40 million, comprised of \$27 million in cash and 474,547 shares in Huron common stock, with an aggregate value at the time of final approval in 2011 of approximately \$13 million.
- In re Lucent Technologies Securities Litigation No. 00-621 (D.N.J.): A settlement in this massive securities fraud class action was reached in late March 2003. The class portion of the settlement amounts to over \$500 million in cash, stock and warrants and ranks as the second largest securities class action settlement ever completed. Cohen Milstein represented one of the co-lead plaintiffs in this action, a private mutual fund.
- Nate Pease, et al. v. Jasper Wyman & Son, Inc., et al. No. 00-015 (Knox County Superior Court, Me.): In 2004, a state court jury from Maine found three blueberry processing companies liable for participating in a four-year price-fixing and non-solicitation conspiracy that artificially lowered the prices defendants paid to approximately 800 growers for wild blueberries. The jury ordered defendants Cherryfield Foods, Inc., Jasper Wyman & Son, Inc., and Allen’s Blueberry Freezer, Inc. to pay \$18.68 million in damages, the amount

which the growers would have been paid absent the defendants' conspiracy. After a mandatory trebling of this damage figure under Maine antitrust law, the total amount of the verdict for the plaintiffs is just over \$56 million. The firm served as co-lead counsel.

- In re StarLink Corn Products, Liability Litigation MDL No. 1403 (N.D. Ill.): Cohen Milstein successfully represented U.S. corn farmers in a national class action against Aventis CropScience USA Holding and Garst Seed Company, the manufacturer and primary distributor of StarLink corn seeds. StarLink is a genetically modified corn variety that the United States government permitted for sale as animal feed and for industrial purposes, but never approved for human consumption. However, StarLink was found in corn products sold in grocery stores across the country and was traced to widespread contamination of the U.S. commodity corn supply. The Firm, as co-lead counsel, achieved a final settlement providing more than \$110 million for U.S. corn farmers, which was approved by a federal district court in April 2003. This settlement was the first successful resolution of tort claims brought by farmers against the manufacturers of genetically modified seeds.
- Snyder v. Nationwide Mutual Insurance Company No. 97/0633 (Sup. Ct. N.Y. Onondaga Cnty.): Cohen Milstein served as one of plaintiffs' principal counsel in this case on behalf of persons who held life insurance policies issued by Nationwide through its captive agency force. The action alleged consumer fraud and misrepresentations. Plaintiffs obtained a settlement valued at more than \$85 million. The judge praised the efforts of Cohen Milstein and its co-counsel for having done "a very, very good job for all the people." He complimented "not only the manner" in which the result was arrived at, but also the "time ... in which it was done."
- Oncology & Radiation Associates, P.A. v. Bristol Myers Squibb Co., et al. No. 1:01CV02313 (D.D.C.): Cohen Milstein has been co-lead counsel in this case since its inception in 2001. Plaintiffs alleged that Bristol-Myers Squibb unlawfully monopolized the United States market for paclitaxel, a cancer drug discovered and developed by the United States government, which Bristol sells under the brand name Taxol. Bristol's scheme included a conspiracy with American BioScience, Inc., a generic manufacturer, to block generic competition. Cohen Milstein's investigation and prosecution of this litigation on behalf of direct purchasers of Taxol led to a settlement of \$65,815,000 that was finally approved by U.S. District Judge Emmet G. Sullivan on August 14, 2003 and preceded numerous Taxol-related litigations brought by the Federal Trade Commission and State Attorneys General offices.
- Kruman v. Christie's International PLC, et al. No. 01-7309 (S.D.N.Y.): A \$40 million settlement on behalf of all persons who bought or sold items through Christie's or Sotheby's auction houses in non-internet actions was approved in this action. Cohen Milstein served as one of three leading counsel on behalf of foreign plaintiffs. The Court noted that approval of the settlement was particularly appropriate, given the significant obstacles that faced plaintiffs and plaintiffs' counsel in the litigation. The settlement marked the first time that claims on behalf of foreign plaintiffs under U.S. antitrust laws have been resolved in a U.S. court, a milestone in U.S. antitrust jurisprudence.
- Roberts v. Texaco, Inc. 94-Civ. 2015 (S.D.N.Y.): Cohen Milstein represented a class of African-American employees in this landmark litigation that resulted in the then-largest race discrimination settlement in history (\$176 million in cash, salary increases and equitable relief). The Court hailed the work of class counsel for, *inter alia*, "framing an imaginative settlement, that may well have important ameliorative impact not only at Texaco but in the corporate context as a whole ...".
- Trotter v. Perdue Farms, Inc. No. 99-893 (D. Del.): This suit on behalf of hourly workers at Perdue's chicken processing facilities – which employ approximately 15,000 people – forced Perdue to pay employees for time spent "donning and doffing," that is, obtaining, putting on, sanitizing and removing protective

equipment that they must use both for their own safety and to comply with USDA regulations for the safety of the food supply. The suit alleged that Perdue's practice of not counting donning and doffing time as hours worked violated the Fair Labor Standards Act and state law. In a separate settlement with the Department of Labor, Perdue agreed to change its pay practices. In addition, Perdue is required to issue retroactive credit under one of its retirement plans for "donning and doffing" work if the credit would improve employees' or former employees' eligibility for pension benefits. Cohen Milstein was co-lead counsel.

## Awards & Recognitions

### 2023

- In 2023, nine Cohen Milstein attorneys were named to the **2023 Lawdragon's 500 Leading Lawyers** in America List, including Benjamin D. Brown, Agnieszka Fryszman, Kalpana Kotagal, Leslie M. Kroeger, Theodore J. Leopold, Betsy A. Miller, Victoria S. Nugent, Julie G. Reiser, Sharon Robertson.
- In 2023, Law360 named Cohen Milstein **2022 Practice Group of the Year** in Benefits, Competition, and Securities.
- In 2023, Joseph M. Sellers was named to **Lawdragon's 2023 Hall of Fame**.

### 2022

- In 2022, Benchmark Litigation named Julie Goldsmith Reiser a **2023 Benchmark Litigation Star**.
- In 2022, the American Arbitration Institute named Cohen Milstein's **AAI's 2022 "Outstanding Antitrust Litigation Achievement in Private Law Practice."**
- In 2022, Benchmark Litigation named Michael B. Eisenkraft, Laura H. Posner and Sharon K. Robertson **2023 Benchmark Litigation Future Stars**.
- In 2022, Benchmark Litigation named Steven J. Toll a **2023 Benchmark Litigation Star**.
- In 2022, 17 Cohen Milstein attorneys named **2022 Super Lawyers**; seven attorneys named **Rising Stars**.
- In 2022, Corporate Counsel named Julie G. Reiser a winner of the **2022 Women, Influence & Power in Law Awards**.
- In 2022, Crain's Chicago Business named Carol Gilden a 2022 **"Notable Women in Law."**
- In 2022, Who's Who Legal Competition 2022 - Plaintiff - Legal Marketplace Analysis named Richard A. Koffman a **"Leading Individual – USA."**
- In 2022, Palm Beach Illustrated named six Cohen Milstein attorneys to its 2022 **"Top Lawyers"** list.
- In 2022, Cohen Milstein recognized as leading firm for women in Law360's **"2022 Glass Ceiling Report: Women in Law."**
- In 2022, Seventeen Cohen Milstein attorneys recognized by **"The Best Lawyers in America."**
- In 2022, Benchmark Litigation named Julie G. Reiser to its 2022 **"Top 250 Women in Litigation"** list.
- In 2022, Benchmark Litigation named Sharon Robertson to its 2022 **"40 & Under"** list.
- In 2022, American Lawyer recognized Michael Eisenkraft in **"Litigator of the Week Runners-Up and Shout Outs."**
- In 2022, The National Law Journal named Cohen Milstein it's 2022 Elite Trial Lawyers of the Year – **"Practice of the Year"** for "Consumer Protection" and "Discrimination"
- In 2022, twenty-two Cohen Milstein attorneys named to the 2022 Lawdragon **"500 Leading Plaintiff Financial Lawyers"** list.
- In 2022, four Cohen Milstein attorneys recognized in 2022 edition of Florida Super Lawyers.
- In 2022, seven Cohen Milstein attorneys named to 2022 Lawdragon **"500 Leading Plaintiff Employment & Civil Rights Lawyers."**
- In 2022, Legal500 recognized Cohen Milstein's Antitrust attorneys as 2022 **"Hall of Fame," "Leading Lawyers"** and **"Next Generation Partners."**
- In 2022, Legal500 recognized Cohen Milstein Product Liability, Mass Tort & Class Action Attorneys as 2022 **"Leading Lawyers."**
- In 2022, Legal500 recognized Cohen Milstein Labor & Employment Attorneys as 2022 **"Leading Lawyers"** and **"Next Generation Partners."**

- In 2022, Legal500 recognized Cohen Milstein Securities Litigation Attorneys as 2022 **“Leading Lawyers”** and **“Next Generation Partners.”**
- In 2022, Legal 500 named Cohen Milstein **“Leading Firm”** for Plaintiffs in Antitrust; Labor and Employment Disputes; Products Liability, Mass Torts & Class Action; and Securities Litigation.
- In 2022, *Chambers USA* named Michelle Yau a 2022 **“Top Ranked” lawyer in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* named Mary Bortscheller a 2022 **“Top Ranked” lawyer in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* named Daniel R. Sutter a 2022 **“Associate to Watch” in ERISA Litigation: Plaintiff – Nationwide.**
- In 2022, *Chambers USA* ranked Cohen Milstein a **2022 “Top Ranked”** firm in four categories – Antitrust: Plaintiff, ERISA Litigation: Plaintiff, Product Liability & Mass Torts: Plaintiff, and Securities Litigation: Mainly Plaintiff
- In 2022, *Chambers USA* named Sharon K. Robertson a **2022 “Top Ranked” lawyer for Antitrust: Plaintiff – Nationwide and for Antitrust: Mainly Plaintiffs – New York.**
- In 2022, *Chambers USA* named Kit A. Pierson a **2022 “Ranked” lawyer in Antitrust: Plaintiff – Nationwide.**
- In 2022, *Law360* named Daniel H. Silverman and Molly J. Bowen **Law360 2022 “Rising Stars”** in Antitrust and Securities, respectively.
- In 2022, the *National Law Journal* named Cohen Milstein a **2022 “Elite Trial Lawyer Award”** finalist in eight practice areas, including Antitrust, Civil Rights, Consumer Protection, Discrimination, Employment Rights, Environmental Protection, Shareholder Rights, Class Action.
- In 2022, the *National Law Journal* named Jan E. Messerschmidt and Daniel H. Silverman **2022 “Rising Stars of the Plaintiffs Bar”** in the areas of Securities and Antitrust, respectively.
- In 2022, the *National Law Journal* named Christine E. Webber a **2022 “Elite Women of the Plaintiffs Bar”** award winner.
- In 2022, the *National Law Journal* named Cohen Milstein a finalist for its **2022 “Diversity Initiative Award.”**
- In 2022, the *American Lawyer* named Carol Gildea was a **2022 American Lawyer “Trailblazer – Midwest.”**
- In 2022, *Variety* named Cohen Milstein’s Kalpana Kotagal to *Variety’s “Legal Impact Report 2022: Top Attorneys Winning Cases and Making Deals in Hollywood.”*
- In 2022, Lawdragon named eight Cohen Milstein attorneys to the **“Lawdragon 500 Leading Plaintiff Consumer Lawyers 2022”** list.
- In 2022, *Law360* appointed Cohen Milstein’s Betsy A. Miller to **Law360’s 2022 Consumer Protection Editorial Advisory Board.**
- In 2022, *Law360* appointed Cohen Milstein’s Christine E. Webber to **Law360’s 2022 Discrimination Editorial Advisory Board.**
- In 2022, *Law360* appointed Cohen Milstein’s Douglas J. McNamara to **Law360’s 2022 Cybersecurity & Privacy Editorial Board.**
- In 2022, *Law360* appointed Cohen Milstein’s Michelle C. Yau to **Law360’s 2022 Benefits Editorial Advisory Board.**
- In 2022, *Global Competition Review* named six Cohen Milstein attorneys to **GCR “Who’s Who Legal: Competition 2022.”**
- In 2022, Lawdragon recognized 12 Cohen Milstein lawyers in the **“Lawdragon 500 Leading Lawyers in America”** list.
- In 2022, *Law360* recognized Cohen Milstein’s Employee Benefits/ERISA practice as one of five law firms in the nation for its **“Law360 2021 Practice Group of the Year – Benefits”** award for the firm’s ERISA-related litigation accomplishments in 2021.
- In 2022, *Law360* recognized Cohen Milstein as one of five law firms in the nation for its **“Law360 2021 Practice Group of the Year – Class Actions”** for the firm’s class action accomplishments in 2021.



- In 2022, *Law360* recognized Cohen Milstein’s Civil Rights & Employment practice for its **“Law360 2021 Practice Group of the Year – Employment”** for the firm’s employment litigation accomplishments in 2021.

## 2021

- In 2021, the 2022 Edition of U.S. News – Best Lawyers “Best Law Firms” recognized Cohen Milstein among the **“Top Firms Nationally.”**
- In 2021, *The American Lawyer* named Cohen Milstein a **“National Boutique / Specialty Litigation Department of the Year”** finalist.
- In 2021, Cohen Milstein’s Leslie M. Kroeger received the 2021 **“B.J. and Tom Masterson Award for Professionalism”** from the Florida Justice Association.
- In 2021, *Lawdragon* selected eight Cohen Milstein attorneys for its **“Leading Plaintiff Employment and Civil Rights Lawyers”** guide.
- In 2021, *Palm Beach Illustrated* named seven Cohen Milstein attorneys to its **“Top Lawyers”** list.
- In 2021, *Law360* named Cohen Milstein’s Michelle Yau **“Benefits – MVP”** for her representation of participants and beneficiaries of the Triad Manufacturing Inc. Employee Stock Ownership Plan in an ERISA suit claiming the company overcharged workers for company stock.
- In 2021, *Law360* named Cohen Milstein’s Joseph M. Sellers **“Employment – MVP”** for his role in obtaining a settlement on behalf of some 700 fight service specialists alleging age discrimination by the Federal Aviation Administration.
- In 2021, *Law360* named Cohen Milstein’s Theodore J. Leopold **“Environmental – MVP”** for his work in securing a settlement for victims of the Flint, MI water crisis.
- In 2021, *Law360* named Cohen Milstein’s Sharon K. Robertson **“Life Sciences – MVP”** for her “pay for delay” antitrust class actions in the Life Sciences industry.
- In 2021, *The Best Lawyers in America* named three Cohen Milstein attorneys to its 2021 **“Ones to Watch”** list.
- In 2021, *The Best Lawyers in America* named 13 Cohen Milstein attorneys to its 2021 **“Best Lawyers in America”** list.
- In 2021, *The Best Lawyers in America* named Christine E. Webber **“Lawyer of the Year”** in the Employment Law – Washington, DC category.
- In 2021, *Lawdragon* named 24 Cohen Milstein attorneys to its **“500 Leading Plaintiff Employment Lawyers”** list.
- In 2021, Cohen Milstein’s Betsy A. Miller named *The National Law Journal/Law.com’s* 2021 Elite Trial Lawyers **“Keith Givens Visionary Award.”**
- In 2021, Cohen Milstein’s named *The National Law Journal/Law.com’s* 2021 Elite Trial Lawyers **“Environmental Protection Practice of the Year Award.”**
- In 2021, Cohen Milstein’s Laura H. Posner and Emmy L. Levens named *The National Law Journal/Law.com’s* 2021 Elite Trial Lawyers **“Elite Women of the Plaintiffs Bar Award.”**
- In 2021, Cohen Milstein’s Sharon K. Robertson named to Benchmark Litigation’s 2021 **“40 & Under Hot List.”**
- In 2021, three Cohen Milstein Attorneys named to Florida Trend’s 2021 **“Florida Legal Elite.”**
- In 2021, Cohen Milstein’s Emmy L. Levens named to Bloomberg Law’s inaugural **“They’ve Got Next: The 40 Under 40.”**
- In 2021, Cohen Milstein’s Richard A. Koffman recognized as GCR’s **“Who’s Who Legal: Thought Leaders – Competition 2022.”**
- In 2021, seven Cohen Milstein Antitrust attorneys named to GCR’s **“Who’s Who Legal: Competition 2021.”**
- In 2021, seven Cohen Milstein attorneys recognized in **“Florida Super Lawyers.”**

- In 2021, twelve Cohen Milstein Attorneys Recognized as 2021 **“Washington, DC Super Lawyers”**; six recognized as 2021 **“Washington, DC Rising Stars.”**
- In 2021, *Legal 500* named Cohen Milstein a **“Leading Firm”** in Antitrust Litigation: Plaintiff; Labor and Employment Disputes: Plaintiff; Products Liability, Mass Torts & Class Action: Plaintiff; and Securities Litigation: Plaintiff.
- In 2021, *Legal 500* named four Cohen Milstein attorneys **“Next Generation Partners.”**
- In 2021, *Legal 500* named eight Cohen Milstein partners **“Leading Lawyers.”**
- In 2021, Cohen Milstein’s Kit A. Pierson **“Ranked”** by Chambers USA for Antitrust: Plaintiff.
- In 2021, Cohen Milstein’s Sharon K. Robertson **“Top Ranked”** by Chambers USA for Antitrust: Plaintiff.
- In 2021, eight Cohen Milstein lawyers named among the **“Lawdragon 500 Leading Plaintiff Consumer Lawyers.”**
- In 2021, Cohen Milstein’s Kalpana Kotagal receives Reel Works **“Change Maker Award.”**
- In 2021, Cohen Milstein was recognized as a **“Leading Firm”** by Chambers USA in Three Categories – Antitrust: Plaintiff; Product Liability: Plaintiff; and Securities Litigation: Plaintiff.
- In 2021, Cohen Milstein named an **“Elite Trial Lawyer”** finalist in eight practice areas by *The National Law Journal*.
- In 2021, *Daily Business Review* recognized Theodore J. Leopold Recognized as a **“2021 Distinguished Leader.”**
- In 2021, *Law360* recognized Julie Goldsmith Reiser as a **“Titan of the Plaintiffs Bar.”**
- In 2021, *The National Law Journal* and *The Trial Lawyer* named Betsy A. Miller and Steven J. Toll among **“America’s 50 Most Influential Trial Lawyers.”**
- In 2021, Lawdragon named Agnieszka Fryszman Named to the **“Lawdragon Global Litigation 500.”**
- In 2021, Lawdragon recognized 12 Cohen Milstein lawyers among the **“500 Leading Lawyers in America.”**
- In 2021, Lawdragon inducted Steven J. Toll into the **“Lawdragon 500 Hall of Fame.”**

## 2020

- In 2020, *Crain’s New York Business* recognized Laura H. Posner among New York’s **“Notable Women in Law.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Class Action Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Environmental Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Life Sciences Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Securities Group of the Year.”**
- In 2020, Cumberland School of Law named Theodore J. Leopold its **“2020 Distinguished Alumnus of the Year.”**
- In 2020, *U.S. News & World Report* and *Best Lawyers* named Cohen Milstein among their **2021 “Best Law Firms”** nationally in ERISA Litigation, Employee Benefits Law, and Labor & Employment Litigation; for Washington, DC in Civil Rights Law, Employee Benefits (ERISA) Law, Employment Law – Individuals, Labor Law – Union, Litigation – ERISA, and Litigation – Labor & Employment; and for West Palm Beach, FL in Mass Tort Litigation / Class Actions – Plaintiffs Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Plaintiffs for West Palm Beach, FL.
- In 2020, *Super Lawyers* recognized five Cohen Milstein attorneys as **“2020 New York – Metro Super Lawyers.”**
- In 2020, Benchmark Litigation recognized Cohen Milstein as a 2021 **“Top Plaintiffs Firm.”**
- In 2020, *Law360’s* Glass Ceiling Report named Cohen Milstein among **“The Best Law Firms for Female Attorneys.”**
- In 2020, Lawdragon named seven Cohen Milstein attorneys to its **“500 Leading Plaintiff Employment Lawyers”** list.

- In 2020, the Human Trafficking Legal Center named Agnieszka M. Fryszman **“Human Trafficking Advocate of the Year.”**
- In 2020, *Crain’s Chicago Business* named Carol V. Gilden one of its **“Notable Women in Law.”**
- In 2020, *Palm Beach Illustrated* named six Cohen Milstein attorneys to its **“Top Lawyers”** list.
- In 2020, *The National Law Journal* named Shaylyn Cochran a **“Washington D.C. Trailblazer.”**
- In 2020, Lawdragon named 15 Cohen Milstein attorneys to its **“500 Leading Plaintiff Financial Lawyers”** list.
- In 2020, *The Best Lawyers in America* named 15 Cohen Milstein attorneys to its 2021 **“Best Lawyers in America”** list.
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **“Antitrust Law Firm of the Year.”**
- In 2020, *Florida Trend* named Poorad Razavi a **“Legal Elite”** in the Civil Trial section.
- In 2020, *Law360* named Emmy L. Levens a **“Rising Star – Class Actions.”**
- In 2020, *Law360* named Shaylyn Cochran a **“Rising Star – Employment.”**
- In 2020, *The Legal 500* named Cohen Milstein a **“Top-Tier”** firm in Labor and Employment: Labor and Employment Disputes (including Collective Actions): Plaintiff.
- In 2020, *The Legal 500* named Cohen Milstein a **“Leading Practice”** in Antitrust, Products Liability, and Securities Litigation.
- In 2020, *Florida Super Lawyers* recognized Nicholas C. Johnson, Leslie M. Kroeger, Theodore J. Leopold as **“Super Lawyers”** in the area of Personal Injury Law (Plaintiff).
- In 2020, *Law360* named Cohen Milstein’s Daniel A. Small a **“Law360 Titan of the Plaintiffs Bar”** for his decades of successful work in antitrust litigation.
- In 2020, *The National Law Journal* named Cohen Milstein’s John Sheehan a **“2020 Plaintiffs’ Trailblazer”** in Environmental Law.
- In 2020, *Daily Business Review* named Cohen Milstein’s Leslie M. Kroeger a **“2020 DBR Distinguished Leader.”**
- In 2020, *Super Lawyers* recognized 17 Cohen Milstein attorneys as **“2020 Washington, DC Super Lawyers”** and seven Cohen Milstein attorneys as **“2020 Washington, DC Rising Stars.”**
- In 2020, *Chambers USA* recognized Cohen Milstein as a leading firm in the **“Antitrust: Plaintiffs – Nationwide”** category.
- In 2020, Lawdragon recognized eight Cohen Milstein lawyers in the **“2020 Lawdragon 500 Leading Plaintiff Consumer Lawyers”** list.
- In 2020, Lawdragon recognized 12 Cohen Milstein lawyers in the **“2020 Lawdragon 500 Leading Lawyers in America”** list.
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **“Antitrust Law Firm of the Year.”**
- In 2020, *Law360* named Cohen Milstein **“Practice Group of the Year – Benefits”** for the firm’s work in 2019.
- In 2020, *Law360* named Cohen Milstein **“Practice Group of the Year – Consumer Protection”** for the firm’s work in 2019.

## 2019

- In 2019, *Law360* named Cohen Milstein’s Sharon K. Robertson **“Life Sciences – MVP”** for her cutting-edge “pay for delay” antitrust class actions in the Life Sciences industry.
- In 2019, Lawdragon named Cohen Milstein’s Agnieszka Fryszman and Steve Toll to **“Lawdragon Legends,”** a list recognizing 30 of the “nation’s elite lawyers” who have been named to the Lawdragon 500 for at least ten years.

- In 2019, ALM and *The National Trial Lawyers* named seven of Cohen Milstein's practice areas to its "**Elite Trial Lawyer – Finalist**" list.
- In 2019, the Seven Hills School awarded Cohen Milstein's Kalpana Kotagal with the "**Norma Martin Goodall Distinguished Alumni Award.**"
- In 2019, the *Chicago Business Journal* named Cohen Milstein's Carol V. Gilden a 2019 "**Woman of Influence.**"
- In 2019, Lawdragon named 15 Cohen Milstein lawyers to its 2019 "**500 Leading Plaintiff Financial Lawyers**" list.
- In 2019, *Law360* named Cohen Milstein's Mary Bortscheller a "**Rising Star.**"
- In 2019, *The Best Lawyers in America* named 12 Cohen Milstein attorneys to its 2020 "**Best Lawyers in America**" list.
- In 2019, Public Justice Foundation named Cohen Milstein one of five finalists for the "**Trial Lawyer of the Year Award.**"
- In 2019, Cohen Milstein's Environmental Toxic Tort practice was named a winner of *The National Law Journal's* "**Elite Trial Lawyers**" Award, and Cohen Milstein's Agnieszka Fryszman and Sharon Robertson were named winners of *The National Law Journal's* "**Elite Women of the Plaintiffs Bar**" Award.
- In 2019, six of Cohen Milstein lawyers were named among the "**Lawdragon 500 Leading Plaintiff Consumer Lawyers.**"
- In 2019, Cohen Milstein's Carol V. Gilden received Lawyer Monthly Magazine's "**Women in Law Award.**"
- In 2019, four of Cohen Milstein partners were named to Benchmark Litigation's "**40 & Under Hot List.**"
- In 2019, Cohen Milstein's Christine E. Webber received the Washington Lawyers' Committee for Civil Rights and Urban Affairs' "**Roderic V.O. Boggs Award.**"
- In 2019, Cohen Milstein's Nicholas C. Johnson and Poorad Razavi were named to Florida Trend's "**Legal Elite.**"
- In 2019, Cohen Milstein's Nicholas C. Johnson was appointed to serve on the **AAJ Board of Governors.**
- In 2019, *The National Law Journal* named Cohen Milstein an "**Elite Trial Lawyer**" finalist in five practice areas and named Agnieszka Fryszman and Sharon Robertson "**Elite Women of the Plaintiffs Bar.**"
- In 2019, *Law360's* 2019 Glass Ceiling Report named Cohen Milstein among "**The Best Law Firms for Female Attorneys.**"
- In 2019, *The Legal 500* recognized Cohen Milstein's Antitrust, Civil Rights & Employment, Products Liability, and Securities Litigation practices as "**Leading Practices,**" and named seven Cohen Milstein attorneys among their "**Leading Lawyers,**" "**Next Generation Lawyers,**" and "**Rising Stars.**"
- In 2019, Cohen Milstein was named to *The National Law Journal's* "**Pro Bono Hot List.**"
- In 2019, 21 Cohen Milstein attorneys were recognized as "**Super Lawyers,**" and nine Cohen Milstein attorneys were recognized as "**Rising Stars.**"
- In 2019, Cohen Milstein's Takisha D. Richardson was named a **Florida Bar Association's Wm. Reece Smith, Jr. Leadership Academy Fellow.**
- In 2019, six of Cohen Milstein's Civil Rights & Employment Litigation lawyers were named among the "**Lawdragon 500 Leading Plaintiff Employment Lawyers 2019.**"
- In 2019, the *Daily Business Review* honored Cohen Milstein with three Professional Excellence Awards, including Theodore J. Leopold, **DBR's 2019 "Distinguished Leaders" award,** Nicolas C. Johnson, **DBR's 2019 "On the Rise" award,** and the firm's Sexual Abuse, Sex Trafficking, and Domestic Violence Litigation team, **DBR's 2019 "Innovative Practice Areas" award.**

- In 2019, four Cohen Milstein lawyers received **“The Burton Awards' Law360 Distinguished Legal Writing Award - Law Firm.”**
- In 2019, nine Cohen Milstein lawyers were named among the **“Lawdragon 500 Leading Lawyers in America.”**

## 2018

- In 2018, *The National Law Journal* and *Trial Lawyer Magazine*, named Steven J. Toll and Betsy A. Miller among **“America’s 50 Most Influential Trial Lawyers.”**
- In 2018, *Law360* named Cohen Milstein **“Practice Group of the Year”** in two categories: Consumer Protection and Environmental.
- In 2018, *Law360* named three partners MVP in the respective practices, including: Theodore J. Leopold as **Law360’s Environmental MVP**, Andrew N. Friedman as **Law360’s Cybersecurity and Privacy MVP**, and Kalpana Kotagal as **Law360’s Employment MVP**.
- In 2018, *The National Law Journal* named Cohen Milstein winner of **“Elite Trial Lawyer of the Year”** in four categories, including Consumer Protection, Counterterrorism, Immigration, and Financial Products, and finalist in five other categories, including Antitrust, Civil Rights, Disability Rights, Employment Rights, and Racial Discrimination.
- In 2018, *The National Law Journal* named Kalpana Kotagal, Betsy A. Miller, and G. Julie Reiser – **“Elite Women of the Plaintiffs Bar.”**
- In 2018, A Better Balance presented Kalpana Kotagal with **“A Better Balance: The Work & Family Legal Center’s Distinguished Public Service Award.”**
- In 2018, the American Antitrust Institute honored Sharon K. Robertson with its **“Outstanding Antitrust Litigation Achievement Award.”**
- In 2018, the NAACP honored Cohen Milstein with its **“Foot Soldier in the Sand Award,”** in recognition of the firm’s outstanding commitment to providing pro bono legal services.
- In 2018, *The Best Lawyers in America* recognized eleven Cohen Milstein attorneys as among the **Best Lawyers in America (2019)**, in their respective areas of law.
- In 2018, *The Best Lawyers in America* singled out and named Joseph M. Sellers **“The Best Lawyers in America 2019, Labor Law Lawyer of the Year – Washington, D.C.”**
- In 2018, *The Best Lawyers in America* singled out and named Milstein’s Leslie M. Kroeger **“The Best Lawyers in America 2019, Mass Tort Litigation / Class Actions “Lawyer of the Year – West Palm Beach, FL.”**
- In 2018, *Palm Beach Illustrated* named seven Cohen Milstein attorneys to its **““Top Lawyers” List.”**
- In 2018, *Benchmark Litigation* named four Cohen Milstein attorneys to its **“40 & Under Hot List.”**
- In 2018, *Florida Trend* named five Cohen Milstein attorneys to its list of **“Florida’s Legal Elite.”**
- In 2018, Lawdragon 500 named five Cohen Milstein attorneys to **“Leading Plaintiff Employment Lawyers.”**
- In 2018, *Crain’s* named Carol V. Gilden one of Chicago’s **“Notable Women Lawyers.”**
- In 2018, Harvard Law School named Kalpana Kotagal a **“Wasserstein Fellow.”**
- In 2018, *Chambers USA Women in Law* honored Kalpana Kotagal with its **“Outstanding Contribution to the Community in Advancing Diversity Award.”**
- In 2018, the *New York Law Journal* named Sharon K. Robertson to its list of **“New York Rising Stars.”**
- In 2018, *The Legal 500: Guide to the US Legal Profession* listed Cohen Milstein’s **Antitrust, Employment Disputes, and Securities Litigation** practices among its **“Leading Practices.”**
- In 2018, the *Daily Business Review* named Leslie M. Kroeger a **“Distinguished Leader.”**
- In 2018, *Law360* named Steven J. Toll a 2018 **“Titan of the Plaintiffs Bar.”**

- In 2018, Leslie M. Kroeger was sworn-in as President-Elect to the Florida Justice Association.
- In 2018, Lawdragon named seven Cohen Milstein attorneys to the 2018 **“Lawdragon 500,”** an annual list of the **500 Leading Lawyers in America.**
- In 2018, Theodore J. Leopold was recognized as an **“Energy and Environmental Trailblazer”** by *The National Law Journal.*
- In 2018, *Super Lawyers* recognized 20 Cohen Milstein attorneys as **“2018 Super Lawyers”** and 12 Cohen Milstein attorneys as **“Super Lawyer Rising Stars.”**

## 2017

- In 2017, *Law360* named Cohen Milstein a **“Practice Group of the Year: Privacy.”**
- In 2017, Steven J. Toll was named a *Law360* **“MVP – Class Action.”**
- In 2017, the *Daily Business Review* named Theodore J. Leopold a **“Most Effective Lawyer of 2017: Class Action.”**
- In 2017, Christopher Lometti, Betsy Miller, and Victoria Nugent were named *The National Law Journal’s* **“Plaintiffs’ Lawyers Trailblazers.”**
- In 2017, *The Best Lawyers in America* recognized seven Cohen Milstein partners as among the **“Best Lawyers in America”** for their respective practices of law.
- In 2017, *Law360* named Cohen Milstein partners, S. Douglas Bunch and Kalpana Kotagal as **“Rising Stars.”**
- In 2017, *The Legal 500* named Cohen Milstein a **Leading Firm** in “Antitrust: Civil Litigation / Class Actions” and “Dispute Resolution: Securities Litigation – Plaintiff.”
- In 2017, *The Legal 500* named Richard A. Koffman to its **“Legal 500 Hall of Fame.”**
- In 2017, *Legal 500* named Sharon K. Robertson and Brent W. Johnson as **“Legal 500 Next Generation Lawyer”** in the area of Antitrust: Civil Litigation/Class Actions.
- In 2017, *Super Lawyers* named Brent W. Johnson as a **“Rising Star”** and a **“Top Rated Antitrust Litigation Attorney in Washington, DC.”**
- In 2017, *Super Lawyers* named Leslie M. Kroeger and Theodore J. Leopold **“Florida Super Lawyers”** and Nicholas C. Johnson **“Florida Rising Stars.”**
- In 2017, the Coalition for Independent Living Options Inc. presented Michael Dolce a Special Acknowledgment Award for his **“Commitment to Ending Sex Crimes against People with Disabilities.”**
- In 2017, *Florida Trend* named Manuel J. Dominguez a **“Legal Elite.”**
- In 2017, Nicholas C. Johnson was elected President of the F. Malcolm Cunningham, Sr. Bar Association.
- In 2017, Leslie M. Kroeger was elected Treasurer to the Florida Justice Association.
- In 2017, *South Florida Legal Guide* named Theodore J. Leopold as a **“Top Lawyer”** and Diana L. Martin a **“Top Up and Comer.”**

## 2016

- In 2016, *Law360* selected Cohen Milstein as a **“Competition Practice Group of the Year”** and a **“Class Action Practice Group of the Year.”**
- In 2016, Women in Wealth Awards selects Carol V. Gilden Selected as **“Best in Securities Litigation Law - Illinois & Excellence Award for Investor Protection Law.”**
- In 2016, Richard A. Koffman was named a *Law360* **“MVP – Competition Law.”**
- In 2016, Martha Geer was selected as a **“North Carolina Leaders in the Law Honoree.”**

- In 2016, the Washington Lawyers' Committee for Civil Rights and Urban Affairs named Cohen Milstein a recipient of its "**Outstanding Achievement Award.**"
- In 2016, for the eighth consecutive year, Cohen Milstein was recognized by *The Legal 500* as one of the leading plaintiff class action antitrust firms in the United States.
- In 2016, Agnieszka Fryszman, Chris Lometti, Kit Pierson, Joe Sellers and Steve Toll were named to the **2016 Lawdragon 500 Leading Lawyers in America.**
- In 2016, *Law360* named Julie Goldsmith Reiser one of the "**25 Most Influential Women in Securities Law.**"
- In 2016, Cohen Milstein is named to *The National Law Journal's* "**Plaintiffs Hot List**" for the fifth time in six years.
- In 2016, *Law360* named Cohen Milstein as one of the top firms for female attorneys.

## 2015

- In 2015, *Law360* named Cohen Milstein as the sole plaintiffs firm to be selected in two "**Practice Groups of the Year**" categories and one of only five class action firms recognized.
- In 2015, Cohen Milstein was named an "**Elite Trial Lawyer Firm**" by *The National Law Journal* for the second year in a row.
- In 2015, Steven J. Toll named a *Law360* "**MVP – Securities Law.**"
- In 2015, Cohen Milstein was selected as a "**Most Feared Plaintiffs Firm**" by *Law360* for the third year in a row.
- In 2015, Richard Koffman was named, for the fifth consecutive year, in *The Legal 500* "**Leading Lawyers**" in "**Litigation - Mass Tort and Class Action: Plaintiff Representation – Antitrust.**"
- In 2015, Theodore J. Leopold and Leslie M. Kroeger were selected as "**Florida Super Lawyers.**"
- In 2015, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as "**Washington DC Super Lawyers.**"
- In 2015, Monya Bunch, S. Douglas Bunch, Johanna Hickman, Kalpana Kotagal, and Emmy Levens were selected as "**Washington DC Rising Stars**" by *Super Lawyers*.
- In 2015, for the fourth time in five years, Cohen Milstein was selected to *The National Law Journal* "**Plaintiffs' Hot List.**"
- In 2015, Carol V. Gilden was selected as "**Pension Funds Litigation Attorney of the Year in Illinois**" for the second year in a row by the Corporate INTL Legal Awards.

## 2014

- In 2014, Cohen Milstein's Antitrust Practice was selected as a "**Practice Group of the Year**" by *Law360*.
- In 2014, Cohen Milstein Partner Kit Pierson was selected as an "**Antitrust MVP**" by *Law360*.
- In 2014, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by *Law360* for the second year in a row. In 2014, Cohen Milstein was selected as an **Elite Trial Lawyer** firm by *The National Law Journal*.
- Cohen Milstein Partners Steven J. Toll, Joseph M. Sellers, Kit A. Pierson, and Agnieszka M. Fryszman Selected to the **2014 Lawdragon 500.**
- Released in 2015, Joseph M. Sellers, Theodore J. Leopold, and Leslie M. Kroeger listed in "**Best Lawyers in America.**"
- Released in 2014, the 2013 SCAS 50 Report on Total Securities Class Action Settlements ranked Cohen Milstein as a top firm.

- In 2014, Cohen Milstein's Theodore J. Leopold was named among the "**Top 100**" **Florida Super Lawyers**, Leslie M. Kroeger was named to the "**Florida Super Lawyers**," and Diana L. Martin was named a "**Florida Rising Star**."
- In 2014, Cohen Milstein's Leslie M. Kroeger was recognized in **Florida Trend's "Florida Legal Elite."**
- In 2014, Cohen Milstein was selected to the selected to the **National Law Journal's Midsize Hot List**.
- In 2014, Cohen Milstein was recognized as a "**Highly Recommended Washington, DC Litigation Firm**" by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2014, Cohen Milstein was ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500** for the sixth year in a row.
- In 2014, Partner Richard Koffman was named, for the fourth consecutive year, in the Legal 500 United States "**Leading Lawyers**" list under the category of "Litigation - Mass Tort and Class Action: Plaintiff Representation - Antitrust".
- In 2014, Cohen Milstein attorneys Agnieszka Fryszman, Julie Goldsmith Reiser, Joseph Sellers, Daniel Sommers, and Steven Toll were recognized as **Local Litigation Stars** by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2014, Cohen Milstein attorneys R. Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as **Washington DC Super Lawyers**.
- In 2014, Cohen Milstein attorneys Monya Bunch, S. Douglas Bunch, Jeffrey Dubner, Johanna Hickman, Joshua Kolsky, Kalpana Kotagal, Emmy Levens, and Michelle Yau were selected as **Washington DC Rising Stars** by Super Lawyers.
- In 2014, Cohen Milstein Partner Carol V. Gilden was selected as the Illinois Pension Fund Attorney of the Year.
- In 2014, Best Lawyers named Cohen Milstein Partner Joseph Sellers D.C. Litigation - Labor & Employment Lawyer of the Year.

## 2013

- In 2013, for the third-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2013, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by Law360.
- In 2013, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fifth year in a row.
- In 2013, Cohen Milstein attorneys Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Kit A. Pierson, Julie G. Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll, and Christine E. Webber were selected as **Washington DC Super Lawyers**.
- In 2013, Cohen Milstein attorney Michelle Yau was selected as **Washington DC Rising Stars** by Super Lawyers. In 2013, Cohen Milstein Partner Carol V. Gilden was selected as a **2013 Illinois Super Lawyer**. She has been selected every year since 2005.

## 2012

- In 2012, for the second-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2012, Cohen Milstein was the recipient of the Judith M. Conti Pro Bono Law Firm of the Year Award from the Employment Justice Center.
- In 2012, Cohen Milstein was recognized as a "Highly Recommended Washington, DC Litigation Firm" by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.
- In 2012, Cohen Milstein was ranked as a top firm by the 2011 SCAS Report on Total Securities Class Action Settlements.



- In 2012, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fourth year in a row.
- In 2012, Partner Joseph M. Sellers was selected as a **Washington DC Super Lawyer**. Mr. Sellers was also selected for this prestigious award in 2007, 2008, 2009, 2010, and 2011.
- In 2012, Partner Steven J. Toll was selected as a **Washington DC Super Lawyer**. Mr. Toll was also selected for this prestigious award in 2007, 2009, 2010, and 2011.
- In 2012, Partner Daniel S. Sommers was selected as a **Washington DC Super Lawyer**. Mr. Sommers was also selected for this prestigious award in 2011.
- In 2012, Partner Christine E. Webber was selected as a **Washington DC Super Lawyer**. Ms. Webber was also selected for this prestigious award in 2007.
- In 2012, Partner Agnieszka M. Fryszman was selected as a **Washington DC Super Lawyer**. In 2012, Partner Kit A. Pierson was selected as a **Washington DC Super Lawyer**.
- In 2012, Partner Carol V. Gilden was selected as an **Illinois Super Lawyer**. Ms. Gilden was also selected for this prestigious award in 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

## 2011

- In 2011, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.
- In 2011, Partner Joseph M. Sellers was selected as a "**Visionary**" by *The National Law Journal*.
- In 2011, Of Counsel Christopher Lometti were selected as **New York - Metro Super Lawyers**.
- In 2011, Partner Joseph M. Sellers and the *Keepseagle v. Vilsack* team were selected as a finalist for the **2011 Trial Lawyer of the Year Award** from the Public Justice Foundation.
- In 2011, **Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500 for the third year in a row.
- In 2011, Partners Steven Toll, Joseph Sellers, and Daniel Sommers were selected as **Washington DC Super Lawyers**. Of Counsel Christopher Lometti were selected as **New York - Metro Super Lawyers**. Partner Carol Gilden was selected as an **Illinois Super Lawyer**.
- In 2011, Cohen Milstein was a recipient of *The National Law Journal's Pro Bono Award*. The Firm was named one of the "six firms that best reflect the pro bono tradition."

## 2010

- In 2010, Partner Joseph M. Sellers was selected as one of "**The Decade's Most Influential Lawyers**" by *The National Law Journal*.
- In 2010, Partner Steven J. Toll was named one of Law360's "**Most Admired Attorneys**". In 2010, Partner Andrew N. Friedman was selected as a **Washington DC Super Lawyer**.
- In 2010, Partner Agnieszka M. Fryszman was selected as a finalist for the **Trial Lawyer of the Year Award** from the Public Justice Foundation.
- In 2010, Partners Joseph M. Sellers and Agnieszka M. Fryszman were both selected as one of the **Lawdragon 500 Leading Lawyers in America**.
- In 2010, Cohen Milstein was once again ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500.

## Attorney Profiles – Executive Committee

### Steven J. Toll

Steven J. Toll is managing partner at Cohen Milstein, a member of the executive committee, and co-chair of the Securities Litigation & Investor Protection practice. He guides the firm's mediation efforts and strategy, and has been lead or principal counsel on some of the most high-profile stock fraud lawsuits in the past 30 years, arguing important matters before the highest courts in the country.

Mr. Toll has built a distinguished career and reputation as a fierce advocate of the rights of shareholders and has guided mediation efforts on the firm's largest and most important matters (both securities fraud and other consumer type cases), a role in which he has earned the trust of mediators, as well as the respect of defense counsel. Mr. Toll has been involved in settling some of the most important mortgage-backed securities (MBS) class-action lawsuits in the aftermath of the financial crisis, including: Countrywide Financial Corp., which settled for \$500 million in 2013; Residential Accredited Loans Inc. (RALI), which settled for \$335 million in 2014; Harborview MBS, which settled for \$275 million, also in 2014; and Novastar MBS, which settled for \$165 million in 2019. He also negotiated a \$90 million settlement of a suit against MF Global.

Among Mr. Toll's important cases is the Harman class action suit, where Mr. Toll argued and won an important ruling from the U.S. Court of Appeals for the District of Columbia Circuit. The Circuit Court reinstated the suit against electronics maker Harman International Industries; the ruling is significant in that it places limits on the protection allowed by the safe harbor rule for forward-looking statements. A \$28.25 million settlement was achieved in this action in 2017.

Mr. Toll was also co-lead counsel in the BP Securities class action securities fraud lawsuit that arose from the devastating Deepwater oil spill in the Gulf of Mexico. The Fifth Circuit Court of Appeals affirmed the certification of the class of investors alleged to have been injured by BP's misrepresenting the amount of oil spilling into the Gulf of Mexico, and thus minimizing the extent of the cost and financial impact to BP of the clean-up and resulting damages. In February 2017, the court granted final approval to a \$175 million settlement reached between BP and lead plaintiffs for the "post-explosion" class.

Mr. Toll was co-lead counsel in the consumer class action suit against Lumber Liquidators, a lawsuit that alleges the nationwide retailer sold Chinese-made laminate flooring containing hazardous levels of the carcinogen formaldehyde while falsely labeling their products as meeting or exceeding California emissions standards, a story that was profiled twice on 60 Minutes in 2015. In October 2018, the court granted final approval to a settlement of \$36 million between Lumber Liquidators and plaintiffs.

Over the course of his career, Mr. Toll has received numerous industry recognitions for his work. Most recently, in 2019, The National Law Journal and The Trial Lawyer named him one of "America's 50 Most Influential Trial Lawyers." In 2018 and 2019, Mr. Toll was named a Legal 500 "Leading Lawyer – Securities Litigation." In 2018, he was named Law360's "Titan of the Plaintiffs Bar." In 2017, he was named Law360's "MVP – Class Actions," in 2015, he was named Law360's "MVP – Securities," and since 2014, he has been perennially named to the Lawdragon 500, which recognizes the 500 leading lawyers in America. He is also annually recognized as a Super Lawyer in Securities Litigation and Class Action/Mass Torts.

Mr. Toll writes and speaks extensively on securities litigation and investor protection issues. His articles have appeared in Harvard Law School Forum on Corporate Governance and Financial Regulation and Cohen Milstein's Shareholder Advocate.

Mr. Toll has provided a great deal of pro bono legal work during a career at Cohen Milstein that spans more than three decades. In addition, he has been an active supporter of Children's Hospital National Medical Center for

decades, setting up an endowment in his daughter's name to help the Hospital's leukemia patients and their families (his daughter passed away from leukemia in 1987), plus more recently establishing regular programs for music and laughter for the children during their hospital stays.

Mr. Toll is a graduate of the Wharton School of the University of Pennsylvania, earning a B.S., cum laude, and received his J.D. from Georgetown University Law Center, where he was Special Project Editor of *The Tax Lawyer*.

### **Benjamin D. Brown**

Benjamin D. Brown is a partner at Cohen Milstein and co-chair of the Antitrust practice. Mr. Brown is also the chairman of the firm's Executive Committee and the Managing Partner-Elect.

Mr. Brown, who previously served in the Antitrust Division of the United States Department of Justice, brings to his role extensive experience leading complex litigation, particularly antitrust class actions.

Mr. Brown has been appointed by federal courts to serve as co-lead counsel for plaintiffs in numerous important matters, such as *In re Plasma-Derivative Protein Therapies Antitrust Litigation* (N.D. Ill.); *Carlin, et al. v. DairyAmerica, Inc.* (E.D. Cal.); and *Mixed Martial Arts (MMA) Antitrust Litigation* (D. Nev.). He has led cases through trial and argued appeals and stands ready to take cases through to the finish line.

Mr. Brown is also an adjunct professor at Georgetown Law School, where he teaches Complex Litigation, a course that explores the policy and procedures implicated by aggregated, high stakes, multi-party litigation, especially class actions.

Mr. Brown is also a leader in the area of takings cases, claims that are brought under the Fifth Amendment of the U.S. Constitution for the unconstitutional taking of property without compensation. He also represents individuals or groups in litigations and confidential arbitrations involving complex commercial disputes, particularly those involving regulated markets.

Currently, Mr. Brown is serving as lead or co-lead counsel on a number of large, complex antitrust cases. He charts the course of his cases from deciding on the claims to be brought, to the litigation strategy to be pursued, and through the approach to settlement or trial.

Notable matters include:

- *Mixed Martial Arts (MMA) Antitrust Litigation* (D. Nev.): Cohen Milstein is co-lead counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or “UFC” – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied the defendant's motion to dismiss the case in September 2015 and discovery is ongoing. Mr. Brown is co-lead in this class action.
- *Moehrl v. National Association of Realtors, et al.* (N.D. Ill.): Cohen Milstein is co-lead counsel in a class action on behalf of home sellers in twenty major metropolitan areas throughout the United States against the National Association of Realtors (NAR) and the nation's four largest real estate brokers and franchisors. Plaintiffs allege a conspiracy to require home sellers to pay the broker representing the buyer of their homes, and to pay at an inflated amount, in violation of federal antitrust law. The district court denied the defendants' motions to dismiss in October 2020 and Plaintiffs filed their motion for class certification in February of 2022. Mr. Brown is co-lead in this class action.
- *In Re: Rail Freight Fuel Surcharge Antitrust Litigation II* (D.D.C.): Mr. Brown represents three of the world's largest container shippers—Yang Ming, NYK, and “K” Line—in antitrust lawsuits filed in the U.S. District Court for the District of Columbia against the four largest United States railroads. Plaintiffs allege that,

beginning as early as July 1, 2003, Defendants conspired to price fix Plaintiffs' intermodal contracts in violation of Section 1 of the Sherman Act, including by agreeing to impose similar or identical rail freight fuel surcharges ("FSCs") in their multi-year contracts.

- *Pacific Steel Group v. Commercial Metals Company, et al.* (N.D. Ca.): Mr. Brown represents Pacific Steel Group, a steel rebar fabricator located in San Diego, California, seeking damages and injunctive relief against Commercial Metals Company or "CMC" for violations of antitrust and other laws. As alleged, Pacific Steel Group decided to build a steel mill to produce rebar in order to become a more efficient competitor through vertical integration. Because the mill would have created competition for CMC in the local rebar manufacturing market that CMC currently dominates, the complaint alleges CMC took various actions to delay or prevent Pacific Steel from building its mill. The district court denied CMC's motion to dismiss in April 2022.

Mr. Brown is also currently litigating a number of takings lawsuits, including the following notable matters:

- *Ideker Farms, et al. v. United States of America* (Fed. Cl.): Cohen Milstein represents Ideker Farms and more than 400 other plaintiffs located in six states along the Missouri River in a landmark mass action lawsuit in the U.S. Court of Federal Claims alleging that the federal government took land and flooding easements over lands owned by farmers without any compensation in violation of the takings clause of the Fifth Amendment. Mr. Brown has helped lead the litigation team, including during both a months-long liability trial in 2017, and a subsequent damages trial in 2020 for bellwether plaintiffs. During those trials, Mr. Brown directed and cross-examined numerous witnesses, including eleven different experts. In December 2020, the Court ruled largely in favor of bellwether plaintiffs. An appeal to the Federal Circuit was heard in 2022.
- *Milne v. United States of America* (Fed. Cl.): Cohen Milstein represents over 60 individual plaintiff farmers and a proposed class of additional farmers and landowners in a Fifth Amendment takings case that overlaps substantially with the Ideker case. Mr. Brown helps spearhead that litigation.

Mr. Brown joined Cohen Milstein in 2005, following four years as a trial attorney with the Antitrust Division of the United States Department of Justice. At the Department of Justice, Mr. Brown led and assisted in numerous investigations, litigations and trials involving antitrust activity and mergers. Mr. Brown also served as a Special Assistant United States Attorney in the Eastern District of Virginia, where he prosecuted criminal cases. Prior to serving in the U.S. Department of Justice, Mr. Brown was in private practice with one of Washington's most prestigious defense firms, where he counseled defendants in antitrust litigation matters. This experience has provided him with insights into defense strategies and has earned him the respect of defendants' counsel.

Mr. Brown has been recognized as one of the nation's "Leading 500 Lawyers in America" by Lawdragon. The Legal 500 has also recognized Mr. Brown as one of the nation's leading class action antitrust attorneys. Mr. Brown is annually recognized in Global Competition Review's Who's Who Legal: Thought Leaders – Competition, and he has been listed as one of Washington D.C.'s "Leading Star" Plaintiffs' Litigators by Benchmark Litigation, recognizing his writing, his depositions and his arguments in court. He is a frequent panelist at legal industry gatherings and is a recognized expert on antitrust litigation whose opinions on the newest developments and trends in antitrust litigation are often quoted in the media. Mr. Brown is a contributing author of the ABA's Antitrust Class Actions Handbook and served as a state editor for the ABA's Survey of State Class Action Law. He authored several chapters on private antitrust recovery actions for the Global Competition Review's Antitrust Review of the Americas, and co-authored with fellow partner Douglas Richards, "Predominance of Common Questions – Common Mistakes in Applying the Class Action Standard," Rutgers Law Journal (Vol. 41).

Mr. Brown is currently serving on the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago's School of Law.

Mr. Brown attended the University of Wisconsin – Madison, where he graduated Phi Beta Kappa, majoring in Philosophy, and earned his J.D., from Harvard Law School, graduating cum laude. He served as Law Clerk to the Hon. Chief Judge Juan R. Torruella, U.S. Court of Appeals for the First Circuit. The United States District Court for the District of Columbia has honored Mr. Brown for his outstanding commitment to pro bono litigation.

### **Michael B. Eisenkraft**

Michael B. Eisenkraft is a partner at Cohen Milstein where he serves in both the Antitrust and Securities practices. He also serves as the administrative partner of the firm's New York office, chairs the New Business Development Committee, and is a member of the Executive Committee.

Mr. Eisenkraft leads the firm's efforts in prosecuting innovative cases relating to the protection of global financial markets.

He currently represents putative classes of investors asserting antitrust or securities claims in the Stock Lending, Interest Rate Swaps, Treasuries, Bristol CVR, KOSPI 200, XIV ETN, and Overstock.com markets. He has also helped investors recover hundreds of millions of dollars in the firm's mortgage-backed securities cases and represents businesses in commercial contingency litigation including cases asserting claims for breach of contract and trade secret misappropriation.

Furthermore, Mr. Eisenkraft serves as co-chair of the Committee on Federal Courts for the New York County Lawyers' Association and on the Judicial Screening Committee for the Westchester County Democratic Party. In 2020, he was appointed by Law360 to serve on its Securities Editorial Advisory Board.

For his work, Mr. Eisenkraft has been widely honored by the legal industry, including by Lawdragon as one of the 500 Leading Plaintiff Financial Lawyers In the United States, by Benchmark Litigation as a "Litigation Future Star" (2023) and "40 & Under Hot List" (2018 and 2019), by Legal 500 as a "Next Generation Partner" (since 2020), by New York Super Lawyers (Rising Star 2013-2019, Super Lawyer 2022) In 2018, Law360 named Mr. Eisenkraft a "Rising Star -- Securities," professionals under 40 whose work belies their age. In the area of Securities. He is rated "AV Preeminent" by Martindale-Hubbell.

Mr. Eisenkraft's notable successes at Cohen Milstein include:

- NovaStar MBS Litigation (S.D.N.Y.): \$165 million settlement on behalf of investors in a Securities Act litigation involving billions of dollars of mortgage-backed securities underwritten by the Royal Bank of Scotland, Wachovia and Deutsche Bank.
- HEMT MBS Litigation (S.D.N.Y.): \$110 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by Credit Suisse after more than seven years of litigation, which included the first written decision certifying a Securities Act class of mortgage-backed securities in the country.
- RALI MBS Litigation (S.D.N.Y.): \$335 million in settlements on behalf of investors in mortgage-backed securities issued by Residential Capital and underwritten by various investment banks after seven years of litigation.
- Harborview MBS Litigation (S.D.N.Y.): \$275 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by the Royal Bank of Scotland and its subsidiaries after more than six years of litigation.
- Dynex Litigation (S.D.N.Y.): \$7.5 million settlement on eve of trial on behalf of investors in asset-backed securities. The decision certifying the class in the case was the first decision within the Second Circuit certifying a class of asset-backed bond purchasers under the 1934 Act.

- China MediaExpress Litigation (S.D.N.Y.): \$12 million settlement with auditor defendant in case involving alleged fraud at Chinese reverse merger company China MediaExpress. One of the largest settlements with an auditor defendant in a case involving a Chinese reverse merger company.
- LIBOR (Exchange Traded Class) (S.D.N.Y.): \$187 million in settlements with defendants, the largest class action settlement of manipulation claims in the history of the Commodity Exchange Act, 7 U.S.C. § 1 et seq.

Mr. Eisenkraft's current cases include:

- In Re: Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Court-appointed co-lead counsel in antitrust class action alleging that major investment banks conspired to prevent an all to all market for interest rate swaps from developing.
- In Re: Treasuries Securities Auction Antitrust Litigation (S.D.N.Y.): Court-appointed co-lead counsel in antitrust and Commodity Exchange Act class action alleging manipulation of the multi-trillion dollar market for U.S. Treasuries and related instruments.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Leading antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- Chahal v. Credit Suisse Grp. AG, et al. (S.D.N.Y.): Court-appointed co-lead counsel in securities class action alleging fraud and market manipulation of XIV Exchange Traded Note market.
- In re: Overstock Securities Litigation: (D. Utah): Court-appointed sole Lead Counsel in class action alleging materially false and misleading statements and omissions and engineering a market manipulation scheme during the Class Period of Overstock.com securities.
- Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC, et al. (S.D.N.Y.): Securities litigation against preeminent market makers for repeated market manipulation tactics involving spoofing of company stock.

Mr. Eisenkraft served as a law clerk to the Honorable Judge Barrington D. Parker of the United States Court of Appeals for the Second Circuit. He is the author or co-author of numerous articles on legal issues in the securities and antitrust fields among other subjects.

Mr. Eisenkraft attended Brown University, where he received a B.A., magna cum laude and Phi Beta Kappa, and graduated cum laude from Harvard Law School.

### **Theodore J. Leopold**

Theodore J. Leopold is a partner at Cohen Milstein and co-chair of the Complex Tort Litigation and Consumer Protection practice. He is also a member of the firm's executive committee.

Mr. Leopold's practice is devoted solely to trial work, with a focus on complex product liability, environmental toxic torts, managed care abuse, consumer class actions, and catastrophic injury and wrongful death litigation. He has tried cases throughout the country and has recovered multi-million-dollar verdicts, including jury verdicts in the eight-figure and nine-figure amounts.

Mr. Leopold litigates high-stakes, complex lawsuits on behalf of consumer safety issues, particularly as it relates to product defects, automobile safety and managed care matters. In 2010, he obtained a \$131 million jury verdict against the Ford Motor Company, the ninth-largest verdict against an automobile company in U.S. history.

Mr. Leopold also has had the honor of being court-appointed Interim Co-Lead Class Counsel in two high-profile putative environmental toxic tort class actions, including In re Flint Water Cases, which resulted in a \$626 million partial settlement (granted final approval on November 10, 2021) and the Cape Fear River Contaminated Water

Class Action Litigation. Mr. Leopold also serves as lead counsel in the LensCrafters and General Motors Litigation class actions.

Currently, Mr. Leopold is litigating these notable matters:

- Cape Fear River Contaminated Water Litigation (E.D.N.C.): On January 4, 2018, Mr. Leopold was court-appointed Interim Co-Lead Class Counsel to consolidate and oversee a series of five putative environmental toxic tort class actions filed against E.I. DuPont de Nemours Company and The Chemours Company for knowingly discharging PFAS, such as GenX, and other “forever chemicals” into the Cape Fear River, one of North Carolina’s principal drinking water sources.
- Underwood v. Meta Platforms, Inc. (Facebook) (Sup. Ct. Cal., Alameda Cnty.): On January 26, 2022, Mr. Leopold filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook, Inc., alleging that by connecting users to extremist groups and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Mr. Underwood.
- General Motors Litigation (E.D. Mich.): On September 26, 2019, Mr. Leopold was court-appointed Lead Counsel and Chair of the Plaintiffs’ Steering Committee to consolidate and oversee consumer class actions filed on behalf of thousands of GM vehicle owners across 30 states against GM related to defective eight-speed automatic transmissions in vehicles manufactured between 2015 and 2019.
- Edwards v. Tesla (Sup. Ct. Cal., Alameda Cnty.): On June 25, 2020, Mr. Leopold filed a product liability lawsuit against Tesla, Inc. on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla Model 3 during an accident.
- Edenville and Sanford Dam Failure Litigation (Mich. Ct. of Claims; Cir. Ct., Cnty. Saginaw, Mich.): On June 24, 2020, Mr. Leopold filed two separate property damage lawsuits against Michigan State Government agencies, including the Michigan Department of Environment, Great Lakes & Energy and Michigan Department of Natural Resources for blatantly mismanaging and failing to properly maintain the Edenville and Sandford dams, which catastrophically failed on May 19, 2020. Cohen Milstein is representing more than 300 residents and businesses in Midland County and Saginaw County, Michigan and the surrounding areas, including, Arenac, Gladwin, and Iosco counties.
- Bernardo, et al. v. Pfizer, Inc., et al. (S.D. Fla.): On February 20, 2020, Mr. Leopold filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subjected to an increased risk of developing cancer.
- Johannesson, et al. v. Polaris Industries (D. Minn.): On July 31, 2017, Mr. Leopold, lead counsel, filed a class action suit against Polaris Industries, the manufacturer of the Sportsman all-terrain vehicles (ATVs), alleging the ATVs have a design defect that makes them dangerous to drive.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Mr. Leopold, as lead counsel, is representing a putative class of purchasers of LensCrafters’ Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being “five times more accurate” in measuring pupillary distance than traditional methods, to induce customers to purchase LensCrafter’s higher-priced prescription lens products. On December 13, 2021, the United States Eastern District of New York granted class certification to purchasers of LensCrafters’ Accufit Digital Measurement System (Accufit) services.
- Doe v. Chiquita Brands International (S.D. Fla.): Mr. Leopold is representing families of banana workers and others killed or tortured by the Autodefensas Unidas de Colombia, a foreign terrorist organization designated by the United States, which was allegedly receiving financial support and firearms and ammunition from Chiquita, a U.S. corporation with operations throughout Colombia.

Examples of some of Mr. Leopold’s litigation successes are:

- In re Flint Water Cases (E.D. Mich.): Mr. Leopold was court-appointed Interim Co-Lead Class Counsel to oversee a group of toxic tort class actions filed on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other contaminants in the city's drinking water. On November 10, 2021, the United States District Court for the Eastern District of Michigan granted final approval of a landmark \$626.25 million settlement against the State of Michigan. On August 11, 2021, Judge Levy granted class certification on liability claims in the ongoing litigation against the other defendants.
- HCA Litigation (M.D. Fla.): Mr. Leopold was lead counsel in a class action lawsuit alleging that HCA hospitals billed inflated fees for emergency room radiology services provided to people involved in automobile accidents and who received care that was covered by their Florida Personal Injury Protection (PIP) insurance. In December 2018, Cohen Milstein secured final approval of a \$220 million injunctive relief settlement on behalf of the class.
- Quinteros, et al v. DynCorp, et al (D.D.C.): Mr. Leopold represented over 2,000 Ecuadorian farmers and their families who suffered physical and mental injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. The bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. In July 2017, Mr. Leopold successfully settled the case.
- Mincey v. Takata (Cir. Ct., Duval Cnty., Fla.): Mr. Leopold was the lead attorney in a lawsuit brought on behalf of Patricia Mincey, a Florida woman who was paralyzed when the driver's side airbag in her car deployed too aggressively during a vehicle collision. The injuries Ms. Mincey sustained in the accident ultimately led to her death. In groundbreaking litigation at the forefront of what would become a Department of Justice investigation and the largest defective product recall in automobile history, Ms. Mincey alleged that the airbag system in her car, manufactured by Takata Corporation, was defective and that Takata knowingly hid the defect from consumers. On July 15, 2016, immediately before a hearing was to be held on Plaintiff's motions to depose the CEO of Takata and to amend the complaint to plead a claim for punitive damages, Mr. Leopold successfully resolved the case.
- Lindsay X-LITE Guardrail Litigation (State Crts.: Tenn., S.C.): Mr. Leopold successfully represented more than five the families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective X-Lite on state roadways.
- Caterpillar Product Liability Litigation (D.N.J.): Mr. Leopold was co-lead counsel in a class action lawsuit alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. Mr. Leopold developed the case and led all aspects of the litigation, which he successfully resolved in September 2016 for \$60 million.
- Cole v. Ford (Cir. Ct., Jasper Cnty., Miss.): Mr. Leopold was co-trial attorney for the family of former New York Mets infielder Brian Cole who was killed when the Ford Explorer he was driving rolled over, ejecting him from the vehicle. The lawsuit charged that the seat belt in the Explorer was defective in that it failed to keep Mr. Cole in his seat. Following two hung juries, eleven of the 12 jury members, in the third trial, agreed on the verdict and found for the Cole family in the amount of \$131 million.
- Quinlan v. Toyota (S.D. Fla.): Mr. Leopold was lead counsel in a product liability case against Toyota Motor Company after Bret Quinlan was paralyzed when his Toyota Camry suddenly and without warning began accelerating and failed to respond to the brakes. Mr. Leopold successfully resolved the case prior to trial.
- Chipps v. Humana (Cir. Ct., Palm Beach Cnty., Fla.): Mr. Leopold tried one of the first managed care abuse cases in the country after Humana wrongfully denied physical and occupational therapy for a 6-year-old child with cerebral palsy. The jury returned the largest punitive damage award on behalf of an individual in Florida history, and this seminal case was featured in the movie Damaged Care.



- Carrier v. Trinity (Cit. Ct., Sullivan Cnty., Tenn): Mr. Leopold represented the Carrier family in this wrongful death matter. The death occurred as a result of the guardrail safety device failing. Instead of protecting the driver, the guardrail intruded into the passenger compartment of the vehicle and impaled the driver, causing her death. Mr. Leopold successfully resolved the case in October 2016.

Mr. Leopold is the past president of Public Justice Foundation, one of the nation's preeminent litigation and advocacy organizations that fights for consumer justice through precedent-setting and socially significant individual and class action litigation.

Mr. Leopold is also frequently recognized by peers as being among the best in his area of practice. He was named a Law360 Titan of the Plaintiffs Bar (2022), as well as to Lawdragon's "500 Leading Lawyers in America" (2020, 2021) and Lawdragon's "500 Leading Plaintiff Consumer Lawyers" (2019 – 2022) lists. In 2019 and 2021, he was named Daily Business Review's "Distinguished Leader" and in 2019 Best Lawyers in America named Mr. Leopold "Lawyer of the Year – West Palm Beach, Florida" for Mass Tort Litigation / Class Actions – Plaintiffs. In 2018, Mr. Leopold was named a "Law360 MVP: Environmental," recognizing the top five practitioners in the United States from both the Defense and Plaintiffs' Bar in this area of law. Other recent recognitions include: The National Law Journal: "2018 Energy and Environmental Trailblazer"; Daily Business Review's "Most Effective Lawyer of 2017: Class Action"; In addition, he was nominated for "Trial Lawyer of the Year" by the Public Justice Foundation for his ground-breaking litigation involving the managed care industry, and his work has been featured in the National Law Journal's "Top Verdicts of the Year." Annually, Best Lawyers in America recognizes Mr. Leopold for his work in: Mass Tort Litigation / Class Actions; Personal Injury Litigation; Product Liability Litigation; Qui Tam Law. He is also consistently recognized by Best Lawyers in America in the fields of Product Liability Litigation – Plaintiffs, as well as by Florida Super Lawyers and Palm Beach Illustrated.

Mr. Leopold lectures frequently at professional gatherings on such issues as personal injury, product liability, class action litigation, trial tactics and consumer justice. He is also author and co-author of several legal publications, including Florida Insurance Law and Practice (Thomson/West). Additionally, he has earned the Florida Bar Civil Trial Certification, the highest level of recognition by the Florida Bar for competency and experience within civil trial law.

Mr. Leopold is a graduate of the University of Miami, where he received a B.A. He earned his J.D. from Cumberland School of Law, Samford University.

### **Sharon K. Robertson**

Sharon Robertson is a partner at Cohen Milstein and a member of the Antitrust practice. She is also a member of the firm's Executive Committee.

Ms. Robertson is a nationally recognized leader in complex, multi-district antitrust litigation, particularly in pharmaceutical antitrust class actions. Since 2020, Chambers USA has named Ms. Robertson a "Top Ranked" lawyer in "Antitrust: Plaintiff – New York and USA – Nationwide," while Lawdragon has included her on its "500 Leading Lawyers in America" list annually since 2019. In 2019, The National Law Journal named her as one of nine "Elite Women of the Plaintiffs Bar," an award that recognizes female lawyers who "have consistently excelled in high-stakes matters on behalf of plaintiffs over the course of their careers." In the same year, Law360 named Ms. Robertson a "Life Sciences-MVP" for her "hard-earned successes" and "record-breaking deals." In 2018, the American Antitrust Institute honored her with its prestigious "Outstanding Antitrust Litigation Achievement by a Young Lawyer" award for her role in securing one of the largest recoveries on behalf of end-payors in a federal generic suppression case in over a decade. Similarly, for five consecutive years, The Legal 500 has selected her as a "Next Generation Lawyer" (2017-2021), an honor bestowed upon only 10 lawyers under 40 years old across the country, who are positioned to become leaders in their respective fields. Likewise, The New York Law Journal recognized her as a Rising Star (2018) – one of only twenty individuals selected to receive this honor. In addition,

Benchmark Litigation selected Ms. Robertson for inclusion on its “40 & Under Hot List” for four consecutive years (2018-2021) and Law360 named her as one of five “Rising Stars” (2018) in the field of competition law whose “professional accomplishments belie their age,” as did Super Lawyers (2014-2016). Ms. Robertson has also been recognized by Law360 as one of a few female litigators to secure leadership roles in high-profile MDLs, such as *In re Lidoderm Antitrust Litigation* (March 16, 2017).

