

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

TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Case No.: 8:20-cv-00325-T-35MRM

Plaintiff

v.

BRIAN DAVISON, et al.,

Defendants.

**INVESTOR PLAINTIFFS' MOTION FOR
COURT APPROVAL OF ATTORNEYS' FEES AND EXPENSES**

Having jointly generated \$44 million in common settlement funds (the "Common Settlement Fund") to be distributed to investors through the Receivership Estate under a joint prosecution agreement (the "JPA") with the Receiver, undersigned counsel ("Investor Counsel") for the investor plaintiffs (the "Investor Plaintiffs") in *Richard Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT (the "Investors' Lawyer Action"), respectfully move the Court to approve the payment of \$5,500,000.00 in attorneys' fees from the Common Settlement Fund. This requested fee award equates to 25% of the 50% share of the \$44 million recovery allocated to the Investors' Lawyer Action under the JPA. Investor Counsel also respectfully request Court approval of \$268,607.79 in unreimbursed litigation expenses reasonably and necessarily incurred to generate the Common Settlement Fund.

As shown below, the Investor Counsel's fee and expense request is eminently fair and reasonable, given the efforts they expended, the risks they assumed, and the results they achieved.

I. INTRODUCTION

Before the Court for final approval are a series of settlements achieved through the combined and coordinated efforts of Investor Counsel and the Court-appointed receiver for EquiAlt, LLC ("EquiAlt"), Burton W. Wiand ("Receiver") and Special Counsel for the Receiver, Johnson Pope Bokor Ruppel & Burns, LLP ("Receiver Special Counsel"). Doc. 760. The centerpiece of those settlements is the agreement (the "Lawyer Settlement Agreement") reached by the Investor Plaintiffs and the Receiver with attorney Paul Wassgren and the two law firms where he was a partner when providing services to the EquiAlt, Fox Rothschild LLP, and DLA Piper LLP (US) (collectively, "the Lawyer Defendants").

If approved, the Lawyer Settlement Agreement will resolve all claims brought by both the Investor Plaintiffs and the Receiver against the Law Firm Defendants. Under the Lawyer Settlement Agreement, the Lawyer Defendants have agreed to the creation of a \$44 million Common Settlement Fund, to be distributed through the Receivership Estate conditioned upon protection against third-party claims by EquiAlt sales agents and other third parties. In order to satisfy the conditions of the Lawyer Settlement Agreement, Investor Counsel, the Receiver, and Receiver Special Counsel cooperatively engaged in another year of litigation, negotiation, and mediation to secure Settlement Agreements with some 30 EquiAlt Sales Agents (the "Sales Agent

Settlements”), thereby obtaining the releases necessary to collect the entire \$44 million from the Lawyer Defendants.

By this Motion, Investor Counsel respectfully requests that the Court approve a common fund fee and expense award commensurate with the common fund benefit generated for all EquiAlt Investors.

II. FACTUAL BACKGROUND

A. This Action

On February 11, 2020, the Securities and Exchange Commission (“SEC”) commenced an action against EquiAlt and its manager Brian Davison (“Davison”), alleging that they had “conducted a Ponzi scheme raising more than \$170 million from over 1,100 investors nationwide, many of them elderly, through fraudulent unregistered securities offerings.” Doc. 1, ¶ 1. The SEC named as additional defendants a number of purported EquiAlt investment funds (“the EquiAlt Funds”), and moved for the appointment of a receiver to administer EquiAlt’s assets and liabilities. The SEC has alleged that at all relevant times, Davison and Co-Defendant Barry Rybicki (“Rybicki”) exercised control over the business operations of EquiAlt and the EquiAlt Funds. *Id.* at ¶¶ 4, 37.

The SEC specifically alleged that the EquiAlt Funds were “operated as a Ponzi scheme almost since their inception.” Doc. 1, ¶ 42. The SEC accordingly asserted claims under the Federal Securities Act for unlawfully selling unregistered securities and for committing securities fraud. *See* 15 U.S.C. §§ 77e(a) and (c) and §§ 77q(a)(1), (2) and (3). The SEC also asserted claims against Davison and Rybicki (collectively,

the “Management Defendants”) for violating the anti-fraud provisions of the Exchange Act and Rule 10b-5 promulgated thereunder, control person liability, and aiding and abetting the foregoing securities laws. *See* 15 U.S.C. §78j(b) and 17 C.F.R. § 240.10b-5(a), (b) & (c).

B. Appointment of the Receiver

On February 14, 2020, this Court entered an order appointing Burton W. Wiand as Receiver over EquiAlt (“the Receivership Order”), which directed the Receiver to investigate and institute legal proceedings for the benefit and on behalf of the EquiAlt Receivership Estate and its investors. Doc. 11. The Receiver was specifically charged to “[t]ake immediate possession of all property, assets and estates of every kind” of the Receivership Estate, including specifically claims against potentially liable third parties. *Id.* at ¶¶ 1, 2.

The Court subsequently entered an order authorizing the Receiver to engage special counsel to investigate and prosecute litigation against the Lawyer Defendants, who had previously served as legal counsel to EquiAlt and the EquiAlt Funds and who appeared to have assisted Davison and Rybicki in the offer and sale of the unregistered EquiAlt securities through the unlicensed Sales Agent Defendants. Doc. 127.

C. The Investors’ Lawyer Action and the Receiver’s Lawyer Action

Immediately following the SEC’s initiation of litigation in February 2020, Investor Counsel began to receive inquiries from EquiAlt investors who were very concerned about losing their investment funds. *See Exhibit A*, Joint Declaration in

Support of Class Counsels' Motion for Attorneys' Fees and Expenses ("Joint Decl.")

¶ 11. Investor Counsel spoke with dozens of victims and began to investigate third parties who might be potentially liable to the investors, thereby providing significant sources of additional recovery. *Id.* Through their investigation, Investor Counsel uncovered evidence that attorney Paul Wassgren, a partner at the Fox Rothschild law firm and, later, a partner at the DLA Piper law firm, had knowingly provided substantial assistance to EquiAlt in its illegal sale of unregistered securities using unlicensed sales agents and the underlying scheme to defraud investors. *Id.*

The Investor Plaintiffs filed an initial class action complaint in this Court on February 26, 2020, styled *Steven J. Rubenstein, et. al. v. EquiAlt, Inc.*, Case No. 8:20-cv-00448-WFG-TGW ("the *Rubenstein* Action"), in which they alleged state law claims against certain EquiAlt managers and sales agents. The Receiver expressed concern, however, that in naming certain corporate officers as defendants, the Investor Plaintiffs could disrupt the Receiver's efforts to recover against them. In deference to the Receiver's request, the Investor Plaintiffs voluntarily dismissed the *Rubenstein* Action without prejudice after obtaining tolling agreements from various agents. *Rubenstein* Doc. 113.

On July 21, 2020, Investor Counsel, on behalf of a group of individual investors, commenced a new putative class action against the Lawyer Defendants only, asserting direct claims against the attorneys that Investor Plaintiffs alone had standing to pursue. *Richard Gleinn and Phyllis Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT (the "Investor Action"). The Investors' Lawyer Action was transferred to

this Court by order dated July 24, 2020, Investor Action Doc. 7, followed by the filing of an amended complaint on August 3, 2020. Investors' Lawyer Action, Doc. 13.

On September 28, 2020, the Receiver filed his own action against the Lawyer Defendants, asserting derivative claims against them in California federal court. The Receiver on December 30, 2021, voluntarily refiled those claims in the California Superior Court (the "Receiver's Lawyer Action"). Meanwhile, the Court approved the Receiver's establishment of a claims process through which to distribute to the EquiAlt investors the proceeds recovered by the Receiver (the "Receivership Claims Process"), including any proceeds recovered through the Receiver's Lawyer Action. Doc. 347.

D. The Genesis of the JPA

Rather than engage in a counterproductive competition for potentially limited recovery on behalf the investors, the Investor Plaintiffs and the Receiver instead entered into the JPA, under which they agreed to pool their efforts and resources and otherwise work cooperatively to pursue recoveries against the Lawyer Defendants. Joint Decl. ¶ 17. To ensure the efficient and coordinated prosecution of their respective claims, to minimize administration costs, and to avoid needless motion practice, the Investor Plaintiffs and the Receiver specifically agreed that any recoveries in their coordinated actions against the Lawyer Defendants would be distributed to the victimized EquiAlt investors through the Receivership Claims Process. *Id.* ¶ 18. The parties also agreed that, in the event that a global settlement was reached that did not allocate settlement proceeds separately between the Receivership Lawyer Action and

the Investors' Lawyer Action, the settlement proceeds will be allocated equally between the Receivership Lawyer's Action and the Investors' Lawyer Action (i.e., 50% to each Action). *Id.*

E. The Receiver's Sales Agent Action

In addition to pursuing their claims against the Lawyer Defendants, the Investor Plaintiffs secured tolling agreements with several of the key EquiAlt sales agents and had threatened claims against others (collectively, the "Sales Agent Defendants"). Joint Decl. ¶ 19. This allowed the Investor Plaintiffs ample time to negotiate settlements with several Sales Agent Defendants concurrently with their prosecution of the Investors' Lawyer Action. *Id.*

The Receiver meanwhile tasked his forensic accountants to identify those EquiAlt sales agents and their associated entities who received substantial "commissions" or "marketing fees" in return for their sales of the EquiAlt securities. Based on this information, the Receiver on February 13, 2021, commenced an action entitled *Burton W. Wiand v. Family Tree Estate Planning, LLC, et al.*, Case No. 8:21-cv-00361-SDM-AAS (the "Receiver's Sales Agent Action"), naming some 37 sales agents and their respective affiliated entities as defendants. Joint Decl. ¶ 20.

