

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CIVIL ACTION NO. 8:20-CV-325-T-35AEP

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN DAVISON,
BARRY M. RYBICKI,
EQUIALT LLC,
EQUIALT FUND, LLC,
EQUIALT FUND II, LLC,
EQUIALT FUND II, LLC,
EA SIP, LLC,

Defendants, and

128 E. DAVIS BLVD, LLC
310 78TH AVE, LLC
551 3D AVE S, LLC
604 WEST AZEELE, LLC
2101 W. CYPRESS, LLC,
2112 W. KENNEDY BLVD, LLC
5123 E. BROADWAY AVE, LLC
BLUE WATRS TI, LLC
BNAZ, LLC
BR SUPPORT SERVERCES, LLC
BUNGALOWS TI, LLC
CAPRI HAVEN, LLC
EA NY, LLC
EQUIALT 519 3RD AVE S., LLC,
MCDONALD REVOCABLE LIVING TRUST,
SILVER SANDS TI, LLC
TB OLDEST HOUSE EST. 1842, LLC

Relief Defendants

**NOTICE OF FILING JOINT DECLARATION OF ADAM M. MOSKOWITZ,
ANDREW S. FRIEDMAN, AND JEFFREY R. SONN IN SUPPORT OF
INVESTOR PLAINTIFFS' MOTION FOR CONFIRMATION OF
UNIMPEDED RIGHT TO PROSECUTE INVESTOR CLAIMS**

Investor Plaintiffs hereby give notice of filing the Joint Declaration of Adam M. Moskowitz, Andrew S. Friedman, and Jeffrey R. Sonn in Support of Investor Plaintiffs' Motion for Confirmation of Unimpeded Right to Prosecute Investor Claims attached as **Exhibit A**.

Dated: July 22, 2020

Respectfully submitted,

By: s/ Adam M. Moskowitz

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed July 22, 2020 with the Court via CM/ECF system, which will send notification of such filing to all attorneys of record.

By: /s/ Adam M. Moskowitz
ADAM M. MOSKOWITZ
Florida Bar No. 984280

Exhibit A

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**JOINT DECLARATION OF ADAM M. MOSKOWITZ, ANDREW S. FRIEDMAN, AND
JEFFREY R. SONN IN SUPPORT OF INVESTOR PLAINTIFFS' MOTION FOR
CONFIRMATION OF UNIMPEDED RIGHT TO PROSECUTE INVESTOR CLAIMS**

We, Adam M. Moskowitz, Andrew S. Friedman, and Jeffrey R. Sonn (collectively, “Class Counsel”), hereby declare as follows:

1. I, Adam M. Moskowitz, am an attorney duly admitted to practice law in the state of Florida and have been admitted to practice before this Court. I am the founding partner of The Moskowitz Law Firm PLLC. My firm is located in Coral Gables, Florida. I have personal, first-hand knowledge of the matters set forth herein.

2. I, Andrew S. Friedman, am an attorney duly admitted to practice law in the state of Arizona and am applying to be admitted to practice before this Court *pro hac vice*. I am a partner at Bonnett Fairbourn Friedman & Balint, PC. My firm is located in Phoenix, Arizona. I have personal, first-hand knowledge of the matters set forth herein.

3. I, Jeffrey R. Sonn, am an attorney duly admitted to practice law in the state of Florida and have been admitted to practice before this Court. I am the founding partner of Sonn Law Group. My firm is located in Aventura, Florida. I have personal, first-hand knowledge of the matters set forth herein.

CLASS COUNSEL

4. Class Counsel are partners at three law firms that have vast experience litigating class actions on behalf of investors. Copies of the resumes for these law firms are attached as **Exhibit A**.

A. Adam M. Moskowitz

5. For more than 25 years, Adam Moskowitz has successfully litigated significant class action and complex commercial cases involving the rights of consumers, investors, and businesses, and has served as co-lead counsel in several major securities fraud class actions.

6. Mr. Moskowitz successfully represented a diverse group of over 84 plaintiffs seeking recovery of over \$225 million in investor losses resulting from a multi-billion-dollar structured settlement Scott Rothstein Ponzi scheme. Adam litigated this case for over 3 years in state court, federal court and federal bankruptcy courts. This nationally publicized case focused on Toronto Dominion Bank's (TD Bank) role in facilitating Rothstein's criminal enterprise and asserted novel claims that the Bank willfully aided and abetted the fraud. After lengthy and complex litigation against lawyers, banks, and other professionals, the matter was resolved through settlement resulting in one of the highest percentage recoveries for victims ever entangled in a Ponzi scheme.

7. Most recently, Mr. Moskowitz was appointed Co-Lead Counsel for a nationwide class of thousands of investors against various principals, accountants, lawyers and other professionals in *In re 1st Global Capital*, representing investors in both state and federal district and bankruptcy court. Mr. Moskowitz and his team recovered millions of dollars in proceeds for the damaged investors.

8. Adam has received numerous awards for his results including the "Most Effective Lawyer Award" for his work in litigating and resolving numerous nationwide force-placed insurance cases. Mr. Moskowitz filed one of the first class action lawsuits regarding these practices and has since spearheaded class action litigation in over 32 nationwide class actions brought against the largest banks or mortgage servicers and the force-placed insurers across the country, reaching 30 settlements to date totaling over \$4.2 billion dollars for the proposed nationwide classes of over 5.3 million homeowners. Adam has also served a Co-Lead Counsel in several large MDLs, including *In re: Managed Care Litigation*, MDL No. 1334. Through this litigation before Judge Moreno, plaintiffs were able to revise the manner in which managed care is conducted with

physicians throughout the country, and obtained almost a billion dollars in monetary relief. To date, this is the only certified nationwide RICO class action to be upheld by the Eleventh Circuit Court of Appeal.

B. Andrew S. Friedman

9. Over the past 35 years, Andrew Friedman has spent the vast majority of his career litigating class action cases, serving as lead or co-lead counsel in many major securities fraud class actions.

10. Of particular significance here, Mr. Friedman served as co-lead class counsel in *Jack Grant and Marjorie Grant, et al. v. Baptist Foundation of Arizona, Inc., et al.*, Maricopa County (Arizona) Superior Court, Case No.CV 99-19093, (“*Baptist Foundation*”) a securities fraud class action alleging claims against attorneys and auditors arising from the failed Ponzi scheme operated by the Arizona Baptist Foundation. The *Baptist Foundation* class action alleged, among other things, that Arthur Anderson LLP, (as independent auditor) and various lawyers aided and abetted the Ponzi scheme. As co-lead counsel for the investor class members, Mr. Friedman worked closely with counsel for the unsecured creditors committee, which had filed claims against Arthur Anderson on behalf of the bankruptcy estate. In fact, co-lead counsel for the class members also served as co-counsel for the unsecured creditors committee in the trial against Arthur Anderson. Class counsel also coordinated the prosecution with ongoing regulatory proceedings litigated by the Arizona Banking Department. Through these coordinated prosecutions, the *Baptist Foundation* cases culminated in a settlement under which Arthur Anderson paid \$88 million for distribution to the State of Arizona and the Baptist Foundation class members. Arthur Anderson formally dissolved shortly after the Baptist Foundation settlement was finalized.

11. Mr. Friedman also served as co-lead counsel for investors in *Robert Facciola, et al., v. Greenberg Traurig, LLP*, et al., U.S. District Court, District of Arizona, Case No. 2:10-cv-01025-FJM, (“*Mortgages Ltd.*”) a securities fraud class action alleging claims under the Arizona securities laws against two national law firms (Greenberg Traurig LLP and Quarles & Brady) and auditors arising from the financial collapse of Mortgages, Ltd., a hard money lender. Once again, the *Mortgages Ltd.* class action was litigated in coordination with ongoing bankruptcy proceedings. Similar to the role of the Lawyer Defendants in this case, the Greenberg Traurig and Quarles & Brady firms had provided securities compliance advice to the defunct entities, including preparation of allegedly misleading Private Placement Memorandums. After class certification was granted and with pending motions for summary judgment *sub judice* the class action resulted in a settlement with the Greenberg Traurig law firm totaling \$61million and a second settlement with the Quarles & Brady firm totaling \$26.5 million.

12. In yet another notable case, Mr. Friedman served as lead counsel for the investors in *Gordon Noble, et. al. v. Greenberg Traurig LLP, et. al.*, Alameda County (California) Superior Court No. RG 11-593201 (“*RE Loans*”). The *RE Loans* class action arises out of the financial collapse of R.E. Loans, LLC and The Mortgage Fund ’08 LLC (“MF08”). At the time of the respective bankruptcies, RE Loans investors suffered principal and accrued interest losses of over \$790 million, and the MF08 investors suffered principal and accrued interest losses of over \$90 million. The Plaintiffs in the *RE Loans* class action asserted claims under the California securities laws and common law aiding and abetting claims against the Greenberg Traurig law firm and also against Wells Fargo Bank. The Greenberg Traurig firm had represented the debtor entities prior to their collapse, providing securities compliance advice and preparing securities offering materials. Mr. Friedman worked cooperatively with counsel for the Liquidating Trustee appointed in the

companion bankruptcy proceedings, arranging for the voluntary waiver of the attorney-client privilege that would have otherwise precluded discovery of critically important evidence. Ultimately, the Greenberg Traurig firm paid \$70 million and Wells Fargo paid \$10 million to the investor class members in separate class action settlements.

C. Jeffrey R. Sonn

13. Over the past 32 years, Jeffrey Sonn has spent the majority of his career representing thousands of individual and institutional investors and court-appointed receivers in Ponzi scheme cases and securities fraud actions in state and federal courts, class actions, and arbitrations. Mr. Sonn is the author of *Ponzi Schemes—Picking Up the Pieces from a Fallen House of Cards*, 755 PLI/Corp 443 (2009), cited by, *In re Petters Co.*, 455 B.R. 166, 177 n.20 (8th Cir. 2011) and *In re Marroquin*, 441 BR 586 n.3 (NDOH 2010). Mr. Sonn has represented federal court appointed Receivers in Ponzi scheme cases, including in a \$350 million SEC Receivership (Michael Goldberg as Receiver for *Worldwide Entertainment vs. Malik*, 2008 WL 2717076 (SDFL 2008)) and a \$50 million Ponzi (as lead counsel in *Katz vs. MRT Holdings*, 2008 WL 4725284 (SD FL 2010), obtained a \$50 million settlement (2009 WL 10668555), and later served as counsel for Receiver James Sallah (*Sallah vs. Worldwide Clearing*, 860 F. Supp 2d. 1329 (SDFL 2011); 2012 WL 399209 (SDFL 2012); 2012 WL 13168395 (SDFL 2012)). Mr. Sonn is a director of the Public Investors Advocate Bar Association.