Ms. Robertson is spearheading Cohen Milstein’s efforts in pay-for-delay pharmaceutical antitrust lawsuits, a cutting-edge and industry-defining area of law, which allege that the defendant brand manufacturer entered into non-competition agreements with generic manufacturers in order to delay entry of lower-priced generic products. Ms. Robertson also heads up the firm’s generic price-fixing cases, which allege that certain generic drug manufacturers conspired to inflate the prices of generic drug products.

These cases come on the heels of a government investigation led by the U.S. Department of Justice alleging similar conduct, which, while ongoing, has already resulted in indictments and guilty pleas.

In addition to leading complex MDLs, Ms. Robertson is an accomplished trial lawyer. She served as a trial team member in two of the largest antitrust cases tried to verdict, including *In re Urethanes Antitrust Litigation*, where the jury returned a \$400 million verdict, which was trebled by the Court, as required by antitrust law, resulting in the largest price-fixing verdict in U.S. history, as well as *In re Nexium Antitrust Litigation*, the first pharmaceutical antitrust case to go to trial following the Supreme Court’s landmark decision in *FTC v. Actavis*, 570 U.S. 756 (2013).

Ms. Robertson represents End-Payor Plaintiffs in the following pharmaceutical antitrust cases in which the firm serves as Co-Lead Counsel:

- *In re Lipitor Antitrust Litigation* (D.N.J.): Plaintiffs allege that Pfizer, the manufacturer of the cholesterol drug Lipitor, the best-selling drug in pharmaceutical history, conspired with Ranbaxy, the generic manufacturer, to delay its introduction of a generic Lipitor product. On August 21, 2017, the Third Circuit handed a sweeping victory to Plaintiffs, reviving their antitrust claims. This case was ranked by Law360 as “The Biggest Competition Cases Of 2017 So Far” (July 7, 2017).
- *In re Tracleer Antitrust Litigation* (D. Md.): Plaintiffs allege that Defendant Actelion engaged in an anticompetitive scheme to withhold samples of its life-saving pulmonary arterial hypertension medication from would-be rivals, under the guise of the REMs program, which conduct ultimately delayed generic competition.
- *In re Bystolic Antitrust Litigation* (S.D.N.Y.): Plaintiffs allege that Forest Laboratories Inc., now a part of AbbVie, engaged in an illegal scheme with pharmaceutical generic manufacturers not to make generic versions of Bystolic®, a hypertension prescription medication containing the active pharmaceutical ingredient nebivolol hydrochloride.
- *In re Seroquel Antitrust Litigation* (D. Del.): Plaintiffs allege that Defendant AstraZeneca Pharmaceuticals LP struck deals with generic drug manufacturers Handa Pharmaceuticals LLC, Par Pharmaceutical Inc. and Accord Pharmaceuticals Inc., inducing the generics to delay launching generic versions of Seroquel XR, AstraZeneca’s prescription drug treatment for schizophrenia, bipolar disorder and depression, for five years in exchange for AstraZeneca committing to delay the launch of its own authorized generic.

In addition, Ms. Robertson co-chairs the executive committee in *In re Humira Antitrust Litigation* (N.D. Ill.) and serves as a member of the executive committee in similar cases in which Cohen Milstein plays a significant role, including: *In re Niaspan Antitrust Litigation* (E.D. Pa.), *In re Suboxone Antitrust Litigation* (E.D. Pa.) and *In re ACTOS Antitrust Litigation* (S.D.N.Y.).

Ms. Robertson represents direct purchaser plaintiffs in a number of cases as well, including *In re Zetia Antitrust Litigation* (E.D. Va.), *In re Generic Pharmaceuticals Pricing Antitrust Litigation* (E.D. Pa.), *In re Sensipar (Cinacalcet Hydrochloride Tablets) Antitrust Litigation* (D. Del.), and *In re Intuniv Antitrust Litigation* (D. Mass.).

Ms. Robertson has successfully litigated the following notable matters:

- Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): We served as Co-Lead Counsel in an antitrust class action alleging a nationwide conspiracy to fix the prices of polyether polyols. Ms. Robertson played a leading role in helping obtain settlements with several defendants for \$139 million and was a member of the trial team that obtained a \$400 million jury verdict (trebled to more than \$1 billion), which was affirmed on appeal by the Tenth Circuit. The case against Dow ultimately settled for \$835 million while Dow's petition for certiorari was pending before the Supreme Court, bringing the total recovery to \$974 million – nearly 250% of the damages found by the jury.
- In re Lidoderm Antitrust Litigation (N.D. Cal.): We served as Co-Lead Counsel for the End-Payor Class in a suit alleging that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, Plaintiffs obtained final approval of a \$104.75 million settlement – more than 40% of Plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Loestrin Antitrust Litigation (D.R.I.): We served as Co-Lead Counsel for the End-Payor Plaintiffs in a case alleging that Warner Chilcott PLC entered into agreements to delay the introduction of a generic version of the contraceptive drug Loestrin and thereafter engaged in a "product hop" to further impede generic entry. The case settled on the last business day before trial for \$63.5 million – representing one of the largest settlements in a federal generic suppression case in over a decade. On September 1, 2020, the settlements received final approval.
- In re Ranbaxy Fraud Antitrust Litigation (D. Mass.): We represent the Direct Purchaser Class in this antitrust, federal RICO, and state consumer protection MDL, alleging Ranbaxy manipulated the U.S. Food and Drug Administration's generic drug approval process to block competitors from coming to market and forcing purchasers to pay supracompetitive prices for its valganciclovir hydrochloride and valsartan products. On the eve of trial, Ranbaxy settled with the Direct Purchaser Class for \$340 million.
- In re Aggrenox Antitrust Litigation (D. Conn.): We served as an executive committee member on behalf of the End-Payor Plaintiffs and alleged that Defendants Boehringer Ingelheim and Teva Pharmaceutical engaged in anticompetitive conduct that delayed the availability of a less-expensive generic versions of Aggrenox. The case settled for \$54 million.
- In re Solodyn Antitrust Litigation (D. Mass.): We served as a member of the executive committee and Ms. Robertson played a significant role in coordinating discovery on behalf of the End-Payor Plaintiffs. The case, which settled mid-trial, resulted in a \$43 million recovery for the Class.
- In re Blood Reagents Antitrust Litigation (E.D. Pa.): Plaintiffs alleged that the two leading producers of blood reagents, Ortho–Clinical Diagnostics, Inc. and Immucor, Inc., conspired to raise prices on traditional blood reagents. In September 2012, Immucor reached a settlement with Plaintiffs. On July 19, 2017, the Court denied in part Ortho's Motion for Summary Judgement. Ms. Robertson was slated to serve as one of four lead trial counsel in the case, which was set for trial in June of 2018 but ultimately settled for a total recovery of \$41.5 million.
- In re Wellbutrin SR Antitrust Litigation (E.D. Pa.): We represented the Direct Purchaser Plaintiffs in this case alleging that Defendant GSK filed and then continued "sham" patent infringement lawsuits against two manufacturers of generic drugs, Eon and Impax, to delay competition to GSK's blockbuster antidepressant, Wellbutrin SR. The case settled before trial for \$49 million.
- Albany and Detroit Nurses Litigation (N.D.N.Y.; E.D. Mich.): We represented registered nurses employed by hospitals in Albany and Detroit in class actions alleging a wage-fixing conspiracy. Ms. Robertson obtained settlements with five Albany Defendants totaling over \$14 million. In the Detroit case, Ms. Robertson helped obtain \$98 million in settlements with eight Defendants.
- Indonesian Villagers Litigation (D.D.C.): Ms. Robertson represented Indonesian villagers in a lawsuit against Exxon Mobil over torture and extrajudicial killings allegedly committed by the Defendant's security forces (a unit of the Indonesian military).

Ms. Robertson is a member of the Professional Development and Mentoring Committee, which she co-chaired for almost a decade, and serves on the firm's Diversity Committee. She is also an active member of the Executive Committee for the Antitrust Section of the New York State Bar Association.

While attending law school, Ms. Robertson was an intern in the Litigation Bureau of the Office of the New York State Attorney General and the United States Court of Appeals for the Second Circuit. Additionally, while in law school, Ms. Robertson was selected as an Alexander Fellow and spent a semester serving as a full-time Judicial Intern to the Hon. Shira A. Scheindlin, U.S. District Court for the Southern District of New York.

Ms. Robertson graduated from State University of New York at Binghamton, magna cum laude with a B.A. in Philosophy, Politics and Law. She earned her J.D. from the Benjamin N. Cardozo School of Law, where she served as Notes Editor of the Cardozo Public Law, Policy and Ethics Journal.

Prior to attending law school, Ms. Robertson worked on the campaign committee of Councilman John Liu, the first Asian American to be elected to New York City's City Council.

## Attorney Profiles – Partners

### Gary L. Azorsky

Gary L. Azorsky is a partner at Cohen Milstein, and co-chair of the Whistleblower/False Claims Act practice. Mr. Azorsky joined Cohen Milstein in 2012, establishing the practice. He pursues whistleblower cases under the federal and state false claims act statutes in the health care, pharmaceutical, banking and defense contractor industries and other industries that conduct business with the government. Mr. Azorsky specializes in the complex, highly detailed process for filing and pursuing these cases. In his practice, he has helped right wrongs and to recover nearly \$2.5 billion in defrauded funds for federal and state governments, including hundreds of millions of dollars for whistleblower clients.

Most recently, Mr. Azorsky served as co-lead counsel in the qui tam action against the pharmaceutical company Wyeth pending in the District of Massachusetts, in which more states joined to intervene along with the government of the United States than had ever before intervened in a qui tam action. (United States of America et al., ex rel. Lauren Kieff, v. Wyeth, No.1:03-CV-12366-DPW [D.Mass.].) The \$784.6 million settlement was the seventh-largest False Claims Act recovery on record and the second-largest recovery in history involving a single class of drugs. Mr. Azorsky worked alongside Department of Justice attorneys and states Attorneys General throughout the 12-year pendency of the case.

Mr. Azorsky was actively involved in precedent-setting cases, such as the series of Ven-A-Care cases, which were among the first large FCA multi-state cases and laid the groundwork for much of the false claims act litigation that goes on today. He has also represented whistleblowers in False Claims Act cases involving defense contractors, off-label marketing and misbranding by pharmaceutical companies and fraud in connection with the banking industry, for-profit colleges and student loan programs. In addition, Mr. Azorsky represents whistleblowers in tax fraud claims against large and small corporations through the IRS Whistleblower Office, as well as whistleblowers alleging violations of the Foreign Corrupt Practices Act and violations of the federal securities laws filed with the SEC Whistleblower Office.

Mr. Azorsky served as co-counsel for the whistleblower on the following representative matters:

- United States of America ex rel. Ven-A-Care of the Florida Keys Inc. v. Dey Laboratories, et al., Civil Action No. 05-11084 (D. Mass) (\$280 Million settlement in December 2010)
- United States of America ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 07-10248 (D. Mass.) (\$280 Million settlement in December, 2010)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) (\$6.5 Million settlement with Dey Laboratories, Inc. in March 2010)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) (\$9.57 Million settlement with Schering-Plough in December 2009)
- Florida ex rel. Ven-A-Care of the Florida Keys Inc. v. Boehringer Ingelheim Corp, et al., Civil Action No. 98-3-32A (Leon Cty., Fla.) (\$8.5 Million settlement with Boehringer Ingelheim in December 2009)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Roxane Laboratories, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., Ben Venue Laboratories, Inc. and Boehringer Ingelheim Corporation, Civil Action No. GV3-03079 (Travis Cty., Tex.) (\$10 Million settlement with Boehringer Ingelheim in November 2005)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Warrick Pharmaceuticals Corporation, Schering Plough Corporation, Schering Corporation, Civil Action No. GV002327 (Travis Cty., Tex.) (\$27 Million settlement with Schering-Plough in May 2004)
- Texas ex rel. Ven-A-Care of the Florida Keys Inc. v. Dey, Inc., Dey, L.P., Civil Action No. GV002327 (Travis Cty., Tex.) (\$18.5 Million settlement with Dey Laboratories, Inc. in June 2003)

Mr. Azorsky is recognized for his expertise. He has served as an expert witness in a legal malpractice case concerning qui tam practice. He has provided expert guidance on the False Claims Act in congressional hearings, as well as before the Vermont Senate Judiciary Committee in support of the passage of a False Claims Act for the state. In addition, he regularly speaks before professional audiences regarding the federal and state False Claims Acts.

Mr. Azorsky is a member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its qui tam provisions. Prior to joining Cohen Milstein, in addition to his Whistleblower/False Claims Act practice, he was actively involved in groundbreaking civil rights, commercial and intellectual property litigation, including Internet and software industry-related litigation.

Mr. Azorsky is a graduate of the University of Pennsylvania, with a B.A. in English, and received his law degree from Cornell University Law School.

### **Christopher Bateman**

Christopher Bateman is a partner in Cohen Milstein's Antitrust practice. In this role, he represents a broad range of individuals and organizations in civil litigation, particularly class actions and antitrust litigation.

Mr. Bateman's focus includes emerging antitrust issues within financial markets, and antitrust and securities issues relating to cryptocurrencies. Since 2021, Mr. Bateman has been recognized as a New York Metro Rising Star by Super Lawyers. An active member of the legal community, in 2022 Mr. Bateman was named a Vice Chair of the ABA Antitrust Section's U.S. Comments & Policy Committee.

Mr. Bateman is working on the following high-profile matters:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as Co-Lead Counsel and represents the Public School Teachers' Pension and Retirement Fund of Chicago and other proposed buy-side investor class members in this ground breaking putative antitrust class action against numerous Wall Street investment banks. Plaintiffs allege that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.
- Iowa Public Employees' Retirement System, et al. v. Bank of America Corp. et al. (S.D.N.Y.): Cohen Milstein is representing Iowa Public Employees Retirement System and other investors who allege that six of the world's largest investment banks, including Bank of America, Credit Suisse, Goldman Sachs, JP Morgan, Morgan Stanley, and UBS, conspired together to prevent the modernization of the \$1.7 trillion stock lending market in order to maintain control over a critical component of a strong economy.
- In Re: Da Vinci Surgical Robot Antitrust Litigation (N.D. Cal.): Cohen Milstein serves as Interim Co-Lead Counsel in this consolidated antitrust class action against Intuitive Surgical, Inc. Plaintiffs allege that Intuitive engages in an anticompetitive scheme under which it ties the purchase or lease of its must-have, market-dominating da Vinci surgical robot to the additional purchases of (i) robot maintenance and repair services and (ii) unnecessarily large numbers of the surgical instruments, known as EndoWrists, used to perform surgery with the robot—a violation of Sections 1 and 2 of the Sherman Act.

Before joining Cohen Milstein, Mr. Bateman was a law clerk for the Honorable Naomi Reice Buchwald, U.S. District Court for the Southern District of New York. Before that, he was a litigation attorney at a distinguished global law firm, where he worked with clients in the financial services and energy sectors.

Mr. Bateman received his B.A., cum laude, High Honors, from Dartmouth College, where he was a Rufus Choate Scholar. He received his J.D., cum laude, from Harvard Law School, where he received Dean's Scholar awards in Civil

Procedure and in Federal Courts and the Federal System. While in law school, Mr. Bateman was an Article Selection Editor for the Harvard Civil Rights-Civil Liberties Law Review. He is the co-author of "Toward Greener FERC Regulation of the Power Industry," 38 Harvard Environmental Law Review 275 (2014).

Before attending law school, Mr. Bateman was an editorial associate at Vanity Fair for several years, where he wrote about politics, civil rights, culture, and environmental issues.

### **Mary J. Bortscheller**

Mary J. Bortscheller is a partner at Cohen Milstein and a member of the Employee Benefits practice. She represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Ms. Bortscheller is a hands-on, strategic litigator, thoroughly versed in the complexities of ERISA law. In 2019, she was named a Law360 "Rising Star," recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

Ms. Bortscheller is involved in a series of groundbreaking cases involving employer-sponsored defined benefit plans known as "church plans," where non-profit health care systems in the United States claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Ms. Bortscheller also represents employees in litigation involving 401(k) plans and Employee Stock Ownership Plans (ESOPs) in complex breach of fiduciary duty litigation under ERISA.

Ms. Bortscheller is currently litigating the following matters:

- AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents plaintiffs and a putative class of participants and beneficiaries in the AT&T Pension Benefit Plan in a case alleging AT&T improperly calculated the pension benefits of certain retirees who retired early and/or took a joint and survivor annuity. As a result of the improper calculation, plaintiffs received a lower pension benefit than they were entitled to under ERISA.
- Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein is representing participants and beneficiaries in the Triad Manufacturing, Inc. Employee Stock Ownership Plan in this case alleging the defendant selling shareholders and ESOP trustee breached their fiduciary duties and engaged in prohibited transactions in connection with the sale of Triad Manufacturing, Inc. to the ESOP. On August 21, 2020, U.S. District Judge Ronald A. Guzmán denied defendants' Motion to Compel Arbitration. On September 10, 2021, the Seventh Circuit upheld Judge Guzmán's decision, citing an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law.
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein is representing plaintiff in a suit brought on behalf of participants and beneficiaries of the Western Milling Employee Stock Ownership Plan. Plaintiff, a participant in the ESOP, alleges that the ESOP's fiduciaries breached their fiduciary duties and engaged in prohibited transactions under ERISA by causing the ESOP to purchase 100% of Kruse-Western, Inc. company stock at an inflated stock price which did not take into account significant liabilities of the company. The value of the company stock subsequently dropped by 90% shortly after the purchase and has not significantly recovered.

Ms. Bortscheller was also significantly involved in the following high-profile successes:

- BlackRock 401(k) Plan Litigation (N.D. Cal.): Cohen Milstein represented participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k)

savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets. In November 2021, the court granted final approval of a \$9.65 million settlement.

- Bon Secours Health System Church Litigation (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over \$102 million, one of the largest settlements of its kind.
- Trinity Health Corporation Church Plan Litigation (D. Md.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Trinity Health Corp. pensions plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a \$75 million settlement.
- Advocate Health Care Church Plan Litigation (N.D. Ill.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants, who alleged that the hospital's plan was not a church plan and thus the class was entitled to ERISA's protections. After the Supreme Court redirected this case back to the district court, in June 2018, the court granted final approval of a settlement, which provides a guarantee of accrued benefits for ten years and significant non-monetary equitable consideration.
- SSM Health Care Church Plan Litigation (E.D. Mo.): Cohen Milstein served as lead counsel to a class of defined benefit participants who alleged that SSM Health improperly operated its defined benefit pension plans under the ERISA church plan exemption, thereby underfunding the plans as required by ERISA to the detriment of plan benefits. In June 2019, the court granted final approval of a \$60 million settlement.

In addition to her ERISA case work, Ms. Bortscheller has represented, pro bono, unaccompanied minor clients in immigration proceedings. Prior to joining Cohen Milstein in 2013, Ms. Bortscheller practiced at a boutique commercial litigation firm based in Chicago, where she represented plaintiffs in antitrust and qui tam matters, as well as defendants in general commercial litigation.

Ms. Bortscheller graduated from Gustavus Adolphus College with a B.A., cum laude, in Political Science, and received her J.D., cum laude, from American University, Washington College of Law. During law school, she served as Features Editor and Senior Editor of Sustainable Development Law & Policy and was a staff member of the American University International Law Review. Ms. Bortscheller served as a judicial intern with the United States District Court for the District of Minnesota.

Before attending law school, Ms. Bortscheller served in the United States Peace Corps teaching English as a foreign language in Sichuan Province, China. Following law school, she was a volunteer for the Chicago Legal Clinic, Inc.'s Foreclosure Defense Project.

#### **Brian E. Bowcut**

Brian E. Bowcut is a partner at Cohen Milstein and a member of the Public Client practice. He represents state Attorneys General and other public-sector clients as outside counsel in investigations and lawsuits involving fraudulent and deceptive trade practices. Mr. Bowcut, who joined the firm in 2015, brings with him deep experience representing the federal government in complex litigation and in enforcement investigations. In his role as a senior lawyer in the Public Client practice group, he brings this experience to bear in false claims and consumer fraud enforcement at the state and local levels.

Mr. Bowcut's recent representations include:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its enforcement actions against Grubhub and DoorDash for violations of the City's consumer protection laws. These cases allege



widespread deceptive and unfair business practices impacting local restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash; click here to view the lawsuit filed against Grubhub.

- Opioid Litigation: Representing the states of Indiana, New Jersey and Vermont in investigations and litigation against entities responsible for the deceptive marketing and sale of opioids. Publicly filed enforcement actions in these matters included Indiana's actions against Purdue, the Sackler family, and pharmaceutical distributors Cardinal Health, McKesson, and AmerisourceBergen; New Jersey's actions against Purdue, the Sackler family, and Janssen; and Vermont's actions against Purdue, the Sackler family, and distributors Cardinal and McKesson. A \$26 billion nationwide settlement of litigation against the distributors and Janssen was finalized in 2022. A nationwide settlement in principle with Purdue and the Sackler family, valued at more than \$6 billion, remains pending in bankruptcy proceedings.
- Nursing Homes: Representing the State of New Mexico in litigation related to Medicaid fraud and deceptive marketing by skilled nursing facilities that promised, but failed to provide, basic care to their elderly residents. Mr. Bowcut briefed and successfully argued the defendants' motion to dismiss the case.
- Energy Drinks: Representing a state government in litigation against Living Essentials, Inc., the creator of 5-Hour ENERGY, for misrepresenting the benefits of its so-called "liquid energy shot." Mr. Bowcut is preparing this case for trial.

Mr. Bowcut formerly was a Trial Attorney and Senior Trial Counsel in the Civil Division of the U.S. Department of Justice for nine years. Most recently, as a member of the Fraud Section, he investigated and litigated fraud across an array of government programs, from Medicare fraud by nursing facilities, hospices and medical device makers to schemes involving federal mortgage, foreign aid, and TARP funds. Before that, as a member of the Environmental Torts Section, he defended the United States as lead counsel in large-scale tort litigation. Prior to joining DOJ, Mr. Bowcut practiced at a preeminent national law firm, where he specialized in pharmaceutical product liability, and commercial litigation. He has argued cases in numerous federal district courts, the U.S. Court of Appeals for the Fourth Circuit, and the District of Columbia Court of Appeals.

Mr. Bowcut attended Utah State University, graduating summa cum laude with a B.A. in Journalism and Political Science. He earned his J.D. from Duke Law School, graduating cum laude and Order of the Coif, and also earned an M.A. in Public Policy from Duke. During law school, Mr. Bowcut was an Articles Editor for the Duke Law Journal. After law school, he clerked for the Honorable Stanley S. Brotman of the United States District Court for the District of New Jersey.

### **Molly J. Bowen**

Molly J. Bowen is a partner in Cohen Milstein's Securities Litigation & Investor Protection practice, where she represents public pension funds and other institutional investors in securities class actions and shareholder derivative lawsuits.

Ms. Bowen is recognized by the legal industry for her clear judgment and unique blend of appellate and trial experience, making her an exceptional litigator. Indeed, she has played a leading role in some of the nation's most significant shareholder derivative litigation to date, including FirstEnergy Shareholder Derivative Litigation, involving the largest political bribery scheme in Ohio history, and in *In re Alphabet Shareholder Derivative Litigation* and *In re Pinterest Derivative Litigation*, both of which resulted in groundbreaking settlements to hold corporate boards of directors accountable for systemic workplace discrimination, harassment, and toxic work cultures.

For her work, Ms. Bowen has been recognized by Law360, which named her a 2022 "Rising Star - Securities" and by The National Law Journal, which named her a 2021 "Rising Star of the Plaintiffs Bar."

Ms. Bowen's experience in securities litigation is complemented by extensive consumer fraud experience, having worked with Cohen Milstein's Public Client practice, representing the interests of state attorneys general. Ms.

Bowen also brings to bear perspective from the defense bar, having worked as a litigator at a prominent national defense firm.

Some of her current matters include:

- In re Wells Fargo & Company Securities Litigation (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel, representing Public Employees' Retirement System of Mississippi and the State of Rhode Island, Office of the General Treasurer, in this putative securities class action. Plaintiffs allege that, in the wake of a widespread consumer banking scandal, Wells Fargo misrepresented its compliance with numerous federal consent orders and the timing of removal of an unprecedented asset cap.

Some of her recent successes include:

- FirstEnergy Shareholder Derivative Litigation (S.D. Ohio; N.D. Ohio): Cohen Milstein represented the Massachusetts Laborers Pension Fund in two shareholder derivative actions against certain officers and directors and nominal defendant FirstEnergy related to the Company's involvement in Ohio's largest public bribery schemes. On August 23, 2022, the Court granted final approval of a \$180 million global settlement. Law360 ranked this as one of the top 10 securities litigation settlements in 2022.
- In re Alphabet Shareholder Derivative Litigation (Sup. Ct. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against Alphabet, Inc.'s Board of Directors. Shareholders alleged that the Board allowed powerful executives to sexually harass and discriminate against women without consequence. In November 2020, the Court granted final approval of a historic settlement, including a \$310 million commitment to fund diversity, equity, and inclusion initiatives and robust reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes.
- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represented the Employees Retirement System of Rhode Island and other Pinterest shareholders in a shareholder derivative lawsuit against certain Board members and executives. Shareholders alleged that Defendants personally engaged in and facilitated a systematic practice of illegal discrimination of employees on the basis of race and sex. On June 9, 2022, the Court granted final approval of a settlement including a \$50 million funding commitment and holistic workplace and Board-level reforms.
- Credit Suisse Group AG Securities Litigation (S.D.N.Y.): Cohen Milstein, as Co-Lead Counsel, represented the International Brotherhood of Teamsters Local No. 710 Pension Plan in a securities class action against Credit Suisse Group AG, involving misrepresentations of its trading and risk limits, and subsequent accumulation of billions of dollars in extremely risky, highly illiquid investments. In December 2020, the Court granted final approval of a \$15.5 million settlement.

Ms. Bowen also maintains an active pro bono practice involving notable matters, such as:

- Vivian Englund v. World Pawn Exchange, LLC (Cir. Ct., Coos Cnty., Or.): Cohen Milstein represented Kirsten Englund's estate in a wrongful death case against the gun dealer and pawn shop that sold guns used in her murder. The case established precedent on firearms dealers' liability for online straw sales and resulted in an important settlement. For their work on the case, Cohen Milstein was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award.

Ms. Bowen regularly publishes on developments in securities law and was named a winner of the Burton Awards in 2019 for "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018).

Prior to pursuing private practice, Ms. Bowen was a law clerk to the Honorable Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit.

Ms. Bowen graduated magna cum laude from Macalester College with a B.A. in Geography in 2007. She earned her J.D., summa cum laude, graduating first in her class, from Washington University School of Law in 2013, where she served as the Articles Editor for the Washington University Law Review.

### **Robert A. Braun**

Robert A. Braun, a partner at Cohen Milstein and a member of the Antitrust practice, focuses on cutting-edge, industry-changing antitrust and class action litigation on behalf of individuals and small businesses harmed by price-fixing and other illegal corporate behavior.

Mr. Braun recently helped obtain more than \$50 million in settlements in *In re Resistors Antitrust Litigation* (N.D. Cal.), and has also played significant roles in suits involving anticompetitive behavior in the real estate services industry, LIBOR manipulation (\$180 million in preliminary settlements), price-fixing by manufacturers of metal pipes and fittings (\$47 million in settlements across two cases), and “pay-for-delay” and other practices by pharmaceutical companies to limit access to less expensive generic drugs.

Mr. Braun is also experienced in international claims litigation, including representing victims of state-sponsored terrorism in suits amounting to nearly \$1 billion in judgments.

Currently, Mr. Braun is litigating the following notable matters:

- *Moehrl v. National Association of Realtors* (N.D. Ill.): Cohen Milstein represents a proposed class of home sellers in litigation against the four largest national real estate services conglomerates, and their trade association. The class alleges that the defendants violated federal antitrust law by conspiring to require sellers to pay the broker representing their homes’ buyer (and to do so at an inflated level). Mr. Braun assists in managing all aspects of the case.
- *In re: Iran Beirut Bombing Litigation* (D.D.C.): Cohen Milstein represents victims and family members of victims in the 1983 Beirut Marine Barracks bombing—the deadliest act of terrorism against Americans prior to September 11, 2001. Mr. Braun manages this litigation, which has resulted in judgments amounting to more than \$942 million against the government of Iran.

Mr. Braun also maintains an active pro bono practice. He is currently a member of the legal teams in *Citizens for Responsibility & Ethics in Washington v. Trump* (S.D.N.Y.) and *District of Columbia v. Trump* (D. Md.), which seek to enjoin President Trump’s unconstitutional receipt of emoluments on behalf of restaurant and hotel plaintiffs and the Attorneys General of Maryland and the District of Columbia.

Prior to joining Cohen Milstein, Mr. Braun served as a law clerk for Hon. Carolyn Dineen King (5th Cir.), and Hon. Lee H. Rosenthal (S.D. Tex.). He was also an Arthur Liman Fellow at Southeast Louisiana Legal Services, where he worked on public interest housing litigation.

Mr. Braun earned his J.D. at Yale Law School and attended Princeton University, graduating summa cum laude. During law school, Mr. Braun was an editor of the *Yale Journal of International Law* and a member of the mock trial team.

## S. Douglas Bunch

S. Douglas Bunch is a partner at Cohen Milstein, a member of the Securities Litigation & Investor Protection practice, and co-chair of the firm's Pro Bono Committee.

Mr. Bunch has also had the unique honor of being appointed by President Joseph R. Biden as Public Delegate of the United States to the United Nations, a position he currently holds.

As a securities litigator, Mr. Bunch represents individual and institutional investors in securities and shareholder class actions. His work and path-breaking legal arguments in precedent-setting cases, such as *In re Harman International Industries, Inc. Securities Litigation*, have earned him numerous accolades, including being named to Benchmark Litigation's 2019 "40 & Under Hot List" and as one of Law360's "Rising Stars – Securities" (2017), honoring lawyers under the age of 40 whose professional accomplishments transcend their age.

Mr. Bunch played a leading role in the following securities class actions:

- *In re Harman International Industries, Inc. Securities Litigation* (D.D.C.): Cohen Milstein obtained a precedent-setting ruling by the U.S. Court of Appeals for the D.C. Circuit, reversing the dismissal of the case by the lower court, protecting investors by limiting the scope of protection afforded by the so-called "safe-harbor" for forward-looking statements in the Private Securities Litigation Reform Act of 1995.
- *In re GreenSky Securities Litigation* (S.D.N.Y.): Cohen Milstein was Co-Lead Counsel in this securities class action involving fintech company GreenSky's failure to disclose in its Initial Public Offering documents significant facts about the Company's decision to pivot away from its most profitable line of business. This failure led to its stock plummeting and causing significant investor harm. In October 2021, the Court granted final approval of a \$27.5 million settlement.
- *Plumbers & Pipefitters National Pension Fund v. Davis* (S.D.N.Y.): Cohen Milstein was Lead Counsel in this high-profile, putative securities class action involving Performance Sports Group's failure to disclose that its purported financial success was not based on sustainable, "organic" growth as represented, but was driven by the Company's manipulative and coercive sales practices, which included pulling orders forward to earlier quarters and pressuring customers to increase their orders without regard for market demand. The SEC and Canadian authorities subsequently initiated investigations, and PSG filed for bankruptcy. On November 22, 2022, the Court granted final approval of a \$13 million settlement, which is in addition to the \$1.15 million settlement Plaintiff obtained in Performance Sports Group's 2016 bankruptcy proceedings through the prior approval of the U.S. Bankruptcy Court for the District of Delaware and the Ontario Superior Court in Canada.
- *In re ITT Educational Services, Inc. Securities Litigation* (S.D.N.Y.): Cohen Milstein achieved a \$16.96 million settlement against ITT and two of its officers. The case was hotly contested and involved unraveling complex accounting treatments governing ITT's transactions with third-party lenders, whereby the third parties agreed to assume liability for student loan defaults up to a particular threshold. The case settled during discovery after the parties had reviewed and analyzed over two million pages of documents, after depositions had been taken, and while class certification briefing was ongoing.
- *Rubin v. MF Global, Ltd.* (S.D.N.Y.): Cohen Milstein achieved a significant \$90 million settlement in this precedent-setting case, in which the U.S. Court of Appeals for the Second Circuit sided with the Plaintiffs and held that companies cannot make false or misleading statements in their offering documents, and then hide behind associated risk disclosures in an attempt to escape liability. The National Law Journal named Cohen Milstein to its Plaintiffs' Hot List for its achievement.
- *MBS Litigation* (S.D.N.Y.): Cohen Milstein is a legal pioneer in mortgage-backed securities (MBS) litigation, having negotiated some of the largest and most significant MBS settlements in history and achieved more than \$2.5 billion in investor recoveries. Mr. Bunch played a key role in these cases, particularly those against Residential Accredited Loans, Inc. (RALI) (\$335 million settlement), Harborview Mortgage Loan Trusts (\$275 million settlement), and Bear Stearns & Co. Inc. (\$500 million settlement).

Mr. Bunch is currently involved in the following notable cases:

- Cape Fear River Contaminated Water Litigation (E.D.N.C.): Cohen Milstein is Interim Co-Lead Class Counsel in this environmental toxic tort class action filed against E.I. du Pont de Nemours & Company and The Chemours Company. Plaintiffs allege that for more than four decades, DuPont and Chemours polluted the Cape Fear River near Wilmington, North Carolina, with a chemical called GenX; contaminated the water supply in five North Carolina counties; and misrepresented the Company's conduct to state and federal regulators, all while knowing that GenX was carcinogenic. Plaintiffs allege extensive property damage and personal injury as a result of Defendants' actions.
- In re EQT Corporation Securities Litigation (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this securities class action, in which Plaintiffs allege that EQT misrepresented the "substantial synergies" that were expected to arise from a planned merger with rival natural gas producer Rice Energy due to "the contiguous and complementary nature of Rice's asset base with EQT's."

For his legal achievements, Mr. Bunch has received numerous industry recognitions, including being named to Benchmark Litigation's 2019 "40 & Under Hot List," and Law360's "Rising Stars – Securities" (2017), recognizing outstanding lawyers under the age of 40. Mr. Bunch has also been annually recognized by Super Lawyers for Securities Litigation (2014-2020).

Mr. Bunch is Co-Founder and Chairman of Global Playground, Inc., a nonprofit that builds schools and other educational infrastructure in the developing world, and serves or has served on the boards of the Northeast Conference on the Teaching of Foreign Languages, Ascanius: The Youth Classics Institute, and Virginia21. Mr. Bunch has twice been appointed, in 2016 and again in 2020, by Governors of Virginia to the Board of Visitors of the College of William & Mary.

A member of Phi Beta Kappa, Mr. Bunch graduated with a B.A., summa cum laude, from the College of William & Mary, earned an Ed. M. from Harvard University, and received his J.D. from William & Mary Law School, where he was a recipient of the Benjamin Rush Medal in 2006. In 2011, he was awarded William & Mary's inaugural W. Taylor Reveley III award, recognizing alumni who have demonstrated a sustained commitment to public service.

### **Robert W. Cobbs**

Robert W. Cobbs is a partner at Cohen Milstein and a member of the Antitrust practice.

Currently, Mr. Cobbs is litigating the following notable matters:

- Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-lead counsel in a groundbreaking antitrust class action representing the Public School Teachers' Pension and Retirement Fund of Chicago and a proposed buy-side investor class against numerous Wall Street investment banks. The class alleges that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as co-counsel in a groundbreaking antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- ExxonMobil - Aceh, Indonesia (D.D.C.): Cohen Milstein is representing eleven Indonesian citizens in a cross-border human rights lawsuit involving allegations of physical abuse, sexual assault, other forms of torture, and murder committed by Indonesian soldiers who were hired by ExxonMobil Corporation.

Mr. Cobbs' recent successes include:

- Google Wi-Fi Litigation (N.D. Cal.): Cohen Milstein was co-lead counsel in a nationwide class action alleging that Google violated the Wiretap Act when its Street View vehicles secretly collected payload data from unencrypted Wi-Fi networks. Plaintiffs defeated a motion to dismiss raising novel Wiretap Act issues, and the ruling was affirmed on interlocutory appeal to the Ninth Circuit. The court approved a \$13 million settlement in March 2020.
- Anadarko Basin Oil and Gas Lease Antitrust Litigation (W.D. Okla.): Cohen Milstein was co-lead counsel for plaintiffs in a class action alleging that Chesapeake Energy, SandRidge Energy and a former executive of both companies conspired to rig bids for leases of land held by private landowners in parts of Oklahoma and Kansas. This litigation followed the U.S. Department of Justice's early 2016 indictment of a co-founder and former CEO of Chesapeake Energy for allegedly participating in this bid-rigging conspiracy. Plaintiffs alleged that Defendants illegally conspired to stabilize and depress the price of royalty and bonus payments paid to landowners in the Anadarko Basin oil and gas province — a massive geological formation holding natural gas and oil deposits that includes large parts of Oklahoma and Kansas. Pursuant to this conspiracy, Plaintiffs alleged that Defendants communicated about and agreed on prices, allocated particular geographic areas between themselves, and rigged bids for leases of land, lowering acquisition prices across the region and thereby harming the proposed class of landowners. In April 2019, the court granted final approval of a \$6.95 million settlement.

Prior to joining Cohen Milstein, Mr. Cobbs clerked for the Hon. Pierre N. Leval, United States Court of Appeals for the Second Circuit; and for the Hon. J. Rodney Gilstrap, United States District Court for the Eastern District of Texas.

Mr. Cobbs graduated from Amherst College with a B.A. in English and Russian, magna cum laude with distinction, and received his J.D. from Yale Law School. During law school, he served as a Notes Editor of the Yale Law Journal and as a Submissions Editor of the Yale Journal on Regulation.

### **Brian Corman**

Brian Corman is a partner in Cohen Milstein's Civil Rights & Employment practice.

Mr. Corman helps spearhead the firm's fair housing litigation efforts, representing fair housing organizations, tenant unions, and those who have been unlawfully denied housing or otherwise discriminated against, often in cases addressing novel state and federal claims. A hands-on litigator, Mr. Corman leads these cases from initial investigation, to briefing and presenting oral arguments before the court, to overseeing settlement negotiations. Mr. Corman's practice also focuses on employment class actions, as well as complicated wage and hour cases under the federal Fair Labor Standards Act (FLSA) and state wage statutes.

Mr. Corman's current high-profile cases include:

- Thompson, et al. v. Trump, et al. (D.D.C.): The NAACP and Cohen Milstein represent 11 Members of Congress in a suit alleging that Donald J. Trump, Rudolph Giuliani, the Proud Boys and the Oath Keepers conspired to prevent members of Congress from carrying out their duty to certify the results of the 2020 election on January 6, 2021.
- Amazon Flex Driver Arbitrations (AAA): Cohen Milstein represents thousands of current and former Amazon Flex delivery drivers in California who allege that Amazon intentionally misclassified them as independent contractors to avoid paying them overtime and to deny them other benefits of California labor law.
- Long Island Housing Services, Inc., et al. v. NPS Holiday Square LLC, et al. (E.D.N.Y.): Cohen Milstein is representing Long Island Housing Services (LIHS), Suffolk Independent Living Organization (SILO) and Suffolk

County residents in a Fair Housing Act race and disability discrimination class action against a prominent Long Island-area property management company.

- *Castillo v. Western Range Association* (D. Nev.): Cohen Milstein represents H-2A shepherds in a class action against Western Range Association in a wage and hour dispute.

Recent notable litigation successes include:

- *Park 7 Tenant Union - Right to Organize Litigation* (D.C. Sup. Ct.): Cohen Milstein, along with the Washington Lawyers' Committee for Civil Rights and Urban Affairs, represented the Park 7 Tenant Union and individual tenants of Park 7 Apartments, an affordable housing apartment building in Washington D.C., against the property's owner and property manager. Plaintiffs alleged that Defendants violated their "right to organize," which is protected under D.C.'s Right of Tenants to Organize Act. In October 2021, the parties signed a first-of-its-kind Consent Agreement that established the procedures by which the Park 7 Tenant Union can operate free from interference and retaliation.
- *Lopez, et al. v. Ham Farms, LLC, et al.* (E.D.N.C.): Cohen Milstein represented hundreds of migrant seasonal and H-2A farm labor workers in a wage and hour dispute under the FLSA, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and the North Carolina Wage & Hour Act. On May 14, 2021, the Court granted final approval of a class action settlement with a total value of \$1 million. At the final approval hearing on May 14, Judge James C. Dever III commended Plaintiffs' counsel for the "excellent [settlement] papers," which were written by Mr. Corman.
- *Sutton v. McCoy* (N.D. Ga.): Cohen Milstein and the ACLU represented a plaintiff in a race-based Fair Housing Act discrimination lawsuit, where the plaintiff claimed she was unjustly evicted for inviting an African-American family to her home. In February 2020, Cohen Milstein and the ACLU settled the case, requiring that the landlords admit to their discriminatory actions and making racist statements in violation of the Fair Housing Act, apologize for the harm they caused, and agree to pay the plaintiff \$150,000.
- *Gentiva Health Services* (N.D. Ga.): Cohen Milstein represented hundreds of health care workers in a nationwide class action against Gentiva, one the country's largest home health care service providers. Plaintiffs sought unpaid overtime wages under FLSA. In June 2017, the court granted final approval of a confidential settlement.
- *Long Island Housing Services, Inc., et al. v. Village of Mastic Beach* (E.D.N.Y.): Cohen Milstein represented LIHS and African American tenants in a Fair Housing Act race discrimination case. The case settled in August 2017 for \$387,500.

Prior to joining Cohen Milstein in 2015, Mr. Corman was a Litigation Associate at a top-tier defense firm, where he focused on Foreign Corrupt Practices Act internal investigations for Fortune 500 clients, as well as pro bono cases in federal district court and before the Supreme Court.

Following law school, Mr. Corman clerked for the Honorable Harry Pregerson of the Ninth Circuit Court of Appeals. He then participated in a D.C. Bar Association Pro Bono Fellowship at the Lawyers' Committee for Civil Rights Under Law, working on education, voting rights and fair housing cases.

Mr. Corman earned his law degree from the University of California, Berkeley, School of Law, where he was an editor of the California Law Review, a member of the Jessup International Law Moot Court Team, co-chaired the Berkeley Law Expulsion Clinic, and externed for the Honorable William Alsup of the U.S. District Court for the Northern District of California. Mr. Corman received his B.A., summa cum laude, Phi Beta Kappa, in Political Science from Columbia University School of General Studies.

Mr. Corman was a professional ballet dancer for eight years, performing with the Houston Ballet and Washington Ballet, among other companies.

## **Alison Deich**

Alison Deich is a partner in Cohen Milstein's Antitrust practice. In this role, she represents a broad range of plaintiffs in antitrust, environmental, and civil rights litigation.

Ms. Deich is highly regarded for her ability to quickly engage with economic and scientific experts. Since 2020, Super Lawyers has consistently recognized Ms. Deich as a "Rising Star" in the Washington, D.C. Metro Area.

Ms. Deich is working on the following high-profile antitrust matters:

- *Jien v. Perdue Farms, Inc.* (D. Md.): Cohen Milstein serves as co-lead counsel, representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their wages. Since July 20, 2021, the Court has preliminarily approved settlements with six defendants for \$134.6 million. Litigation against the remaining defendants continues.
- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.): Cohen Milstein represents a class of broiler chicken consumers in a suit alleging that the nation's largest chicken producers, including Perdue Farms and Tyson Foods, conspired to raise the price of chicken. On December 20, 2021, the Court granted final approval of settlements with six of the defendants for a total of \$181 million. Litigation against the remaining defendants continues.

Ms. Deich is also involved in other high-profile matters on behalf of the firm, including:

- *Thompson v. Trump* (D.D.C.): The NAACP and Cohen Milstein represent members of Congress in a suit alleging that Donald J. Trump, the Proud Boys and the Oath Keepers conspired to prevent members of Congress from carrying out their duty to certify the results of the 2020 election on January 6, 2021.
- *Cape Fear River Contaminated Water Litigation* (E.D.N.C.): Cohen Milstein serves as Interim Co-Lead Class Counsel, overseeing a putative class action against E.I. DuPont de Nemours Company and The Chemours Company for discharging toxic chemicals into the Cape Fear River—a source of drinking water for five counties in North Carolina.
- *In re Flint Water Crisis Class Action Litigation* (E.D. Mich.): Cohen Milstein is Interim Co-Lead Class Counsel for a group of related class action lawsuits filed in federal court on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other hazards from the city's drinking water. On November 10, 2021, the Court granted final approval of a landmark \$626.25 million settlement against the State of Michigan and other defendants. Litigation continues against two private water engineering firms.

Prior to joining Cohen Milstein, Ms. Deich clerked for the Honorable Cornelia Pillard of the United States Court of Appeals for the D.C. Circuit. She also clerked for the Honorable Katherine Polk Failla of the U.S. District Court for the Southern District of New York, as well as the Honorable Goodwin Liu of the California Supreme Court.

Ms. Deich received her B.A. from the University of Virginia, where she graduated with highest distinction, Phi Beta Kappa, and received several honors, including the Lewis M. Hammond Award. Ms. Deich received her J.D. from Harvard Law School, where she graduated magna cum laude and won the Ames moot court competition.

## **Michael Dolce**

Michael Dolce is a partner at Cohen Milstein, a member of the Complex Tort Litigation practice, and the leader of the firm's Sexual Abuse, Sex Trafficking, and Domestic Abuse team.



A trial lawyer and political activist, Mr. Dolce's exclusively represents sex crime survivors, including child and adults. His team represents clients from initial disclosure to law enforcement, to police investigations, criminal prosecutions, injunction proceedings and civil lawsuits against individual criminals and any institution that gave them safe harbor to commit their crimes. Mr. Dolce brings to his work the insight and commitment of a survivor, having himself been the victim of sexual abuse as a young boy at the hands of a sadistic predator.

In addition to helping secure convictions against multiple sex criminals, he has achieved multiple multi-million-dollar trial verdicts and substantial settlements for his clients. Those include a \$19.2 million jury verdict in 2009 (a top 100 verdict in The National Law Journal's "Verdict Search" that year) and in 2018 the largest child abuse verdict in Florida that year, \$4.6 million.

Among many awards, he is included in Lawdragon's list of "500 Leading Lawyers in America" (2020 - 2022) and "500 Leading Plaintiff Consumer Lawyers" (2019). He is listed in The Best Lawyers in America and received Daily Business Review's 2019 "Innovative Practice Areas" award. He is a Fellow of the Litigation Counsel of America. He has also received awards for his work from the National Center for Victims of Crime, the Florida Council Against Sexual Violence, and the Florida Justice Association.

His expertise and accomplishments in sex crime victim rights is nationally recognized. CNN relied on him as an expert for an investigative report into mishandling of sex crime investigations. He has been quoted and has published editorials in the nation's top news outlets and law journals, including: NBC Think, The Associated Press, Newsweek, USA Today, The Guardian, The Hill, The New York Times, New York Daily News, The Washington Post, The Christian Science Monitor, Law360, The Daily Business Review, The Epoch Times, The Herald (Sharon), The Palm Beach Post, PENN Live, Politico, Salon.com, SunSentinel (Ft. Lauderdale), Tampa Bay Times, among others. He also appears as an expert in the award-winning documentary film, Pursuit of Truth: Adult Survivors of Child Sexual Abuse Seeking Justice.

In 2004, he broke his decades-long public silence about his status as a child sex abuse survivor in order to help other survivors. He testified before the Florida Senate Criminal Justice Committee, starting what became a six-year crusade to repeal all statutes of limitation for civil and criminal prosecution of child sexual battery. He founded the political committee, Protect Our Kids First, Inc., and assembled a grassroots organization of some 200 survivors to overcome aggressive, well-financed opponents to compel the Florida Legislature to pass a full repeal.

Currently, Mr. Dolce is litigating the following notable matters:

- Doe, et al. v. Washington Hebrew Congregation, et al. (D.D.C.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.
- Doe v. Scores, et al. (Cir. Ct., Hillsborough Cnty., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a developmentally disabled minor against Scores Holding Company, Inc. and its affiliates for illegally having her perform at one of their Florida strip clubs, subjecting her to be sexual abuse and human trafficking.
- Jane Doe v. Gerard Abate, M.D. (Cir. Ct., Flagler Cnty.): On June 16, 2021, Cohen Milstein filed a civil sexual assault lawsuit Against Dr. Abate for allegedly committing rape and sexual assault by deception or fraud, sexual battery, battery, aggravated battery, poisoning, and exposed the plaintiff to a sexually transmissible disease without notice and consent.

Mr. Dolce's recent successes include:

- Doe v. Unnamed Institution: In November 2017, Mr. Dolce successfully settled a matter, prior to filing a lawsuit in court, on behalf of a client who survived a sexual assault in a medical setting. The \$800,000

settlement and outcome for his client was life-altering and life-sustaining, as she had profoundly struggled with suicidal behaviors and needed expensive residential treatment due to her trauma.

- Jane Doe v. Seagate Hotel and Spa (Cir. Ct., Palm Beach Cnty., Fla.): Mr. Dolce successfully represented an adult against a resort hotel for negligence, asserting that she was sexually assaulted by a massage therapist, who had been discharged just two months earlier by his prior employer for sexually assaulting a guest.
- Doe v. Doe (Cir. Ct., Norfolk Cnty., Va.): In October 2017, Mr. Dolce successfully settled a survivor of child sexual abuse lawsuit in Virginia for \$880,000 – more than 40 years after the abuse occurred –on behalf of a 49-year-old south Florida resident, whose repressed memories of traumatic sexual abuse began to surface two years earlier, causing him to relive the painful experiences.
- Jane Doe v. Florida Sheriffs Youth Ranches (Cir. Ct., Polk Cnty., Fla): Mr. Dolce represented a teenaged sex abuse victim who was abused in a residential childcare facility by an adult resident of the facility. This civil suit against the facility follows a successful criminal prosecution of the abuser, asserting that the facility failed to maintain proper child safety procedures and policies.
- Rose, Fitzsimons and Davis v. The Devereux Foundation, Inc. (Cir. Ct., Leon Cnty., Fla.): Mr. Dolce represented adult survivors in three related lawsuits, asserting child physical and sexual abuse at a licensed therapeutic group home perpetrated by several staff members.
- Hollins v. Watchtower Bible and Tract Society of New York, Inc. (Cir. Ct., Leon Cnty., Fla.): Mr. Dolce represented an adult survivor of child sexual abuse against his former church (Jehovah’s Witnesses), resulting in a confidential settlement.
- A.S.W. v. Happy House, Inc. (Cir. Ct, Duval Cnty., Fla.): Mr. Dolce represented a pre-school child against a day care center in a child-on-child sex abuse case, resulting in a confidential settlement.
- Jane Doe v. James Byrne and Linda Byrne (Cir. Ct., St. Lucie Cnty., Fla): Mr. Dolce represented a mentally disabled child in an action against a neighbor who sexually abused her over a two-year period and against the abuser’s wife, on a theory that she failed to protect the child after finding evidence of ongoing abuse. The jury awarded damages of \$3.5 million, ordering both defendants to pay.

He previously served on the board of directors of the Florida Council Against Sexual Violence.

Mr. Dolce graduated with a Bachelor of Arts, summa cum laude, from Lynn University and received his J.D. from Stetson University, which awarded him at graduation the Walter Mann Award for leadership in the legal profession and the Victor O. Wehle Award for outstanding trial advocacy.

### **Manuel J. Dominguez**

Manuel J. (“John”) Dominguez is a partner at Cohen Milstein and a member of the Antitrust practice. He focuses on complex, multi-district antitrust litigation, representing individuals and businesses harmed by anticompetitive business practices. Mr. Dominguez also plays a significant role in identifying and investigating potential antitrust violations for the practice.

Mr. Dominguez has been litigating complex antitrust, securities, and consumer cases for more than 20 years, and has served as lead counsel and handled numerous high-profile, high-stakes cases during that time. His efforts have enabled aggrieved businesses and consumers to recover hundreds of millions of dollars.

A hands-on litigator, Mr. Dominguez currently represents plaintiffs in litigation alleging price-fixing and monopolistic practices in the medical products, finance and other industries. These cases include:

- Automotive Parts Antitrust Litigation: Cohen Milstein represents direct purchasers of Bearings, Mini-Bearings, IG coils, Power Window Motors, Valve Timing Control Devices and other automotive parts in a series of antitrust class action lawsuits accusing manufacturers and suppliers of price-fixing and bid-rigging

conspiracies. These cases, being litigated in the Eastern District of Michigan in Detroit, stem from the largest antitrust investigation in the history of the U.S. Department of Justice, with over \$1 billion in fines and multiple criminal indictments. Bearings is the first matter currently being considered for certification by the court. Mr. Dominguez has significant responsibilities in these cases, including leading discovery efforts against defendants, briefing and assisting experts. Settlements in several of these cases have recovered more than \$500 million for direct purchaser plaintiffs.

- Liquid Aluminum Sulfate Antitrust Litigation: In this action it was alleged that the manufacturers of Aluminum Sulfate, a product used by municipalities for water treatment, conspired to allocate customers, rig bids and fix prices. Mr. Dominguez was appointed by the court to serve on the Plaintiffs' Steering Committee. As part of his responsibilities, he has been responsible for selecting class representatives and working on the consolidated amended complaint. Thus far, this case has resulted in the preliminary approval of settlements for direct purchaser plaintiffs of more than \$10.7 million in cash and up to \$13.5 million from the sale of defendant's assets resulting from the company's dissolution or acquisition.

In addition to antitrust class action litigation, Mr. Dominguez continues to be involved in significant non-class and non-antitrust class actions, including winning a significant motion to dismiss in a non-class action antitrust action brought on behalf of doctors and practice groups against a major insurance company and hospital in Florida in *Omni Healthcare, Inc. v. Health First, Inc.* The case presented and argued issues of first impression for the middle district of Florida. Mr. Dominguez was also involved in cutting-edge data privacy breach litigation against AOL for allegedly unlawfully collecting internet search data of millions of users and making their private information available for public downloading. In addition, Mr. Dominguez litigated a highly significant securities matter that settled for hundreds of millions of dollars involving Symbol Technologies Inc., a barcode technology maker that intentionally overstated its revenues through premature revenue recognition, improper consignments arrangements and channel stuffing.

Mr. Dominguez began his career as an Assistant Attorney General in the Attorney General of the State of Florida's Department of Economic Crimes. In that role, he represented the State of Florida in prosecuting corporations and business entities for alleged violations of Florida's RICO, antitrust and Unfair and Deceptive Trade Practices Act statutes. Following his service as an Assistant Attorney General, Mr. Dominguez entered private practice, litigating and trying numerous cases involving unfair trade practices and other alleged violations of state and federal consumer protection statutes. In 2000, he joined a premier class action firm focused on antitrust and securities litigation; there, he rose to be one the heads of the firm's antitrust practice group.

Mr. Dominguez also has been at the forefront of exploring ways to develop and apply e-discovery to the law—authoring white papers and presenting on e-discovery amendments to the Federal Rules of Civil Procedure. He also participated in The Sedona Conference® Working Group 1, the legal industry's vanguard e-discovery standards organization.

Mr. Dominguez formerly served as the Chair of the Antitrust, Franchise & Trade Regulation Committee of the Florida Bar's Business Law Section. He previously served as the Vice Chair of that committee and was a member of the Executive Council of Florida Bar's Business Law Section. He is also co-author of an article that appeared in the Florida Bar Journal, "The Plausibility Standard as a Double Edge Sword: The application of Twombly and Iqbal to Affirmative Defenses" (Vol. 84, No. 6).

Mr. Dominguez is recognized by the Global Competition Review Who's Who Legal: Competition (since 2021), Lawdragon 500 Leading Plaintiff Financial Lawyers List (2021), "Super Lawyers" as a top-rated lawyer in Florida (since 2021), "Legal Elite" by Florida Trend (2017-2018), and he has been named a Palm Beach Illustrated "Top Lawyers" (2018).

Mr. Dominguez received a B.A. from Florida International University, and earned his J.D. from the Florida State University Law School, graduating with honors. In law school, he was a member of the Transnational Journal of Law and Policy.

### **Andrew N. Friedman**

Andrew N. Friedman is a partner at Cohen Milstein and the immediate past co-chair of the Consumer Protection practice. Practicing in the class action field since 1985, Mr. Friedman is a nationally recognized leader in the area of complex, multi-state class action lawsuits against manufacturers and consumer service providers, such as banks, insurers, credit card companies, and others, who is ready to take litigation all the way through trial.

In 2018, Mr. Friedman was named Law360's "MVP – Data Privacy and Security," an award recognizing only five lawyers in the United States in this emergent area of law. In addition, under his leadership, Cohen Milstein's Consumer Protection practice has received numerous industry awards, including Law360's "Practice Group of the Year – Consumer Protection" (2018, 2019) and The National Law Journal's "Elite Trial Lawyers – Consumer" award (2018), as well as Law360's "Practice Group of the Year – Privacy" (2017).

Over the years, Mr. Friedman has been court-appointed Lead or Co-Lead Counsel in numerous high-profile and often precedent-setting class actions, bringing relief to millions of consumers and recovering hundreds of millions of dollars in class actions, including:

- In re Anthem Data Breach Litigation (N.D. Cal.): Mr. Friedman was Co-Lead Counsel in a data breach class action involving the theft of personal identification and health information of more than 78 million customers of Anthem, the second largest health insurance company in the nation. The lawsuit involved novel claims and cutting-edge damage theories, resulting in a \$115 million settlement – at the time, the largest data breach settlement in history.
- In re Equifax, Inc., Customer Data Security Breach Litigation (N.D. Ga.): Mr. Friedman was a member of the Plaintiffs' Steering Committee and was Co-Chair of the Expert Committee in this data privacy breach class action against Equifax, a leading credit-reporting company that safeguards some of the most sensitive financial and personal information of over 147 million individuals across the United States, for its failure to inform the public of a massive data breach and theft of client data. On December 19, 2019 the court granted final approval of a landmark \$1.5 billion settlement, consisting of a record-breaking \$425 million in monetary and injunctive benefits and requiring Equifax to spend \$1 billion to upgrade its security and technology.
- Symantec, Corp. and Digital River, Inc. (D. Minn.): Mr. Friedman also litigated a lawsuit against a four-year long nationwide class action battle related to the marketing of a re-download service in conjunction with the sale of Norton software. The case settled in a \$60 million all-cash deal one month before the case was about to go to trial – one of the most significant consumer settlements in years.
- Nationwide (N.D.N.Y.) and Country Life (Cook Cty. Ill. Cir. Ct.): Mr. Friedman was one of the principal counsel in cases against two of the largest insurance companies in which plaintiffs asserted sales marketing abuses in the marketing of so-called "vanishing premium policies," where insurance agents sold insurance policies to unsuspecting consumers promising that after a relatively short time the dividends generated from the policy would be so high as to be able to fully pay the premiums. In fact, the calculations of the policies were based on unrealistic interest rate projections and, therefore, the premiums never "vanished." Nationwide resulted in a settlement valued at between \$85 million and \$103 million, while a settlement with Country Life made \$44 million in benefits available to policyholders.
- Keithly v. Intelius, Inc. (W.D. Wash.): Mr. Friedman was Co-Lead Counsel, where he negotiated two nationwide settlements with Intelius, Inc., relating to negative option programs and improper post-transaction marketing. The combined settlements made \$12 million in cash available to the Class.

- Home Depot Data Breach Litigation (N.D. Ga.): Mr. Friedman was a member of the Plaintiffs' Steering Committee, representing financial institutions and headed the expert committee. This class action lawsuit arose out of the Home Depot data breach, a cyber-attack that affected hundreds of financial institutions and more than 40 million consumers who used their debit and credit cards to patronize Home Depot. On September 22, 2017, the court granted final approval of a \$25 million settlement.
- HCA Litigation (M.D. Fla.): Mr. Friedman was one of the principal counsel in the a state-wide consumer class action in Florida federal court. Plaintiffs alleged that post-car accident emergency room patients were billed inflated fees for emergency radiology services, in excess of the amount allowed by law, covered in part by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the court granted final approval of an injunctive relief settlement of \$220 million.

Mr. Friedman has also litigated important consumer product lawsuits, including one against Thomson Consumer Electronics, which resulted in a settlement that made up to \$100 million available for persons who paid for unreimbursed repairs to defective televisions. In addition, Mr. Friedman was one of the principal counsel in the Dex-Cool Litigation, a nationwide lawsuit alleging that General Motors sold millions of cars with defective coolant that gummed up and caused corrosion to engines. GM settled ahead of trial, offering relief of cash payments of up to \$800 per repair.

Prior to his Co-Chairing the Consumer Protection group, Mr. Friedman was a member of Cohen Milstein's Securities Litigation & Investor Protection practice, litigating many important matters, including Globalstar Securities Litigation in which he served as one of the lead trial counsel. The case settled for \$20 million during the second week of the trial. In addition, Mr. Friedman served as Co-Lead or principal counsel in Norman Frank et al. v. David L. Paul (a recovery of over \$18 million); In re Jiffy Lube Securities Litigation (D. Md.) (a recovery of over \$12 million); and In re Immunex Securities Litigation (W.D. Wash.) (a recovery of \$14 million).

Currently, Mr. Friedman is litigating such notable matters as:

- In re: Marriott International Inc. Customer Data Security Breach Litigation (D. Md.): On April 29, 2019, the court appointed Mr. Friedman Consumer Plaintiffs' Co-Lead Counsel to oversee a putative nationwide class action related to the data breach of personal information of nearly 400 million customers of Starwood-branded hotels, subsequently acquired by Marriott in 2016, making it one of the largest data breaches in U.S. history.
- Facebook 2018 Data Breach Litigation (N.D. Cal.): On February 14, 2019, the court appointed Mr. Friedman Co-Interim Class Counsel in a putative nationwide class action against Facebook for breach of personal data. According to Facebook, the data breach was the result of a software vulnerability that existed for over a year (July 2017 – September 2018). On November 15, 2020, the court preliminarily approved an injunctive relief settlement, which will require Facebook to adopt, implement, and/or maintain a detailed set of security commitments for the next five years.
- COVID-19 Business Interruption Insurance Litigation: Cohen Milstein represents restaurants, retailers, and other small businesses across the United States in litigation against their property and casualty insurance providers for failing to cover their COVID-19-related business interruption losses.

Mr. Friedman is a noted speaker who has appeared on numerous panels for legal education seminars and institutional investor conferences on the issues of consumer and securities class actions. In 2011, Lawdragon named him one of the Leading Plaintiffs' Lawyers. His work has been cited in the media and he was profiled in the April 14, 2000, Washington Business Journal.

Prior to joining Cohen Milstein, Mr. Friedman served as an attorney with the U.S. Patent and Trademark Office.

Mr. Friedman attended Tufts University, graduating magna cum laude and was elected Phi Beta Kappa, with a B.A. in Psychology. He earned his J.D. from the National Law Center, George Washington University.

### **Agnieszka Fryszman**

Agnieszka Fryszman, chair of the Human Rights practice at Cohen Milstein, has been recognized as leading one of the best private international human rights practices in the world.

She represents individuals who have been victims of torture, human trafficking, forced and slave labor and other violations of international law. A recognized expert and leader in the field of human rights law, Ms. Fryszman regularly litigates cases against corporate giants and foreign powers.

Notable areas where Ms. Fryszman's work has made an impact:

- **Holocaust-era atrocities:** Ms. Fryszman was a member of the legal team that successfully represented survivors of Nazi-era forced and slave labor against the German and Austrian companies that allegedly profited from their labor. These cases were resolved by international negotiations that resulted in multi-billion-dollar settlements.
- **Human Trafficking and Forced Labor:** Ms. Fryszman filed one of the first claims under the federal human trafficking statute (the TVPRA) and has continued to focus on representing survivors of human trafficking and forced labor. She has been recognized as Advocate of the Year by the Human Trafficking Legal Center and awarded the National Law Journal Pro Bono Award for her efforts. She has represented workers trapped in supply chain forced labor as well as men and women trafficked by military contractors, in the fishing industry, and to work cleaning houses in Northern Virginia.
- **Military contractors:** Ms. Fryszman earned the National Law Journal Pro Bono Award for efforts on behalf of Nepali laborers killed at U.S. military bases in Iraq. She represented the families of twelve Nepali men and five additional surviving Nepali men who were lured to Jordan with the false promise of well-paying hotel jobs, but instead their passports were confiscated, they were imprisoned and then taken against their will to a U.S. military base in Iraq, where they were put to work for U.S. military subcontractors during the Iraq war. Twelve of the men were killed by insurgents. The claims were ultimately resolved, including under innovative proceedings pursuant to the Defense Base Act. Cohen Milstein's work received international attention and is the focus of the book, *The Girl from Kathmandu | Twelve Dead Men and a Woman's Quest for Justice*, by Cam Simpson (HarperCollins, 2018).
- **Deep Sea Fishing Industry:** Ms. Fryszman filed and settled the first successfully resolved case of fishing boat slavery in the world. She represented two Indonesian men who escaped from a fishing boat when it docked in California. The settlement included provisions intended to protect future seamen, including a code of conduct for ship captains and a hand-out for seamen informing them of their rights and who to call for help.
- **Comfort Women:** Ms. Fryszman's work on behalf of former "comfort women," women and girls trafficked into sexual slavery by the government of Japan during World War II, was recognized with the "Fierce Sister" award from the National Asian Pacific American Women's Forum.
- **Victims of 9/11:** Ms. Fryszman represented, pro bono, victims of the September 11 attack on the Pentagon and obtained one of the highest awards for an injured survivor from the Victim's Compensation Fund.
- **Guantanamo Bay Detention:** Ms. Fryszman represented, pro bono, two individuals detained by the United States at Guantanamo Bay who were ultimately cleared without charge.

Some of Ms. Fryszman's Current high-profile cases include:

- **ExxonMobil -Villagers of Aceh Litigation (D.D.C.):** Ms. Fryszman represents eleven villagers from Aceh, Indonesia, who allege that they or their relatives were victims of torture, extrajudicial killing, and other abuses committed by security guards working for Exxon Mobil. The case is being heard in a United States

court but involves claims under Indonesian law. The case has been hotly litigated for 20 years, including two trips to the D.C. Circuit Court of Appeals (both successfully argued by Ms. Fryszman). Ms. Fryszman pioneered the use of remote deposition technology to take over 20 depositions of eyewitnesses located in rural Aceh. The parties are currently awaiting a trial date.

- *Chiquita (S.D. Fla)*: Ms. Fryszman represents hundreds of Columbian citizens who allege that they or their family members were victims of torture or extrajudicial killing committed by the AUC, a paramilitary death squad paid by Chiquita. The victims included labor organizers, elected officials, and activists on Chiquita's banana plantations. The AUC was designated by the United States government as a "Foreign Terrorist Organization." That designation made supporting the AUC a federal crime. After an inquiry by the U.S. Justice Department, Chiquita pled guilty and admitted to making over 100 payments to the AUC but has thus far refused to compensate the families whose loved ones were murdered.
- *Kurd v. The Republic of Turkey (D.D.C.)*: Ms. Fryszman represents fifteen people, including a seven-year-old girl with her father, a mother pushing a four-year-old in a stroller, students, and local small business owners, who had gathered at Sheridan Circle in Washington, D.C., to peacefully protest the Erdogan regime's treatment of its Kurdish community. They were brutally attacked by President Erdogan's security detail, who pushed past a line of law enforcement officers to kick, stomp and bludgeon the demonstrators. The attack was captured on video, resulted in criminal indictments, and was condemned by the United States Congress. The Republic of Turkey claimed it was immune from suit, but the district court disagreed. Ms. Fryszman successfully argued the case at the Court of Appeals, obtaining a unanimous opinion upholding the district court.
- *Ratha v. Phatthana Seafood (C.D. Cal.)*: Ms. Fryszman represents Cambodian villagers who allege that they were trafficked into Thailand and subjected to forced labor at seafood processing factories that were owned by and did business with U.S. business entities.
- *Paul Rusesabagina Kidnapping (D.D.C.)*: Ms. Fryszman represents U.S. Presidential Medal of Freedom winner Paul Rusesabagina and his family against the Republic of Rwanda, the President of Rwanda and other members of the government staff for allegedly spying on Paul and his family, luring him away from his home in Texas to kidnap him and take him back to Rwanda, where he was imprisoned, tortured and subjected to a sham show trial. Mr. Rusesabagina is perhaps best known for saving thousands of lives during the Rwandan genocide in 1994, when he was the hotel manager of Hôtel des Mille Collines, a story that inspired the Academy-Award-nominated film, *Hotel Rwanda*.