F. Investor Counsel's Prosecution of the Investor Plaintiffs' Claims against Lawyer Defendants

After piecing together documents and other evidence gathered during their investigation, Investor Counsel prepared and filed an extremely detailed amended complaint against the Lawyer Defendants in the Investors' Lawyer Action, spanning

88 pages and containing 334 paragraphs. Joint Decl. ¶ 21. The Investor Plaintiffs' amended complaint was supported by regulatory filings and evidence secured from cooperative sales agent witnesses that directly implicated the Lawyer Defendants in the alleged fraudulent scheme. *Id.*

Investor Counsel thereafter spent thousands of hours energetically litigating the Investor Plaintiffs' claims against the Lawyer Defendants. Joint Decl. ¶¶ 22-23. Investor Counsel promptly initiated discovery by serving the Lawyer Defendants with interrogatories and document requests. *Id.* At the same time, Investor Counsel negotiated with the Receiver and former EquiAlt managers to secure waivers of the attorney-client privilege (and otherwise applicable protections), successfully obtaining access to tens of thousands of documents in the possession of the Receiver. *Id.* After obtaining those documents, Investor Counsel established a document management database housing the documents for review and analysis by Investor Counsel. *Id.*

Investor Counsel ultimately reviewed and analyzed more than 600,000 pages of documents obtained from numerous sources, including documents produced by the Lawyer Defendants, documents produced in response to more than 65 subpoenas directed to EquiAlt sales agents, documents obtained from cooperating sources, and the EquiAlt business records secured from the Receiver. Joint Decl. ¶ 24. Investor Counsel in particular spent countless hours negotiating with the Lawyer Defendants concerning deficiencies in their responses to the discovery requests. *Id.* In furtherance of their document discovery, Investor Counsel served the Lawyer Defendants with follow-up discovery requests, negotiated search terms for electronically stored

information, and negotiated an agreed confidentiality order demanded by the Lawyer Defendants as a condition to their production of documents. *Id.*

Investor Counsel furthermore ultimately filed motions to compel the production of documents from each of the Lawyer Defendants, resulting in the production of still further responsive documentation. Joint Decl. ¶ 23. Investor Counsel served notices of deposition for witnesses possessing relevant information, such as Ernest Badway, and began arrangements for depositions of the Lawyer Defendants and other knowledgeable witnesses. *Id.* ¶ 25. Investor Counsel conducted the deposition of Wyn Saunders, a paralegal who worked with Paul Wassgren, and defended the depositions of the Investor Plaintiffs. *Id.*

After the inception of the Investors' Lawyer Action and amendment of the initial complaint, each of the Lawyer Defendants filed voluminous motions to dismiss the amended complaint. The motions to dismiss contained a combined 105 pages of legal argument raising a plethora of complicated legal and factual arguments. Joint Decl. ¶ 26. Investor Counsel thereafter prepared and filed a combined 58-page opposition on January 15, 2021. *Id.*

After marshalling evidence supporting the Investor Plaintiffs' claims, Investor Counsel prepared and filed the Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel (the "Class Certification Motion") on July 23, 2021. Joint Decl. ¶ 27; *see also*, Investors' Lawyer Action, Doc. 128. The Class Certification Motion, which like the motions to dismiss was pending

at the time the Lawyer Settlement Agreement was reached, was supported by extensive documentary evidence. *Id.*

All told, Investor Counsel devoted more than 9,000 hours prosecuting the Investor Plaintiffs' claims in the Investors' Lawyer Action, all on a contingency basis with absolutely no assurance of compensation. Joint Decl. ¶ 28. In addition, Investors' Counsel at their own expense (over \$140,000) retained forensic accounting experts to calculate the investors' damages for purposes of litigating this matter through class certification and trial. *Id.* ¶¶ 28, 52 & Ex. 2.

G. Mediation and Settlement

On August 17, 2021, the Investor Plaintiffs, the Lawyer Defendants, the Receiver, and Receiver Special Counsel participated in a global mediation before nationally recognized mediator David Geronemus of JAMS. Joint Decl. ¶ 29. The parties made substantial progress toward settlement and the mediation was held open for the parties to continue their settlement discussions. *Id.* In response to the parties' joint request, the Court entered an order continuing all deadlines in the action for approximately 90 days, and held in abeyance rulings on Defendants' motions to dismiss and Plaintiffs' Class Certification Motion. *Id.* The Court entered an order extending the stay for an additional 90 days on November 19, 2021. *Id.*

The parties continued their negotiations and, on December 8, 2021, entered into a Memorandum of Understanding setting forth the principal terms of the Lawyer Settlement Agreement. Joint Decl. ¶ 30. The parties thereafter turned their attention to numerous remaining issues necessary to finalize, memorialize and execute the

formal Lawyer Settlement Agreement. *Id.* Accordingly, at the parties' joint request the Court entered an additional 90-day continuance of the stay, followed by several additional extensions providing the time necessary for the parties to satisfy certain required conditions of the Settlement Agreement. *Id.*

As the parties explained in seeking multiple stay extensions, the Lawyer Settlement Agreement required the Investor Plaintiffs and the Receiver to satisfy multiple exacting conditions, including the procurement of releases from former EquiAlt managers Davison and Rybicki and additional releases from more than 30 sales agents and their related affiliates. Joint Decl. ¶¶ 31-32. These onerous requirements, which were a necessary pre-condition for the Lawyer Defendants to pay the \$44 million settlement amount, in turn required the Investor Counsel and the Receiver to engage in contentious protracted negotiations with dozens of sales agents and Messrs. Davison and Rybicki, which in turn required further mediations and extended negotiations to resolve claims asserted in *Burton W. Wiand, as Receiver for EquiAlt, LLC, et al., v. Family Tree Estate Planning, LLC, et al.*, Case No. 8:21-cv-00361-SDM-AAS, the Receiver's pending claw-back action against the agents and the Investor Plaintiffs' threatened claims against those same agents (the "Sales Agent Settlement Agreements"). *Id.*

Several of the Sales Agent Settlement Agreements are themselves conditioned on the entry of bar orders protecting the settling defendants from claims by investors and other third parties, which in turn required additional negotiations with the Lawyer Defendants and ultimate approval by this Court. Joint Decl. ¶ 33. If that were not

enough, the ability of the Investor Plaintiffs and the Receiver to procure the required releases was complicated by pending regulatory proceedings against the sales agents, which necessitated coordination with the responsible regulatory authorities. *Id.* Ultimately, certain of the sales agents refused to sign the required releases, thereby requiring additional negotiations with the Lawyer Defendants to modify the related provisions of the Settlement Agreement. *Id.*

It is fair to say Investor Counsel devoted hundreds of additional hours of additional time actively participating in this laborious process which extended over more than a year, during which Investor Counsel negotiated with the sales agents and Davison and Rybicki, attended mediation sessions and prepared and negotiated multiple rounds of required documentation, while simultaneously negotiating with the Lawyer Defendants to hammer out and document multiple addendums to the Lawyer Settlement Agreement. Joint Decl. ¶¶ 34-35. Ultimately, Investor Counsel were successful in obtaining releases from Rybicki, Davison, and nearly all of the sales agents thereby satisfying the conditions necessary to finalize the \$44 million settlement with the Lawyer Defendants and present it to the Court for preliminary and final approval. *Id.*

III. ARGUMENT

A. Legal Standard for an Award of Attorneys' Fees in Common Fund Cases

The Supreme Court has long recognized that where, as here, counsel's efforts result in the creation of a "common fund" for the benefit of an ascertainable group or class of people, counsel should be compensated from that fund for doing so. *See Boeing*

v. Van Gemert, 444 U.S. 472, 478 (1980). One rationale for such awards is that “persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched.” *Id.* at 478. While most common fund recoveries occur in class action settlements, the same principles apply in non-class cases benefiting discrete or identifiable groups of beneficiaries. *Amorin v. Taishan Gypsum Co.*, 861 F. App’x 730, 734 (11th Cir. 2021), *cert. denied sub nom. Parker Waichman, LLP v. Levin*, 211 L. Ed. 2d 480, 142 S. Ct. 769 (2022). As Justice Frankfurter once explained:

Whether one professes to sue representatively or formally makes a fund available for others may, of course, be a relevant circumstance in making the fund liable for his costs in producing it. But when such a fund is for all practical purposes created for the benefit of others, the formalities of the litigation—the absence of an avowed class suit or the creation of a fund, as it were, through *stare decisis* rather than through a decree—hardly touch the power of equity in doing justice as between a party and the beneficiaries of his litigation.

Sprague v. Ticonic Nat. Bank, 307 U.S. 161, 167 (1939).

In the Eleventh Circuit, “attorneys’ fees awarded from a common fund must be based upon a reasonable percentage of the fund established for benefit of the class.” *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *see also Gevaerts v. TD Bank*, No. 11:14-cv-20744, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015) (“[C]lass counsel is awarded a percentage of the fund generated through a class action settlement.”).¹

¹ The lodestar approach to determining a reasonable fee award is inapplicable when calculating “attorneys’ fees awarded from a common fund.” *Camden I*, 946 F.2d at 774. “[I]n the Eleventh Circuit, ‘the lodestar approach should not be imposed through the back door via a ‘cross-check.’” *Wilson v. EverBank*, No. 14-cv-22264, 2016 WL 457011, at *13 (S.D. Fla. Feb. 3, 2016) (quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 (S.D.

The “majority of common fund fee award falls between 20% to 30% of the fund.” *Camden*, 947 F.2d at 774. The Eleventh Circuit has instructed district courts to view this range as a “benchmark” which “may be adjusted in accordance with the individual circumstances of each case,” using the 12 non-exclusive factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989). *See Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (quoting *Camden I*, 946 F.2d at 775).

Accordingly, in evaluating the reasonable percentage of a common fund that should be awarded to counsel who have litigated group claims on a contingency basis, the court considers the following factors: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *Camden I*,

Fla. 2011)). “The Eleventh Circuit made clear in *Camden I* that percentage of the fund is the *exclusive* method for awarding fees in common fund class actions.” *Id.* Thus, “courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all.” *Id.* at 1363; *see also, e.g., In re Takata Airbag Prods. Liability Litig.*, No. 15-02599, 2017 WL 5706147, at *4-5 (S.D. Fla. Nov. 1, 2017); *Reyes v. AT&T Mobility Servs., LLC*, No. 10-20837, 2013 WL 12219252, at *6 (S.D. Fla. Jun. 21, 2013).

946 F.2d at 772 n.3. The court may consider “other pertinent factors” that may include, among other “additional factors unique to a particular case,” “the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.” *Id.* at 775. Most fundamentally, “monetary results achieved predominate over all other criteria.” *Id.* at 774.