14. Mr. Sonn served as co-lead counsel for investors in *Terrance Wright vs. Pinnacle Plus Capital* (2019-018039, Miami Dade County Court), a \$270 million Ponzi Scheme, and in that capacity, jointly prosecuted claims with the special counsel for the debtor against a prominent law firm and an accounting firm for aiding and abetting, resulting in a multimillion dollar settlement, approved by the bankruptcy court. (*In re: 1 Global Capital*, Case No 18-19121-RBR at DE1169

(S.D. Fla. 2019)). Mr. Sonn presently serves on the Executive Committee for Lead Class Action counsel in a \$1 Billion Ponzi claim against Comerica Bank alleging aiding and abetting. *In re Woodbridge Invs. Litig.*, 2018-cv-00103-DMG-MRW (CDCA 2018). Mr. Sonn also successfully defended an investment advisory firm in a \$127 million Ponzi, alleging aiding and abetting fraud. *Cordova vs. Lehman Brothers*, 526 F. Supp. 1305 (S.D. Fla. 2007).

FACTUAL BACKGROUND

15. On February 26, 2020, several of the Investor Plaintiffs filed *Steven J. Rubinstein, et. al. v. EquiAlt, Inc.*, Case No. 8:20-cv-00448-WFG-TGW (“*Rubinstein*”), a putative class action asserting claims against the Corporate Defendants, the Relief Defendants and numerous unlicensed securities dealers who sold the EquiAlt Securities.

16. The *Rubinstein* complaint acknowledged the existence of the SEC Action and alleged that the TRO does not by its terms “bar any person from proceeding against EquiAlt, the Funds, or the EquiAlt Principals.” Counsel for the *Rubinstein* Plaintiffs was not aware, however, that the Receivership Order entered by this Court did, in fact, enjoin litigation against the Corporate Defendants and the Relief Defendants.

17. When provided with a copy of the Receivership Order, counsel for the *Rubinstein* Plaintiffs assured the Receiver that the Plaintiffs would voluntarily stay all proceedings against the Corporate Defendants and Relief Defendants. At the same time, we advised the Receiver that the *Rubinstein* action was necessary to toll the statutes of limitations applicable to the claims against the defendants, and that to protect the interests of the investors it was imperative to assert and preserve claims against additional sales agents and other parties who aided and abetted the alleged Ponzi scheme.

18. Counsel for the *Rubinstein* Plaintiffs proposed to work cooperatively with the Receiver with respect to the continued prosecution of claims against the sales agents and proposed to join forces with the Receiver for the benefit of the investors and the Receivership. The Receiver declined this overture and, instead, took the position that the TRO and Receivership Order bar the prosecution of all claims alleged in *Rubinstein*, including claims against the third-party sales agents.

19. Over the ensuing months, counsel for the *Rubinstein* Plaintiffs attempted without success to fashion an acceptable and mutually advantageous arrangement with the Receiver to advance all of the stakeholders' respective interests. *Id.* Rather than doing so, however, the Receiver asked the Court to stay *Rubinstein* in its entirety. The *Rubinstein* Plaintiffs opposed the requested stay, filed an amended complaint dropping the Corporate Defendants and the Relief Defendants, and filed notices voluntarily dismissing various sales agent Defendants as tolling agreements were obtained to preserve the claims of the Plaintiffs and potential class members against the agents.

20. The *Rubinstein* action was ultimately dismissed without prejudice on June 10, 2020 with the filing of the Notice of Voluntary Dismissal of Case Without Prejudice. The *Rubinstein* case was dismissed to preserve resources after we determined that the sales agents lack the financial capacity to compensate the investors for their losses, the agents were willing to provide relevant information and documents without the need for formal discovery and the primary sales agents signed tolling agreements preserving the investors' claims against them.

21. On July 9, 2020, counsel for the Receiver sent an email to counsel for the Investor Plaintiffs stating that “[i]t has come to the Receiver’s attention that your firm is considering filing claims against the law firms that provided counsel to EquiAlt” and incorrectly asserting that “these

are the Receiver's claims to bring." *See* Email from Kacy Donlon to Jeffrey Sonn dated July 9, 2020, attached as **Exhibit B**. Counsel for the Receiver concluded the email threatening that that "these are the Receiver's claims and will [sic] take necessary action to protect them." *Id.*

22. Counsel for the Investor Plaintiffs responded to the Receiver on July 20, 2020, advising that: (1) the Investor Plaintiffs would soon file a class action complaint in this Court asserting claims that belong exclusively to the investors; (2) the Receiver does not hold or have standing to bring those claims; (3) the TRO and Receivership Order do not preclude the Investor Plaintiffs from prosecuting the investor-owned claims; and (4) the Receiver is improperly acting to prejudice the investors by attempting to preclude the Investor Plaintiffs from initiating and prosecuting the investor claims that will become time-barred if this class action were not filed. *See* Email from Adam Moskowitz to Kacy Donlon dated July 20, 2020, attached as **Exhibit C**. The Investor Plaintiffs once again urged the Receiver to proceed in a cooperative rather than antagonistic fashion. *Id.*

23. Based on a careful review of the TRO entered by this Court on February 14, 2020, counsel for Plaintiffs concluded that nothing in the TRO is directed at the Investor Plaintiffs, let alone purports to preclude the assertion of the Investor Claims against the Lawyer Defendants by the Investor Plaintiffs.

24. The Investor Plaintiffs in the Investor Class Action assert no claims against the Receiver, the Corporate Defendants, or the Relief Defendants, nor is the Receiver a necessary party to the Investor Class Action.

25. The Lawyer Defendants are well-established law firms with significant resources, including insurance policies, to cover any damages that may be awarded to Investor Plaintiffs in the proposed California action. Indeed, DLA Piper (where Paul Wassgren currently serves as a

Partner) is “a global law firm with lawyers located in more than 40 countries” and “more than 25 offices across the United States.” <https://www.dlapiper.com/en/us/aboutus/> (last visited on 6/22/2020). Fox Rothschild LLP (where Paul Wassgren was formerly a partner) similarly touts itself as “a 950-lawyer national law firm with 27 offices.” <https://www.foxrothschild.com/our-firm/> (last visited on 6/22/2020).

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

Dated this 22nd day of July, 2020 in Miami-Dade County, Florida.

By:

/s/ Adam. M. Moskowitz
Adam M. Moskowitz, Esq.

/s/ Andrew S. Friedman
Andrew S. Friedman, Esq.

/s/ Jeffrey R. Sonn
Jeffrey R. Sonn, Esq.

Exhibit A



For more than 25 years, the lawyers at The Moskowitz Law Firm, PLLC (“The Moskowitz Law Firm”) have successfully litigated significant class action and complex commercial cases involving the rights of consumers, investors, and businesses. The Firm and its attorneys consistently rank among the most highly regarded litigation attorneys locally and on the national stage — according to clients, judges, opponents, and professional journals — for effectiveness in and out of the courtroom.

Adam Moskowitz. Mr. Moskowitz is the Founder and Managing Partner of The Moskowitz Law Firm and is experienced in all forms of class action claims, including civil conspiracy claims under the Racketeering Influenced and Corrupt Organizations (“RICO”) Act. Mr. Moskowitz serves and has served as Lead Counsel in some of the largest class action cases in Florida and nationwide. Mr. Moskowitz has been an Adjunct Professor at the University of Miami School of Law teaching Class Action Litigation for over 26 years. Adam has received numerous awards for his results including the “Most Effective Lawyer Award” for his work in litigating and resolving numerous nationwide force-placed insurance cases. Mr. Moskowitz filed one of the first class action lawsuits regarding these practices and has since spearheaded class action litigation in over 32 nationwide class actions brought against the largest banks or mortgage servicers and the force-placed insurers across the country, reaching 30 settlements to date totaling over \$4.2 billion dollars for the proposed nationwide classes of over 5.3 million homeowners.¹

¹ See for example *Williams v. Wells Fargo Bank, N.A.*, No. 11-cv-21233 (S.D. Fla.) (final approval granted); *Saccoccio v. JPMorgan Chase Bank N.A.*, No. 13-cv-21107 (S.D. Fla.) (final approval granted); *Diaz v. HSBC Bank (USA), N.A.*, No. 13-cv-21104 (S.D. Fla.) (final approval granted); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721 (S.D. Fla.) (final approval granted); *Hamilton v. SunTrust Mortg., Inc.*, No. 13-cv-60749 (S.D. Fla.) (final approval granted); *Hall v. Bank of Am., N.A.*, No. 12-cv-22700 (S.D. Fla.) (final approval granted); *Lee v. Ocwen Loan Servicing, LLC*, No. 14-cv-60649 (S.D. Fla.) (final approval granted); *Braynen v. Nationstar Mortg., LLC*, No. 14-cv-20726 (S.D. Fla.) (final approval granted); *Wilson v. Everbank, N.A.*, No. 14-cv-22264 (S.D. Fla.) (final approval granted); *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474 (S.D. Fla.) (final approval granted); *Almanzar v. Select Portfolio Servicing*, No. 14-cv-22586 (S.D. Fla.) (final approval granted); *Jackson v. U.S. Bank, N.A.*, No. 14-cv-21252 (S.D. Fla.) (final approval granted); *Circeo-Loudon v. Green Tree Servicing, LLC*, No. 14-cv-21384 (S.D. Fla.); *Beber v. Branch Banking & Trust Co.*, No. 15-cv-23294 (S.D. Fla.) (final approval granted); *Ziwczyzn v. Regions Bank*, No. 15-cv-24558 (S.D. Fla.) (final approval granted); *McNeil v. Selene Finance, LP*, No. 16-cv-22930 (S.D. Fla.); *McNeil v. Loancare, LLC*, No. 16-cv-20830 (S.D. Fla.) (final approval granted) (final approval granted); *Edwards v. Seterus, Inc.*, No. 15-cv-23107 (S.D. Fla.) (final approval granted); *Cooper v. PennyMac Loan Servicing, LLC*, No. 16-cv-20413 (S.D. Fla.) (final approval granted). *Strickland, et al. v. Carrington Mortgage Services, LLC, et al.*, 16-cv-

Prior to filing the FPI class actions, Adam Moskowitz served as Co-Lead Counsel in one of the largest MDLs, *In re: Managed Care Litigation*, MDL No. 1334. The MDL was finalized about 6 years ago and was actively litigated for about 7 years. Plaintiffs brought suit against the seven largest managed care providers on behalf of approximately 600,000 physicians alleging that these defendants engaged in a civil conspiracy in violation of the RICO Act. Adam Moskowitz worked almost all of his time assisting the Co-Lead team with every aspect of the case, including taking and defending depositions, coordinating with co-counsel, working with scientists, drafting pleadings, and helping with settlement efforts. Through this litigation before Judge Moreno, plaintiffs were able to revise the manner in which managed care is conducted with physicians throughout the country, and obtained almost a billion dollars in monetary relief. To date, this is the only certified nationwide RICO class action to be upheld by the Eleventh Circuit Court of Appeal.