Ms. Fryszman has received some of the legal profession's highest honors including The Human Trafficking Legal Center's Human Trafficking Advocate of the Year Award (2020), and being named a "Lawdragon Legend" in 2019, an award highlighting 30 of the "nation's elite lawyers." She is regularly included in the Lawdragon 500 and Lawdragon also named Ms. Fryszman to its inaugural "Global Litigation 500." The National Law Journal has named Ms. Fryszman to the list of "Elite Women of the Plaintiffs Bar" and Benchmark Plaintiff has named her a Leading Star Plaintiffs' Litigator and one of the Top 150 Women in Litigation. For her pro bono work, in addition to the National Law Journal Pro Bono Award, she has been awarded the Beacon of Justice Award by the National Legal Aid and Defender and the Frederick Douglass Human Rights Award from the Southern Center for Human Rights. She was also a finalist for the Public Justice Foundation's Trial Lawyer of the Year Award for her work on *Wiwa v. Royal Dutch Shell*. Ms. Fryszman joined the legal team in that case to prepare it for trial, resulting in a multi-million-dollar settlement on the morning of jury selection.

Prior to joining Cohen Milstein, Ms. Fryszman served as counsel to the United States House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, and as counsel to Representative Henry Waxman, Ranking Member on the House Government Reform and Oversight Committee. Earlier in her career, she was legislative director to U.S. Representative, now Senator, Jack Reed.

Ms. Fryzman graduated from Brown University with an A.B. in International Relations, and earned her law degree from Georgetown University, graduating magna cum laude, Order of the Coif. In law school, she was a Public Interest Law Scholar.

### **Carol V. Gilden**

Carol V. Gilden is a nationally recognized securities litigator and a partner in Cohen Milstein's Securities Litigation & Investor Protection Practice Group. She also serves as the Resident Partner of Cohen Milstein's Chicago Office.

Ms. Gilden represents public pension funds, Taft-Hartley pension and health and welfare funds, and other institutional investors in securities class actions, individual actions and transaction and derivative litigation. She also litigates other types of complex litigation and class actions nationwide in state and federal courts. Ms. Gilden's practice includes cases involving stock, bonds, preferred stock, ADR's and other complex financial Instruments, including interest rate swaps, Treasury bonds and exchange-traded notes.

Ms. Gilden has spearheaded and litigated some of the most novel securities disputes in the financial markets, resulting in aggregate recoveries of over several billion dollars for investors. Her guiding principle – those who commit fraud on the financial markets should be held accountable.

In numerous high-profile securities cases, Ms. Gilden has led the litigation as Lead or Co-Lead Counsel. These cases include MF Global, where the U.S. Court of Appeals for the Second Circuit held that companies that make false or misleading statements cannot hide behind risk disclosures to escape liability, and in which Ms. Gilden, as Co-Lead Counsel, was named in the National Law Journal's selection of Cohen Milstein to its "Plaintiffs' Hot List." Ms. Gilden was also Lead Counsel in the IntraLinks Securities Litigation, which, as one of the first securities class actions certified after the Supreme Court's Halliburton II decision, provided a roadmap for obtaining class certification in other securities cases.

Most recently, Ms. Gilden served as Lead Counsel in *Seafarers Pension Plan v. Bradway, et al.*, a federal derivative case against The Boeing Company's directors and officers arising out of the 737 MAX crashes and alleging federal proxy statement violations in connection with director elections. After the case was dismissed on forum non conveniens grounds, Ms. Gilden successfully argued before the U.S. Court of Appeals for the Seventh Circuit, obtaining a 2-to-1, precedent-setting decision reversing the district court's dismissal of the case based on enforcement of Boeing's forum selection bylaw. The derivative action ultimately settled, along with a companion class action filed by the Seafarers in Delaware Chancery Court after the district court's dismissal and challenging the bylaw under Delaware law, for corporate governance reforms valued in excess of \$100 million and a \$6.25 million payment by the Directors' insurers to the Company.

Among other cases, Ms. Gilden is currently serving on the Co-Lead Counsel team in two groundbreaking antitrust lawsuits involving two of the world's largest financial markets and as Lead Counsel in a securities class action against Bayer AG, stemming from its acquisition of Monsanto, with its flagship product, the herbicide Roundup. Additionally, she is Lead Counsel in a securities class action against Pluralsight and its senior officers, alleging that they misrepresented and omitted material information concerning the size of the Company's sale force, which impacted its billing's growth, a key metric to investors.

Ms. Gilden began her career in the Enforcement Division of the Securities and Exchange Commission, where she spent five years investigating and litigating securities fraud cases.

Before joining Cohen Milstein in 2007, Ms. Gilden served as the head of the securities class action practice at a prominent mid-sized Chicago law firm and the vice-chair of its class action department.



Representative Matters:

- Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Ms. Gilden represents the Public School Teachers' Pension and Retirement Fund of Chicago and other institutions in a groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets. Cohen Milstein is Co-Lead Counsel in this case,
- Treasuries Market Manipulation Litigation (S.D.N.Y.): Ms. Gilden represents the Cleveland Bakers and Teamsters Pension and Health and Welfare Funds and other institutions in this putative antitrust class action, alleging that two dozen financial institutions with an inside role at the auction for U.S. Treasuries conspired to manipulate yields and prices to their benefit. Cohen Milstein is Co-Lead Counsel.
- Bayer AG Securities Litigation (N.D. Cal.): Ms. Gilden represents the Sheet Metal Workers National Pension Fund and the International Brotherhood of Teamsters Local No. 710 Pension Plan in this putative securities class action, alleging that Bayer misrepresented the extent of its due diligence on the risks posed by the Roundup litigation in connection with its \$63 billion acquisition of Monsanto. Bayer investors incurred significant losses after bellwether jury trials in the toxic tort cases in the Roundup litigation repeatedly found in favor of the plaintiffs against Monsanto, leading to jury awards totaling hundreds of millions of dollars. Ultimately, a global settlement of the Roundup litigation was announced for upwards of \$10.9 billion, which the Court handling the cases rejected as to future claims. Cohen Milstein is Lead Counsel.
- Pluralsight, Inc. Securities Litigation (D. Utah): Ms. Gilden represents the Indiana Public Retirement System and the Public School Teachers' Pension and Retirement Fund of Chicago in this securities class action against Pluralsight, Inc, a provider of cloud-based and video training courses. The case alleges that Pluralsight and its senior officers misrepresented and omitted material information from investors concerning the Company's sales force, which impacted its billings growth, before a \$37 million stock cash-out by Pluralsight insiders through the use of Rule 10b5-1 trading plans, open market transactions and in an \$450 secondary public offering orchestrated by those insiders. Ms. Gilden successfully argued and convinced U.S. Court of Appeals for the Tenth Circuit to reverse the lower court's dismissal of the case. In doing so, the Tenth Circuit held that the plaintiffs' allegations "strongly support the inference" of scienter and that the executives' use of Rule10b5-1 trading plans for their sales "cannot rebut the inference that personal financial gain was a motive for defendants' material misrepresentations." Cohen Milstein is Lead Counsel.
- Set Capital LLC et al. v. Credit Suisse Group A.G. et al. (S.D.N.Y.): Ms. Gilden represents Set Capital LLC and other investors in this securities class action lawsuit against Credit Suisse Group and its officers stemming from the collapse of exchange-traded notes called VelocityShares Daily Inverse VIX Short Term Exchange Traded Notes, or XIV, that tracked the inverse of the VIX. The case alleges that Credit Suisse sold hundreds of millions of dollars of XIV notes to investors, while actively betting against their performance and falsely telling investors that it (and Credit Suisse's affiliates) did not believe their hedging in VIX futures would adversely impact XIV's value. Cohen Milstein serves as Co-Lead Counsel.
- Intuitive Surgical Inc. Derivative Litigation (Sup. Crt. Cal.): Ms. Gilden represented the Public School Teachers' Pension and Retirement Fund of Chicago in this derivative action against Intuitive's directors and officers, alleging they covered up safety defects in the da Vinci robotic surgery system. She achieved a settlement one day before trial for cash and options worth \$20.2 million at final approval, to be paid by the Individual Defendants back to Intuitive. The settlement also required Intuitive Surgical to adopt extensive corporate governance, insider trading, product safety, and FDA compliance measures designed to prevent the reoccurrence of the alleged wrongdoing. In the plaintiff's expert's opinion, the reduction in the risk of recurrence of the events similar to the ones experienced (which resulted in a 30% drop in stock value and the establishment of a \$100 million product liability reserve) translated into a benefit of \$117 million to Intuitive and its shareholders. Cohen Milstein served as Co-Lead Counsel.
- Huron Securities Litigation (N.D. Ill.): Ms. Gilden represented the Public School Teachers' Pension & Retirement Fund of Chicago and the Arkansas Public Employees Retirement Fund in this securities fraud

class action against Huron and its officers, alleging accounting fraud allegations. The case settled for \$40 million, consisting of \$27 million in cash plus 474,547 shares of common stock, valued at \$13,292,061. Cohen Milstein served as Co-Lead Counsel.

- *City of Chicago v. Hotels.com, et al.* (Circ. Ct. Cook Cty., Ill.): Ms. Gilden represented the City of Chicago in a high-profile lawsuit in Cook County Circuit Court, alleging that Expedia, Hotels.com, Orbitz, Priceline, and Travelocity failed to properly remit hotel taxes to the City of Chicago for hotel bookings. Expedia, the last remaining defendant, appealed a \$29 million judgment and settled on appeal after briefing concluded. The City of Chicago recouped \$23.6 million in back taxes and interest, and these defendants now collect and remit to the City of Chicago taxes on the markup of the room bookings. Ms. Gilden served as the lead attorney in this litigation.
- *Credit Suisse Group AG Securities Litigation* (S.D.N.Y.): Ms. Gilden represented the International Brotherhood of Teamsters Local No. 710 Pension Plan and achieved a \$15.5 million settlement in this securities class action against Credit Suisse Group AG, alleging misrepresentations of the Company's trading and risk limits leading to the accumulation of billions of dollars in risky, highly illiquid investments. Cohen Milstein was Co-Lead Counsel.
- *Plumbers & Pipefitters National Pension Fund v. Davis, et al.* (S.D.N.Y.): Ms. Gilden represented the United Association National Pension Fund, f/k/a Plumbers & Pipefitters National Pension Fund, in this securities class action alleging that PSG and its officers failed to disclose that PSG's growth was not based on sustainable "organic growth" as represented but was driven by the company's manipulative and coercive sale practices, which included pulling orders forward and forcing customers to increase their orders without regard for market demand. PSG subsequently filed for bankruptcy protection. Cohen Milstein is sole Lead Counsel, which after extensive discovery, achieved \$14.15 million in settlements for the benefit of the class.
- *In re Alphabet Shareholder Derivative Litigation* (Sup. Ct. Cal., Santa Clara Cnty.): Ms. Gilden represented the Northern California Pipe Trades Pension Plan and other institutions in this shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. The case alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a \$310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes. Ms. Gilden was an active member of the Litigation Team. Cohen Milstein was Co-Lead Counsel.
- *Ong v. Sears Roebuck & Co.* (N.D. Ill): Ms. Gilden represented the State Universities Retirement System of Illinois and Mr. Ong and achieved a \$15.5 million settlement in this securities class action against Sears Roebuck, Sears Roebuck Acceptance Corp. and its underwriters. The case alleged that the defendants made misrepresentations and omissions regarding Sears' credit card operations to make those operations appear more stable and profitable than they were. Cohen Milstein was Co-Lead Counsel.

#### Other Recent Leadership Roles:

In addition to the cases listed above, Ms. Gilden has served as Lead and Co-Lead counsel in other notable matters, including, among others:

- *MF Global Securities Litigation* (S.D.N.Y.): Ms. Gilden represented the Central States, Southeast and Southwest Areas Pension Fund and achieved a \$90 million settlement in this precedent-setting securities class action in which the U.S. Court of Appeals for the Second Circuit sided with the plaintiffs and held that companies cannot make false or misleading statements in their offering documents and then hide behind risk disclosures related to those facts to escape liability. The National Law Journal singled out Ms. Gilden's work on the case in connection with its selection of Cohen Milstein as a Hot Plaintiffs' Firm for that year. Cohen Milstein was Co-Lead Counsel.

- ITT Educational Services, Inc. Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund and Metropolitan Water Reclamation District Retirement Fund in this securities class action and achieved a \$16.96 million settlement against ITT and two of its officers. The case was hotly contested and involved unraveling complex accounting treatments governing ITT's transactions with the third-party lenders, set against the Department of Education and Higher Education Act default guidelines. The case settled during discovery after reviewing and analyzing over two million pages of documents, after depositions had been taken and in the middle of class certification briefing. Co-Milstein was Lead Counsel.
- IntraLinks Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund in one of the first securities class actions to be certified following the Supreme Court's decision in Halliburton II. The case alleged that IntraLinks Holdings Inc., a virtual data room – or cloud computing – company, and other defendants made misleading statements and omissions regarding the strength of the Company's business and failed to disclose to investors the loss of IntraLinks' largest client. The case settled for \$14 million after the class was certified and extensive fact discovery was completed. Cohen Milstein served as Lead Counsel.
- Orthofix International NV Securities Litigation (S.D.N.Y.): Ms. Gilden represented the Plumbers and Pipefitters National Pension Fund and reached an \$11 million settlement against this medical device company headquartered in Curacao, Netherlands Antilles, despite significant logistical obstacles during investigation and discovery. Much of the information relevant to the case—internal company documents, witnesses, and news reports—were in six foreign languages and located in nine different countries on four different continents.
- Navistar Securities Litigation (N.D. Ill.): Ms. Gilden represented the Central States, Southeast and Southwest Areas Pension Fund in this securities class against Navistar International Corporation and its former officers, alleging material misrepresentations and omissions concerning the development and marketability of Navistar's exhaust gas recirculation technology. The case settled for \$9.1 million. Cohen Milstein served as sole Lead Counsel.
- In re RehabCare Group, Inc. Shareholders Litigation (Del. Ch.): Ms. Gilden was co-lead counsel and settled the case for a cash payment to shareholders and significant deal reforms in this shareholder litigation challenging the acquisition of healthcare provider RehabCare Group, Inc. by Kindred Healthcare, Inc.

Ms. Gilden served in Executive Committee roles in other high-profile cases, Global Crossing Securities Litigation (settlements of \$448 million) and the Merrill Lynch Analyst cases (\$125 million settlement), as well as an active litigation team of the Waste Management Litigation (N.D. Ill) (\$220 million settlement). Under her leadership, her former firm was an active member of the litigation teams in the AOL Time Warner Securities litigation (\$2.5 billion settlement), CMS Securities Litigation (\$200 million settlement) and the Salomon Analyst Litigation/In re AT&T (\$75 million settlement). Further, Ms. Gilden was lead counsel in an opt-out securities litigation action on behalf of a large group of individual plaintiffs in connection with the McKesson/HBOC merger, Pacha, et al. v. McKesson Corporation, et al., which settled for a substantial, confidential sum.

Ms. Gilden has earned the trust of her clients, who know she will go to the mat for them, tenaciously advocating for them from start to finish in their cases. She draws respect from colleagues, as well as from adversaries who consistently place her in the highest ranks of the profession. In 2022, Ms. Gilden was chosen as one of The American Lawyer's Trailblazers – Midwest. She has been repeatedly named one of Lawdragon's "500 Leading Plaintiff Financial Lawyers" (2018-2022), which recognizes as the "best of the U.S. plaintiffs' bar" attorneys specializing in representing individual investors and shareholders, as well as business and other organizations harmed by corporate misconduct or other failures. Ms. Gilden has been repeatedly designated one of Chicago's Notable Women Lawyers by Crain's Chicago Business, and in 2021, she was placed on the "Recommended" List by The Legal 500 Editorial Board. In 2019, she was named a "Women of Influence" by the Chicago Business Journal and received a "Women in Law Award" by Lawyer Monthly Magazine. In 2018, she was lauded the "Securities Litigation Attorney of the Year – Illinois" by Lawyer International's Global Awards. Ms. Gilden is rated AV Preeminent by Martindale-Hubbell (the highest

possible rating for professional excellence) and is consistently listed as an “Illinois Super Lawyer” by the Thomson Reuters magazine, Super Lawyers.

Ms. Gilden served as the first woman President of the National Association of Shareholder and Consumer Attorneys, the preeminent trade association for securities class action attorneys, as well as the organization’s first woman Treasurer. As President of NASCAT, Ms. Gilden made repeated visits to Capitol Hill advocating for strong investor protection. She also engaged in outreach to the institutional investor community on needed reforms to reverse the erosion of investor rights. Under Ms. Gilden’s leadership, NASCAT also filed amicus briefs in connection with major securities cases before the Supreme Court and other courts. Prior to becoming President, she served as the President-Elect. She continues to serve on NASCAT’s Executive Committee.

Ms. Gilden was selected to serve on the inaugural Corporate Governance Council and Markets Advisory Council to the Board of Directors for the Council for Institutional Investors (CII) during 2013-2015. CII is a nonprofit association of pension and other employee benefits funds, endowments and foundations and a voice for effective corporate governance and strong shareholder rights.

Ms. Gilden is a Vice President of the Institute for Law and Economic Policy, a public policy research and educational foundation whose mission is to preserve, study and enhance investor and consumer access to the civil justice system. She is also a member of the National Association of Public Pension Attorneys (NAPPA).

Ms. Gilden regularly lectures at legal conferences around the country on securities litigation and class action law and is a frequent speaker at institutional investor conferences and law symposiums regarding securities law developments, shareholder rights and regulatory reform. She has authored and co-authored numerous scholarly articles and course materials on securities fraud cases, class actions, derivative litigation and related topics.

Ms. Gilden attended the University of Illinois, earning a B.S. in Business Administration, and received her J.D. from Chicago-Kent College of Law, where she graduated with honors and was a member of the Chicago-Kent Law Review.

### **Geoffrey Graber**

Geoffrey Graber is a partner in Cohen Milstein's Consumer Protection practice, where he focuses on representing consumers in complex class action litigation involving issues of false advertising, fraud, data privacy theft and other forms of unfair business practices at the hands of social media companies, banks, insurance, health care companies, and other consumer providers. Mr. Graber also has extensive experience representing whistleblowers in qui tam litigation under the False Claims Act and whistleblower programs under the U.S. Securities Exchange (SEC), U.S. Department of Transportation (DOT), and U.S. Department of Defense (DOD).

Prior to joining Cohen Milstein in 2015, Mr. Graber had a distinguished career at the U.S. Department of Justice (DOJ), where he was part of the Department's senior leadership team serving as Deputy Associate Attorney General and Director of the DOJ's Residential Mortgage-Backed Securities (RMBS) Working Group. As the Director of the RMBS Working Group, Mr. Graber oversaw the DOJ's nationwide investigation into the packaging and sale of mortgage-backed securities (MBS) - the catalyst for the 2008 financial crisis - ultimately recovering more than \$36 billion from banks, including the record-breaking \$16.65 billion settlement with Bank of America – the largest settlement with a single entity in U.S. history – as well as settlements with Citigroup (\$7 billion) and JP Morgan (\$13 billion).

Earlier in his tenure at the DOJ, Mr. Graber served as Counsel in the Civil Division, where he led the three-year investigation (2004 – 2007) of Standard & Poor’s (S&P) and its ratings of structured finance products. The investigation, which made groundbreaking use of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), resulted in the largest enforcement action filed by the United States concerning the financial crisis

(United States v. Standard & Poor's). As a result of his successful work on S&P, Mr. Graber earned the Attorney General's Distinguished Service Award in 2015. Mr. Graber also received the Attorney General's Distinguished Service Award in 2014 for his work relating to the \$13 billion settlement with JP Morgan – including, at the time, the largest FIRREA penalty recovered by the DOJ.

Mr. Graber's distinguished background and experience has proven invaluable to his private sector clients.

Mr. Graber is currently litigating the following high-profile matters:

- DZ Reserve, et al. v. Facebook (N.D. Cal.): Mr. Graber serves as lead counsel representing advertisers who claim that Facebook's key advertising metrics (Potential Reach and Estimated Daily Reach) are false and misleading due to systemic inflation of Facebook's user base. The Court granted class certification on March 29, 2022.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Mr. Graber represents purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods, to induce customers into purchasing LensCrafters' higher-priced prescription lens products. The Court granted class certification on December 13, 2021.

Mr. Graber's recent successes include:

- LLE One, LLC v. Facebook (N.D. Cal.): Mr. Graber served on the co-lead counsel team representing a class of advertising purchasers who claimed that Facebook breached its implied duty to perform with reasonable care and violated California's Unfair Competition Law by intentionally miscalculating and inflating metrics related to its video advertisement services. If not for these miscalculations, plaintiffs claim, they would not have purchased more video advertisements and at a higher price than they otherwise would have paid. In June 2020, the Court granted final approval of a \$40 million settlement against Facebook.
- In re Anthem, Inc. Data Breach Litigation (N.D. Cal.): Cohen Milstein was co-lead counsel in a certified class action involving the 2015 cyberattack and massive data breach of Anthem, Inc., one of the nation's largest for-profit managed health care companies, which resulted in the theft of personal identification and health information of 78.8 million insureds. On August 16, 2018, the Court granted final approval to a \$115 million settlement in this class action – the largest data breach settlement in U.S. history. Mr. Graber was involved in all aspects of the litigation.

Before joining the DOJ, Mr. Graber was an associate at a top-tier defense law firm, where he defended Fortune 500 companies and their officers and directors in securities and derivative suits, consumer class actions and government investigations. Mr. Graber also devoted substantial time to pro bono representation of indigent individuals and families in civil rights actions against local law enforcement.

Mr. Graber received his undergraduate degree in Philosophy from Vassar College and earned his law degree from the University of Southern California Law School, where he served as the Managing Articles Editor on Southern California Law Review.

### **Brent W. Johnson**

Brent W. Johnson is a Partner at Cohen Milstein and Co-Chair of the firm's Antitrust practice group. Mr. Johnson also co-leads the group's new case investigations. He has served as Co-Lead Counsel in cases that have compensated class members hundreds of millions of dollars for claims under Sherman Act Sections 1 and 2 and state antitrust laws. He also has initiated and developed cases that have helped break new ground in antitrust law, including those on behalf of workers challenging restraints in labor markets.

Mr. Johnson currently serves as Co-Lead Counsel in the following notable antitrust class actions:

- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Mr. Johnson serves as co-lead counsel for the Cohen Milstein team, representing a class of end-user consumers of broiler chicken in a litigation alleging that the defendants, who include Perdue Farms and Tyson Foods, agreed to restrict the supply of broilers, among other things, thereby raising their price to consumers. The Court has finally approved settlements with six of the defendants for a total of \$181 million and the case is in merits expert discovery against the remaining defendants. Law360 recently cited plaintiffs' success in Broilers in naming Cohen Milstein one of its six Class Action Groups of the Year for 2021.
- Jien v. Perdue Farms, Inc. (D. Md.): Mr. Johnson serves as co-lead counsel for the Cohen Milstein team, representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their compensation. The Court so far has preliminarily approved settlements with four defendants for \$49.8 million and the case is in discovery with the remaining dozen defendants.
- Yuen v. IDEXX (N.D. Cal.): Mr. Johnson serves as co-lead counsel for the Cohen Milstein team, representing a proposed class of pet owners and other indirect purchasers. Plaintiffs allege that IDEXX's anticompetitive behavior caused artificially inflated prices for inhouse point-of-care analyzers, consumables, and single-use rapid test kits that veterinary practices use to treat family pets and other companion animal patients.

Mr. Johnson's experience and success in antitrust class actions include:

- In re Animation Workers Antitrust Litigation (N.D. Cal.): Mr. Johnson developed this case with two other attorneys in the firm, and Cohen Milstein filed the first complaint. Cohen Milstein served as Co-Lead Counsel representing a class of animation and visual effects workers in a lawsuit alleging that the defendants, including Pixar, Lucasfilm Ltd. and DreamWorks Animation, secretly agreed not to solicit class members and to coordinate on compensation. The Court approved settlements with all of the defendants for a total of \$168.5 million.
- In re Domestic Drywall Antitrust Litigation (E.D. Pa.): Mr. Johnson initiated the investigation and filed the first complaint in this case, in which Cohen Milstein served as Co-Lead Counsel for a class of direct purchasers of drywall against drywall manufacturers for price-fixing. The Court ultimately approved settlements that totaled more than \$190 million. The Court commented that it had sided with Plaintiffs because of counsel's "outstanding work," and that Plaintiffs' counsel had a "sophisticated and highly professional approach." It complimented the attorneys as "highly skilled" and noted that their performance on class action issues was "imaginative." It also stated that "Few cases with no government action, or investigation, result in class settlements as large as this one."
- Grand Strand v. Oltrin (D. S.C.): Mr. Johnson was personally appointed Co-Lead Class Counsel and led the Cohen Milstein team in representing a class of direct purchasers of bulk bleach, including municipal water authorities and others, against that product's manufacturers who engaged in an illegal market allocation agreement. The Court approved a settlement worth nearly all of the class's single damages and remarked that the case had been "skillfully handled."
- In re Urethane Antitrust Litigation (D. Kan.): Cohen Milstein served as Co-Lead Counsel on behalf of a certified class of direct purchasers of several types of chemicals who were overcharged as a result of a nationwide price-fixing and market allocation conspiracy. In the litigation, multiple defendants collectively settled for over \$130 million, and a jury verdict of \$1.1 billion was secured against Dow Chemical, the final defendant, in 2013. Dow ultimately settled for \$835 million while the case was on appeal before the Supreme Court, bringing the total recovery to \$974 million – nearly 250% of the damages found by the jury.
- The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan (E.D. Mich.): Cohen Milstein served as Co-Lead Counsel, representing a class of purchasers of hospital services against Blue Cross Blue Shield of Michigan for agreeing to MFN provisions in its contracts with hospitals throughout Michigan that required those

hospitals to charge other insurers as much or considerably more for services provided to class members. The Court approved a settlement with BCBSM for nearly \$30 million.

Currently, in addition to those above, Mr. Johnson is litigating the following antitrust class action:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as Co-Lead Counsel, representing the Public School Teachers' Pension and Retirement Fund of Chicago and a proposed buy-side investor class against numerous Wall Street investment banks. The class alleges that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.

Prior to joining Cohen Milstein, Mr. Johnson practiced at a premier global law firm, where he focused on antitrust litigation for plaintiffs and defendants. Some of Mr. Johnson's matters included:

- Feesers, Inc. v. Michael Foods, Inc. and Sodexo, Inc. (M.D. Pa.): Mr. Johnson was a member of the successful trial team that represented Michael Foods, a manufacturer of processed egg products and refrigerated potato products, in a three-week trial of a Robinson-Patman Act action brought by a broad-line distributor of food products.
- Dahl, et al. v. Bain Capital, et al. (D. Mass.): Mr. Johnson represented The Carlyle Group in a class action where plaintiffs alleged collusion among certain private equity firms and investment banks in specific going-private transactions in violation of Section 1 of the Sherman Act.
- In re Aftermarket Filters Antitrust Litigation (N.D. Ill.): Mr. Johnson represented Champion Laboratories, a manufacturer of aftermarket automotive filters, in a class action where plaintiffs alleged a conspiracy among manufacturers to fix prices in violation of Section 1 of the Sherman Act.
- National Laser Technology, Inc. v. Biolase Technology, Inc. (S.D. Ind.): Mr. Johnson represented Biolase, the country's largest manufacturer of lasers for dental applications, against Sherman Act claims brought by a competitor aftermarket dental laser support company. The matter resulted in a favorable settlement for the client.

Mr. Johnson's work has been repeatedly recognized. Lawdragon named him to its list of "500 Leading Plaintiff Financial Lawyers" in 2019, 2020, 2021 and 2022. Global Competition Review (GCR) named him to its "Who's Who Legal: Competition" list for Plaintiffs in 2021 and 2022. He was recognized by The Legal 500 in 2017, 2018 and 2019 as a "Next Generation Lawyer" and in 2020, 2021 and 2022 as a "Next Generation Partner," an honor bestowed upon less than a dozen lawyers positioned to become leaders in the field of antitrust civil litigation and class actions. He also was named by Super Lawyers a "Rising Star" in Antitrust Litigation in 2016, 2017, and 2018 and a Super Lawyer for Antitrust Litigation in 2020 and 2021. He was named a "Future Star" by Benchmark Litigation in 2018.

Mr. Johnson is a commentator on antitrust and class action issues. In the fall of 2016, he provided testimony concerning Rule 23 to the Advisory Committee on Civil Rules on behalf of the Committee to Support the Antitrust Laws. Along with Emmy Levens, he has published two articles in the ABA's Antitrust magazine – one on ascertainability in the Spring 2016 issue and another on circuit splits affecting antitrust class actions in the Fall 2019 issue. He is a member of the ABA Section of Antitrust Law, and in July of 2019, he gave an ABA presentation on the legal standard to apply in cases regarding no-poach agreements. In his pro bono work, he has represented Covenant House Washington, D.C., Habitat for Humanity International Inc. and the Cystic Fibrosis Foundation.

Mr. Johnson graduated magna cum laude from Duke University with a B.A. in Political Science and Spanish, and attended Stanford Law School where he earned his law degree.

## **Richard A. Koffman**

Richard A. Koffman is a Partner at Cohen Milstein and former Co-Chair of the Antitrust practice group. He litigates antitrust cases on behalf of the victims of corporations engaged in price-fixing, market monopolization, and other unlawful conduct.

Mr. Koffman has repeatedly been recognized as one of the world's top plaintiffs' antitrust lawyers. Mr. Koffman is named in Global Competition Review's "Who's Who Legal: Thought Leaders – Competition 2022" – one of only 40 plaintiffs' antitrust attorneys in the United States to earn this distinction. Since 2010, The Legal 500 has annually named Mr. Koffman as one of the top plaintiffs' class action antitrust litigators in the United States, describing him as a "strong brief writer and an excellent oral advocate," and inducted him into The Legal 500 Hall of Fame in 2017. Mr. Koffman was named Law360's Competition Law MVP (2016), recognizing him as one of the top five most influential antitrust lawyers in the United States. Annually, Mr. Koffman also is named to Global Competition Review's "Who's Who Legal: Competition" (since 2016), Lawdragon's 500 Leading Plaintiff Financial Lawyers (since 2019), and Washington, D.C. Super Lawyers (since 2020).

Mr. Koffman has had the honor of serving as court-appointed Lead or Co-Lead Counsel in many landmark antitrust class actions, including the Urethanes Antitrust Litigation, which resulted in the largest price-fixing verdict in U.S. history and the largest jury verdict of 2013.

A former Senior Trial Attorney in the U.S. Department of Justice's Antitrust and Civil Rights Divisions, Mr. Koffman views his role in litigating antitrust lawsuits as an extension of the public interest work he pursued at the DOJ in promoting competition and fighting discrimination.

Recent case successes include:

- In re: Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): Co-Lead Counsel for plaintiffs in an antitrust class action alleging a conspiracy to fix the prices of chemicals used to make polyurethane foam. Four defendants settled pre-trial for a total of \$139 million. After a four-week trial, the jury returned a \$400 million verdict for plaintiffs against the final defendant, The Dow Chemical Co., which the district court trebled to more than \$1 billion. Dow ultimately settled for \$835 million while the case was on appeal, bringing the total recovery to \$974 million – nearly 250% of the damages found by the jury.
- In re: Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.): Co-Lead Counsel for plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin – life-saving therapies derived from blood plasma. Mr. Koffman and his team obtained settlements totaling \$128 million to compensate customers who were overcharged for these vital therapies.
- In re: Dental Supplies Antitrust Litigation (E.D.N.Y.): Co-Lead Counsel for a proposed class of dental practices and dental laboratories. The case alleges that Defendants Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company – the three largest dental supply and dental equipment distributors in the United States – fixed price margins on dental equipment, jointly pressured manufacturers to squeeze out competitors, and agreed not to "poach" each other's employees, in violation of federal antitrust law. The Court granted final approval to an \$80 million settlement on June 24, 2019. In approving the settlement, the Honorable Brian M. Cogan of the U.S. District Court for the Eastern District of New York stated, "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' Lawyers in this case who were running it."

Current cases include:

- Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.): Co-Lead Counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship – has unlawfully



monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied defendant's motion to dismiss the case in September 2015.

- In re: Treasuries Securities Antitrust Litigation (S.D.N.Y.): Co-Lead Counsel in a ground-breaking antitrust and Commodity Exchange Act class action alleging many of the nation's biggest banks manipulated the multi-trillion-dollar market for U.S. Treasuries and related instruments.

Mr. Koffman served as a law clerk to two Federal Judges: James B. McMillan of the U.S. District Court for the Western District of North Carolina, and Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit.

Mr. Koffman attended Wesleyan University, where he received a B.A. in English, with honors, and is a member of Phi Beta Kappa. Mr. Koffman is a graduate of Yale Law School, where he was Senior Editor of the Yale Law Journal.

### **Eric A. Kafka**

Eric A. Kafka, a partner in Cohen Milstein's Consumer Protection practice, is a tireless advocate for consumers. He represents plaintiffs in a wide range of consumer class actions, including false advertising, data breach, privacy, and product liability class actions.

Mr. Kafka is a member of both the American Association for Justice (AAJ) and Public Justice and he serves as the Secretary for the AAJ's Class Action Litigation Section. He also serves on Public Justice's Class Action Preservation Committee.

Currently, Mr. Kafka is litigating the following notable matters:

- Prescott, et al. v. Reckitt Benckiser LLC (N.D. Cal.): Mr. Kafka serves as Lead Counsel in the Prescott matter. On July 29, 2022, the court granted class certification for California, New York, and Massachusetts classes. In this false advertising consumer protection class action, Plaintiffs allege that Woolite laundry detergent "Color Renew" and "revives colors" representation is false and misleading because Woolite does not renew or revive color in clothing.
- DZ Reserve et al. v Facebook (N.D. Cal.): Cohen Milstein represents advertisers who claim that Facebook's Potential Reach metric is false and misleading due to systemic inflation of the Potential Reach. The court granted class certification on March 29, 2022.
- Ariza v. Luxottica Retail North America (LensCrafters) (E.D.N.Y.): Cohen Milstein represents purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods. The court granted class certification on December 13, 2021.

Mr. Kafka played an active role in the concluded, high-profile matters:

- In re Anthem, Inc. Data Breach Litigation (N.D. Cal.): Cohen Milstein was Co-Lead Counsel on behalf of a putative class of 78.8 million insureds, whose personal data and health information was stolen as a result of a massive data breach of Anthem, Inc., one of the nation's largest for-profit health care companies. In August 2018, the Court granted final approval of a \$115 million settlement – the largest data breach settlement in history.
- LLE One, LLC v. Facebook (N.D. Cal.): Cohen Milstein, as Co-Class Counsel, represented advertising purchasers, who claimed that Facebook intentionally inflated key metrics regarding their paid video advertisements' performance. Plaintiffs alleged that the inflated metrics caused them to buy more video

advertisements and to pay a higher price than they otherwise would have paid. In June 2020, the Court granted final approval of a \$40 million settlement against Facebook.

- HCA Litigation (M.D. Fla.): Cohen Milstein was Lead Counsel in a class action, alleging that emergency room patients were billed unreasonably high fees for emergency radiology services, in excess of the amount allowed by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the Court granted final approval of a \$220 million injunctive relief settlement.

Prior to attending law school, Mr. Kafka worked on multiple political campaigns, including President Obama's 2008 presidential campaign.

Mr. Kafka earned his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar. He received his B.A. from Yale University

### **Kalpana Kotagal**

Kalpana Kotagal is a partner in Cohen Milstein's Civil Rights & Employment practice and co-chair of the firm's Hiring and Diversity Committee. Ms. Kotagal plays an active role in the investigation and development of new matters for the Civil Rights & Employment practice.

Ms. Kotagal is co-author of the "Inclusion Rider," referenced by Oscar-winning actress Frances McDormand in her 2018 Best Actress acceptance speech. The Inclusion Rider has since been adopted by leaders across industries, including the Recording Academy, which announced the use of the Inclusion Rider in the production of the 2022 GRAMMY Awards, as well as JAMS, which included an Inclusion Rider option in its JAMS Domestic and International Clause Workbooks.

A highly-acclaimed employment and civil rights plaintiffs' litigator, Ms. Kotagal represents women and other disenfranchised people in employment and civil rights class actions, involving often cutting-edge issues related to the Title VII, Equal Pay Act, the Americans with Disabilities Act, Family Medical Leave Act, as well as wage and hour issues.

Ms. Kotagal leads or plays a leading role in the following high-profile matters:

- Jock, et al. v. Sterling Jewelers Inc. (A.A.A.; S.D.N.Y.): Cohen Milstein represents a putative class of more than 69,000 female employees of Sterling Jewelers, one of the nation's largest jewelry chains, in a nationwide Title VII gender discrimination and Equal Pay Act case. Plaintiffs claim they were subjected to a pattern of pay and promotions discrimination.
- Allen, et al. v. AT&T Mobility Services LLC (N.D. Ga.): Cohen Milstein and the ACLU Women's Rights Project represent former AT&T Mobility sales representatives in a novel pregnancy discrimination class action alleging that AT&T Mobility's "point" system for tardiness or absenteeism violates the Pregnancy Discrimination Act, Americans with Disabilities Act, and Family and Medical Leave Act, among others.
- Center for Reproductive Rights v. Department of Health and Human Services (D.D.C.): Cohen Milstein represents the CRR in FOIA litigation against the HHS, in which CRR seeks budget and staffing documents of the Conscience and Religious Freedom Division of the HHS's Office for Civil Rights and information related to HHS's use of HIPAA enforcement funds under the Trump Administration.

Ms. Kotagal's past successes include:

- The Inclusion Rider: A contractual addendum made famous by Frances McDormand in her 2018 Best Actress Oscar Awards speech that enables famous actors, directors, and other A-Listers to stipulate in their employment contracts that studios ensure representation of minorities in the auditions for film or television projects and track such initiatives to ensure the film reflects the world in which we actually live,

while protecting creative sovereignty. In August 2021, the Recording Academy announced that it would use the Inclusion Rider in the production of the 2022 GRAMMY Awards.

- Gender-Affirming Surgery Coverage by Aetna: With the Transgender Legal Defense & Education Fund, Ms. Kotagal led a pivotal access-to-healthcare negotiation on behalf of four transgender women. On January 26, 2021, Aetna, one of the largest health insurance companies in the United States, agreed to expand its coverage to include gender-affirming surgery, including, in this matter, breast augmentation. As a part of the pre-litigation agreement, TLDEF and Ms. Kotagal worked with Aetna to update its clinical policy bulletin to cover such medically necessary surgery for transfeminine members.
- Sutton v. McCoy (N.D. Ga.): Cohen Milstein and the ACLU successfully represented a plaintiff in a race-based Fair Housing Act discrimination lawsuit, where the plaintiff claimed she was unjustly evicted for inviting an African-American family to her home. On February 13, 2020, in exchange for dismissing the case, the landlords admitted to their discriminatory actions and making racist statements in violation of the Civil Rights Act and Fair Housing Act, apologized for the harm they caused, and paid restitution.
- Hill, et. al v. Donohue, United States Postal Service (E.D.N.Y.): Ms. Kotagal represented a class of disabled veteran job applicants, who alleged the U.S. Postal Service illegally required pre-offer medical inquiries during their application process. The case, which settled for \$9.58 million, resulted in USPS's agreeing to implement changes in its practices to prevent similar violations in the future.
- Aaron v. Pilgrim's Pride Corp. (W.D. Ark.): Ms. Kotagal represented 8,000 workers in 11 states in a wage and hour lawsuit, in which the workers sought redress for unpaid overtime. The \$10 million settlement allowed class members to recover about 85% of the back pay owed them.
- Nurse Wages Matters: Cohen Milstein represented nurses in several antitrust cases, contending that hospitals conspired to suppress and fix wages of nurses.

Ms. Kotagal played an instrumental role in representing Wal-Mart employees in *Dukes v. Walmart* (N.D. Cal.), nationwide class action consisting of approximately 1.5 million women who worked or had worked in Walmart's 3,400 stores nationwide. The landmark case, which was eventually heard by the Supreme Court, addressed standards for class certification in employment discrimination matters.

For her work on the Inclusion Rider and her other efforts in championing equity, diversity, and inclusion through her practice of law, Ms. Kotagal has received numerous industry recognitions, including being listed in Lawdragon's "500 Leading Lawyers in America" (2019-- 2021), named Law360's "Employment – MVP" (2018), recognizing the top five most influential employment lawyers in the United States, named one of The National Law Journal's "Elite Women of the Plaintiffs Bar" (2018), and receiving Chambers Women in Law: USA 2018, "Outstanding Contribution to the Community in Advancing Diversity" Award, as well as "The Work & Family Legal Center's Distinguished Public Service Award" from A Better Balance. In 2017, Ms. Kotagal was also recognized by Law360 as a "Rising Star," an annual list recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

A noted public speaker, Ms. Kotagal is a leading voice in the national conversation on diversity, equity, and inclusion, as well as issues related to class actions and mandatory arbitration. She speaks to a wide range of audiences, including the American Constitution Society, the Democratic Attorneys General Association, the Impact Fund, the National Employment Lawyers Association, TEDxLinz, among many others. Ms. Kotagal has also had the honor of delivering the commencement address to the graduating classes of University of Pennsylvania Law School (2019) and the University of California, Irvine School of Law (2018). A Harvard Law School Wasserstein Public Interest Fellow, Ms. Kotagal frequently speaks to law students and new lawyers about public interest law.

Ms. Kotagal is a prolific writer. Her recent Op-Eds include: "We Created Hollywood's New Inclusion Rider — Here's Why It's Just the Beginning," *Refinery 29* (May 24, 2021); "Inclusion Rider Work Must Continue in Hollywood and Beyond," *Law360*, February 21, 2019; "Push for Diversity in Hollywood Paves Path for Rest of America," *The Hill*, March 28, 2018; "The 'Inclusion Rider' Should Be a Hollywood Standard," *The Washington Post*, March 9, 2018;

“Your Thoughts: Can Trump Ban Transgender from the US Military?” Lawyer Monthly, August 08, 2017, and “The Need for Female Equality and Diversity in Hollywood,” Variety, February 23, 2017 (Co-Authored with Cohen Milstein’s Anita Hill).

Alongside, Ms. Hill, Ms. Kotagal was a featured legal commentator, “This Changes Everything: An Examination of Sexism in Hollywood,” a documentary addressing gender discrimination in Hollywood, co-produced with Geena Davis Institute on Gender in Media (January 17, 2019).

Ms. Kotagal is also actively involved in several national organizations, including serving as Co-Chair of the Alumni Advisory Board on Inclusion and Engagement for the University of Pennsylvania Law School and a member of the board of directors of Public Justice and A Better Balance. She is on the Advisory Board of the People’s Parity Project and is a member of American Constitution Society Task Force on #MeToo in the Legal Profession and co-chairs the Alumni Advisory Board for Equity and Inclusion at Penn Law. She has also served as a member of the Center for Worklife Law’s Working Group on Pregnancy Accommodation and the National Employment Lawyers Association (NELA).

Ms. Kotagal brings to her litigation practice her experience as an organizer, having previously served as field organizer with Green Corps, a field director with the U.S. Public Interest Research Group, and as an advisor to a Congressional candidate. Ms. Kotagal also served as an honorary chair of the National Finance Committee of Young Lawyers for Obama in 2008. She is the immediate past chair of the governance committee of the Board of Directors of CISV USA, an international youth-empowerment and peace education organization with more than 20 chapters in the United States.

Prior to joining Cohen Milstein, she served as a law clerk to the Honorable Betty Binns Fletcher of United States Court of Appeals for the Ninth Circuit.

Ms. Kotagal attended Stanford University, where she was a Morris K. Udall Scholar and graduated with honors. She earned her J.D., cum laude, from the University of Pennsylvania Law School, where she was a James Wilson Fellow. Ms. Kotagal was Articles Editor of the University of Pennsylvania Law Review.

### **Leslie M. Kroeger**

Leslie M. Kroeger is a partner in and the co-chair of the Cohen Milstein’s Complex Tort Litigation practice. She focuses on complex, high-profile product liability, wrongful death, and managed care abuse litigation.

Ms. Kroeger is a highly accomplished trial attorney who began her legal career in the courtroom as an Assistant Public Defender for the 18th Judicial Circuit of Florida and later became an Assistant State Attorney in Miami-Dade County, Florida. She then moved into private practice where she continues to handle a variety of complex civil litigation before state and federal courts in Florida and nationwide.

Ms. Kroeger is a Past President of the Council of Presidents for the American Association for Justice (AAJ), and is honored to represent the Council on the AAJ Executive Committee. She is also a Past-President of the Florida Justice Association (FJA), one of the nation’s premier plaintiffs trial associations. She was the second female President in the history of the association.

Currently, Ms. Kroeger is litigating the following notable matters:

- In re Flint Water Cases (E.D. Mich.): Cohen Milstein was court-appointed Interim Co-Lead Class Counsel to oversee a group of toxic tort class actions filed on behalf of Flint, Michigan residents and businesses harmed by exposure to toxic levels of lead and other contaminants in the city’s drinking water. On November 10, 2021, the United States District Court for the Eastern District of Michigan granted final

approval of a landmark \$626.25 million settlement against the State of Michigan. Litigation against two private engineering firms, Veolia North America (VNA) and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency, continues before the United States District Court for the Eastern District of Michigan. On August 11, 2021, Judge Levy granted class certification on liability claims in the ongoing litigation against LAN and VNA.

- Underwood v. Meta Platforms, Inc. (Facebook) (Sup. Ct. Cal., Alameda Cnty): On January 6, 2022, Cohen Milstein filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook, Inc., alleging that by connecting users to extremist groups and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Mr. Underwood.
- Edwards v. Tesla (Sup. Ct. Cal., Alameda Cnty.): On June 25, 2020, Cohen Milstein filed a product liability lawsuit against Tesla, Inc. on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla Model 3 during an accident.
- Edenville and Sanford Dam Failure Litigation (Mich. Ct. of Claims; Cir. Ct., Cty. Saginaw, Mich.): On June 24, 2020, Cohen Milstein filed two separate property damage lawsuits against Michigan State Government agencies, including the Michigan Department of Environment, Great Lakes & Energy and Michigan Department of Natural Resources for blatantly mismanaging and failing to properly maintain the Edenville and Sanford dams, which catastrophically failed on May 19, 2020. Cohen Milstein is representing more than 300 residents and businesses in Midland County and Saginaw County, Michigan and the surrounding areas, including, Arenac, Gladwin, and Iosco counties.
- Bernardo, et al. v. Pfizer, Inc., et al. (S.D. Fla.): On February 20, 2020, Cohen Milstein filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subjected to an increased risk of developing cancer.
- United States ex rel. Long v. Janssen Biotech, Inc. (D. Mass.): Cohen Milstein represents the plaintiff-relator in a whistleblower/qui tam lawsuit against Janssen Biotech (a subsidiary of Johnson & Johnson), alleging that the manufacturer of the rheumatoid arthritis drugs Remicade and Simponi ARIA violated federal law by engaging in a scheme through which it provided physicians free practice management and infusion business consulting services over an extended period to induce the physicians to purchase Remicade and Simponi ARIA and administer these drugs to patients, including Medicare beneficiaries, via infusions performed in their offices.

Ms. Kroeger has successfully litigated the following lawsuits:

- Lindsay X-LITE Guardrail Litigation (State Crts: Tenn., S.C.): Cohen Milstein represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective, X-Lite guardrails on state roadways.
- Ratha, et al. v. Phatthana Seafood Co. (C.D. Cal.): Cohen Milstein represented seven Cambodian plaintiffs in a cross-border human rights lawsuit, involving human trafficking, forced labor, involuntary servitude, and peonage by factories in Thailand that produce shrimp and seafood for export to the United States.
- Quinteros, et al. v. DynCorp, et al. (D.D.C.): Cohen Milstein represented over 2,000 Ecuadorian farmers and their families who suffered physical injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. A bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. This resolution allowed for a successful case settlement.

- *Mincey v. Takata* (Cir. Ct., Duval Cty., Fla.): Cohen Milstein was lead counsel in a lawsuit brought on behalf of Patricia Mincey and her family. Patricia Mincey sustained catastrophic injuries that rendered her a quadriplegic in 2014 when the driver's side airbag in her Honda Civic deployed too aggressively during a collision due to a product defect. She passed away in early 2016 due to complications from her quadriplegia caused by the problematic airbag. The suit charged that Takata, the manufacturer of the airbag system, knew of the airbag defect and hid the problem from consumers. Evidence uncovered by the firm showed that Takata concealed the defective nature of the airbag system for more than a decade. The case was resolved in July 2016.
- *Quinlan v. Toyota Motor Corporation* (S.D. Fla.): Cohen Milstein was lead counsel in a product liability case filed against Toyota, alleging that manufacturing defects in the defendant's car caused the car being driven by the plaintiff to suddenly accelerate and go out of control, resulting in catastrophic injuries that left Quinlan a quadriplegic. The defendant entered into a confidential settlement. Ms. Kroeger was engaged in all aspects of the litigation.
- *In re: Caterpillar, Inc. Engine Products Liability Litigation* (D.N.J.): Cohen Milstein was co-lead counsel in a nationwide product liability class action lawsuit, alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. Ms. Kroeger was involved all aspects of the litigation.
- *John Doe v. Sunz Insurance Company and CorVel Corporation* (State Ct., Fla.): Cohen Milstein successfully represented John Doe in a workers' compensation arbitration against his workers' compensation carrier and third-party administrator for breach of fiduciary duty and intentional infliction of emotional distress relating to their denial of medically necessary cervical spine surgery, recommended by a carrier-approved orthopedic surgeon, and their termination of his workers' compensation benefits.

Since 2001, Ms. Kroeger has been an active member of FJA, serving on the Executive Committee from 2011-2021 and more recently as FJA's President in 2019-2020. She is a past Chair of the Women's Caucus.

FJA has also recognized Ms. Kroeger for her leadership and advocacy efforts. In 2017, 2018 and 2019, she was presented with FJA's Cornerstone Award in recognition of her leadership and efforts in recruiting new members to the organization. In 2015, Ms. Kroeger was awarded FJA's Champion of Consumer Safety Award for her lobbying efforts before the Florida legislature, resulting in passage of SB 518, a state law requiring children under age five to be secured in federally-approved child-restraint devices.

Ms. Kroeger also currently serves on the Board of Directors of Communities Connected for Kids, and she oversees the Cohen Milstein/Safe Kids bi-annual booster seat giveaway. She is Past-President and Founder of the Martin County Chapter of the Florida Association for Women Lawyers. She also served seven years on the Florida Bar Professional Ethics Committee.

Ms. Kroeger is widely recognized for her leadership and legal skills. Lawdragon has named her to its "500 Leading Lawyers in America" (2020, 2021) and "500 Leading Plaintiff Consumer Lawyers" (2019-2022) lists. In 2020 and 2018, Ms. Kroeger was named Daily Business Review's "Distinguished Leader," and in 2018, Best Lawyers in America recognized her as "Lawyer of the Year" in West Palm Beach for Mass Tort Litigation /Class Actions. Annually, Ms. Kroeger is annually recognized by Best Lawyers in America in the areas of Consumer Protection Law; Mass Tort Litigation / Class Actions; Personal Injury Litigation; Product Liability Litigation, as well as by Florida Super Lawyers, Palm Beach Illustrated, and Florida Trend's Legal Elite. Ms. Kroeger is AV rated by Martindale-Hubbell.

Ms. Kroeger often speaks and writes on a range of issues dealing with litigation strategies and tactics from addressing the standards for expert witness testimony in light of the Supreme Court's Daubert ruling to delivering compelling opening statements and other trial skills, as well as legal trends related to automotive negligence, roadway safety and guardrail systems, managed care abuse, and denial of workers' compensation claims. She is

frequently invited to speak at the Florida Workers' Advocates Annual Conference, the Annual Trial Lawyers Summit, and Florida Justice Association seminars and conventions throughout the year. In 2016, Ms. Kroeger was named to Law360's Product Liability Editorial Advisory Board.

Ms. Kroeger graduated with high honors from the University of Tennessee at Knoxville, and obtained her law degree from the Cumberland School of Law, Samford University. Following law school, she served in a trial clerkship in Miami.

### **Emmy L. Levens**

Emmy Levens is a partner at Cohen Milstein and a member of the Antitrust and Public Client practices. Ms. Levens has particular expertise in litigating large, high-profile complex litigation, class actions, and appellate litigation involving anticompetitive, consumer fraud, and environmental justice claims.

Ms. Levens has been repeatedly recognized by the legal industry for her exceptional work, including being named to The National Law Journal's 2021 "Elite Women of the Plaintiffs Bar," recognizing the top female litigators in the U.S., who "have demonstrated repeated success in cutting-edge work on behalf of plaintiffs," as well as Bloomberg Law's 2021 "They've Got Next: The 40 Under 40 – Mass Torts" and Law360's 2020 "Rising Stars – Class Action."

Currently, Ms. Levens is litigating these notable matters:

- **Flint Water Crisis Litigation (E.D. Mich.):** On November 10, 2021, the Court granted final approval of a landmark \$626.25 million settlement between Flint residents and businesses and multiple governmental defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in this environmental toxic tort class action, affecting over 90,000 Flint residents and businesses. Litigation will continue against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency will also continue. Cohen Milstein's is Interim Co-Lead Class Counsel in this litigation. Ms. Levens oversees class strategy and manages all aspects of the litigation.
- **Iowa Public Employees Retirement System et al. v. Bank of America Corp. (S.D.N.Y.):** Cohen Milstein is co-counsel in this groundbreaking putative class action, in which investors accuse Morgan Stanley, Goldman Sachs, Credit Suisse, UBS, J.P. Morgan, and other Wall Street banks of conspiring to thwart the modernization of and preserve their dominance over the \$1.7 trillion stock loan market. Ms. Levens is one of the lead Antitrust partners in this suit.

Some of her past successes include:

- **Pre-Filled Propane Tank Antitrust Litigation (W.D. Mo.):** Cohen Milstein served as Co-Lead Counsel to Direct Purchasers in this price fixing class action against two of the largest distributors of propane exchange tanks. In June 2020, the court granted final approval of the \$12.6 million settlement. Ms. Levens drafted the successful appellate brief argued before the Eighth Circuit en banc. The Court adopted Plaintiffs' articulation of the continuing violation doctrine and held that sales made pursuant to an anticompetitive agreement constitute new acts for purposes of determining the timeliness of a claim, thereby reviving Direct Purchasers' antitrust claims against distributors of pre-filled propane tanks. In January 2018, the U.S. Supreme Court refused to review the Eighth Circuit's ruling, allowing it to stand.
- **Resistors Antitrust Litigation (N.D. Cal.):** Cohen Milstein served as Interim Co-Lead Counsel for the direct purchasers of resistors, who accused the world's largest manufacturers of resistors of fixing prices. In November 2019, the court granted final approval of a \$50.25 million settlement – a remarkable recovery, reflecting 33% - 57% of estimated single damages according to Plaintiffs' preliminary analysis. Estimated

payments to class members would be an average payment of \$46,850.64; a median payment of \$768.39. Ms. Levens managed all aspects of this litigation.

- *Allen vs. Dairy Farmers of America* (D. Vt.): Cohen Milstein served as Lead Counsel for one of two subclasses of dairy farmers challenging anticompetitive conduct in the Northeast which resulted in lower prices paid to farmers. In April 2017 the Second Circuit Court of Appeals affirmed a \$50 million settlement between plaintiffs and the remaining defendants, bringing the total settlement to more than \$80 million, in addition to industry-changing equitable relief. Ms. Levens served as one of the principle attorneys litigating this matter since its inception.
- *Plasma-Derivative Protein Therapies Antitrust Litigation* (N.D. Ill.): Cohen Milstein served as Co-Lead Counsel for plaintiffs alleging that the two largest manufacturers of IVIG and Albumin – life-saving therapies derived from blood plasma – conspired to reduce the supply, and increase the prices, of these therapies. Ms. Levens played an active role in the litigation, helping to obtain settlements totaling \$128 million for hospitals and other direct purchasers.
- *Bulk Bleach Litigation* (D.S.C.): Ms. Levens served as one of the key attorneys at Cohen Milstein representing a class of municipalities and other direct purchasers of bulk bleach in a case alleging that the two dominant manufacturers of bulk bleach in the Carolina’s engaged in an illegal market allocation agreement. After successfully defeating multiple motions to dismiss, class counsel obtained a settlement that satisfied nearly all of the class’s damages. In approving the settlement, Judge Gergel complimented counsel, stating that the, “whole case has been, I think, very professionally handled, skillfully handled.”

Ms. Leven’s recent pro bono work includes:

- *Access to Education Class Action* (Circ. Ct., Prince George’s Cnty.): On June 12, 2019, Cohen Milstein, the ACLU of Maryland, and the Howard University School of Law Civil Rights Clinic filed an education discrimination class action and motion for a temporary restraining order against the Prince George’s County School Board, seeking to declare its charging of fees for summer school violates the Maryland Constitution (which requires the state to provide a free education), causing serious, irreparable harm to students in the county who cannot afford the fees.

Ms. Levens was also a member of the Apple price-fixing litigation team recognized as “Legal Lions” by Law360.

In addition to her work at the Cohen Milstein, Ms. Levens has served as an adjunct Professor at Georgetown School of Law and is a Board member and Secretary of Global Playground, a nonprofit that builds schools in the developing world. She recently co-authored an article entitled, “Heightened Ascertainability Requirement Disregards Rule 23’s Plain Language,” which appeared in the Spring, 2016 issue of Antitrust magazine.

Prior to joining the firm, Ms. Levens worked as a staff law clerk at the U.S. Court of Appeals for the Seventh Circuit.

Ms. Levens attended the University of Kansas, graduating with honors, and earned her J.D. at UCLA Law School, graduating Order of the Coif. While at law school, Ms. Levens served as the Managing Editor for the UCLA Journal of Environmental Law and Policy, Director of the Downtown Legal Housing Clinic, and President of Moot Court.

### **Jeanne A. Markey**

Jeanne A. Markey is a Partner at Cohen Milstein and Co-Chair of the firm's Whistleblower/False Claims Act practice group.

Ms. Markey has successfully represented whistleblowers in federal and state cases across the country in some of highest-profile qui tam litigation in the healthcare, defense, financial services, and education industries. She has also



represented whistleblower clients in the public housing sector, in S.E.C. related matters, and in matters involving complex financial instruments.

Representative settled cases include:

- United States of America et al., ex rel. Lauren Kieff, v. Wyeth: Ms. Markey was co-lead counsel in this False Claims Act whistleblower case against pharmaceutical giant Wyeth (subsequently acquired by Pfizer), in which the whistleblowers alleged that Wyeth defrauded Medicaid, the joint federal/state healthcare program for the poor, when it reported falsely inflated prices for its acid suppression drug Protonix from 2001 through 2006 for Medicaid rebate purposes. Weeks before trial, in February 2016, in one of the largest qui tam settlements in U.S. history, Wyeth agreed to pay \$784.6 million to the U.S. government and the over 35 intervening states.
- United States et al. ex relators v. Southern SNF Management, Inc. and Rehab Services in Motion, LLC: Ms. Markey was lead counsel in this False Claims Act case in which three whistleblowers employed by a chain of skilled nursing facilities located in Florida and Alabama alleged that the chain was engaged in a multi-year scheme of inflating the facilities' Medicare collections by assigning Medicare patients to levels of therapy, (often referred to as "RUG" levels), higher than what was medically reasonable and necessary for that patient. In July 2018 this case settled for \$10 million.
- Ven-A-Care Whistleblower Litigation: Ms. Markey was involved in a series of Ven-A-Care whistleblower cases which pertained to the inflated reimbursement amounts drug companies were causing Medicare and Medicaid to pay for prescription drugs by reporting inflated wholesale prices to the government. These large, highly-successful groundbreaking cases helped to pave the way for a wide range of subsequent False Claims Act cases in the realm of healthcare and directed at drug companies in particular.

In 2016, Ms. Markey was recognized as one of the top 25 women lawyers in the Commonwealth of Pennsylvania by The Legal Intelligencer.

In 2018, Ms. Markey, an alumna of Cornell University Law School, was invited to become a member of The President's Council of Cornell Women.

She is also an active member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its Qui Tam provisions, and the Association of qui tam attorneys.

She frequently speaks about developments in the qui tam field and has co-authored several articles about topics including statistical sampling and representing whistleblowers in cases involving issues of medical necessity.

Ms. Markey received her B.A. (cum laude) from Colgate University and her J.D. from Cornell University Law School.

### **Daniel McCuaig**

Dan McCuaig is a partner at Cohen Milstein and a member of the Antitrust practice. He represents a broad range of plaintiffs in civil litigation, with a focus on class actions and antitrust litigation.

Immediately prior to joining Cohen Milstein, Mr. McCuaig was a trial attorney in the Antitrust Division at the U.S. Department of Justice for more than a decade, where he led investigation and litigation teams in both criminal and civil matters related to price fixing, bid rigging, anticompetitive mergers, and other antitrust law violations.

As a criminal prosecutor at the DOJ, Mr. McCuaig led the investigation and prosecution of antitrust, fraud, and obstruction of justice claims against corporations and individuals. He was the principal trial lawyer in related plea

hearings, sentencings, and before grand juries, and successfully generated significant charges and guilty pleas. Even while carrying out his prosecutorial duties, Mr. McCuaig continued to provide his expertise on major Antitrust Division civil actions, such as its successful challenge to the proposed merger between Anthem and Cigna—in which Mr. McCuaig cross-examined Anthem expert economist Robert Willig at trial.

While a civil litigation trial lawyer at the DOJ, Mr. McCuaig oversaw the government's investigation into the e-books price fixing conspiracy litigated in *In Re Electronic Books Antitrust Litigation* (S.D.N.Y.), involving Apple and five major publishers, and played a principal role in the government's successful trial of Apple. Leading up to that trial, Mr. McCuaig coordinated with foreign enforcement agencies, 33 state attorneys general, and private plaintiffs' counsel, and negotiated consent decrees with all publisher defendants. More generally, Mr. McCuaig investigated competitive effects of proposed mergers in media, sports, real estate, and tangential industries, as well as potential anticompetitive effects of non-merger activity in the same industries, and negotiated divestitures and consent decrees to remedy anticompetitive aspects of mergers and non-merger activities.

Prior to his work with the DOJ, Mr. McCuaig was counsel at a prestigious international white collar and corporate defense firm, where, in addition to civil antitrust defense work, he focused on telecommunications disputes before the FCC, state public service commissions, and state and federal courts.

He is regularly sought to speak on antitrust and class certification panels and has been repeatedly recognized by Lawdragon as one of the nation's "500 Leading Plaintiff Financial Lawyers."

Currently, Mr. McCuaig is litigating the following notable matters:

- *Iowa Public Employees Retirement System et al. v. Bank of America Corp.* (S.D.N.Y.): Cohen Milstein is co-counsel in this groundbreaking putative class action, in which investors accuse Morgan Stanley, Goldman Sachs, Credit Suisse, and other Wall Street investment banks of conspiring to thwart the modernization of, and preserve their dominance over, the \$1.7 trillion stock loan market.
- *In Re: Da Vinci Surgical Robot Antitrust Litigation* (N.D. Cal.): On September 24, 2021, the Court appointed Cohen Milstein Interim Co-Lead Counsel in this consolidated antitrust class action against Intuitive Surgical, Inc. Plaintiffs allege that Intuitive engages in an anticompetitive scheme under which it ties the purchase or lease of its must-have, market-dominating da Vinci surgical robot to the additional purchases of (i) robot maintenance and repair services and (ii) unnecessarily large numbers of the surgical instruments, known as EndoWrists, used to perform surgery with the robot—a violation of Sections 1 and 2 of the Sherman Act.
- *Pacific Steel Group v. Commercial Metals Company* (N.D. Cal.): Cohen Milstein represents Pacific Steel Group, a steel rebar fabricator, in challenging the lawfulness of an agreement extracted by one of the world's largest steel companies (CMC) from the world's only manufacturer of steel rebar micro mills to refuse to build a micro mill for Pacific Steel in any location that could threaten CMC's rebar monopoly in Southern California or otherwise allow Pacific Steel to become a more formidable competitor in the downstream rebar fabrication market.

Mr. McCuaig is the co-author of *Telecommunications Convergence Overview* (with William T. Lake and Thomas P. Olson), 698 PLI/Pat 9 (May 2002), and the author of *Halve the Baby: An Obvious Solution to the Troubling Use of Trademarks as Metatags*, 18 J. Marshall J. Computer & Info. L. 643 (Spring 2000).

Mr. McCuaig received his B.A., summa cum laude, from The George Washington University. He is a member of Phi Beta Kappa. He received his J.D., cum laude, from Harvard Law School, where he was a Senior Editor and the Treasurer of the Harvard Negotiation Law Review.

Mr. McCuaig was a judicial clerk to The Honorable Algenon L. Marbley of the United States District Court for the Southern District of Ohio (Columbus).

## Douglas J. McNamara

Douglas J. McNamara, a partner in Cohen Milstein's Consumer Protection practice, focuses on litigating complex, multi-state class action lawsuits against manufacturers and consumer service providers, such as banks, insurers, credit card companies and others. He has helped litigate precedent-setting cases, involving issues of preemption, choice of law, and class certification. He is a hands-on litigator who takes pleasure in the details, facts, and documents of each case. Mr. McNamara is also a highly regarded speaker who has presented at several forums on such topics as federal preemption, class certification and civil litigation, and is the author of scholarly articles focusing on emerging legal issues.

Mr. McNamara has worked on numerous cases involving data breaches, dangerous pharmaceuticals and medical devices, light cigarettes, defective consumer products, and environmental torts.

Mr. McNamara is currently litigating the following notable matters:

- General Motors Litigation (E.D. Mich.): On September 26, 2019, Cohen Milstein (via Theodore Leopold) was appointed Lead Counsel to oversee a consolidated consumer class actions filed on behalf of hundreds of thousands of GM vehicle owners across 30 states against GM related to defective eight-speed automatic transmissions in vehicles manufactured between 2015 and 2019. Mr. McNamara has led discovery and briefing efforts. Class certification is pending before the court, seeking over a billion dollars for injured consumers.
- In re MGM Resorts International Data Breach Litigation (D. Nev.): On February 1, 2021, Cohen Milstein's Douglas J. McNamara was appointed Co-Lead Interim Class Counsel in this consolidated data breach class action against MGM Resorts for failing to implement reasonable data security practices, thereby allowing the personal information of between 10.6 million and 142 million MGM hotel guests and customers to be stolen on or about July 7, 2019.
- In re: Marriott International Inc. Customer Data Security Breach Litigation (D. Md.): In April 2019, Cohen Milstein was appointed Consumer Plaintiffs' Co-Lead Counsel to oversee a class action related to the data breach that compromised the personal data of nearly 400 million customers, making it one of the largest data breaches in U.S. history. On May 3, 2022, the Court granted class certification to eight classes of plaintiffs.
- In Re: Blackbaud, Inc., Customer Data Breach Litigation (D.S.C.): On February 16, 2021, Cohen Milstein's Douglas J. McNamara was appointed to the Plaintiffs' Steering Committee in this data breach class action in which Plaintiffs claim that Blackbaud failed to take reasonable steps to prevent a data breach, starting in February 2020, and failed to promptly or accurately provide notice of the data breach to those affected.
- Cape Fear River Contaminated Water Litigation (E.D.N.C.): On January 4, 2018, Cohen Milstein was appointed Interim Co-Lead Class Counsel in a consolidated toxic tort class action filed against DuPont and Chemours, alleging that for more than four decades the companies polluted the Cape Fear River near Wilmington, North Carolina with a chemical called GenX, contaminating the water supply of five counties, and misrepresented their conduct to state and federal regulators.

Some of Mr. McNamara's recent successes include:

- Facebook 2018 Data Breach Litigation (N.D. Cal.): On May 6, 2021, the Court granted final approval of an injunctive relief settlement in this data breach class action against Facebook, which requires Facebook to adopt, implement, and/or maintain a detailed set of security commitments for the next five years, which will be independently assessed by a third-party. In 2019, Cohen Milstein was appointed Co-Interim Class Counsel.
- In re Apple Inc. Device Performance Litigation (N.D. Cal.): On March 17, 2021, the Court granted final approval of a \$500 million settlement fund, concluding this consumer litigation between iPhone users and

Apple. Specifically, the settlement fund will be used by Apple to pay out between \$310 million and \$500 million to iPhone users — which the Court called one of the largest class action settlements in the Ninth Circuit. Owners of Apple’s iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, and 7 Plus claimed that Apple failed to disclose material information about Apple’s iOS software operating system updates. Mr. McNamara was appointed to the Plaintiffs’ Steering Committee and was Co-Chair of the Expert Committee.