District courts within this circuit routinely apply the percentage method and *Camden I* factors to order fee awards totaling one-third or more of the common fund recovered for the benefit of a class of recipients.² Moreover, in complex securities and Ponzi scheme cases such as this, district courts in this circuit most often conclude that an award at or above the 25% benchmark is reasonable.³

² See *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) (“The average percentage award in the Eleventh Circuit mirrors that of awards nationwide — roughly one-third”); see also, *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1295-98 (11th Cir. 1999) (affirming class action fee award of 33 1/3 % of the total available settlement fund); *Hanley v. Tampa Bay Sports & Ent. LLC*, No. 819CV00550CEHCPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding a “slight increase from the one-third benchmark”); *Pritchard v. APYX Med. Corp.*, No. 819CV00919SCBAEP, 2020 WL 6937821, at *1 (M.D. Fla. Nov. 18, 2020) (33 1/3%); *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (discussing the normality of 33% contingency fees); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (35%); *Swift v. BancorpSouth Bank*, No. 1:10-CV-00090-GRJ, 2016 WL 11529613, at *19 (N.D. Fla. July 15, 2016) (35%); *Reyes*, 2013 WL 12219252, at *3 (awarding “one-third of the total maximum settlement fund”); Eisenberg, Attorneys’ Fees in Class Actions: 2009-2013, 92 N.Y.U. L. REV. 937, 951 (2017) (empirical study showing the median award in Eleventh Circuit is 33%).

³ See, e.g., *Waters*, 190 F.3d at 1292–98 (approving district court’s award of one-third of \$40 million common fund in a class action concerning securities fraud); *In re Sunbeam*

Consequently, this Court has consistently awarded contingency fee counsel a percentage of a common fund at or above the 25% benchmark. *See, e.g., Boyd v. Task Mgmt. Staffing*, No. 8:20-cv-780-T-35JSS, 2021 WL 2474433, at *2 (M.D. Fla. April 30, 2021) (Scriven, J.) (finding attorney’s fee award in the amount of one-third of the total fund to be “reasonable and in line with *Camden I*”); *Herman v. Sea World Parks & Entm’t, Inc.*, No. 8:14-cv-3028-T-35JSS, 2019 WL 2535981, at *2 (M.D. Fla. April 29, 2019) (Scriven, J.) (finding attorney’s fee award of 25% of \$11.5 million common fund to be “fair and reasonable in light of the nature of this case, the experience and efforts of Class Counsel in prosecuting this Action, and the benefits obtained for the Class”).

B. The Requested 25% Benchmark Fee Award is Reasonable

Applying the percentage method and the factors referenced in *Camden I*, the Court should grant Class Counsel’s request for a fee award of \$5,500,000, which constitutes 25% of the settlement amount allocated to the Investors’ Lawyer Action under the JPA between the Investor Plaintiffs, the Receiver, and Receiver Special Counsel. As indicated above, the JPA contemplates that 50% of the total Common Settlement Fund created by the coordinated assertion of claims through the Investors’ Lawyer Action and the Receiver’s Lawyer Action is to be allocated to the Investors’ Lawyer Action. Thus, for present purposes, the Investor Plaintiffs and the Receiver have agreed that \$22 million of the \$44 million total common fund is allocable to the

Secs. Litig., 176 F.Supp.2d 1323 (S.D. Fla. 2001) (finding award of 25% of \$110 million common fund in securities fraud class action to be “fair, adequate, and reasonable” and “well within the range of fees awarded in comparable class-action cases”).

efforts of Investor Counsel in the Investors' Lawyer Action. In addition, because Investor Counsel agreed when the JPA was signed that we would cap our fee request at 25% of the amount allocated to the Investors' Lawyer Action (notwithstanding case law in this district and the Eleventh Circuit awarding far higher percentages), the Receiver has agreed that he will not oppose the fee award now sought by Investor Counsel. Joint Decl. ¶ 36.

As shown below, Investor Counsel's 25% request is surely justified by the results obtained, the demands and complexity of the Investors' Lawyer Action, the enormous investment of time and resources by Investor Counsel, the risk of nonrecovery surrounding the Investors' Lawyer Action, and similar fee awards in comparable cases.

1. Investor Counsel obtained outstanding results for the Investors.

Although taken out of order, "the amount involved and the results obtained" recognizes the fundamental principle that the level of a fee award should reflect the level of the relief obtained. *Johnson*, 488 F.2d at 718. This corresponds to the Supreme Court's directive that an enhancement of the fee award is warranted in cases of "exceptional success." *Blum v. Stenson*, 465 U.S. 886, 901 (1984). Factors indicating "exceptional success" include success achieved under unusually difficult or risky circumstances and the size of plaintiffs' recovery. *See Yates v. Mobile County Personnel Bd.*, 719 F.2d 1530, 1535 (11th Cir.1983).

Here, Investor Counsel's performance produced a very high level of achievement under extremely challenging circumstances. Joint Decl. ¶¶ 38-39. The

\$44 million settlement amount represents nearly one-third of the total principal losses suffered by the EquiAlt investors. That extremely favorable result would not have been achieved without the persistent and dedicated efforts of Investor Counsel. While \$22 million of the total settlement amount was presumptively allocated to the Investors' Lawyer Action under the JPA – thereby obviating any contest over division of the settlement proceeds – the reality is that Investor Counsel and the Receiver worked collaboratively, cooperatively, and tirelessly to secure the \$44 million Lawyer Settlement fund. This exceptional result was obtained despite the enormous risks associated with litigation by non-clients against lawyer defendants armed with numerous defenses and vast financial resources.

2. The Investors' Lawyer Action involved many novel and difficult questions and issues.

The second *Camden I* factor, “the novelty and difficulty of the questions involved,” likewise supports Investor Counsel’s benchmark fee request. *Camden I*, 946 F.2d at 772 n.3. The complex factual and legal issues underlying the Investors' Lawyer Action posed substantial obstacles to recovery requiring extraordinary efforts and legal acumen to achieve the excellent outcome. While Investor Counsel had unflagging confidence in the merits of the Investor Plaintiffs' claims, the outcome of the litigation was far from certain, and (given the high caliber and deep resources of defense counsel) the investors would undeniably have faced numerous substantial risks had their claims made it to trial. Joint Decl. ¶¶ 40-42.

Simply put, the Investor Plaintiffs' claims against the Lawyer Defendants were complex, novel, and inherently risky. As the Court will no doubt appreciate, claims against professionals by non-clients are notoriously difficult to establish. The Investor Plaintiffs' aiding and abetting claims against the Lawyer Defendants – which required proof of actual knowledge of the primary violations and substantial assistance – entailed even more heightened risks. *See, e.g.*, DLA Piper's Motion to Dismiss, Investors' Lawyer Action, Doc. 61 at 9 (emphasizing that “courts regularly dismiss claims for aiding and abetting fraud and breach of fiduciary duty for failing plausibly to plead actual knowledge or substantial assistance”) (and many cases cited therein). The Investor Plaintiffs faced uncertainty over whether a factfinder would conclude that the evidence presented at trial would be sufficient to meet this high standard. In addition, Plaintiff's claims under the state securities laws of Arizona, Colorado, Nevada, and California are each based on that state's unique regulatory framework, and the Lawyer Defendants raised substantial legal defenses to all of these claims. The Lawyer Defendants also raised innovative arguments that Plaintiffs' claims were preempted by SLUSA and the NSMIA. Furthermore, the Investor Plaintiffs faced procedural hurdles that may have posed challenges on class certification, including disparate putative class members with unique factual issues and claims and various statutes of repose that may have barred some investors from obtaining relief.

The novelty and difficulty of these questions presented thus readily support a benchmark fee award. *See Cabot East Broward 2 LLC*, No. 16-61218, 2018 WL 5905415, at *3 (S.D. Fla. Nov. 9, 2018) (“Class Counsel should be rewarded not only for taking

on the novel and difficult issues presented by this case despite substantial risk, but also for delivering an outstanding result in the face of those challenges, which will hopefully motivate others to do the same in the future.”).

3. Time and labor required, preclusion of other employment, and time limitations imposed by the client or circumstances.

The first, fourth, and seventh *Camden I* factors are interrelated inquires that together again support the reasonableness of the 25% request. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining “the time required to reach a settlement” and “the time and labor required”).

The Investors’ Lawyer Action has been pending in this Court since 2020, and Investor Counsel have since then devoted an enormous amount of time and effort to achieve a very favorable result for the EquiAlt investors. Joint Decl. ¶¶ 43-45. Collectively, Investor Counsel worked well over 9,000 hours in the prosecution of these complex claims entailing a very substantial risk of non-recovery. *Id.* ¶ 43 & 45. These efforts required certain Investor Counsel to devote a substantial portion of their time and resources to prosecution of the Investors’ Lawyer Action, including periods when they worked full time on the Investors’ Lawyer Action and related cases. *Id.* ¶ 44; *see, e.g., Camden I*, 946 F.2d at 772 n.3 (examining “the preclusion of other employment by the attorney due to acceptance of the case” and “time limitations imposed by the client or the circumstances”).

The 25% award is thus justified under the first, fourth, and seventh *Camden I* factors. *See Yates v. Mobile Cnty. Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (noting

the expenditure of time necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award); *Thorpe v. Walter Inv. Mgmt. Corp.*, No. 1:14-cv-20880-UU, 2016 WL 10518902, at *8 (S.D. Fla. Oct. 17, 2016) (granting request for attorneys' fees equal to 33.3% of common fund where class counsel “devoted significant time and resources to researching, investigating, and prosecuting” the case).

4. The Investors’ Lawyer Action posed considerable risks to Investor Counsel.

The Court should give great weight to the risks assumed by Investor Counsel in bringing the Investors’ Lawyer Action on a pure contingency fee basis. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining “whether the fee is fixed or contingent,” “the ‘undesirability’ of the case,” and “the economics involved in prosecuting a class action”). “A determination of a fair fee ... must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high.” *Pinto*, 513 F. Supp. 2d at 1339. Many cases recognize that attorneys' risk is “‘perhaps the foremost’ factor” in determining an appropriate fee award. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir.2000) (citation omitted); *see e.g., Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992); *Walters v. Atlanta*, 652 F. Supp. 755, 759 (N.D. Ga.), *modified*, 803 F.2d 1135 (11th Cir. 1986); *York v. Alabama State Bd. of Educ.*, 631 F. Supp. 78, 86 (M.D. Ala. 1986); *accord, Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir.1981) (“Lawyers who are to be compensated only in the event of victory

expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result.”).