Mr. Moskowitz has been appointed Lead and Co-Lead counsel in numerous other state and federal class actions, including resolving one of the nation's largest consumer class actions, *LiPuma vs. American Express*, No. 04-cv-20314 (S.D. Fla.). In *Pain Clinic et al. v. Allscripts Healthcare Solutions, Inc.*, 12-49371 (Fla 11th Cir. Ct. 2012), Mr. Moskowitz reached a nationwide settlement against Allscripts Healthcare Solution on behalf of thousands of small physician practices regarding the sale and marketing of defective electronic healthcare software. Mr. Moskowitz has also served as Lead, Co-lead or as part of Plaintiffs' counsel in various nationwide class actions including *In re: Marine Hose Antitrust Litigation*, No. 08-MDL-1888-Graham/Turnoff (S.D. Fla.); *Natchitoches Parrish Hospital v. Tyco (In re Sharps Containers)*, No. 05-cv- 12024 (D. Mass.) (serving as co-lead counsel in a nationwide antitrust class action on behalf of direct purchasers of containers for the disposal of sharp medical instruments); *Texas Grain Storage Inc. v. Monsanto Co.*, No. 5:2007-cv-00673 (W.D. Texas) (serving as co-lead counsel with Bruce Gerstein in a nationwide antitrust class action on behalf of direct purchasers of genetically modified seeds); *In re: Hypodermic Products Antitrust Litigation*, MDL No. 1730, No. 05-cv-1602 (JLL/CCC) (D. N.J.) (Linares, J.) (obtaining final approval of a nationwide settlement of an antitrust class action on behalf of direct purchasers of needle products); *In re: Mushroom Direct Purchase Antitrust Litigation*, No. 06-cv-006201 (E.D. Pa.) (representing direct purchasers of fresh agaricus mushrooms sold in the United States east of the Rocky Mountains in antitrust class action); *Miller v. Dyadic International*, No. 07-cv-80948 (S.D. Fla.) (consolidated securities fraud class action against biotech company arising out of material misstatements and omissions regarding financial improprieties of its subsidiaries in violation of federal securities laws); *In re: Herbal Supplements Marketing and Sales Practices Litigation*, 1:15-cv-05070 (N.D. Ill.) (serving on Plaintiffs' Lead Counsel Committee in multidistrict litigation regarding misleading labelling of herbal supplements sold at Target, Walgreens and Walmart stores); *Louisiana Wholesale v. Becton*

25237 (S.D. Fla.) (final approval granted for three separate settlements); *Quarashi et al v. Caliber Home Loans Inc. et al.*; 16-9245 (D.N.J.) (final approval granted).

Dickinson, et al., No. 05-cv-01602 (D.N.J.); and *Bruhl v. Price Waterhouse Coopers, International, et al.*, No. 03-cv-23044 (S.D. Fla.).

Adam has represented individual investors, and certified classes of investors, in many Ponzi Scheme cases, including serving as Co-Lead counsel in many cases. Most recently, Adam was appointed Co-Lead Counsel for a nationwide class of thousands of investors against various principals, accountants, lawyers and other professionals in *In re 1st Global Capital*, representing investors in both state and federal district and bankruptcy court. Adam and his team recovered millions of dollars in proceeds for the damaged investors. Previously, Adam worked with Conrad & Scherer to represent a diverse group of over 84 plaintiffs seeking recovery of over \$225 million in investor losses resulting from a multi-billion dollar structured settlement *Scott Rothstein Ponzi scheme*. Adam litigated this case for over 3 years in state court, federal court and federal bankruptcy courts. This nationally publicized case focused on Toronto Dominion Bank's (TD Bank) role in facilitating this criminal enterprise and asserted novel claims that the Bank willfully aided and abetted the fraud. After months of litigation against lawyers, banks, and other professionals, the matter was resolved through settlement resulting in the highest percentage recovery for victims entangled in a Ponzi scheme.

Currently, in *In re Transamerica COI Litigation*, Case No. 2:16-cv-01378-CAS-AJW (C.D. Cal.), Mr. Moskowitz was appointed as Co-Lead counsel and reached a nationwide settlement for a certified class of nationwide consumers who purchased life insurance policies from Transamerica Life Insurance Company—a subsidiary of Aegon—one of the world's largest providers of life insurance, pension solutions and asset management products. That nationwide settlement was finally approved by U.S. District Judge Christina A. Snyder in February 2019 and resulted in recovering a gross Settlement Common Fund of over \$100 million, as well as extremely valuable injunctive relief for the nationwide class. Mr. Moskowitz also personally resolved the sole objection to the settlement with the objector's counsel who brought separate "copycat" Transamerica COI class actions in Iowa. Further, in *In re Fieldturf Multi District Litigation*, Case No. 3:17-md-02779-MAS-TJB (D.N.J.), U.S. District Judge Michael A. Shipp recently appointed Mr. Moskowitz as Co-Lead counsel for all of the plaintiffs after numerous class actions brought against Fieldturf were consolidated in the District of New Jersey earlier last year. The claims were brought on behalf of municipalities related to the marketing and sale of allegedly defective artificial fields. Adam is currently lead and co-lead counsel in numerous other class actions currently pending in state and federal courts across the country.

Mr. Moskowitz's practice also encompasses various other complex commercial litigation matters, arbitrations before FINRA and numerous jury trials. Adam obtained one of the largest jury verdicts in Miami-Dade County (over \$100 million dollars) in a jury trial against a global agricultural company on behalf of growers from the United States and Costa Rica. Adam has also served as chairperson in numerous NASD securities arbitrations, and actively participates in local and national seminars and panels, lectures across the country regarding class action litigation, and

has published numerous articles on class action practices and settlements.² Mr. Moskowitz has actively served on numerous state and national class action organizations, including being appointed to the Duke Law Center for Judicial Studies Advisory Council and serves as the Topics Coordinator. The Council brings together all federal judges, experienced plaintiffs' and defense attorneys, and academics to develop practical solutions to legal issues by way of rule changes, best practices, guidelines, and principles. The Council conducts numerous national seminars each year, attended by hundreds of class action practitioners and federal and state judges. One such seminar was the "National Townhall Meeting Developing a Useful Framework to Address Alcohol Abuse, Drug Addiction, and Anxiety/Depression Among Bench, Bar, and Related Professionals," which included many great speakers (39 Panelists for 8 Panels), including many federal judges. Adam is married to his wife Jessica and has three children, Serafina, Michael and Samantha and is very active with his children's school Temple Beth Am in Miami, Florida. Attached are two personal articles about Adam Moskowitz, including one regarding his family being named "Family of the Year" for their synagogue this past year, based mainly on the great dedication and pro bono service by his wife to his children's school.

Howard Bushman. Howard Bushman is a Partner at The Moskowitz Law Firm and a seasoned litigator with over 18 years of experience prosecuting nationwide class actions and mass tort litigation. Mr. Bushman is a central figure in litigating the lender placed insurance class actions listed in Footnote 1. Further, Mr. Bushman has effectively litigated the following class actions: *Kenneth F. Hackett & Associates, Inc. v. GE Capital Information Technology Solutions, Inc. et al.*, Case No.: 10-20715-CIV-ALTONAGA/BROWN (S.D. Fla.) (multi-million dollar settlement on behalf of a nationwide class of copier lessees whom were overcharged for their monthly payments); *Aarons et al. v. BMW of North America, LLC*, Case No. 2:11-cv-07667-PSG (S.D.Cal.) (multi-million dollar settlement on behalf of a nationwide class of owners of defective Mini-Cooper vehicles); *Lockwood et al. v. Certegy Check Services, Inc.*, Case No.: 8:07-CV-01657-SDM-MSS (M.D. Fla.) (nationwide data breach action resulting in a settlement valued at over \$75 million dollars); *Brenda Singer v. WWF Operating Company*, Case No.: 13-CV-21232 (S.D. Fla. 2013) (nationwide litigation regarding alleged deceptive marketing of evaporated cane juice; successfully settled nationwide class action over deceptive labeling of evaporated cane juice); *In Re: Countrywide Financial Corp. Customer Data Security Breach Litigation*, Case No. 3:08-MD-01998-TBR (WDKY) (class action on behalf of over 17 million consumers, achieved a settlement valued at over \$300 million dollars); *Eugene Francis v. Serono Laboratories, Inc., et al.* ("Serostim"), Case No. 06-10613 PBS (U.S. District Court of Mass.) (\$24 million cash settlement in a nationwide class action litigation against multiple entities regarding the deceptive and illegal marketing, sales and promotional activities for the AIDS wasting prescription drug Serostim); *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 1708 (U.S. District of Minnesota) (\$245 million dollar settlement for patients

² See, e.g., *The Right Way to Calculate Attorneys' Fees in Class Actions*, December 4, 2015, available at <http://www.law360.com/articles/733534/the-right-way-to-calculate-atty-fees-in-class-actions>.

in this nationwide mass tort class action regarding the sale of defective cardiac defibrillators and pacemakers); *In Re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2096 (mass tort involving over \$15 million settlement).

Mr. Bushman has extensive experience litigating antitrust matters throughout the state of Florida as well. *See In re: Photochromic Lens Antitrust Litigation*, MDL No. 2173, No. 8:10-md-02173-T-27EA (M.D. Fla.) (nationwide indirect purchaser antitrust class action on behalf of purchasers of photochromic lenses); *In re Florida Cement and Concrete Antitrust Litigation (Indirect Purchaser Action)*, No. 09-23493-CIV-Altonaga/Brown (S.D. Fla.) (statewide indirect purchaser antitrust class action on behalf of purchasers of cement); *Anna Vichreva v. Cabot Corporation, et al.*, No. 03-27724-CA-27 (Fla. 11th Jud. Cir. Ct.) (litigated and obtained the largest per-consumer Carbon Black state court antitrust class action settlement in the country).

As passionate for the law as he is for giving back to the local community, Howard recently received the Eleventh Judicial Circuit and Miami-Dade County Bar Associations' Put Something Back Pro Bono Service Award.

Adam Schwartzbaum. Adam Schwartzbaum is a Senior Associate at The Moskowitz Law Firm, where he plays an important role in managing all aspects of the Firm's class action litigation practice. Adam's responsibilities include case analysis and development, trial court litigation, and appellate work.

Adam successfully litigated and settled *Rollo v. Universal Property & Casualty Insurance Co.*, No. 2017-027720-CA-01 (Fla. 11th Jud. Cir. Complex Bus. Div.), a class action which held the largest private insurance company in Florida accountable for its systemic failure to pay statutory interest on late-paid settlement payments. Adam also represented several certified classes of investors in litigation concerning the \$300+ million bankruptcy, *In re 1 Global Capital LLC*, No. 18-19121 (Bankr. S.D. Fla.). Working in concert with the Debtors' Special Counsel, Adam helped to litigate and settle claims with many of the Debtors' professionals and sales agents in both state and federal court. Adam has also played an important role in many successful class actions litigated by The Moskowitz Law Firm, including *In re Transamerica COI Litigation*, Case No. 2:16-cv-01378-CAS-AJW (C.D. Cal.) (cash settlement valued over \$100 million, including significant prospective relief for life insurance policyholders).