- *Herrera v. JFK Medical Center and HCA, Inc.* (M.D. Fla.): Cohen Milstein was Lead Counsel in a class action, alleging that emergency room patients were billed unreasonably high fees for emergency radiology services, in excess of the amount allowed by their mandatory Florida Personal Injury Protection (PIP) insurance. In December 2018, the Court granted final approval of a \$220 million injunctive relief settlement.
- *Lumber Liquidators Chinese-Manufactured Flooring Products Liability Litigation* (E.D. Va.): Cohen Milstein is co-lead counsel in a consumer class action lawsuit, alleging the nationwide retailer sold Chinese-made laminate flooring containing hazardous levels of the carcinogen formaldehyde while falsely labeling their products as meeting or exceeding California emissions standards, a story that was profiled twice on 60 Minutes in 2015. On October 9, 2018, the Court granted final approval of a \$36 million settlement. Mr. McNamara was involved in all aspects of the litigation, including discovery, writing and arguing pleadings, and settlement.
- *Khoday et al. v. Symantec Corp. et al.* (D. Minn.): Cohen Milstein was lead counsel in a nationwide class action involving the marketing to consumers of a re-download service in conjunction with the sale of Norton software. In April 2016, the case settled in a \$60 million all-cash deal a month before it was to go to trial – one of the most significant consumer settlements in years. Mr. McNamara was involved in all aspects of the case, from managing the litigation to overseeing a staff of contract attorneys to settlement discussions.
- *Caterpillar Engine Product Liability Litigation* (D.N.J.): Cohen Milstein was co-lead counsel on behalf of 22 trucking and transportation companies in 18 states in a class action lawsuit against Caterpillar alleging that the MY2007 CAT engine, designed to meet the EPA’s tougher Clean Air Act emissions standards, was defective, causing power loss and shutdowns that prevented or impeded vehicles from transporting goods or passengers. Caterpillar sought to dismiss the case claiming EPA approval of the engine preempted any state law claims. Mr. McNamara was the architect of the successful opposition to the motion, and he was involved in all aspects of the litigation. On September 20, 2016, the Court granted final approval of the \$60 million settlement.

Mr. McNamara also is actively involved in the firm’s high-profile pro bono litigation, including:

- *NAACP v. Donald J. Trump, President of the United States* (D.D.C.): Cohen Milstein represented the NAACP and two unions in a lawsuit against President Donald J. Trump, Department of Homeland Security and other U.S. immigration enforcement agencies and their efforts to terminate the Deferred Action for Childhood Arrivals (DACA) program. On June 18, 2020, in a 5-4 ruling, the Supreme Court blocked the Trump Administration’s plan to rescind DACA, preserving immigration protections for approximately 650,000 current DACA recipients.

Prior to joining Cohen Milstein in 2001, Mr. McNamara was a litigation associate at an international defense firm, specializing in pharmaceutical and product liability cases. He started his career at New York City’s Legal Aid Society, defending indigent criminal defendants at trial and on appeal.

He has been the lead author on three law review articles: “Buckley, Imbler and Stare Decisis: The Present Predicament of Prosecutorial Immunity and An End to Its Absolute Means,” 59 *Albany Law Review*, 1135 (1996); “Sexual Discrimination and Sexual Misconduct: Applying New York’s Gender-Specific Sexual Misconduct Law to Minors,” 14 *Touro Law Review*, 477 (Winter 1998), and most recently, Douglas McNamara, et al, “Reexamining the Seventh Amendment Argument Against Issue Certification,” 34 *Pace Law Review*, 1041 (2014). He has also taught

a course on environmental and toxic torts as an adjunct at George Washington University School of Law. Mr. McNamara is currently on Law360's 2022 Cybersecurity & Privacy Editorial Advisory Board.

Mr. McNamara graduated summa cum laude from SUNY Albany, and he earned his J.D. from New York University School of Law.

### **Betsy A. Miller**

Betsy A. Miller is a partner at Cohen Milstein and chair of the Public Client practice. She represents state attorneys general and political subdivisions in civil law enforcement investigations and litigation involving consumer protection, Medicaid fraud, and other areas of enforcement that protect government interests and vulnerable communities. She currently represents the states of Indiana, New Jersey and Vermont in the national opioid crisis litigation against manufacturers and distributors of prescription narcotics.

For her accomplishments and continued work in high-stakes matters, Ms. Miller has been honored on several occasions by industry peers, including Lawdragon 500, which recognizes "the best of the best" in the U.S. legal profession, The National Law Journal and The Trial Lawyer, which have identified Ms. Miller as one of America's "50 Most Influential Trial Lawyers," and The National Law Journal, which named Ms. Miller as one of nine women in the nation to its inaugural list of "Elite Women of the Plaintiffs' Bar."

Prior to joining Cohen Milstein, Ms. Miller served as the Chief of Staff and Senior Counsel to the Attorney General for the District of Columbia. Her responsibilities included supervising an office of 700+ employees and serving as the lead lawyer for the historic transition of the D.C. Public Schools under Mayor Adrian Fenty and Chancellor Michelle Rhee.

Earlier in her career, Ms. Miller served as Nominations Counsel for Senator Patrick J. Leahy (D-VT) on the Senate Judiciary Committee, where she was responsible for handling confirmation hearings on presidential nominations to the federal judiciary, the Department of Justice, the Federal Bureau of Investigation, and to the Offices of the United States Attorneys.

Ms. Miller also spent eight years as a litigator for two premier defense firms, where she represented some of the nation's largest companies and individuals in matters including First Amendment issues, complex commercial disputes, collective bargaining negotiations and arbitration, employment class actions and challenges to independent contractor classification. Her civil defense experience adds to Ms. Miller's deep and balanced litigation skillset.

Ms. Miller's public (non-confidential) representations include:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its litigation against Grubhub and DoorDash for pervasively deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. [Click here to view the lawsuit filed against DoorDash](#); [click here to view the lawsuit filed against Grubhub](#).
- Uber Eats, Postmates Investigation: Represented the City of Chicago in its investigation into UberEats and Postmates for allegedly listing Chicago restaurants on their platforms without the eateries' consent, for violating the City's emergency fee cap ordinance during the COVID-19 pandemic, and for other false advertising-related misconduct. On December 5, 2022, the City announced a \$10 million settlement.
- Opioid Painkillers: Representing the states of Indiana, New Jersey and Vermont in investigations and litigation against entities responsible for the deceptive marketing and sale of opioids.
- Moody's Litigation: Represented the co-lead state (Mississippi) and New Jersey in the \$864 million consumer fraud settlement achieved in January 2017 by 22 states and the U.S. Department of Justice with Moody's Corporation, Moody's Investors Service, Inc., and Moody's Analytics, Inc.

- S&P Litigation: Represented co-lead state (Mississippi) in the \$1.375 billion-dollar consumer fraud settlement achieved in 2015 by 20 states and the U.S. Department of Justice with Standard & Poor's. Together with the Moody's settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than \$2.2 billion for their conduct contributing to the national housing crisis and Great Recession.

Ms. Miller's other investigation and litigation successes include matters in the financial, health care, and employment law sectors. Examples include:

- Representing the states of Arizona and Nevada in litigation against Bank of America for deceptive conduct in connection with servicing approximately 500,000 mortgages; resulting in financial payments to consumers and the states, commitments to mortgage modifications, and other equitable relief valued at nearly \$1 billion.
- Representing the state of Montana in an investigation of a Fortune 100 company regarding alleged misclassification of employees as independent contractors; resulting in a multimillion-dollar resolution for the state.
- Representing other state attorneys general and municipalities in numerous confidential investigations and settlements.

In 2022, Harvard Law School invited Ms. Miller to serve as a Lecturer on Law, Advanced Negotiations - Polarities: The Power of "Both/And" Law and Leadership, which addresses the finer dynamics of advocacy and leadership skills in the practice of law and engaging sophisticated clients (and teams) in complex negotiations and problem solving. In addition, Ms. Miller has taught intensive negotiation courses at Harvard Law School's Program on Negotiation (PON) (a consortium program of Harvard University, Massachusetts Institute of Technology, and Tufts University) (formerly Harvard's Program of Instruction for Lawyers) and has provided negotiation skills training for a wide variety of federal and state government agencies, law firms, corporations, and non-profit organizations. In addition, Ms. Miller served as an Adjunct Professor at Georgetown Law School (2001 - 2014), where she taught seminars on negotiation and mediation strategy. She also holds Executive Certificates in both Leadership Coaching and Navigating Polarities: Leading and Coaching in a Complex World from Georgetown University's Institute for Transformational Leadership (ITL) and is a member of the International Coach Federation (ICF).

Ms. Miller has authored several articles, including, "Untapped Potential: Creating a Systematic Model for Mediation Preparation," which appears as Chapter 13 in the AAA Handbook on Mediation – Third Edition (2016), and she has been acknowledged for her work in the area of leadership coaching, including in Navigating Polarities: Using Both/And Thinking to Lead Transformation by Brian Emerson and Kelly Lewis (Paradoxical Press, 2019).

Ms. Miller speaks nationally on the practice of law and issues of significance for state attorneys general and other government entities. She is also in high demand as a speaker on negotiation and resolution strategy, leadership, team dynamics, and change management. The development of women leaders is an area of particular focus within these presentation topics. Ms. Miller's thought leadership has been profiled extensively, including by Above the Law, The American Lawyer, Law360, National Law Journal, Thomson Reuters Legal Executive Institute, among others.

Ms. Miller earned her undergraduate degree in Comparative Literature from Dartmouth College, graduating magna cum laude and Phi Beta Kappa, and earned her law degree from Harvard Law School, where she was an editor on the Harvard Human Rights Journal and the Harvard Latinx Law Review. She is the recipient of Harvard Law School's Heyman Post-Grad Fellowship for federal government service and academic excellence and of Harvard Law School's Irving R. Kaufman Public Interest Fellowship for public service. Immediately after graduating from Harvard, she clerked for the Honorable Thomas Penfield Jackson in the U.S. District Court for the District of Columbia.

## **Victoria S. Nugent**

Victoria S. Nugent is a partner at Cohen Milstein and co-chair of the Consumer Protection practice and immediate past co-chair of the Public Client practice. She was also a member of the firm's Executive Committee (2020 - 2022).

Ms. Nugent is a highly regarded consumer protection litigator, having overseen significant consumer fraud investigations and litigation on behalf of the state Attorneys General of Nevada, New Mexico, Pennsylvania, New Jersey, Indiana, and Vermont – as well as class actions brought on behalf of consumers under the laws of numerous states. Ms. Nugent is named among Lawdragon's "500 Leading Lawyers in America" (2019 – 2022), as well as Lawdragon's "500 Leading Plaintiff Consumer Lawyers" (2020 – 2022), and The National Law Journal's "Plaintiffs' Lawyers Trailblazers" (2017).

Most recently, Ms. Nugent has been representing restaurant owners, retailers, and other small businesses across the United States in litigation against their insurance companies for failing to honor their business interruption claims due to the COVID-19 pandemic. These cases are being litigated in state and federal courts as class actions and individual cases.

While working in the Public Client practice, Ms. Nugent represented state attorneys general in civil law enforcement investigations and litigation involving consumer protection, Medicaid fraud, and other areas of enforcement that protect government interests and vulnerable communities. These included:

- Deceptive and Unfair Opioid Marketing and Distribution: Representing the states of Indiana, New Jersey, and Vermont in consumer protection, Medicaid fraud, and nuisance claims against opioid manufacturers and distributors.
- Deceptive and Irresponsible Lending: Representing the state of Nevada in investigations into the conduct of Deutsche Bank and the Royal Bank of Scotland, two of the investment banks that encouraged and enabled the predatory lending practices of retail lenders. Ms. Nugent helped develop the State's legal theories and claims and handled numerous aspects of these investigations.
- Improper Foreclosures: Representing the states of Arizona and Nevada in litigation against Bank of America for deceptive conduct in connection with servicing approximately 500,000 mortgages, resulting in financial payments to consumers and the states, commitments to mortgage modifications and other equitable relief valued at nearly \$1 billion.

During her earlier years in the Consumer practice, Ms. Nugent was involved in precedent-setting matters:

- In re StarLink Corn Product Liability Litigation (N.D. Ill.): Ms. Nugent represented farmers suing Aventis CropScience after an unapproved variety of genetically modified corn was detected in the U.S. corn supply and drove down prices for all U.S. corn exports. More than \$100 million was recovered for the class in a landmark settlement.
- Negative Option Marketing Litigation: In 2009 and 2010, Ms. Nugent filed suit on behalf of consumers challenging the post-transaction marketing practices (also sometimes called "negative option marketing") and in two significant rulings persuaded federal courts in California and Washington that these practices ran afoul of state consumer protection laws.

In addition to trial court work, Ms. Nugent has argued cases before the high courts of Georgia, Nebraska, and the District of Columbia, as well as the federal D.C. Circuit Court of Appeals and the Commonwealth Court of Pennsylvania.

Prior to joining Cohen Milstein in 2000, Ms. Nugent worked for seven years at Public Citizen, a national consumer advocacy organization. There, she worked on many legislative and regulatory campaigns addressing issues that

ranged from automobile safety to international trade policy. After graduating from law school in 1998, Ms. Nugent received a two-year fellowship sponsored by the National Association for Public Interest Law (NAPIL/Equal Justice Works). As a NAPIL Fellow, she worked at Trial Lawyers for Public Justice, where she helped develop and prosecute impact litigation in the areas of arbitration, banking, credit, and insurance.

Since 2018, Ms. Nugent has been a member of Public Justice Foundation's Board of Directors. Public Justice Foundation is the nation's foremost consumer litigation and advocacy organization. Ms. Nugent served on the D.C. Bar Committee on the Rules of Professional Conduct from 2012 to 2019. Since 2019, she has been a member of the Bar's Legal Ethics Committee. In 2022, she was elected by The American Law Institute to become a member.

Ms. Nugent received her B.A. from Wesleyan University and her J.D. from Georgetown University Law Center.

#### **Kit A. Pierson**

Kit A. Pierson is a partner at Cohen Milstein and a member of the Antitrust practice. Mr. Pierson has also had the honor of serving as co-chair of the Antitrust practice (2010-2017). Under his leadership, the Legal 500 recognized Cohen Milstein as a Leading Plaintiff Class Action Firm for seven consecutive years and Law360 selected the Antitrust practice as a Competition Law Practice Group of the Year in 2013 and 2014.

Mr. Pierson has served as lead or co-lead counsel in many of the nation's most significant antitrust class actions on behalf of the victims of corporations engaged in price-fixing, market monopolization and other unlawful conduct. Prior to joining Cohen Milstein in 2009, he spent more than 20 years primarily representing defendants in a broad range of complex matters. Some of the companies he represented included Microsoft Corp., 3M Corp. and other major corporations, national associations and individuals in class actions and other antitrust litigation. As a result of his experience as a defense lawyer, Mr. Pierson possesses deep insight into defense strategies, understands the dynamics of the other side and is someone who has earned the respect and credibility of opposing counsel.

Mr. Pierson is a hands-on litigator who has litigated and tried antitrust lawsuits and other complex civil cases in many jurisdictions, helping to win settlements and judgments cumulatively totaling more than \$1.8 billion in the past several years. Currently, he is lead or co-lead counsel in many antitrust cases at the firm. Some of Mr. Pierson's recent successes include:

- Domestic Drywall Litigation (E.D. Pa.): Cohen Milstein was co-lead counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. Mr. Pierson ran the case for Cohen Milstein and in 2015 took the lead for the direct purchaser plaintiffs in arguing against the defendants' summary judgment motions (which were denied by the Court for four of the five defendants). The Court granted final approval to settlements totaling \$190 million.
- Ductile Iron Pipe Fittings Litigation (D.N.J.): Cohen Milstein, as co-lead counsel, represented direct purchasers in a price-fixing class action against the three largest manufacturers of ductile iron pipe fittings—McWane Inc., Sigma Corporation and Star Pipe Products—and a monopolization case against McWane for excluding significant competition in the domestic ductile iron pipe fittings market. In May 2018 the Court granted final approval to the outstanding settlement, ending the litigation and bringing the total recovery to more than \$17.3 million.
- Cast Iron Soil Pipe & Fittings Litigation (E.D. Tenn.): Cohen Milstein, as co-lead counsel, represented direct purchasers against the two largest soil pipe and fittings manufacturers in the country (McWane Inc. and Charlotte Pipe & Foundry) and the trade association they control (Cast Iron Soil Pipe Institute) in a class action alleging that the defendants engaged in a nationwide price-fixing conspiracy and other anticompetitive actions. Mr. Pierson directed the litigation team. In May 2017, the Court granted final approval of a \$30 million settlement.



- Urethanes (Polyether Polyols) Antitrust Litigation (D. Kan.): Cohen Milstein was co-lead counsel for direct purchaser plaintiffs in an antitrust class action alleging a nationwide conspiracy to fix the prices of chemicals used to make polyurethane foam. Four defendants—Bayer, BASF, Huntsman and Lyondell—settled for a total of \$139.5 million, while the case against the fifth manufacturer, Dow Chemical, went to trial. After a four-week jury trial, in which Mr. Pierson was one of the trial lawyers for the class, the jury returned a \$400 million verdict for the plaintiffs, which was trebled under federal antitrust law to more than \$1 billion, the largest verdict in the country in 2013, as reported by The National Law Journal. The U.S. Court of Appeals for the Tenth Circuit affirmed the judgment, and the case against Dow Chemical was settled for \$835 while the matter was pending before the United States Supreme Court (resulting in a total recovery of \$974.5 million in the case).
- Community Health Care System Litigation: Cohen Milstein was co-counsel representing an emergency room doctor and nurse who brought claims against Community Health Care System under the False Claims Act for allegedly defrauding the federal government in connection with health care bills. Mr. Pierson led Cohen Milstein’s team in the case which was resolved for \$94 million.
- Electronic Books Antitrust Litigation (S.D.N.Y.): Cohen Milstein was co-lead counsel in a class action lawsuit alleging that Apple and five of the leading U.S. publishers conspired to raise the retail prices of e-books. Mr. Pierson led the Cohen Milstein team, which secured class certification, defeated motions to exclude the class expert, and successfully moved for exclusion of most of Apple’s expert testimony. The five publishing defendants settled for \$166 million and a settlement was reached with Apple shortly before trial for an additional \$450 million.
- Guantanamo Litigation (D.D.C.): Mr. Pierson represented Alla Ali Bin Ali Ahmed, a young man who had been arrested with many others while residing in a house in Pakistan and was then incarcerated in Guantanamo without a judicial hearing for more than seven years. After filing a habeas corpus petition, Mr. Pierson represented Mr. Ahmed at a multi-day evidentiary hearing before a United States District Court judge. At the conclusion of the hearing, the District Court ruled that the evidentiary record did not support Mr. Ahmed’s detention and ordered that he be released from Guantanamo and returned to his home country.

Since 2020, Chambers & Partners has named Mr. Pierson a “Ranked Individual” in the category, “Antitrust: Plaintiffs – Nationwide: USA.” Mr. Pierson has also been repeatedly named to Lawdragon’s list of 500 leading lawyers in the United States (2013, 2014, and 2016), as well as to Lawdragon’s annual “500 Leading Plaintiff Financial Lawyers.” Since 2017, Legal 500 has named Mr. Pierson a “Leading Lawyer” in Antitrust Class Actions. Since 2012, Mr. Pierson has been selected as a “Top Rated Antitrust Litigation Attorney” by Super Lawyers. In 2014, Mr. Pierson was distinguished as one of the six most influential antitrust lawyers in the United States, by being named Law360’s “MVP – Competition Law.”

A champion for civil rights, he is a member of the Board of Trustees for the Lawyers’ Committee for Civil Rights Under the Law, a national organization, and a Member of the ACLU of Maryland’s Committee on Litigation and Legal Priorities. Mr. Pierson is also a Board member of the Washington Urban Debate League.

Mr. Pierson has taught Complex Litigation as an Adjunct Professor at Georgetown University Law School (a class that focused primarily on legal, ethical and strategic issues presented by class action litigation) and Antitrust Class Actions as a Visiting Lecturer at Yale Law School (a class examining legal, ethical and strategic issues in antitrust class action litigation).

Mr. Pierson attended Macalester College, earning a B.A., magna cum laude, in Economics and Political Science, and graduated from the University of Michigan Law School, magna cum laude, where he was a Note Editor of the Michigan Law Review and a member of the Order of the Coif. Following law school, he served as a Law Clerk for the Honorable Harry T. Edwards, United States Court of Appeals for the District of Columbia Circuit, from 1983-1984 and as a law clerk for the Honorable Chief Judge John Feikens, United States District Court for the Eastern District of Michigan, from 1984-1985.

## Laura H. Posner

Laura H. Posner is a partner at Cohen Milstein and a member of the Securities Litigation & Investor Protection and Ethics & Fiduciary Counseling practices.

Prior to joining the firm, Ms. Posner was appointed by the New Jersey Attorney General to serve as the Bureau Chief for the New Jersey Bureau of Securities – the top Securities Regulator in New Jersey. In that capacity, Ms. Posner was responsible for administering and enforcing the New Jersey Uniform Securities Law and regulations thereunder, as well as managing and overseeing the employees who staff the Bureau of Securities. Cases prosecuted under Ms. Posner’s direction as Bureau Chief resulted in hundreds of millions of dollars in recoveries for New Jersey residents, as well as more than 20 criminal convictions.

Ms. Posner is currently involved in the following notable matters:

- *IBEW Local 98 Pension Fund v. Deloitte* (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to as SCANA’s multi-billion-dollar nuclear energy expansion project in South Carolina.
- *Chahal v. Credit Suisse Grp. AG, et al.* (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this putative securities class action alleging fraud and market manipulation of XIV Exchange Traded Note market.
- *In re Wells Fargo & Company Securities Litigation* (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this putative securities class action, alleging that Wells Fargo and certain executives misrepresented that the bank had improved its governance and oversight structures following a widespread consumer fraud banking scandal in direct violation of its 2018 consent orders with the CFPB, OCC, and the Federal Reserve.
- *In Re Overstock Securities Litigation* (D. Utah): Cohen Milstein is sole Lead Counsel in this putative securities class action against Overstock.com Inc., its former CEO, CFO, and current Retail President for engineering a market manipulation “short squeeze” scheme in the company’s common stock and insider trading.
- *Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC, et al.* (S.D.N.Y.): Cohen Milstein is leading this securities litigation against market makers Canaccord Genuity LLC, Citadel Securities LLC, G1 Execution Services LLC, GTS Securities LLC, Instinet LLC, Lime Trading Corp., Susquehanna International Group LLP, and Virtu Americas LLC for repeated market manipulation tactics involving the spoofing of company stock.

Ms. Posner’s recent high-profile successes include:

- *Miller Energy/KPMG* (E.D. Tenn.): Cohen Milstein, as Co-Lead Counsel in this certified securities class action, represented plaintiffs who alleged that KPMG failed to meet its obligation as the independent auditor of Miller Energy Resources, Inc., perpetrating a massive fraud by Miller Energy, including overstating the value of largely worthless oil reserves to more than \$480 million, among other claims. In July 2022, the Court granted final approval of a \$35 million settlement.
- *In re Pinterest Derivative Litigation* (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represented the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex. As a result of this illegal misconduct, the company’s financial position, goodwill, and reputation among users had been harmed. In June 2022, the Court granted final approval of a \$50 million settlement.
- *L Brands, Inc. Derivative Litigation*: Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria’s Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of

discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest \$45 million each, for a total of \$90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils.

- Wynn Resorts, Ltd. Derivative Litigation (Eighth Jud. Dist. Ct., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Mr. Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of company employees. In March 2020, the Court granted final approval of a \$90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.
- Tradex Global Master Fund SPC Ltd. et al. v. Lancelot Investment Management, LLC, et al. (Circ. Ct., Cook Cnty., Ill.): In August 2018, the Court granted final approval of a \$27.5 million settlement, concluding a nearly decade-old putative investor class action against McGladrey & Pullen LLP, an accounting firm, for its alleged fraud and negligence arising out of the Tom Petters' Ponzi scheme, one of the largest Ponzi schemes in U.S. history. This case significant for not only the dollar value of the final settlement, but the rarity of such a case in which the auditor was allegedly complicit in its client's fraud, as well as the number of legal hurdles cleared.

Ms. Posner has recovered billions on behalf of defrauded investors. Her notable successes include 5 of the top 100 securities fraud class action settlements of all time, including:

- In re Schering-Plough Corp./ENHANCE Securities Litigation (D.N.J.) and In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation (D.N.J.): Obtained \$688 million for investors on the eve of trial, the third largest recovery ever achieved in the Third Circuit and District of New Jersey, the second largest securities fraud settlement ever against a pharmaceutical company and among the top 25 securities fraud settlements of all time.
- In re The Mills Corporation Securities Litigation (E.D. Va.): Obtained \$202.75 million for investors, the largest recovery ever achieved in a securities class action in Virginia, and the second largest recovery ever in the Fourth Circuit.
- In re WellCare Health Plans, Inc. Securities Litigation (M.D. Fla.): Obtained \$200 million for investors, the largest recovery ever achieved in a securities class action in Florida, and the second largest recovery in the Eleventh Circuit.

Ms. Posner has also been involved in several landmark derivative cases, including the In re Walt Disney Co. Derivative Litigation, which redefined the fiduciary duties of corporate directors and officers. She has authored several successful amicus briefs to the United States Supreme Court, most recently on behalf of the North American Securities Administrators Association in support of the SEC in Liu v. SEC and Lorenzo v. SEC and in support of the Arkansas Teacher Retirement System in Goldman Sachs v. Arkansas Teacher Retirement System.

Ms. Posner currently serves as a Vice President of the Institute for Law and Economic Policy, a public policy research and educational foundation seeking to preserve, study and enhance investor and consumer access to the civil justice system. She is the immediate past-Chair of the Association of the Bar of the City of New York's (NYC Bar) Securities Litigation Committee, and previously served as a member of the NYC Bar's Securities Regulation and Consumer Affairs Committees. Ms. Posner also is the former Chairwoman of the North American Securities Administrators Association (NASAA) Enforcement Committee, and previously served on NASAA's Multi-Jurisdictional Action Committee, Technology Committee and State Legislation Committee.

For her work, Ms. Posner has received numerous peer and industry recognitions, including The National Law Journal's 2021 Elite Trial Lawyers "Elite Women of the Plaintiffs Bar Award" and Crain's New York Business 2020 "Notable Woman in Law." Annually, she is honored as a New York Super Lawyer, as a member of Benchmark Litigation's "40 & Under Hot List" and "Future Stars List," and as one of Lawdragon's Leading Plaintiff Financial Lawyers. In 2017, Ms. Posner received NASAA's 2017 "Outstanding Service Award."

Ms. Posner graduated with a B.A. in Political Science, magna cum laude, from the University of California, Los Angeles in 2001. She received her law degree at Harvard Law School in 2004, where she served on the Executive Editorial Committee for the Harvard Women's Law Journal.

### **Julie Goldsmith Reiser**

Julie Goldsmith Reiser is a partner at Cohen Milstein and co-chair of the Securities Litigation & Investor Protection practice. Ms. Reiser focuses on public pension plans, institutional investors, retirees and plan participants, representing them in high-stakes, complex litigation, including securities, ERISA, and antitrust litigation.

Law360 recognized Ms. Reiser as a "Titan of the Plaintiffs Bar," not long after citing her as one of the "25 Most Influential Women in Securities Law." The National Law Journal placed her among the "Elite Women of the Plaintiffs Bar" and, Lawdragon has repeatedly named her one of the leading 500 lawyers in America.

Ms. Reiser was recognized by The American Lawyer as "Litigator of the Week," for the historic \$310 million settlement In re Alphabet Shareholder Derivative Litigation (Sup. Ct. Cal., Santa Clara Cnty.), a shareholder derivative action, which established a framework for board accountability following allegations of systemic corporate mismanagement of sexual harassment, discrimination, and retaliation claims.

Ms. Reiser is highly regarded by clients, co-counsel, and opposing counsel for her tenacious advocacy, shrewd understanding of complex financial and economic issues, meticulous preparation, and dynamic leadership. Indeed, co-counsel and opposing counsel were quoted in Law360's "Titans of the Plaintiffs Bar: Cohen Milstein's Julie Goldsmith Reiser" profile:

- "I think [Ms. Reiser] is an excellent attorney. Very good in advocating in the courtroom and in settlement negotiations, a very good strategic thinker and a nice person." Louise Renne, former City Attorney of San Francisco, founding partner of Renne Public Law Group, and co-counsel in Alphabet.
- Ms. Reiser is "a very candid, trustworthy person" and working with her and her co-counsel was a "highlight of the case." Boris Feldman, partner at Freshfields Bruckhaus Deringer LLP and opposing counsel in Alphabet.

Including Alphabet, Ms. Reiser has helped shareholders achieve a total \$550 million in corporate diversity, equity and inclusion commitments and sweeping corporate governance and workplace policy changes at Wynn Resorts, Pinterest, and L Brands through novel shareholder derivative litigation she helped pioneer. In addition, she led litigation teams in several of the country's most complex class actions and landmark settlements, including a \$500 million settlement related to Countrywide's issuance of mortgage-backed securities ("MBS") and the Fifth Circuit affirmation of an investor class in the BP securities fraud litigation, stemming from the 2010 Deepwater Horizon oil spill, which settled for \$175 million.

Currently, Ms. Reiser is litigating the following notable matters:

- El Paso Firemen & Policemen's Pension Fund, San Antonio Fire & Police Pension Fund, and Indiana Public Retirement System v. InnovAge Holding Corp, et. al. (D. CO.): Ms. Reiser is Lead Counsel in this lawsuit that alleges InnovAge "substantially failed" to "provide to its participants medically necessary items and services"

as required by government regulation. As a result, CMS and the State of Colorado suspended enrollment at InnovAge's Colorado facilities. InnovAge's stock price declined 78% just nine months after its IPO, giving InnovAge the distinction of being one of 2021's five worst performing stocks.

- In re Wells Fargo & Company Securities Litigation (S.D.N.Y.): Ms. Reiser represents the State of Rhode Island, Office of the General Treasurer in this putative securities class action, alleging that Wells Fargo and certain executives misrepresented that the bank had improved its governance and oversight structures following a widespread consumer fraud banking scandal in direct violation of its 2018 consent orders with the CFPB, OCC, and the Federal Reserve.
- Bank of America Corp. Stock Lending Markets Antitrust Lawsuit (S.D.N.Y.): Ms. Reiser represents Iowa PERS, Los Angeles County Employees Retirement Association, Orange County Employees Retirement System and Sonoma County Employees' Retirement Association in this ground-breaking lawsuit, in which plaintiffs allege collusion among six of the world's largest investment banks to prevent modernization of the securities lending market, a critical component of a strong economy.

Ms. Reiser also maintains an active pro bono practice her most notable success is:

- Vivian Englund v. World Pawn Exchange, LLC (Cir. Ct., Coos Cnty., Or.): Cohen Milstein successfully represented the estate of a Kirsten Englund in a wrongful death case of first impression in Oregon state court and nationally, addressing the legal liability for federally licensed firearms dealers involved in online straw sales. The landmark settlement (October 2018) establishes important legal precedent at the state and federal levels regarding gun dealer responsibility for online sales of firearms. Given the precedential significance of this lawsuit, Cohen Milstein was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award.

Ms. Reiser has twice been named a winner of the Burton Awards, placing her among the "finest law firm writers" in the nation. She was a winner of the Burton Awards in 2019, as a co-author of "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018), and in 2016 for "Pre-Dispute Arbitration Clauses: Taking the Alternative Out of Dispute Resolution," Bloomberg BNA, Class Action Litigation Report (December 11, 2015). After the publication of "Pre-Dispute Arbitration Clauses," Paul Bland, Executive Director of Public Justice wrote: "This is invaluable advocacy that takes industry-side advocacy and exposes its flaws and failings. I'm very glad to see this kind of very high-quality advocacy and critical thinking."

Most recently, Ms. Reiser is the author or co-author of "Boards Must Be Held Accountable for Sexual Harassment Scandals," Financial Times (January 1, 2020); "Event-Driven Litigation Defense," Harvard Law School Forum on Corporate Governance and Financial Regulation (May 23, 2019); "INSIGHT: Sandy Hook Decision Reins in Gun Industry Shield Law," Bloomberg Law (March 28, 2019); "The Critical ABCs of Financial Antitrust Litigation & Recovery Opportunities," an ISS Securities Class Actions Services White Paper (February 18, 2019); and, "Trends in ERISA Litigation in 2017," Law360 (December 17, 2017).

Ms. Reiser attended Vassar College, graduating with honors, and earned her J.D. at the University of Virginia School of Law. She serves as Chair of U.S. Youth Soccer's Legal Advisory Committee and previously served as a board member at Seattle Works and the Eastside Domestic Violence Program (now known as LifeWire).

### **Christina Donato Saler**

Christina Donato Saler is a partner at Cohen Milstein, and a member of the Securities Litigation & Investor Protection practice.

Ms. Saler represents her clients in a broad range of securities, shareholder rights, and derivative actions as well as other complex litigation. She gained substantial trial experience prosecuting First Amendment cases involving

individual plaintiffs against media defendants. She has been named in Lawdragon's "500 Leading Plaintiff Financial Lawyers" list (2021) and recognized by Law & Politics and the publishers of Philadelphia Magazine as a Rising Star, as listed in the Super Lawyer's publications (2011 – 2013).

Prior to joining Cohen Milstein in 2017, Ms. Saler was a securities class action litigator at a nationally recognized plaintiffs law firm, where she distinguished herself as a skilled litigator and trusted client counselor of public pension funds and other institutional investors.

Ms. Saler is currently involved in the following notable matters:

- Pharmacy Benefit Manager (PBM) Ohio Litigation (Franklin C.P., Ohio): Cohen Milstein serves as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation against PBMs Express Scripts, Inc. and OptumRx Administrative Services, LLC for allegedly overcharging certain of Ohio's state-funded health plans on millions of prescription drug claims.
- PBM State Investigations: Led by Ms. Saler, Cohen Milstein serves as Special Counsel to state Attorneys General throughout the United States in their investigation into the billing practices and fee structures of managed care organizations (MCOs) and PBMs in their delivery of services to state-funded health plans.
- In Re Tintri, Inc. Securities Litigation (Sup. Ct., San Mateo County, Cal.): Cohen Milstein represents investors in this securities class action, alleging that Tintri made misstatements and omissions in its IPO registration statement and prospectus.
- Universal Health Services, Inc. Shareholder Derivative Litigation (Del. Ch.): Cohen Milstein represents Delaware County Employees' Retirement Fund and Chester County Employees' Retirement Fund in a shareholder derivative action alleging that nominal defendant Universal Health Services' directors and officers breached their fiduciary duties of care and loyalty to the company. The complaint cites the directors' and officers' alleged failures to properly oversee Universal Health Services' operations and compliance with applicable laws and regulations pertaining to its billing practices for mental health patients.

Some of Ms. Saler's recent successes include:

- Ohio Department of Medicaid v. Centene, Corp. (Franklin C.P., Ohio): On June 14, 2021, the Ohio Attorney General announced a \$88.3 million settlement with Centene Corporation and its wholly owned subsidiaries for their alleged role in not only breaching contractual and fiduciary obligations to the Ohio Department of Medicaid (ODM), but also defrauding ODM out of millions of dollars through an elaborate scheme with pharmacy benefit subcontractors to maximize company profits at the expense of the ODM and millions of Ohioans who rely on Medicaid. Led by Ms. Saler, Cohen Milstein served as Special Counsel to the Ohio Attorney General's Office in this litigation.
- Eric Weiner v. Tivity Health, Inc. (M.D. Tenn.): Cohen Milstein was Class Counsel, representing Class Representative Oklahoma Firefighters' Pension and Retirement System and other purchasers of Tivity Health stock in a putative securities class action for Exchange Act violations related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the Court granted final approval of a \$7.5 million settlement. Ms. Saler managed all aspects of the litigation.
- In re Woodbridge Investments Litigation (C.D. Cal.): Cohen Milstein is a part of the executive leadership team in a consolidated securities class action against Comerica Bank for violating California statutory law and breaching its fiduciary duties by aiding and abetting an elaborate multi-billion-dollar Ponzi-scheme fraud committed by Robert H. Shapiro and the Woodbridge Group of Companies, a real estate investment company that transacted the scheme through Comerica bank accounts. On September 3, 2021, the Court granted preliminary approval of a \$54.2 million settlement between Woodbridge investors and Comerica Bank.

In addition to her litigation work, Ms. Saler also advises Cohen Milstein's clients on regulatory trends and legal decisions that may impact the management of their funds. In this capacity, she is the editor of the Shareholder Advocate, a quarterly publication focused on legal issues relevant to public and Taft-Hartley pension funds and the institutional investor community.

In 2017, Governor Tom Wolf of Pennsylvania appointed Ms. Saler to the Board of the Pennsylvania Humanities Council, whose mission is to find ways of using the humanities to help people take action for positive change in their lives and communities, and to demonstrate this effectiveness to leaders and organizations invested in making Pennsylvania a better place to live. Ms. Saler is a member of the Executive Committee and Chairs the Government Advocacy Committee.

Ms. Saler is also a volunteer at Philadelphia Volunteer Indigence Program (VIP), where she represents individuals in jeopardy of losing their homes in the Philadelphia Common Pleas Court's Mortgage Foreclosure Program.

Ms. Saler received her B.A. from Fairfield University. She received her J.D., with honors, from Rutgers University Law School. In addition to other academic honors, Ms. Saler was selected for the Rutgers Law Journal and served as the Lead Articles Editor. She is also the author of "Pennsylvania Law Should No Longer Allow a Parent's Right to Testamentary Freedom to Outweigh the Dependent Child's 'Absolute Right to Child Support,'" 34 Rutgers Law Journal, 235 (Fall 2002).

Ms. Saler's professional career began in advertising. She was a Senior Account Executive with the Tierney Agency, where she managed various advertising campaigns and Verizon's contractual relationship with its spokesperson, James Earl Jones.

### **Joseph M. Sellers**

Joseph M. Sellers is co-chair of the firm's Civil Rights & Employment practice, a practice he founded, and the former chair of the firm's Executive Committee. In a career spanning nearly four decades, Mr. Sellers has represented victims of discrimination and other illegal employment practices individually and through class actions. He brings to his practice a deep commitment and broad background in fighting discrimination in all its forms. That experience includes decades of representing clients in litigation to enforce their civil rights, participating in drafting and efforts to pass landmark civil rights legislation, testifying before Congress on various civil rights issues, training government lawyers on the trial of civil rights cases, teaching civil rights law at various law schools and lecturing extensively on civil rights and employment matters.

Mr. Sellers, who joined the firm in 1997, has been practicing civil rights law for more than 40 years, during which time he has represented individuals and classes of people who have been victims of civil rights violations or denied other rights in the workplace. He has tried to judgment before courts and juries several civil rights class actions and a number of individual cases and has argued more than 30 appeals in the federal and state appellate courts, including the United States Supreme Court. He has served as class counsel, and typically lead counsel, in more than 75 civil rights and employment class actions.

His clients have included persons denied the rights and opportunities of employment because of race, national origin, religion, age, disability and sex, including sexual orientation and identity. He has represented victims of race discrimination in the denial of equal access to credit, in the rates charged for insurance and in the equal access to health clubs, retail stores, restaurants and other public places. He has challenged housing discrimination on the basis of race and the denial of housing and public accommodations to people with disabilities.

Some of the noteworthy matters he has handled include: Walmart v. Dukes (U.S. S.Ct.), delivered argument on behalf of class of women who alleged sex discrimination in pay and promotions in case establishing new rules governing class certification; Randolph v. Greentree Financial (U.S. S.Ct.), delivered argument on behalf of consumer

challenging enforcement of arbitration agreement in case establishing rules governing the enforceability of arbitration agreements; Beck. v. Boeing Company (W.D. Wash.), co-lead counsel on behalf of class of more than 28,000 women employees alleging sex discrimination in pay and overtime decisions; Conway, et al. v. Deutsch (E.D. Va.), co-lead counsel on behalf of class of female covert case officers at the CIA alleging sex discrimination in promotions and job assignments; Johnson, et al. v. Freeh (D.D.C.), co-lead counsel on behalf of class of African-American FBI special agents alleging racial discrimination in promotion and job assignments; Keepseagle v. Veneman (D.D.C.), lead counsel on behalf of class of Native American farmers and ranchers alleging denial of equal access to credit by USDA; Neal v. Director, D.C. Dept. of Corrections (D.D.C.), co-lead counsel in which he tried first sexual harassment class action to a jury, on behalf of a class of women correctional employees and women and men subject to retaliation; Doe v. D.C. Fire Department (D.D.C.), in which he established after trial that an applicant with HIV could properly serve as a firefighter; Floyd-Mayers v. American Cab Co. (D.D.C.), in which he represented persons who alleged they were denied taxi service because of their race and the race of the residents at the location to which they asked to be driven; and Trotter, et al. v. Perdue Farms (D. Del.), lead counsel on behalf of chicken processing workers alleging violations of federal wage and hour and employee benefits law.

Prior to joining Cohen Milstein, Mr. Sellers served for over 15 years as the Director of the Employment Discrimination Project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, an organization providing pro bono representation in a broad range of civil rights and related poverty issues. He was a member of the transition teams of Obama/Biden in 2008 and Clinton/Gore in 1992 and 1993, and served as a Co-Chair of the Special Committee on Race and Ethnicity of the D.C. Circuit Task Force on Gender, Race and Ethnic Bias to which he was appointed by the judges of the D.C. Circuit Court of Appeals and the U.S. District Court for the District of Columbia. In 2018, Mr. Sellers was appointed by the Chief Justice of the United States to the Advisory Committee on Civil Rules of the Judicial Conference of the United States. Established by the Supreme Court in 1935, Advisory Committees on the Rules of Appellate, Bankruptcy, Civil, Criminal Procedure, and the Rules of Evidence carry on a continuous study of the rules and recommend changes to the Judicial Conference through a Standing Committee on Rules of Practice and Procedure.

Throughout his career, Mr. Sellers has also been active in legislative matters. He helped to draft and worked for the passage of the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990 and the Lily Ledbetter Fair Pay Restoration Act of 2009. He has testified more than 20 times before Committees of the United States Senate and House of Representatives on various civil rights and employment matters.

A teacher and mentor, Mr. Sellers has trained lawyers at the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice on the trial of civil rights cases and was an Adjunct Professor at the Washington College of Law at American University, where he taught Employment Discrimination law, and at the Georgetown University Law Center, where he taught Professional Responsibility. In addition, he has lectured extensively throughout the country on various civil rights and employment topics. Mr. Sellers is also a professionally trained mediator and has served as the President of the Washington Council of Lawyers.

Mr. Sellers has been recognized as one of the top lawyers in Washington and as one of the top plaintiffs' employment lawyers in the U.S. In 2010, The National Law Journal named Mr. Sellers one of "The Decade's Most Influential Lawyers"; in 2011, The Legal Times named him a "Legal Visionary"; and in 2017, American Lawyer recognized him as "A Giant of the Plaintiffs Bar." Other prestigious recognitions include the Washington Lawyers' Committee for Civil Rights and Urban Affairs awarded Mr. Sellers the Wiley Branton Award for leadership in civil rights (2012); Lawdragon named him a "Lawdragon Legend" (2016) for being ranked one of the top 500 lawyers in the U.S. for 10 consecutive years; the NAACP honored him with the "Foot Soldier in the Sand Award" (2018) for his "willingness to go above and beyond the call of duty"; Legal500 has named him a "Leading Lawyer" in plaintiff-side employment law since 2020; and Law360 named him a "2021 MVP – Employment Law," recognizing him as one of the top five most influential employment lawyers in the U.S.



Mr. Sellers received his B.A. in American History and Literature from Brown University, and earned his J.D. from Case Western Reserve School of Law, where he served as Research Editor of the Case Western Reserve Law Review.

### **Daniel H. Silverman**

Daniel H. Silverman is a partner in Cohen Milstein's Antitrust practice, where he prosecutes class actions on behalf of consumers, small businesses, and employees in a variety of industries in courts around the country.

Mr. Silverman is highly regarded by the legal industry, economists, and academics alike for his deep engagement with economic experts and for successfully shepherding cases through class certification. In 2022, Law360 named him a "Rising Star - Antitrust," the only plaintiff lawyer to be named, citing Mr. Silverman's keen interest in the dynamic interplay of economics, econometrics, and social science in driving antitrust law and economic justice. The National Law Journal also recognized him as a 2022 Elite Trial Lawyers "Rising Star of the Plaintiffs Bar."

Among his successes, Mr. Silverman has helped litigate the following matters:

- Domestic Drywall Antitrust Litigation (E.D. Pa.): Co-Lead Counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. The Court granted final approval of settlements that totaled more than \$190 million.
- VFX/Animation Workers: In re Animation Workers Antitrust Litigation (N.D. Cal.): Mr. Silverman represented a class of animation and visual effects workers in a lawsuit alleging that the defendants, who include Pixar, Lucasfilm Ltd. and DreamWorks Animation, secretly agreed not to solicit class members and to coordinate on compensation. The Court approved settlements with all of the defendants for a total of \$168.5 million.
- Plasma-Derivative Protein Therapies Antitrust Litigation (N.D. Ill.): Co-Lead Counsel for plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin—life-saving therapies derived from blood plasma. The lawsuit was resolved for \$128 million to compensate customers who were overcharged for these vital therapies.

Mr. Silverman is currently involved in the following notable matters:

- In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Co-Lead Counsel in a class action against several of the world's largest investment banks that are alleged to have colluded with one another to crush competition in the trillion-dollar market for interest rate swaps, a type of financial derivative. The case is in active discovery.
- Mixed Martial Arts (MMA) Antitrust Litigation (D. Nev.): Co-Lead Counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or "UFC" – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters.
- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Co-Lead Counsel representing a certified class of consumers who allege that the defendants, including Perdue Farms and Tyson Foods, agreed to restrict the supply of broilers, thereby raising consumer prices. The Court approved settlements with six of the defendants for a total of \$181 million. Law360 cited plaintiffs' success in Broilers in naming Cohen Milstein a Law360 "Class Action Group of the Year" (2021).
- Jien v. Perdue Farms, Inc. (D. Md.): Interim Co-Lead Counsel representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their compensation. The Court so far has preliminarily approved settlements with four defendants for \$49.8 million and the case is in discovery with the remaining dozen defendants.
- Moehrl v. National Association of Realtors (N.D. Ill.): Interim Co-Lead Class Counsel representing a proposed class of home sellers in litigation against the four largest national real estate services conglomerates, and

their trade association. The class alleges that the defendants violated federal antitrust law by conspiring to require sellers to pay the broker representing their homes' buyer (and to do so at an inflated level).

Prior to joining the firm in 2012, Mr. Silverman served as the executive director of Legal Economics, LLC, a Cambridge, Massachusetts-based firm specializing in the analysis of complex economic issues related to legal issues. At Legal Economics, he supported expert economic testimony in a variety of antitrust matters involving horizontal price-fixing, mergers, and loyalty discounts in industries ranging from health care and computer hardware to live music promotion. His experience at Legal Economics provides him with unique insight into the inner workings of expert testimony in antitrust matters. In addition, Mr. Silverman has represented public sector clients before the Federal Energy Regulatory Commission, state public utility commissions, and federal appellate courts.

Mr. Silverman is a magna cum laude graduate of Brown University, with a B.S. in Physics, where he was elected to Phi Beta Kappa. He earned a J.D., magna cum laude, from Harvard Law School. In law school, he served as a Managing Editor of the Harvard Environmental Law Review. Mr. Silverman also served as a summer associate at the U.S. Department of Justice in the Environment and Natural Resources Division, Law and Policy Section.

### **Daniel A. Small**

Daniel A. Small became of counsel at Cohen Milstein, after being a partner for many years, when he largely retired from the practice of law in 2022. He continues to work on periodic pro bono cases with the firm and on a couple of matters nearing completion. Mr. Small was the co-chair of the Antitrust practice group for ten years. He also had the honor of serving on the firm's Executive Committee for over a decade.

Mr. Small is one of the most respected litigators in antitrust class actions. In 2020, Law360 named him a Titan of the Plaintiffs Bar for his decades of success in antitrust and other cases, including his extensive involvement in a class action against Sutter Health that settled on the eve of trial in October 2019 for \$575 million and detailed injunctive relief. He is also named on the Lawdragon 500 Leading Lawyers in America list (2018 – 2022) and the Super Lawyers' list of Top Antitrust Litigation Attorneys in Washington, DC (2013 – 2022). Since 2009, Legal 500 has annually recognized Mr. Small and Cohen Milstein as a Leading Plaintiffs Antitrust Class Action Lawyer/Firm; Benchmark Plaintiff has repeatedly awarded Mr. Small with its National Litigation Star – Antitrust recognition; and Global Competition Review and Who's Who Legal: Competition has named him a Leading Thought Leader – Competition since 2014.

Mr. Small is widely regarded for his intellectual energy, deep study of the economic issues underpinning antitrust disputes and sophisticated understanding of how conspiracies and monopolies operate in a range of complex markets – from animation and visual effects workers and computer software and hardware to wild blueberries and hospital nurses – and achieving just compensation for victims and promoting more open markets nationwide.

Mr. Small has represented plaintiff classes, and defended unions, as lead or co-lead counsel in numerous antitrust cases and obtained settlements and judgments totaling over one billion dollars. He has tried cases to verdict and argued in numerous appellate courts, including the U.S. Supreme Court.

Mr. Small's successes include:

- Sutter Health Antitrust Litigation (Sup. Ct., San Fran. Cty., Cal.): On August 27, 2021, the Court granted final approval of a \$575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified

class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.

- Google Wi-Fi Litigation (N.D. Cal.): Cohen Milstein served as co-lead counsel in a nationwide class action alleging that Google violated the Wiretap Act when its Street View vehicles secretly collected payload data from unencrypted Wi-Fi networks. On March 18, 2020, the Honorable Charles R. Breyer of the United States District Court for the District of Northern California granted final approval of a \$13 million cy pres settlement, commenting that the case was significant in that it addressed previously unexplored questions involving electronic privacy.
- Animation Workers Litigation (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily through no poach agreements. The court granted final approval of \$168.95 million in settlements.
- NYU Hospitals Center Litigation (S.D.N.Y.): Cohen Milstein served as lead trial counsel defending 1199SEIU United Healthcare Workers East against an antitrust claim by NYU Hospitals Center alleging that 1199SEIU conspired with a multi-employer bargaining association and others to increase NYU's required contributions to the Union's benefit fund. In June 2018, the court granted defendants' motion to dismiss the antitrust claim. All remaining claims were dismissed with prejudice in December 2018.
- Prime Healthcare Services Litigation (S.D. Cal.): Cohen Milstein defended the Service Employees International Union in an antitrust action brought by Prime Healthcare Services, a hospital chain in Southern California, alleging that SEIU conspired with Kaiser Permanente to drive Prime and certain other hospitals out of the market. Cohen Milstein led the successful effort to dismiss the complaint and amended complaint in the Southern District of California and to defend the dismissal on appeal to the Ninth Circuit.
- Michigan Blue Cross Litigation (E.D. Mich.): Cohen Milstein has served as co-lead counsel in this class action challenging Michigan Blue Cross's use of most favored nation provisions in its provider agreements with numerous hospitals in Michigan. The court granted final approval of a \$30 million settlement, and the Sixth Circuit ultimately upheld the settlement on appeal.
- Hy-Ko Products Antitrust Litigation (N.D. Ohio): Cohen Milstein represented Hy-Ko Products Co., a manufacturer of keys and key duplication machines, in a monopolization case against its dominant competitors. The litigation settled on favorable terms.
- In re Buspirone Antitrust Litigation (S.D.N.Y.): Cohen Milstein served as co-lead counsel in an end-payor class action alleging that Bristol Myers-Squibb Co., the manufacturer of the prescription drug Buspar, conspired to keep generic versions of the drug out of the market. The class of end-payors settled for \$90 million.
- Pease v. Jasper Wyman & Son, et al. (Sup. Ct., Knox Cty., Me.): Cohen Milstein was lead counsel representing a class of wild blueberry growers in Maine who sued four blueberry processors for conspiring to depress blueberry prices. The case was tried to a jury in Maine state court, where Mr. Small was co-lead trial counsel. The jury found the processors liable for 100% of the damages estimated by plaintiffs' expert, resulting in a judgment of \$56 million.

Mr. Small also maintains an active pro bono practice. Current notable cases include:

- Lewis v. Cain, et al. (M.D. La.): Cohen Milstein represents a certified class of more than 6,000 prisoners in a lawsuit filed against the Louisiana State Penitentiary in Angola, LA, the largest maximum-security prison in the country, and the Louisiana Department of Public Safety and Corrections for deficient and discriminatory medical care in violation of the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act. After an 11-day bench trial and extensive post-trial briefing, on March 31, 2021, the Court ruled in favor of the Plaintiffs, ordering sweeping injunctive relief and medical policy reform at the prison.
- Citizens for Responsibility and Ethics in Washington, et al. v. Trump, and District of Columbia et al. v. Trump: Cohen Milstein represented restaurant and hotel plaintiffs and the Attorneys General of Maryland and the District of Columbia in lawsuits against President Trump, seeking to enjoin his ongoing receipt of

emoluments in violation of the U.S. Constitution. After victories in the Second and Fourth Circuits on interlocutory appeal, the lawsuits were mooted when President Trump left office.

- *Seeger, et al. v. United States Department of Defense* (D.D.C.): Cohen Milstein is representing a group of civilian and military lawyers who represent a detainee in the military commission proceedings at the Guantánamo Bay naval station. Cohen Milstein filed a lawsuit under the Administrative Procedure Act against the Department of Defense, the Navy, and the Convening Authority, claiming that military commission personnel have been forced to live and work for years in facilities that have been found to have dangerous levels of cancer-causing chemicals and other toxic substances, ranging from formaldehyde to heavy metals and mold. The case is before the court on cross motions for summary judgment.

In 2018, Mr. Small, Cohen Milstein, and the co-lead counsel team in Animation Workers Antitrust Litigation were nominated for Public Justice Foundation's Trial Lawyer of the Year, recognizing the legal teams that made the most outstanding contributions to the public interest through precedent-setting or otherwise extraordinary litigation concluded within the last year.

Mr. Small serves on the Advisory Board of the American Antitrust Institute (AAI), a pre-eminent thought-leadership organization devoted to promoting competition. For several years through 2021, he was chair of the selection committee for the Jerry S. Cohen Memorial Fund Writing Award, which annually recognizes top antitrust scholarship. He remains a committee member.

Mr. Small clerked for the Honorable Roger Vinson, United States District Court for the Northern District of Florida, from 1986 to 1988.

Mr. Small attended Colgate University, where he graduated with a B.A., cum laude, in History. He earned his J.D. at American University's Washington College of Law.

### **Daniel S. Sommers**

Daniel S. Sommers is a partner at Cohen Milstein, the immediate past co-chair of the Securities Litigation & Investor Protection practice, and a former member of the firm's Executive Committee, on which he served for twelve years from 2007 through 2019.

Mr. Sommers is a highly-regarded securities litigator and thought leader in the areas of securities and class action litigation as well as investor rights. During his over three-decade career at Cohen Milstein, Mr. Sommers has taken leadership roles in litigating large, complex and significant securities cases. He has provided litigation counsel to institutional investors, including state-wide public pension funds; public safety pension funds and Taft-Hartley pension funds. Many of his cases have resulted in important rulings and legal precedents, as well as in significant recoveries for investors totaling hundreds of millions of dollars.

Some of his notable matters include:

- *Bear Stearns Mortgage Pass Through Securities Litigation* (S.D.N.Y.): Co-lead counsel representing the New Jersey Carpenters Health Fund in a \$505 million landmark settlement (including a \$5 million expense fund) of a securities class action suit alleging that Bear Stearns violated securities laws in the sale of mortgage backed securities to investors. This is the largest recovery ever obtained in a securities class action on behalf of investors in mortgage-backed securities.
- *Converium/SCOR Securities Litigation* (Netherlands): Co-lead counsel in a groundbreaking \$58.4 million securities class action recovery, in which the Amsterdam Court of Appeal declared binding a world-wide class action settlement of claims of non-U.S. investors who purchased Converium shares outside of the United States. The ruling was a major victory for worldwide investors because it successfully implemented

the Dutch Collective Settlement Statute even though the underlying transactions had limited contact with the Netherlands.

- Fannie Mae Securities Litigation (D.D.C.): Played a significant role in a high-profile securities class action representing the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio against Fannie Mae, several of its former executives and KPMG involving allegations of falsified financial statements. The \$153 million settlement amount represents the largest recovery in a securities fraud class action ever obtained in the United States District Court for the District of Columbia.
- CP Ships Ltd. Securities Litigation (M.D. Fla.): Co-lead counsel in a class action lawsuit alleging that CP Ships, a Canadian company headquartered in England but with substantial operations in Tampa, Florida, issued false financial statements. Mr. Sommers argued an appeal in the U.S. Court of Appeals for the Eleventh Circuit, successfully opposing objections to a settlement that provided non-U.S. investors with the protections of the federal securities laws.

Mr. Sommers has obtained significant recoveries for investors in numerous other securities class action cases in federal courts throughout the United States including: *Steiner v. Southmark Corporation* (N.D. Tex.) (over \$70 million recovery); *In re PictureTel Inc. Securities Litigation* (D. Mass.) (\$12 million recovery); *In re Opus Bank Securities Litigation* (C.D. Cal.) (representing the Arkansas Public Employees Retirement System and obtaining a \$17 million recovery); *In re Physician Corporation of America Securities Litigation* (S.D. Fla.) (\$10.2 million recovery); *In re Gilat Satellite Securities Litigation* (E.D.N.Y.) (\$20 million recovery); *In re Pozen Inc. Securities Litigation* (M.D.N.C.) (\$11.2 million recovery); *In re Nextel Communications Securities Litigation* (D.N.J.) (up to \$27 million recovery); *In re PSINet Inc. Securities Litigation* (E.D. Va.) (\$17.8 million recovery); *In re Cascade International Inc. Securities Litigation* (S.D. Fla.) (global recovery of approximately \$10 million); *In re GT Solar Securities Litigation* (D.N.H.) (representing the Arkansas Public Employees Retirement System and obtaining a recovery of \$10.5 million); *Mulligan v. Impax Laboratories, Inc.* (N.D. Cal.) (representing the Boilermakers Blacksmith National Pension Trust and obtaining a recovery of \$8 million); *Plumbers & Pipefitters National Pension Fund v. Orthofix, N.V.* (S.D.N.Y.) (representing the Plumbers & Pipefitters National Pension Fund and obtaining a recovery of \$11 million) and *In re ECI Telecom Securities Ltd. Litigation* (E.D. Va.) (\$21.75 million recovery). He has also handled significant appellate matters including arguing before the United States Court of Appeals for the Ninth Circuit in *Hemmer Group v. Southwest Water Company*, where he obtained a reversal of the district court's order dismissing investors' claims under the Securities Act of 1933. In addition, he was co-lead counsel for investors before the Supreme Court of the United States in *Broudo v. Dura Pharmaceuticals, Inc.*, 544 U.S. 336 (2005) (addressing the standards for pleading loss causation).

Mr. Sommers is also experienced in non-class action litigation. He represented TBG Inc., a multi-billion dollar privately-held overseas corporation, in a multi-party, complex action alleging fraud in a corporate acquisition and represented individuals in connection with investigations brought by the United States Securities and Exchange Commission. He also has represented publicly traded corporations in the prosecution and defense of claims.

Mr. Sommers has litigated cases covering a wide-range of industries including the financial services, computer software, pharmaceutical, healthcare, insurance, real estate and telecommunications industries among others. In addition, he has substantial experience in cases presenting complex accounting and auditing issues.

A thought leader in the area of securities and class action litigation, as well as investor rights, Mr. Sommers is frequently called on to speak both to other lawyers and institutional investors. He has been quoted on these topics in a variety of publications including *The Wall Street Journal*, *The Washington Post*, *Bloomberg BNA*, *Pension and Investments*, and *Law360*.

Mr. Sommers is the immediate past Chair of the Markets Advisory Council of the Council of Institutional Investors, having served for two consecutive terms (2018 – 2019). He is currently a member of the Securities Litigation Committee of the National Association of Public Pension Attorneys. He served as Chairman and Vice-Chairman of

the Investor Rights Committee of the Corporation, Finance and Securities Law Section, District of Columbia Bar, and through the years has been a guest lecturer at Columbus School of Law at the Catholic University of America; Georgetown Law Center; and George Washington University Law School. He has also served as a member of the editorial advisory boards of Bloomberg BNA Securities Litigation & Law Report and Law360 Securities.

Named a Washington, D.C. Super Lawyer every year since 2011, Mr. Sommers has also been awarded Martindale-Hubbell's highest rating of AV Preeminent®, and Benchmark Plaintiff has recognized him as a litigation star in multiple years.

Mr. Sommers attended Union College, where he earned a B.A., magna cum laude, in Political Science, and graduated from George Washington University Law School.

### **Christine E. Webber**

Christine E. Webber, co-chair of the Civil Rights & Employment practice, represents victims of discrimination and wage and hour violations in class and collective actions. She is a tenacious, hands-on litigator, highly regarded for her ability to organize large, high-profile class and collective actions and work closely with economic and statistical experts on developing sophisticated statistical analyses of class claims.

Ms. Webber has had the honor of representing clients in some of the largest, groundbreaking discrimination and Fair Labor Standards Act (FLSA) class and collective actions in the United States, including *Keepseagle v. Vilsack* (D.D.C.), a historic nationwide race-based discrimination class action brought by Native American ranchers and farmers against the United States Department of Agriculture (USDA). The landmark \$760 million settlement required the USDA to pay \$680 million in damages to thousands of Native Americans, to forgive up to \$80 million in outstanding farm loan debt and to improve the farm loan services the USDA provides to Native Americans. Ms. Webber was lead counsel in *In re Tyson Foods FLSA MDL* (M.D. Ga.), a collective action involving FLSA claims at over 40 Tyson chicken processing plants, which ultimately resolved the claims of 17,000 chicken processing workers who had been denied compensation for donning and doffing required safety and sanitary equipment; and *Hnot v. Willis Group Insurance* (S.D.N.Y.), where she represented a class of women vice presidents in Willis' Northeast region, who complained of discrimination with respect to their salary and bonuses, as well as promotions. This "glass ceiling" case settled for an average payment of \$50,000 per woman, a record-breaking settlement in 2007 for a sex discrimination class action. Ms. Webber continues the fight in *Dukes v. Wal-Mart* – a nationwide pay and promotion sex discrimination class action that went to the U.S. Supreme Court in 2011 and addressed standards for class certification in employment discrimination matters.

Ms. Webber is currently leading several high-profile class and collective actions, including:

- *Bird, et al. v. Barr* (D.D.C.): Ms. Webber is leading a putative class action of women who suffered systemic discrimination on the basis of sex when they were terminated from the Federal Bureau of Investigation's Basic Training program for new agents and intelligence analysts. In April 2022, the Court denied the FBI's motion to dismiss.
- *CFHC, et al. v. CoreLogic Rental Property Solutions* (D. Conn.): Ms. Webber represents the Connecticut Fair Housing Center and Carmen Arroyo in a cutting-edge legal challenge to CoreLogic's algorithmic background check system which allegedly discriminates against African-Americans and Latinos seeking rental housing in violation of the Fair Housing Act. Because of the novel artificial intelligence (AI)-related discrimination claims, the case has been identified as one of Law360's "3 Real Estate Cases to Watch in 2022." A bench trial was initiated in March 2022.
- *Reynolds et al v. Fidelity Investments Institutional Operations Company* (M.D.N.C.): Ms. Webber successfully negotiated a settlement of a nationwide FLSA class action involving thousands of employees at Fidelity

Investments Institutional Operations Company, Inc. call centers who were not paid overtime for mandatory pre-shift work. The court granted final approval to the settlement in January 2020.

- *Ralph Talarico v. Public Partnerships, LLC* (E.D. Pa.): Ms. Webber is leading a conditionally certified collective action of more than 4,900 past and present “direct care” workers, who provide home care for individuals with disabilities, for denied overtime wages. The case involves novel joint employer issues. In 2020, the Third Circuit reversed and remanded the district court’s order granting PPL summary judgement. In February 2021, the Third Circuit denied PPL’s request for a rehearing, thereby upholding its 2020 ruling and reaffirming Plaintiffs’ successful appeal.
- *Castillo, et al. v. Western Range Association* (D. Nev.): Ms. Webber is also representing a putative class of shepherds hired primarily from Peru and Chile, who allege that Western Range Association, which brought the plaintiffs into the U.S. to work as herders through the H-2A visa program, grossly underpaid them, in violation of Nevada law. As of May 2022, we are awaiting district court rulings on class certification and on summary judgment.
- *Dukes v. Walmart* (federal courts nationwide): Ms. Webber is coordinating a series of individual gender-related pay and promotion discrimination claims against Walmart on behalf of approximately 1800 women who filed charges before the EEOC following decertification of the Dukes class. This is the latest step in addressing the merits of this massive discrimination lawsuit, which went up to the Supreme Court in 2011. As of January 2022, nearly all of these lawsuits have been resolved, but many claims remain pending before the EEOC.

For her tireless work, Ms. Webber has been frequently recognized by the legal industry. In 2022, The National Law Journal named her a winner of its 2022 “Elite Women of the Plaintiffs Bar” award, which recognizes a small handful of female plaintiffs’ attorneys who “have demonstrated repeated success in cutting-edge work on behalf of [clients]” over their careers. The same year, The Best Lawyers in America named Ms. Webber the “Lawyer of the Year – Employment Law – Individuals – Washington, D.C.” In 2019, Ms. Webber was the recipient of the “Roderic V.O. Boggs Award” for her “sustained commitment” to the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. Annually, she has been recognized by Lawdragon 500 Leading Plaintiff Employment Lawyers (since 2018), The Best Lawyers in America (since 2018), and Super Lawyers (since 2012).

She is co-chair of the National Employment Lawyers’ Association’s Class Action Committee, the nation’s pre-eminent employee-side legal association, a position she has held since 1999. Ms. Webber is also a member of Law360’s Employment Editorial Advisory Board (2020 – 2021). She speaks and writes frequently on employment discrimination, wage and hour issues, and class actions.

Prior to joining Cohen Milstein in 1997, Ms. Webber received a Women’s Law and Public Policy fellowship which funded the first of her four years at the Washington Lawyers’ Committee for Civil Rights and Urban Affairs in their Equal Employment Opportunity Project. There, she worked on employment discrimination cases, focusing in particular on the sexual harassment class action *Neal v. Director, D.C. Department of Corrections, et al.* (D.D.C.). Ms. Webber participated in the trial of this groundbreaking sexual harassment class action in 1995. Ms. Webber also tried the race discrimination case *Cooper v. Paychex* (E.D. Va.), and successfully defended the plaintiffs’ verdict before the Fourth Circuit.

Ms. Webber attended Harvard University, graduating magna cum laude, with an A.B. in Government, and earned her J.D., magna cum laude, Order of the Coif, at the University of Michigan Law School. Following law school, she clerked for the Honorable Hubert L. Will, United States District Judge for the Northern District of Illinois.

#### **Michelle C. Yau**

Michelle C. Yau, chair of Cohen Milstein’s Employee Benefits/ERISA practice, has spearheaded some of the most significant ERISA class actions in the nation. In 2022, Chambers USA named her a “Top Ranked” individual in ERISA

Litigation and in 2021, she was named a Law360 Benefits MVP. Ms. Yau combines ardent dedication to protecting her clients' retirement assets with rare insight into complex financial transactions and actuarial issues, informed by her Wall Street and government experience.

Ms. Yau is passionate about righting economic injustice and protecting pension plan participants. She has a unique background having served as an Honors Program Attorney at the Department of Labor where she enforced and administered a variety of labor statutes and working as a financial analyst at Goldman Sachs in the Financial Institutions Group of the Investment Banking Division.

This experience has allowed Ms. Yau to play an instrumental role in important financial litigation, including high-profile ERISA lawsuits emerging from the Madoff Ponzi scheme:

- In re Beacon Association Litigation (S.D.N.Y.): Ms. Yau represented a multi-plan class of participants, beneficiaries, and fiduciaries, which settled along with other consolidated cases for \$219 million in 2013, representing 70% of the Class members' out-of-pocket losses. The judge praised the settlement, describing the outcome as "extraordinary" and the praising the "hard work" done by plaintiffs' counsel, including Cohen Milstein.
- Becker v. Wells Fargo & Co. et al. (D. Minn.): Ms. Yau led the team in litigation and recently achieved a \$32.5 million settlement prior to class certification and expert discovery. If approved, the settlement will recover 40% of estimated damages.

Ms. Yau is currently involved in a series of high-profile class actions involving 401(k) Plans, Employee Stock Ownership Plans (ESOPs) for the mismanagement of employee retirement savings. Notable matters include:

- Casino Queen ESOP Litigation (S.D. Ill.): To date, Ms. Yau has won two motions to dismiss in this case on behalf of employee participants. She represents ESOP participants who allege that the Board of Directors of CQ Holding Company, Inc. and related defendants violated ERISA when they created an ESOP to buy their Casino Queen stock for \$170 million, a significantly inflated price.
- Western Global Airlines ESOP Litigation (D. Del.): Ms. Yau represents employees in challenging the valuation of Western Global Airlines at approximately \$1.3 billion, based on the sale of 37.5% of the company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.
- New York Life 401(k) Plan Litigation (S.D.N.Y.): Ms. Yau represents employees in a lawsuit against New York Life which alleges corporate self-dealing and the prohibited transfer of employees' retirement assets to defendants at the expense of the retirement savings of New York Life employees and agents.
- Triad Manufacturing Inc. ESOP Litigation (N.D. Ill.): Ms. Yau defeated a motion to compel arbitration in this case and thereafter achieved a precedent-setting decision in the Seventh Circuit upholding the lower court's denial of the motion to compel arbitration. As a result of this decision, Cohen Milstein and co-counsel were recognized in *The American Lawyer* as "Litigators of the Week."
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein represents participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.

Ms. Yau played an instrumental leadership role in the following high-profile cases:

- Dignity Health Church Plan Litigation (N.D. Cal.): Cohen Milstein is co-counsel to a class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over \$1.2



billion. In June 2017, the Supreme Court reversed previous rulings on consolidated church plan cases and ordered plaintiffs, in this case, to file an amended complaint. On October 19, 2021, the Court granted preliminary approval of a \$100 million settlement.