These risk factors should indeed weigh heavily in favor of awarding Investor Counsel 25% of the common fund amount allocated to the Investors’ Lawyer Action. Investor Counsel have received no compensation during this litigation, while on the other hand incurring significant expenses to litigating on behalf of the victimized investors -- none of whom would have been recovered had the Investors’ Lawyer Action not been ably prosecuted. Joint Decl. ¶ 46. From the time Investor Counsel filed suit, there existed a very real possibility that they would achieve no recovery for the investors and hence no compensation. *Id. See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (contingent multiplier “is designed to reflect the riskiness of the case at the outset”). The relevant risks must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit and not retroactively with the benefit of hindsight.

And here, even after the parties achieved the Lawyer Settlement Agreement, Investor Counsel continued to bear the risk that they would be unable to obtain releases for from Rybicki, Davison, and the Sales Agent Defendants -- a reality that required this Court to extend an abatement of this case on five separate occasions. Joint Decl. ¶ 47.

In short, Investor Counsel's investment of time and expenses has always been at risk and wholly contingent on the result they achieved. The financial risks borne by Investor Counsel fully support the appropriateness of the fee requested. *See Cabot East*

Broward 2 LLC, 2018 WL 5905415, at *3 (awarding 33.33% of settlement fund where counsel took case on a contingent basis and case “presented novel and difficult issues that were subject to several affirmative defenses that could have reduced the value of the case to zero”). Accordingly, the sixth and tenth *Camden I* factors favor the requested 25% benchmark fee.

5. This case required Investor Counsel’s high level of skill and meaningful relationships with the Investor Plaintiffs.

The next *Camden I* factor pertains to Investor Counsel’s capabilities, reputation, and handling of the Investor Plaintiffs’ claims against the Lawyer Defendants, the Management Defendants, and the Sales Agent Defendants. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining “the skill requisite to perform the legal service properly,” “the experience, reputation, and ability of the attorneys,” and “the nature and length of the professional relationship with the client”). These factors similarly weigh in favor of the requested fee award to Investor Counsel.

Investor Counsel have extensive experience in complex and securities litigation. *See* Joint Decl. ¶ 49 & Ex. 1 (attaching firm resumes). To litigate such a case requires counsel highly experienced in both class action procedure and specialized substantive securities issues. *Id.* Further, Investor Counsel faced formidable and sophisticated opposition from two nationally prominent and sophisticated law firms, each represented by highly experience defense counsel. *Id.* The foregoing facts demonstrate that the third, ninth, and eleventh *Camden I* weigh in favor of Investor Counsel’s requested fee award. *See, e.g., Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334,

1342 (S.D. Fla. 2007) (“The skill of counsel is commensurate with the novelty and complexity of the issues in this case.”).

6. Awards in similar cases support the requested fee award.

Finally, the fifth and twelfth *Camden I* factors pertaining to the “customary fee” and fee “awards in similar cases” weigh in favor of Investor Counsel’s requested 25% benchmark fee award. *See Camden I*, 946 F.2d at 772 n.3, 775.

Courts in similar proceedings have concluded that a contingency fee award of at least 25% is appropriate to compensate litigation counsel who successfully prosecute and settle claims that expand the pool of funds available to compensate investor-creditors in a bankruptcy estate or receivership. *See, e.g., Secs. & Exch. Comm’n v. Stanford Int’l Bank*, Nos. 3:09-cv-0298-N, 3:13-CV-0477-N-BG, 2019 WL 289370 (N.D. Tex. Jan. 18, 2019) (approving 25% contingency fee concerning settlement of lawsuit against law firm for the benefit of a receivership estate and victims of a massive Ponzi scheme, where settlement was “not a class action settlement,” but instead “structured as a settlement with the Receiver and the [Creditor’s] Committee, and as a bar order precluding other litigation against [the law firm] arising from [a Ponzi scheme]”); *Secs. & Exch. Comm’n v. Stanford Int’l Bank*, Nos. 3:09-cv-0298-N, 3:13-CV-0477-N-BG, 2018 WL 1558266 (N.D. Tex. Marc. 26, 2018) (same); *Secs. & Exch. Comm’n v. Stanford Int’l Bank*, Nos. 3:09-cv-0298-N, 3:13-CV-0477-N-BG, 2015 WL 13021964 (N.D. Tex. Aug. 27, 2015) (same).

In another similar case, a district court concluded that a 25% contingency fee was “well within the range of reasonableness for cases of the magnitude and

complexity of the Litigation.” *Secs. & Exch. Comm’n v. Stanford Int’l Bank*, Nos. 3:09-cv-0298-N, 3:13-CV-0477-N-BG, 2019 WL 289370 (N.D. Tex. Jan. 18, 2019). The district court explained that while the settlement “is not a class action settlement, because the settlement is structured as a settlement with the Receiver and the [Creditor’s] Committee, and as a bar order precluding other litigation against [the law firm] arising from Stanford, this Court has analyzed the award of attorneys’ fees to Plaintiffs’ counsel” by awarding fees based on a percentage of the common fund with a reasonableness check. *Id.* at *2.

C. The Court Should Grant the Request for Reimbursement of Expenses

Finally, Investor Counsel is entitled to reimbursement from the common fund for reasonable litigation expenses. *See, e.g., In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2015 WL 12641970, at *18 (S.D. Fla. May 22, 2015); *Gevaerts*, 2015 WL 6751061, at *14. “Indeed, courts normally grant expense requests in common fund cases as a matter of course.” *Hanley*, 2020 WL 2517766, at *6. Here, Investor Counsel incurred a total of \$268,607.79 in expenses to date, all of which were necessarily incurred in furtherance of the litigation. Joint Decl. ¶¶ 51-52 & Ex. 2 (categorizing the expenses). These expenses are in line with normal expenditure amounts as a percentage of the total recovery amount. Joint Decl. ¶ 52.

IV. CONCLUSION

For the foregoing reasons, the Investor Plaintiffs respectfully request that this Court (i) award Investor Counsel attorneys’ fees in the amount of \$5,500,000 and (ii) order the reimbursement of \$ \$268,607.79 in litigation expenses to Investor Counsel.

RESPECTFULLY SUBMITTED this 5th day of January, 2023.

By: /s/ Andrew S. Friedman
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EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Case No.: 8:20-cv-00325-T-35MRM

Plaintiff

v.

BRIAN DAVISON, et al.,

Defendants.

**JOINT DECLARATION IN SUPPORT OF
INVESTOR PLAINTIFFS' MOTION FOR
COURT APPROVAL OF ATTORNEYS' FEES AND EXPENSES**

We, Andrew S. Friedman and Howard M. Bushman, hereby declare as follows:

1. Andrew S. Friedman is a shareholder in the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C. ("Bonnett Fairbourn"). Howard M. Bushman is a partner in The Moskowitz Law Firm ("Moskowitz Firm"). Together, and along with the other law firms and attorneys identified below, we serve as legal counsel for the investor plaintiffs (collectively, "Investor Counsel") in *Richard Gleinn and Phyllis Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT ("the Investors' Lawyer Action").
2. We have personal knowledge of the matters set forth herein, based on our active participation in all material aspects of the prosecution of the Investors' Lawyer Action,

leading to an agreement to settle the claims alleged in that Action (“the Settlement Agreement”). If called upon, we could and would competently testify that the following facts are true and correct based on our personal involvement in this litigation.

INTRODUCTION

3. Before the Court for final approval are a series of settlements achieved through the combined and coordinated efforts of Investor Counsel and the Court-appointed receiver for EquiAlt, LLC (“EquiAlt”), Burton W. Wiand (“Receiver”) and Special Counsel for the Receiver, Johnson Pope Bokor Ruppel & Burns, LLP (“Receiver Special Counsel”).

4. The parties to the Settlement Agreement are: (i) the Investor Plaintiffs; (ii) the Receiver; (iii) Paul Wassgren; (iv) Fox Rothschild LLP; and (v) DLA Piper LLP (US) (collectively, “the Lawyer Defendants”). If approved, the Settlement Agreement will resolve all claims brought by both the Investor Plaintiffs and the Receiver against the Lawyer Defendants. Under the Settlement Agreement, the Lawyer Defendants have agreed to pay \$44 million to establish a common settlement fund (the “Common Settlement Fund”). The Common Settlement Fund, less any attorneys’ fees and expenses approved by the Court, will be distributed through the Receivership Estate.

5. The effectiveness of the Settlement Agreement is conditioned upon certain protections against third-party claims against the Lawyer Defendants by EquiAlt sales agents and other third parties. To satisfy these conditions to the Settlement Agreement, Investor Counsel, the Receiver, and Receiver’s Special Counsel cooperatively engaged

in over a year of additional litigation, negotiation, and mediation to secure settlement agreements with some 30 EquiAlt Sales Agents and their related entities (the “Sales Agent Settlement Agreements”). As a result of the Sales Agent Settlement Agreements, we as Investor Counsel and the Receiver together obtained the necessary releases and covenants not to sue that were a condition of the Settlement Agreement.

6. We submit this Joint Declaration in support of Investor Plaintiffs’ Motion for Court Approval of Attorneys’ Fees and Expenses, based on the common fund created by the Settlement Agreement.

PROCEDURAL BACKGROUND

- **This Action**

7. On February 11, 2020, the Securities and Exchange Commission (“SEC”) commenced an action against EquiAlt and its manager Brian Davison (“Davison”), alleging that they had “conducted a Ponzi scheme raising more than \$170 million from over 1,100 investors nationwide, many of them elderly, through fraudulent unregistered securities offerings.” The SEC named as additional defendants a number of purported EquiAlt investment funds (“the EquiAlt Funds”), and moved for the appointment of a receiver to administer EquiAlt’s assets and liabilities. The SEC has alleged that at all relevant times, Davison and Co-Defendant Barry Rybicki (“Rybicki”) exercised control over the business operations of EquiAlt and the EquiAlt Funds.