Prior to joining The Moskowitz Law Firm, Mr. Schwartzbaum was an associate at Weiss Serota Helfman Cole & Bierman, a large regional law firm well known for representing local governments. As an associate in the litigation department, Mr. Schwartzbaum represented an array of private and municipal clients, at the trial and appellate levels, in state and federal court. In several instances, Mr. Schwartzbaum won significant trial victories and then succeeded in upholding them on appeal. For example, in *SDE Media, LLC v. City of Doral*, Case No. 3D16-2008 (Fla. 11th Jud. Cir.), Mr. Schwartzbaum second-

chaired a trial that resulted in the trial court issuing a nineteen-page order finding in the City's favor. On appeal, Mr. Schwartzbaum authored the answer brief, and the Third District Court of Appeal issued a per curiam affirmance. *SDE Media, LLC v. City of Doral*, 228 So. 3d 567 (Fla. 2017). Similarly, in *Brock v. Ochs*, Case No. 2D16-705 (Fla. 20th Jud. Cir.), Mr. Schwartzbaum helped obtain summary judgment for the Collier County Manager in a major dispute with the County Clerk regarding the scope of the County Manager's purchasing power under the Florida Constitution. On appeal, Mr. Schwartzbaum authored the answer brief, and the Second District Court of Appeal affirmed per curiam. *Brock v. Ochs*, 203 So. 3d 164 (Fla. 2d DCA 2016). Mr. Schwartzbaum achieved similar success in federal court. For example, in *Edwards CDS, LLC v. City of Delray Beach*, No. 16-15693 (S.D. Fla.), Mr. Schwartzbaum authored a motion to dismiss that resulted in an order dismissing \$25 million in federal constitutional claims with prejudice. On appeal, Mr. Schwartzbaum authored the answer brief, and the Eleventh Circuit Court of Appeals issued a written opinion affirming the dismissal. *Edwards CDS, LLC v. City of Delray Beach*, 699 Fed. App'x 885 (11th Cir. 2017). As a result, Mr. Schwartzbaum helped the City achieve a very favorable settlement. Other significant appellate victories include *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017) (upholding constitutionality of City of Miami's Civilian Investigative Panel); *City of Homestead v. Foust*, 2018 WL 575620 (Fla. 1st DCA 2018) (reversing order of Judge of Compensation Claims after determining, in issue of first impression, that JCC incorrectly interpreted a statute); *City of Cooper City v. Joliff*, 227 So. 3d 633 (Fla. 4th DCA 2017) (reversing a multi-million dollar summary judgment for plaintiffs in a class action alleging a special assessment was unconstitutional and instructing trial court to enter judgment for the City).

Mr. Schwartzbaum's career began in the litigation department of a large international law firm, White & Case, where he provided research and writing support on complex commercial disputes and in significant appellate matters in both state and federal court. Adam served on the trial team in *Dacra Development v Corp. v. Colombo*, Consolidated Case Nos. 11-17338 & 10-47846, successfully defending a prominent real estate developer from a multimillion dollar lawsuit and helping secure a \$2 million verdict on the defendant's counterclaim. Adam also represented the City of Dania Beach in a dispute over the expansion of the Fort Lauderdale-Hollywood International Airport, ultimately helping to secure a landmark settlement on behalf of over 850 homeowners impacted by the development. Adam also made vital contributions to several notable appellate victories, including *North Carillon, LLC v. CRC 603, LLC*, 135 So. 3d 274 (Fla. 2014) (obtaining a reversal of an opinion that incorrectly interpreted provision of Florida's condominium law concerning statute governing placing of deposits into escrow), *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014) (establishing new Florida law concerning trial court's jurisdiction to compel turn over of foreign assets), and *200 Leslie Condominium Association, Inc. v. QBE Insurance Corp.*, 616 Fed. App'x 936 (11th Cir. 2015) (affirming judgment in favor of insurer following a bench trial).

Mr. Schwartzbaum is an active contributor to the South Florida community and a leader in several prominent organizations. He is a Member of the Board of Directors of Nu Deco Ensemble, Miami's 21st Century genre-bending orchestra. Mr. Schwartzbaum sits on the Board of Directors of Temple Menorah in Miami Beach, the Board of the South Florida Israel Bonds Young Investor Society, and on the Board of the South Florida Lawyer's Chapter of the American Constitution Society. Adam previously served on American Jewish Committee's Global ACCESS Board and as a Member of the Democratic Executive Committee, the governing body of the Miami-Dade County Democratic Party. Mr. Schwartzbaum also serves as J-Street's District Coordinator for Congresswoman Federica Wilson. In addition, Mr. Schwartzbaum is the Founder and Team Captain for Jewish Community Service's Miami Marathon and Half Marathon Team which raises funds for The Blue Card, an organization benefiting indigent Holocaust Survivors.

Joseph Kaye. Joseph is an Associate Attorney at The Moskowitz Law Firm, whose practice focuses on multi-state consumer class action litigation, complex commercial litigation and multidistrict litigation. His experience involving a broad range of disputes, including force-placed insurance class action litigation, health insurance, products liability, and federal antitrust litigation matters, allows him to serve as a valuable asset in representing a number of the Firm's clients.

In a putative Florida statewide class action representing skilled nursing facilities seeking to recover statutory interest owed by insurers on late paid Medicaid Long Term Care Program claims, Joseph was instrumental in effectively briefing and arguing against a motion by one defendant insurer to compel individual arbitration of one of the plaintiff's claims. Joseph then co-authored the answer brief on appeal to the Third District Court of Appeal, which resulted in a written opinion upholding the trial court's order and favorably expanding the law on arbitration in Florida for parties seeking to litigate their claims in a court of law. *See Coventry Health Care of Florida, Inc. v. Crosswinds Rehab, Inc., LLC*, 259 So. 3d 306 (Fla. 3d DCA 2018).

Prior to joining The Moskowitz Law Firm, Joseph was an Associate Attorney at Stok Folk + Kon, a full-service law firm serving South Florida, where he represented businesses and individuals in a range of disputes involving breach of contract, commercial transactions, fraud, business torts, deceptive and unfair trade practices, intellectual property, probate, guardianship and trust litigation, at both the trial and appellate court levels, as well as in arbitration. For example, Joseph successfully represented the plaintiffs in *Oded Meltzer, et al. v. NMS Capital Group LLC, et al.*, Case No. 1:17-cv-23068-UU (S.D. Fla.), where plaintiffs sought a declaratory judgment that plaintiffs were not bound to an arbitration agreement they entered into as representatives of their business entities, as well as an injunction enjoining defendants from joining the plaintiffs as parties to arbitration of a multi-million-dollar dispute with those business entities. Joseph obtained a

preliminary injunction on the papers without a hearing, which caused the defendants to stipulate to entry of a final judgment and permanent injunction. Further, Joseph authored the answer brief and litigated an appeal in *Yehezkel Nissenbaum, et al. v. AIM Recovery Services, Inc.*, Case No. 3D15-1000 (Fla. 3d DCA 2015), which resulted in the Third District Court of Appeal issuing a *per curiam* affirmance upholding a final judgment exceeding \$125,000.000. Similarly, in *Dantro LLP, et al. v. In rem Dantro Fund, et al.*, Case No. 12-ca-001643 (Fla. 20th Jud. Cir.), after obtaining a final summary judgment entitling plaintiff limited liability partnerships to recover \$90,000.00 from the Court Registry after it was stolen by their former managing partner, Joseph successfully sought an order entitling plaintiffs to recover their attorneys' fees and costs in maintaining the action against the former managing partner in his individual capacity as the real party in interest because he entered an appearance and sought to obtain the stolen funds for himself, purportedly on behalf of the dissolved partnerships. Joseph argued and won the motion before the trial court, then successfully defended the order on appeal to the Second District Court of Appeal. *See Edward Adkins v. Dantro LLP, et al.*, Case No. 2D16-4751 (Fla. 2d DCA 2017).

A life-long Florida native, Joseph attained a Bachelor's degree in Creative Writing from Florida State University (B.A., 2012) and a Juris Doctorate degree from the University of Miami School of Law (J.D., *magna cum laude*, 2015). While at the University of Miami, Joseph was a member of the Race and Social Justice Law Review, served as Dean's Fellow for the Contracts and Elements courses, earned the Dean's Certificate of Achievement in Evidence and Elements courses, received honors in litigation skills, and was on the Dean's List multiple times.

Joseph also gained invaluable experience as a judicial intern for the Honorable Magistrate Judge Jonathan Goodman in the United States District Court for the Southern District of Florida, where he researched and drafted bench memoranda and reports and recommendations, and learned a great deal about the inner workings of the federal court system through observing mediations and courtroom proceedings, and discussing litigation strategies with Judge Goodman and his clerks. While in law school, Joseph was also a certified legal intern for the Miami-Dade State Attorney's Office, Misdemeanor Domestic Violence Division, where he successfully argued motions and took live testimony on the record in open court, including Williams Rule motions, motions to revoke bond, motions to modify stay away orders and excited utterance motions, conducted victim and witness interviews, participated in arraignment, sounding and trial calendars, and assisted in *voir dire*.

Barbara Lewis. Barbara is an Associate Attorney at The Moskowitz Law Firm. Most of her practice has focused on representing consumers in multi-state class action litigation, complex commercial litigation and multidistrict litigation. She handles a broad range of disputes, including force-placed insurance litigation and complex nationwide litigation relating to health insurance, products liability, false advertising, fraudulent business practices, and other consumer issues. Her fluency in Spanish makes her a valued source to the firm's Hispanic and multicultural clients in South Florida. She has authored various publications including *Amending Rule 23: Modernizing Class Notice and Debunking Bad-Faith Objectors*, published by the Federal Litigation Section of

the Federal Bar Association (SideBAR) in Spring 2017, and *Lawsuits Target Hidden Fees, Pass-Through Charges*, published by the Daily Business Review in July 2016.

Barbara also briefly worked at Clarke Silverglate, P.A. where her practice consisted of litigating employment law and general commercial matters. She defended employers against a variety of discrimination and wrongful termination lawsuits in federal and state court. She was instrumental in authoring and arguing various discovery motions against the plaintiff in a contentious sexual harassment dispute which led to a successful mediation. Barbara also represented insurance companies nationwide in a variety of breach of contract actions. In this capacity, she briefed and successfully obtained summary judgment in *Dwyer v. Globe Life and Accident Insurance Company*, Case No. 2:19-cv-14071 (S.D. Fla.), where the plaintiff demanded accidental death insurance benefits on behalf of an insured who had overdosed on illegal drugs. The court's opinion not only clarified existing Florida insurance law, but also created new Florida law on accidental death coverage.

Barbara was born in Cuba but has been a long time Miami resident. She obtained her Bachelor's degree with honors in Government from the University of Virginia in 2012, and her Juris Doctorate degree *cum laude* from the University of Miami School of Law in 2015. While at the University of Miami, Barbara earned the CALI Excellence for the Future Award and Dean's Certificate of Achievement, awarded to the highest scoring student in the class, in her Legal Communication and Research courses. She interned at the Investor Rights Clinic, where she represented under-served investors in securities arbitration claims against their brokers before the Financial Industry Regulatory Authority (FINRA). She was also a member of the school's International Moot Court Program and earned Second Place in the Moot Madrid competition, an international commercial arbitration competition that is conducted entirely in Spanish.