- Presence Health Plan Litigation (N.D. Ill.): Cohen Milstein represented Presence Health Network-sponsored pension plan participants and beneficiaries, who allege that defendants wrongly claimed that the plans under dispute qualified as ERISA-exempt “church plans” and subsequently denied participants the protections of ERISA, including underfunding the plans by over \$175 million. In July 2018, the court granted final approval to a \$50 million settlement.
- Trinity Church Plan Litigation (D. Md.): Cohen Milstein was counsel to a class of defined benefit participants in which allege that the hospital’s plan is not a church plan and thus the class is entitled to ERISA’s protections and thereby underfunded the plan by over \$600 million. In May 2017, the granted final approval of a \$75 million settlement.
- Merrill Lynch ERISA Litigation (S.D.N.Y.): Cohen Milstein served as interim co-lead counsel in a class action alleging that fiduciaries of the Merrill Lynch retirement plans imprudently purchased and held inflated Merrill employer stock for the retirement accounts of the companies’ employees. The litigation was resolved for \$75 million. Ms. Yau was engaged in all aspects of the litigation.
- Weyerhaeuser Pension Plan Litigation (D. Or.): Cohen Milstein was lead counsel in a lawsuit alleging that the Weyerhaeuser Company caused its Defined Benefit Retirement Plans to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans’ master trust to become underfunded. A settlement was reached for injunctive relief on behalf of Plans’ participants and beneficiaries. Ms. Yau was engaged in all aspects of the litigation.

Ms. Yau is a prolific public speaker and is frequently invited to speak on ERISA litigation updates and trends. She is also a senior editor of the ERISA treatise published by Bloomberg BNA, Employee Benefits Law, and a member of the Benefits Editorial Advisory Board for Law360.

Ms. Yau received her law degree from Harvard Law School, where she was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to federal public service. She graduated Phi Beta Kappa with a B.A. in Mathematics from the University of Virginia. Ms. Yau was also selected as an Echols Scholar and awarded the Student Council Scholarship for leadership, academic achievement, and community service.

## **Attorney Profiles – Of Counsel, Associates, Discovery Counsel & Staff Attorneys**

### **Susan Banks**

Susan Banks is a staff attorney at Cohen Milstein and a member of the Antitrust practice. In this role, she assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Ms. Banks brings to bear extensive discovery experience, having worked as a discovery and contract attorney with several renowned defense firms prior to joining Cohen Milstein. Ms. Banks was also the Director of The Socratic School of Language in Washington, D.C. where she created and administered a multilingual language curriculum and innovative afterschool programming in partnership with public, private, and charter school networks.

Ms. Banks is a graduate of The University of Illinois Urbana-Champaign, where she received a B.A. She earned her J.D. and an LL.M. in Intellectual Property Law from The University of Illinois Chicago School of Law. Ms. Banks also holds an A.A.S. in Early Childhood Education from Ashworth College.

### **Norhan Bassiouny**

Norhan Bassiouny is an Associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice, where she represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Ms. Bassiouny was a litigation associate at a highly regarded international defense law firm.

Ms. Bassiouny earned her BS. from Indiana University – Kelley School of Business. She earned her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar, and was a member of the Columbia Journal of Transnational Law.

Prior to pursuing a career in law, Ms. Bassiouny was a financial analyst.

### **Luke Bierman**

Luke Bierman is of counsel to Cohen Milstein, and adviser to the Firm's Ethics and Fiduciary Counseling and Securities Litigation & Investor Protection practices. Mr. Bierman's role is to counsel pension funds and public entities on fiduciary, ethics, governance and compliance issues. He joined Cohen Milstein in 2011, bringing with him a singular perspective and substantive experience as in-house counsel to one of the leading pension funds in the country, appointments to state task forces to review the state code of judicial ethics and professionalism, and a scholarly and academic background as the Dean and Professor of Law at a rising law school that President Bill Clinton has called "interesting and innovative." His experience provides him with a unique context for assisting public pension funds at critical and challenging times for those funds, and to offer collaborative and creative solutions.

Mr. Bierman served from 2007 to 2010 as General Counsel for the Office of the New York State Comptroller, the sole trustee of the state's then \$150 billion pension fund and the state's chief fiscal officer for the state of New York's then \$130 billion budget. This was during the period when the Office of the Comptroller faced unprecedented challenges including an international placement agent scandal and the Great Financial Crisis, and Mr. Bierman led the review of policies and procedures in the Office. In this role, Mr. Bierman managed a legal staff that included 55 attorneys, and was responsible for legal advice and counsel on all matters relating to the comptroller's constitutional and statutory responsibilities, including fiduciary, governance, ethics, litigation, investment, pension benefits, state

and municipal finance and legislative matters. He also managed the 35 outside law firms that represented the Comptroller in litigation and transactional matters.

Mr. Bierman is a noted expert on legal ethics and professionalism, who has spoken and written widely about state courts and judicial conduct. He currently serves as a member of the North Carolina Commission on Administration of Law and Justice and on the North Carolina Chief Justice's Commission on Professionalism. He was a member of the Massachusetts Supreme Judicial Court's Task Force on the Code of Judicial Conduct, which was assigned to review and suggest updates to the Court. He served on the ABA Presidential Task Force on Financing Legal Education and the ABA Presidential Task Force on Legal Access JobCorps. While working at the American Bar Association, Mr. Bierman initiated the project that resulted in revisions to the Model Code of Judicial Conduct (2007), which many states have since adopted.

Mr. Bierman is the Dean and Professor of Law at Elon University School of Law in Greensboro, North Carolina, an innovative law school that blends the most important traditional elements of legal education with highly experiential learning in the nation's first 2½ year JD program. Previously, Mr. Bierman was the Associate Dean for Experiential Education and Distinguished Professor of Practice of Law at Northeastern University School of Law in Boston, where he was responsible for Northeastern's Cooperative Legal Education Program.

Earlier in his career, Mr. Bierman served as a Fellow in Government Law and Policy at Albany Law School. He also has served as Director of the Institute for Emerging Issues at North Carolina State University, where he held the rank of Associate Professor of Political Science; as Founding Director of the Justice Center and Special Assistant to the President of the American Bar Association; as Visiting Specialist in Constitutional Law with the rank of Associate Professor at The Richard Stockton College of New Jersey; and as law clerk to the Presiding Justice and an Associate Justice as well as Chief Attorney of the New York Supreme Court, Appellate Division, Third Department. Mr. Bierman also has taught at Northwestern University School of Law, the University at Albany and Trinity College in Hartford.

Mr. Bierman is widely published for his legal analysis and is a frequent lecturer and commentator about corporate governance reform, fiduciary responsibility and ethics and justice reform. He was a member of the board of directors of the Council of Institutional Investors, where he co-chaired the policies committee.

Mr. Bierman earned his Ph.D. and M.A. in Political Science from the University at Albany; his J.D. from the Marshall Wythe School of Law of the College of William and Mary, where he was a member of the Law Review; and his B.A. in American Political History magna cum laude with High Honors from Colgate University, where he was elected to Phi Beta Kappa. He is an elected member of the American Law Institute.

### **Chloe Bootstaylor**

Chloe Bootstaylor is an associate at Cohen Milstein and a member of the Public Client practice. Ms. Bootstaylor's practice focuses on the representation of state Attorneys General and other public-sector clients in investigations and lawsuits involving false claims and fraudulent and deceptive trade practices.

Prior to joining Cohen Milstein, Ms. Bootstaylor was a law clerk for the Honorable Richard F. Boulware, II of the U.S. District Court for the District of Nevada.

Before her clerkship, Ms. Bootstaylor was an associate at a distinguished global defense law firm, where she focused on securities litigation.

Ms. Bootstaylor is involved in the following high-profile litigation:

- DoorDash Litigation: Representing the City of Chicago in its investigation and litigation against DoorDash for deceptive and unfair business practices that take advantage of restaurants, consumers, and drivers. Click here to view the lawsuit filed against DoorDash.

Ms. Bootstaylor received her B.A. from Rhodes College. She received her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar and served as Notes Editor of the Columbia Journal of Race and Law.

### **John Bracken**

John Bracken joined Cohen Milstein in 2014 and is a staff attorney in the Antitrust practice. In this role, he assists in discovery and evidentiary-related aspects of the litigation and deposition preparation.

Currently, Mr. Bracken is assisting in litigating the following notable matters:

- Domestic Drywall Antitrust Litigation: Cohen Milstein is co-lead counsel in an antitrust litigation alleging that the seven major U.S. manufacturers of drywall conspired to manipulate prices. To date, settlements for \$45 million have been reached with two of the defendants. The case is ongoing.
- VFX/Animation Antitrust Litigation: Cohen Milstein is one of three court-appointed co-lead counsels in a litigation alleging that the major animation studios conspired to limit the opportunities and suppress the pay of special effects and animation workers by agreeing not to poach each other's employees. The litigation has survived a motion to dismiss and the firm is in the process of filing a class motion.
- Mixed Martial Arts (MMA) Antitrust Litigation: Cohen Milstein is co-lead counsel in a class action on behalf of MMA fighters alleging that Zuffa LLC – commonly known as the Ultimate Fighting Championship or "UFC" – has unlawfully monopolized the markets for promoting live professional MMA bouts and for purchasing the services of professional MMA fighters. The district court denied the defendant's motion to dismiss the case in September 2015 and discovery is ongoing.
- Solodyn Antitrust Litigation: Cohen Milstein is a movant in a pay-for-delay litigation, alleging that Medicis Pharmaceutical Corp. and other drug manufacturers colluded to keep a generic version of the acne drug Solodyn off the market. The case is ongoing.

Among Mr. Bracken's successes are the following matters:

- Sports Broadcasting Antitrust Litigation: Cohen Milstein is lead counsel for plaintiffs in class actions alleging that the system of geographical broadcasting territories employed by the National Hockey League (NHL) and Major League Baseball (MLB) amount to unlawful market allocation under Section 1 of the Sherman Act. The NHL lawsuit settled in 2015. A proposed settlement was reached with the MLB in January 2016.
- Symantec Antivirus Antitrust Litigation: Cohen Milstein was lead counsel in a class action alleging Symantec, a computer security provider, and another defendant sold consumers worthless and unnecessary download insurance. The case was resolved just prior to the trial for a \$60 million settlement.

Mr. Bracken graduated from Vassar College with a B.A. in History and earned his J.D. from American University, Washington College of Law.

### **Jay Chaudhuri**

Mr. Chaudhuri has spent his career fighting for and working on behalf of the people of North Carolina. Prior to joining Cohen Milstein, Mr. Chaudhuri served as General Counsel & Senior Policy Advisor at the North Carolina Department of State Treasurer, the sole trustee of the state's \$90 billion pension fund and administrator of the \$8 billion defined contribution plan.

Mr. Chaudhuri oversaw all legal and corporate governance matters. In his role, he recovered more than \$100 million for the pension and unclaimed property funds, including settlements with a real estate investment manager and custodian bank. He played a key role in uncovering alleged wrongdoing that led to eight investment managers paying the pension fund back \$15 million and tougher, cutting-edge ethical standards for these managers.

Mr. Chaudhuri also helped organize a coalition of 11 public pension funds against Massey Energy's Board of Directors and Chairman, after a coal-mining explosion resulted in the death of 29 workers. That engagement resulted in key corporate governance changes and the Chairman's resignation. Today, the coalition's engagement is cited as a model of collaboration among shareholder rights advocates. In addition, Mr. Chaudhuri worked closely with the Harvard Shareholder Rights Project where the Department helped declassify twenty corporate boards, including Stanley Black & Decker, Hess, Lexmark, Foot Locker, and Jarden Corporation. Mr. Chaudhuri served as Chair of the Council of Institutional Investors, an association of the pension funds with combined assets of more than \$3 trillion which serves as the leading voice for effective corporate governance and strong shareholder rights. As Chair, he led the development and adoption of the organization's long-term strategic plan.

Before joining the Department of State Treasurer, Mr. Chaudhuri served as Special Counsel at the North Carolina Department of Justice, where he lead an investigation by all 50 Attorneys General that resulted in a landmark agreement with two leading social networking sites to better protect children from Internet predators. For his efforts, the National Association of Attorneys General honored him with the Marvin Award, given to an individual who furthers that association's goals.

The North Carolina Bar Association has awarded Mr. Chaudhuri its Citizen Lawyers Award, given to lawyers who provide exemplary service to the communities. Lawyers Weekly has also honored him with its Leader in the Law award. In addition, he has been awarded the William C. Friday Fellowship, Henry Toll Fellowship, and American Marshall Memorial Fellowship.

Mr. Chaudhuri currently serves in the North Carolina State Senate representing parts of Raleigh, Cary, and Morrisville. As one of the newest state senators, he serves on the Commerce, Pension & Retirements and Aging, Judiciary II, State and Local Government, and Appropriations on General Government committees. Mr. Chaudhuri has co-sponsored a bill to repeal House Bill 2, a bill critics have referred to as the most anti-LGBT legislation in the country. He is the first South Asian American to serve in the North Carolina General Assembly.

Mr. Chaudhuri graduated from Davidson College, Columbia University School of International and Public Affairs, and North Carolina Central University School of Law (cum laude), where he was executive editor of the Law Journal.

### **Leonardo Chingcuanco**

Leonardo Chingcuanco is an associate with Cohen Milstein and a member of the Antitrust practice. He represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to joining Cohen Milstein, Mr. Chingcuanco served as a Law Clerk for the Honorable Rosemary Collyer of the U.S. District Court for the District of Columbia. Before that, he worked as an Associate Regional Counsel at the U.S. Environmental Protection Agency, during which time he was the recipient of the Regional Administrator's Award for Excellence and a 2018 Regional Honor Award.

Mr. Chingcuanco earned his B.A., magna cum laude, at the University of California, San Diego. He earned his J.D. from Stanford Law School, where he was a member of the Stanford Law Review.

### **Arthur E. Coia**

Arthur E. Coia is of counsel at Cohen Milstein and is a member of the Securities Litigation & Investor Protection practice. Mr. Coia works to keep clients, many of which are Taft-Hartley pension plans, informed of potential fraud and corporate governance issues within their investments so they are able to consider appropriate action in a timely manner.

Prior to joining the firm in 2013, Mr. Coia spent more than 20 years in the investment advisory business. He was President of an asset management company for 10 years, where he oversaw the management of more than \$4 billion in assets. Earlier in his career, Mr. Coia worked as a Portfolio Manager and Securities Analyst for a well-respected trust company and other independent "buy side" advisors. Because of his prior role as a fiduciary in managing benefit fund assets, Mr. Coia understands how important it is for such funds to recover all assets to which they are legally entitled, and to take timely corporate governance actions where appropriate. Mr. Coia uses his unique combination of investment experience and legal knowledge to raise client awareness of instances where they have been defrauded of assets and helps them with the recovery process.

Mr. Coia earned a B.S. in Finance from Georgetown University McDonough School of Business, and received his J.D. from Georgetown University Law Center.

### **Zoya Davis**

Zoya Davis is discovery counsel at Cohen Milstein and a member of the Public Client practice. Ms. Davis manages factual and legal research in litigation and confidential investigations, including overseeing discovery issues and supervising contract attorneys.

Prior to joining Cohen Milstein, Ms. Davis was a staff attorney at several of the country's leading global defense firms, where she led and was an integral member of discovery teams working on high profile congressional, regulatory, and litigation-related investigations involving the U.S. Department of Justice, Federal Trade Commission, Securities and Exchange Commission, Commodity Futures Trading Commission, and other state and federal government entities.

She is a member of the D.C. Chapter of Women in E-Discovery (WiE) and she served as Secretary on the WiE Executive Board in 2017-2018.

Ms. Davis received her B.S. in Environmental & Marine Science from Hampton University and her J.D. from Temple University, James E. Beasley School of Law, where she was the Associate Editor of the Temple University International & Comparative Law Journal. She received her LL.M. in International Legal Studies from American University, Washington College of Law.

### **Suzanne Dugan**

Suzanne M. Dugan is special counsel to Cohen Milstein and leads the Ethics & Fiduciary Counseling practice, a practice she helped found within the Securities Litigation & Investor Protection practice.

Ms. Dugan joined Cohen Milstein after more than 20 years of service in government, including as Special Counsel for Ethics for the Office of the New York State Comptroller, and as counsel to and acting director of the New York State Ethics Commission. Her service and experience in government offer the broad and unique perspective of a regulator and the understanding of an in-house counsel.

Ms. Dugan brings her experience gained from having served as ethics counsel to the third largest public pension fund in the country to advise and counsel pension fund trustees and senior managers on issues and challenges, providing collaborative and creative solutions for pension funds as they navigate changing economic challenges and organizational requirements.

From this unique vantage, Ms. Dugan counsels pension funds on fiduciary responsibility, ethical duties, strategic governance and compliance issues. She consults with governmental entities and other clients on design, implementation, management and assessment of comprehensive ethics programs. She also assists in conducting investigations and structuring recommendations, and provides expert legal and consulting services to law firms retained to conduct special reviews, providing an additional layer of oversight and accountability.

Ms. Dugan has worked with public pension fund and municipal government clients in the following capacities:

- Service as Fiduciary Counsel, Ethics Counsel, and Compliance Counsel to public pension plans from coast to coast, including some of the largest institutional investors in the country.
- Providing ethics and fiduciary training to boards of trustees, designing and delivering educational programs for sophisticated public pension plans and government entities.
- Outside Ethics Officer to municipalities across the country, evaluating and investigating complaints of unethical conduct, providing objective and independent guidance, and working to ensure a culture of ethical leadership.

Ms. Dugan serves on the Executive Board of the National Association of Public Pension Attorneys (NAPPA), a professional organization dedicated to providing legal educational opportunities and informational resources to its member attorneys. She also serves on NAPPA's Executive Board Committees for Diversity, Equity & Inclusion and Publications; as Board Liaison to and Acting Co-Chair of the ESG Resources Working Group; and on the New Member Education Committee. She is a former member of the Fiduciary and Plan Governance Section Steering Committee. In addition, Ms. Dugan is an active member of the Council on Government Ethics Laws, an international organization dedicated to issues involving governmental ethics, elections, campaign finance, lobby laws and freedom of information.

Ms. Dugan is a frequent lecturer at conferences and forums addressing ethics and fiduciary issues in the public and nonprofit sectors, including pension funds, bringing with her an understanding of ethical issues born out of practical experience as well as scholarly pursuits. She has served as an adjunct professor, teaching a course on Government Ethics, and writes frequently on ethics, fiduciary responsibilities of pension trustees and the role of pension fund attorneys. In 2014, Ms. Dugan won the Burton Award, the country's most prestigious legal writing award run in association with the Library of Congress, for her Bloomberg BNA article, "Ethics and Fiduciary Issues for Public Pension Plans: Lessons Learned".

Ms. Dugan is also an active member of her community. She is currently an elected Trustee of her local public library. In addition, she serves as a member of the Governance Committee of a Planned Parenthood affiliate, following many years of service on the Board of Directors. She also previously served as the pro bono legal director of a not-for-profit in the Albany area.

Ms. Dugan is an elected member of the American Law Institute, where she is a member of the Consultative Group on Government Ethics.

Ms. Dugan began her career as a judicial clerk with the Appellate Division, Third Department, of the New York State Supreme Court. She graduated magna cum laude from Siena College and earned her J.D. cum laude from Albany Law School of Union University.

### **Robert Dumas**

Robert Dumas is a staff attorney at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice. He is engaged in document discovery and review and in preparing the attorneys in deposing witnesses. Since joining the firm in 2014, he has worked on some of the most important mortgage backed securities (MBS) litigations to emerge from the financial crisis.

Prior to joining Cohen Milstein, Mr. Dumas practiced at a leading plaintiff firm, litigating securities fraud matters, and then later at a smaller plaintiff firm, where he helped litigate the In re IPO Securities Litigation, in which investors accused the leading investment banks of rigging IPOs during the 1990s tech bubble; after nearly a decade of legal wrangling, a \$586 million settlement was reached. Earlier, he practiced at a leading intellectual property and trademark law firm, where he defended trademark matters for an international clothing manufacturer.

### **Lisa Ebersole**

Lisa Ebersole is an associate in the firm's Public Client practice. Her practice focuses on the representation of state attorneys general and other public-sector clients in investigations and lawsuits involving false claims and fraudulent and deceptive trade practices.

Prior to joining Cohen Milstein, Ms. Ebersole was a Second Amendment Fellow at Everytown for Gun Safety, and before that she was a litigation associate at a highly regarded global defense law firm. She also served as a Law Clerk for the Honorable Rowan D. Wilson of the New York State Court of Appeals.

Ms. Ebersole graduated with honors from Cornell University. She earned her J.D., cum laude, from Harvard Law School, where she was a Senior Article Editor and Senior Online Editor for the Harvard Law & Policy Review.

Ms. Ebersole has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

### **Donna M. Evans**

Donna M. Evans is of counsel at Cohen Milstein and a member of the Antitrust practice.

Ms. Evans' practice spans thirty years as a trial lawyer in civil cases and includes many years as a litigation partner at large global firms. Ms. Evans is an accomplished trial lawyer and has tried numerous cases to verdict, including obtaining, as part of a trial team, one of the largest plaintiff jury verdicts in Massachusetts Superior Court.

Ms. Evans' experience includes pharmaceutical litigation in which she has represented plaintiffs in antitrust class actions; prescription drug manufacturers; biomedical device companies and inventors; private medical consulting services; and global pharmaceutical companies. For nearly a decade, Ms. Evans has focused on cutting-edge pay-for-delay pharmaceutical antitrust litigation, which addresses collusive, non-competition agreements between brand and generic drug manufacturers in order to delay entry of lower-priced generic drug products. Ms. Evans was part of the trial team in In re Nexium Antitrust Litigation, the first pharmaceutical antitrust case to go to trial following the Supreme Court's landmark decision in FTC v. Actavis, 570 U.S. 756 (2013). She is also involved in the litigation of generic drug price-fixing cases, which come on the heels of a government investigation led by the U.S. Department of Justice alleging similar conduct, which, while ongoing, has already resulted in indictments and guilty pleas.

Ms. Evans currently serves as a member of Cohen Milstein's Professional Development Mentoring Committee and co-led the firm's two-day young associate training program in 2017 and 2019.



Among other honors, since 2019, Ms. Evans has been annually selected for Lawdragon's "500 Leading Plaintiff Financial Lawyers" list. Ms. Evans has also been named a Massachusetts Super Lawyer numerous times, and served on the Hon. Nancy Gertner's Equality Commission and the Corporate Advisory Board of the Commonwealth Institute, advising women-owned businesses.

Ms. Evans' successfully concluded matters include:

- In re Lidoderm Antitrust Litigation (N.D. Cal.): Cohen Milstein served as Co-Lead Counsel for the End-Payor Class in a suit alleging that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, Plaintiffs obtained final approval of a \$104.75 million settlement – more than 40% of Plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Loestrin Antitrust Litigation (D.R.I.): Cohen Milstein served as Co-Lead Counsel for the End-Payor Plaintiffs in a case alleging that Warner Chilcott PLC entered into agreements to delay the introduction of a generic version of the contraceptive drug Loestrin and thereafter engaged in a "product hop" to further impede generic entry. The case settled on the last business before trial for \$63.5 million – representing one of the largest settlements in a federal generic suppression case in over a decade. On September 1, 2020, the settlements received final approval.
- In re Solodyn Antitrust Litigation (D. Mass.): Cohen Milstein served as a member of the executive committee and Ms. Evans played a significant role in discovery on behalf of the End-Payor Plaintiffs. The case, which settled mid-trial, resulted in a \$43 million recovery for the Class.

Ms. Evans is currently representing End-Payor Plaintiffs in the following pay-for-delay pharmaceutical antitrust cases in which Cohen Milstein serves as Co-Lead Counsel:

- In re Lipitor Antitrust Litigation (D.N.J.): Plaintiffs allege that Pfizer, the manufacturer of the cholesterol drug Lipitor, the best-selling drug in pharmaceutical history, conspired with Ranbaxy, the generic manufacturer, to delay its introduction of a generic Lipitor product. On August 21, 2017, the Third Circuit handed a sweeping victory to Plaintiffs, reviving their antitrust claims. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).
- In re Tracleer Antitrust Litigation (D. Md.): Plaintiffs allege that Defendant Actelion engaged in an anticompetitive scheme to withhold samples of its life-saving pulmonary arterial hypertension medication from would-be rivals, under the guise of the REMs program, which conduct ultimately delayed generic competition.
- In re Bystolic Antitrust Litigation (S.D.N.Y.): Plaintiffs allege that Forest Laboratories Inc., now a part of AbbVie, engaged in an illegal scheme with pharmaceutical generic manufacturers not to make generic versions of Bystolic®, a hypertension prescription medication containing the active pharmaceutical ingredient nebivolol hydrochloride.
- In re Zytiga Antitrust Litigation (D.N.J.): Plaintiffs allege that Janssen Biotech and BTG International Limited engaged in sham litigation, thereby delaying generic manufacturers from entering the market with competing generic versions of Zytiga for more than year.
- Ms. Evans is also currently involved in pay-for delay cases in which Cohen Milstein plays a significant role, including: In re Niaspan Antitrust Litigation (E.D. Pa.), In re Suboxone Antitrust Litigation (E.D. Pa.), In re ACTOS Antitrust Litigation (S.D.N.Y.) and In re Zytiga Antitrust Litigation (D.N.J).

In addition, Ms. Evans is involved in cases on behalf of direct purchaser plaintiffs, including: In re Zetia Antitrust Litigation (E.D. Va.), In re Generic Pharmaceuticals Pricing Antitrust Litigation (E.D. Pa.), In re Sensipar (Cinacalcet

Hydrochloride Tablets) Antitrust Litigation (D. Del.), In re Intuniv Antitrust Litigation (D. Mass.) and In re Ranbaxy Fraud Antitrust Litigation (D. Mass.).

Throughout her career, Ms. Evans has been deeply involved in the issue of equality. She served on the Honorable U.S. District Court Judge Nancy Gertner's Equality Commission, the Boston Bar Association's Diversity and Attorney Attrition Standing Committee, and the BBA's Task Force on Professional Challenges and Family Needs. Ms. Evans participated in writing a ground-breaking BBA report addressing the costs of attorney attrition, *Facing the Grail: Confronting the Cost of Work-Family Imbalance*, as well as implementing the report's recommendations in Boston law firms. Ms. Evans has also served on the Board of Directors of Greater Boston Legal Services and has been active in pro bono representation, including fair housing issues.

Ms. Evans graduated from the University of North Carolina at Chapel Hill with a B.A. in English and Political Science, and an M.A. in English. She received a J.D., cum laude, from the University of North Carolina at Chapel Hill Law School, where she served as a Note and Comment Editor on the Board of the North Carolina Law Review. She interned with the Criminal Division of the U.S. Attorney's Office for the District of Massachusetts during law school.

Ms. Evans has written articles on topics including the federal mail fraud statute and construction pay-when-paid contract clauses, and she authored a chapter in *Inside the Minds*, addressing best practices in client relationships. She taught legal writing at Boston University Law School for six years, has guest lectured at Duke University and the University of North Carolina law schools, and – prior to practicing law – she taught English at the University of North Carolina and was a Visiting Lecturer in English at North Carolina State University.

### **Rachael Flanagan**

Rachael Flanagan is an associate at Cohen Milstein and a member of the Complex Tort Litigation practice. Her practice is focused on catastrophic injury, wrongful death, medical malpractice, and sexual abuse, sex trafficking, and domestic violence cases.

Prior to joining Cohen Milstein, Ms. Flanagan was an associate at a highly regarded medical malpractice and personal injury law firm in Florida.

Ms. Flanagan is currently working on the following high profile litigation:

- *Doe, et al. v. Washington Hebrew Congregation, et al.* (D.C. Supr. Ct.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.
- *Doe v. Scores, et al.* (13th Jud. Cir., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a young woman against Scores Holding Company, Inc., and its affiliates for illegally employing her when she was a minor at one of its Florida locations, subjecting her to be sexual abuse and human trafficking.

Ms. Flanagan proudly serves the legal and local community as a board member of the Palm Beach County chapter of the National Alliance on Mental Illness (NAMI) and a board member of the Florida Justice Association's Women's Caucus. She is also a member of the local chapter of the Florida Association for Women Lawyers (FAWL) and the Palm Beach County Bar Association's Lawyers for Literacy Committee.

Ms. Flanagan earned her B.S. at East Tennessee State University. She earned her J.D., magna cum laude, at Barry University, Dwayne O. Andreas School of Law, where she graduated in the top 10% of her class and served as managing editor of the Barry Law Review.

Before pursuing a career as a lawyer, Ms. Flanagan was a paralegal for over a decade, working in the areas of medical malpractice, managed care abuse, products liability, mass torts, and class action litigation. During that time, she worked for several years at Leopold Law, which merged with Cohen Milstein in 2015.

### **Eleanor Frisch**

Eleanor Frisch is an associate in Cohen Milstein's Employee Benefits/ERISA practice. She represents the interests of employees, retirees, plan participants and beneficiaries in ERISA class-action lawsuits across the country.

Prior to joining Cohen Milstein, Ms. Frisch spent several years at an appellate litigation boutique representing employees and consumers before the federal courts of appeals. Before that, Ms. Frisch was an associate at a highly regarded national plaintiffs' law firm, where she represented clients in employee benefits/ERISA, employment and consumer class actions.

Before entering private practice, Ms. Frisch served as a law clerk to the Honorable Roger L. Wollman on the U.S. Court of Appeals for the Eighth Circuit.

Some of Ms. Frisch's legal publications include:

- Coauthor, "The Fair Labor Standards Act," ch. 2, Minnesota Continuing Legal Education, The Complete Employment Lawyer's Quick Answer Book (May 2017)
- State Sexual Harassment Definitions and Disaggregation of Sex Discrimination Claims, 98 Minn. L. Rev. 1943 (2014)
- Coauthor, The Canary Sings Again: New Life for the Minnesota Whistleblower Act, Bench & B. Minn. (Sept. 2013)

Ms. Frisch received her B.A., magna cum laude, from Trinity University, and received her J.D., magna cum laude, from the University of Minnesota Law School, where she was an executive board member of the Minnesota Law Review and a member of the Order of the Coif.

### **Zachary Glubiak**

Zachary Glubiak is an associate at Cohen Milstein and a member of the Antitrust practice. He represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Mr. Glubiak first joined Cohen Milstein in 2020, and he rejoined the firm following a clerkship with the Honorable Randolph D. Moss of the United States District Court for the District of Columbia.

Previously, Mr. Glubiak served as the John Marshall Fellow in the Solicitor General's Office of the Virginia Attorney General. In this capacity, Mr. Glubiak litigated constitutional and other high-profile matters on behalf of the Commonwealth, including defending the constitutionality of recently enacted gun-control legislation and the Governor's Covid 19-related executive orders, serving as lead counsel in appeals before the United States Court of Appeals for the Fourth Circuit, and presenting oral arguments before both the Supreme Court of Virginia and the Court of Appeals of Virginia.

Prior to joining the Solicitor General's Office, Mr. Glubiak clerked for the Honorable Pamela A. Harris of the United States Court of Appeals for the Fourth Circuit.

Mr. Glubiak is involved in the following high-profile matters:

- *Jien v. Perdue Farms, Inc.* (D. Md.): On October 8, 2019, the Court appointed Cohen Milstein Co-Lead Counsel in this putative wage and hour suppression class action against the nation's largest chicken and turkey producers conspired to suppress their compensation. As of July 20, 2021, the Court has preliminarily approved \$49.8 million in settlements with four defendants. Litigation continues against other defendants.
- *In Re: Da Vinci Surgical Robot Antitrust Litigation* (N.D. Cal.): On September 24, 2021, the Court appointed Cohen Milstein Interim Co-Lead Counsel in this consolidated antitrust class action against Intuitive Surgical, Inc. Plaintiffs allege that Intuitive engages in an anticompetitive scheme under which it ties the purchase or lease of its must-have, market-dominating da Vinci surgical robot to the additional purchases of (i) robot maintenance and repair services and (ii) unnecessarily large numbers of the surgical instruments, known as EndoWrists, used to perform surgery with the robot—a violation of Sections 1 and 2 of the Sherman Act.

Mr. Glubiak received his B.A. from Columbia University and his M.S.T. from Fordham University's Graduate School of Education. He received his J.D. from Stanford Law School, where he was the Co-Founder and Co-President of the Stanford Plaintiffs' Lawyers Association.

Prior to law school, Mr. Glubiak was a history teacher, coach, and advisor at KIPP NYC College Prep, a high school in South Bronx, NY.

### **Leslie Greening**

Leslie Greening is a staff attorney at Cohen Milstein and a member of the Public Client practice. She assists in legal research, as well as discovery and evidentiary-related aspects of the firm's representation of state attorneys General and other public sector clients in investigation and lawsuits involving health care fraud and other fraudulent and deceptive trade practices.

Ms. Greening previously worked as a contract attorney with Cohen Milstein. She joined the firm as a staff attorney in 2018.

Prior to her work at Cohen Milstein, Ms. Greening was a Post-Graduate Fellow at nonprofit legal aid groups in North Carolina, including the Wake Forest University Innocence & Justice Clinic.

Ms. Greening attended Davidson College, graduating with a B.A. She earned her J.D. from Wake Forest University School of Law.

### **Susan M. Greenwood**

Susan M. Greenwood is a member of Cohen Milstein's Securities Litigation & Investor Protection practice. With extensive experience in the area of securities law and class action litigation, Ms. Greenwood analyzes and evaluates securities litigation case opportunities.

Prior to joining Cohen Milstein, Ms. Greenwood was a Securities Law Specialist at Bloomberg Law, providing analysis of trends and developments in securities litigation, regulation and enforcement and serving as the editor of the Bloomberg Law Securities Litigation and Enforcement Report. She also has served as counsel at a prominent insurance company and two large litigation firms.

Ms. Greenwood attended Cornell University, graduating cum laude with Distinction, and earned her J.D. at the University of Pennsylvania School of Law.

## **Alicia Gutiérrez**

Alicia Gutiérrez is discovery counsel at Cohen Milstein and a member of the Antitrust practice. Ms. Gutiérrez is engaged in a number of the group's ongoing cases. Additionally, she is a member of the group's New Case Investigations Team, where she identifies and helps develop potential cases.

Ms. Gutiérrez's case work includes the following:

- Sutter Health Antitrust Litigation (Sup. Ct., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a \$575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.
- Animation Workers Litigation (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily through no poach agreements. The court granted final approval of \$168.95 million in settlements.
- In re Broiler Chicken Antitrust Litigation (N.D. Ill.): Cohen Milstein represents a class of end-user consumers of broiler chicken in a litigation alleging that the defendants, who include Perdue Farms and Tyson Foods, agreed to restrict the supply of broilers, among other things, thereby raising their price to consumers.

Ms. Gutiérrez's legal practice has focused for more than a decade on complex commercial litigation, with an emphasis on antitrust litigation. She has worked on cases in both state and federal courts, as well as advised clients on investigations and litigation involving government agencies. Prior to joining Cohen Milstein, Ms. Gutiérrez was Counsel and an Associate at two notable firms, where she represented both defendants and plaintiffs. A significant case from one of her prior firms was a single plaintiff antitrust case in the credit card industry, which resulted in a \$4 billion settlement. Before embarking on her legal career, she was a financial analyst in investment banking at Merrill Lynch and a management consultant at The Boston Consulting Group.

Ms. Gutiérrez attended Princeton University, where she graduated with an A.B. from the Woodrow Wilson School of Public and International Affairs. She received her J.D. from Stanford Law School in 2002 and her M.B.A. from the Stanford Graduate School of Business in 2002.

## **D. Michael Hancock**

D. Michael Hancock is of counsel at Cohen Milstein and a member of the Civil Rights & Employment practice.

Mr. Hancock is the former Assistant Administrator for the U.S. Department of Labor's (DOL) Wage and Hour Division. As a senior DOL employee for 20 years, conducting policy-related work, including policy interpretation and enforcement, he helped enforce a wide range of workplace protections, from minimum wage, overtime, child labor and the Family Medical Leave Act, to guest worker and other employment-based immigration programs. Most recently, as Acting Director, DOL's Division of Interpretation and Regulatory Analysis, and as Assistant Administrator for Policy, Mr. Hancock managed a team of 40 senior managers and analysts and worked with, among others, the Solicitor of Labor, the Secretary of Labor, the Office of Management and Budget, and the White House.

At the DOL, Mr. Hancock also served as Branch Chief, Wage and Hour Division, Division of Interpretations and Regulatory Analysis, and as National Farm Labor Coordinator, Wage and Hour Division. While on detail from the DOL, he served as Senior Labor Advisor to the U.S. Agency for International Development (USAID), where he

provided guidance to the Bureau of Democracy, Conflict and Humanitarian Assistance, Office of Democracy and Governance, on a broad range of labor, civil society, democracy and development programs funded and administrated by USAID.

Prior to joining the DOL in 1995, Mr. Hancock was the Executive Director of Farmworker Justice, where he helped provide policy support to farmworker organizations, labor unions, migrant legal services programs, administrative and legislative bodies, and other organizations. Before that, he was General Counsel of the National Coalition to Ban Handguns and President of the Foundation for Handgun Education. He also served as Executive Director of the Aviation Consumer Action Project.

Mr. Hancock was awarded a fellowship from Howard University — the Reginald Heber Smith Community Lawyer Fellowship, Ozark Legal Services, Fayetteville, Arkansas — to practice poverty law in rural Arkansas, and was a law clerk at Ozark Legal Services. He also worked as an administrator and social worker with the Arkansas Department of Human Services.

Mr. Hancock received his B.S. from Oklahoma State University, and his J.D., with honors, from the University of Arkansas, where he was appointed to the Arkansas Law Review.

### **Johanna M. Hickman**

Johanna M. Hickman is of counsel at Cohen Milstein where she is a member of the Public Client practice and serves as co-chair of the Hiring and Diversity Committee.

Ms. Hickman represents state attorneys general and other public-sector clients in investigations and lawsuits involving violations of consumer protection laws, health care fraud, and other unfair or deceptive trade practices.

Ms. Hickman's recent representations include:

- **Grubhub and DoorDash Litigation:** Representing the City of Chicago in its enforcement actions against Grubhub and DoorDash for violations of the City's consumer protection laws. These cases allege widespread deceptive and unfair business practices impacting local restaurants, consumers, and drivers. [Click here to view the lawsuit filed against DoorDash](#); [click here to view the lawsuit filed against Grubhub](#).
- **Uber Eats, Postmates Investigation:** Represented the City of Chicago in its investigation into UberEats and Postmates for allegedly listing Chicago restaurants on their platforms without the eateries' consent, for violating the City's emergency fee cap ordinance during the COVID-19 pandemic, and for other false advertising-related misconduct. On December 5, 2022, the City announced a \$10 million settlement.
- **Opioid Litigation:** Representing the states of Indiana, New Jersey and Vermont in investigations and litigation against entities responsible for the deceptive marketing and sale of opioids. Publicly filed enforcement actions in these matters included Indiana's actions against Purdue, the Sackler family, and pharmaceutical distributors Cardinal Health, McKesson, and AmerisourceBergen; New Jersey's actions against Purdue, the Sackler family, and Janssen; and Vermont's actions against Purdue, the Sackler family, and distributors Cardinal and McKesson. A \$26 billion nationwide settlement of litigation against the distributors and Janssen was finalized in 2022. A nationwide settlement in principle with Purdue and the Sackler family, valued at more than \$6 billion, remains pending in bankruptcy proceedings.

Prior to joining Cohen Milstein in 2013, Ms. Hickman practiced at a leading defense firm, where she advised clients regarding environmental, health, and safety matters and in related complex insurance coverage litigation. Her civil defense and corporate advisory experience add to Ms. Hickman's deep and balanced litigation and client counseling skillsets.

Ms. Hickman graduated with Highest Honors from the University of North Carolina at Chapel Hill with a B.A. in Journalism and Mass Communication. Ms. Hickman earned her J.D., cum laude, from the Georgetown University Law Center, where she served as a Law Fellow, a Global Teaching Fellow, a Staff Member and Symposium Editor of the Georgetown Journal of Legal Ethics, and a member of the Barristers' Council. Since 2013, Ms. Hickman has served on the adjunct faculty at Georgetown Law, where she teaches a course in advanced legal writing and practice.

### **Benjamin F. Jackson**

Benjamin F. Jackson is an associate at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice where he represents institutional and individual shareholders in derivative lawsuits and securities class actions. In 2022, Super Lawyers recognized Mr. Jackson as a New York Metro Rising Star.

Prior to joining Cohen Milstein, Mr. Jackson was a litigation associate at a highly regarded national defense firm, where he focused on securities, antitrust, white collar investigations, and intellectual property litigation.

Currently, Mr. Jackson is involved in litigating the following notable matters:

- In re EQT Corporation Securities Litigation (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this securities class action, in which Plaintiffs allege that EQT misrepresented the synergies and cost savings that could be expected to arise from EQT's \$6.7 billion merger with rival natural gas producer Rice Energy, and then concealed that EQT was suffering from undisclosed well collapses and skyrocketing costs after the merger closed.
- Bayer Securities Litigation (N.D. Cal.): Cohen Milstein is Lead Counsel in this securities class action, in which Plaintiffs allege that in connection with its \$63 billion acquisition of Monsanto, Bayer misrepresented the rigor of its due diligence and the nature of the legal risk presented by Monsanto's flagship product, the herbicide Roundup. Bayer investors incurred significant losses after bellwether jury trials in toxic tort cases repeatedly found in favor of the plaintiffs against Monsanto, including finding that Roundup was a "substantial factor" in causing the plaintiffs' non-Hodgkin's lymphoma, and leading to jury awards totaling hundreds of millions of dollars.
- Bristol-Myers Squibb CVR Securities Litigation (S.D.N.Y.): Cohen Milstein is Lead Counsel in this securities class action arising from Bristol Myers' alleged subversion of the FDA approval process for the cancer therapy Liso-cel for the purpose of avoiding a \$6.4 billion payment to holders of contingent value rights (CVRs).
- Nikola Corp. Derivative Litigation (Del. Ch.): Cohen Milstein filed a shareholder derivative action against Trevor Milton, the founder and former CEO and Executive Chairman of Nikola Corporation, a zero-emissions vehicle startup company, and certain other current and former directors and officers of Nikola. The action alleges that Milton engaged in an ongoing criminal fraud involving the dissemination of materially false and misleading statements regarding Nikola's business, technology and expected financial performance to Nikola stockholders and the public. Nikola ultimately paid the SEC \$125 million to settle an investigation relating to Milton's fraudulent scheme.

Mr. Jackson served as a law clerk to the Honorable Katherine B. Forrest of the United States District Court for the Southern District of New York and to the Honorable Robert D. Sack of the United States Court of Appeals for the Second Circuit.

Mr. Jackson earned his A.B., summa cum laude, at Washington University in St. Louis, where he was a Lien Scholar. He earned his J.D., magna cum laude, from Harvard Law School, where he served as Forum Chair of the Harvard Law Review and won the Ames Moot Court Competition.

A prolific writer, Mr. Jackson's legal publications include *Censorship and Freedom of Expression in the Age of Facebook*, 44 N.M. L. Rev. 121 (2014); Note, *Danger Lurking in the Shadows: Why Regulators Lack the Authority to Effectively Fight Contagion in the Shadow Banking System*, 127 Harv. L. Rev. 729 (2013); and Recent Case, *U.S. Bank National Ass'n v. Ibanez*, 941 N.E.2d 40 (Mass. 2011), 125 Harv. L. Rev. 827 (2012).

Mr. Jackson currently serves as the Co-Chair of the Committee on Securities and Exchanges of the New York County Lawyers Association (NYCLA), and he is also a member of NYCLA's Committee on Federal Courts.

Before attending law school, Mr. Jackson was a consultant in the financial services practice of a global strategy consulting firm.

### **Nicholas J. Jacques**

Nicholas J. Jacques is an associate at Cohen Milstein and a member of the Human Rights practice. His practice focuses on representing individuals who have been victims of torture, human trafficking, forced labor, and other violations of international law.

Prior to becoming an associate at Cohen Milstein, Mr. Jacques was a Law Fellow at the firm where he worked across practices and was involved in litigating individual and class action cases at the district and appellate levels.

Immediately before his Fellowship, Mr. Jacques was a law clerk to the Honorable Carolyn Dineen King for the United States Court of Appeals for the Fifth Circuit, as well as a law clerk to the Honorable Nancy Moritz for the United States Court of Appeals for the Tenth Circuit.

Mr. Jacques received his B.A., summa cum laude, from Northeastern University, where received several academic awards, including the Kappa Tau Alpha Top Scholar Award. He received his J.D., magna cum laude, from Cornell Law School, where he received numerous academic awards, including The Freeman Award for Civil-Human Rights and the Arthur S. Chatman Labor Law Prize.

While at law school he was Articles Editor at Cornell Law Review, Executive Bench Editor for the Moot Court Board, and Chapter President of the National Lawyers Guild.

Mr. Jacques's publications include, "Information Gathering in the Digital Age: Towards a Liberal Right to Record," 102 Cornell Law Review 783 (2017).

Prior to law school, Mr. Jacques was a journalist at The Boston Globe.

### **Brian E. Johnson**

Brian E. Johnson is an associate in Cohen Milstein's Consumer Protection practice, where he represents consumers in a wide range of consumer protection class actions, including false advertising, data breach, and product liability and warranty claim class actions.

Mr. Johnson brings to bear extensive state court consumer protection law experience - essential to addressing emergent statutory rights and injury-in-fact Article III standing requirement issues. Prior to joining Cohen Milstein in 2018, originally as a Staff Attorney, Mr. Johnson was an associate at a Missouri-based law firm where he represented consumers in class actions the Fair Debt Collection Practices Act, Fair Credit Reporting Act and the Telephone Consumer Protection Act. Mr. Johnson also played a role in assisting Heartland Center for Jobs & Freedom, a non-profit advocacy organization focused on helping low-wage workers, expand its advocacy efforts in consumer rights and tenant rights.



Mr. Johnson is currently litigating the following notable matters:

- *Ariza v. Luxottica Retail North America (LensCrafters)* (E.D.N.Y.): Cohen Milstein represents purchasers of LensCrafters' Accufit Digital Measurement System (Accufit) services, who allege that LensCrafters used false, misleading advertising and deceptive sales practices about Accufit being "five times more accurate" in measuring pupillary distance than traditional methods. The court granted class certification on December 13, 2021, including the certification of a damages class for New York, California, and Florida.
- *Prescott, et al. v. Reckitt Benckiser LLC* (N.D. Cal.): On July 29, 2022, the court granted class certification in California, New York, and Massachusetts in this false advertising consumer protection class action. Plaintiffs allege that Reckitt's Woolite laundry detergent labeled with "COLOR RENEW" and/or "revives colors" were false and misleading because Woolite does not renew or revive color in clothing.

Following law school, Mr. Johnson served as a Law Clerk for the Honorable Margaret L. Sauer and the Honorable Janette K. Rodecap, 16th Circuit Court of Jackson County, Missouri.

Mr. Johnson is a graduate of Missouri State University, where he received a dual B.A., magna cum laude, in History and German in 2005. He earned his J.D. from the George Washington University Law School in 2012. Mr. Johnson also studied at Webster University in Vienna, Austria, earning a M.A. in International Relations in 2007.

### **Nicholas C. Johnson**

Nicholas C. Johnson is of counsel at Cohen Milstein and a member of the Complex Tort Litigation practice. His practice focuses on catastrophic injury and wrongful death, medical malpractice, nursing home abuse, and personal injury cases.

Prior to joining Cohen Milstein in 2014, Mr. Johnson worked for two South Florida defense firms, gaining valuable experience representing Fortune 500 insurance companies in the defense of claims and lawsuits. Earlier in his career, he practiced as an Assistant Public Defender in Palm Beach County, where he represented indigent clients charged with misdemeanors and felonies, ranging from DUI to crimes punishable by life in prison. He was awarded the Best Advocate Award at the Florida Public Defender College in November 2008. Mr. Johnson tried approximately 30 jury trials to verdict as an Assistant Public Defender. Eager to resume his representation of individuals, Mr. Johnson joined Cohen Milstein.

Some of his past successes include:

- *Doe. v. JFK Medical Center* (Cir. Ct., Palm Beach Cnty., Fla.): In April 2019, Cohen Milstein settled a medical malpractice lawsuit against JFK Medical Center on behalf of a client who had a documented seizure disorder, for which he was prescribed twice daily anticonvulsant medication. During a medical evaluation, one of the doctors employed by JFK Medical Center withheld our client's anticonvulsant medication, causing him to suffer a severe and debilitating seizure. The seizure resulted in comminuted shoulder fractures, a reverse total shoulder replacement surgery, and severe permanent functional impairment to both shoulders.
- *Doe v. Florida Medical Corporation*: Cohen Milstein represented the family of a woman who tragically died while being held in the Marion County Jail. Upon booking, she immediately exhibited symptoms of MRSA, a deadly disease, which the jail medical staff failed to include in her differential diagnosis. Her condition continued to deteriorate during her incarceration, leading to her death from bacterial endocarditis, a condition of her untreated infection. She left behind an 8-year-old-son, the sole beneficiary of her estate.
- *Skiles v. Boca Raton Regional Hospital* (Cir. Ct., Palm Beach Cnty., Fla.): Cohen Milstein represented the Estate of Mr. Skiles in a medical malpractice, wrongful death case, arising from the defendant's failure to perform an x-ray on Mr. Skiles to rule-out a potential bowel perforation following a colonoscopy procedure.

The x-ray was never performed, and Mr. Skiles was sent home. Later that day, Mr. Skiles returned to the hospital with severe abdominal pain. He was diagnosed with a perforated bowel, ultimately leading to bowel resection surgery. Although Mr. Skiles initially survived his surgery, he later died due to complications of sepsis. The case settled for a confidential sum.

- Doe v. Unnamed Hospital (Cir. Ct., Orange Cnty., Fla.): Cohen Milstein represented the widow and children of a man against an unnamed hospital in a medical malpractice lawsuit. Our client checked into the hospital's Emergency Room complaining of severe chest pain and shortness of breath. The hospital-employed physicians ran tests, evaluated him only for cardiac related issues, and gave an order to discharge him. While he was still in the hospital, our client suffered a massive pulmonary embolism and died. The complaint alleges that the physicians failed to recognize the signs and symptoms of pulmonary embolism, and thereby fell below the standard of care. The case settled for a confidential sum.
- Doe v. Unnamed Hospital (Cir. Ct., Seminole Cnty., Fla.): Cohen Milstein represented a client in a medical malpractice lawsuit against an unnamed hospital. Our client, a patient at the hospital, was dropped on his head during a routine surgical procedure, allegedly as a result of the hospital technicians' failure to properly secure him to the operating room table. The fall resulted in a mild traumatic brain injury with debilitating consequences, including significant emotional, behavioral, and memory deficits. After extensive litigation, including over 40 depositions, the case settled for a confidential sum.
- Doe v. Unnamed Hospital (Cir. Ct., Highlands Cnty., Fla.): Cohen Milstein represented an emergency room patient of an unnamed hospital, who was never notified by the hospital of the results of a "critical" blood culture, ultimately leading to irreversible damage of his spinal cord and paraplegia. The case settled for a confidential sum.
- Pavlov v. PBSO (S.D. Fla.): Cohen Milstein represented the mother of a 28-year-old mentally disturbed man who was shot and killed by a Deputy Sheriff of the Palm Beach County Sheriff's Office. Mr. Johnson was instrumental in litigating this case, which at that time, resulted in the largest settlement paid out by the Palm Beach County Sheriff's Office.
- Negligent Security Matter (Cir. Ct., Palm Beach Cnty., Fla.): Cohen Milstein represented the mother of a 20-year-old man who was shot and killed in the parking lot of a West Palm Beach nightclub, which had been plagued with violent crimes over the years. The complaint alleged that the nightclub failed to provide adequate security that led to this tragic incident. On October 6, 2017, the parties entered into a confidential settlement.
- Patient v. Confidential Defendant (Cir. Ct., Alachua Cnty., Fla.): On March 17, 2016, Cohen Milstein successfully negotiated a confidential settlement on behalf of their client who had suffered permanent bodily damage at the hands of a Florida Cardiologist. Mr. Johnson exposed the Defendant's misconduct and medically negligent treatment when using a stent inappropriately.
- Nursing Home Neglect Litigation (Cir. Ct., Alachua Cnty., Fla.): Cohen Milstein represented the spouse of an 85-year-old man who experienced a series of falls in a nursing home before finally fracturing his hip, which required hip replacement surgery. Mr. Johnson was instrumental in reaching a confidential settlement in this case that alleged neglect on the part of the nursing home.

Mr. Johnson has been selected by National Trial Lawyers as a "Top 100 Plaintiff Civil Trial Lawyer" in the State of Florida. He is consistently recognized by the "Best Lawyers in America" as a "Best Lawyer" in the field of Personal Injury Litigation and Product Liability Litigation – Plaintiffs, as well annual recognitions by Florida Trend, Florida Super Lawyers and Palm Beach Illustrated.

In June 2019, Mr. Johnson was appointed to serve on the Florida Justice Association's (FJA) Board of Directors.

Mr. Johnson is Past President of the prestigious F. Malcolm Cunningham, Sr. Bar Association. He has been a member since 2014.

In October 2020, Mr. Johnson was appointed to serve on The Florida Bar's Grievance Committee and will serve until 2023. He is a 2016 alumnus and active member of The Florida Bar's Wm. Reece Smith, Jr. Leadership Academy, and currently serves as Chair for the Academy's 2021-2022 term.

Mr. Johnson has served as an appointed member of the Palm Beach County Bar Association's Judicial Campaign Practices Commission since 2018. In addition, he served on the North County Section's Board of Directors between 2017 and 2019.

Mr. Johnson is also an active member of the American Association for Justice (AAJ). He is involved in several AAJ committees, including the Minority Caucus, the Voter Protection Committee, and the Public Education Committee. In June 2019, Mr. Johnson was appointed to serve on AAJ's Board of Directors by FJA as the minority state delegate. Mr. Johnson is an alumnus of AAJ's Leadership Academy (2016-2017).

Mr. Johnson is a community advocate and was appointed to the Board of Scholar Career Coaching in June 2018.

Mr. Johnson is also a prolific writer, and his articles have been published in Florida Justice Association Journal and AAJ's Trial magazine.

Mr. Johnson was born and raised in Kingston, Jamaica, and graduated from Boston University with a B.A. in Economics and completed his Master's in Sports Management at the University of Florida. He graduated cum laude from St. Thomas University School of Law in 2007.

### **Peter Ketcham-Colwill**

Peter Ketcham-Colwill is an associate at Cohen Milstein and a member of the Public Client practice. His practice focuses on the representation of state attorneys general and other public-sector clients in investigations and lawsuits involving false claims and fraudulent and deceptive trade practices.

Prior to joining Cohen Milstein in 2018, Mr. Ketcham-Colwill practiced as a litigation associate at an international disputes and transactions law firm in Washington, D.C. Before that, he served as the Voter Protection Director for the Democratic Party of Virginia's 2018 Coordinated Campaign. He also worked as a Regional Voter Protection Director for the Ohio Democratic Party's 2016 Coordinated Campaign.

Mr. Ketcham-Colwill is involved in the following high-profile litigation:

- Grubhub and DoorDash Litigation: Representing the City of Chicago in its enforcement actions against Grubhub and DoorDash for violations of the City's consumer protection laws. These cases allege widespread deceptive and unfair business practices impacting local restaurants, consumers, and drivers. [Click here to view the lawsuit filed against DoorDash](#); [click here to view the lawsuit filed against Grubhub](#).
- Uber Eats, Postmates Investigation: Represented the City of Chicago in its investigation into UberEats and Postmates for allegedly listing Chicago restaurants on their platforms without the eateries' consent, for violating the City's emergency fee cap ordinance during the COVID-19 pandemic, and for other false advertising-related misconduct. On December 5, 2022, the City announced a \$10 million settlement.

Following law school, Mr. Ketcham-Colwill served as a Law Clerk for the Honorable David Ezra, U.S. District Court for the Western District of Texas.

Mr. Ketcham-Colwill graduated from Princeton University with an A.B. in the Woodrow Wilson School of Public and International Affairs. He earned his J.D. with Highest Honors from The George Washington University Law School, where he was the Senior Executive Editor of The George Washington Law Review.

Prior to law school, Mr. Ketcham-Colwill worked for the U.S. House of Representatives Committee on Energy and Commerce, where he organized investigative hearings and drafted legislation related to consumer protection and the environment.

### **Jessica Kim**

Jessica (Ji Eun) Kim is an associate at Cohen Milstein and a member of the firm's Securities Litigation & Investor Protection practice group, where she represents institutional and individual shareholders in securities class actions.

In 2021 and 2022, Best Lawyers in America named Ms. Kim "Ones to Watch" in Securities Litigation. In 2022, Super Lawyers recognized her as a "Rising Star."

Ms. Kim's current matters include:

- *IBEW Local 98 Pension Fund v. Deloitte* (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to as SCANA's multi-billion-dollar nuclear energy expansion project in South Carolina.
- *In re EQT Corporation Securities Litigation* (W.D. Pa.): Cohen Milstein is Co-Lead Counsel in this putative securities class action against EQT Corporation for allegedly misrepresenting the "substantial synergies" that were expected to arise from a planned merger with rival natural gas producer Rice Energy due to "the contiguous and complementary nature of Rice's asset base with EQT's."
- *Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC, et al.* (S.D.N.Y.): Cohen Milstein, on behalf of plaintiff Northwest Biotherapeutics, filed suit alleging that market makers Canaccord Genuity LLC, Citadel Securities LLC, G1 Execution Services LLC, GTS Securities LLC, Instinet LLC, Lime Trading Corp., Susquehanna International Group LLP, and Virtu Americas LLC, deliberately engaged in repeated manipulative spoofing of NWBO's stock.

Some of Ms. Kim's recent successes include:

- *In re GreenSky Securities Litigation* (S.D.N.Y.): Cohen Milstein was co-Lead Counsel in this putative securities class action against GreenSky, a financial technology company, for failing to disclose the substantial change in the composition of GreenSky's merchant business mix and the resulting diminution in transaction-fee revenue, accounting for 87% of its overall revenue, as it moved from solar panel energy merchant sector to the healthcare sector. On October 22, 2021, the court granted final approval of a \$27.5 million settlement.
- *Eric Weiner v. Tivity Health, Inc.* (M.D. Tenn.): Cohen Milstein, as sole Lead Counsel, represented Oklahoma Firefighters Pension and Retirement System and other purchasers of Tivity Health stock in a putative securities class action for violations of the Exchange Act related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the court granted final approval of a \$7.5 million settlement. During the final approval hearing on October 4, 2021, the court commended counsel for being "outstanding [client] representatives."

Prior to joining Cohen Milstein, Ms. Kim was a litigation associate at a highly-regarded international defense firm, where she focused on white collar defense, government enforcement, and internal investigations.

Ms. Kim received a dual B.B.A. and B.A. from Korea University and her J.D. from Harvard Law School. While in law school, Ms. Kim was an Executive Technical Editor for the Harvard Civil-Rights Civil-Liberties Law Review, and Co-President of the Harvard Mediation Program. She was also a member of the Harvard Criminal Justice Institute, where she represented indigent clients charged with misdemeanors and felonies in the Boston Municipal Court Department.

Ms. Kim is fluent in Korean.

### **Zachary Krowitz**

Zachary Krowitz is an associate in Cohen Milstein's Antitrust practice, where he represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to joining Cohen Milstein, Mr. Krowitz served as a law clerk for the Honorable Pamela A. Harris of the U.S. Court of Appeals for the Fourth Circuit.

Before his clerkship, Mr. Krowitz was an associate at a distinguished global law firm, where he focused on complex commercial litigation matters.

Mr. Krowitz is working on the following high-profile antitrust matters:

- *Jien v. Perdue Farms, Inc.* (D. Md.): Cohen Milstein serves as Co-Lead Counsel, representing a proposed class of poultry plant workers, in a suit alleging that the nation's largest chicken and turkey producers conspired to suppress their wages.
- *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.): Cohen Milstein represents a putative class of broiler chicken consumers in a suit alleging that the nation's largest chicken producers, including Perdue Farms and Tyson Foods, conspired to raise the price of chicken.

Mr. Krowitz received his B.A., summa cum laude, from the University of Pennsylvania, B.A., and his J.D. from Stanford Law School, where he was the recipient of numerous awards for outstanding academic performance. During law school, Mr. Krowitz served as Symposium Co-Chair and Senior Editor for the Stanford Law Review. He co-authored "Confronting Efforts at Election Manipulation from Foreign Media Organizations" in *Securing American Elections: Prescriptions for Enhancing the Integrity and Independence of the 2020 U.S. Presidential Elections and Beyond*, Stanford Cyber Policy Center Freeman Spolgi Institute (June 2019).

Before law school, Mr. Krowitz was a staff assistant for U.S. Senator Richard Blumenthal.

### **Christopher Lometti**

Christopher Lometti is Of Counsel in Cohen Milstein's Securities Litigation & Investor Protection practice group. In this role, Mr. Lometti has litigated some of the most significant mortgage-backed securities (MBS) class action lawsuits to emerge from the financial crisis.

Mr. Lometti, together with his colleague Joel Laitman, initiated the Bear Stearns, Harborview, RALI, Lehman and HEMT MBS litigation at their named firm prior to joining Cohen Milstein. The lawsuits were high-risk matters involving novel claims on behalf of their Taft-Hartley pension fund clients injured by the dramatic downgrades of their MBS holdings from AAA to junk status. The MBS litigations have earned Cohen Milstein's Securities Litigation Practice numerous accolades from the National Law Journal, Law360 and American Lawyer.

Mr. Lometti's successes include the following notable matters:

- *Bear Stearns MBS Litigation*: \$500 million settlement with JPMorgan Chase. Cohen Milstein was lead counsel in a class action lawsuit alleging Bear Stearns violated securities laws in selling toxic mortgage-backed securities that failed to meet the bank's own underwriting standards and that contained false and misleading information as to the appraised values of the underlying mortgages. Mr. Lometti was one of the key litigators in the case, developing strategy and conducting extensive fact discovery into the 22 offerings

backed by approximately 71,000 largely Alt-A mortgages that Bear Stearns sold to investors from May 2006 to April 2007.

- RALI MBS Litigation: \$335 million settlement with Citigroup, Goldman Sachs and UBS. Cohen Milstein was lead counsel in a class action litigation alleging RALI and its affiliates sold shoddy MBS securities that did not meet the standards of their underwriters. Mr. Lometti was one of the senior litigators on the class action, conducting fact discovery, deposing economic experts and preparing witnesses.
- Harborview MBS Litigation: \$275 million settlement with Royal Bank of Scotland. Cohen Milstein was lead counsel in a complex case, in which presiding Judge Loretta A. Preska, of the U.S. District Court, Southern District of New York, commented on the “job well done” by the Cohen Milstein team of which Mr. Lometti was a senior litigator.
- NovaStar MBS: Cohen Milstein is lead counsel in litigation alleging that RBS, Wells Fargo (formerly Wachovia) and Deutsche Bank sold toxic mortgage-backed securities to investors. The litigation is one of the last outstanding class action MBS lawsuits. The Second Circuit Court of Appeals reversed an earlier dismissal of the lawsuit, paving the way for prosecution of the case. In March 2019, the Court granted final approval of a \$165 million all-cash settlement.
- HEMT MBS Litigation: \$110 million settlement with Credit Suisse. Cohen Milstein was lead counsel in a case alleging Credit Suisse and its affiliates sold toxic securities to pension fund investors. The suit, filed in 2008, was one of the first class action cases involving mortgage-backed securities to be filed.
- Lehman Litigation: \$40 million settlement. Cohen Milstein was lead counsel in a class action lawsuit against individuals affiliated with the bankrupt firm, the largest bankruptcy in U.S. history. Mr. Lometti was a senior litigator on the lawsuit, developing strategy.
- FirstEnergy Shareholder Derivative Litigation: Cohen Milstein represented the Massachusetts Laborers Pension Fund in two shareholder derivative actions against certain current and former officers and directors and nominal defendant FirstEnergy related to the Company’s involvement in Ohio’s largest public bribery schemes. On August 23, 2022, the Court granted final approval of a \$180 million global settlement of all shareholder derivative cases.
- Dynex Litigation: \$7.5 million settlement. Cohen Milstein was lead counsel in a class action lawsuit involving the asset-backed securities. Mr. Lometti was a central member of the team to litigate this seminal lawsuit involving hybrid securities. In the litigation, the U.S. District judge issued one of the first decisions certifying an investor class pursuing fraud claims in connection with the sale of asset-backed securities. The Dynex litigation laid out a road map that could be followed in litigating an asset-backed security.
- Braskem Litigation: \$10 million settlement. Cohen Milstein represented shareholders in a class action suit alleging that the Brazilian petrochemical company lied to investors in its American Depository Receipts about its role in a bribery scheme involving Petrobras, Brazil’s giant oil producer.

Prior to his joining Cohen Milstein, Mr. Lometti played a substantive role in litigating and settling the massive class action suit against WorldCom, one of the largest bankruptcies in history, representing significant stakeholders in the telecom’s bond offerings. The lawsuit resulted in a settlement of \$6.15 billion.

Mr. Lometti has been repeatedly recognized for his career accomplishments, including being named to the 2016 Lawdragon 500, one of the industry’s leading peer-reviewed surveys, as well as annually recognized by New York Super Lawyers (2011- 2019).

He has served as a non-industry arbitrator for the New York Stock Exchange and National Association of Securities Dealers helping to resolve disputes, and as a mediator for the New York State Court System.

Mr. Lometti received a Bachelor of Arts from Fordham College in 1983, and his J.D. from Fordham Law School in 1986.

### **Joshua Lurie**

Joshua Lurie is a Staff Attorney at Cohen Milstein and a member of the firm's Antitrust practice. In this role, Mr. Lurie assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Mr. Lurie was a senior associate at an Illinois-based defense law firm, where he focused on consumer-related financial services litigation, mortgage related disputes, and general civil litigation and criminal proceedings.

Mr. Lurie earned his B.A., magna cum laude, from Elon University and his J.D. from Chicago-Kent College of Law, where he was on the Executive Board of The Chicago-Kent Law Review and a member of the Chicago-Kent Moot Court Honor Society.

While attending law school, Mr. Lurie was a judicial extern for the Honorable Robert E. Gordon for the Illinois Court of Appeals.

Mr. Lurie is the Founder and Editor-in-Chief of Vertical Slice Games, an online website that aggregates video game reviews from professional game critics.

### **Aaron J. Marks**

Aaron J. Marks is an Associate at Cohen Milstein and a member of the firm's Antitrust practice group. In this role, Mr. Marks represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to joining Cohen Milstein, Mr. Marks was a Law Clerk for the Honorable Carol Bagley Amon of the United States District Court for the Eastern District of New York.

Before his clerkship, Mr. Marks served as a Litigation Associate at a distinguished international law firm.

Mr. Marks received his B.A. from New York University and his J.D., magna cum laude, from Harvard Law School. During law school, he was Online Editor of the Harvard National Security Journal.

Mr. Marks currently serves on the Antitrust & Trade Regulation Committee of the New York City Bar Association. Prior to pursuing a career in law, Mr. Marks was a software engineer.

### **Diana L. Martin**

Diana L. Martin is of counsel at Cohen Milstein, and a member of the Complex Tort Litigation and Consumer Protection practices. Her practice focuses on appellate litigation involving complex product liability, consumer class, mass tort, and managed care litigation. She not only handles appeals in these areas of law, but also provides appellate support at the trial stage. In this role, she works as an integral part of the trial team by strategizing best practices, drafting and arguing complex and case dispositive motions, handling jury instruction charge conferences, and assisting trial counsel in preserving and protecting the record in the event of an appeal.

Ms. Martin is often involved in cases that involve complex issues or require the development of innovative strategies for novel or evolving theories of liability. These areas have included developing legal theories to avoid the application of legal immunity to workers' compensation carriers who deny or delay medical care to injured workers, and using Florida's Deceptive and Unfair Trade Practices Act to hold hospitals accountable for drastically overbilling patients on a uniform basis. Her experience spans various practice areas, such as constitutional and civil rights law,

commercial litigation, mass tort and class action litigation, managed care litigation, products liability law, and catastrophic personal injury litigation.