8. The SEC specifically alleged that the EquiAlt Funds were “operated as a Ponzi scheme almost since their inception.” Doc. 1, ¶ 42. The SEC accordingly asserted

claims under the Federal Securities Act for unlawfully selling unregistered securities and for committing securities fraud. *See* 15 U.S.C. §§ 77e(a) and (c) and §§ 77q(a)(1), (2) and (3). The SEC also asserted claims against Davison and Rybicki (collectively, the “Management Defendants”) for violating the anti-fraud provisions of the Exchange Act and Rule 10b-5 promulgated thereunder, control person liability, and aiding and abetting the foregoing securities laws. *See* 15 U.S.C. §78j(b) and 17 C.F.R. § 240.10b-5(a), (b) & (c).

- **Appointment of the Receiver**

9. On February 14, 2020, this Court entered an order appointing Burton W. Wiand as Receiver over EquiAlt (“the Receivership Order”), which directed the Receiver to investigate and institute legal proceedings for the benefit and on behalf of the EquiAlt Receivership Estate and its investors. The Receiver was specifically charged to “[t]ake immediate possession of all property, assets and estates of every kind” of the Receivership Estate, including specifically claims against potentially liable third-parties.

10. The Court also subsequently entered an order authorizing the Receiver to engage Receiver Special Counsel to investigate and prosecute litigation against the Lawyer Defendants, who had previously served as legal counsel to EquiAlt and the EquiAlt Funds and who appeared to have assisted Davison and Rybicki in the offer and sale of the unregistered EquiAlt securities through the unlicensed Sales Agent Defendants.

- **The Investors' and Receiver's Independent Actions against the Lawyer Defendants**

11. Immediately following the SEC's initiation of litigation in February 2020, Investor Counsel began to receive inquiries from EquiAlt investors who were very concerned about losing their investment funds. As Investor Counsel, we spoke with dozens of victims and began to investigate the Management Defendants and other third-parties who might be potentially liable to the investors and capable of providing significant sources of recovery for the investors. Through our investigation, Investor Counsel uncovered evidence that we believed supported the allegation that attorney Paul Wassgren, a partner at the Fox Rothschild law firm (and later a partner at the DLA Piper law firm), had knowingly provided substantial assistance to EquiAlt in its illegal sale of unregistered securities using unlicensed sales agents and the underlying scheme to defraud investors.

12. On behalf of the Investor Plaintiffs, we first filed an initial class action complaint in this Court on February 26, 2020, styled *Steven J. Rubenstein, et. al. v. EquiAlt, Inc.*, Case No. 8:20-cv-00448-WFG-TGW ("the *Rubinstein* Action"), in which we alleged state law claims against the Management Defendants and certain sales agents who allegedly aided and abetted the unlawful sale of the EquiAlt securities. The Receiver expressed concern, however, that in naming certain corporate officers as defendants the Investor Plaintiffs could disrupt the Receiver's efforts to recover against them. In deference to the Receiver's request, the Investor Plaintiffs voluntarily

dismissed the *Rubenstein* Action without prejudice, while obtaining tolling agreements from selected EquiAlt sales agents.

13. On July 21, 2020, on behalf of a group of individual investors we commenced the Investors' Lawyer Action as a new putative class action against the Lawyer Defendants only, asserting direct claims against the attorneys that Investor Plaintiffs alone had standing to pursue. The Investors' Lawyer Action was transferred to this Court by order dated July 24, 2020, followed by the filing of an amended complaint on August 3, 2020.

14. The following law firms and lawyers (among others) joined us as co-counsel of record for the Investor Plaintiffs in the Investors' Lawyer Action: Sonn Law Group PA (Jeffrey Sonn), Casey Gerry Schenk Francavilla Blatt & Penfield, LLP (David Casey, Gayle Blatt and James Davis), Law Offices of Leonard B. Simon (Leonard Simon), Russomanno & Borrello, P.A. (Herman Russomanno and Robert Russomanno).

15. On September 28, 2020, the Receiver filed his own action against the Lawyer Defendants, asserting derivative claims against them in California federal court. The Receiver on December 30, 2021, voluntarily refiled those claims in the California Superior Court (the "Receiver's Lawyer Action").

16. This Court has approved the Receiver's establishment of a claims process through which to distribute to the EquiAlt investors the proceeds recovered by the Receiver (the "Receivership Claims Process"), including any proceeds recovered through the Receiver's Lawyer Action.

- **The Genesis of the JPA**

17. Rather than engage in a counterproductive competition for potentially limited recovery on behalf the investors, the Investor Counsel and the Receiver instead entered into a joint prosecution and common interest agreement (the “JPA”), under which we agreed to pool our efforts and resources and otherwise work cooperatively to pursue recoveries against the Lawyer Defendants.

18. To ensure the efficient and coordinated prosecution of their respective claims, to minimize administration costs, and to avoid needless motion practice, the Investor Plaintiffs and the Receiver specifically agreed in the JPA that any recoveries in their coordinated actions against the Lawyer Defendants would be distributed to the EquiAlt investors through the Receivership Claims Process. The parties also agreed that, in the event that a global settlement was reached that did not allocate settlement proceeds separately between the Receivership Lawyer Action and the Investors’ Lawyer Action, the settlement proceeds would be deemed equally allocated between the Investors’ Lawyer Action and the Receiver’s Lawyer Action (i.e., 50% to each Action).

- **Assertion of Claims against the EquiAlt Sales Agents by Investor Plaintiffs and the Receiver.**

19. In addition to pursuing the Investor Plaintiffs’ claims against the Lawyer Defendants, we as Investor Counsel secured tolling agreements with several of the key EquiAlt sales agents and had threatened claims against others (collectively, the “Sales Agent Defendants”). This allowed the Investor Plaintiffs ample time to negotiate

settlements with several Sales Agent Defendants concurrently with their prosecution of the Investors' Lawyer Action.

20. The Receiver meanwhile retained forensic accountants to identify those EquiAlt sales agents and their associated entities who received substantial "commissions" or "marketing fees" in return for their sales of the EquiAlt securities. Based on this information, the Receiver on February 13, 2021, commenced an action entitled *Burton W. Wiand v. Family Tree Estate Planning, LLC, et al.*, Case No. 8:21-cv-00361-SDM-AAS (the "Receiver's Sales Agent Action"), naming some 37 sales agents and their respective affiliated entities as defendants.

- **Prosecution of the Investor Plaintiffs' Claims against Lawyer Defendants**

21. After reviewing and analyzing documents and other evidence gathered during our investigation, we as Investor Counsel prepared and filed a detailed amended complaint against the Lawyer Defendants in the Investors' Lawyer Action, spanning 88 pages and containing 334 paragraphs. The Investor Plaintiffs' amended complaint was supported by regulatory filings and evidence secured from cooperative sales agent witnesses detailing the Lawyer Defendants actions and involvement with respect to the issuance and sale of the EquiAlt securities.

22. Investor Counsel thereafter spent thousands of hours litigating the Investor Plaintiffs' claims against the Lawyer Defendants. We promptly initiated discovery by serving the Lawyer Defendants with interrogatories and document requests. At the same time, we negotiated with the Receiver and former EquiAlt managers to secure waivers of the attorney-client privilege (and otherwise applicable protections),

successfully obtaining access to tens of thousands of documents in the possession of the Receiver. After obtaining those documents, we established a document management database housing the documents for review and analysis by Investor Counsel.

23. Despite the waivers obtained from the Receiver, the Lawyer Defendants initially refused to produce numerous related documents based on their assertion of the attorney-client privilege and ethical rules protecting the confidentiality of client communications. Based on these privilege objections and others based on relevance and proportionality, the Lawyer Defendants sought to block the Investor Plaintiffs from obtaining documents regarding their communications with investors and sales agents and the legal services they performed in connection with the REIT and QOZ funds sponsored by EquiAlt. To gain access to these documents, Investor Counsel filed two motions to compel in which they demonstrated that the Receiver was the sole holder of the privileges asserted by the Lawyer Defendants, that any privilege claimed by sales agents had been waived and that in any event the crime-fraud exception vitiated any otherwise applicable privilege. The Lawyer Defendants ultimately produced a substantial number of additional documents before the motions to compel were decided.

24. Investor Counsel ultimately reviewed over 1 TB of data collected and shared by the Receiver, and analyzed in excess of 80,000 documents (more than 600,000 pages) obtained from numerous sources, including documents produced by the Lawyer Defendants, documents produced in response to more than 65 subpoenas

directed to EquiAlt sales agents and others, documents obtained from cooperating sources, and the EquiAlt business records secured from the Receiver. We also spent countless hours negotiating with the Lawyer Defendants concerning deficiencies in their responses to the discovery requests. In furtherance of our document discovery, Investor Counsel served the Lawyer Defendants with follow-up discovery requests, negotiated search terms for electronically stored information, and negotiated an agreed confidentiality order demanded by the Lawyer Defendants as a condition to their production of documents.

25. As part of our discovery efforts, we served notices of deposition for witnesses possessing relevant information, such as Ernest Badway, and began arrangements for depositions of the Lawyer Defendants and other knowledgeable witnesses. Investor Counsel conducted the deposition of Wyn Saunders, a paralegal who worked with Paul Wassgren.

26. After the inception of the Investors' Lawyer Action and amendment of the initial complaint, each of the Lawyer Defendants filed voluminous motions to dismiss the amended complaint. The motions to dismiss contained a combined 105 pages of legal argument raising a plethora of complicated legal and factual arguments. Investor Counsel thereafter prepared and, on January 15, 2021, filed a combined 58-page opposition brief.

27. After marshalling evidence supporting the Investor Plaintiffs' claims, we prepared and filed the Motion for Class Certification, Appointment of Class Representatives, and Appointment of Class Counsel (the "Class Certification

Motion”) on July 23, 2021. The Class Certification Motion, which like the motions to dismiss was pending at the time the Settlement Agreement was reached, was supported by extensive documentary evidence.

28. All told, we as Investor Counsel collectively devoted more than 9,000 hours prosecuting the Investor Plaintiffs’ claims in the Investors’ Lawyer Action, negotiating the Settlement Agreement, and taking the steps necessary to satisfy the conditions of the Settlement Agreement. All of these efforts were performed on a pure contingency basis, with absolutely no assurance of compensation. In addition, at our own expense Investor Counsel retained forensic accounting experts to calculate the investors’ damages for purposes of litigating this matter through class certification and trial.