The Moskowitz Law Firm, PLLC

The Moskowitz Law Firm focuses only on large-scale class actions and complex commercial litigation, typically against parties represented by larger, premier law firms. Its attorneys have played a leading role in significant class actions and complex litigation across the country that have made a real difference in the world and on behalf of consumers across the country. With deep roots in the local Miami community, the attorneys at The Moskowitz Law Firm have been avid supporters of several non-profit and education related organizations for over two decades, earning the good will of colleagues, clients and neighbors. After teaching Class Action Litigation at the University of Miami for over 26 years, in 2016, Adam Moskowitz, along with his other co-counsel in the force placed cases, organized the University of Miami Class Action Conference, and annual event which included Class Action Panels with various federal judges, state attorney generals and numerous plaintiff and defense counsel and awards scholarships to students interested in class action litigation.

2019 ‘Family of the Year’

We Salute the Moskowitz Family, honored as the Committee of 100’s 2019 ‘Family of the Year’

Each year, Temple Beth Am is proud to recognize an outstanding family of volunteers. Congratulations to the ***Moskowitz Family*** — ***Jessica, Adam, Serafina, Michael*** and ***Samantha*** — who were honored on March 10, 2019 as recipients of the ***Committee of 100’s 2019 “Family of the Year” Award***, for their continued participation in our Temple community and their ongoing commitment to congregational leadership.



Jessica's TBAM journey began almost a decade ago in the Tot Shabbat and Mommy and Me programs, with the oldest of her three Temple Beth Am Day School students **Serafina**. She has been involved as a lay leader in the Temple Beth Am Day School for several years, including being a room parent, and for two years was Co-Chair of the Day School Annual Auction (2017 and 2018). Jessica is a member of the Day School Board, and is now Co-President of **PATIO** (Parent and Teacher Involvement Organization). She previously chaired the Grandparents & Special Friends Day Committee, served as Vice

President of the Elementary School on the PATIO Board and is currently enrolled in Temple Beth Am's *Atideynu* leadership training program.

Adam, founding partner of [The Moskowitz Law Firm](#), is in his 26th year on the faculty at the University of Miami School of Law teaching Class Action Litigation, and donates his salary back to the school for student scholarships. He helped establish the annual Class Action Forum at the UM School of Law. Last year, Adam helped organize a new group of parent volunteers to launch the inaugural Day School Chanukah Games on December 21, 2018 — [watch video](#). All 230 elementary school students participated in 12 physical and mental activities, and Opening and Closing Ceremonies. Adam is active in the Alexander Muss High School in Israel program, having been a student and then a *Madrich* (counselor). He is passionate about Israel and works tirelessly in behalf of AIPAC in Washington, DC. A member of the "Beyond the Curve" Capital Campaign Committee, he proudly coaches his daughter's 3rd grade Beth Am Basketball League team and is a frequent guest reader in his childrens' classrooms.

Serafina (*pictured at right*) is a third grader at Temple Beth Am Day School where she began her studies in Early Childhood in Junior Pre-Nursery. She enjoys art, tennis, Beth Am Basketball League, spending time with her friends and setting out on her own path in life.

Michael, a first grader at Temple Beth Am Day School who also began here in the Early Childhood, also loves playing tennis at Coral Oaks, basketball and spending time with friends and family in Miami and North Carolina.

In Fall 2019, **Samantha**, a Pre-K student, will find her way across the quad to Kindergarten. Eager to learn to read and write, her spunky personality comes shining through, especially during After School U's Hip Hop.



(Family Photo by Anastasia Murphy — [Stasia Shoots](#)).

March 26, 2018**Circulation: 25,128/ UMV: 57,146**

National Class Action Litigator Opens Up About Stress, Quitting Drinking

by Celia Ampel

Adam Moskowitz realized a few years ago that he needed to make a change.

One of the top federal class action lawyers in the country, Moskowitz has led enormous cases including force-placed insurance litigation that recovered more than \$5 billion for homeowners who alleged their mortgage servicers took kickbacks from insurers.

But with huge victories came a lot of stress — and he wasn't handling it well.

"As the cases became more stressful and they became larger and I was traveling a lot more, I found myself getting more unhealthy," said Moskowitz, who was leading the class action practice at Kozyak Tropin & Throckmorton in Coral Gables. "A lot of the lifestyles of lawyers involve drinking and involve celebration. When you win a big case, you open champagne."

Drinking became his go-to method for relieving stress, and while it wasn't affecting his work, he felt he was on a "path to destruction." Moskowitz realized something had to give.

"Having a beautiful wife and having three kids made me really analyze my situation," he said. "I looked around and there were terrible things happening to people. People were committing suicide that I knew."

A lot of lawyers deal with mental health issues but don't feel they can talk about them, he said. The issue has become a focus of the Florida Bar, particularly after the suicide of powerhouse litigator Ervin Gonzalez last year.

"You're fighting people so often that they're looking for any weakness in you, and you don't want to admit, maybe, that you have a problem," Moskowitz said. "Or you don't want to seek help from those people that you're probably around the most because of this competition and how vicious our industry can be."

Moskowitz quit drinking and got back to old habits of running races and practicing yoga. The resulting mental clarity gave the 50-year-old the resolve to strike out on his own, leaving the firm he'd joined as a second-year associate in 1993. He still has working and personal relationships with his old partners at Kozyak Tropin, but that firm wasn't his dream.

"I want my own future," he said. "I want to create my own legacy and have my own traditions and really focus in on class actions."

Two months after founding the Moskowitz Law Firm with partner



J. ALBERT DIAZ

Coral Gables litigator Adam Moskowitz said he wants to help stoke honest conversations about stress and mental health in the legal profession.

Howard Bushman, Moskowitz leads a firm with four attorneys, several support staff and an office in downtown Coral Gables. He admits he's scared, but mentors such as legendary Miami attorney Aaron Podhurst told him they were scared, too — and it all worked out.

Moskowitz knows about perseverance, starting with his upbringing after his father left.

"My mom was amazing," he said. "With nothing, she moved to Miami with my sister and I, and she worked five jobs. Five jobs. She was a nurse. She was a receptionist. She was a hostess. She did summer jobs — she worked at my summer camp as the nurse so we could go for free."

Moskowitz said his mother also begged a private school to let him attend on a scholarship. From there he went to college, studied abroad in London and worked in Israel, all thanks to her.

BENLATE CASES

When he graduated from the University of Miami School of Law, he joined a five-attorney firm that sent him during his second week to speak with a grower whose claimed his plants were dying because of the DuPont Co. fungicide Benlate. The firm took about 70 similar cases.

"They said, 'Adam, you go handle them,'" Moskowitz said. "You go travel around the state of Florida to Apopka, to Dade City, to Plant City, to Tallahassee." I was a first-year associate. I knew nothing. I was getting killed. ... I was learning trial by fire."

But he broke the cases open during a trip to Costa Rica when he learned about Benlate studies done there that produced "horrible" results. In sworn interrogatories, DuPont said it had not done any testing in Costa Rica. Moskowitz's firm made a long-shot move and asked the judge to strike the pleadings and find against DuPont on liability — and she did.

The resulting settlements led to infighting over money and ethical issues among the partners, and the firm broke up. Moskowitz decided to take his cases with him to Kozyak Tropin. As a second-year associate, he negotiated a contract that would give him a percentage of the fees. Soon afterward, he did the openings and closings for a trial that led to a \$130 million jury verdict against DuPont.

Forced-place insurance has been much of Moskowitz's focus for the past decade. He's also known for representing victims of Scott Rothstein's \$1.2 billion Ponzi scheme and serving as lead counsel in a currency-conversion class action against American Express

and securities litigation against Lancer Partners, among other cases.

At his new firm, he's leading class action litigation alleging life insurance companies are charging illegal rates to people near the end of their lives.

TAKE CARE

His career isn't slowing down. But Moskowitz now understands the importance of taking care of himself. He's thrilled about organizing the kids' field day at his synagogue, quipping that these days, he'd rather make the Temple Beth Am Commentator than the front page of the Wall Street Journal.

Moskowitz hopes he can inspire even one attorney struggling with drinking or stress to do something about it.

"The tragedies are these people who commit suicide and they leave their children orphans," he said, beginning to choke up. "We had somebody in our school who died — her son is in our son's class. I can only imagine if my son grew up without a father. Maybe if that lawyer or that person says, 'Yeah, things are rough, but you know, Adam went through it, and he's a tougher person as a result of dealing with it. Maybe I'll go see somebody. Maybe I'll go talk to somebody.'"

Celia Ampel covers South Florida litigation. Contact her at campel@alm.com or on Twitter at @CeliaAmpel.

ADAM MOSKOWITZ

Born: 1967, New York City

Spouse: Jessica Moskowitz

Children: Serafina, Michael, Samantha

Education: University of Miami, J.D., 1993; Syracuse University, B.A., 1989

Experience: Founding and managing partner, The Moskowitz Law Firm, 2018-present; Partner, associate and class action chairman, Kozyak Tropin & Throckmorton, 1993-2018; Associate, Friedman, Rodriguez, Ferraro & St. Louis, 1993



ABOUT THE FIRM

Bonnett, Fairbourn, Friedman & Balint, P.C. is an AV rated firm of 19 lawyers. Our clients include many individuals and local businesses, as well as major national and international companies in a wide range of civil litigation in both federal and state courts.

The firm has developed a recognized practice in the area of complex commercial litigation, including major class actions and is widely regarded as the preeminent firm in Arizona representing plaintiffs in class action proceedings. Over the last twenty years, the firm has successfully handled more than 100 class action lawsuits. We have represented consumers and victims in a wide range of class action proceedings, including actions alleging antitrust claims, securities fraud, civil rights claims and consumer fraud.

Our antitrust practice includes the prosecution of class claims on behalf of direct purchasers of products as well as indirect purchaser claims. These antitrust cases include, among others, class actions against Microsoft, MasterCard, Apple Computer and sellers of products such as polyester and rubber chemicals, waste management services, financial products and other industries. In addition to our class action practice, the firm also has represented plaintiffs in individual litigation asserting antitrust claims, including Culligan International.

Bonnett, Fairbourn, Friedman & Balint has taken a leading role in numerous important actions on behalf of consumers and investors, and we have been responsible for many outstanding results that have yielded dozens of multi-million dollar recoveries for class members in Arizona and throughout the United States.

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PRACTICE AREAS

CLASS ACTION

Bonnett, Fairbourn, Friedman & Balint represents consumers and investors in major class action cases in federal and state courts throughout the United States. Under the direction of Andrew S. Friedman, the firm's class action section represents plaintiff classes in the following areas:

Securities Fraud: Protects institutional shareholders and individual investors from corporate fraud and mismanagement.

Consumer Protection: Protects consumers from defective products and fraudulent marketing practices.

Antitrust: Protects individuals and businesses from price fixing, unfair business practices and other anticompetitive conduct.

Civil Rights and Employment: Protects employees and consumers against unfair practices and racial, age, gender, and other forms of discrimination.

Insurance and Health Care: Represents victims of fraud and unfair sales practices by life insurance companies and HMOs.

Tobacco: Seeks redress for fraudulent marketing of "Light" cigarettes as a less toxic version of "Full Flavor" varieties.

False Claims and Whistleblowers: Provides for awards to individuals who uncover false claims for payment submitted to the federal government.