Ms. Martin is on the litigation team for the following notable matters:

- United States ex rel. Long v. Janssen Biotech, Inc. (D. Mass.): Cohen Milstein represents the plaintiff-relator in a whistleblower/qui tam lawsuit against Janssen Biotech (a subsidiary of Johnson & Johnson), alleging that the manufacturer of the rheumatoid arthritis drugs Remicade and Simponi ARIA violated federal law by engaging in a scheme through which it provided physicians free practice management and infusion business consulting services over an extended period to induce the physicians to purchase Remicade and Simponi ARIA and administer these drugs to patients, including Medicare beneficiaries, via infusions performed in their offices.
- Underwood v. Meta Platforms, Inc. (Facebook) (State Ct., Cal.): Cohen Milstein has filed a wrongful death lawsuit on behalf of Angela Underwood Jacobs, the sister of slain federal security officer Dave Patrick Underwood, against Meta Platforms, Inc., formerly Facebook. On May 29, 2020, Officer Underwood was providing security at a federal courthouse during a rally to protest the killing of George Floyd. According to documents filed in federal criminal proceedings, Officer Underwood was the victim of a drive-by shooting by Steven Carrillo and his accomplice, Robert Alvin Justus, Jr., who identify as boogaloo adherents, part of an extremist movement that advocates targeted violence against federal officers. Plaintiff alleges that by connecting users to extremist groups, including Officer Underwood's killers who met through Facebook where they hatched their extremist plot to target and kill federal officers, and promoting inflammatory, divisive, and untrue content, the company bears responsibility for the tragic murder of Officer Underwood.
- CSX Litigation (E.D. N.C.): On October 4, 2018, Cohen Milstein filed a putative class action on behalf of faith leaders, businesses, and residents in the southern and western portions of Lumberton, North Carolina who have twice suffered catastrophic flooding and damage due to CSX Corporation and CSX transportation entities ignoring and trying to block government entities from building a floodgate on a train underpass it owns and operates, including preventing the city from building a temporary berm in 2018 to protect its citizens from impending Hurricane Florence.
- Edwards v. Tesla (State Ct., Cal.): On June 25, 2020, Cohen Milstein filed a product liability lawsuit against Tesla, Inc., on behalf of Kristian and Jason Edwards. Ms. Edwards sustained catastrophic injuries as a result of the failure of the airbags to deploy in her Tesla model 3 during an accident.
- Doe v. Chiquita Brands International (S.D. Fla.): Cohen Milstein is representing families of banana workers and others killed or tortured by the Autodefensas Unidas de Colombia, a foreign terrorist organization designated by the United States, which was allegedly receiving financial support and firearms and ammunition from Chiquita, a U.S. corporation with operations throughout Colombia.

Ms. Martin has successfully litigated the following matters:

- Trahan v. Mulholland (Cir. Ct., Alachua Cnty., Fla.): In August 2018, after a week-long trial, a jury awarded Ms. Trahan, an adult survivor of childhood sexual abuse, \$4.6 million in damages for more than a decade of sexual abuse perpetrated by her father, a prominent Central Florida businessman. The jury also found her mother negligent in failing to use reasonable care to protect her daughter from the abuse. Ms. Martin represented Ms. Trahan as part of the trial team and on appeal, where she successfully defended the \$4.6 million judgment in Florida's First District Court of Appeal.
- S.B. v. FAMU (11th Cir. Ct. of Appeals): Cohen Milstein represented a FAMU student who filed an action alleging the university committed Title IX violations in failing to adequately investigate her claims of sexual assault. To protect her identity, Cohen Milstein named the plaintiff under a pseudonym, and the district court repeatedly denied the university's attempts to make her identity public. Ms. Martin successfully defended the district court's orders, protecting the plaintiff's anonymity, when the university appealed the issue to the United States Court of Appeals for the Eleventh Circuit.



- *Herrera, et al. v. JFK Medical Center, et al.* (M.D. Fla.): Cohen Milstein was lead counsel in a class action lawsuit alleging that four Florida plaintiffs and others like them were billed inflated and exorbitant fees for emergency radiology services, in excess of the amount allowed by law, covered in part by their mandatory Florida Personal Injury Protection insurance. When the district court struck plaintiffs' class claims, Ms. Martin successfully petitioned the Eleventh Circuit Court of Appeals to accept immediate appellate review and obtained a reversal of the district court's order. Cohen Milstein resolved the case and secured final approval of a \$220 million injunctive relief settlement.
- *Lindsay X-LITE Guardrail Litigation* (State Cts.: Tenn., S.C.): Cohen Milstein successfully represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective X-Lite guardrails on state roadways.
- *H.C., et al. v Ric Bradshaw, et al.* (S.D. Fla.): Cohen Milstein, in conjunction with the Human Rights Defense Center and the Legal Aid Society of Palm Beach County, successfully represented juvenile offenders against the Palm Beach County Sheriff's Office and the Palm Beach County School Board, challenging the practice of placing juvenile offenders in solitary confinement and for allegedly denying mandated educational services to juvenile offenders held at the Jail, "including services needed to address their disabilities," in violation of the federal Individuals with Disabilities Education Act. Cohen Milstein and its co-counsel resolved the matter in 2018 by obtaining a settlement that was first-of-its-kind in Florida, as it ended the systemic practice of holding juveniles charged as adults in solitary confinement and ensures the provision of educational services to such juveniles.
- *Hand et al., v. Scott et.al* (N.D. Fla.): Cohen Milstein and Fair Elections Legal Network, a national voting rights organization, achieved a major victory in 2018 on behalf of former felons in Florida, who claimed their constitutional rights had been infringed by Florida's Clemency Board. The court ruled that the Clemency Board's process to grant or deny former felons' restoration of voting rights applications was unconstitutionally arbitrary and violated the U.S. Constitution's First and Fourteenth Amendments. While this case was on appeal before the 11th Circuit, Floridians voted to allow such voting rights restoration to felons.
- *In re: Caterpillar, Inc. Engine Products Liability Litigation* (D.N.J.): Cohen Milstein was co-lead counsel in a nationwide product liability class action lawsuit alleging Caterpillar sold diesel engines with defective exhaust emissions system that resulted in power losses and shutdowns. The case was settled in September 2016 for \$60 million.
- *Mincey v. Takata* (Cir. Crt., Duval Cnty., Fla.): Cohen Milstein was lead counsel in a lawsuit brought on behalf of Patricia Mincey and her family, a Florida woman who sustained catastrophic injuries that rendered her a quadriplegic in 2014 when the driver's side airbag in her Honda Civic deployed too aggressively during a collision due to a product defect. Patricia Mincey passed away in early 2016 due to complications from her quadriplegia. The suit charged that Takata, the manufacturer of the airbag system, knew of the airbag defect and hid the problem from consumers. When the defendants removed Ms. Mincey's case to federal court in an attempt to have it bogged down in multi-district litigation, Ms. Martin successfully had the case remanded to Florida state court, where it is was resolved in July 2016.
- *Wal-Mart Employment Discrimination Litigation* (S.D. Fla.): Cohen Milstein represented individual female Walmart employees in a lawsuit alleging that the company discriminated against them on the basis of their sex. Ms. Martin worked as part of the trial and appellate teams until the parties reached a confidential settlement with the plaintiffs.

Ms. Martin currently serves on the Civil Procedure Rules Committee of the Florida Bar and serves as Audit Committee Chair of Families First of Palm Beach County. She is a past President of Florida Legal Services, where she was a board member from 2007 to 2016, and served as a board member on the Florida Bar Foundation from 2015 to 2016. She has written numerous legal articles, which have been published in a variety of journals, including Trial Magazine, The Florida Bar Journal, and the Florida Justice Association Journal, and co-authors Florida Insurance Law

and Practice, an annual publication by Thomson/West. She was recognized by “Best Lawyers in America” in 2021 as “Best Lawyer” for practice areas of Appellate Practice; Mass Tort Litigation / Class Actions; and Personal Injury Litigation. In 2018, Ms. Martin was recognized by the Daily Business Review as the “Most Effective Lawyer” in the area of Pro Bono.

Ms. Martin attended Flagler College, graduating summa cum laude with Departmental Honors in Philosophy/Religion. She earned her J.D. from the University of Florida Levin College of Law, graduating with High Honors and achieving admission to the Order of the Coif.

Ms. Martin clerked for three years between 2002 and 2005 for the Honorable Martha C. Warner in Florida’s Fourth District Court of Appeal.

#### **David M. Maser**

David M. Maser is of counsel at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice. Prior to joining Cohen Milstein, Mr. Maser worked with a nationally recognized securities class action plaintiffs law firm for more than a decade, where he helped create the firm’s securities monitoring program and cultivated important relationships with the firm’s growing portfolio of institutional investor clients, nationally and globally.

As a result of his work, Mr. Maser successfully engaged over 25 public fund and union clients with well over \$200 billion in assets under management. Clients he has represented have been involved in more than 60 actions, generating more than \$4.6 billion in case recoveries.

Mr. Maser has worked extensively in both the public and private sectors and brings more than 25 years of experience and insight to pension funds and other institutional clients, specifically at the intersection of law, business and government.

Through his extensive experience in the public and private sectors, Mr. Maser has established bipartisan relationships in the political arena on the federal, state and local levels. His ability to see the big picture and create bipartisan collaborations has earned him a reputation as an exceptional diplomat and strategic consensus builder.

#### **Kalpish K. Mehta**

Kalpish K. Mehta is a staff attorney at Cohen Milstein and a member of the Antitrust practice. He assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Mr. Mehta has extensive discovery experience in antitrust class action litigation, including Department of Justice Antitrust Division and Federal Trade Commission investigations.

Mr. Mehta’s case work includes:

- Sutter Health Antitrust Litigation (Sup. Ct., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a \$575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely-watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California’s Attorney General joined the suit in March 2018.

- Stock Lending Litigation (S.D.N.Y.): Cohen Milstein and co-counsel filed a putative class action on August 17, 2017 in the Southern District of New York on behalf of Iowa Public Employees Retirement System and other investors, alleging collusion among six of the world's largest investment banks to prevent modernization of the \$1.7 trillion stock loan market. Plaintiffs allege that Bank of America, Credit Suisse, Goldman Sachs, JP Morgan, Morgan Stanley, and UBS conspired to overcharge investors and maintain the power they hold over the stock loan market, obstructing multiple efforts to create competitive electronic exchanges and enhance price transparency that would benefit both stock lenders and borrowers.

Mr. Mehta served in the United States Army. Prior to military service, he worked in variety of private practice settings. Mr. Mehta's litigation experience includes medical malpractice and criminal defense.

Mr. Mehta attended Santa Clara University, graduating cum laude with a B.S. in Accounting. He earned his J.D. from Brooklyn Law School.

### **Jan E. Messerschmidt**

Jan E. Messerschmidt, an associate at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice, represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Mr. Messerschmidt was an associate at a highly regarded national litigation boutique, where he represented both plaintiffs and defendants in a range of issues involving antitrust, securities, cybersecurity, contract, personal tort, and malicious prosecution claims.

For his work, The National Law Journal named Mr. Messerschmidt one of its 2022 Elite Trial Lawyers "Rising Stars of the Plaintiffs Bar."

Mr. Messerschmidt is involved in the following notable matters:

Miller Energy/KPMG (E.D. Tenn.): Cohen Milstein is Co-Lead Counsel in this certified securities class action, alleging that KPMG failed to meet its obligation as the independent auditor of Miller Energy Resources, Inc., perpetrating a massive fraud by Miller Energy, including overstating the value of largely worthless oil reserves to more than \$480 million, among other claims.

IBEW Local 98 Pension Fund v. Deloitte (D.S.C.): Cohen Milstein is sole Lead Counsel in this putative securities class action against Deloitte entities for allegedly breaching its external auditor duties related to SCANA's multi-billion-dollar nuclear energy expansion project in South Carolina.

Mr. Messerschmidt's recent successes include:

In re GreenSky Securities Litigation (S.D.N.Y.): Cohen Milstein was Co-Lead Counsel in this putative securities class action against GreenSky, a financial technology company, for failing to disclose the substantial change in the composition of GreenSky's merchant business mix and the resulting diminution in transaction-fee revenue, accounting for 87% of its overall revenue, as it moved from the solar panel energy merchant sector to the healthcare sector. On October 22, 2021, the court granted final approval of a \$27.5 million settlement.

Before entering private practice, Mr. Messerschmidt served as a law clerk to the Honorable Beryl A. Howell, Chief Judge of the United States District Court for the District of Columbia. He was also a law clerk to the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit.

Mr. Messerschmidt earned his B.A., magna cum laude, from New York University, where he was the Co-Founder and Editor of Journal of Politics & International Affairs. He earned his J.D. from Columbia Law School, where he was a Harlan Fiske Stone Scholar and received the Parker School Certificate for Achievement in International and Comparative Law. During law school, Mr. Messerschmidt had the distinction of participating in the Philip C. Jessup

International Law Moot Court Competition (U.S. National Champions (2012, 2013)), and he was the Head Articles Editor for Columbia Journal of Transnational Law and the note author of, “Hackback: Permitting Retaliatory Hacking by Non-State Actors as Proportionate Countermeasures to Transboundary Cyberharm,” 52 COLUM. J. TRANSNAT’L L. 275 (2013)

Prior to law school, Mr. Messerschmidt was a legislative policy analyst for the New York City Council, Policy Division.

### **Amy Miller**

Amy Miller is of counsel in Cohen Milstein’s Securities Litigation & Investor Protection practice, where she represents institutional and individual shareholders in derivative lawsuits and securities class actions, seeking accountability on issues ranging from breach of fiduciary to corporate waste.

Ms. Miller brings to bear more than 20 years of plaintiff-side and defense-side securities litigation experience addressing matters involving corporate governance and corporate wrongdoing, mergers and acquisitions in which stockholders were not provided maximized value, and more recently with SPAC investment vehicles.

Immediately prior to joining Cohen Milstein in 2019, Ms. Miller led the corporate governance and litigation practice at a highly regarded national securities plaintiffs’ class action law firm. She began her career at one of the nation’s top securities defense firms where she worked for nearly a decade.

Some of Ms. Miller’s representations include:

- Boeing Derivative Litigation (N.D. Ill.; Del. Ch.): Cohen Milstein represents the Seafarers Pension Plan in two lawsuits against Boeing – one a derivative lawsuit and the other a securities class action – arising out of Boeing’s fatal 737 MAX crashes. The derivative case asserts claim against the Board of Directors for allegedly issuing misleading proxy statements used to solicit stockholders’ votes to re-elect certain Board members, among other claims. These cases involve novel forum bylaw issues. On August 10, 2022, Plaintiffs filed a motion for preliminary approval of a \$6.25 million settlement and the requirement that Boeing revise its forum bylaws, per a recent Seventh Circuit decision.
- Zucker, et al. v. Bowl America, Inc., et al. (D. Md.): Cohen Milstein represents shareholders of Bowl America, Inc., who allege that the board of directors of Bowlero Corp., orchestrated a merger that was unfair, misleading and grossly inadequate, forcing the sale of Bowl America at a fire sale price.

Some of Ms. Miller’s recent successes include:

FirstEnergy Shareholder Derivative Litigation (S.D. Ohio; N.D. Ohio): Cohen Milstein represented the Massachusetts Laborers Pension Fund in two shareholder derivative actions against certain current and former officers and directors and nominal defendant FirstEnergy related to the Company’s involvement in Ohio’s largest public bribery schemes. On August 23, 2022, the Court granted final approval of a \$180 million global settlement of all shareholder derivative cases.

Since 2018, Ms. Miller has contributed to the American Bar Association’s Survey of Federal Class Action Law: A U.S. Supreme Court and Circuit-by-Circuit Analysis. The Survey, produced by the ABA Litigation Section’s Class Actions and Derivative Suits Committee, provides up-to-date analysis of class action law in each federal circuit.

Ms. Miller was an extern for the Honorable George B. Daniels of the U.S. District Court for the Southern District of New York.

Ms. Miller earned her B.A. from Boston University, magna cum laude, and she received her J.D. from New York Law School, summa cum laude. While attending law school, Ms. Miller was the Articles Editor for the New York Law School Law Review.

**Blake R. Miller**

Blake R. Miller is a staff attorney at Cohen Milstein and a member of the Consumer Protection practice. He assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Mr. Miller was a staff attorney at the United States Department of Justice, Civil Division, Consumer Protection Branch for nearly a decade. Prior to that he was a contract claims analyst at the U.S. Drug Enforcement Administration and a law clerk at the U.S. DOJ, Civil Rights Division, Special Litigation Section.

Mr. Miller earned his B.B.A. at University of Miami Business School. He earned his J.D. from Emory University School of Law.

**Rebecca Ojserkis**

Rebecca Ojserkis is an associate at Cohen Milstein and a member of the Civil Rights & Employment Litigation practice.

Prior to joining Cohen Milstein, Ms. Ojserkis was an associate at a highly regarded national plaintiffs' law firm, where she represented clients in employment discrimination cases, including Title VII and ADA-related cases, and other public interest matters.

Prior to working in private practice, Ms. Ojserkis was a Fellow at the ACLU, where she worked with the Women's Rights Project, Immigrants' Rights Project, and National Prison Project. She also clerked for the Honorable Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and the Honorable Sidney H. Stein of the U.S. District Court for the Southern District of New York.

Ms. Ojserkis received her B.A., magna cum laude, from Amherst College. She received her J.D. from Yale Law School, where she served as an editor of the Yale Law Journal and engaged in litigation and advocacy as a member of the Veterans Legal Services Clinic, the Reproductive Rights and Justice Project, and the Liman Project.

Before pursuing a career in law, Ms. Ojserkis worked at Massachusetts General Hospital in the area of mental health.

Ms. Ojserkis has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

**Laura Older**

Laura E. Older is an Associate at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Ms. Older represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Older was a law clerk for the Honorable John D. Couriel of the Supreme Court of Florida.

Ms. Older earned her B.A., summa cum laude, from The Florida State University. She received her J.D. from Harvard Law School, where she served as the President of Lambda, Harvard Law School's LGBTQ student organization, and

the Executive Technical Editor of the Journal of Law & Gender. During law school, Ms. Older interned with the ACLU of Florida and Planned Parenthood.

Before pursuing a career in law, Ms. Older worked as a theatre marketing consultant in New York City.

Ms. Older is admitted only in Massachusetts. She is seeking admission to the District of Columbia Bar, and is currently working under the close supervision of the Partners of the firm who are admitted to practice in the District of Columbia.

### **Madelyn Petersen**

Madelyn Petersen is an associate in Cohen Milstein's Consumer Protection practice. Ms. Petersen's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived or harmed by large corporations.

Prior to becoming an associate at Cohen Milstein, Ms. Petersen was a law fellow at the firm. In this role, she worked across practices and was involved in litigating individual and class action cases at the district and appellate levels.

Before that, Ms. Petersen was a law clerk to the Honorable William Dimitrouleas of the United States District Court for the Southern District of Florida.

Ms. Petersen received her B.A. from University of Nebraska-Lincoln. She received her J.D. from Harvard Law School, where she was Managing Editor, Harvard Journal of Law and Gender and Online Content Editor for Harvard Civil Rights-Civil Liberties Law Review. While in law school, Ms. Petersen was also a board member of the Harvard Prison Legal Assistance Project and participated in Harvard Law School's International Human Rights Clinic. She was also a legal intern for the Corporate Accountability Lab, the Advancement Project, and Oxfam America.

### **Regina D. Poserina**

Regina D. Poserina is of counsel at Cohen Milstein and a member of the Whistleblower/False Claims Act practice. She represents whistleblowers in qui tam cases brought throughout the United States under the federal and state False Claims Act statutes against recipients of government funds. A retired registered nurse, Ms. Poserina focuses predominantly on representing whistleblowers in healthcare fraud, including Medicare/ Medicaid and nursing home fraud. She also has extensive experience in qui tams related to other governmental programs, including the Department of Defense, Housing and Urban Development, Food Stamp/Department of Agriculture, Small Business Administration, and Department of Education fraud.

Prior to joining Cohen Milstein, Ms. Poserina was of counsel at a highly regarded False Claims Act and employment litigation firm in New Jersey and Pennsylvania, and was the sole proprietor of her own firm, focusing on False Claims Act and employment litigation. She has argued cases before the United States Court of Appeals for the Third Circuit, and successfully briefed a case to the United States Supreme Court. Ms. Poserina's career successes include representing the whistleblowers in U.S. ex rel. Druding et al v. Care Alternatives, a precedent setting case involving Medicare hospice care, and in U.S. ex rel. Dunleavy v. The County of Delaware, et al., a case where the United States' Supreme Court ruled on the issue of who can be a proper defendant under the False Claims Act. Ms. Poserina also acted as amici curiae for Taxpayers Against Fraud, a nonprofit whistleblowers organization headquartered in Washington, D.C.

She is also an active member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the Federal False Claims Act and its qui tam provisions; and the National Employment Lawyers Association and its local chapters.

Ms. Poserina received her B.S. in Nursing from Villanova University and her J.D. from Temple University.

Prior to pursuing a career in law, Ms. Poserina worked as a registered nurse in Intensive Care and Cardiac Surgical Intensive Care Units throughout the United States.

### **Casey M. Preston**

Casey M. Preston is of counsel at Cohen Milstein and a member of the Whistleblower/False Claims Act practice. He represents whistleblowers across the country in qui tam actions brought under the False Claims Act against individuals and corporations that engage in fraudulent conduct that causes significant economic harm to federal and state government programs as well as taxpayers. He has significant experience in investigating, reporting, and prosecuting Medicare and Medicaid fraud schemes and also has substantial experience with other types of government fraud, including non-compliance with government contracts, Title IV federal student aid fraud, customs and tariff fraud, and sales of defective mortgages. He also represents individuals who report securities fraud, tax fraud, and customs fraud through federal whistleblower programs. In addition, Mr. Preston has significant experience handling complex commercial cases and securities litigation in courts across the U.S.

Some of Mr. Preston's current representations include:

- A sealed qui tam action against a drug manufacturer that allegedly induced physicians to prescribe its drugs by providing kickbacks in the form of free practice management and business advisory services.
- A sealed qui tam action against a drug company that is alleged to have violated the Anti-Kickback Statute by paying physicians to provide sham speaker programs to induce them to prescribe its drug.
- A sealed qui tam action alleging that a medical equipment supplier is selling unnecessary equipment and supplies to Medicare beneficiaries.
- A sealed action against a hospital system for overcharging Medicare for services furnished at its off-campus locations.
- A SEC whistleblower program case reporting that a biotech company is misleading investors about the status of a groundbreaking technology that it claims to be developing.

Mr. Preston has played a key role in a number of successful cases, including:

- United States ex rel. Kieff v. Wyeth: A qui tam action alleging that drug manufacturer Wyeth overcharged the state Medicaid programs by not providing them the statutorily required "best price" for a widely prescribed drug. This action resulted in a recovery of more than \$780 million by the government.
- United States ex rel. O'Connor v. National Spine and Pain Centers, LLC: A qui tam action alleging that pain management practices defrauded the government health care programs by (a) billing for services furnished by physician assistants and nurse practitioners as "incident to" a physician's service when the services did not qualify as such, and (b) referring patients for unnecessary drug tests. The United States intervened in and settled this action for approximately \$3.3 million.
- United States ex rel. Davis v. Southern SNF Management, Inc.: A qui tam action against skilled nursing facilities that were involved in a multi-year scheme of increasing the facilities' Medicare collections by assigning Medicare patients to levels of therapy far greater than medically appropriate and billing Medicare at the higher amounts associated with this unnecessary therapy. There was a \$10 million recovery by the government.
- United States ex rel. Saidiani v. NextCare, Inc.: A qui tam action against the NextCare chain of urgent care centers that allegedly billed the government for unnecessary medical tests and services performed on beneficiaries of the government health care programs. There was a \$10 million recovery by the government.

- United States ex rel. Rai v. Kool Smiles, P.C.: A qui tam action against the Kool Smiles pediatric dentistry chain for allegedly billing the state Medicaid programs for unnecessary dental procedures. There was a \$23.9 million recovery by the federal government and several states.
- [Sealed] v. [Sealed]: Successfully represented an investor in several commercial real estate LLCs in a fraud and breach of fiduciary duty action against the LLCs' manager.
- In re Fleming Cos. Inc. Securities Litigation: Represented stock and bondholders in a class action against grocery chain and food distributor Fleming Companies and its outside auditor that resulted in a \$94 million recovery for investors.
- In re Carreker Corp. Securities Litigation: Represented stockholders in a securities class action against a software company that resulted in a \$5.25 million recovery for investors.
- Staro Asset Management v. Provell Inc.: Represented a hedge fund in a securities fraud action against a marketing company through which the hedge fund secured a \$4 million recovery.
- In re Cigna Corp. Securities Litigation.: Represented a state pension fund in a securities class action against health insurer Cigna that resulted in a \$93 million recovery for stockholders.

In addition, Mr. Preston has provided pro bono services to the Legal Clinic for the Disabled and the Brady Center to Prevent Gun Violence.

Mr. Preston served as law clerk for the Hon. William J. Nealon, U.S. District Court for the Middle District of Pennsylvania and the Hon. Terrence R. Nealon, Court of Common Pleas, Lackawanna County, Pennsylvania.

Mr. Preston received his B.S. from The Citadel and his J.D. from the Villanova University School of Law.

### **Joshua Prince**

Joshua Prince is discovery counsel at Cohen Milstein and a member of the Antitrust practice, having joined the firm in 2009. Mr. Prince has focused on building expertise in the area of e-Discovery and of becoming a resource for the Antitrust practice. He is involved in all discovery-related matters for the practice: overseeing document review, document production and deposition preparation.

Currently, Mr. Prince is litigating the following notable matters:

- In re Automotive Parts Antitrust Litigation (E.D. Mich.): Cohen Milstein represents direct purchasers of wire harnesses, bearings and other automotive parts, who were overcharged as a result of price-fixing and bid-rigging conspiracies by various sets of defendants throughout the automotive parts industry for more than a decade. The litigation follows a U.S. Department of Justice price-fixing and bid-rigging investigation into auto parts manufacturers. Mr. Prince is overseeing a team of lawyers who are reviewing documents, and is coordinating deposition preparation.

Mr. Prince has helped litigate the following successes:

- Northeastern Dairy Antitrust Litigation: Cohen Milstein is co-lead counsel in a class action lawsuit on behalf of Northeast dairy farmers against Dairy Farmers of America (DFA) and Dean Foods Company charging a conspiracy to reduce competition for raw milk and that DFA monopolized the milk market in the Northeast, forcing dairy farmers to market their milk through DFA or its affiliate Dairy Marketing Services (DMS). Defendant Dean Foods Company settled for \$30 million, and Defendant Dairy Farmers of America has settled for \$50 million pending final approval by the Court.
- Plasma-Derivative Protein Therapies Antitrust Litigation: \$128 million settlement. Cohen Milstein was co-lead counsel for direct purchaser plaintiffs alleging a conspiracy to reduce the supply and increase prices of IVIG and Albumin, life-saving therapies derived from blood plasma.



Mr. Prince graduated from The College of William and Mary in 2004 with a B.A. in International Relations and received his J.D. from Villanova University School of Law in 2009.

### **Karina G. Puttieva**

Karina G. Puttieva is an associate at Cohen Milstein and a member of the Consumer Protection practice. Ms. Puttieva's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived or harmed by large corporations.

Prior to joining Cohen Milstein, Ms. Puttieva was a litigation associate at a highly regarded national defense firm, where she focused on consumer data privacy issues, government investigations and criminal litigation, and civil litigation in the areas of antitrust, consumer fraud, and misappropriation of intellectual property.

Ms. Puttieva is currently litigating the following matters:

- DZ Reserve et al. v. Facebook (N.D. Cal.): Cohen Milstein represents a putative class of advertisers who claim that Facebook's key advertising metrics (Potential Reach and Estimated Daily Reach) are inflated and misleading.
- General Motors Litigation (E.D. Mich.): Cohen Milstein is Lead Counsel and Chair of the Plaintiffs' Steering Committee, overseeing this consolidated consumer class action filed against GM in over 30 states. Plaintiffs allege that GM's eight-speed automatic transmissions (GM 8L90 and the 8L45) manufactured between 2015 and 2019 were defective.
- Brooks, et al. v. Thomson Reuters (N.D. Cal.): Cohen Milstein is representing a class of putative plaintiffs who claim that Thomson Reuters's CLEAR platform not only surreptitiously collects vast quantities of Californians' personal data but then sells this information to third parties, including commercial and government entities.

Ms. Puttieva was involved in the following successful matters:

- Facebook 2018 Data Breach Litigation (N.D. Cal.): On May 6, 2021, the Court granted final approval of an injunctive relief settlement in this data breach class action against Facebook, which requires Facebook to adopt, implement, and/or maintain a detailed set of security commitments for the next five years, which will be independently assessed by a third-party. Cohen Milstein was Co-Interim Class Counsel in this matter.

Ms. Puttieva earned her B.A., magna cum laude, from Haverford College and her J.D. from University of California, Berkeley, School of Law, where she was the Submissions Editor and Associate Editor of the Berkeley Journal of Criminal Law.

While attending law school, Ms. Puttieva was a judicial extern for the Honorable Christina A. Snyder of United States District Court for the Central District of California and she was a law clerk for the United States Attorney's Office for the Northern District of California.

Prior to law school, Ms. Puttieva worked as a victim/witness coordinator at the Family Violence/Sexual Assault Unit of the Philadelphia District Attorney's Office.

### **Poorad Razavi**

Poorad Razavi is an attorney at Cohen Milstein and a member of the Complex Tort Litigation practice. Mr. Razavi's practice focuses on products liability, vehicle defects, roadway design and maintenance defects, trucking and car

accidents, chemical exposure, negligent security, with a specific focus on multimillion dollar wrongful death and catastrophic injury suits.

Mr. Razavi represents clients in state and federal courts across the nation, including in Florida, California, Indiana, Ohio, Georgia, New York, Nevada, Michigan, Alabama, South Carolina, Maryland, Virginia, Washington D.C., and Tennessee. He has litigated claims against all of the major insurance carriers, as well as automobile, tire, and component part manufacturers, including General Motors, Toyota, Honda, Chrysler, Takata, and Continental, as well as highway guardrail manufacturers, installers and other contractors.

Mr. Razavi has also handled a broad range of non-traditional personal injury and wrongful death cases throughout the country, including claims involving chemical and pesticide exposure, chlorine gas exposure, mold exposure, construction defect, boating defect, negligent vehicle repairs, and negligent tractor-trailer operation.

What is particularly unique about Mr. Razavi's experience is his background as a former civil litigation defense attorney and his perspective into the mindset of insurance companies and corporate defendants. This background gives him a unique understanding about how to maximize the value of a claim in order to ensure that clients receive maximum compensation for their injuries.

Mr. Razavi also has extensive experience in claims against the Department of Transportation and private state contractors for roadway design and defects. He has litigated multiple roadway design and maintenance defect claims resulting in multimillion dollar settlements and subsequent installation and remediation of guardrails, re-paving, curbing, and rehabilitation of roadways in multiple counties.

Currently, Mr. Razavi is litigating the following notable matters:

- *Bernardo, et al. v. Pfizer, Inc., et al.* (S.D. Fla.): On February 20, 2020, Cohen Milstein filed a false advertising, medical monitoring, and personal injury class action against Pfizer, Inc., Boehringer Ingelheim, Sanofi, and other pharmaceutical companies on behalf of multiple plaintiffs and putative class members across the United States. Mr. Razavi also has extensive experience in claims against the Department of Transportation and private state contractors for roadway design and defects. He has litigated multiple roadway design and maintenance defect claims resulting in multi-million dollar settlements and subsequent installation and remediation of guardrails, re-paving, curbing, and rehabilitation of roadways in multiple counties. States who, as a result of taking Zantac (ranitidine), may have been afflicted with cancer or may now be subject to an increased risk of developing cancer.
- *Ratha, et al v Phatthana Seafood Co.* (C.D. Cal.): Cohen Milstein is representing seven Cambodian plaintiffs in a cross-border human rights lawsuit involving human trafficking, forced labor, involuntary servitude, and peonage by factories in Thailand that produce shrimp and seafood for export to the United States.
- *ExxonMobil - Aceh, Indonesia* (D.D.C.): Cohen Milstein is representing eleven Indonesian citizens in a cross-border human rights lawsuit involving allegations of physical abuse, sexual assault, other forms of torture, and murder committed by Indonesian soldiers who were hired by Exxon Mobil Corporation.

Mr. Razavi has successfully litigated the following matters:

- *Lindsay X-LITE Guardrail Litigation* (State Crts.: Tenn., S.C.): Cohen Milstein successfully represented more than five families of decedents and victims of catastrophic injuries in a series of individual products liability, wrongful death and catastrophic injury lawsuits in Tennessee and South Carolina state courts against the Lindsay Corporation and several related entities for designing, manufacturing, selling, and installing defective, X-Lite guardrails on state roadways.
- *Saori Yamauchi, et al. v. Toyota Motor Corporation, et al.* (Cir. Ct., Dutchess Cty., N.Y.): Cohen Milstein and local New York co-counsel resolved a product liability and personal injury lawsuit against Toyota Motor

Corporation, Autoliv, and related entities on behalf of Saori Yamauchi. Mrs. Yamauchi sustained a catastrophic injury during an accident in her Toyota Sienna as a result of the vehicle's airbag system deploying in a dangerous manner.

- *Hand et al., v. Scott et.al.* (N.D. Fla.): Cohen Milstein and Fair Elections Legal Network, a national voting rights organization, achieved a major victory on behalf of former felons in Florida, who claimed their constitutional rights had been infringed by Florida's Clemency Board. U.S. District Court Judge Mark E. Walker ruled that the process by which Florida's Clemency Board grants or denies former felons' restoration of voting rights applications is unconstitutionally arbitrary and violates the U.S. Constitution's First Amendment right of free association and free expression, as well as the Fourteenth Amendment
- *Quinteros, et al v. DynCorp, et al.* (D.D.C.): Cohen Milstein represented over 2,000 Ecuadorian farmers and their families who suffered physical injuries and property damage as a result of aerial spraying of toxic herbicides on or near their land by DynCorp, a U.S. government contractor. A bellwether trial on behalf of the first six Ecuadorian clients came to a conclusion in April 2017, when the ten-person jury unanimously determined that DynCorp was responsible for the conduct of the pilots with whom it had subcontracted to conduct the chemical spraying after April 2003. This resolution allowed for a successful case settlement.
- *Staton v. Elite Auto Logistics, Inc.* (M.D. Fla.): In July 2018, Cohen Milstein successfully settled this personal injury and negligence lawsuit against Elite Auto Logistics, Inc. The complaint alleged that the driver of Elite Auto Logistics tractor trailer truck was driving in an unsafe manner and his negligence caused an accident and the subsequent disabling injuries to our client.

Additionally, Mr. Razavi initiated the investigation and discovery of a major nation-wide vehicle airbag defect resulting in the filing of a subsequent class action against the world's largest automobile manufacturers, in which he was selected to the Interim Plaintiffs' Executive Committee.

Mr. Razavi has been recognized by Best Lawyers in America (2019, 2020, 2021) for Personal Injury Litigation. He is annually distinguished by Florida Super Lawyers (2010, 2011, 2015, 2016, 2021) and Florida Trend Magazine (2013, 2014, 2018, 2020, 2021), and Palm Beach Illustrated. Mr. Razavi is AV rated by Martindale-Hubbell.

Mr. Razavi is also a frequent writer and speaker. His articles have been published in Florida Justice Association's (FJA) Journal and the American Bar Association (ABA) Journal involving a variety of issues, including preservation of evidence, fighting against large corporations, as well as defective guardrail and roadway design. Annually, Mr. Razavi is invited to speak at FJA seminars, including "Identifying and Developing Roadway and Guardrail Defect Claims" at FJA's Advanced Trial Skills seminars, as well as speaking about the Use of Technology in litigation for the Palm Beach County Justice Association. In addition to his private practice, Mr. Razavi proudly serves the legal and local community, holding several prominent Palm Beach County Bar Association roles, including being appointed Co-Chair for the Palm Beach County Bar Association's Annual Bench Bar Conference in 2016 and an elected Board Member for the Palm Beach County Justice Association from 2015 through 2019.

Mr. Razavi graduated from Indiana University with a B.S. in International Business and Business Economics. He received his J.D. from the University of Cincinnati College of Law and was a Merit Scholarship recipient.

### **Nathaniel D. Regenold**

Nathaniel Regenold is an associate in Cohen Milstein's Antitrust practice. He represents a broad range of individuals and businesses in civil litigation, with a focus on multi-district class actions and antitrust litigation.

Prior to joining Cohen Milstein, Mr. Regenold clerked for the Honorable Paul L. Friedman of the United States District Court for the District of Columbia and for the Honorable Jane Kelly of the United States Court of Appeals for the Eighth Circuit. Before that, Mr. Regenold was a litigation associate at a highly regarded global law firm where he focused on antitrust and other civil litigation matters.

Mr. Regenold earned his B.A., with College Honors, from Washington University in St. Louis. He earned his J.D., magna cum laude, from Georgetown University Law Center, where he was the vice president of the Asian Pacific American Law Students Association, an executive editor of the Georgetown Law Journal, and a member of the Order of the Coif.

Prior to law school, Mr. Regenold served as a Peace Corps Volunteer in Liberia, where he taught high school math and science, and worked as a legal assistant with the Florence Immigrant and Refugee Rights Project in his home state of Arizona, providing legal assistance to detained adults facing threat of deportation.

Mr. Regenold is proficient in Spanish.

Mr. Regenold is applying for admission to the District of Columbia bar and is currently working under the close supervision of the partners of the firm's Antitrust practice who are admitted to practice in the District of Columbia.

### **Megan Reif**

Megan Reif is a staff attorney in Cohen Milstein's Civil Rights & Employment practice. She assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to becoming a staff attorney at Cohen Milstein, Ms. Reif was a Civil Rights & Employment Law Fellow at the firm.

Before joining Cohen Milstein, Ms. Reif was a Fair Housing and Community Development Fellow at the Lawyers' Committee for Civil Rights Under Law. During her fellowship, she worked on litigation and fair housing policy work, including authoring Assessments of Fair Housing, which analyze demographic data, local policies, and relevant laws to identify barriers to fair housing and potential solutions. As a Fellow, she also worked side-by-side with Cohen Milstein lawyers on Long Island Housing Services, Inc. v. NPS Holiday Square LLC (E.D.N.Y.).

Ms. Reif speaks frequently on fair housing issues, including on the panel "Gentrification, Affordable Housing and Eviction: Defining the Impacts on Low Income," as a part of Ecumenical Advocacy Days, 2019.

Ms. Reif received her B.A., summa cum laude, from the University of Iowa, and her J.D., cum laude, from Washington University School of Law, where she was the recipient of the F. Hodge O'Neal Corporate Law Award and the Media and Symposium Editor of Global Studies Law Review.

### **Takisha D. Richardson**

Takisha D. Richardson is of counsel at Cohen Milstein, and a member of the Complex Tort Litigation practice and the Sexual Abuse, Sex Trafficking, and Domestic Violence team. Ms. Richardson focuses on representing child sexual abuse victims and adult survivors of sexual abuse.

Prior to joining Cohen Milstein, Ms. Richardson was an Assistant State Attorney and Chief of the Special Victims Unit of the State Attorney's Office for Palm Beach County. She brings more than a decade of experience both as an attorney and as a supervisor of a team responsible for the prosecution of crimes against children and the elderly, and sexually motivated offenses. Prior to that role, she prosecuted felony cases at all levels and was an Assistant Public Defender.

Ms. Richardson has vast trial experience. To date, she has tried over 100 jury and non-jury trials, most of which involved sexual abuse and/or homicide matters.

Currently, Ms. Richardson is litigating the following notable matters:

- Doe, et al. v. Washington Hebrew Congregation, et al. (D.D.C.): On April 15, 2019, Cohen Milstein, on behalf of the families of 11 children between the ages of three and four, filed a lawsuit against Washington Hebrew Congregation Edlavitch Tyser Early Childhood Center and its Director for failing to protect their children from sexual abuse by a preschool teacher over a two-year period.
- Doe v. Scores, et al. (Cir. Ct., Hillsborough Cnty., Fla.): On January 29, 2020, Cohen Milstein filed a lawsuit on behalf of a young woman against Scores Holding Company, Inc. and its affiliates for illegally employing her when she was a minor at one of its Florida locations, subjecting her to be sexual abuse and human trafficking.

Ms. Richardson's past successes include:

- Jimmy Dac Ho (Cir. Ct., Palm Beach Cnty., Fla.): Ms. Richardson helped prosecute and incarcerate a former law enforcement officer for first-degree murder and kidnapping (with a firearm) of a 29-year-old aspiring law school student from Boynton Beach, Florida.
- Stephen Budd (Cir. Ct., Palm Beach Cnty., Fla.): Ms. Richardson brought to trial a former fourth-grade teacher who was found guilty on five charges of sexual assault and sentenced to serve three consecutive life sentences on the first three charges and 15 years on each of the final two charges.
- Carlos Soto (Cir. Ct., Palm Beach Cnty., Fla.): Ms. Richardson successfully prosecuted this lawsuit involving sexual battery of a child. The bravery of the victim, who testified at trial, aided in the conviction of the defendant on all charges and who is serving 45 years in prison.
- Jorge Gonzalez (Cir. Ct., Palm Beach Cnty., Fla.): Ms. Richardson prosecuted the defendant, who is now serving a life sentence in prison, as a result of the seven-year-old victim bravely telling a family friend about being forced to receive inappropriate, sexual touching.

Ms. Richardson was a Fellow in the Florida Bar's Wm. Reece Smith, Jr. Leadership Academy 2019-2020 class, a program designed to assist a select group of lawyers from across the state in becoming better leaders within the Bar and legal community. She is also the Chair of the Legislation Relations Subcommittee for the Florida Bar and Vice Chair of the Family Law Rules Committee for the Florida Bar

In 2021, Ms. Richardson was recognized as a "Best Lawyer – Personal Injury Litigation - Plaintiffs" by The Best Lawyers in America, and in 2019, Ms. Richardson received the Daily Business Review's "Innovative Practice Areas" award which honors the firm's Sexual Abuse, Sex Trafficking and Domestic Violence team.

Ms. Richardson is a member of the Sex Abuse Response Team (SART), a countywide coalition responsible both for advocacy on behalf of victims of sexual abuse and for maintaining national Law Enforcement protocols.

Ms. Richardson attended Florida Agricultural & Mechanical University in Tallahassee Florida, where she received her B.S. in Political Science. She earned her J.D., from University of Florida's Frederic G. Levin College of Law, where she was the recipient of the Virgil Hawkins Scholarship.

While attending law school, Ms. Richardson was a member of the U.F. Trial Team where she earned the title Vice President of Intramural Competitions and a Final Four Trial Team Competitor. She served as Vice President of the U.F. Black Law Student's Association.

## **Kai Richter**

Kai Richter is of counsel at Cohen Milstein and a member of the Employee Benefits/ERISA practice. He has extensive trial and appellate experience in ERISA class action litigation in federal courts across the country.

Prior to joining Cohen Milstein, Mr. Richter was a partner and practice leader at a highly regarded national plaintiffs' law firm, where he represented clients in all manner of class actions, including over two dozen ERISA class actions as court-appointed class counsel.

Mr. Richter's experience also includes public service as the Manager of the Complex Litigation Division of the Minnesota Attorney General's Office, and as a litigator in the Office of General Counsel for the Federal Election Commission.

Mr. Richter is currently involved in several high-profile matters:

- AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents AT&T pension plan participants a lawsuit, alleging that they were deprived of accrued, vested pension benefits when they received their pension benefit in the form of a Joint and Survivor Annuity, resulting in their receiving less than the actuarial equivalent of their vested accrued benefits.
- Envision Management Holding, Inc. ESOP Litigation (D. Col.): Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP.
- Luxottica Group Pension Plan Litigation (E.D.N.Y.): Cohen Milstein represents Luxottica pension plan participants in a lawsuit, alleging that the plan used outdated mortality tables to determine the value of participants' joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.
- Nationwide Savings Plan Litigation (S.D. Ohio): Cohen Milstein represents participants in the Nationwide Savings Plan in a lawsuit, alleging that Nationwide improperly set its own compensation, earned impermissible profits at the expense of its employees, and exposed its employees' retirement savings to undue risk.
- New York Life 401(k) Plan Litigation (S.D.N.Y.): Cohen Milstein represents employees in a lawsuit against New York Life, which alleges corporate self-dealing and the prohibited transfer of employees' retirement assets to defendants at the expense of the retirement savings of New York Life employees and agents.
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein represents participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties under ERISA in connection with the purchase of Kruse-Western, Inc. company stock.

A sought-after public speaker, Mr. Richter has spoken frequently on ERISA before the American Law Institute, American Bar Association, Professional Liability Underwriting Society, Retirement Advisor Council, and American Conference Institute.

In addition, Mr. Richter has held teaching roles as the Co-Director of the Robert F. Wagner Labor Law Moot Court Program for the University of Minnesota Law School, and as an adjunct legal writing instructor at Hamline University. He also formerly served as the Co-Chair of the Minnesota State Bar Association Consumer Litigation Section.

Mr. Richter received his B.A., cum laude, from Dartmouth College, and his received his J.D., cum laude, from University of Minnesota Law School.

### **Laura Older Rockmore**

Laura Older Rockmore is an associate at Cohen Milstein and a member of the Employee Benefits Practice Group. She represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Rockmore was a law clerk for the Honorable John D. Couriel of the Supreme Court of Florida.

Ms. Rockmore earned her B.A., summa cum laude, from The Florida State University. She received her J.D. from Harvard Law School, where she served as the President of Lambda, Harvard Law School's LGBTQ student organization, and the Executive Technical Editor of the Journal of Law & Gender. During law school, Ms. Rockmore interned with the ACLU of Florida and Planned Parenthood.

Before pursuing a career in law, Ms. Rockmore worked as a theatre marketing consultant in New York City.

Ms. Rockmore is admitted only in Massachusetts. She is seeking admission to the District of Columbia Bar, and is currently working under the close supervision of the Partners of the firm who are admitted to practice in the District of Columbia

### **Raymond M. Sarola**

Raymond M. Sarola is of counsel at Cohen Milstein and a member of the Whistleblower/False Claims Act and the Ethics and Fiduciary Counseling practices. He represents whistleblowers in qui tam cases brought under the federal and state False Claims Act statutes in industries that conduct business with the government, including health care, defense, and financial services. As a member of the firm's Ethics and Fiduciary Counseling practice, Mr. Sarola calls on his experience as a trustee on the New York City pension fund boards in counseling public pension funds fiduciary issues.

Prior to joining Cohen Milstein, Mr. Sarola served as Senior Policy Advisor & Counsel in the Mayor's Office of the City of New York, where he represented the Mayor and Commissioner of Finance on the boards of the City's pension systems and deferred compensation plan and advised on legal issues regarding pension investments, benefit payments, securities litigation and corporate governance initiatives. Previously, Mr. Sarola was a litigation associate at a noted defendants' firm, where he focused on securities, antitrust, and other complex commercial litigation, and internal investigations.

Mr. Sarola's government service and corporate defense litigation experience has been invaluable to his role in counseling clients in their claims against the government and corporate entities.

Mr. Sarola has been involved in high-profile whistleblower cases including:

- United States et al., ex rel. Lauren Kieff, v. Wyeth: Mr. Sarola assisted in this qui tam action against the pharmaceutical company Wyeth, resulting in a \$784.6 million settlement, the seventh-largest False Claims Act recovery on record.
- United States ex rel. Davis, et al. v. Southern SNF Management, Inc. et al.: Mr. Sarola was actively involved in this qui tam case in which the whistleblowers alleged the skilled nursing facilities in which they worked were involved in a multi-year scheme to increase the facilities' Medicare reimbursement by assigning Medicare patients to levels of therapy far greater than medically appropriate and billing Medicare at the higher amounts associated with this unnecessary therapy. The government recovered \$10 million from the defendants.

Some of Mr. Sarola's current representations include:

- A sealed qui tam action against a healthcare company alleging that it performed medically unnecessary procedures on patients covered by Medicare and Medicaid.
- A sealed qui tam action against healthcare companies alleging that they denied necessary treatment to patients in violation of Medicare regulations.
- Multiple qui tam actions alleging the unnecessary provision of skilled therapy in nursing homes.
- A sealed qui tam action alleging fraud in the bidding for a public contract.
- A sealed qui tam action against a provider of telehealth services alleging overbilling and underprovision of healthcare services.
- A sealed qui tam action against a healthcare company for allegedly defrauding the government's Electronic Health Record Incentive Programs.
- Sealed qui tam actions against pharmaceutical companies alleging that they overcharged the government healthcare programs for brand-name drugs.
- Submissions under the Securities and Exchange Commission Whistleblower Program and the Internal Revenue Service Whistleblower Program alleging securities and tax fraud against major financial services companies and other entities.
- Submissions under the SEC and Commodity Futures Trading Commission Whistleblower Programs alleging violations of the Foreign Corrupt Practices Act and the Commodity Exchange Act.

Mr. Sarola has published articles on whistleblower issues, including the use of statistical sampling to prove large fraud cases. He has also published and spoken at conferences on pension fund fiduciary issues, in particular the SEC's pay-to-play rule. He is a member of Taxpayers Against Fraud, a nonprofit, public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the False Claims Act.

In addition, Mr. Sarola was part of the Cohen Milstein team that successfully represented the estate of Kirsten Englund in a wrongful death case of first impression in Oregon state court and nationally, addressing the legal liability for federally licensed firearms dealers involved in online straw sales. The landmark settlement (October 2018) establishes important legal precedent at the state and federal levels regarding gun dealer responsibility for online sales of firearms. Given the precedential significance of this lawsuit, Cohen Milstein was named to The National Law Journal's "2019 Pro Bono Hot List" and won Public Justice Foundation's "2019 Trial Lawyer of the Year – Finalist" award. Mr. Sarola was a co-author of "INSIGHT: Holding Firearms Dealers Accountable for Online Straw Sales," Bloomberg Law (December 19, 2018), which discussed this case and won a 2019 Burton Award for Distinguished Legal Writing.

Mr. Sarola received his B.A. from the University of North Carolina at Chapel Hill, and earned his J.D. from the University of Pennsylvania Law School, where he also earned a Certificate of Study in Business and Public Policy from the Wharton School. While in law school, he was a Summer Intern for the Honorable Clarence Newcomer, United States District Court for the Eastern District of Pennsylvania.

### **Brendan Schneiderman**

Brendan Schneiderman is an associate in Cohen Milstein's Securities Litigation & Investor Protection practice, where he represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to becoming an associate at Cohen Milstein, Mr. Schneiderman was a Law Fellow at the firm where he worked across practices and was involved in litigating individual and class action cases at the district and appellate levels.



Mr. Schneiderman is involved in the following high-profile cases:

- *Chahal v. Credit Suisse Grp. AG, et al.* (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this putative securities class action alleging fraud and market manipulation of XIV Exchange Traded Note market.
- *Bristol-Myers Squibb CVR Securities Litigation* (S.D.N.Y.): Cohen Milstein is Lead Counsel in this securities class action arising from Bristol Myers' alleged subversion of the FDA approval process for the cancer therapy Liso-cel for the purpose of avoiding a \$6.4 billion payment to holders of contingent value rights (CVRs).

Mr. Schneiderman also has an active pro bono practice. High-profile cases include:

- *Lewis, et al v. Cain, et al.* (M.D. La.): Cohen Milstein represents a certified class of more than 6,000 incarcerated individuals in a lawsuit filed against the Louisiana State Penitentiary in Angola, LA, the largest maximum-security prison in the country, and the Louisiana Department of Public Safety and Corrections for deficient and discriminatory medical care in violation of the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act.

Mr. Schneiderman received his B.A., magna cum laude, from Pomona College and his J.D. from Harvard Law School, where he was the Executive Technical Editor and Article Selection Editor for Harvard Civil Rights-Civil Liberties Law Review, and a member of the People's Parity Project.

During law school, Mr. Schneiderman participated in several legal internships, including a summer internship at Cohen Milstein.

Prior to pursuing a legal career, Mr. Schneiderman was a consultant at an energy regulatory, economics and advocacy consulting firm.

### **Jacob Schutz**

Jacob Schutz is an associate in Cohen Milstein's Employee Benefits/ERISA practice. In this role, Mr. Schutz represents the interests of employees, retirees, plan participants and beneficiaries in ERISA class-action lawsuits across the country.

Prior to joining Cohen Milstein, Mr. Schutz was an associate for several years at a highly regarded national plaintiffs' law firm, where he represented clients in employee benefits/ERISA class actions.

Mr. Schutz received his B.A., summa cum laude, from the University of Pennsylvania. He received his J.D., magna cum laude, from the University of Minnesota Law School, where he was a notes and articles editor for the ABA Journal of Labor & Employment Law and a member of the Order of the Coif. While at law school, he published the note: *Association Discrimination under the Americans with Disabilities Act: The Case of Dependent Healthcare Costs*, 27 ABA J. Lab. & Emp. L. 485

### **Aniko R. Schwarcz**

Aniko R. Schwarcz is an attorney in Cohen Milstein's Civil Rights & Employment practice where she serves as director of case development. She investigates and develops new cases involving the antidiscrimination provisions of Title VII, the Equal Pay Act, the Affordable Care Act and the Fair Housing Act, as well as wage theft issues under the Fair Labor Standards Act and state law.

With over a decade of experience in employment law, interviewing and working with clients and witnesses and assessing the legal claims of prospective class members, Ms. Schwarcz directs and oversees the intake and evaluation of the firm's civil rights-related inquiries and case referrals. She also onboards, educates, and supports clients throughout the class action litigation process, from investigation through resolution.

Ms. Schwarcz's multi-disciplinary training and experience contribute to her unique insight and broad capacity for understanding both the social-emotional and economic effects of workplace discrimination on her clients.

Representative Clients, Investigations, and Litigation:

- Female Retail Employees – Investigation of pregnancy and gender-based discrimination in violation of the Equal Pay Act and Title VII.
- LGBTQ+ Employees – Investigation into denial of coverage for gender affirming healthcare.
- Detained Immigrants – Investigation into wage theft at Federal administrative detention facility.
- Individuals Seeking Treatment for Substance Use Disorder – Investigation into wage theft at adult rehabilitation centers.

She also represents others including non-profit organizations, in conducting internal workplace investigations.

Ms. Schwarcz played a key role in *Jock, et al. v. Sterling Jewelers Inc.* (A.A.A.; S.D.N.Y.), a nationwide Title VII gender discrimination and Equal Pay Act case, which parties agreed to settle in 2022. Ms. Schwarcz interviewed and collected affidavits from hundreds of the company's retail workers, which were produced in support of the team's successful motion for class certification. Ms. Schwarcz also interviewed and filed hundreds of EEOC charges on behalf of former class members in *Dukes v. Wal-Mart Stores, Inc.*

Prior to joining Cohen Milstein, Ms. Schwarcz was a Social Work Fellow in Advocacy Programs at the Alliance for Justice.

Ms. Schwarcz attended Vanderbilt University, graduating with honors and earned her J.D. from the University of Maryland Francis King Carey School of Law. She also holds a Masters of Social Work from the University of Maryland.

#### **Richard A. Speirs**

Richard A. Speirs is of counsel at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice. He has worked on many of the mortgage-backed securities fraud cases that were successfully litigated by the firm. In addition to litigating securities fraud cases, Mr. Speirs is principally responsible for developing and litigating the firm's derivative and merger-related lawsuits.

Since joining the firm, Mr. Speirs has litigated the following notable matters:

- Bear Stearns Mortgage Pass-Through Certificates Litigation (S.D.N.Y.): \$505 million settlement by JPMorgan Chase & Co. to settle a class action litigation arising from Bear Stearns' sale of \$27.2 billion of mortgage-backed securities that proved defective during the U.S. housing and financial crises.
- RALI MBS Litigation (S.D.N.Y.): \$335 million settlement with Citigroup, Goldman Sachs and UBS. Cohen Milstein was lead counsel in a class action litigation alleging RALI and its affiliates sold shoddy MBS securities that did not meet the standards of their underwriters. Mr. Speirs was a critical member of the team of litigators, conducting fact discovery, deposing economic experts and preparing witnesses.
- Harborview MBS Litigation (S.D.N.Y.): \$275 million settlement with Royal Bank of Scotland. Cohen Milstein was lead counsel in a complex case, in which presiding Judge Loretta A. Preska, of the U.S. District Court, Southern District of New York, commented on the "job well done" by the Cohen Milstein team.

- NovaStar Mortgage Backed Securities Litigation (S.D.N.Y.): \$165 million settlement on behalf of investors in a Securities Act litigation involving billions of dollars of mortgage-backed securities underwritten by the Royal Bank of Scotland, Wachovia and Deutsche Bank.
- HEMT MBS Litigation (S.D.N.Y.): \$110 million settlement on behalf of investors in mortgage-backed securities issued and underwritten by Credit Suisse after more than seven years of litigation, which included the first written decision certifying a Securities Act class of mortgage-backed securities in the country.
- Sino-Forest Corp. Securities Litigation (Sup. Ct., New York Cnty., N.Y.): Cohen Milstein served as lead counsel for U.S. investors in securities fraud class action brought on behalf of investors in Sino-Forest Corp., a Canadian corporation, which achieved \$150 million in settlements from numerous defendants.
- In re Alphabet Shareholder Derivative Litigation (Sup. Ct. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. Shareholders alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the Court granted final approval of a historic settlement, including a \$310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes.
- Wynn Resorts, Ltd. Derivative Litigation (Eighth Jud. Dist. Ct., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Mr. Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of company employees. In March 2020, the Court granted final approval of a \$90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.
- FirstEnergy Shareholder Derivative Litigation (S.D. Ohio; N.D. Ohio): Cohen Milstein represented the Massachusetts Laborers Pension Fund in two shareholder derivative actions against certain current and former officers and directors and nominal defendant FirstEnergy related to the Company's involvement in Ohio's largest public bribery schemes. On August 23, 2022, the Court granted final approval of a \$180 million global settlement of all shareholder derivative cases.
- Intuitive Surgical Inc. Derivative Litigation (Sup. Ct., Cal.): Cohen Milstein was co-lead counsel in a now settled derivative action against the company's directors and officers, asserting breaches of fiduciary duties and insider trading claims in connection with concealing regulatory compliance problems and safety defects in the company's flagship product, the da Vinci robotic surgery system.
- Ocwen Financial Corp. Derivative Litigation (D.V.I.): Cohen Milstein was co-lead counsel in a derivative action alleging that Ocwen's board of directors breached their fiduciary duties by permitting a pervasive scheme of wrongdoing in violation of applicable federal and state consumer financial protection laws. The defendants had exposed Ocwen to substantial harm by concealing failures with respect to the Company's compliance with regulations governing the servicing of mortgage loans, failing to establish adequate internal controls, permitting former Chairman and Chief Executive Officer to be involved in a series of improper self-dealing transactions and allowing insiders to trade on material adverse information. The litigation resulted in a settlement involving the adoption of significant corporate governance measures.

Mr. Speirs is also actively involved in several matters involving derivative claims and related books and records demands under Delaware or other relevant state laws.

In a career spanning more than 30 years, Mr. Speirs has been lead or co-lead attorney in a number of securities class actions where the court has issued an important decision under the federal securities laws. Among the issues decided were: the improper grouping of unaffiliated investors in a lead plaintiff motion (In re Telxon Corp. Securities

Litigation, No. 5:98-cv-02876-KMO, 67 F. Supp. 2d 803 (N.D. Ohio 1999)); recommendation of default sanction against auditing firm for discovery misconduct involving electronic audit work papers (Hayman v. PriceWaterhouseCoopers, No. 1:01-CV-1078, 2004 U.S. Dist. LEXIS 27295 (N.D. Ohio July 2, 2004)); and liability under Section 10(b) of a non-issuer for disclosures made by the issuer (In re BP Prudhoe Bay Royalty Trust Securities Litigation, No. 2:06-cv-01505-MJP, 2007 U.S. Dist. LEXIS 83007 (W.D. Wash. Oct. 26, 2007)).

Mr. Speirs has appeared on numerous panels and legal events to discuss securities fraud and investor protection. He attended Brooklyn College of the City University of New York, where he received a B.A., cum laude, and earned his J.D. at Brooklyn Law School, where he earned the Order of the Coif.

### **Harini Srinivasan**

Harini Srinivasan is an associate in Cohen Milstein's Civil Rights & Employment Litigation practice.

Prior to joining Cohen Milstein, Ms. Srinivasan was an associate at a highly respected plaintiff-focused employment litigation firm, where she represented clients in employment discrimination cases involving claims under Title VII, the Age Discrimination Act, the Americans with Disabilities Act, the Fair Labor Standards Act, and state and federal wage theft statutes.

Prior to working in private practice, Ms. Srinivasan was a Georgetown Law Center Women's Law and Public Policy Fellow and worked at the National Partnership for Women & Families.

Ms. Srinivasan is working on the following notable cases:

- Harris, et al. v. Medical Transportation Management, Inc. (D.D.C.): Cohen Milstein represents non-emergency medical transportation (NEMT) drivers in a certified class action alleging that their employer, Medical Transportation Management, Inc. (MTM), knowingly and willfully failed to pay proper wages to its NEMT drivers across Washington, D.C. This lawsuit seeks to hold MTM liable as a joint employer of the drivers.
- Talarico, et al. v. Public Partnerships, LLC (E.D. Pa.): Cohen Milstein is leading a conditionally certified collective action of more than 4,900 past and present "direct care" workers, who provide home care for individuals with disabilities, for denied overtime wages. The case involves novel joint employer issues.
- Allen, et al. v. AT&T Mobility Services LLC (N.D. Ga.): Cohen Milstein and the ACLU Women's Rights Project represent former AT&T Mobility sales representatives in a novel pregnancy discrimination class action alleging that AT&T Mobility's "point" system for tardiness or absenteeism violates the Pregnancy Discrimination Act, Americans with Disabilities Act, and Family and Medical Leave Act, among others.
- Temporary Employment Staffing Agency Litigation (N.D. Ill.): Cohen Milstein is involved in a series of race-based discrimination class actions in Chicago, representing African-American laborers who allege that their temporary staffing agencies and their factory-clients engaged in a repeated and collusive practice of excluding African Americans from temporary laborer positions.

Ms. Srinivasan was involved in the following high-profile cases:

- Jock, et al. v. Sterling Jewelers Inc. (A.A.A.; S.D.N.Y.): Cohen Milstein represented a certified class of more than 69,000 female employees of Sterling Jewelers, one of the nation's largest jewelry chains, in a nationwide Title VII gender discrimination and Equal Pay Act class arbitration. Claimants alleged that they were subjected to a pattern of gender-based pay and promotions discrimination. On November 15, 2022, the Arbitrator granted final approval of a \$175 million settlement.
- Alvarez et al. v. Chipotle Mexican Grill Inc. et al. (D.N.J.): Cohen Milstein represented a class of managerial apprentices at Chipotle Mexican Grill restaurants in New Jersey who were denied the overtime pay to which

they were entitled under federal and state law, including the newly enacted 2016 Overtime Rule, which was slated to take effect in December 2016 and would have doubled the salary threshold for executive, administrative and professional workers to be exempt from overtime pay requirements. On September 20, 2021, the Court approved a \$15 million settlement against Chipotle to resolve the class claims and end the lawsuit.

Ms. Srinivasan has authored and co-authored several articles for Law360 and Corporate Compliance Insight.

Ms. Srinivasan received her B.A., with honors, from the University of Chicago, and she received her J.D., cum laude, from American University Washington College of Law, where she was on the editorial staff of the American University Journal of Gender, Social Policy.

### **Nada S. Sulaiman**

Nada S. Sulaiman is a staff attorney at Cohen Milstein and a member of the Antitrust practice where she assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Ms. Sulaiman was an associate and staff attorney at two highly regarded defense law firms in the area of antitrust litigation.

Ms. Sulaiman's case work includes the following high-profile matters:

- In re Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Cohen Milstein is court appointed Co-Lead Counsel in this groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-leading an antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.
- Sutter Health Antitrust Litigation (Sup. Ct., San Fran. Cnty., Cal.): On August 27, 2021, the Court granted final approval of a \$575 million eve-of-trial settlement, which includes significant injunctive relief, in this closely watched antitrust class action against Sutter Health, one of the largest healthcare providers in California, for restraining hospital competition through anticompetitive contracting practices with insurance companies. Cohen Milstein was one of five firms that litigated this case since 2014 on behalf of a certified class of self-insured employers and union trust funds. California's Attorney General joined the suit in March 2018.

Outside of the practice of law, Ms. Sulaiman is a regular volunteer at Earth Sanga, a not-for profit native plant nursery.

Ms. Sulaiman is a graduate of George Washington University, where she received a B.A., magna cum laude, in International Affairs. She earned her J.D., cum laude, from Villanova University.

### **Daniel R. Sutter**

Daniel R. Sutter is an associate in Cohen Milstein's Employee Benefits/ERISA practice. He represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country. In 2022, Chambers USA named Mr. Sutter an "Associate to Watch" in the area of ERISA Litigation - Mainly Plaintiffs.

Prior to becoming an associate at Cohen Milstein, Mr. Sutter served as a Legal Fellow in the firm's Employee Benefits practice, where he investigated, developed, and drafted complaints against major financial institutions for ERISA violations. Before that, Mr. Sutter worked at Cohen Milstein as a law clerk (2013-2016) and as an analyst (2010-2016), where he researched and aided in the development potential cases for a number of practices.

Mr. Sutter is currently litigating the following high-profile matters:

- AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA's actuarial equivalence requirements when providing married participants joint and survivor annuities.
- Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein represents participants and beneficiaries in the Triad Manufacturing ESOP who allege that the ESOP trustees breached their fiduciary duties in connection with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. As a result of this decision, Cohen Milstein and co-counsel were recognized in *The American Lawyer* as "Litigators of the Week."
- Western Global Airlines ESOP Litigation (D. Del.): Cohen Milstein represents employees in connection challenging the valuation of Western Global Airlines at approximately \$1.3 billion based on the sale of 37.5% of the Company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.
- New York Life 401(k) Plan Litigation (S.D.N.Y.): Cohen Milstein represents employees in a lawsuit against New York Life which alleges corporate self-dealing and the prohibited transfer of employees' retirement assets to Defendants at the expense of the retirement savings of New York Life employees and agents.
- Nationwide Savings Plan Litigation (S.D. Oh.): Cohen Milstein represents employees in a lawsuit against Nationwide Mutual Insurance Company for its prohibited transfer of employees' retirement assets into its general account.

Mr. Sutter was also significantly involved in the following high-profile successes:

- *Becker v. Wells Fargo & Co. et al.* (D. Minn.): Cohen Milstein recently achieved a \$32.5 million settlement prior to class certification and expert discovery. If approved, the settlement will recover 40% of estimated damages.
- *BlackRock 401(k) Plan Litigation* (N.D.Cal.): Cohen Milstein represented participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets. In November 2021, the court granted final approval of a \$9.65 million settlement.

Mr. Sutter attended George Washington University, graduating with a B.A. in Finance in 2010. He earned his J.D. from the George Washington University Law School in 2016. During law school, he was a member of the Federal Circuit Bar Journal, and he also worked as a law clerk at the Consumer Financial Protection Bureau, Legal Division, over the summer of 2015. He also studied at the London School of Economics.

**Claire L. Torchiana**

Claire Torchiana is an associate in Cohen Milstein's Consumer Protection practice. Ms. Torchiana's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived or harmed by large corporations.

Prior to joining Cohen Milstein, Ms. Torchiana was an attorney focused on student loan debt at the Student Borrower Protection Center and Housing and Economic Rights Advocates, two of the country's leading consumer protection advocacy organizations.

Ms. Torchiana earned her B.A. with Distinction from Stanford University and her J.D., with High Pro Bono Distinction from Stanford Law School. While at law school, she was a senior and executive editor of the Stanford Journal of Civil Rights and Civil Liberties.

During law school, Ms. Torchiana participated in several legal internships, including the San Francisco City Attorney's Office, the National Housing Law Project, and the California Department of Justice, Office of Attorney General.

Ms. Torchiana is fluent In French.

Ms. Torchiana is admitted only in California. She is currently working under the close supervision of partners of the firm who are admitted to practice in New York.

#### **Catherine A. Torell**

Catherine A. Torell is the Director of Securities Research and Analysis at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice. She has the exclusive role of analyzing every securities case that is brought to the firm.

Ms. Torell is also responsible for thoroughly researching the factual and legal merits of all of the federal securities fraud class actions filed in the United States. Based on her research, she generates written analyses to evaluate the merits of each case for the firm's Case Evaluation Committee and assesses the potential importance of the case to the firm's clients. As a result, she has played an integral role in helping to cultivate and significantly expand Cohen Milstein's investor client base.

Ms. Torell also prepares the written analyses that are sent to the firm's institutional clients. Those analyses describe and evaluate the merits of the cases in which those clients have sustained substantial losses and include a recommendation as to whether the firm believes the client should pursue a lead plaintiff role in the case.

Prior to focusing exclusively on her current role, Ms. Torell also actively participated in many of the firm's notable securities class actions, including *In re Parmalat Securities Litigation* 376 F. Supp. 2d 472 (S.D.N.Y. 2005).

Ms. Torell has been practicing law for more than 25 years. Prior to joining Cohen Milstein, Ms. Torell was counsel at a number of prominent plaintiffs' class action firms, serving in co-lead and leadership positions in numerous successful class action cases that resulted in settlements collectively totaling hundreds of millions of dollars for the clients she represented. She served as a co-lead counsel in *In re Providian Financial Securities Litigation*, which resulted in a \$38 million settlement. In approving the settlement, the Court remarked on the "extremely high quality" and "skill and efficiency" of plaintiffs' counsel's work throughout the litigation.

Ms. Torell attended Stony Brook University, receiving a B.A., magna cum laude, in Political Science, and earned her J.D. from St. John's University School of Law, where she was the recipient of the Federal Jurisprudence Award.

#### **Caitlin M. Vaughn**

Caitlin McGowan Vaughn is Director of Public Client Case Development at Cohen Milstein and a member of the Public Client practice. She investigates and develops cases filed on behalf of state attorneys general and public sector clients in cases involving consumer protection.

Prior to the move to Director of Case Development, Ms. Vaughn was Law Fellow at the firm, where she assisted the Public Client attorneys with investigations into entities responsible for the marketing, distribution, and sale of opioids, and supported the development of deceptive marketing, public nuisance, and negligence cases.