- **Mediation and Settlement**

29. On August 17, 2021, the Investor Plaintiffs, the Lawyer Defendants, the Receiver, and Receiver Special Counsel participated in a global mediation before nationally recognized mediator David Geronemus of JAMS. The parties made substantial progress toward settlement and the mediation was held open for the parties to continue their settlement discussions. In response to the parties’ joint request, the Court entered an order continuing all deadlines in the Investors’ Lawyer Action for approximately 90 days, and held in abeyance rulings on Defendants’ motions to dismiss and Plaintiffs’ Class Certification Motion. The Court on November 19, 2021, entered an order extending the stay in the Investors’ Lawyer Action for an additional 90 days.

30. All meanwhile parties continued their negotiations until, on December 8, 2021, they reached a written Memorandum of Understanding setting forth the principal terms of the Settlement Agreement. The parties thereafter turned their attention to numerous remaining issues necessary to finalize, memorialize, and execute a formal Settlement Agreement. Accordingly, at the parties' joint request the Court entered an additional 90-day continuance of the stay in the Investors' Lawyer Action, followed by several additional extensions providing the time necessary for the parties to satisfy certain required conditions of the Settlement Agreement.

31. As noted above, the Settlement Agreement required the Investor Plaintiffs and the Receiver to satisfy multiple exacting conditions, including the procurement of releases from former EquiAlt managers Davison and Rybicki and from more than 30 EquiAlt sales agents and their related affiliates.

32. These conditions, which were an integral and necessary pre-condition for the Lawyer Defendants to pay the \$44 million settlement amount, in turn required Investor Counsel and the Receiver to engage in contentious protracted negotiations with dozens of sales agents and Messrs. Davison and Rybicki, which in turn required mediations and extended negotiations to resolve claims asserted in the Receiver's Sales Agent Action. Those efforts ultimately led to the execution of the Sales Agent Settlement Agreements with some 30 sales agents and their related entities, in turn generating additional funds and assurances beneficial to the Receivership Estate.

33. Several of the Sales Agent Settlement Agreements are conditioned on the entry of bar orders protecting the settling defendants from claims by investors and other

third-parties. Those provisions of the Sales Agent Settlement Agreements required additional negotiations with the Lawyer Defendants. The ability of the Investor Plaintiffs and the Receiver to procure the required releases was further complicated by pending regulatory proceedings against the sales agents, which necessitated coordination with the responsible regulatory authorities. Ultimately, certain of the sales agents refused to sign the required releases, thereby requiring additional negotiations with the Lawyer Defendants to modify the related provisions of the Settlement Agreement.

34. As Investor Counsel, we devoted hundreds of additional hours of attorney time actively participating in this laborious sales-agent-release process, which extended over more than a year, during which we not only negotiated with the sales agents and with Management Defendants Davison and Rybicki, but actively participated in mediation sessions, prepared and negotiated multiple rounds of required settlement and release documentation acceptable to the Lawyer Defendants, while simultaneously negotiating with the Lawyer Defendants to prepare and document multiple addendums to the Settlement Agreement.

35. Ultimately, as Investor Counsel we were successful in obtaining releases from Davison, and from nearly all of the sales agents, which we then persuaded the Lawyer Defendants to accept as sufficient for the parties to submit the \$44 million Settlement Agreement to the Court for approval. As Investor Counsel we were thus instrumental not only in achieving the Settlement Agreement, but also in satisfying the conditions necessary to secure the \$44 million Common Settlement Fund.

INVESTOR COUNSEL'S FEE REQUEST

- **Investor Counsel's Requested 25% Benchmark Fee Award Is Reasonable.**

36. As indicated above, the JPA contemplates that 50% of the total common settlement fund created by the coordinated assertion of claims through the Investor Action and the Receiver's Lawyer Action is to be allocated to the Investors Action. Thus, for present purposes, the Investor Plaintiffs and the Receiver have agreed that \$22 million of the \$44 million total common fund is allocable to the efforts of Investor Counsel in the Investors' Lawyer Action. In addition, because Investor Counsel agreed when the JPA was signed that we would cap our fee request at 25% of the amount allocated to the Investors' Lawyer Action (notwithstanding case law in this district and the Eleventh Circuit awarding higher percentages), the Receiver has agreed that he will not oppose the fee award now sought by Investor Counsel.

37. Applying the percentage method and the factors referenced in *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991), the Court should grant Investor Counsel's request for a fee award of \$5,500,000, which constitutes 25% of the settlement amount allocated to the Investors' Lawyer Action under the JPA between the Investor Plaintiffs, the Receiver, and Receiver Special Counsel. As shown below, our 25% request is justified by the results obtained, the demands and complexity of the Investors Action, the enormous investment of time and resources by Investor Counsel, the risk of nonrecovery surrounding the Investors Action, and similar fee awards in comparable cases. And when considered together with Receiver Special Counsel, the

lawyers are seeking fees in the combined amount of only 22.25% of the Common Settlement Fund generated by the Lawyer Defendant Settlements.

- **Investor Counsel Obtained Outstanding Results for the Investor Plaintiffs.**

38. Investor Counsel's efforts represent a high level of achievement under extremely challenging circumstances. The \$44 million settlement amount represents a very favorable result that would not have been achieved without those persistent and dedicated efforts. While \$22 million of the total settlement amount was presumptively allocated to the Investors' Lawyer Action under the JPA – thereby obviating any contest over division of the settlement proceeds – Investor Counsel and the Receiver worked collaboratively, cooperatively, and tirelessly to secure the \$44 million Common Settlement Fund. Based on our prior experience in similar Ponzi scheme cases involving lawyer defendants, we were acutely aware of the enormous risks associated with litigation by non-clients against lawyer defendants armed with numerous defenses and vast financial resources.

39. Investor Counsel's efforts were undeniably instrumental in securing the settlement with the Lawyer Defendants. Because the Receiver's Lawyer Action was quickly mired in procedural disputes over jurisdictional and arbitration defenses raised by the Lawyer Defendants, the Investors' Lawyer Action afforded the only means to obtain formal discovery from the Lawyer Defendants and third-parties (including the sales agents), which the Investor Plaintiffs shared with the Receiver in accordance with the JPA. In addition, motions to dismiss were fully briefed in the Investors' Lawyer Action and the Investor Plaintiffs filed their motion for class certification,

developments which prompted the Lawyer Defendants to proceed with the global mediation conducted in the Investors' Lawyer Action.

- **The Investors' Lawyer Action Involved Novel and Difficult Issues.**

40. The complicated factual and legal issues underlying the Investors' Lawyer Action posed substantial obstacles to recovery. While we as Investor Counsel had confidence in the merits of the Investor Plaintiffs' claims, the outcome of the litigation was far from certain, and (given the high caliber and deep resources of defense counsel) the investors would undeniably have faced numerous substantial risks had their claims made it to trial.

41. The Investor Plaintiffs' securities claims against the Lawyer Defendants were complex, novel, and inherently risky. The Investor Plaintiffs' secondary (aiding and abetting) claims against the Lawyer Defendants – which required proof of actual knowledge of the primary violations and substantial assistance – entailed heightened risks.

42. The Investor Plaintiffs faced uncertainty over whether a factfinder would conclude that the evidence presented at trial would be sufficient to meet this high standard. In addition, the Investor Plaintiffs' claims under the state securities laws of Arizona, Colorado, Nevada, and California are each based on that state's unique regulatory framework, and the Lawyer Defendants raised substantial legal defenses to all of these claims. The Lawyer Defendants also argued that Plaintiffs' claims were preempted by SLUSA and the NSMIA. Furthermore, the Investor Plaintiffs faced procedural hurdles that may have posed challenges on class certification, including

disparate putative class members with unique factual issues and claims and various statutes of repose that may have barred some investors from obtaining relief.

- **The Requested Fee Is Reasonable Considering the Time and Labor Required, Preclusion of Other Employment, and Time Limitations Imposed by the Circumstances**

43. The Investors' Lawyer Action has been pending in this Court since 2020, and we as Investor Counsel have since then devoted an enormous amount of time and effort to achieve a very favorable result for the EquiAlt investors. Collectively, Investor Counsel worked well over 9,000 hours in the prosecution of the claims asserted in the Investors' Lawyer Action and the related settlement negotiations and the enormous expenditure of time necessary to satisfy the conditions to the Settlement.

44. These efforts required certain Investor Counsel to devote a substantial portion of our resources to prosecution of the Investors' Lawyer Action, including periods when we worked full time on the Investors' Lawyer Action and related cases. By way of example, for calendar year 2021 Mr. Friedman devoted 37% of his total billable hours to prosecution of the Investors' Lawyer Action, while his partner Francis J. Balint, Jr. devoted more than 33% of his total billable hours working on the Investors' Lawyer Action. For 2022, Messrs. Friedman and Balint respectively devoted 26% and 30% of their total billable hours to their work on the Investors' Lawyer Action.

45. In addition to the Investors' Lawyer Action, to secure the Common Settlement Fund Investor Counsel commenced lawsuits against certain of the sales agents, including litigation against Robert Armijo initiated in California and before this Court. We specifically devoted hundreds of hours to negotiations with numerous sales agents

to obtain the releases required as a condition of the Settlement Agreement with the Lawyer Defendants.

- **The Investors' Lawyer Action Posed Considerable Risks to Investor Counsel.**

46. As Investor Counsel, we assumed significant risks in bringing the Investors Action on a pure contingency fee basis. Investor Counsel have received zero compensation during this litigation, while advancing significant out-of-pocket expenses litigating on behalf of the victimized investors. Throughout the Investors' Lawyer Action there existed the very real possibility that we would achieve no recovery for the investors and hence receive no compensation whatsoever.

47. Even after the parties reached the Settlement Agreement, as Investor Counsel we continued to bear the risk that they would be unable to obtain the required releases for from Davison and the Sales Agent Defendants -- a reality that required the Court to stay the Investors' Lawyer Action on five separate occasions.