SECURITIES

Bonnett, Fairbourn, Friedman & Balint has extensive experience in plaintiffs' class action securities cases in and out of the State of Arizona. Its attorneys have recovered substantial verdicts and settlements in various high-profile cases representing bondholders who have suffered significant losses due to the criminal activities of individuals in the securities and banking industries, including victimized investors in the Lincoln Savings scandal.

APPELLATE LITIGATION

Bonnett, Fairbourn, Friedman & Balint has extensive appellate experience at all levels of the state and federal court systems. Attorneys from the firm have appeared before the Arizona Court of Appeals, the Arizona Supreme Court, and numerous U.S. Circuit Courts. Decisions to appeal a matter are not made lightly by the firm; we carefully analyze the likelihood of a positive result for the client against the potential cost of an unfavorable outcome. Although we draw on the clerking and practical experience of many of our attorneys in making this analysis, a fully informed client is always an integral part of this process.



ANDREW S. FRIEDMAN heads the firm's class action, securities fraud, and consumer fraud practice groups. Mr. Friedman is admitted to the State Bar of Arizona and is admitted to practice before the U.S. District Court for the District of Arizona, U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court.

Mr. Friedman's practice is devoted primarily to litigation of major class action cases in federal and state courts in Arizona and throughout the United States. He has represented plaintiff classes in major consumer, securities fraud, antitrust, civil rights and insurance sales practices cases and other complex commercial litigation.

Securities Fraud

Mr. Friedman and other members of the firm served as Arizona counsel for the plaintiff class of investors in *In re American Continental Corp./Lincoln Savings and Loan Sec. Litig.*, MDL 834 (D. Ariz.). Mr. Friedman was one of the team of lawyers who represented the class of investors who purchased debentures and/or stock in American Continental Corp., the parent company of the now-infamous Lincoln Savings & Loan. The suit charged Charles Keating, Jr., other corporate insiders, three major accounting firms, law firms and others with racketeering and violations of the securities laws. Plaintiffs' counsel actively participated in bankruptcy proceedings, multi-district litigation and, ultimately, a jury trial in Tucson, Arizona. Plaintiffs successfully recovered \$240 million of the \$288 million in losses sustained by the investors. After trial, the jury rendered verdicts exceeding \$1 billion against Keating and other defendants.

Mr. Friedman also served, along with other members of the firm, on the court-appointed Executive Committee in the *Prudential Limited Partnerships Multi-District Litigation*, representing investors in limited partnerships sponsored by Prudential Securities. This action, which alleged racketeering and securities fraud claims on behalf of a nationwide class, resulted in a settlement providing more than \$125 million in benefits to defrauded investors.

Mr. Friedman has served as plaintiffs' counsel in many other securities fraud class actions, including the following major cases: *Persky v. Pinnacle West Corp., et al.* (securities fraud class action - \$35 million settlement); *Culligan International Company v. United Catalysts, Inc.* (Antitrust Action); *Sitgraves, et al. v. Allied Signal, Inc.*; *Stein v. Residential Resources, et al.* (Securities Fraud Class Action); *Gould v. Pinnacle West Corp., et al.*; *Shields v. Del Webb Corp., et al.* (Securities Fraud Class and Derivative Suit); *Hoexter v. Valley National Bank, et al.* (Securities Fraud Class Action); *Friedman, et al. v. Emerald Mortgage Investment Corporation, et al.* (Securities Fraud Class Action); *Marks, et al. v. Circle K* (Securities Fraud Class Action); *Krause v. Sierra Tucson, et al.* (Securities Fraud Class Action); *Braunstein, et al. v. Tucson Electric, et al.* (Derivative Suit); *Krause v. Sierra Pacific, et al.* (Securities Fraud Class Action); *Blinn v. Bech, et al.* (Securities Fraud Class Action); *Voss v. Cobra Industries, et al.* (Securities Fraud Class Action); *Hollywood Park Securities Litigation* (Securities Fraud Class Action); *In re America West Sec. Fraud Litig.* (Securities Fraud Class Action); *Orthologic Securities Fraud Litig.* (Securities Fraud Litigation); and *In re Vitamins Antitrust Litigation* (Antitrust Class Action).

Mr. Friedman also served as lead counsel in a number of class action cases seeking relief on behalf of investors victimized by fraudulent investment schemes, brought against professional defendants who allegedly substantially assisted in the fraud. Mr. Friedman served as co-lead counsel for investors in *Facciola, et al. v. Greenberg Traurig LLP, et al.*, a class action asserting claims against law firms and

an auditor for allegedly aiding and abetting a Ponzi scheme leading to the collapse of Mortgages, Ltd. After class certification was granted and at the conclusion of discovery, Plaintiffs secured settlements with the defendants totaling \$89 million. At the conclusion of the case, the Hon. Frederick J. Martone observed:

Class counsel were retained on a purely contingent basis in a complex case fraught with uncertainty. Counsel advanced litigation costs in excess of \$1.5 million in order to prosecute this action, shouldering the risk of non-payment. Absent class counsels' willingness to advance these litigation costs, there likely would have been no common fund. Finally, counsel have demonstrated outstanding expertise, diligence, and professionalism at every stage of this litigation.

Mr. Friedman also served as lead counsel in *Gordon Noble, et al. v. Greenberg Traurig LLP, et al.*, a class action in the California Superior Court asserting claims on behalf of investors against law firms, auditors and a lender for their involvement in an alleged Ponzi scheme orchestrated by a hard money lender. After several years of hotly contested litigation, plaintiffs obtained settlements for the investor class members totaling \$83 million.

Mr. Friedman and other members of the firm served as class counsel in *In re Apollo Group, Inc. Securities Litig.*, an open market securities fraud case seeking redress for allegedly false statements made by the Apollo Group, Inc. in publicly filed registration statements. After trial, the jury returned a verdict of \$275 million for the Apollo shareholders, one of the largest jury verdicts ever obtained in a securities fraud case prosecuted through trial. At the conclusion of the trial, the presiding judge commented:

[trial counsel] brought to this courtroom just extraordinary talent and preparation ... [F]or the professionalism and the civility that you – and the integrity that you have all demonstrated and exuded throughout the handling of this case, it has just, I think, been very, very refreshing and rewarding to see that...[W]hat I have seen has just been truly exemplary.

Deceptive Marketing of Insurance Products

Mr. Friedman served as co-lead counsel for the certified nationwide plaintiff classes in *In re Conseco Life Insurance Company Cost of Ins. Litig.*, MDL 1610 (C.D. Cal.). The suit charged that Conseco breached the terms of life insurance policies owned by over 90,000 class members. After nearly two years of litigation against an entrenched adversary, the class recovered over \$400 million in damages.

Mr. Friedman and the firm were key members of a team of lawyers that brought landmark cases against major life insurance companies challenging the deceptive manner in which life insurance products were marketed to consumers during the 1980's. The first of these cases, against New York Life Insurance Co., arose from events uncovered in Arizona and resulted in a ground-breaking settlement providing benefits to class members exceeding \$250 million. This settlement has been praised by regulators and commentators as an innovative solution to sales practice abuses. Subsequently, Mr. Friedman and co-counsel for plaintiffs prosecuted class actions and secured settlements against a host of other major insurance companies, including settlements with *Prudential Life Insurance Company* (exceeding \$2 billion), *Metropolitan Life Insurance Company* (exceeding \$1 billion), *Manulife* (exceeding \$500 million) and more than 20 other companies. Mr. Friedman was

instrumental in the prosecution of these actions, was a member of the settlement negotiating team and briefed and argued class certification issues at the trial level and in the appellate courts.

Mr. Friedman served as co-lead counsel in a series of class actions against insurance companies challenging the sale of deferred annuities to senior citizens. These cases alleged RICO claims and other theories to obtain redress for allegedly false and misleading representations inducing elderly purchasers to invest their life savings in illiquid and poorly performing annuity products. Mr. Friedman and co-counsel for plaintiffs prosecuted class actions and secured settlements benefitting thousands of elderly consumers, including settlements with *Allianz Life Insurance Company of North America* (\$251 million), *American Equity Investment Life Insurance Company* (\$129 million), *Midland National Life Insurance Company* (\$80 million), as well as settlements with *Fidelity and Guaranty Life Insurance Company*, *National Western Life Insurance Company*, *Conseco Insurance Company*, *Jackson National Life Insurance Company*, and *American International Group, Inc.*

Universal Life Cost of Insurance Increases

Mr. Friedman served as co-lead counsel for the Plaintiff in *Yue v. Conseco Life Ins. Co.*, CV08-1506 and *Yue v. Conseco Life Ins. Co.*, CV11-9506, class actions challenging the legality of cost of insurance (“COI”) increases imposed on universal life policies. These cases alleged that Conseco Insurance Company unlawfully increased the COI charges in violation of the provisions of the universal life policies allowing such increases based only on worsening mortality experience. The actions alleged that mortality has improved, not worsened over the years (because people are living longer). Conseco withdrew the COI increases during the pendency of the first case but then sought to impose a new increase shortly thereafter. Accordingly, the Plaintiff initiated a new action against Conseco challenging the new COI increase. The Court certified the proposed class of policyholders and issued an injunction halting the challenged increase. Plaintiff thereafter moved for summary judgment against Conseco. A settlement was ultimately reached which required Conseco to roll back the challenged COI increases, thereby providing settlement benefits to class members with a total projected value of \$65 million.

Mr. Friedman is currently serving as co-lead counsel for the Plaintiffs in *Feller, et al. v. Transamerica Life Insurance Company*, a class action challenging cost of insurance increases imposed by Transamerica on various universal life policies. Plaintiffs are seeking injunctive relief to invalidate the COI rate increases, which are alleged to violate the terms of the insurance policies.

Captive Reinsurance Transactions

Mr. Friedman represents plaintiffs in cases asserting that life insurance companies have offloaded insurance liabilities to affiliated captive reinsurance companies to weaken policy reserves and falsely inflate reported surplus. Plaintiffs allege that the defendant insurance companies used these fraudulent practices to misrepresent their true financial condition to induce consumers to purchase annuities and other insurance products. These cases, which assert claims under the federal anti-racketeering statutes, currently include *Ludwick v. Harbinger Group, et al.* and *Hudson v. Athene Annuity and Life Company, et al.*

Health Insurance

Mr. Friedman served as co-lead counsel representing health care providers in *In re Managed Care Litigation*, an MDL proceeding against major managed care companies seeking recovery for allegedly

improper claims payment practices. Mr. Friedman represented the American Psychological Association, the American Podiatric Medical Society, the Florida Chiropractic Association and numerous individual providers in cases against Humana, Inc., CIGNA, numerous Blue Cross and Blue Shield companies and other managed care companies. Mr. Friedman and his co-counsel secured settlements against CIGNA (\$72 million) and Humana, Inc. (\$20 million) in these MDL proceedings.

Mr. Friedman also is representing health care providers in proceedings against several major health care companies arising from the use of the Ingenix database to improperly reduce payments to patients, physicians and other providers. Defendants in these class action proceedings include Aetna, CIGNA and WellPoint, Inc. Mr. Friedman represents the New Jersey Psychological Association, the American Podiatric Medical Association, the California Chiropractic Association and the California Psychological Association, among other plaintiffs, in these actions.