Before that, Ms. Vaughn worked for several years in the New York State Senate in the capacity of Counsel to several senators, including Senator Sue Serino, Chair of the Senate Aging Committee; Senator Stephen M. Saland, Chair of the Senate Codes Committee; and Senator Kemp Hannon, Chair of the Senate Health Committee. Ms. Vaughn was also the Director of the Joint Legislative Commission on Rural Resources on behalf of Senator Catharine M. Young.

Ms. Vaughn was a consultant and a Duke University Global Health Fellow assigned to the World Health Organization's Tobacco Free Initiative in Geneva, Switzerland.

Ms. Vaughn received her B.A., magna cum laude, from Cornell University. She received her J.D. from Syracuse University College of Law, where she was the winner of the Moot Court Honor Society, Grossman Competition. She received her M.A. and Ph.D. in Political Science from Georgetown University. Her Ph.D. dissertation studied the potential for political bias in state retirement system investment strategies.

Ms. Vaughn's legal publications include Copyright Infringement and Bankruptcy: The Meaning of Willful in Two Statutory Schemes, SYR. SC. & TECH. LAW REP., 2009, <http://sstlr.syr.edu/>.

#### **Lyzette M. Wallace**

Lyzette Wallace is discovery counsel at Cohen Milstein and a member of the Securities Litigation & Investor Protection practice. She assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Ms. Wallace has extensive discovery experience related to government investigations and litigation involving securities, antitrust, and False Claims Act violations, across a range of industries, including financial services, pharmaceuticals, medical devices, healthcare, and involving the U.S. Securities and Exchange Commission, the U.S. Department of Justice, Federal Communications Commission, Federal Trade Commission, Food and Drug Administration, and numerous state attorney general offices.

Prior to joining Cohen Milstein, Ms. Wallace was as an associate at a highly regarded plaintiffs' firm and a senior associate at a highly regarded defense firm. As a plaintiffs' attorney, Ms. Wallace represented health care insurers against brand pharmaceutical manufacturers in large, antitrust class actions involving False Claims Act violations, kickbacks, Hatch-Waxman abuses and Whistleblower claims. Ms. Wallace was a member of the team that represented a whistleblower against a brand pharmaceutical manufacturer, leading to what was at the time the largest health care fraud settlement in the U.S. Department of Justice's history. As a defense attorney, Ms. Wallace defended clients in internal and external investigations in deferred prosecution agreements, False Claims Act; Food, Drug and Cosmetics Act violations; kickbacks and qui tam matters involving the U.S. Department of Justice, the House Ways and Means Committee, the Senate Finance Committee, Food and Drug Administration, and various state attorney general offices.

Ms. Wallace is currently involved in the following high-profile matters:



- PBM State Investigations: Cohen Milstein serves as Special Counsel to state attorneys general throughout the United States in their investigation into the billing practices and fee structures of managed care organizations (MCOs) and PBMs in their delivery of services to state-funded health plans.
- Pharmacy Benefit Manager (PBM) Ohio Litigation (Franklin C.P., Ohio): Cohen Milstein serves as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation against PBMs Express Scripts, Inc. and OptumRx Administrative Services, LLC for allegedly overcharging certain of Ohio's state-funded health plans on millions of prescription drug claims.

Some of Ms. Wallace's recent successes include:

- In re Pinterest Derivative Litigation (N.D. Cal.): Cohen Milstein, as Interim Lead Counsel, represented the Employees Retirement System of Rhode Island and other Pinterest shareholders in a consolidated shareholder derivative complaint against certain current officers and directors of Pinterest, including its Board Chairman and CEO, for breaches of fiduciary duty and other violations of Section 14(a) of the Exchange Act, relating to their alleged personal engagement in and facilitation of a systematic practice of illegal discrimination of employees on the basis of race and sex. As a result of this illegal misconduct, the Company's financial position, goodwill, and reputation among users had been harmed. On June 9, 2022, the Court granted final approval of a \$50 million settlement.
- Eric Weiner v. Tivity Health, Inc. (M.D. Tenn.): Cohen Milstein was Class Counsel, representing Class Representative Oklahoma Firefighters' Pension and Retirement System and other purchasers of Tivity Health stock in a putative securities class action for Exchange Act violations related to Tivity's misleading the public about its relationship with United Healthcare, Inc. On October 7, 2021, the Court granted final approval of a \$7.5 million settlement.
- Ohio Department of Medicaid v. Centene, Corp. (Franklin C.P., Ohio): On June 14, 2021, the Ohio Attorney General announced a \$88.3 million settlement with Centene Corporation and its wholly owned subsidiaries for their alleged role in not only breaching contractual and fiduciary obligations to the Ohio Department of Medicaid (ODM), but also defrauding ODM out of millions of dollars through an elaborate scheme with pharmacy benefit subcontractors to maximize company profits at the expense of the ODM and millions of Ohioans who rely on Medicaid. Cohen Milstein served as Special Counsel to the Ohio Attorney General's Office in breach of contract litigation.
- In re Alphabet Shareholder Derivative Litigation (Sup. Ct. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in a shareholder derivative lawsuit against the Board of Directors of Alphabet, Inc. Shareholders alleged that the tech giant's Board violated its fiduciary duty by enabling a double standard at Alphabet that allowed powerful executives to sexually harass and discriminate against women without consequence. On November 30, 2020, the court granted final approval of a historic settlement, including a \$310 million commitment to fund diversity, equity, and inclusion initiatives at Alphabet-owned companies, and workplace and corporate governance reforms including limiting non-disclosure agreements and ending mandatory arbitration in sexual harassment, gender discrimination, and retaliation-related disputes.

Ms. Wallace is a certified coach through the Coach Training Alliance and founded C3 Coaching, Inc. She is also an accomplished facilitator and speaker and has had the opportunity to give a presentation to a State Department audience that provided successful strategies for managing difficult client relationships and communications.

Prior to practicing law, Ms. Wallace was a senior technical and marketing recruiter at Microsoft, and she founded, owned, and operated an education consulting business.

Ms. Wallace earned her B.A. from Stanford University, and she received her J.D. from Howard University School of Law, where she was the Founder & President of the Intellectual Property Student Association.

**Ryan Wheeler**

Ryan Wheeler is an associate at Cohen Milstein and a member of the Employee Benefits practice. He represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein as an associate, Mr. Wheeler was a Fellow in the firm's Fellowship program, where he worked on litigation matters spanning the firm's antitrust, consumer protection, civil rights and employment litigation, human rights, and securities litigation practices.

Before that, Mr. Wheeler was a law clerk to the Honorable Michael H. Simon of the United States District Court for the District of Oregon.

Mr. Wheeler received his B.A. from Pomona College and his J.D. from Harvard Law School, where he was the Solicited Content Editor for Harvard Civil Rights-Civil Liberties Law Review, a founding member of the Pipeline Parity Project (now known as the People's Parity Project), and the co-president of Project No One Leaves.

### **William Wilder**

William Wilder is an associate in Cohen Milstein's Securities Litigation & Investor Protection practice, where he represents institutional and individual shareholders in derivative lawsuits and securities class actions.

Prior to joining Cohen Milstein, Mr. Wilder was a Singer Fellow at the Brennan Center for Justice, where he was involved in complex voting rights cases in state and federal courts.

Mr. Wilder earned his B.A. from Washington University in St. Louis, where he was a Danforth Scholar, and his J.D. from Columbia Law School, where he was the editor-in-chief of Columbia Human Rights Law Review.

Mr. Wilder has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

### **Kamilah Williams**

Kamilah Williams is a staff attorney at Cohen Milstein and a member of the Antitrust practice. She assists in discovery and evidentiary-related aspects of litigation and deposition preparation.

Prior to joining Cohen Milstein, Ms. Williams was a staff attorney at a highly regarded global defense law firm, where she organized and analyzed, among other things, custodial documents regarding antitrust violations, second requests, state and federal investigations, fraud, and various class actions, as well as conducted deposition, trial, hearing, merger and settlement preparations.

Ms. Williams is currently involved in these high-profile matters:

- In re Interest Rate Swaps Market Manipulation Litigation (S.D.N.Y.): Cohen Milstein is court appointed Co-Lead Counsel in this groundbreaking putative class action, charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the interest rate swaps market – one of the world's biggest financial markets.
- Stock Lending Antitrust Litigation (S.D.N.Y.): Cohen Milstein is co-leading an antitrust class action alleging that major investment banks conspired to prevent the stock lending market from evolving by boycotting and interfering with various platforms and services designed to increase transparency and reduce costs in the stock lending market.

Ms. Williams earned her B.A. from Salisbury State University and her J.D. from Catholic University of America-Columbus School of Law.

While attending law school, Ms. Williams was a student attorney at Catholic University's Columbus Community Legal Services, where she provided legal advice and counsel to disadvantaged individuals and families regarding domestic violence, adoption, special education issues, child support, disabilities and veteran claims.

### **Phoebe Wolfe**

Phoebe Wolfe is an associate at Cohen Milstein and a member of the firm's Civil Rights & Employment Litigation practice.

Prior to joining Cohen Milstein, Ms. Wolfe was the Litigation Fellow at the National Women's Law Center, where she worked on litigation and amicus briefs aimed at advancing the Center's mission across intersecting legal issues that affect women, particularly in the workplace.

Before the National Women's Law Center, Ms. Wolfe was a Public Interest Fellow at Tycko & Zavareei LLP, a class action plaintiffs law firm. As part of her fellowship, Ms. Wolfe also spent several months at Public Justice, one of the nation's foremost plaintiff advocacy and litigation organizations.

Ms. Wolfe received her B.A. from the Macaulay Honors College at Hunter College. She received her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar and senior editor of the Columbia Law Review.

Ms. Wolfe has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

# **EXHIBIT E**



the Secretary's Complaint herein and waive service thereof, having been duly advised in the premises, admit to the jurisdiction of this Court and the subject matter of this action and agree to the entry of this Consent Order and Judgment without contest. Defendants Farmers and the Weddle ESOP neither admit nor deny the allegations of the Secretary's Complaint.

C. The Parties agree to settle this dispute on the terms and conditions hereafter set forth and stipulate and agree to the entry of this Consent Order and Judgment as a full and complete resolution of all of the civil claims, causes of action and issues arising between them in this action without adjudication of any issue of fact or law raised in the Secretary's Complaint in this action.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Consent Order and Judgment and other valuable and sufficient consideration, the Parties have agreed as herein stated. Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

**I. JURISDICTION**

The Court has jurisdiction over the Parties and subject matter of this action, and is empowered to provide the relief herein.

**II. MONETARY RELIEF**

A. Within sixty days of the Court's entry of this Consent Order and Judgment, Defendant Farmers shall restore to the Weddle ESOP the sum of \$545,454.55 ("Farmers Settlement Restoration Amount"), consisting of alleged losses and lost opportunity costs, by means of a wire transfer to the Weddle ESOP. The Farmers Settlement Restoration Amount shall be allocated to paragraph IV(A), herein. The Farmers Settlement Restoration Amount shall not be offset in any manner by any payments made to the Selling Shareholders, Weddle, the Weddle ESOP, or any other party, or for debt service.

**B.** Upon restoration of the Farmers Settlement Restoration Amount in paragraph II(A) above, Defendant Farmers shall be and hereby is assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$109,090.91. The Secretary agrees to reduce the amount of penalty to \$54,545.45. Therefore, the Secretary hereby does and will accept, as full satisfaction of the assessed penalty, the amount of \$54,545.45. Defendant Farmers waives its rights to a separate notice of assessment of the penalty under § 502(1), 29 U.S.C. § 1132(1), and the service requirement of 29 C.F.R. § 2570.83, and its right to seek any further reductions of or relief from the penalty under § 502(1), 29 U.S.C. § 1332(l), including any good faith or financial waiver request. Defendant Farmers shall pay \$54,545.45 to the United States Department of Labor within sixty days of the Court’s entry of this Consent Order and Judgment by sending a certified or cashier’s check to:

U.S. Department of Labor  
ERISA Civil Penalty  
P.O. Box 6200-36  
Portland, OR 97228-6200

The certified or cashier's check shall be made payable to the United States Department of Labor and will reference EBSA Case No. 43-009670.

**C.** Defendant Farmers shall provide to the Secretary proof of restoration of the Farmers Settlement Amount. Such proof will include wire transfer confirmations of the restoration and such other proof as may be requested by the Secretary. Any proof provided under this paragraph will be sent to the Secretary's representative at the following address:

L. Joe Rivers  
Regional Director, Cincinnati Regional Office  
Employee Benefits Security Administration  
U.S. Department of Labor  
1885 Dixie Highway, Ste. 210  
Ft. Wright, KY 41011

**D.** Notwithstanding any other provision of this agreement, the Secretary may

seek any judicial remedy available, including contempt, if any of the responsible Parties fail to pay the amounts as required herein or violate any other terms of this Consent Order and Judgment.

### **III. LOAN FORGIVENESS**

On behalf of the Weddle ESOP, Farmers has obtained from Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Kelly G. Abel, William J. Ludlow, Steven T. Hunt, Marion S. Mishler, Jr., and Edward C. Zurface (collectively, “Selling Shareholders”) restructured versions of their respective loans and promissory notes made in connection with the March 1, 2013 stock purchase transaction, as detailed in Exhibit A attached hereto and made a part hereof.

### **IV. ESOP PARTICIPANT ACCOUNTS**

Within 10 days of receiving the Farmers Settlement Restoration Amount set forth in paragraph II(A) above, the Weddle ESOP shall allocate those monies to participant accounts for participants who were participants of the Weddle ESOP on March 1, 2013. The allocation of the restoration shall specifically include former participants who received a distribution of plan assets prior to the date of entry of this Consent Order and Judgment. The allocation of the restoration to the participant accounts (including former participants) shall be pro rata according to the number of shares that were allocated to each participant account between March 1, 2013, to the date of entry of this Consent Order and Judgment, except that none of the Selling Shareholders shall receive any allocation made to the Weddle ESOP under this Consent Order and Judgment. The restoration shall not replace or be paid in lieu of a contribution to the Weddle ESOP by Weddle for any plan year.



**V. NON-MONETARY RELIEF**

**A.** Defendant Farmers agrees that it has not and will not seek contribution or indemnification from Weddle or the Weddle ESOP for any restoration made in connection with this Consent Order and Judgment or with respect to EBSA’s investigation into the Weddle ESOP, and explicitly waives any rights it may have to contribution or indemnification from Weddle or the Weddle ESOP.

**B.** Defendant Farmers may not assert any claims that arose or accrued on or before the date of the entry of this Consent Order and Judgment under ERISA or under any other state or federal law against Weddle or the Weddle ESOP related to the March 1, 2013 Weddle ESOP Stock Purchase Transaction underlying this litigation. Defendant Farmers reserves their rights to bring claims arising after the date of the entry of this Consent Order and Judgment to meet its obligations as required under the terms of the Stock Purchase Agreement and Promissory Notes, as those documents are amended by this Consent Order and Judgment.

**C.** Defendant Farmers is permanently enjoined to comply with all requirements stated in the Agreement Concerning Process Requirements for Employee Stock Ownership Plan Transactions (the “Process Agreement”), attached hereto and made part hereof as Exhibit B, when it provides services as a fiduciary or trustee to any ESOP or ESOP fiduciary.

**VI. RELEASES**

**A.** This Consent Order and Judgment provides full, final, and complete judicial resolution of all of the claims and causes of action alleged in the Secretary's Complaint in this action. Notwithstanding the foregoing, nothing in this Consent Order and Judgment shall be deemed to waive any claim by the Secretary relating to the obligations set forth in

this Consent Order and Judgment. Furthermore, notwithstanding the foregoing, nothing in this Consent Order and Judgment shall be deemed to waive any claim by Defendant Farmers with respect to the Weddle ESOP's obligations under this Consent Order and Judgment.

**B.** Except for the obligations set forth in this Consent Order and Judgment, the Secretary and his agents, representatives, assigns, predecessors and successors in interest, acting in their official capacities, do hereby waive, release and forever discharge all claims, demands, actions, causes of action, liabilities, or fines (including any payment under Section 502(l) of ERISA) they may have against Defendant Farmers and its directors, officers, agents, attorneys, employees, representatives, assigns, predecessors, and successors in interest based upon the allegations in the Secretary's Complaint in this action related to the Weddle ESOP.

**C.** Defendant Farmers and its directors, officers, agents, attorneys, trustees, employees representatives, assigns, and predecessors and successors in interest, do hereby release the Secretary and his officers, agents, attorneys, employees, and representatives, both in their individual and corporate/organizational capacities, from all actions, claims and demands of whatsoever nature, including those arising under the Equal Access to Justice Act or any statute, rule, or regulation, that relate in any manner to the investigations, filing, prosecution, and maintenance of the Secretary's Complaint.

**D.** Except for the claims released by the Secretary in paragraph VI(B) above, the Secretary's claims against any other persons not identified in paragraph VI(B) are expressly preserved. Nothing in this Consent Order and Judgment shall preclude the Secretary from initiating or continuing any audit or investigation, or from pursuing any claims or actions, against any entities or persons (other than the claims stated in the

Secretary's complaint) relating to any ERISA-covered plan. Nothing in this Consent Order and Judgment resolves any claims that have been or may be asserted against Defendant Farmers by the Weddle ESOP or by any other person.

E. Each party represents and warrants that he, she, or it has not assigned all or part of any claim, demand, debt, or cause of action of any kind or nature released in this Consent Order and Judgment to any other person or third-party prior to executing this Consent Order and Judgment.

#### **VII. RETENTION OF JURISDICTION**

This Court shall retain jurisdiction over the Parties and subject matter of this action for the purposes of enforcing and interpreting the terms of this Consent Order and Judgment.

#### **VIII. COST AND EXPENSES**

The Parties each shall bear their own costs, expenses, and attorneys' fees in connection with this action, the Secretary's investigation of the March 1, 2013 purchase of Weddle stock by the Weddle ESOP, and this Consent Order and Judgment. The Parties agree not to seek or accept indemnification from Weddle or the Weddle ESOP or use any assets of Weddle or the Weddle ESOP for any payments made or required to be made regarding this matter, or for any expenses, including attorney's fees, associated with the negotiation, consideration, documentation, or implementation of this Consent Order and Judgment.

#### **IX. PARTIES BOUND**

By entering into this Consent Order and Judgment, the Parties represent that they have read this Consent Order and Judgment, been informed by counsel of the effect and purpose of this Consent Order and Judgment, and agree to be bound by its terms. This

Consent Order and Judgment is not binding on any governmental agency other than the United States Department of Labor.

**X. MULTIPLE ORIGINALS**

This Consent Order and Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument. The date of execution of this Consent Order and Judgment is the date on which it is signed by the Court.

**XI. ENTRY OF JUDGMENT**

The Court finds that there is no just reason to delay the entry of this Consent Order and Judgment and expressly directs the entry thereof as a final Decree and Order pursuant to Fed. R. Civ. P. 54(a).

**IN WITNESS WHEREOF**, the Parties through their respective duly authorized representatives have executed this Consent Order and Judgment on the date(s) set forth hereunder.

Date: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

**FOR THE SECRETARY:**

**KATE S. O’SANNLAIN**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/ Jing Acosta  
**JING ACOSTA**

U.S. Department of Labor  
Office of the Solicitor  
230 South Dearborn Street, Room 844  
Chicago, Illinois 60604  
Email: acosta.jing@dol.gov

Attorneys for Eugene Scalia, Secretary of Labor,  
U.S. Department of Labor, Plaintiff

**FOR THE FARMERS NATIONAL BANK OF DANVILLE:**

s/ Dana Howard  
By Dana Howard

s/ Dana Howard  
**DANA HOWARD**

Stoll Keenon Ogden PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507  
Email: dana.howard@skofirm.com

Counsel for The Farmers National Bank of Danville

(continued on next page)

**WEDDLE BROS. CONSTRUCTION CO., INC. ESOP**

s/ Philip J. Gutwein II \_\_\_\_\_

By Philip J. Gutwein II

s/ Philip J. Gutwein II \_\_\_\_\_

**PHILIP J. GUTWEIN**

Faegre Baker Daniels LLP  
300 N. Meridian Street  
Suite 2500  
Indianapolis, IN 46204  
Email: philip.gutwein@faegrebd.com

Counsel for Weddle, as sponsor and administrator of the Weddle ESOP

Exhibit A

CONSENT ORDER AND JUDGMENT

Purchase Price Reduction Documents

1. Settlement Agreement dated February 27, 2020, by and among The Farmers National Bank of Danville (“Buyer”); and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (“Sellers”); and Weddle Bros. Construction Co., Inc. (“Company”).
2. First Amendment to the Stock Purchase Agreement dated February 27, 2020, by and among The Farmers National Bank of Danville (“Buyer”); and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (“Sellers”); and Weddle Bros. Construction Co., Inc. (“Company”).
3. First Amendment to the Assignment and Assumption Agreement dated March 1, 2013, is dated February 27, 2020, by and among Weddle Bros Construction Co., Inc., an Indiana business corporation (the “*Company*”), The Farmers National Bank Of Danville, not in its individual capacity, but solely as the trustee (the “*Trustee*”) of Weddle Bros. Construction Co., Inc., Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”) and Lee E. Carmichael, Scott A. Sieboldt, Michael A. Hemmerling, Steven T. Hunt, Kelly G. Abel, William J. Ludlow, Marion S. Mishler and Edward C. Zurface (collectively, the “*Sellers*”).
4. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Lee E. Carmichael.
5. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Scott A. Sieboldt.
6. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Edward C. Zurface.
7. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Marion S. Mishler.
8. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and William J. Ludlow.
9. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Kelly G. Abel.
10. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Steven T. Hunt.
11. Seller Note Modification Agreement by and between Weddle Bros. Construction Co., Inc. and Michael A. Hemmerling.

12. First Amendment to the ESOP Loan Agreement by and between Farmers National Bank of Danville (the “*Trustee*”), in its capacity as trustee of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”), a trust established in connection with Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan (the “*ESOP*”) (the Trustee and the Trust are collectively referred to herein as the “*Borrower*”); and Weddle Bros. Construction Co., Inc. (the “*Company*”), a corporation organized under the laws of the State of Indiana.
13. ESOP Note Modification Agreement by and between Farmers National Bank, the Trustee of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan and Trust Agreement (the “*Trust*”) which implements and forms a part of Weddle Bros. Construction Co., Inc. Employee Stock Ownership Plan (the “*Borrower*”), and Weddle Bros. Construction Co., Inc. (the “*Company*”), an Indiana business corporation with an address of 1201 W. 3<sup>rd</sup> Street, Bloomington, IN 47404.
14. Weddle Internal ESOP Loan – Amortization Schedule dated 08/18/2019 – 08/20/2019.



## EXHIBIT B

### AGREEMENT CONCERNING PROCESS REQUIREMENTS FOR EMPLOYEE STOCK OWNERSHIP PLAN TRANSACTIONS

The Farmers National Bank of Danville d/b/a WealthSouth (“Farmers”), a subsidiary of Boyle Bancorp, Inc. (“Boyle”), agrees to apply the following policies and procedures whenever Boyle, Farmers or any affiliated entities (collectively referred to as “FNB”) serves as trustee or other fiduciary of an employee stock ownership plan (“ESOP”) subject to Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”) in connection with a transaction involving the direct or indirect purchase, sale, or redemption of employer securities that are not publicly traded (“Transaction”).

**A. Selection and Use of valuation advisor - General.** FNB shall do the following:

1. Prudently investigate the valuation advisor's qualifications;
2. Take reasonable steps to determine that the valuation advisor receives complete, accurate, and current information necessary to value the plan sponsor's securities;
3. Contemporaneously document the steps FNB took – including who at FNB took those steps – to determine that the valuation advisor received complete, accurate, and current information and to ensure FNB understood the advice of the valuation advisor; and
4. Prudently determine that its reliance on the valuation advisor's advice is reasonable before entering into any Transaction in reliance on the advice.

**B. Selection of valuation advisor - Conflicts of Interest.** FNB shall not use a valuation advisor for a Transaction that has previously performed work for any party to the Transaction other than the ESOP or its trustee, including but not limited to a

"preliminary valuation" for or on behalf of the plan sponsor (as distinguished from the ESOP), a committee of employees of the plan sponsor, any counterparty to the ESOP or plan sponsor involved in the Transaction, or any other entity that is structuring the Transaction (such as an investment bank). FNB shall not use a valuation advisor for a Transaction that has a familial or corporate relationship (such as a parent-subsidary relationship) to any of the aforementioned persons or entities. FNB shall obtain written confirmation from the valuation advisor selected that none of the above-referenced relations exist.

**C. Selection of valuation advisor - Process.**

1. In selecting a valuation advisor for a Transaction, FNB shall prepare a written analysis addressing the following topics:
  - a. The reason for selecting the particular valuation advisor;
  - b. A list of all the valuation advisors that FNB considered;
  - c. A discussion of the qualifications of the valuation advisors that FNB considered;
  - d. A list of at least three references checked and discussion of the references' views on the valuation advisor;
  - e. Whether the valuation advisor was the subject of prior criminal, civil, or regulatory proceedings/investigations related to its previous valuation work and the outcome of such proceedings or investigations; and
  - f. A full explanation of the basis for concluding that FNB's selection of the valuation advisor was prudent.
2. If FNB selects a valuation advisor from a roster of valuation advisors that it has previously used, FNB need not undertake anew the analysis outlined

above if the following conditions are satisfied:

- a. FNB previously performed the analysis described above in connection with a prior engagement of the valuation advisor;
- b. The previous analysis was completed within the prior calendar year immediately preceding FNB's selection of the valuation advisor;
- c. FNB documents in writing that it previously performed the analysis, the date(s) on which FNB performed the analysis and the results of the analysis;
- d. FNB's files contain the valuation advisor's confirmation that the information it previously provided pursuant to item (C)(1)(e) above is still accurate.

**D. Oversight of valuation advisor – Required Analysis.** Prior to approving a Transaction, FNB shall request that the valuation advisor document the following items in its Valuation Report<sup>1</sup> and, if the valuation advisor does not so document, FNB shall prepare or require the preparation of supplemental documentation of the following items to the extent they were not documented by the valuation advisor:

1. Use of Projections: Conduct reasonable inquiry into projections given by individual(s) responsible for providing any projections reflected in the Valuation Report, such reasonable inquiry shall include:
  - a. Whether those individuals have or reasonably may be determined to have any conflicts of interest in regard to the ESOP including but not limited to any interest in the purchase or sale of the plan sponsor's stock being considered;
  - b. Whether those individuals serve as agents or employees of persons with such conflicts, and the precise nature of any such conflicts; and

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<sup>1</sup> All references to the term "Valuation Report" refer to the valuation advisor's report on which FNB relies prior to the Transaction in deciding whether to approve or reject the Transaction.

c. How FNB and the valuation advisor considered such conflicts in determining the value of the plan sponsor's securities.

2. An opinion as to the reasonableness of any projections considered in connection with the Transaction that explains in writing why and to what extent the projections are or are not reasonable. At a minimum, the analysis shall consider how the projections compare to, and whether they are reasonable in light of, the plan sponsor's five-year historical averages and/or medians and the five-year historical averages and/or medians of a group of comparable public companies (if any exist) for the following metrics, unless five-year data are unavailable (in which case, the analysis shall use averages extending as far back as possible):

- a. Return on assets;
- b. Return on equity;
- c. EBIT and EBITDA margins;
- d. Ratio of capital expenditures to sales;
- e. Revenue growth rate; and
- f. Ratio of free cash flows (of the enterprise) to sales.

3. If it is determined that any of these metrics should be disregarded in assessing the reasonableness of the projections, document in writing both the calculations of the metric (unless calculation is impossible) and the basis for the conclusion that the metric should be disregarded. The use of additional metrics to evaluate the reasonableness of projections other than those listed in section (D) (2) (a)-(f) above is not precluded as long as the appropriateness of those metrics is documented in writing.

4. If comparable companies are used for any part of a valuation -

whether as part of a guideline company method of valuation or any other method of valuation, to gauge the reasonableness of projections, or for any other purpose, explain in writing the basis for concluding that the comparable companies are actually comparable to the plan sponsor being valued, including on the basis of size, customer concentration (if such information is publicly available), and volatility of earnings. If a guideline company analysis is performed, explain in writing any discounts applied to the multiples selected, and if no discount is applied to any given multiple, explain in detail the reasons.

5. If the plan sponsor is projected to meet or exceed its historical performance or the historical performance of the group of comparable public companies on any of the metrics described in paragraph (D) (2) above, document in writing all material assumptions supporting such projections and why those assumptions are reasonable.

6. To the extent that FNB or its valuation advisor considers any of the projections provided by the plan sponsor to be unreasonable, document in writing all adjustments made to the projections.

7. If adjustments are applied to the plan sponsor's historical or projected financial metrics in a valuation analysis, determine and explain in writing why such adjustments are reasonable.

8. Describe the risks facing the plan sponsor that could cause the plan sponsor's financial performance to fall materially below the projections relied upon by the valuation advisor.

9. If greater weight is assigned to some valuation methods than to others, explain in writing the weighting assigned to each valuation method and the basis for the weightings assigned.

10. Consider, as appropriate, how the ESOP document provisions regarding stock distributions, the duration of the ESOP loan, and the age and tenure of the ESOP participants, may affect the plan sponsor's prospective repurchase obligation, the prudence of the Transaction or the fair market value of the stock.

11. Analyze and document in writing:

a. Whether the plan sponsor will be able to service the debt taken on in connection with the Transaction (including the ability to service the debt in the event that the plan sponsor fails to meet the projections relied upon in valuing the stock);

b. Whether the Transaction is fair to the ESOP participants from a financial point of view;

c. Whether the Transaction is fair to the ESOP participants relative to all the other parties to the Transaction;

d. Whether the terms of the financing of the Transaction are market-based, commercially reasonable, and in the best interests of the ESOP participants;

e. Whether both seller financing and financial institution financing was considered and whether the loans sought from financial institutions were within the amounts the financial institution was willing to loan;

f. Whether the terms of any loan the ESOP receives in connection with the Transaction are as favorable as the terms of any loans between the plan sponsor and any executive of the plan sponsor made within the two years preceding the Transaction; and

g. The financial impact of the Transaction on the plan sponsor, and document in writing the factors considered in such analysis and conclusions drawn therefrom.

12. Explain any material differences between the present valuation and the most recent prior valuation of the plan sponsor performed within the past 24 months by any valuation firm for any purpose (if any exist). For valuations obtained exclusively by the sellers in connection with the Transaction within the past 12 months, FNB should at a minimum obtain information on when the valuation was performed and who prepared the valuation.

**E. Financial Statements.**

1. FNB shall request that the plan sponsor provide FNB and its valuation advisor with unqualified audited financial statements for the preceding five fiscal years, unless unqualified audited financial statements extending back five years are unavailable (in which case, FNB shall request unqualified audited financial statements extending as far back as possible).

2. If the plan sponsor provides to FNB or its valuation advisor unaudited or qualified audited financial statements for any of the preceding five fiscal years (including interim financial statements that update or supplement the last available unqualified audited financial statement), FNB shall determine whether it is prudent to rely on these financial statements notwithstanding the risk posed by using unaudited or qualified audited financial statements.

3. If FNB proceeds with the Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last available unqualified audited financial statement), FNB shall document the basis for FNB's belief that it is prudent to rely on the financial statements, and explain in writing how FNB accounted for any risk posed by using financial statements other than unqualified audited financial statements. If FNB does not believe that it can reasonably

conclude that it would be prudent to rely on the financial statements used in the Valuation Report, FNB shall not proceed with the Transaction. While FNB need not audit the financial statements themselves, it must carefully consider the reliability of those statements in the manner set forth herein.

4. FNB may approve a Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last unqualified audited financial statement) only if the stock purchase agreement includes a provision requiring the selling or purchasing shareholder(s) who is(are) an officer, manager, or member of the board of directors of the plan sponsor to compensate the ESOP for any losses or other harms caused by or related to financial statements that did not accurately reflect the plan sponsor's financial condition.

**F. Fiduciary Review Process - General.** In connection with any Transaction, FNB agrees to do the following:

1. Ensure that sufficient time is allowed to fully, completely, and accurately review and analyze the contemplated Transaction prior to agreeing to a redemption transaction or a closing date for the Transaction;
2. Take reasonable steps necessary to determine the prudence of relying on the plan sponsor's financial statements provided to the valuation advisor, as set out more fully in paragraph E above;
3. Critically assess the reasonableness of all projections (particularly management projections), and if the Valuation Report does not document in writing the



reasonableness of such projections to FNB's satisfaction, FNB shall prepare supplemental documentation explaining why and to what extent the projections are or are not reasonable;

4. If FNB believes the projections are unreasonable, FNB shall ask the valuation advisor to account for the unreasonable projections in its valuation, request new and reasonable projections from management, or reject the Transaction. FNB must document the basis for its decision.

5. Ensure that the information the valuation advisor obtains from the plan sponsor and purchasing or selling shareholder(s) includes the following, to the extent it exists:

a. All prior attempts by the purchasing or selling shareholder(s) to purchase or sell their stock in the plan sponsor within the proceeding two (2) years;

b. All prior defaults within the past five years by the plan sponsor under any lending or financing agreement;

c. All management letters provided to the plan sponsor by its accountants within the past five years; and

d. All information related to a valuation of the plan sponsor provided to the Internal Revenue Service within the past five years.

**G. Fiduciary Review Process - Documentation of Valuation Analysis.**

FNB shall document in writing its analysis of the Valuation Report relating to a Transaction. FNB's documentation shall specifically address each of the following topics and shall include FNB's conclusions regarding the Valuation Report's treatment of each topic and explain in writing the basis for its conclusions:

1. Marketability discounts;

2. Minority interests and control premiums;
3. Projections of the plan sponsor's future financial performance and the reasonableness or unreasonableness of such projections, including, if applicable, the basis for assuming that the plan sponsor's future financial performance will meet or exceed historical performance or the expected performance of the relevant industry generally;
4. Analysis of the plan sponsor's strengths and weaknesses, which may include, as appropriate, personnel, plant and equipment, capacity, research and development, marketing strategy, business planning, financial condition, and any other factors that reasonably could be expected to affect future performance;
5. Specific discount rates chosen, including whether any weighted average cost of capital used by the valuation advisor was based on the plan sponsor's actual capital structure or that of the relevant industry and why the chosen capital structure weighting was reasonable;
6. All adjustments to the plan sponsor's historical financial statements;
7. Consistency of the general economic and industry-specific narrative in the Valuation Report with the quantitative aspects of the Valuation Report;
8. Reliability and timeliness of the historical financial data considered, including a discussion of whether the financial statements used by the valuation advisor were the subject of unqualified audit opinions, and if not, why it would nevertheless be prudent to rely on them;
9. The comparability of the companies chosen as part of any analysis based on the plan sponsor's comparable companies;
10. Material assumptions underlying the Valuation Report and all testing and

analysis of these assumptions;

11. Where the Valuation Report made choices between averages, medians, and outliers (e.g., in determining the multiple(s) used under the guideline company method of valuation), the reasons for the choices;
12. Treatment of corporate debt;
13. Whether the methodologies employed were standard and accepted methodologies and the basis for any departures from standard and accepted methodologies;
14. The plan sponsor's ability to service all debt or liabilities to be taken on in connection with the Transaction, including but not limited to, its ability to meet any repurchase obligations and the state of its solvency post-Transaction;
15. The Transaction's reasonably foreseeable risks as of the date of the Transaction; and
16. All other material considerations or variables that could have a significant effect on the price of the plan sponsor's securities.

**H. Fiduciary Review Process - Reliance on Valuation Report.**

1. FNB, through its employees who are primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, shall do the following, and document in writing its work with respect to each:
  - a. Read and understand the Valuation Report;
  - b. Identify and question the valuation report's underlying assumptions;
  - c. Make reasonable inquiry as to whether the information in the

Valuation Report is materially consistent with information in FNB's possession;

- d. Analyze whether the Valuation Report's conclusions are consistent with the data and analysis; and
- e. Analyze whether the Valuation Report is internally consistent in material aspects.

2. FNB shall document in writing the following: (a) how it made its determination to close the Transaction, including the internal process it normally uses and whether this process was followed for this transaction; (b) the identities of its employees who were primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction; (c) all material points on which such employee disagreed and why; and (d) whether all such employees concluded or expressed the belief prior to FNB's approval of the Transaction that the Valuation Report's conclusions were inconsistent with the data and analysis therein or that the Valuation Report was internally inconsistent in material aspects.

3. If the employees who were primarily responsible for the Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, believe that the Valuation Report's conclusions are not consistent with the data and analysis or that the Valuation Report is internally inconsistent in material respects, FNB shall not proceed with the Transaction.

4. FNB shall independently determine whether a Fairness Opinion is required and, if so, shall not proceed without one.

**I. Preservation of Documents.** In connection with any Transaction approved by FNB, FNB will create a Transaction folder and preserve for at least six (6) years the

following:

1. The full name, business address, business telephone number and email address at the time of FNB's consideration of the Transaction of each employee who was primarily responsible for the Transaction, including any employee who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, and any other FNB employee who made any material decision(s) on behalf of FNB in connection with the Transaction;

2. All relevant notes and records created by FNB in connection with its consideration of the Transaction, including all documentation required by this Consent Order and Judgment;

3. The vote (yes or no) of each employee of FNB who voted on the proposed Transaction and a signed certification by each voting employee, in his or her representative capacity, and all other FNB employees who made any material decision(s) on behalf of FNB in connection with the proposed Transaction that they have read the valuation report, identified its underlying assumptions, and considered the reasonableness of the valuation report's assumptions and conclusions;

4. All relevant documents FNB and the employees identified in paragraph (I)(1) above relied on in making the decisions;

5. All relevant electronic or other written communications FNB and the employees identified in paragraph (I)(1) above had with service providers (including any valuation advisor), the plan sponsor, any non-ESOP counterparties, and any advisors retained by the plan sponsor or non-ESOP counterparties;

**J. Debt and Fair Market Value.** The principal amount of the debt financing the

Transaction, irrespective of the interest rate, cannot exceed the plan sponsor's securities' fair market value. Accordingly, FNB shall not cause an ESOP to engage in a leveraged stock purchase Transaction in which the principal amount of the debt financing the Transaction exceeds the fair market value of the plan sponsor's securities acquired with that debt, irrespective of the interest rate or other terms of the debt used to finance the Transaction.

**K. Control.** This section only applies when the ESOP intends to buy a controlling interest in the company whose stock it intends to acquire. To the extent permissible under state and federal law, FNB will only approve a Transaction where the ESOP pays for a controlling interest if, in fact, the ESOP obtains the right to control the company whose stock it acquires. The right to control the company includes all of the unencumbered rights that a shareholder would have that acquired the shares to be purchased by the ESOP, and the right to control the company's direction, including, but not limited to: the unencumbered ability to vote its shares; the ability to appoint and remove the company's officers; the ability to appoint and remove the majority of the members of the company's board of directors; the ability to set management compensation and perquisites; the ability to acquire, lease, or liquidate the company's assets; the ability to liquidate, dissolve, sell, or recapitalize the company; decision-making authority over mergers, acquisitions; and sales of company stock; authority to decide whether the company incurs significant debt or engages in debt refinancing; the ability to authorize or veto major capital expenditures; the ability to decide whether to sell or acquire Treasury shares and whether to declare and pay cash and/or stock dividends; the ability to determine whether to call warrants or other significant company obligations, and the ability to modify or amend the company's articles of incorporation or bylaws. If FNB is asked to consider a Transaction in which the ESOP does not acquire the

degree of control of the company commensurate with the ownership interest it is acquiring, or that restrictions are placed on the ESOP's ability to exercise its right to control the company, FNB will ensure that the purchase price paid by the ESOP will reflect the ESOP's lack of control. Accordingly, where the ESOP's rights of control are limited, restricted or substantially reduced, FNB will ensure that the valuation of the stock the ESOP is purchasing does not include a control premium, and includes an appropriate lack of control discount, to the extent that the ESOP's rights of control are diminished, and FNB will ensure that the purchase price paid by the ESOP is adjusted accordingly. If the ESOP is not acquiring control or its rights of control are limited, restricted or substantially reduced, FNB will ensure that the normalized earnings of the subject company do not include adjustments based on anticipated actions that only a controlling, unencumbered, shareholder can execute. In all transactions it approves, FNB will document its determination of whether and to what extent the ESOP has obtained the right to control the company and how and to what degree those rights may be limited, reduced or restricted, and document how that determination affects the valuation of the stock the ESOP is acquiring, the price the ESOP is paying for the stock, and why that price is fair to the ESOP in light of any limitations on the ESOP's control rights.

**L. Consideration of Claw-Back.** In evaluating a proposed Transaction, FNB shall consider whether it is appropriate to request a claw-back arrangement, limitation agreement (requiring shareholder to reprice the Transaction if the DOL finds it paid more than the fair market value), or other purchase price adjustment(s) to protect the ESOP against the possibility of adverse consequences in the event of significant corporate events or changed circumstances. FNB shall document in writing its consideration of the appropriateness of a claw-back or other purchase price adjustment(s).

**M. Other Professionals.** FNB may, consistent with its fiduciary responsibilities under ERISA, employ, or delegate fiduciary authority to qualified professional service providers to aid FNB in the exercise of its powers, duties, and responsibilities in the Transaction as long as it is prudent to do so.

**N. Indemnification.** FNB will not enter into any agreement providing that it will be indemnified by the ESOP or by an ESOP-owned company (irrespective of whether the ESOP owns some or all of the company's stock) against and from any damages, expense, liabilities, and losses resulting from claims of fiduciary breach and/or prohibited transactions related to the Transaction or that otherwise would be in violation of ERISA. Specifically, FNB will not agree to indemnification provisions by the ESOP or the ESOP-owned company that result in advancement of defense fees and expenses unless an entirely independent third-party determines that there has been no breach of fiduciary duty. Under those circumstances, a prudent arrangement must be in place that guarantees, through the posting of collateral or otherwise, a refund of the entirety of the advanced fees and costs should a fiduciary breach be determined by a court. Any appreciable settlement amount of claims of fiduciary breach and/or prohibited transaction, i.e. more than a nuisance settlement, must result in a full refund of any fees and expenses. Fees and expenses includes all liabilities incurred after a voluntary compliance letter is issued by the Department of Labor, plan participant, or plan fiduciary, or other measurable allegation of a violation.

**O.** This Agreement is not intended to specify all of the FNB's obligations as an ERISA fiduciary with respect to the purchase or sale of employer stock under ERISA, and in no way supersedes any of the FNB's obligations under ERISA or its



implementing regulations.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

R. ALEXANDER ACOSTA,	)	
Secretary of the United States	)	
Department of Labor,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:13-cv-1302-PP
v.	)	
	)	
VERONICA MUELLER, et al.,	)	
	)	
Defendants.	)	
_____	)	

**AGREED CONSENT DECREE AND ORDER**

Plaintiff R. Alexander Acosta, Secretary of the United States Department of Labor (the “Secretary” or the “Department of Labor”), Defendants Veronica Mueller and Roger Mueller (the “Muellers”) and the “Defendant Trusts”,<sup>1</sup> Alpha Investment Consulting Group, LLC (“Alpha”), Omni Resources, Inc. Employee Stock Ownership Plan and Trust (the “Omni ESOP”),<sup>2</sup> and Omni Resources, Inc. (“Omni”)<sup>3</sup> (collectively, and with the Secretary, the “Parties”), by and through their respective attorneys, have negotiated an

<sup>1</sup> The “Defendant Trusts” are the Carey V. Mueller (n/k/a Vollmers) 1996 Trust, the Roger L. and Veronica S. Mueller 1996 Exemption Trust f/b/o Carey V. Mueller (n/k/a Vollmers), the Craig M. Mueller 1996 Trust, the Roger L. and Veronica S. Mueller 1996 Exemption Trust f/b/o Craig M. Mueller, the Christopher L. Mueller 1996 Trust, and the Roger L. and Veronica S. Mueller 1996 Exemption Trust f/b/o Christopher L. Mueller.

<sup>2</sup> The Omni ESOP was named as a defendant herein, pursuant to Federal Rule of Civil Procedure 19, solely to assure that complete relief can be granted.

<sup>3</sup> Omni voluntarily submits itself to the jurisdiction of this Court for the purpose of agreeing and subjecting itself to the terms of this Agreed Consent Decree and Order. See paragraphs II(E), III, IV, VI(G), VII and VIII below.

agreement to settle the matters in controversy in this civil action, and each consents to the entry of this Agreed Consent Decree and Order by this Court as the sole and complete memorialization of the terms of such agreement.

**A.** The Secretary filed this action pursuant to his authority under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.*, as amended.

**B.** The Parties agree to settle this dispute on the terms and conditions hereinafter set forth and stipulate and agree to the entry of this Agreed Consent Decree and Order as a full and complete resolution of all of the civil claims, causes of action, and issues arising between them in this action without adjudication of any issue of fact or law raised in the Secretary’s Complaint in this action.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Agreed Consent Decree and Order and other valuable and sufficient consideration, the Parties have agreed as herein stated. Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

**I. JURISDICTION**

**A.** This Court has jurisdiction over the Parties and subject matter of this action, and is empowered to provide the relief herein.

**B.** Omni voluntarily submits itself to the jurisdiction of this Court for the purpose of agreeing and subjecting itself to this Agreed Consent Decree and Order.

**II. MONETARY RELIEF**

**A.** Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts, jointly and severally, will (i) pay the Omni ESOP \$1,520,681.82 (one million five hundred twenty thousand and six hundred eighty-one dollars and eighty-two cents), (ii) reduce the

balance of both Omni's obligation to repay Veronica Mueller and the Defendant Trusts and the Omni ESOP obligation to repay Omni by the amount of \$3,500,000 (three million five hundred thousand dollars) and Omni's loan in the same amount to the ESOP, and (iii) pay an ERISA § 502(l) penalty in the amount of \$479,318.18 (four hundred seventy-nine thousand three hundred eighteen dollars and eighteen cents) to the Department of Labor. As described in the following paragraphs, \$1,500,000 (one million five hundred thousand dollars) ("First Installment") will be paid to the Omni ESOP within sixty days of entry of this Agreed Consent Decree and Order. An additional \$20,681.82 (twenty thousand six hundred eighty-one dollars and eighty-two cents) ("Second Installment") will be paid to the Omni ESOP within two years of the entry of this Agreed Consent Order and Order. The payment of an ERISA § 502(l) penalty of \$479,318.18 (four hundred seventy-nine thousand three hundred eighteen dollars and eighteen cents) will be made within the earlier of five days after the payment of the Second Installment or two years after the entry of the Agreed Consent Decree and Order. The Muellers' and/or the Defendant Trusts' settlement payments are, in part, in consideration for the assignments from Omni and the Omni ESOP described in paragraph VII below.

**B.** As noted above, within sixty (60) days of the Court's entry of this Agreed Consent Decree and Order, Defendants Roger Mueller, Veronica Mueller, and/or the Defendant Trusts shall pay to the Omni ESOP the total sum of \$1,500,000.00 (one million five hundred thousand dollars). This payment shall not be offset in any manner by any payments from Omni, the Omni ESOP, Alpha, or any other party.

**C.** Within two years of the Court's entry of this Agreed Consent Order and Order, Defendants Veronica Mueller, Roger Mueller, and the Defendant Trusts shall pay the Omni ESOP the total sum of \$20,681.82 (twenty thousand six hundred eighty-one

dollars and eighty-two cents). This payment shall not be offset in any manner by any payments from Omni, the Omni ESOP, Alpha, or any other party.

**D.** Upon payment of the First Installment in paragraph II(B) above, full compliance with the Loan Restructuring Provisions in paragraph III below, and payment of the Second Installment pursuant to paragraphs II(C) and (E), the Department of Labor has determined that Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts shall be and hereby are assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$829,166.67 (eight hundred twenty-nine thousand one hundred sixty-six dollars and sixty-seven cents). The Department of Labor has agreed to compromise and reduce the amount of the penalty to \$479,318.18 (four hundred seventy-nine thousand three hundred eighteen dollars and eighteen cents) (the “502(l) Penalty”). Therefore, the Secretary hereby does and will accept, as full satisfaction of the assessed penalty, the amount of \$479,318.18 (four hundred seventy-nine thousand three hundred eighteen dollars and eighteen cents) out of the Second Installment. Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts waive their rights to a separate notice of assessment of the penalty under § 502(l), 29 U.S.C. § 1132(l), the service requirement of 29 C.F.R. § 2570.83, and their rights to seek any further reductions of or relief from the 502(l) Penalty. Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts shall pay the 502(l) Penalty to the United States Department of Labor within the earlier of five (5) calendar days of payment of the Second Installment or two (2) years after the entry of this Agreed Consent Decree and Order. The 502(l) Penalty must be paid by sending a certified or cashier’s check to:

U.S. Department of Labor  
ERISA Civil Penalty  
P.O. Box 71360  
Philadelphia, PA 19176-1360.

The certified or cashier's check for the 502(l) Penalty shall be made payable to the United States Department of Labor and will reference EBSA Case No. 50-032066. If Defendants wish to remit a check by commercial express courier, they agree to contact Soroosh Nikouei at the United States Department of Labor (Nikouei.Soroosh@dol.gov or 202-693-8486) and follow his instructions.

**E.** The Second Installment will be secured against the quarterly installment payments due from Omni to the Veronica Mueller and the Defendant Trusts in payment of the loan to Omni made in connection with the stock purchase transaction underlying this litigation. In the event that the payments described in paragraphs II(C) and II(D) of this Agreed Consent Decree and Order are not made within two (2) years of the date of the entry of this Agreed Consent Decree and Order, the amount of any such nonpayment up to \$500,000 of the next installment payments due from Omni to the Defendant Muellers and the Defendant Trusts shall be directed immediately by Omni to the Omni ESOP in the amount of any such nonpayment of the Second Installment and/or to the U.S. Department of Labor in the amount of any such nonpayment of the 502(l) Penalty. These payments are secured by the ongoing payments required under the amended promissory notes and ESOP Loan and Pledge Agreement referenced in paragraph III below, and Exhibit A hereto. To the extent that any such payments become necessary, Omni first shall remit payment to the Omni ESOP in the amount owed under paragraph II(C), plus accumulated interest under this paragraph, and then remit payment to the United States Department of Labor in the amount owed under paragraph II(D), plus accumulated interest under this paragraph.

**F.** Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts shall provide to the Secretary proof of payment of the First and Second Installments and the 502(l) Penalty. Such proof will include wire transfer confirmations of the payments and such other proof as may be requested by the Secretary. Any proof provided under this paragraph will be sent to the Secretary's representative at the following address:

Jeffrey Monhart  
Regional Director, Chicago Regional Office  
Employee Benefits Security Administration  
U.S. Department of Labor  
John C. Kluczynski Federal Bldg.  
230 S. Dearborn Street, Suite 2160  
Chicago, IL 60604

**G.** Defendant Alpha shall pay to the Omni ESOP the sum of \$45,454.55 (forty-five thousand four hundred fifty-four dollars and fifty-five cents) and to pay an ERISA § 502(l) penalty in the amount of \$4,545.45 (four thousand five hundred forty-five dollars and forty-five cents) to the Department of Labor.

**H.** Within sixty (60) days of the Court's entry of this Agreed Consent Decree and Order, Defendant Alpha shall pay to the Omni ESOP the sum of \$45,454.55 (forty-five thousand four hundred fifty-four dollars and fifty-five cents) (the "Alpha Settlement Amount") to fully settle the claims against Alpha in the Secretary's Complaint in this action. This payment shall not be offset in any manner by any payments from Omni, the Omni ESOP, Roger Mueller, Veronica Mueller, the Trusts, or any other party.

**I.** Upon payment of the Alpha Settlement Amount, Defendant Alpha shall be and hereby is assessed a penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$8,333.33 (eight thousand three hundred and thirty-three dollars and thirty-three cents). The parties have entered into a compromise to reduce the amount of the penalty to \$4,545.45 (four thousand five hundred forty-five dollars and forty-five cents) (the "Alpha 502(l)

Penalty”). Therefore, the Secretary hereby does and will accept, as full satisfaction of the assessed penalty, the amount of \$4,545.45 (four thousand five hundred forty-five dollars and forty-five cents). Defendant Alpha waives its right to a separate notice of assessment of the penalty under § 502(1), 29 U.S.C. §1132(1), and the service requirement of 29 C.F.R. § 2570.83. Defendant Alpha shall pay the Alpha 502(1) Penalty to the United States Department of Labor within five (5) calendar days of payment of the Alpha Settlement Amount to the Omni ESOP by sending a certified or cashier’s check to:

U.S. Department of Labor  
ERISA Civil Penalty  
P.O. Box 71360  
Philadelphia, PA 19176-1360.

The certified or cashier’s check shall be made payable to the United States Department of Labor and will reference EBSA Case No. 50-032066.

**J.** Defendant Alpha shall provide to the Secretary proof of payment of the Alpha Settlement Amount and the Alpha 502(1) Penalty. Such proof will include wire transfer confirmations of the payments and such other proof as may be requested by the Secretary. Any proof provided under this paragraph will be sent to the Secretary’s representative at the following address:

Jeffrey Monhart  
Regional Director Chicago Regional Office  
Employee Benefits Security Administration  
U.S. Department of Labor  
John C. Kluczynski Federal Bldg.  
230 S. Dearborn Street, Suite 2160  
Chicago, IL 60604.

**K.** Notwithstanding any other provision of this agreement, the Secretary may seek any judicial remedy available, including contempt, if the responsible Defendants fail to pay the First Installment, the Second Installment, the 502(1) Penalty, the Alpha



Settlement Amount, or the Alpha 502(l) Penalty as required herein or violate any other term of this Agreed Consent Decree and Order.

### **III. RESTRUCTURING THE LOAN**

Defendants Veronica Mueller, the Defendant Trusts, and Omni and the Omni ESOP agree to restructure their respective loans and promissory notes made in connection with the December 30, 2008, stock purchase transaction such that the principal balance remaining on the loans and promissory notes shall be reduced by the sum of \$3,500,000. The balance remaining owed by Omni to Defendant Veronica Mueller and the Defendant Trusts will be re-amortized and paid in approximately equal quarterly installments until paid in full. There will be no acceleration of payments on the remaining amount owed in either loan except as may otherwise later be agreed upon by the parties to the loans and promissory notes. The amended ESOP Loan and Pledge Agreement is attached hereto and made a part hereof as Exhibit A and incorporated herein by this reference. The amended promissory note between Omni and the Omni ESOP is attached hereto and made a part hereof as Exhibit B and is incorporated herein by this reference. The amended promissory note between Veronica Mueller and the Defendant Trusts and Omni is attached hereto and made a part hereof as Exhibit C.

### **IV. ESOP PARTICIPANT ACCOUNTS**

A. Within thirty (30) days of receiving the payments set forth in paragraphs II(B), (C), and (G) above, the Omni ESOP shall allocate those monies to participant accounts for participants who were allocated shares of company stock between December 30, 2008, and the date of this Agreed Consent Decree and Order. The allocation of the payments shall specifically include former participants who vested in the Omni ESOP and received a distribution of plan assets prior to the date of entry of this Agreed Consent

Decree and Order. The allocation of the payments to the participant accounts (including former participants) shall be pro rata according to the number of shares that were allocated to each participant account between December 30, 2008, to the date of entry of this Agreed Consent Decree and Order, except that neither Defendant Roger Mueller nor Defendant Veronica Mueller shall receive any allocation of payments made to the Omni ESOP under this Agreed Consent Decree and Order. These payments shall not replace or be paid in lieu of a contribution to the Omni ESOP by Omni for any plan year. Roger Mueller and Veronica Mueller and the Defendant Trusts shall not be involved in any manner and shall have no liability with respect to the allocations and other actions set forth in this paragraph.

**B.** Within thirty (30) days of the entry of this Agreed Consent Decree and Order, the Omni ESOP shall release to participants' accounts the shares of Omni stock necessary to account for the \$3,500,000.00 loan reductions from Veronica Mueller and the Mueller Trusts to Omni and from Omni to the Omni ESOP described in paragraph III above. The allocation shall be pro rata in proportion to the number of shares that were allocated to each participant between December 30, 2008, to the date of entry of this Agreed Consent Decree and Order except that Defendant Roger Mueller and Veronica Mueller shall not receive any allocation of shares made as a result of the \$3,500,000 loan reduction from Omni to the Omni ESOP made under this Agreed Consent Decree and Order. The allocation of shares shall specifically include former participants who vested in the Omni ESOP and received a distribution of plan assets prior to the date of entry of this Agreed Consent Decree and Order. Omni and the Omni ESOP may amend the plan document to allow a five-year payment schedule for the put options on the shares allocated in this paragraph. Roger Mueller and Veronica Mueller and the Defendant Trusts shall not be involved in any manner and shall have no liability with respect to the allocations and

other actions set forth in this paragraph.

**V. NON-MONETARY RELIEF**

**A.** Defendants may not seek direct or indirect contribution or indemnification from each other or Omni or the Omni ESOP and waive any rights they may have to such claims against Omni or the Omni ESOP. The Parties expressly acknowledge and agree that the assignment by Omni and/or the Omni ESOP of their certain claims set forth in paragraph VII below shall not be considered direct and/or indirect contribution or indemnification from each other or Omni, the Omni ESOP, or any other Party.

**B.** Defendants may not assert any claims that arose or accrued on or before the date of the entry of this Agreed Consent Decree and Order under ERISA or under any other state or federal law against Omni or the Omni ESOP related to the December 30, 2008, Omni ESOP Stock Purchase Transaction underlying this litigation, including the repayment of any extensions of credit made by the Muellers, the Defendant Trusts, or Omni to the Omni ESOP that were not made. Defendants reserve their rights to bring claims arising after the date of the entry of this Agreed Consent Decree and Order for any failure by Omni to meet its obligations as required under the terms of the Stock Purchase Agreement and Promissory Notes, as those documents are amended by this Agreed Consent Decree and Order, as well as any settlement agreements incorporated in this Agreed Consent Decree and Order. Omni and the Omni ESOP may not assert any claims that arose on or before the date of the entry of this Agreed Consent Decree and Order under ERISA or any other state or federal law against the Defendants related to the December 30, 2008 Omni ESOP Stock Purchase Transaction underlying this litigation. Omni and the Omni ESOP reserve their rights to bring claims arising after the date of the entry of this Agreed Consent Decree and Order for any failure by Defendants to meet their obligations under the Stock Purchase

Agreement and Promissory Notes as those documents are amended by this Agreed Consent Decree and Order.

**C.** Defendants Roger Mueller and Veronica Mueller are permanently enjoined from serving as a fiduciary to any ERISA-covered employee benefit plan or engaging in any conduct that would make them a fiduciary under ERISA section 3(21), 29 U.S.C. § 1002(21).

**D.** Defendant Alpha is permanently enjoined to comply with all requirements stated in the Agreement Concerning Process Requirements for Employee Stock Ownership Plan Transactions (the “Process Agreement”), attached hereto and made part hereof as Exhibit D, when it provides services to any ESOP or ESOP fiduciary. Defendants Roger Mueller and Veronica Mueller and the Defendant Trusts are not and shall not be involved in any manner and shall have no liability or obligations with respect to Exhibit D.

## **VI. RELEASES**

**A.** This Agreed Consent Decree and Order provides full, final, and complete judicial resolution of all of the claims and causes of action alleged in the Secretary’s Complaint in this action. Notwithstanding the foregoing, nothing in this Agreed Consent Decree and Order shall be deemed to waive any claim by the Secretary relating to the obligations set forth in this Agreed Consent Decree and Order. Furthermore, notwithstanding the foregoing, nothing in this Agreed Consent Decree and Order shall be deemed to waive any claim by any Defendant with respect to the Secretary’s, Omni’s and the Omni ESOP’s obligations under this Agreed Consent Decree and Order.

**B.** Except for the obligations set forth in this Agreed Consent Decree and Order, the Secretary and his agents, representatives, assigns, predecessors and successors in interest, acting in their official capacities, do hereby waive, release, and forever discharge

all claims, demands, actions, causes of action, liabilities, or fines (including any penalty under § 502(l) of ERISA) they may have against Defendants Roger Mueller, Veronica Mueller, the Defendant Trusts, Alpha, and their respective directors, officers, agents, attorneys (except DeWitt, Ross & Stevens, S.C., and its present or former affiliates or employees, including, without limitation, Timothy Stewart, Brian Anderson, and Sandy Swartzberg), employees, representatives, assigns, predecessors, and successors in interest based upon the allegations in the Secretary's Complaint in this action.

**C.** Defendants Roger Mueller, Veronica Mueller, and the Defendant Trusts, and their directors, officers, agents, attorneys, trustees, employees, representatives, assigns, and predecessors and successors in interest, do hereby release the Secretary and his officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, from all actions, claims and demands of whatsoever nature, including those arising under the Equal Access to Justice Act or any statute, rule, or regulation, that relate in any manner to the investigations, filing, prosecution, maintenance, and settlement of the Secretary's Complaint.

**D.** Defendant Alpha, and its directors, officers, agents, attorneys, employees, representatives, assigns, predecessors and successors in interest, do hereby release the Secretary and his officers, agents, attorneys, employees, and representatives, both in their individual and governmental capacities, from all actions, claims and demands of whatsoever nature, including those arising under the Equal Access to Justice Act or any statute, rule, or regulation, that relate in any manner to the investigations, filing, prosecution, maintenance, and settlement of the Secretary's Complaint.

**E.** Except for the claims released by the Secretary in Paragraph VI(B) above, the Secretary's claims against all persons not identified in VI(B) are expressly preserved.

Nothing in this Agreed Consent Decree and Order shall preclude the Secretary from initiating or continuing any audit or investigation, or from pursuing any claims or actions, against any entities or persons (other than the claims stated against Roger Mueller, Veronica Mueller, the Defendant Trusts, and Alpha, in the Secretary's Complaint) relating to any ERISA-covered plan, except for the claims the Secretary released in Paragraph VI(B) above. Nothing in this Consent Decree and Order resolves any claims that have been or may be asserted against Roger Mueller, Veronica Mueller, the Defendant Trusts, or Alpha by current and former participants of the Omni ESOP, or by any other person.

**F.** Each Party represents and warrants that he, she, or it has not assigned all or part of any claim, demand, debt, or cause of action of any kind or nature released in this Agreed Consent Decree and Order to any other person or third party prior to executing this Agreed Consent Decree and Order.

**G.** Roger Mueller, Veronica Mueller, the Defendant Trusts, Alpha, Omni and Omni ESOP have entered into a Settlement and Assignment Agreement and Mutual Release under which each such party has released the other pursuant to the terms thereof.

## **VII. ASSIGNMENT OF CLAIMS**

Omni and the Omni ESOP agree to assign any rights to certain claims in connection with the December 30, 2008, Omni ESOP Stock Purchase Transaction underlying this litigation to Defendants Roger and Veronica Mueller and the Defendant Trusts. The terms of such assignment are documented in the separate Settlement and Assignment Agreement and Mutual Release and the Assignment Agreement between Roger Mueller, Veronica Mueller, the Defendant Trusts, Omni, and the Omni ESOP.

## **VIII. RETENTION OF JURISDICTION**

This Court shall retain jurisdiction over the Parties and subject matter of this action

for the purposes of enforcing and interpreting the terms of this Agreed Consent Decree and Order.

**IX. COST AND EXPENSES**

The Parties each shall bear their own costs, expenses, and attorneys' fees in connection with this action, the Secretary's investigation of the December 30, 2008, purchase of Omni stock by the Omni ESOP, and this Agreed Consent Decree and Order, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended. The Parties agree not to seek or accept indemnification from Omni or the Omni ESOP or use any assets of Omni or the Omni ESOP for any payments made or required to be made in this Agreed Consent Decree and Order or for any expenses, including attorneys' fees, associated with the negotiation, consideration, documentation, or implementation of this Agreed Consent Decree and Order.

**X. PARTIES BOUND**

By entering into this Agreed Consent Decree and Order, the Parties represent that they have read this Agreed Consent Decree and Order, been informed by counsel of the effect and purpose of this Agreed Consent Decree and Order, and agree to be bound by its terms. This Agreed Consent Decree and Order is not binding on any governmental agency other than the United States Department of Labor.

**XI. MULTIPLE ORIGINALS**

This Agreed Consent Decree and Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument. The date of execution of this Agreed Consent Decree and Order is the date on which it is signed by this Court.

**XII. ADMISSION OF LIABILITY**

Defendants Roger Mueller, Veronica Mueller, the Defendant Trusts and Defendant Alpha neither admit nor deny the allegations in the Secretary's Complaint in this action.

**XIII. NOTICE**

If any provisions of this Agreed Consent Decree and Order require notice to Omni and/or the Omni ESOP, such notice shall be satisfied by delivering it in writing to:

Thomas M. Burnett  
Reinhart Boerner Van Deuren, SC  
1000 North Water Street, Suite 1700  
P.O. Box 2965  
Milwaukee, WI 53202  
tburnett@reinhartlaw.com

If any provisions of this Agreement require notice to the Muellers and the Mueller Trusts, such notice shall be satisfied by delivering it in writing to:

David R. Johanson  
Hawkins Parnell Thackston & Young LLP  
1776 Second Street  
Napa, California 94559  
Phone: (707) 299-2470  
E-mail: DJohanson@hptylaw.com

If any provisions of this Agreement require notice to Alpha, such notice shall be satisfied by delivering it in writing to:

Donal Demet  
Demet & Demet, LLC  
815 N. Cass St.  
Milwaukee, WI 53202-3908  
Phone: (414) 326-3101  
E-mail: ddemet@demetlaw.com

If any provisions of this Agreement require notice to the Secretary, such notice shall be satisfied by delivering it in writing to:

Jeffrey Monhart, Regional Director  
Chicago Regional Office  
U.S. Department of Labor  
Employee Benefits Security Administration



John C. Kluczynski Federal Bldg.  
230 S. Dearborn Street, Suite 2160  
Chicago, IL 60604  
Phone: (312) 353-0900  
Fax (312) 353-1023  
E-mail: monhart.jeff@dol.gov

with a duplicate delivered to:

Eric Lund  
Senior Trial Attorney  
Plan Benefits Security Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Room N-4611  
Washington, DC 20210  
Phone: (202) 693-5600  
E-mail: lund.eric@dol.gov

Delivery shall be made by e-mail or reliable overnight express courier service. The Parties may change the designation of persons to receive notice on their behalf by notifying the other Party or Parties of the change.

#### **XIV. ENTRY OF ORDER**

This Court finds that there is no just reason to delay the entry of this Agreed Consent Decree and Order and expressly directs the entry thereof as a final Decree and Order pursuant to Fed. R. Civ. P. 54(a).

**IN WITNESS WHEREOF**, the Parties through their respective duly authorized representatives have executed this Agreed Consent Decree and Order on the date(s) set forth hereunder.