48. Accordingly, the risks borne by Investor Counsel fully support the appropriateness of the fee requested.

- **The Investors' Lawyer Action Required Investor Counsel's High Level of Skill and Meaningful Relationships with the Investor Plaintiffs.**

49. To litigate a case like the Investors' Lawyer Action requires counsel who are highly experienced in both class action procedure and specialized substantive securities issues. Investor Counsel have such extensive experience in complex class and securities litigation. *See* Firm resumes, collectively attached as **Exhibit 1**.

50. By the same token, we as Investor Counsel faced formidable and sophisticated opposition from two nationally prominent and sophisticated law firms, each represented by highly experience defense counsel.

INVESTOR COUNSEL'S EXPENSE REIMBURSEMENT REQUEST

51. As Investor Counsel, we are in a common fund case also entitled to reimbursement for reasonable litigation expenses necessarily incurred in furtherance of the litigation and the Settlement Agreement. *See, e.g., In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, 2015 WL 12641970, at *18 (S.D. Fla. May 22, 2015) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393 (1970)). “Indeed, courts normally grant expense requests in common fund cases as a matter of course.” *Hanley v. Tampa Bay Sports & Ent. LLC*, No. 819CV00550CEHCPT, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (and cases cited therein).

52. Here, Investor Counsel incurred a total of \$268,607.79 in reimbursable litigation expenses to date, all of which were necessarily incurred in furtherance of the litigation. A true and accurate breakdown of the reported expenses by firm and category, based on each firm's financial books and records, is attached as **Exhibit 2**. These costs and expenses are equal to approximately only 1.2 % of the Common Settlement Fund allocated to Investor Plaintiffs, and are thus in line with normal expenditure amounts as a percentage of the total recovery amount. *Hanley*, 2020 WL 2517766, at *6 (approving reimbursement of costs and litigation expenses that equated to approximately 1.2% of the settlement fund).

CONCLUSION

53. For the foregoing reasons, we as Investor Counsel respectfully request that this Court approve payment from the common fund generated by the Lawyer Settlement Agreement, of (a) attorneys' fees in the amount of \$5,500,000 and (b) reimbursed litigation expenses in the amount of \$ \$268,607.79

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 5th day of January, 2023, at Phoenix, Arizona.

/s/ Andrew S. Friedman

ANDREW S. FRIEDMAN

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 5th day of January, 2023, at Miami, Florida.

/s/ Howard M. Bushman

HOWARD M. BUSHMAN

EXHIBIT 1

Bonnett Fairbourn Friedman & Balint



ABOUT THE FIRM

Bonnett Fairbourn Friedman & Balint, PC 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 thirty 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.

Bonnett Fairbourn Friedman & Balint, PC
7301 N. 16th Street, Suite 102
Phoenix, Arizona 85020
Phone: (602) 274-1100

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.

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 served as co-lead counsel for the Plaintiffs in *Feller, et al. v. Transamerica Life Insurance Company*, a class action challenging increases to the monthly deduction rates (“MDR”) imposed by Transamerica on various universal life policies. Plaintiffs alleged that the MDR increases implemented by Transamerica breached a uniform, express contractual term in the standardized Policies prohibiting MDR increases that recoup past losses. The district court certified a nationwide class of Policyholders and a California state law class of Policyholders. A settlement was ultimately reached which included a monetary payment to class members and a five-year moratorium on any future MDR increases. The monetary relief provided under the settlement totaled over \$100 million.

Captive Reinsurance Transactions

Mr. Friedman represented 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 alleged 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 asserted claims under the federal anti-racketeering statutes, included *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 represented plaintiffs in class action proceedings in California against Blue Shield of California Life & Health Insurance Company 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.

Mr. Friedman currently represents plaintiffs in a class action against Magellan and Blue Shield of California for violation of ERISA arising out of defendants' denial or reduction in hours of Applied Behavior Analysis ("ABA") for the treatment of Autistic Spectrum Disorder ("ASD"). Plaintiffs allege that Defendants breached their fiduciary duties by adopting and utilizing medical necessity criteria and claims determination guidelines that are far more restrictive than those that are generally accepted medical practice for the treatment of ASD by the mental health community and the prevailing well-documented scientific research.

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 served 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 Practising 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 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.

Mr. Balint also served as co-counsel for the class of policyowners in successive class actions seeking relief from so-called "cost of insurance" ("COI") increases brought and favorably resolved in *Feller, et al. v. Transamerica Life Insurance Company*, and *Thompson, et al. v. Transamerica Life Insurance Company*. Plaintiffs in these actions alleged that the COI increases implemented by Transamerica breached a uniform, express contractual term in the standardized Policies prohibiting COI increases that recoup past losses. The district court in *Feller* certified a nationwide class of policyholders and a California state law class of policyholders. A settlement was ultimately reached which included a monetary payment to class members and a five-year moratorium on any future COI increases. The monetary relief provided under the settlement totaled over \$100 million. The *Thompson* action too was ultimately settled, with class monetary relief of approximately \$96 million and a seven-year moratorium.

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); *Bacchi v. Massachusetts 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); *Foster v. 1st Global Capital, LLC* (Securities Fraud); *Durkee v. Alaska Airlines* (Travel Insurance); and *Fruitstone v. Spartan Race Inc.* (Consumer Protection).

Mr. Balint has in particular frequently assisted individual policyholders in securing relief from their insurance and mortgage servicing companies, including in *Zhou v. Security Life of Denver Insurance Company* (underpaid interest on pre-issuance premium payments), *LSCC v. Wilco Life Insurance Company* (underpaid benefits under earlier class settlement agreement); *Labrecque v. NewRez LLC* (RESPA enforcement).

Mr. Balint has also represented individual clients in numerous disputes successfully resolved without the need for litigation, both as potential plaintiffs and potential defendants.

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 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, PC.

BONNETT FAIRBOURN FRIEDMAN & BALINT, PC

ATTORNEYS

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.

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.

Moskowitz Law Firm



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); *Ziwczyn 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-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).

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.). Mr. Moskowitz was recently appointed Co-Lead Counsel for the Economic Loss and Property Damage Track in *In re: Champlain Towers South Condominium Collapse Litigation*, Case No. 2021-015089-CA-01 (Fla. 11th Jud. Cir.) to bring class claims on behalf of the victims of the catastrophic collapse of the Champlain Towers South condominium in Surfside, Florida. Mr. Moskowitz was also appointed Co-Lead Counsel in the MDL proceeding: *In re: Erie COVID-19 Business Interruption Protection Insurance Litigation*, Case No. 1:21-mc-000001 (W.D. Pa.), to represent policyholders in their multidistrict litigation against Erie Insurance Co. seeking coverage for COVID-19 business interruption losses. Mr. Moskowitz was also appointed Class Counsel in a finally-approved nationwide settlement with Spartan Race, Inc., in a nationwide class action arising from Spartan Race's business practices relating to its Racer Insurance Fee, see *Fruitstone v. Spartan Race, Inc.*, No. 1:20-cv-20836-BLOOM/Louis (S.D. Fla.), as well as in *Collins v. Quincy Bioscience, LLC*, No. 19-22864-Civ-COOKE/Goodman, ECF No. 200 (S.D. Fla. Nov. 18, 2020), where Magistrate Judge Jonathan Goodman for the United States District Court for the Southern District of Florida granted final approval of a nationwide class action settlement resolving claims of a nationwide class of purchaser of the memory improvement supplement Prevacen.

Recently, in *Cherry v. Dometic Corp.*, No. 19-13242 (11th Cir. Feb 2, 2021), Mr. Moskowitz was successful in overturning a denial of class certification for failing to demonstrate the "administrative feasibility" of identifying class members. This decision represents a sea change in class action litigation in the Eleventh Circuit, which now joins the Second, Sixth, Seventh, Eighth and Ninth Circuits in rejecting any heightened ascertainability requirement purportedly inherent in Federal Rule of Civil Procedure 23(a).

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 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.).

Mr. Moskowitz was appointed as Co-Lead counsel in *In re Transamerica COI Litigation*, Case No. 2:16-cv-01378-CAS-AJW (C.D. Cal.), and reached a finally-approved 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—which 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. Judge Snyder also recently granted final approval of a nationwide class action settlement regarding a very similar COI nationwide class action against Transamerica for the 2017 COI increases, which is currently pending appeal. *Thompson v. Transamerica Life Insurance Company*, No. 2018-cv-5422-CAS, ECF No. 197 (C.D. Cal. Sept. 16, 2020). 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.

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>.

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 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.

Joseph Kaye. Joseph is a Partner 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, construction defect, products liability, and federal antitrust litigation matters, allows him to serve as a valuable asset in representing a number of the Firm's clients.

Joseph's recent significant involvements include litigating, through a finally-approved nationwide settlement with Spartan Race, Inc., a nationwide class action arising from Spartan Race's business practices relating to its Racer Insurance Fee. *Fruitstone v. Spartan Race, Inc.*, No. 1:20-cv-20836-BLOOM/Louis (S.D. Fla.). Joseph also helped successfully litigate and settle claims in *Collins v. Quincy Bioscience, LLC*, No. 19-22864-Civ-COOKE/Goodman, ECF No. 200 (S.D. Fla. Nov. 18, 2020), brought on behalf of a nationwide class of purchasers of the memory improvement supplement Prevacen. Plaintiffs' counsel achieved the *Collins* settlement after Magistrate Judge Jonathan Goodman recommended certification of a litigated Florida statewide issue class pursuant to Federal Rule of Civil Procedure 23(c)(4), which would have bifurcated the proceedings into liability and damages phases. *Collins*, No. 19-22864-Civ-COOKE/Goodman, ECF No. 119 (S.D. Fla. Mar. 19, 2020). In *Las Olas Company Inc., et al. v. Florida Power & Light Company, et al.*, No. CACE19019911-18 (Fla. Cir. Ct. Dec. 14, 2020), Joseph helped the Moskowitz Law Firm attain a litigated certification, pursuant to Florida Rule of Civil Procedure 1.220(d)(4), of a liability issue class of businesses who were forced to close and sustained damages as a result of a ruptured water main caused through the negligence of Florida's largest electric utility provider and its subcontractors. This was the first reported decision since the Florida Supreme Court decided *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), where a Florida District Court of Appeal affirmed an order applying this rule to certify a liability issue class. See *Florida Power & Light Company, et al. v. Las Olas Company Inc.*, 4D21-0541 (Fla. 4th DCA May 27, 2021) (*per curiam* affirmance). 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 Silvergate, 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 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.