Mr. Friedman also represents plaintiffs in class action proceedings in California against Blue Cross and Blue Shield for engaging in postclaims underwriting. Postclaims underwriting is a practice by which insurance companies fail to conduct underwriting before accepting insurance applications but seek to find grounds to rescind health insurance policies when a claim for payment is submitted by the patient or doctor.

Civil Rights

Mr. Friedman and the firm, along with several other law firms, have represented African-American policy holders in class action proceedings against life insurance companies seeking relief under the Federal Civil Rights Act for racial discrimination in the sale and administration of life insurance policies. For many decades, life insurance companies routinely charged higher premiums to non-Caucasians for inferior life insurance policies. The first such action, against *American General Life & Accident Company*, resulted in a \$250 million settlement providing benefits that included cash refunds, increased death benefits and reduced future premiums. Mr. Friedman and the firm also represent plaintiffs in similar race discrimination class actions against other life insurance companies, including *Metropolitan Life*, *Liberty National*, *American National*, *Monumental Life*, *Western & Southern Life* and *Jefferson-Pilot Life Insurance Company*.

Mr. Friedman served as lead or co-lead counsel in many other actions seeking to hold financial institutions responsible for racial discrimination against minorities. He currently serves as co-lead counsel on behalf of proposed classes of African-American and Latino borrowers asserting claims against mortgage lenders for racial discrimination in violation of the Equal Credit Opportunity Act and the Fair Housing Act. The bank defendants in these actions, among others, include: *Countrywide Financial Corporation*; *Wells Fargo Bank, N.A.*; *GreenPoint Mortgage Funding, Inc.*; *GE Money Bank*; *First Franklin Financial Corp.*; *JP Morgan Chase & Chase Bank, U.S.A., N.A.*; *H&R Block, Inc.*; *IndyMac Bank, F.S.B.*; *HSBC Finance Co.*, and *Option One Mortgage Co.* Mr. Friedman also has represented Plaintiffs in cases challenging the use of credit scoring by insurance companies and lenders in a manner that adversely impacts minority consumers.

Data Breach Litigation

Mr. Friedman and other lawyers of the firm have represented consumers and health care patients in cases arising from cyber-attacks against companies resulting in the theft of personal information, including credit card and personal health information.

Mr. Friedman represented the Chapter 7 trustee for CardSystems Solutions, Inc. in two separate actions in the Pima County Superior Court. CardSystems was a major credit and debit card processor that collapsed into bankruptcy in 2006. CardSystems failed to properly encrypt credit card data and was the victim of a hacking intrusion resulting in the disclosure of confidential information and identity theft. The CardSystems security breach, which was the largest reported breach of personal data (exposing as many as 40 million credit cards), sparked a national scandal and hearings before the U.S. Senate. After obtaining a judgment against former officers of CardSystems in the amount of \$7.5 million, Mr. Friedman represented the bankruptcy trustee in an action against the insurance company and ultimately secured a payment of \$1.25 million.

Professional Associations

Mr. Friedman has lectured at numerous continuing legal education programs, including panel discussions and presentations on the Private Securities Litigation Reform Act (1996 Federal Bar Convention), prosecution of nationwide class actions in state courts (1996 ABA Annual Convention), litigation of life insurance market conduct cases (1997, 1999 and 2000 PLI conferences), class action best practices (2011 Arizona State Bar), consumer rights litigation (2008), the Arizona Securities Act (2013 Arizona State Bar), mediation of complex cases (2016 American Bar Association) and other litigation programs sponsored by the Practicing Law Institute, ALI-ABA, American Bar Association, National Academy of Elder Law Attorneys .

Mr. Friedman testified before the U.S. Congress in connection with proposed legislation to limit the rights of consumers in class action cases. He also has testified before the Arizona Legislature in connection with legislation on the Arizona Anti-Racketeering Act, the Arizona Securities Fraud Act and proposed legislation to limit the ability of consumers to obtain relief through class actions.

Mr. Friedman received his Bachelor of Arts Degree from the University of Rochester in 1975 (high distinction) and his Law Degree from Duke University School of Law in 1978 (Order of the Coif, high distinction). He serves as a Board member of Public Justice, a public interest organization and is also a member of the American Association of Justice and Consumer Attorneys of California. Mr. Friedman was a finalist for the Public Justice Trial Lawyer of the Year in 2008 and a finalist for the CAOC Consumer Attorney of the Year in 2009.

Mr. Friedman served as a Board member of the Public Justice Foundation and currently serves as a Board member of Public Citizen. Mr. Friedman has performed *pro bono* services on behalf of non-profit organizations, including the Jewish Children and Family Services and private litigants.

Mr. Friedman is a founding member of Bonnett, Fairbourn, Friedman & Balint.



FRANCIS J. BALINT, JR.'s practice focuses on consumer class action litigation, qui tam actions under the federal False Claims Act, insurance coverage and defense matters, and appellate work. He has represented clients in class litigation involving federal and state securities laws, deceptive insurance sales practices, and other consumer claims. In particular, Mr. Balint served as counsel for the relator in *Todarello v. Beverly Enterprises*, (D. Ariz. & N.D. Cal.) a qui tam action which led to a recovery by the United States Government of \$170 million. Successful appellate decisions include: *Atchison, Topeka and Santa Fe Ry. Co. v. Brown & Bryant, Inc.*, 159 F.3d 358 (9th Cir. [Cal.] Oct. 14, 1998); *Taylor AG Industries v. Pure-Gro*, 54 F.3d 555 (9th Cir.

[Ariz.], Apr. 24, 1995); *Ranch 57 v. City of Yuma*, 152 Ariz. 218, 731 P.2d 113 (Ariz. App. Div. 1, Sept. 2, 1986). Mr. Balint is a former President of the Arizona Association of Defense Counsel (1999-2000), a former member of its board of directors and former chairman of its Amicus Committee.

Mr. Balint served as co-counsel for the Lead Plaintiffs and the investor class in the litigation arising out of the collapse of the Baptist Foundation of Arizona, the largest charitable institution fraud case in United States history. The recovery achieved for investors, after four years of highly adversarial litigation, exceeded \$250 million.

Mr. Balint also served as co-counsel for the Lead Plaintiff, the Policemen's Annuity and Benefit Fund of Chicago, and a class of shareholders seeking relief under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. *In re Apollo Group, Inc.*, CV-04-2147-PHX-JAT (D. Ariz.) was one of only six such cases to have been taken to trial since the passage of the PSLRA. Lead Plaintiff successfully obtained a verdict of approximately \$275 million for Apollo shareholders.

Other class action cases which Mr. Balint has litigated include *Cheatham v. ADT LLC* (Consumer Protection); *Harshbarger v. The Penn Mutual Life Insurance Company* (Policyholder Protection); *The Apple iPod iTunes Anti-Trust Litigation* (Antitrust); *Facciola v. Greenberg Traurig* (Securities Fraud); *In Re: Prudential Insurance Company of America SGLI/VGLI Contract Litigation* (Policyholder Protection); *Yue v. Conseco Life Insurance Company* (Policyholder Protection); *Orthologic Securities Fraud Litigation*. (Securities Fraud); *In re Skymall* (Securities Fraud); *Rogers v. American Family* (Policyholder Protection).

Mr. Balint received his Bachelor of Arts Degree with high distinction from the University of Virginia in 1979. He received his law degree in 1982 from the University of Virginia. Mr. Balint was admitted to the Bar in the Commonwealth of Virginia in 1982, the District of Columbia in 1982, the State of Arizona in 1983, and the Commonwealth of Massachusetts in 2010; he is admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Fourth, Fifth, Seventh, Ninth and Tenth Circuits, and the U.S. District Court for the District of Arizona, the District of Colorado, the Eastern District of Virginia, the Central District of Illinois and the District of Massachusetts.

Mr. Balint was a sole practitioner in Virginia for a short period of time before becoming associated with Evans, Kitchel & Jenkes, P.C., a large Phoenix law firm. In 1984, Mr. Balint became a founding member of Bonnett, Fairbourn, Friedman & Balint, P.C.

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

ATTORNEYS

WILLIAM G. FAIRBOURN, born Salt Lake City, Utah, April 21, 1947; admitted to bar, 1973, Arizona; Arizona Supreme Court; U.S. District Court, District of Arizona; United States Court of Appeals, Ninth Circuit. Education: University of Utah (B.S., 1970); Arizona State University (J.D., 1973). Member: Maricopa County Bar Association (Member, Board of Directors, 1984-1986); Arizona Association of Defense Counsel (Member, Board of Directors, 1981-1989; President, 1986); American Board of Trial Advocates (President Phoenix Chapter, 1994); Fellow, American College of Trial Lawyers.

ANDREW S. FRIEDMAN, born Plainfield, New Jersey, September 26, 1953; admitted to bar, 1978, Arizona; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona; U.S. Supreme Court. Education: University of Rochester (B.A., with high distinction, 1975); Duke University (J.D., with high distinction, 1978). Order of the Coif. Member: State Bar Committee on Civil Practice and Procedure (1980-1984); State Bar Committee on Bench-Bar Relations (1991); State Bar Bankruptcy Section; National Association of Commercial Trial Attorneys (1991-present); American Bar Association, Trial Practice Committee, Subcommittees and Class and Derivative Actions.

FRANCIS J. BALINT, JR., born Pittsburgh, Pennsylvania, January 9, 1957; admitted to bar, 1982, Virginia and District of Columbia; 1983, Arizona; U.S. District Court, Districts of Arizona and Virginia; U.S. Court of Appeals, Fourth and Ninth Circuits; U.S. Supreme Court. Education: University of Virginia (B.A., with high distinction, 1979; J.D., 1982). Former President: Arizona Association of Defense Counsel (Member, Board of Directors 1988 - 2001).

VAN BUNCH, born Chattanooga, Tennessee, April 28, 1957; admitted to bar, 1984, Arizona; 2007, West Virginia; U.S. District Court, District of Arizona. Education: Vanderbilt University (B.A., 1979); University of Tennessee at Knoxville (J.D., with high honors, 1984). Order of the Coif.

MICHAEL N. WIDENER, born Mt. Ranier, Maryland, June 10, 1950; admitted to bar, 1983, Arizona and Tennessee; United States Supreme Court; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona. Education: University of Virginia (B.A., with distinction, 1972); University of Illinois (M.S., 1974); University of Arizona (J.D., 1982). Articles Editor, *Arizona Law Review*, 1980-1982. Law Clerk to Hon. James Duke Cameron, Supreme Court of Arizona, 1982-1983. (Certified Specialist, Real Estate Law, Arizona Board of Legal Specialization). Adjunct Professor (Land Use and Water Law), Arizona Summit Law School; Zoning Adjustment Hearing Officer, City of Phoenix.

ROBERT J. SPURLOCK, born Janesville, Wisconsin, November 23, 1954; admitted to Arizona bar, 1984; U.S. District Court, District of Arizona. Education: University of Wisconsin-Madison (B.S., with honors, 1976), Arizona State University (J.D., 1984). Law Clerk to the Honorable D.L. Greer, Arizona Court of Appeals, 1984-1985; Member: Phoenix Association of Defense Counsel; Defense Research Institute; Arizona Association of Defense Counsel; American Bankruptcy Institute. Adjunct Professor, Sandra Day O'Connor School of Law, Arizona State University.