**IT IS SO ORDERED**

Date: December \_\_, 2017

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PAMELA PEPPER  
UNITED STATES DISTRICT COURT JUDGE

**FOR THE SECRETARY:**

Respectfully Submitted,

NICHOLAS C. GEALE  
Acting Solicitor of Labor

CHRISTINE HERI  
Regional Solicitor

G. WILLIAM SCOTT  
Associate Solicitor  
for Plan Benefits Security

RUBEN CHAPA  
ERISA Counsel

GLENN M. LOOS  
Counsel for Litigation

USHA RENGACHARY  
Senior Trial Attorney

  
ERIC LUND  
Senior Trial Attorney

ELIZABETH ARUMILLI  
Senior Trial Attorney

STACEY E. ELIAS  
Senior Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
Washington, D.C.  
(202) 693-5633  
lund.eric@dol.gov

MARK ISHU  
Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
Chicago, IL

Attorneys for Plaintiff Secretary of Labor

**ROGER MUELLER**

---

**VERONICA MUELLER**

---

**FOR THE SECRETARY:**

Respectfully Submitted,

NICHOLAS C. GEALE  
Acting Solicitor of Labor

CHRISTINE HERI  
Regional Solicitor

G. WILLIAM SCOTT  
Associate Solicitor  
for Plan Benefits Security

RUBEN CHAPA  
ERISA Counsel

GLENN M. LOOS  
Counsel for Litigation

USHA RENGACHARY  
Senior Trial Attorney

ERIC LUND  
Senior Trial Attorney

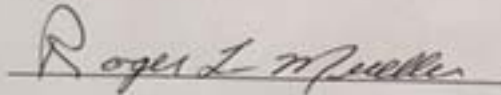
ELIZABETH ARUMILLI  
Senior Trial Attorney

STACEY E. ELIAS  
Senior Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
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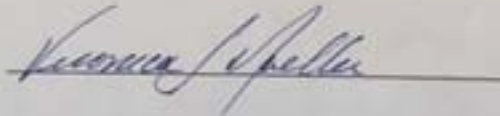
MARK ISHU  
Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
Chicago, IL

Attorneys for Plaintiff Secretary of Labor

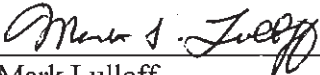
**ROGER MUELLER**



**VERONICA MUELLER**



**THE CAREY V. MUELLER (N/K/A VOLLMERS) 1996 TRUST, THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CAREY V. MUELLER (N/K/A VOLLMERS), THE CRAIG M. MUELLER 1996 TRUST, THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CRAIG M. MUELLER, THE CHRISTOPHER L. MUELLER 1996 TRUST, AND THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CHRISTOPHER L. MUELLER**

By:   
Mark Lulloff  
Not in his individual capacity but solely in  
his capacity as Trustee  
Title: Trustee

**ALPHA INVESTMENT CONSULTING GROUP, LLC**

By: \_\_\_\_\_  
Robert Bukowski  
Title: Managing Member

**OMNI RESOURCES, INC.**

By: \_\_\_\_\_  
Donald R. Cotey, Jr.  
Title: Chief Executive Officer

**THE OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST**

By: \_\_\_\_\_  
Kevin B. Kolb  
Not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Title: Trustee

**THE CAREY V. MUELLER (N/K/A VOLLMERS) 1996 TRUST, THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CAREY V. MUELLER (N/K/A VOLLMERS), THE CRAIG M. MUELLER 1996 TRUST, THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CRAIG M. MUELLER, THE CHRISTOPHER L. MUELLER 1996 TRUST, AND THE ROGER L. AND VERONICA S. MUELLER 1996 EXEMPTION TRUST F/B/O CHRISTOPHER L. MUELLER**

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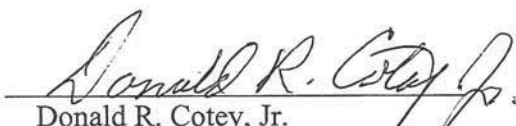
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**By:** \_\_\_\_\_  
Mark Lulloff  
Not in his individual capacity but solely in  
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**By:** \_\_\_\_\_  
Robert Bukowski  
Title: Managing Member

**OMNI RESOURCES, INC.**

**By:**   
Donald R. Cotey, Jr.  
Title: Chief Executive Officer

**THE OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST**

**By:** \_\_\_\_\_  
Kevin B. Kolb  
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By: \_\_\_\_\_  
Mark Lulloff  
Not in his individual capacity but solely in  
his capacity as Trustee  
Title: Trustee


**ALPHA INVESTMENT CONSULTING GROUP, LLC**

By: \_\_\_\_\_  
Robert Bukowski  
Title: Managing Member

**OMNI RESOURCES, INC.**

By: \_\_\_\_\_  
Donald R. Cotey, Jr.  
Title: Chief Executive Officer

**THE OMNI RESOURCES, INC. EMPLOYEE  
STOCK OWNERSHIP PLAN AND TRUST**

By:  \_\_\_\_\_  
Kevin B. Kolb  
Not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Title: Trustee



**Ex. A - ESOP Loan and Pledge Agreement**

**AMENDMENT TO ESOP LOAN AND PLEDGE AGREEMENT**

This Amendment to ESOP Loan and Pledge Agreement (this “Agreement”) is entered into this 15th day of December, 2017 by and between (a) GreatBanc Trust Company, not in its individual or corporate capacity but solely in the capacity as Trustee of the Omni Resources, Inc. Employee Stock Ownership Trust, (the “ESOP”); (b) Veronica S. Mueller and Mark Lulloff (not individually, but solely in his capacity as trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller) (collectively, the “Seller”); and (c) Omni Resources, Inc. (the “Company”). The spouse of Veronica S. Mueller (as seller) also enters into this Agreement to acknowledge his relinquishment of marital property rights.

The ESOP, the Seller and the Company entered into an ESOP Loan and Pledge Agreement dated as of December 30, 2008 (the “ESOP Loan and Pledge Agreement”). Under the terms of the ESOP Loan and Pledge Agreement, the Seller agreed to provide the Company a loan in the amount of \$13,765,000.00 (the “Company Loan”), as evidenced by a promissory note (the “Company Note”). Under the terms of the ESOP Loan and Pledge Agreement, the Company agreed to provide the ESOP a loan in the amount of \$13,765,000.00 (the “ESOP Loan”), as evidenced by a promissory Note (the “ESOP Note”).

Pursuant to the terms of the Consent Decree and Order in the litigation in the United States District Court for the Eastern District of Wisconsin, styled “*R. Alexander Acosta, Secretary of Labor v. Veronica Mueller, et al.*, 2:13-cv-1302-PP,” the parties wish to amend the ESOP Loan and Pledge Agreement in the following manner:

- 1) In accordance with Section 2.1 of the ESOP Loan and Pledge Agreement, payments of principal and interest on the ESOP Note shall be paid by the ESOP as set forth in the terms of the ESOP Note, as amended.
- 2) In accordance with Section 3.1 of the ESOP Loan and Pledge Agreement, payments of principal and interest on the Company Note shall be paid by the Company as set forth in the terms of the Company Note, as amended.
- 3) Notwithstanding the provisions herein and as outlined in the ESOP Note, as amended, there will be no acceleration of payments on the remaining amount owed on the ESOP Note except as permitted by the Consent Decree referenced above.
- 4) Notwithstanding the provisions herein and as outlined in the Company Note, as amended, there will be no acceleration of payments on the remaining amount owed on the Company Note except as permitted by the Consent Decree referenced above.

All other terms and conditions of the ESOP Loan and Pledge Agreement shall remain in effect.

SELLER:

---

Veronica S. Mueller

38482552

**AMENDMENT TO ESOP LOAN AND PLEDGE AGREEMENT**

This Amendment to ESOP Loan and Pledge Agreement (this "Agreement") is entered into this 15th day of December, 2017 by and between (a) GreatBanc Trust Company, not in its individual or corporate capacity but solely in the capacity as Trustee of the Omni Resources, Inc. Employee Stock Ownership Trust, (the "ESOP"); (b) Veronica S. Mueller and Mark Lulloff (not individually, but solely in his capacity as trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller) (collectively, the "Seller"); and (c) Omni Resources, Inc. (the "Company"). The spouse of Veronica S. Mueller (as seller) also enters into this Agreement to acknowledge his relinquishment of marital property rights.

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- 1) In accordance with Section 2.1 of the ESOP Loan and Pledge Agreement, payments of principal and interest on the ESOP Note shall be paid by the ESOP as set forth in the terms of the ESOP Note, as amended.
- 2) In accordance with Section 3.1 of the ESOP Loan and Pledge Agreement, payments of principal and interest on the Company Note shall be paid by the Company as set forth in the terms of the Company Note, as amended.
- 3) Notwithstanding the provisions herein and as outlined in the ESOP Note, as amended, there will be no acceleration of payments on the remaining amount owed on the ESOP Note except as permitted by the Consent Decree referenced above.
- 4) Notwithstanding the provisions herein and as outlined in the Company Note, as amended, there will be no acceleration of payments on the remaining amount owed on the Company Note except as permitted by the Consent Decree referenced above.

All other terms and conditions of the ESOP Loan and Pledge Agreement shall remain in effect.

SELLER:

  
Veronica S. Mueller

10402112

*Mark S. Lulloff*

Mark Lulloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP TRUST

By: \_\_\_\_\_  
Kevin B. Kolb, not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Its: Independent Trustee

COMPANY  
OMNI RESOURCES, INC.

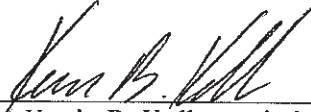
By: \_\_\_\_\_  
Brent Otto  
Title: Chief Financial Officer

As spouse of Veronica S. Mueller (Seller), Roger L. Mueller executes this Agreement, not as a party to the Agreement, in his individual capacity, but solely to acknowledge his relinquishment of any marital property rights regarding sale of the Shares.

\_\_\_\_\_  
Roger L. Mueller

\_\_\_\_\_  
Mark Luloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP TRUST

By:   
Kevin B. Kolb, not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Its: Independent Trustee

COMPANY  
OMNI RESOURCES, INC.

By: \_\_\_\_\_  
Brent Otto  
Title: Chief Financial Officer

As spouse of Veronica S. Mueller (Seller), Roger L. Mueller executes this Agreement, not as a party to the Agreement, in his individual capacity, but solely to acknowledge his relinquishment of any marital property rights regarding sale of the Shares.

\_\_\_\_\_  
Roger L. Mueller

Mark Lulloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP TRUST

By: \_\_\_\_\_  
Kevin B. Kolb, not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Its: Independent Trustee

COMPANY  
OMNI RESOURCES, INC.

By: Brent Otto  
Brent Otto  
Title: Chief Financial Officer

As spouse of Veronica S. Mueller (Seller), Roger L. Mueller executes this Agreement, not as a party to the Agreement, in his individual capacity, but solely to acknowledge his relinquishment of any marital property rights regarding sale of the Shares.

\_\_\_\_\_  
Roger L. Mueller

Mark Luloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

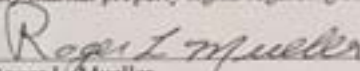
OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP TRUST

By: \_\_\_\_\_  
Kevin B. Kolb, not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company  
Its: Independent Trustee

COMPANY  
OMNI RESOURCES, INC.

By: \_\_\_\_\_  
Brent Otto  
Title: Chief Financial Officer

As spouse of Veronica S. Mueller (Seller), Roger L. Mueller executes this Agreement, not as a party to the Agreement, in his individual capacity, but solely to acknowledge his relinquishment of any marital property rights regarding sale of the Shares.

  
\_\_\_\_\_  
Roger L. Mueller

18482912

**Ex. B - Promissory Note 1 (Omni and Omni ESOP)**



**AMENDMENT #3 TO  
PROMISSORY NOTE**

December 15, 2017

On December 30, 2008, the Trustee of the Omni Resources, Inc. Employee Stock Ownership Trust ("Debtor"), promised to pay to the order of Omni Resources, Inc. ("Creditor"), at Creditor's business address or such other place as the legal holder hereof may from time to time appoint, the principal sum of Thirteen Million Seven Hundred Sixty-Five Thousand and no/100 Dollars (\$13,765,000.00) plus interest on the unpaid principal balance from time to time, on or before December 31, 2023, in terms set forth in writing. This written promise to pay is hereinafter referred to as the "ESOP Note."

On September 16, 2009, the parties amended the ESOP Note to make certain changes as set forth on such amendment. On March 31, 2010, the parties again amended the ESOP Note to provide for annual payments from the Debtor to the Creditor.

Pursuant to the terms of that certain Consent Decree and Order in the litigation in the United States District Court for the Eastern District of Wisconsin, styled "*R. Alexander Acosta, Secretary of Labor v. Veronica Mueller, et al.*, 2:13-cv-1302-PP," the parties wish to amend the ESOP Note in the following manner:

- 1) The outstanding principal balance on the ESOP Note as of December 15, 2017 shall be reduced by three million five hundred thousand dollars (\$3,500,000). Effective December 15, 2017, the outstanding principal balance on the ESOP Note is \$4,181,602.01.
- 2) The payment due under the ESOP Note on December 31, 2017 shall be in the amount of \$1,322,671.01, after which the remaining principal balance on the ESOP Note will be \$3,273,398.28.
- 3) Beginning with the payment due under the ESOP Note on December 31, 2018, payments shall be made in approximately equal annual installments over the remaining period of the ESOP Note (ending on December 31, 2023). Interest on the outstanding principal balance of the ESOP Note shall be determined from time to time in accordance with the ESOP Note, as amended.
- 4) Notwithstanding the provisions herein and as outlined in the ESOP Note, there will be no acceleration of payments on the remaining amount owed on the ESOP Note except as permitted by the Consent Decree and Order referenced above.

All other terms and conditions of the ESOP Note, as amended, shall remain in effect.

DEBTOR

OMNI RESOURCES, INC. EMPLOYEE STOCK OWNERSHIP TRUST

By: Kevin B. Kolb

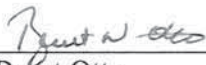
Kevin B. Kolb

Not in his individual capacity but solely  
as an authorized officer of GreatBanc Trust Company

Its: Independent Trustee

38302678

CREDITOR  
OMNI RESOURCES, INC.

By:   
Brent Otto  
Title: Chief Financial Officer

38302678

**Ex. C - Promissory Note 2 (Veronica Mueller and Defendant Trusts and Omni)**

**AMENDMENT #2 TO  
PROMISSORY NOTE**

December 15, 2017

On December 30, 2008, the undersigned Omni Resources, Inc. (“Debtor”), promised to pay to the order of Veronica S. Mueller and Sandy Swartzberg (the latter as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller and the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller) (collectively, “Creditor”), at Creditor’s residential address(es) or such other place as the legal holder hereof may from time to time appoint, the principal sum of Thirteen Million Seven Hundred Sixty-Five Thousand and no/100 Dollars (\$13,765,000.00) plus interest on the unpaid principal balance from time to time, on or before December 31, 2023, according to terms set forth in writing. This written promise to pay is hereinafter referred to as the “Omni Note.”

On September 16, 2009, the parties amended the Omni Note to make certain changes as set forth on such amendment.

Pursuant to the terms of the Consent Decree and Order in the litigation in the United States District Court for the Eastern District of Wisconsin, styled “*R. Alexander Acosta, Secretary of Labor v. Veronica Mueller, et al.*, 2:13-cv-1302-PP,” the parties wish to amend the Omni Note in the following manner:

- 1) The outstanding principal balance on the Omni Note as of December 15, 2017, shall be reduced by three million five hundred thousand dollars (\$3,500,000). Effective on December 15, 2017, after this reduction, the outstanding principal balance on the Omni Note is \$3,084,892.72.
- 2) Beginning with the quarterly payment due under the Omni Note on December 31, 2017, payments shall be made in approximately equal quarterly installments over the remaining period of the Omni Note (ending on December 31, 2023). Interest on the outstanding principal balance of the Omni Note shall be determined from time to time in accordance with the Omni Note, as amended.
- 3) Notwithstanding the provisions herein and as outlined in the Omni Note, there will be no acceleration of payments on the remaining amount owed on the Omni Note except to the extent permitted by the Consent Decree and Order referenced above.

All other terms and conditions of the Omni Note, as amended, shall remain in effect.

DEBTOR  
OMNI RESOURCES, INC.

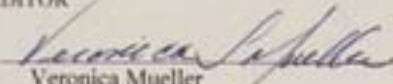
By: \_\_\_\_\_

Brent Otto

Title: Chief Financial Officer

38305857

CREDITOR

By:   
Veronica Mueller

By: \_\_\_\_\_  
Mark Lulloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

3810587

CREDITOR

By: \_\_\_\_\_  
Veronica Mueller

By: Mark J. Fiebig  
Mark Lulloff (not individually, but solely in his capacity as Trustee of the Carey V. Mueller (n/k/a Vollmers) 1996 Trust Dated 11/14/96, the Craig M. Mueller 1996 Trust Dated 11/14/96, the Christopher L. Mueller 1996 Trust Dated 11/14/96, the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Carey V. Mueller (n/k/a Vollmers), the Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Craig M. Mueller, and The Roger L. and Veronica S. Mueller 1996 Exemption Trust Dated 11/14/96 f/b/o Christopher L. Mueller)

**EXHIBIT D**

**AGREEMENT CONCERNING PROCESS REQUIREMENTS FOR  
EMPLOYEE STOCK OWNERSHIP PLAN TRANSACTIONS**

Alpha Investment Consulting Group, LLC (“Alpha”) agrees to apply the following policies and procedures whenever Alpha serves as trustee or other fiduciary of an employee stock ownership plan (“ESOP”) subject to Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”) that is purchasing or selling, is contemplating purchasing or selling, or receives an offer to purchase or sell, employer securities that are not publicly traded (“Transaction”).

**A. Selection and Use of valuation advisor - General.** Alpha shall do the following:

1. Prudently investigate the valuation advisor's qualifications;
2. Take reasonable steps to determine that the valuation advisor receives complete, accurate, and current information necessary to value the plan sponsor's securities;
3. Contemporaneously document the steps Alpha took – including who at Alpha took those steps – to determine that the valuation advisor received complete, accurate, and current information and to ensure Alpha understood the advice of the valuation advisor; and
4. Prudently determine that its reliance on the valuation advisor's advice is reasonable before entering into any Transaction in reliance on the advice.

**B. Selection of valuation advisor - Conflicts of Interest.** Alpha shall not use a valuation advisor for a Transaction that has previously performed work for any party to the Transaction other than the ESOP or its trustee, including but not limited to a

"preliminary valuation" for or on behalf of the plan sponsor (as distinguished from the ESOP), a committee of employees of the plan sponsor, any counterparty to the ESOP involved in the Transaction, or any other entity that is structuring the Transaction (such as an investment bank). Alpha shall not use a valuation advisor for a Transaction that has a familial or corporate relationship (such as a parent-subsidary relationship) to any of the aforementioned persons or entities. Alpha shall obtain written confirmation from the valuation advisor selected that none of the above-referenced relations exist.

**C. Selection of valuation advisor - Process.**

1. In selecting a valuation advisor for a Transaction, Alpha shall prepare a written analysis addressing the following topics:
  - a. The reason for selecting the particular valuation advisor;
  - b. A list of all the valuation advisors that Alpha considered;
  - c. A discussion of the qualifications of the valuation advisors that Alpha considered;
  - d. A list of at least three references checked and discussion of the references' views on the valuation advisor;
  - e. Whether the valuation advisor was the subject of prior criminal, civil, or regulatory proceedings/investigations related to its previous valuation work and the outcome of such proceedings or investigations; and
  - f. A full explanation of the basis for concluding that Alpha's selection of the valuation advisor was prudent.
2. If Alpha selects a valuation advisor from a roster of valuation advisors that it has previously used, Alpha need not undertake a-new the analysis outlined above if the following conditions are satisfied:



- a. Alpha previously performed the analysis described above in connection with a prior engagement of the valuation advisor;
- b. The previous analysis was completed within the prior calendar year immediately preceding Alpha's selection of the valuation advisor;
- c. Alpha documents in writing that it previously performed the analysis, the date(s) on which Alpha performed the analysis and the results of the analysis;
- d. Alpha's files contain the valuation advisor's confirmation that the information it previously provided pursuant to item (C)(1)(e) above is still accurate.

**D. Oversight of valuation advisor – Required Analysis.** Prior to approving a Transaction, Alpha shall request that the valuation advisor document the following items in its Valuation Report<sup>1</sup> and, if the valuation advisor does not so document, Alpha shall prepare or require the preparation of supplemental documentation of the following items to the extent they were not documented by the valuation advisor:

- 1. Use of Projections: Conduct reasonable inquiry into projections given by individual(s) responsible for providing any projections reflected in the Valuation Report, such reasonable inquiry shall include:
  - a. Whether those individuals have or reasonably may be determined to have any conflicts of interest in regard to the ESOP including but not limited to any interest in the purchase or sale of the plan sponsor's stock being considered;
  - b. Whether those individuals serve as agents or employees of persons with such conflicts, and the precise nature of any such conflicts; and

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<sup>1</sup> All references to the term "Valuation Report" refer to the valuation advisor's report on which Alpha relies prior to the Transaction in deciding whether to approve or reject the Transaction.

c. How Alpha and the valuation advisor considered such conflicts in determining the value of the plan sponsor's securities.

2. An opinion as to the reasonableness of any projections considered in connection with the Transaction that explains in writing why and to what extent the projections are or are not reasonable. At a minimum, the analysis shall consider how the projections compare to, and whether they are reasonable in light of, the plan sponsor's five-year historical averages and/or medians and the five-year historical averages and/or medians of a group of comparable public companies (if any exist) for the following metrics, unless five-year data are unavailable (in which case, the analysis shall use averages extending as far back as possible):

- a. Return on assets;
- b. Return on equity;
- c. EBIT and EBITDA margins;
- d. Ratio of capital expenditures to sales;
- e. Revenue growth rate; and
- f. Ratio of free cash flows (of the enterprise) to sales.

3. If it is determined that any of these metrics should be disregarded in assessing the reasonableness of the projections, document in writing both the calculations of the metric (unless calculation is impossible) and the basis for the conclusion that the metric should be disregarded. The use of additional metrics to evaluate the reasonableness of projections other than those listed in section (D) (2) (a)-(f) above is not precluded as long as the appropriateness of those metrics is documented in writing.

4. If comparable companies are used for any part of a valuation - whether as part of a guideline company method of valuation, to gauge the reasonableness

of projections, or for any other purpose, explain in writing the basis for concluding that the comparable companies are actually comparable to the plan sponsor being valued, including on the basis of size, customer concentration (if such information is publicly available), and volatility of earnings. If a guideline company analysis is performed, explain in writing any discounts applied to the multiples selected, and if no discount is applied to any given multiple, explain in detail the reasons.

5. If the plan sponsor is projected to meet or exceed its historical performance or the historical performance of the group of comparable public companies on any of the metrics described in paragraph (D) (2) above, document in writing all material assumptions supporting such projections and why those assumptions are reasonable.

6. To the extent that Alpha or its valuation advisor considers any of the projections provided by the plan sponsor to be unreasonable, document in writing all adjustments made to the projections.

7. If adjustments are applied to the plan sponsor's historical or projected financial metrics in a valuation analysis, determine and explain in writing why such adjustments are reasonable.

8. Describe the risks facing the plan sponsor that could cause the plan sponsor's financial performance to fall materially below the projections relied upon by the valuation advisor.

9. If greater weight is assigned to some valuation methods than to others, explain in writing the weighting assigned to each valuation method and the basis for the weightings assigned.

10. Consider, as appropriate, how the ESOP document provisions regarding stock distributions, the duration of the ESOP loan, and the age and tenure of the

ESOP participants, may affect the plan sponsor's prospective repurchase obligation, the prudence of the Transaction or the fair market value of the stock.

11. Analyze and document in writing:

- a. Whether the plan sponsor will be able to service the debt taken on in connection with the Transaction (including the ability to service the debt in the event that the plan sponsor fails to meet the projections relied upon in valuing the stock);
- b. Whether the Transaction is fair to the ESOP participants from a financial point of view;
- c. Whether the Transaction is fair to the ESOP participants relative to all the other parties to the Transaction;
- d. Whether the terms of the financing of the Transaction are market-based, commercially reasonable, and in the best interests of the ESOP participants;
- e. Whether both seller financing and financial institution financing was considered and whether the loans sought from financial institutions were within the amounts the financial institution was willing to loan;
- f. Whether the terms of any loan the ESOP receives in connection with the Transaction are as favorable as the terms of any loans between the plan sponsor and any executive of the plan sponsor made within the two years preceding the Transaction; and
- g. The financial impact of the Transaction on the plan sponsor, and document in writing the factors considered in such analysis and conclusions drawn therefrom.

12. Explain any material differences between the present valuation and the most recent prior valuation of the plan sponsor performed within the past 24 months by

any valuation firm for any purpose (if any exist).

**E. Financial Statements.**

1. Alpha shall request that the plan sponsor provide Alpha and its valuation advisor with unqualified audited financial statements for the preceding five fiscal years, unless unqualified audited financial statements extending back five years are unavailable (in which case, Alpha shall request unqualified audited financial statements extending as far back as possible).

2. If the plan sponsor provides to Alpha or its valuation advisor unaudited or qualified audited financial statements for any of the preceding five fiscal years (including interim financial statements that update or supplement the last available unqualified audited financial statement), Alpha shall determine whether it is prudent to rely on these financial statements notwithstanding the risk posed by using unaudited or qualified audited financial statements.

3. If Alpha proceeds with the Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last available unqualified audited financial statement), Alpha shall document the basis for Alpha's belief that it is prudent to rely on the financial statements, and explain in writing how Alpha accounted for any risk posed by using financial statements other than unqualified audited financial statements. If Alpha does not believe that it can reasonably conclude that it would be prudent to rely on the financial statements used in the Valuation Report, Alpha shall not proceed with the Transaction. While Alpha need not audit the financial statements themselves, it must carefully consider the reliability of those statements in the manner set forth herein.

4. Alpha may approve a Transaction notwithstanding the lack of

unqualified audited financial statements (including interim financial statements that update or supplement the last unqualified audited financial statement) only if the stock purchase agreement includes a provision requiring the selling or purchasing shareholder(s) who is(are) an officer, manager, or member of the board of directors of the plan sponsor to compensate the ESOP for any losses or other harms caused by or related to financial statements that did not accurately reflect the plan sponsor's financial condition.

**F. Fiduciary Review Process - General.** In connection with any Transaction, Alpha agrees to do the following:

1. Take reasonable steps necessary to determine the prudence of relying on the plan sponsor's financial statements provided to the valuation advisor, as set out more fully in paragraph E above;

2. Critically assess the reasonableness of all projections (particularly management projections), and if the Valuation Report does not document in writing the reasonableness of such projections to Alpha's satisfaction, Alpha shall prepare supplemental documentation explaining why and to what extent the projections are or are not reasonable;

3. If Alpha believes the projections are unreasonable, Alpha shall ask the valuation advisor to account for the unreasonable projections in its valuation, request new and reasonable projections from management, or reject the Transaction. Alpha must document the basis for its decision.

4. Ensure that the information the valuation advisor obtains from the plan sponsor and purchasing or selling shareholder(s) includes the following, to the extent it exists:

a. All prior attempts by the purchasing or selling shareholder(s)

to purchase or sell their stock in the plan sponsor within the proceeding two (2) years;

- b. All prior defaults within the past five years by the plan sponsor under any lending or financing agreement;
- c. All management letters provided to the plan sponsor by its accountants within the past five years; and
- d. All information related to a valuation of the plan sponsor provided to the Internal Revenue Service within the past five years.

**G. Fiduciary Review Process - Documentation of Valuation Analysis.**

Alpha shall document in writing its analysis of the Valuation Report relating to a Transaction. Alpha's documentation shall specifically address each of the following topics and shall include Alpha's conclusions regarding the Valuation Report's treatment of each topic and explain in writing the basis for its conclusions:

- 1. Marketability discounts;
- 2. Minority interests and control premiums;
- 3. Projections of the plan sponsor's future financial performance and the reasonableness or unreasonableness of such projections, including, if applicable, the basis for assuming that the plan sponsor's future financial performance will meet or exceed historical performance or the expected performance of the relevant industry generally;
- 4. Analysis of the plan sponsor's strengths and weaknesses, which may include, as appropriate, personnel, plant and equipment, capacity, research and development, marketing strategy, business planning, financial condition, and any other factors that reasonably could be expected to affect future performance;
- 5. Specific discount rates chosen, including whether any weighted average cost of capital used by the valuation advisor was based on the plan sponsor's actual

capital structure or that of the relevant industry and why the chosen capital structure weighting was reasonable;

6. All adjustments to the plan sponsor's historical financial statements;
7. Consistency of the general economic and industry-specific narrative in the Valuation Report with the quantitative aspects of the Valuation Report;
8. Reliability and timeliness of the historical financial data considered, including a discussion of whether the financial statements used by the valuation advisor were the subject of unqualified audit opinions, and if not, why it would nevertheless be prudent to rely on them;
9. The comparability of the companies chosen as part of any analysis based on the plan sponsor's comparable companies;
10. Material assumptions underlying the Valuation Report and all testing and analysis of these assumptions;
11. Where the Valuation Report made choices between averages, medians, and outliers (e.g., in determining the multiple(s) used under the guideline company method of valuation), the reasons for the choices;
12. Treatment of corporate debt;
13. Whether the methodologies employed were standard and accepted methodologies and the basis for any departures from standard and accepted methodologies;
14. The plan sponsor's ability to service all debt or liabilities to be taken on in connection with the Transaction;
15. The Transaction's reasonably foreseeable risks as of the date of the Transaction; and
16. All other material considerations or variables that could have a



significant effect on the price of the plan sponsor's securities.

**H. Fiduciary Review Process - Reliance on Valuation Report.**

1. Alpha, through its employees who are primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, shall do the following, and document in writing its work with respect to each:

- a. Read and understand the Valuation Report;
- b. Identify and question the valuation report's underlying assumptions;
- c. Make reasonable inquiry as to whether the information in the Valuation Report is materially consistent with information in Alpha's possession;
- d. Analyze whether the Valuation Report's conclusions are consistent with the data and analysis; and
- e. Analyze whether the Valuation Report is internally consistent in material aspects.

2. Alpha shall document in writing the following: (a) the identities of its employees who were primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction; (b) all material points on which such employee disagreed and why; and (c) whether all such employees concluded or expressed the belief prior to Alpha's approval of the Transaction that the Valuation Report's conclusions were inconsistent with the data and analysis therein or that the Valuation Report was internally inconsistent in material aspects.

3. If the employees who were primarily responsible for the Transaction,

including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, believe that the Valuation Report's conclusions are not consistent with the data and analysis or that the Valuation Report is internally inconsistent in material respects, Alpha shall not proceed with the Transaction.

4. Alpha shall independently determine whether a Fairness Opinion is required and, if so, shall not proceed without one.

**I. Preservation of Documents.** In connection with any Transaction approved by Alpha, Alpha will create a Transaction folder and preserve for at least six (6) years the following:

1. The full name, business address, business telephone number and email address at the time of Alpha's consideration of the Transaction of each employee who was primarily responsible for the Transaction, including any employee who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, and any other Alpha employee who made any material decision(s) on behalf of Alpha in connection with the Transaction;

2. All relevant notes and records created by Alpha in connection with its consideration of the Transaction, including all documentation required by this Consent Order and Judgment;

3. The vote (yes or no) of each employee of Alpha who voted on the proposed transaction and a signed certification by each voting employee, in his or her representative capacity, and all other Alpha employees who made any material decision(s) on behalf of Alpha in connection with the proposed Transaction that they have read the valuation report, identified its underlying assumptions, and considered the reasonableness of the valuation report's assumptions and conclusions;

4. All relevant documents Alpha and the employees identified in paragraph (I)(1) above relied on in making the decisions;

5. All relevant electronic or other written communications Alpha and the employees identified in paragraph (I)(1) above had with service providers (including any valuation advisor), the plan sponsor, any non-ESOP counterparties, and any advisors retained by the plan sponsor or non-ESOP counterparties;

**J. Debt and Fair Market Value.** The principal amount of the debt financing the Transaction, irrespective of the interest rate, cannot exceed the plan sponsor's securities' fair market value. Accordingly, Alpha shall not cause an ESOP to engage in a leveraged stock purchase Transaction in which the principal amount of the debt financing the Transaction exceeds the fair market value of the plan sponsor's securities acquired with that debt, irrespective of the interest rate or other terms of the debt used to finance the Transaction.

**K. Control.** If Alpha approves a Transaction in which the ESOP cedes any degree of control to which it would otherwise be entitled based on its ownership interest, including but not limited to the unencumbered ability to vote its shares (for example, by electing members of the board of directors), Alpha must document all consideration received in exchange for such limitation on the ESOP's control (or how the limitation on control is otherwise reflected in the purchase price) and why it is fair to the ESOP. If Alpha approves a Transaction in which the ESOP pays a control premium, Alpha must document why it believes that the ESOP is obtaining voting control and control in fact and identify all limitations on such control as well as the specific amount of consideration the ESOP received for such limitation(s).

**L. Consideration of Claw-Back.** In evaluating a proposed Transaction, Alpha

shall consider whether it is appropriate to request a claw-back arrangement or other purchase price adjustment(s) to protect the ESOP against the possibility of adverse consequences in the event of significant corporate events or changed circumstances. Alpha shall document in writing its consideration of the appropriateness of a claw-back or other purchase price adjustment(s).

**M. Other Professionals.** Alpha may, consistent with its fiduciary responsibilities under ERISA, employ, or delegate fiduciary authority to qualified professional service providers to aid Alpha in the exercise of its powers, duties, and responsibilities in the Transaction as long as it is prudent to do so.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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MARTIN J. WALSH, Secretary of Labor,  
U.S. Department of Labor,

Civil No. 17-CV-04540 (SRN/ECW)

Plaintiff,

vs.

RELIANCE TRUST COMPANY,  
STEVEN R. CARLSEN, PAUL A.  
LILLYBLAD, KELLI WATSON, and  
KURT MANUFACTURING  
COMPANY, INC., EMPLOYEE STOCK  
OWNERSHIP PLAN,

Defendants.

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**CONSENT ORDER AND JUDGMENT**

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Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, et seq., filed a complaint against defendants Reliance Trust Company (“Reliance”) and Steven R. Carlsen, Paul A. Lillyblad, and Kelli Watson (the “Defendant Directors”) alleging breaches of their fiduciary responsibilities under ERISA §§ 404, 406, and 410, with respect to the Kurt Manufacturing Company, Inc. (“Kurt”) Employee Stock Ownership Plan and Trust (“ESOP”). (Reliance and the Defendant Directors are hereinafter collectively referred to as the “Defendants.” The Secretary, the Defendants, and the ESOP are hereinafter collectively referred to as the “Parties.”)





7. The Defendants shall not seek or accept reimbursement from the ESOP or from Kurt for any fees or expense incurred in the defense of this action or any related investigation.

8. The Defendant Directors shall not participate in the Stock Appreciation Rights (“SARs”) plan, which was previously awarded to the Defendant Directors. The SARs are currently valued at \$254,299.21 based on the \$40.88 per share value of Kurt stock as determined by Chartwell as of October 31, 2020.

9. The Defendant Directors shall not receive any future contributions from Kurt to the Supplemental Executive Retirement Plan (“SERP”) as of July 1, 2021.

10. Within 30 days of the entry of this Judgment, the Defendant Directors shall cause Kurt to rescind, and shall accept and agree to the rescission of, the “Employment and Non-Competition Agreements” which were effective as of October 5, 2011. As a result, the Defendant Directors shall not receive any compensation after terminating employment with Kurt (the “Termination Severance”), which is valued at, at least, \$921,234.03

11. If there are any other claims brought against the Defendant Directors by participants of the ESOP (not including Gretchen Rode and William Kuban and their beneficiaries) not relating to the Transaction, they maintain the right to seek contribution or indemnification for those private actions in accordance with the ESOP’s governing documents, state law, and ERISA.

12. Within thirty days of the Court’s entry of the Consent Order and Judgment, the Defendant Directors shall repay the ESOP or Kurt any funds advanced for any fees or expenses that the Defendant Directors have incurred in the defense of this action or any



investigation related to this action. The Defendant Directors shall provide the Secretary with satisfactory proof of the payment by submitting documentation to the EBSA Regional Director at 2300 Main Street, Suite 1100, Kansas City, MO 64108 within seven days of making such payment.

13. Each of the Defendant Directors agree that they will not receive any increase in the value of their ESOP accounts resulting from (a) the Defendant Directors' Settlement Amount or the Reliance Settlement Amount or (b) the agreements made pursuant to paragraphs 1 through 10 of this Consent Order and Judgment.

14. Defendant Carlsen has agreed to be and hereby is permanently enjoined from serving or acting as a fiduciary or service provider with respect to employee benefit plans subject to ERISA.

15. Defendants Watson and Lillyblad have agreed to be and hereby are permanently enjoined from serving or acting as a fiduciary or service provider with respect to the ESOP.

16. Within sixty days of the entry of this Consent Order and Judgment, the Defendant Directors shall move the Kurt Board of Directors to vote, and the Defendant Directors shall vote, to direct GreatBanc to replace Chartwell Business Valuation with an independent valuation firm (excluding Stout Risius Ross) chosen by GreatBanc. The Defendant Directors shall provide the Secretary with satisfactory proof of this vote by submitting documentation to the EBSA Regional Director within seven days of the vote.

17. Within ninety days of the entry of this Consent Order and Judgment, the Defendant Directors shall either:



a. Reliance waives its right to a separate notice of assessment of the penalty under ERISA § 502(*l*), 29 U.S.C. § 1132(*l*), and the notice of assessment and service requirement of 29 C.F.R. § 2570.83.

b. Reliance agrees to pay \$840,909.09 pursuant to ERISA § 502(*l*), 29 U.S.C. § 1132(*l*), within 30 days of its payment of the Reliance Settlement Amount to the ESOP pursuant to paragraph 1 of this Consent Order and Judgment unless Reliance requests a waiver pursuant to ERISA § 502(*l*)(2)(A).

c. Reliance shall have the right to request a waiver of the ERISA § 502(*l*) penalty in its entirety in accordance with ERISA § 502(*l*)(3) and, if it requests such a waiver, shall comply with the requirements of 29 C.F.R. § 2570.85 in requesting its waiver. Reliance agrees to waive any other defenses or appeals if its waiver is denied or if it fails to seek said waiver within the time set forth in this paragraph. This document or a copy thereof can be used as evidence of its waiver of further defenses or appeals pursuant to ERISA § 502(*l*).

d. The Secretary shall notify Reliance within 90 days of receiving the information identified in paragraph 19(c) of his decision to grant or deny a waiver (in full or part). If the Secretary grants Reliance a waiver, but only agrees to reduce the originally assessed ERISA § 502(*l*) penalty identified in paragraph 19 above, the Secretary shall accept the reduced amount as full satisfaction of the total assessed penalty identified in paragraph 19 above. Reliance shall pay the reduced ERISA § 502(*l*) penalty under this paragraph within 30 days of the Secretary's determination.

e. If the Secretary denies Reliance's petition for a waiver in its entirety, Reliance shall pay the full ERISA § 502(l) penalty identified in paragraph 19 above within 30 days of the Secretary's determination identified in paragraph 19(d) above, by sending payment to U.S. Department of Labor, ERISA Civil Penalty, P.O. Box 71360, Philadelphia, PA 19176-1360. The payment referenced in this paragraph shall be made payable to the United States Department of Labor, will reference EBSA Case No. 60-107230(48), and shall be sent to the address in paragraph 21(a) below. If Reliance wishes to remit a check by commercial express courier, it agrees to contact Soroosh Nikouei at the United States Department of Labor (Nikouei.Soroosh@dol.gov or 202-693-8486) and follow his instructions.

20. Reliance represents that it is not currently acting as a discretionary trustee for any employee stock ownership plan in connection with a transaction involving the purchase or sale of employer securities that are not publicly traded. Reliance further represents with respect to such matters for which it may in the future act as such a discretionary trustee, it reaffirms its agreement to follow the process described in "Agreement Concerning Fiduciary Engagements and Process Requirements for Employer Stock Transactions" contained in Exhibit A to the settlement agreement resolving *R. Alexander Acosta, United States Secretary of Labor v. Reliance Trust Company, et al.*, Civil Action No. 1:19-cv-02725 in the U.S. District Court for the Northern District of Illinois, Eastern Division ("Process Agreement").

21. Upon payment of the Defendant Directors' Settlement Amount described in paragraph 2, as well as the agreements contained in paragraphs 8 through 10 above, the

Secretary has determined the Defendant Directors shall be and hereby are assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$431,915.12. For purposes of calculating the penalty, the Secretary and the Defendant Directors agree the "applicable recovery amount" is \$2,159,575.68. The Secretary has agreed to compromise and reduce the amount of the penalty to \$215,957.56. Therefore, the Secretary hereby does and will accept as full satisfaction of the assessed penalty the amount of \$215,957.56. The Defendant Directors waive their right to a separate notice of assessment of the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), the notice of assessment and service requirement of 29 C.F.R. § 2570.83, and their right to seek any further reductions of or relief from the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l). The Defendant Directors shall pay, or cause their insurers to pay, the penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), within thirty calendar days of payment of the Defendant Directors' Settlement Amount described in paragraph 2 above, as follows:

- a. The Defendant Directors or their insurer shall send payment to:

U.S. Department of Labor  
ERISA Civil Penalty  
P.O. Box 71360  
Philadelphia, PA 19176-1360

- b. The payment referenced in this paragraph shall be made payable to the United States Department of Labor and will reference EBSA Case No. 60-107230(48). If the Defendant Directors wish to remit a check by commercial express courier, they agree to contact Soroosh Nikouei at the United States Department of Labor (Niknouei.Soroosh@dol.gov or 202-693-8486) and follow his instructions.

22. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

23. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

24. This Consent Order and Judgment represents a complete settlement and release with prejudice of all the Secretary's claims asserted in this action against the Defendants, with the exception of any potential civil money penalties assessed under ERISA § 502(l), 29 U.S.C. § 1132(l), which are being assessed and collected separately pursuant to the terms set forth above in paragraphs 19 and 21 of this Consent Order and Judgment. Upon payment of the civil money penalties described in this Consent Order and Judgment, the Secretary's claims relating to payment of such penalties shall also be settled and released.

25. This Consent Order and Judgment shall not be binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and the Defendants.

Dated: January 5, 2022

s/Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States District Judge



**THE DEFENDANT DIRECTORS**

Dated: December 29, 2021

/s Paul A. Lillyblad  
Paul A. Lillyblad

Dated: December 29, 2021

/s Steven R. Carlsen  
Steven R. Carlsen

Dated: December 29, 2021

/s Kelli Watson  
Kelli Watson

**COUNSEL FOR THE DEFENDANT  
DIRECTORS**

Dated: December 29, 2021

By /s Jonathan P. Norrie  
Alan I. Silver (MN #101023)  
Jonathan P. Norrie (MN #347309)  
Maria P. Brekke (MN #399946)  
Bassford Remele, A Professional Association  
100 South 5<sup>th</sup> Street, Suite 1500  
Minneapolis, Minnesota 55402-1254  
Telephone: (612) 333-3000  
Facsimile: (612) 333-8829  
Email: asilver@bassford.com  
jnorrie@bassford.com  
mbrekke@bassford.com



**GREATBANC TRUST COMPANY, IN  
ITS CAPACITY AS TRUSTEE OF THE  
KURT MANUFACTURING, INC.  
EMPLOYEE STOCK OWNERSHIP  
PLAN**

Dated: December 28, 2021

---

By: /s Julie Govreau  
Julie Govreau  
Senior Vice President & General Counsel  
GreatBanc Trust Company  
801 Warrenville Rd., #500  
Lisle, IL 60532  
Email: [jgovreau@greatbanctrust.com](mailto:jgovreau@greatbanctrust.com)

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## ATTACHMENT A

The formula for allocation of the net settlement proceeds shall be as follows:

$$G \div (R + E + D) \times A = T$$

Where:

G = The amount of a participant's allocated shares plus any shares diversified by the participant, or the amount of a departed (who has received a complete distribution of their ESOP benefit) participant's distributed shares plus any shares diversified by the departed participant prior to a complete distribution

R = Total shares distributed to departed and retired employees

E = Currently allocated shares

A = Settlement amount

D = Total shares diversified (pursuant to section 8.5 "ESOP Diversification Elections" of the ESOP plan document) by participants from October 5, 2011, to present

T = Cash money paid from the settlement to a departed or current participant

Kurt, as plan sponsor of the ESOP, shall be responsible for taking appropriate actions to locate each such participant or beneficiary of the ESOP entitled to an allocation of the Reliance Settlement Amount or the Defendant Directors' Settlement Amount. Appropriate actions include complying with the guidance in EBSA Missing Participants – Best Practices for Pension Plans (Jan. 12, 2021) available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans>.

Funds of a participant who cannot be located after following said Best Practices shall be placed in an individual account in the missing participant's name in the ESOP's trust account, unless their account balance is less than \$1,000, in which case their funds may be transferred to either (A) an interest-bearing federally insured bank or savings association account in the name of the participant, or (B) the unclaimed property fund of the State in which the participant's or beneficiary's last known address is located. In the event that the ESOP is terminated or there is a required distribution and the missing participant has still not been located, in accordance with 29 C.F.R. § 2550.404a-3 the missing participant's funds shall be rolled over to an individual retirement account or annuity ("IRA") in the name of the missing participant, unless their account balance is less than \$1,000, in which case their funds may be transferred to either (A) an interest-bearing federally insured bank or savings association account in the name of the participant, or (B) the unclaimed property fund of the State in which the participant's or beneficiary's last known address is located.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

James Smith and Jerry Honse, on behalf of themselves and all others similarly situated, and on behalf of the Triad Manufacturing, Inc. Employee Stock Ownership Plan,	)	
	)	
Plaintiffs,	)	Civil Action No.: 1:20-cv-02350-RAG
	)	
	)	JUDGE RONALD A. GUZMAN
v.	)	
	)	MAGISTRATE JUDGE YOUNG B. KIM
	)	
GreatBanc Trust Company, the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

---

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF  
SETTLEMENT CLASS**

Plaintiffs James Smith and Jerry Honse, individually and as Class Representatives (“Plaintiffs” or “Class Representatives”), have moved, pursuant to Federal Rule of Civil Procedure 23, for an order preliminarily approving the Settlement of this Action and for certification of a Settlement Class, in accordance with the Class Action Settlement Agreement dated April 19, 2023 (the “Settlement Agreement”), which sets forth the terms and conditions for a proposed settlement

of this action. The Court, having read and considered the Settlement Agreement, the Motion, and the exhibits thereto, HEREBY ORDERS that:

**1. Definitions.** This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Settlement Agreement.

**2. Settlement.** Plaintiffs, on behalf of themselves and all members of the Class, and Defendants GreatBanc Trust Company (“GreatBanc”), the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (collectively the “Defendants”), have negotiated a proposed settlement to this action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Releasees (as defined in the Settlement Agreement).

**3. Jurisdiction.** This Court has jurisdiction over the subject matter of this Action and over all parties to this Action. Venue in this Court is proper.

**4. Preliminary Approval.** The Court hereby preliminarily approves the Settlement Agreement as fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing described below. The Court finds on a preliminary basis that the Settlement Agreement falls within the range of reasonableness and was the product of informed, good-faith, arm’s-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval.

**5. Settlement Class.** The Court certifies the following Settlement Class: all

participants in the Triad ESOP from December 17, 2015 through December 31, 2022 who vested under the terms of the Plan, and those participants' beneficiaries, excluding the individual Triad Defendants and the legal representatives, successors, and assigns of any such excluded persons.

**6. Class Representatives and Class Counsel.** The Court appoints Plaintiffs James Smith and Jerry Honse as Class Representatives, and the law firms Cohen Milstein Sellers & Toll PLLC and Feinberg, Jackson, Worthman & Wasow LLP as Class Counsel.

**7. Final Approval Hearing.** A hearing (the "Fairness Hearing") shall be held before this Court, on \_\_\_\_\_, 2023, at \_\_\_\_\_ p.m., at the United States District Court for the Northern District of Illinois, in the courtroom of Judge Ronald A. Guzman, Everett McKinley Dirksen U.S. Courthouse, 219 Dearborn Street, Courtroom 1801, Chicago, IL 60604. At the Fairness Hearing, the Court will address any written objections and oral statements from Class Members and will determine, among other things: (i) whether the proposed Settlement of this Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Final Order should be entered; (iii) whether the Parties should be bound by the Releases set forth in Section XI of the Settlement Agreement; and (iv) any amount of fees and expenses that should be awarded to Class Counsel and any service award to the Class Representatives for their representation of the Class. The Parties shall include the date of the Fairness Hearing in the Class Notice to be mailed to the Class.

**8. Class Notice.** The Court approves the form, substance, and requirements of the proposed Class Notice, attached to this Proposed Order. The Court further finds that the proposed Class Notice meets the requirements of Rule 23 and due process. The Court further finds that sending the Class Notice to all Class Members by U.S. Mail and/or electronic mail based on the

records of the ESOP's data is the best notice practicable under the circumstances and is reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of this action, and to apprise Class Members of their right to object to the proposed Settlement, Class Counsel's request for attorneys' fees and expenses, Class Representative service awards, and provides adequate notice to Class Members of their right to appear at the Fairness Hearing. The Court further finds that the Class Notice constitutes valid and sufficient notice to all persons entitled to notice of the proposed Class Action Settlement.

**9. Class Notice.** The Court directs that notice will be sent to all members of the proposed Settlement Class as set forth herein:

- a. Within fourteen (14) days after this Order (the "Notice Date"), the Settlement Administrator shall cause the Class Notice to be disseminated to the Class Members by first class U.S. mail and/or electronic mail, and shall post the Class Notice and the operative First Amended Complaint in this action, as well as contact information for the Settlement Administrator and Class Counsel, on a website for the Class;
- b. the Class Notice shall be substantially in the form of Exhibit 1 attached to the Proposed Order (though the Settlement Administrator shall have discretion to format the Class Notice in a reasonable manner to minimize mailing or administration costs);
- c. following the issuance of the Class Notice, the Settlement Administrator shall provide Counsel with written confirmation of the mailing; and
- d. the Settlement Administrator shall otherwise carry out its duties as set forth in the Settlement Agreement.

**10. Objections.** Any Class Member may object to the proposed Settlement, or any aspect of it, and may object to attorneys' fees, expenses, and service awards, by filing a written objection with the Clerk of Court, U.S. District Court for the Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 Dearborn Street, Chicago, IL 60604, on or before twenty-one (21) calendar days before the Fairness Hearing. A copy of the objection must also be mailed to Class Counsel and Defendants' Counsel. To be valid, the objection must set forth, in clear and concise terms: (a) the case name and number (*Smith v. GreatBanc Trust Company*, No. 1:20-cv-02350-RAG); (b) the name, address, and telephone number of the objector objecting and, if represented by counsel, of his or her counsel; (c) the complete basis for objection; (d) a statement of whether the objector intends to appear at the Fairness Hearing, either with or without counsel; (e) a statement of whether the objection applies only to the objector, a specific subset of the class, or the entire class, and (f) copies of all supporting documents. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, and to the award of attorneys' fees and expenses to Class Counsel and the payment of service awards to the Class Representatives for their representation of the Class, unless otherwise ordered by the Court. Responses to objections shall be filed ten (10) days before the Fairness Hearing.

**11. Appearance of Objectors at Fairness Hearing.** Any Class Member may appear, in person or by counsel, at the Fairness Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector: (a) files with the Clerk of the Court a notice of intention to appear at the Fairness Hearing by the objection deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on Class

Counsel and Defense Counsel at least twenty-one (21) days before the Fairness Hearing.

The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector will present to the Court in connection with the Fairness Hearing. Any Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines set forth herein shall be deemed to have waived his or her right to appear at the Fairness Hearing.

**12. Motion for Final Approval.** The motion in support of final approval of the Settlement shall be filed and served no later than sixty (60) calendar days prior to the Fairness Hearing and any responsive papers shall be filed and served no later than twenty-one (21) calendar days prior to the Fairness Hearing.

**13. Motion for Fees, Expenses, and Awards.** Class Counsel's motion for attorneys' fees and expenses and Class Representative service awards shall be filed and served no later than sixty (60) calendar days prior to the Fairness Hearing, any Opposition to such motion will be filed within seven (7) days of the motion, and any Reply filed within fourteen (14) days of the motion. Objections by Class Members to the motion for attorneys' fees and expenses and Class Representative service awards shall be filed and served no later than twenty-one (21) calendar days prior to the Fairness Hearing. The Court's approval or disapproval of the Settlement, and the effectiveness of the Settlement Agreement, shall not be contingent on the Court's approval or disapproval of the requested attorneys' fees, expenses, or service awards. At or after the Fairness Hearing, the Court shall determine whether any application for attorneys' fees and expenses, and any service awards to the Class Representatives for their representation of the Class, should be approved.

**14. Releases.** If the Settlement is finally approved, the parties shall be bound by the Releases set forth in the Settlement Agreement.



**15. Injunction.** Pending the Fairness Hearing, the Court hereby enjoins any Class Member from instituting, asserting, or prosecuting against any Defendant, in any pending or future action in any federal or state court or any other forum, any Released Claim that the Member currently has or may have in the future.

**16. Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Settlement Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in this action. In no event shall this Order, the fact that a settlement was reached, the Settlement Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in this action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Settlement Agreement.

**17. Stay of Proceedings.** All proceedings in this action are stayed until further Order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

**18. No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

**19. Continuing Jurisdiction.** This Court retains jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement Agreement and the Settlement.

Event	Timing
Settlement Administrator mails Class Notice	Within fourteen (14) days after entry of this Preliminary Approval Order
Motion for Final Approval of Settlement	No later than sixty days (60) days before the Fairness Hearing set for _____
Motion for of attorneys' fees and expenses, and Service Awards for Named Plaintiffs	No later than sixty (60) days before the Fairness Hearing set for _____
Independent Fiduciary provides written notification of its determination	No later than forty-five (45) days after the entry of this Preliminary Approval Order
Objections to the Settlement; notice of intention to appear at Fairness Hearing	Must be received by the Court on or before twenty-one (21) days before the Fairness Hearing
Response to Objections and Settlement Administrator's Notice Declaration	No later than ten (10) days before the Fairness Hearing
Fairness Hearing	No earlier than July 29, 2023 (CAFA requires final approval may not be entered earlier than 90 days after the mailing of CAFA notice)

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
 THE HON. RONALD A. GUZMAN  
 U.S. DISTRICT COURT JUDGE

# **EXHIBIT 1**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**Triad Manufacturing Inc. ESOP Litigation**  
***Smith v. GreatBanc Tr. Co., No. 1:20-cv-02350-RAG (N.D. Ill.)***

**Please read this notice carefully and completely.**

**If you are a member of the Class, the Settlement will affect your legal rights.**

**A federal court has authorized this notice. This is not a solicitation from a lawyer. You have not been sued. You do not need to submit a claim form.**

The parties to this class action lawsuit have reached a proposed Settlement which, if approved, would resolve a lawsuit concerning the Triad Manufacturing, Inc. (“Triad”) Employee Stock Ownership Plan (“ESOP”). You received this notice because you are believed to be a Class Member because you held vested Triad stock in the Triad ESOP between December 17, 2015 and December 31, 2022 or are a beneficiary of someone who did.

This notice summarizes the settlement terms and provides information concerning your rights as a Class Member. The complete Settlement Agreement (“Settlement”) and other information about this lawsuit, are available at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com) or by contacting the settlement administrator at [info@TriadESOPsettlement.com](mailto:info@TriadESOPsettlement.com) or xxx-xxx-xxxx.

**SUMMARY OF YOUR LEGAL RIGHTS & OPTIONS**

**OPTION #1: DO NOTHING.** You can do nothing and still receive the benefits of the Settlement, if it is approved. If you have any Triad stock still in your ESOP account, you will automatically receive Settlement proceeds through an increase in value of the Triad stock in your account.

If you have sold some or all of your stock, you will receive Settlement proceeds through a payment mailed directly to you, if the Settlement is approved.

**OPTION #2: OBJECT.** If you are not satisfied with the terms of the proposed Settlement, then you or your attorney may inform the Court by sending a letter or written statement by \_\_\_\_\_. You or your attorney may also attend the Fairness Hearing on \_\_\_\_ to explain your concerns to the Court.

## BASIC INFORMATION

### 1. What is a Class Action?

In a class action, one or more individuals file a lawsuit on behalf of a class of many other individuals who have similar claims. Here, the Court appointed as Class Representatives James Smith and Jerry Honse, who are two former employees of Triad who held Triad stock in their ESOP accounts.

### 2. Who is a Member of the Class?

The Class is defined as: "All participants in the Triad ESOP from December 17, 2015 through December 31, 2022 who vested under the terms of the Plan, and those participants' beneficiaries, excluding the individual Triad Defendants and the legal representatives, successors, and assigns of any such excluded persons."

Because this Lawsuit was certified as a mandatory ("non-opt-out") class action, you cannot exclude yourself from the Class or the benefits of the Settlement.

## THE LAWSUIT AND THE SETTLEMENT

### 3. What Is This Lawsuit About?

This Lawsuit was filed on behalf of participants in the Triad ESOP and their beneficiaries (the "Lawsuit"). The Lawsuit asserts claims against GreatBanc Trust Company, the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust (collectively the "Defendants") and has been litigated in the U.S. District Court for the Eastern Division of the Northern District of Illinois and the Court of Appeals for the Seventh Circuit since April of 2020.

The Lawsuit asserts that Defendants violated a federal statute, the Employee Retirement Income Security Act of 1974 ("ERISA"), in connection with the ESOP's purchase of Triad stock in 2015 for approximately \$106 million (the "ESOP Transaction"). Plaintiffs allege that the ESOP paid more than fair market value for Triad stock. Specifically, the Lawsuit alleges that some of the Defendants were ESOP fiduciaries who violated their duties under ERISA § 404, 29 U.S.C. § 1104, ERISA § 405, 29 U.S.C. § 1105 ERISA § 406, 29 U.S.C. § 1106, and ERISA § 410, 29 U.S.C. § 1110 in connection with the ESOP purchase of Triad stock. The Lawsuit also asserts claims against various Selling Shareholders for participating in the ERISA violations when they sold their Triad stock to the ESOP.

The Defendants deny all the allegations in the Lawsuit, deny any wrongdoing regarding the ESOP Transaction, and have vigorously defended the Lawsuit.

### 4. Why is there a Settlement?

The Court did not decide in favor of any party. Instead, both sides agreed to a settlement. That way, both sides avoided the cost and risk of a trial, and Class Members will get the value of the Settlement now, rather than continuing with the litigation where there is a chance the Class would receive nothing (i.e., if Plaintiffs ultimately lose the case). The Class Representatives and Class Counsel think the Settlement is in the best interest of all Class Members.

## 5. Why Did I Get This Notice?

You received this Notice because, according to the ESOP's records, you are believed to be a Member of the Class. The Court has ordered that this Notice be sent to all Class Members to provide you with information about the Settlement and to inform you of your right to object to the Settlement and/or the motion for attorneys' fees, expenses, and service awards to the Class Representatives, which are described further below.

## THE SETTLEMENT RECOVERY

## 6. What does the Settlement provide?

If the Settlement is approved, the Class will receive the following benefits:

- (1) The Selling Shareholders will forgive \$15 million of debt that Triad owes them for the ESOP transaction. This will increase the value of the Triad stock owned by the ESOP by an estimated \$9,735,600.
- (2) The strike price of the Warrants held by the Selling Shareholders will be increased from \$2 to \$9.45. This offsets the value the Selling Shareholders would otherwise get from the increase value of Triad stock created from the Settlement.
- (3) The Selling Shareholders will give up 150,000 Warrants they currently own. This will increase the value of Triad's stock—in addition to the benefit from (1) above—by an estimated \$2,340,000.
- (4) Defendants will pay Class Members who have sold Triad stock on or before December 31, 2022 \$8.20 for each share sold.
- (5) Defendants will pay a total of \$2,500,000 ("Cash Payment") into an escrow account established for the payment of court-awarded attorneys' fees, expenses, settlement administration costs, and service awards.

The total value the Settlement consideration listed above is conservatively estimated to be \$14.8 million. These and other terms of the Settlement are set forth in the Class Action Settlement Agreement dated \_\_\_\_\_, 2023 ("Settlement Agreement") and are summarized in this notice. The complete Settlement Agreement is available at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com) or from Class Counsel.

## 7. How will I get my Settlement benefits?

Under the proposed Settlement, if you have an active ESOP account, the value of the Triad shares held in your account will increase, thereby increasing the value of the retirement savings in your account. If you have sold Triad stock once held in your ESOP account, you will receive a direct payment of \$8.20 for each share you sold. If the Settlement is approved, all Class Member will automatically receive these benefits. You do not need to complete a claims form.

## THE LAWYERS REPRESENTING YOU

## 8. Who represents the Class?

The Court has appointed lawyers from the law firms Cohen Milstein Sellers & Toll PLLC and Feinberg Jackson Worthman & Wasow LLP to represent you and other Class Members. These lawyers are called Class Counsel.

You will not be charged for these lawyers' services. If you want to be represented by your own lawyer, you may hire one at your own expense. Information about Class Counsel and the work they did in prosecuting this case and negotiating the proposed Settlement is available at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com).

## 9. How will the lawyers be paid?

From the beginning of the case, which was filed in April 2020, to the present, Class Counsel have not received

any payment for their services in prosecuting the case or obtaining the Settlement. Nor have they been reimbursed for any litigation expenses spent prosecuting the case. Class Counsel will therefore apply to the Court for an award of attorneys' fees and the reimbursement of the litigation expenses. The total amount of attorneys' fees requested will not exceed \$\_\_\_\_, and the total requested litigation expense reimbursement will not exceed \$\_\_\_\_. The Class Representatives will seek service awards of \$15,000 each in recognition of the time and effort they expended on behalf of the Class, such as sitting for deposition and producing documents to Defendants.

You may object to the requested attorneys' fees, expenses, and service awards through the objection procedures described below in Question 12. All requested attorneys' fees, expense reimbursements, and service awards must be reviewed and approved by the Court, and the Court may decide to award less than the requested amount. The Court will consider any objections before deciding the amount of any awards for attorneys' fees and expenses or service awards, all of which will be paid from a \$2.5 million fund from Defendants as described in paragraph 5 of Question 6 above. In all events, Class Members will not have to pay for any potential awards of attorneys' fees, expense reimbursements, or service awards, which will come from the \$2.5 million fund created by Defendants. However, any amount left in that fund after the distribution of court awarded amounts and settlement administration expenses will be deposited into the ESOP and distributed to ESOP participants with active accounts on a *pro rata* basis (based on the proportional number of shares they have compared to all allocated shares)

All court documents related to the motion for attorneys' fees and reimbursement of expenses will be posted to [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com) by \_\_\_\_\_.

## INDEPENDENT FIDUCIARY

### 9. Will the Settlement be reviewed by anyone other than the Court?

Yes. The Settlement Agreement requires an experienced Independent Fiduciary to review the Settlement on behalf of the ESOP and Class Members. An Independent Fiduciary is an impartial third party that specializes in ERISA issues and will review the proposed Settlement, including the terms of the Settlement, the value of the Settlement benefits described in Question 6 above, and whether the requested attorneys' fees, expense reimbursements, and service awards are fair and reasonable in the opinion of the Independent Fiduciary. However, the ultimate determination of whether the Settlement terms and attorneys' fees, expense reimbursements, and service awards are fair and reasonable is solely in the discretion of Judge Guzman. The Independent Fiduciary will submit a written report with its findings and its conclusion concerning whether the Settlement is fair and reasonable. If the Independent Fiduciary does not agree with any aspect of the Settlement, it will object in writing and explain the basis of that objection. The parties may attempt to resolve the concerns of the Independent Fiduciary if it objects. The Independent Fiduciary's written report will be filed with the Court on or before the deadline to object so that the written report may be considered by Class Members and Judge Guzman. That report will be posted here: [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com).

## YOUR RIGHTS AND OPTIONS

### 10. What happens if you do nothing at all?

If you do nothing, and the Judge approves the Settlement, you will receive the benefits of the Settlement as described in Question 6 above. The particular benefits you receive depends on whether you have sold any Triad stock that was allocated to your ESOP account. If you have an active ESOP account that holds Triad stock, then the value of the Triad stock in your ESOP account will increase. If you sold any or all of the Triad stock in your ESOP account before 12/31/2022, then you will receive a settlement payment of \$8.20 per share based on the number of Triad shares sold.

**11. May I opt out of the Settlement?**

No. If the Court approves the Settlement, you will be bound by it and will receive whatever Settlement recovery you are entitled to under its terms. You cannot exclude yourself from the Settlement, but you may tell Judge Guzman what you don't like about the Settlement by filing an objection on or before [---]. (See Question 12 below.)

**12. How do I object to the Settlement?**

You can submit written comments or an objection that explains what you do not like Settlement. You may also object to the requested attorneys' fees, expenses, and service awards, but it must be submitted on or before [---]. Your objection must be in writing, and you must provide the following information to ensure that Judge Guzman receives your objection and can properly consider it:

1. Include the case name and number for this Action: *Smith v. Greatbanc Trust Company*, No. 1:20-cv-02350;
2. Your full name, current address, current telephone number, and email address. If you are represented by a lawyer, you need to also provide your lawyer's name, current address, current telephone number, and email address;
3. Explanation of what you do not like about the Settlement or the requested attorneys' fees, expenses, and service awards and why; and
4. Copies of any documents that you believe support your objection.

Again, it is very important that you file your objection on or before [---]. Failure to submit your objection to the Court and Counsel for the Parties (identified below) by this deadline shall constitute a waiver of your right to object. In other words, you cannot object to the Settlement or the requested attorneys' fees, expenses, and service awards after the deadline, \_\_\_\_.

On or before [---], you must file or mail your objection to the Court at the Courthouse (address below). In addition, you must email and/or mail copies of your objection to all Counsel (emails and addresses below):

<p><b>To Clerk of Court:</b>                  United States District Court for the Northern District of Illinois                  219 S. Dearborn Street                  Chicago, IL 60604</p>	<p><b>To Class Counsel:</b>                  Michelle C. Yau                  Cohen Milstein Sellers &amp; Toll, PLLC                  1100 New York Ave. NW                  Suite 500 West                  Washington, DC 20005  <a href="mailto:myau@cohenmilstein.com">myau@cohenmilstein.com</a></p> <p>Daniel M. Feinberg                  Feinberg, Jackson, Worthman &amp; Wasow LLP                  2030 Addison Street, Suite 500                  Berkeley, CA 94704  <a href="mailto:dan@feinbergjackson.com">dan@feinbergjackson.com</a></p>	<p><b>To GreatBanc's Counsel:</b>                  Mark A. Nebrig                  Moore &amp; Van Allen PLLC                  100 N. Tryon St.                  Suite 4700                  Charlotte, NC 28202-4003  <a href="mailto:marknebrig@mvalaw.com">marknebrig@mvalaw.com</a></p> <p><b>To the Triad Defendants and Selling Shareholders' Counsel:</b>                  Benjamin Paul Fryer                  Ford &amp; Harrison LLP                  6000 Fairview Road, Suite 1415                  Charlotte, NC 28210  <a href="mailto:BFryer@fordharrison.com">BFryer@fordharrison.com</a></p>
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### **13. When and where will the Court hold a hearing on the fairness of the Settlement?**

The Court will hold a Fairness Hearing on \_\_\_ at \_\_\_ a.m., before Judge Ronald A. Guzman in the United States District Court for the Northern District of Illinois. The Fairness Hearing will occur at the Everett McKinley Dirksen U.S. Courthouse, 219 Dearborn Street, Courtroom 1801, Chicago, IL 60604. At the Fairness Hearing, the Court will listen to any objections, comments, and arguments concerning the fairness of the proposed Settlement and the requested attorneys' fees and expenses, and service awards.

You do not need to attend the Fairness Hearing. But you are welcome to attend the Hearing to observe or to voice your views about the Settlement or the requested attorneys' fees, expenses, and service awards. If you plan to speak at the hearing, you must file or send a Notice of Intention to Appear at the [---] Fairness Hearing on or before [---], and include copies of any papers, exhibits, or other evidence you will present to the Court. You must include the name of this Action (*Smith v. GreatBanc Trust Company*, No. 1:20-cv-02350), your full name, current address, current telephone number, and email address. If you will have a lawyer with you at the hearing, please also provide your lawyer's name, current address, current telephone number, and email address. You must send your Notice of Intention to Appear at the Fairness Hearing (with the information described in this paragraph) to the Court and all Counsel at the addresses provided in Question 12 above.

Note: The date and time of the Fairness Hearing may change, but any changes will be posted at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com).

### **14. May I speak at the hearing?**

Yes, by sending a Notice of Intention to Appear at the Fairness Hearing you are telling the Court that you would like to speak at the hearing. To do so, you must send a "Notice of Intention to Appear at the \_\_ Fairness Hearing." Again, your Notice of Intention to Appear at the Fairness Hearing must be postmarked no later than \_\_\_[deadline to object], and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the addresses provided in Question 12 above.

### **15. When will I get my Settlement benefits?**

If the Judge approves the Settlement after the Fairness Hearing, it is still possible that someone appeals the approval of the Settlement. If that happens, an appeals court will review whether it agrees that the Settlement is fair and reasonable. Appeals take several months and sometimes more than a year to be resolved. Please be patient. If no one appeals the Judge's approval of the Settlement, Class Members will receive the benefits described in Question 6 approximately 45 days after approval is granted. This means that payments to Class Members who sold Triad stock from their ESOP accounts, the increase in the reduction of \$15 million of Triad debt, and the elimination of 150,000 Warrant terms (which will increase the value/price of Triad stock held in active ESOP accounts) will occur approximately 45 days after the Final Approval Order is entered. The value of the increased share price in Triad stock will be reflected on the annual ESOP statements for the 2023 plan year sent to Class Members with active accounts.

## 16. What is the effect of Final Approval of the Settlement?

If the Court finds that the Settlement is fair and reasonable, a final order and judgment dismissing the case will be entered in the Action. Shortly after the Settlement becomes final, the loan reduction and warrant revisions will be effectuated and the payments to Class Members who sold Triad stock on or before 12/31/2022 will be made. All of the Court's orders will apply to you and legally bind you, including the release of claims outlined in the Settlement Agreement, which can be found at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com).

If the Settlement is approved, no Settlement Class Member will be permitted to continue to assert the Released Claims in any other litigation against the Released Parties. If you do not like any aspects of the Settlement Agreement or the requested attorneys' fees and costs, you may file/send an objection the Court and Counsel as described in Question 12 above.

If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached. In other words, the increase in Triad stock price and the payments for Triad stock sold by Class Members will **not** occur. If the Settlement is not approved and the case resumes, there is no assurance that Settlement Class members will recover more than what is provided under the Settlement, or anything at all.

## 17. Where can I get additional information?

This notice provides only a summary of information about the Settlement. For more detailed information, you may can review the Settlement Agreement and all other court documents filed in connection with the proposed Settlement at [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com). You can also get more information by calling the Settlement Administrator toll free at xxx-xxx-xxxx. The Settlement Agreement and all other pleadings and papers filed in the case are also available for inspection and copying during regular business hours at the office of the Clerk of Court, located at 219 S. Dearborn Street Chicago, IL 60604.

Please do not contact the Court or Triad Manufacturing with questions about the Settlement. If you have questions, you can call xxx-xxx-xxxx, send an email with your questions to [info@TriadESOPsettlement.com](mailto:info@TriadESOPsettlement.com) or visit [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com) for more information.

## 18. What if my address or other information has changed or changes?

It is your responsibility to inform the Settlement Administrator of your updated address or other information. You may do so by email to: [info@TriadESOPsettlement.com](mailto:info@TriadESOPsettlement.com) or by U.S. Mail to the following mailing address: Triad ESOP Settlement [---]