C. KEVIN DYKSTRA, born Phoenix, Arizona, March 30, 1964; admitted to Arizona bar, 1989; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona. Education: Northern Arizona University (B.S., 1986); California Western School of Law (J.D., 1989). Director, Arizona Association of Defense Counsel.

ELAINE A. RYAN, born Emmetsburg, Iowa, June 15, 1963; admitted to Arizona bar, 1989; Texas bar, 2008; Kansas bar, 2010; Missouri bar, 2010; Washington bar, 2010; Colorado bar, 2011; Utah bar, 2011; Idaho bar, 2011; U.S. District Court, District of Arizona; U.S. District Court, District of Eastern Michigan; U.S. District Court, District of Idaho; U.S. District Court, Western District of Wisconsin; U.S. District Court, Northern District of Illinois. Education: University of Iowa (B.S., with distinction, 1986); Duke University (J.D., 1989).

ANDREW Q. EVERROAD, born Phoenix, Arizona, August 8, 1969; admitted to Arizona bar, 1995; U.S. District Court, District of Arizona. Education: University of Arizona (B.A., 1992); University of London – Bloomsburg, 1990; Arizona State University (J.D., 1995). Law Clerk to the Honorable Thomas C. Kleinschmidt, Arizona Court of Appeals, 1995-1996.

PATRICIA N. SYVERSON, born San Diego, California, July 16, 1975; admitted to California bar, 1999; Arizona bar, 2000; U.S. District Court, Central and Southern Districts of California; U.S. District Court, District of Arizona. Education: University of California at San Diego (B.A., 1996); California Western School of Law (J.D., 1999).

KIMBERLY C. PAGE, born Washington, D.C., February 16, 1968; admitted to Georgia bar, 1993; Alabama bar, 1993; Arizona bar, 2004; U.S. District Court, Northern, Middle and Southern Districts of Alabama; U.S. Court of Appeals, Eleventh Circuit. Education: Miami University (B.A., 1990); Cumberland School of Law of Samford University (J.D., *magna cum laude*, 1993).

CHRISTINA L. BANNON, born Ames, Iowa, September 16, 1968; admitted to Arizona bar, 1995; U.S. Court of Appeals, Ninth Circuit, 1997; U.S. District Court, District of Arizona. Education: Arizona State University (B.A., *summa cum laude*, 1989); Arizona State University College of Law (J.D., *cum laude*, 1995). Associate Articles Editor, *Arizona State University Law Journal*, 1994-1995. Law Clerk to Hon. E. G. Noyes, Jr., Arizona Court of Appeals, 1995-1996.

MANFRED P. MUECKE, born Inglewood, California, August 28, 1971; admitted to California bar, 2002; U.S. District Court, Southern District of California. Education: California State University Northridge (B.A., 1996); University of San Diego (J.D., 2002); San Diego State University (M.B.A., 2009).

WILLIAM F. KING, born Phoenix, Arizona, October 21, 1978; admitted to Arizona bar, 2005; U.S. District Court, District of Arizona. Education: Rockhurst College (B.A., 2001); Creighton University School of Law (J.D., *cum laude*, 2005). Lead Articles Editor, *Creighton Law Review*, 2004-05.

T. BRENT JORDAN, born Urbana, Illinois, November 21, 1967; admitted to Minnesota bar, 1993, Pennsylvania bar, 2003; U.S. District Court, Eastern District of Pennsylvania. Education: University of Illinois (B.A., B.S., *magna cum laude*, 1990); University of Minnesota Law School (J.D., *cum laude*, 1993). Judicial Clerk, U.S. Magistrate Judge Raymond L. Erickson, U.S. District Court, District of Minnesota, 1993-1995.

TY D. FRANKEL, born Phoenix, Arizona, November 13, 1983; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona; U.S. Court of Appeals, Ninth Circuit. Education: Boston College (B.A., Dean's List, 2006); Boston College Law School (J.D., *cum laude*, 2009).

CARRIE A. LALIBERTE, born Juneau, Alaska, December 9, 1989; admitted to Arizona bar, 2015; U.S. District Court, District of Arizona. Education: Washington State University (B.S., *magna cum laude*, 2012); Arizona State University College of Law (J.D., *cum laude*, 2015).

LISA T. HAUSER, born Kansas City, Missouri, March 13, 1956; admitted to bar, 1981, Arizona; Arizona Supreme Court; U.S. District Court, District of Arizona; United States Court of Appeals, Ninth Circuit; U.S. Supreme Court. Education: University of Arizona (B.A., with high distinction, 1978); University of Arizona College of Law (J.D., 1981). Member: Arthritis Foundation of Arizona Leadership Board 2014-2016; University of Arizona Phoenix Alumnae Board of Directors 2004-2006; Foundation for Arizona's Future 2001-2005; University of Arizona Alumni Association National Board of Directors 1995-1998; State Bar of Arizona Appointments Committee 1991-1995. Coach, Sandra Day O'Connor School of Law ABA National Appellate Advocacy Competition Team 2011.

DANIEL R. LEATHERS, born Pittsburgh, Pennsylvania, November 11, 1982; admitted to Pennsylvania bar, 2009; admitted to New Jersey bar, 2009; admitted to New York bar, 2010; U.S. District Court, District of New Jersey; U.S. District Court, Eastern and Southern Districts of New York; U.S. District Court, Eastern District of Wisconsin; United States Court of Appeals, Third Circuit. Education: Pennsylvania State University (B.A. – History, 2005; B.A. – Journalism, 2005); Case Western Reserve University School of Law (J.D., *cum laude*, 2009). Executive Articles Editor, Case Western Reserve University School of Law Journal of International Law, (2008-09). Judicial Law Clerk to the late Carol E. Higbee, New Jersey Superior Court, Appellate Division, (2009-10).

NADA DJORDJEVIC, born Chicago, Illinois, June 25, 1970, admitted to Illinois bar, 2002; U.S. District Court for the Northern District of Illinois, 2002, Trial Bar, 2012; U.S. District Court for the Northern District of Indiana, 2004; United States Court of Federal Claims, 2004. Education: Grinnell College (B.A., Sociology, 1996); University of Illinois College of Law (J.D., *summa cum laude*, 2002), *University of Illinois Law Review*, Member 2000-2001, Symposium Editor, 2001-2002.

Exhibit B

From: Kacy Donlon <kdonlon@wiandlaw.com>

Sent: Thursday, July 9, 2020 11:42 AM

To: Jeff Sonn <jsonn@sonnlaw.com>

Cc: Burton Wiand <bwiaand@wiandlaw.com>

Subject: EquiAlt Receivership

Jeff –

It has come to the Receiver's attention that your firm is considering filing claims against law firms that provided counsel to EquiAlt. As you know, these are the Receiver's claims to bring and will be for the benefit of all the Receivership and EquiAlt investors and creditors. You should know that the

Receiver has sought and received the Court's approval for the retention of Johnson Pope to investigate and bring such claims. *See* attached Order. That effort is ongoing. The Receiver wanted to assure that you were aware of this. We believe these are the Receiver's claims and will take necessary action to protect them. Please let me know if you have any questions.

Katherine C. "Kacy" Donlon

5505 W. Gray Street

Tampa, FL 33609

Phone: 813.347.5104

Cell: 813.494.6806

Fax: 813.347.5154

kdonlon@wiandlaw.com

www.wiandlaw.com



Exhibit C

From: Adam Moskowitz

Sent: Monday, July 20, 2020 2:26 PM

To: Kacy Donlon <kdonlon@wiandlaw.com>; Jared Perez <jperez@wiandlaw.com>

Cc: Andy Friedman <afriedman@bffb.com>; Jeff Sonn <jsonn@sonnlaw.com>; guyb@jpfirm.com; johnsonali@sec.gov; Frank Balint <fbalint@BFFB.com>; Adam Schwartzbaum <adams@moskowitz-law.com>

Subject: EquiAlt: Investor Class Action Complaint

Dear Counsel:

We are writing in response to your email dated July 9, in which you reminded us that the Receiver has retained the law firm of Johnson, Pope to assert EquiAlt's claims against Paul Wassgren and DLA Piper. Please be aware that we will be filing a complementary class action in the U.S. District Court for the Middle District of Florida this week, to assert the EquiAlt investors' claims against Paul Wassgren, DLA Piper and Fox Rothschild. The class action complaint will assert claims by investor Plaintiffs residing in Florida, California, Colorado and Arizona on behalf of similarly situated investors from those states, which collectively encompass the largest concentration of EquiAlt investors. The complaint will allege claims under the various states' securities laws as well as common law claims for aiding and abetting breaches of fiduciary duty and fraud.

As the Eleventh Circuit recently reaffirmed in *Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296 (11th Cir. June 1, 2020), these claims "belong to the investors who suffered losses in the Ponzi scheme, not the Receivership Entities." *Id.* at 1307. Accordingly, "[t]he Receivership Entities thus cannot assert tort claims against third parties [like the lawyer defendants] for aiding and abetting the Ponzi scheme" and "[b]ecause ... [the] receiver stands in the shoes of the Receivership Entities, he to lacks standing to bring these aiding and abetting claims" *Id.* Thus, your suggestion that all claims against the

lawyer defendants “are the Receiver’s claims” is incorrect. Our class action will be limited to claims belonging exclusively to the investors (which *Isaiah* makes clear the Receiver has no standing to bring). We will not purport to assert any claims held by the Receiver and we will not join any parties named in the SEC action (i.e., the EquiAlt Corporate Defendants or the Relief Defendants).

Given the common legal and factual issues raised in the Investor class action and the SEC Complaint for violations of the federal securities laws, we also intend to file a motion seeking consolidation of the investor class action and the SEC action under Fed. R. Civ. P. 42(a), which will include a request that in light of *Isaiah* the Court confirm that neither the order appointing the Receiver nor the temporary restraining order preclude the investor plaintiffs from proceeding in the class action. Indeed, for the very reasons articulated by the Eleventh Circuit in *Isaiah*, the Receiver’s threat that he will seek to preclude or interfere with the investors’ ability to litigate claims which they alone hold is not only misguided, but is highly prejudicial to the rights and interests of the investors. Please advise us whether the Receiver will consent to consolidation and acknowledge to the Court that the Receivership Order and the TRO do not extend to the investor claims that will be asserted in the forthcoming class action. We will, of course, provide you with a courtesy copy of the class action complaint when it is filed.

On behalf of the investors, we again urge the Receiver and the newly appointed Special Counsel to work together with us to maximize the prospects for full recovery on behalf of the investors. Despite the Receiver’s prior rejection of our past overtures for such coordination, we stand ready to collaborate with the Receiver and the Johnson Pope law firm to ensure that discovery and other pretrial activities proceed in a coordinated, cost-efficient and expedited fashion. We will do so -- and will ask the Court to require the parties to do so -- regardless of the Receiver’s response to our repeated invitations to proceed in a coordinated and mutually supportive way.

Please let us know when we may speak with your team after you have the opportunity to review the filed class action complaint.

Thank you, Adam Moskowitz, Andy

Friedman and Jeff Sonn