Casey Gerry

CaseyGerry

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FIRM OVERVIEW

Founded in 1947, San Diego based firm of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP “CaseyGerry” is one of the oldest plaintiffs’ law firms in California and is nationally recognized. Our firm focuses on complex civil litigation, with an emphasis on consumer protection, class actions, product defect, pharmaceutical and serious personal injury matters. Our attorneys have held numerous leadership roles in coordinated cases at both the state and federal level. We have prosecuted a variety of consumer fraud, unfair business practices, TCPA, product defect, and other complex mass torts and class action matters. We have litigated cases against companies such as Volkswagen, Exxon, Amazon, Sony, Toyota, General Motors, AT&T, Mitsubishi, Apple, Inc., Wells Fargo, Bank of America, American Express, Honda, Discover Financial Services, and Yahoo, among others.

CaseyGerry represented then Lt. Gov. Gray Davis in his private attorney general action against the tobacco industry. We were successful in obtaining a settlement of over \$25 billion for the citizens of California, and also took part in successfully resolving other similar tobacco cases in other states. Our firm also was part of the trial team and played a leadership role in the Exxon Valdez litigation, which resulted in a \$5 billion verdict. And recently, the firm obtained a first of its kind appellate victory against Amazon involving strict liability of online marketplaces.

The firm has extensive experience in class action, mass tort and other complex litigation. Managing partner, David Casey was appointed to serve on the Plaintiffs’ Steering Committees for *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Lit.*, Case No. 15-md-02672-CRB (N.D. Cal.), which included the related “Audi CO₂” and “Porsche Gasoline” cases. Working with partner Gayle Blatt, they represented over 500,000 owners and lessees of Volkswagen diesel vehicles in the third largest car recall in history, over 100,000 owners and lessees of Audi vehicles and approximately 500,000 Porsche owners and lessees. Mr. Casey was also appointed in *In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Product Liability Lit*, Case No. 17-md-02777-EMC (N.D. Cal.) and worked with Ms. Blatt, successfully representing approximately 100,000 owners and lessees of EcoDiesel Jeep Grand Cherokees and Ram 1500 trucks.

Firm members have also recently served on court-appointed leadership committees, including cases against Yahoo!, Wells Fargo, Apple, Intel and the NFL.

The firm's experienced lawyers have earned numerous local, regional and national accolades and awards bestowed for professional success. Our lawyers have been president of, or currently hold, leadership positions and longtime affiliations with

the California State Bar Association, American Association for Justice (AAJ, formerly known as American Trial Lawyers Association “ATLA”), Consumer Attorneys of California (CAOC), Consumer Attorneys of San Diego (CASD), San Diego County Bar Association, Lawyers Club of San Diego, California Women Lawyers, North County Bar Association, Korean American Bar Association San Diego, South Asian Bar Association of San Diego, Filipino American Lawyers of San Diego, and Tom Homann LGBT Law Association. Our partners have been elected to such prestigious organizations as the American Board of Trial Advocates, the International Academy of Trial Lawyers, and the International Society of Barristers. Four partners have served as president of the Consumer Attorneys of San Diego. Five of the firm’s partners are members of the American Board of Trial Advocates (ABOTA), and partner Frederick Schenk is past president of the executive board of the San Diego chapter of ABOTA.

CASEYGERRY ATTORNEYS

David S. Casey, Jr.

David S. Casey, Jr. is the senior partner of CaseyGerry, the firm that his father founded in 1947. He began his career as a prosecutor and has handled over 70 jury trials during the course of his over forty-year legal career. He is a past president of the Association of Trial Lawyers of America (now the American Association for Justice), Consumer Attorneys of California, Western Trial Lawyers Association, and San Diego Trial Lawyers Association (now Consumer Attorneys of San Diego).

Mr. Casey is a proven leader nationwide. During his tenure as president of ATLA (now AAJ), which at the time was an organization of approximately 60,000 lawyers nationwide, he was one of a small group of people who proposed the Victims Compensation Fund for victims of the unprecedented terrorist attacks of September 11, 2001. Thereafter, AAJ formed Trial Lawyers Care (TLC) to coordinate what would become one of the largest pro bono programs in history. TLC helped 1,739 eligible claimants from 35 states and 11 countries, and the recovery to these claimants exceeded \$2 billion dollars.

Mr. Casey is also a leader in the state of California. He undertook a lead role in California on behalf of then Lieutenant Governor Gray Davis in his private attorney general action against the Tobacco Industry, instigated when the state of California declined to participate in the litigation with other states' Attorneys General. This litigation involved multiple billion-dollar companies, who had been involved in litigation over the effects of tobacco use for decades. Mr. Casey was involved in extensive negotiations in Washington, DC, and proposed legislation. After Gov Davis' election as Governor of California, a global settlement resulted in the resolution of all claims.

During the course of his career, Mr. Casey has represented American POWs in litigation for having been treated as slave laborers during World War II and his firm was co-counsel in the Exxon Valdez Oil Spill litigation. He also represented Honda dealers in one of the most massive fraud schemes on Honda dealers in the history of the United States.

Mr. Casey was appointed to serve on the Plaintiffs' Steering Committee for *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Lit.* Following his appointment in *Volkswagen*, he was appointed in *In re: Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Product Liability Lit.* He was also appointed in *In re: Wells Fargo Collateral Protection Insurance Lit.*, in which he helped negotiate a favorable settlement, and to the

PSC for *In re: National Football League Players' Concussion Injury Lit.*, representing the interests of thousands of former NFL players.

Having opted out of the class action, he represented the family of Junior Seau against the NFL in the national head injury litigation, as well as represented the family of Tony Gwynn for the wrongful death resulting from his use of smokeless tobacco.

Mr. Casey has served as the Lawyer Representative for the United States District Court, Southern District of California and as a current board member for the Ninth Judicial Circuit Historical Society. He is honored to have been inducted into the San Diego Consumer Attorneys Hall of Fame. He is also a member of such prestigious, invitation-only, organizations, such as the International Academy of Trial Lawyers, International Society of Barristers and American Board of Trial Advocates.

David S. Casey, Jr., has received over 100 accolades including his recognition as one of the Top Plaintiff's Lawyers in the State of California by the Daily Journal in 2015, 2016, 2018, 2019, 2020 and 2021.

Gayle M. Blatt

Heading the firm's complex litigation practice group, Ms. Blatt concentrates her practice on consumer class actions, data security cases, and pharmaceutical and medical device cases. She joined CaseyGerry more than 30 years ago and has become well known for representing injured clients and consumers in a wide range of high profile, multi-million-dollar cases.

Ms. Blatt serves by appointment on the Plaintiffs' Executive Committees in *In re: ZF- TRW Airbag Control Units Products Liability Lit.*, Case No. 19-ml-02905-JAK-FFM (C.D. Cal.); and served on the Plaintiffs' Steering Committee in *In re: Intel Corp. CPU Marketing, Sales Practices and Products Liability Lit.*, Case No. 18-md-2828-SI (D. Or.), *In re: Apple Inc. Device Performance Lit.*, Case No. 18-md-02827-EJD (N.D. Cal.), and *In re Chrysler Pacifica Fire Recall Products Liability Litigation*, Case No. 22-md-03040(E.D. Mich.). She served as Co-Liaison Counsel in *In re: Incretin Mimetics Product Liability Lit.*, Case No. 13-md-02452-AJB-MDD (S.D. Cal.), and in *In re: Hydroxycut Marketing and Sales Practices Lit.*, Case No. 09-md-02097 (S.D. Cal.). She worked closely with partner David S. Casey, Jr. on the *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Lit.*, the "Audi CO₂" and "Porsche Gasoline" cases, Case No. 15-md-02672-CRB (N.D. Cal.) representing hundreds of thousands of vehicle owners whose claims included misrepresentation of the attributes of their vehicles and on the *In re: Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Product Liability Litigation*, Case No. 17-md-

02777-EMC (N.D. Cal.) resulting in relief obtained for approximately 100,000 owner and lessees of EcoDiesel Jeep Grand Cherokee and Ram 1500 trucks.

Ms. Blatt serves as interim co-lead counsel in *In re: Netgain Technology, LLC, Consumer Data Breach Lit.*, 21-cv-1210-SRN-LIB (D. Minn.), as interim co-lead counsel in *DeSue v. 20/20 Eye Care Network, Inc. et al.*, Case No. 21-cv-61275-RAR (S.D. Fla.), interim lead counsel in *Pfeiffer et al v. RadNet, Inc.*, Case No. 20-cv-09553-RGK-SK (C.D. Cal.), lead counsel in *In re: Waste Management Data Breach Lit.*, Case No. 21-cv-06199-DLC (S.D. N.Y.), interim co-lead counsel in *In re: Warner Music Group Data Breach Lit.*, Case No. 20-cv-07473-PGG (S.D.N.Y.), and interim class counsel in *In re: US Fertility LLC Data Security Lit.*, Case No. 8:21-cv-00299 (D. Md.). Ms. Blatt also serves on CaseyGerry's behalf, as Interim Liaison Counsel, for *In re: Bank of America California Unemployment Benefits Litigation*, Case No. 21-md-02992-LAB (S.D. Cal.). Additionally, she has served as class counsel in *In re: Citrix Data Breach Lit.*, Case No. 19-cv-61350-RKA (S.D. Fla.), and serves on the Plaintiffs' Executive Committee in *In re: EyeMed Vision Care, LLC Data Security Breach Lit.*, Case No. 21-cv-00036-DRC (S.D. Ohio). Ms. Blatt was also appointed to the five-member PEC overseeing the class action litigation related to the massive Yahoo data breaches, Case No. 16-MD-02752 (N.D. Cal.). She served on the law and briefing committee in the consolidated class action *Adkins v. Facebook, Inc.*, Case No. 18-05982-WHA (N.D. Cal.). She previously served as settlement class counsel in *Sung et al v. Schurman Fine Papers d/b/a Schurman Retail Group*, Case No. 17-cv-02760-LB (N.D. Cal.), and liaison counsel in *In re: Sony Gaming Networks and Customer Data Security Breach Lit.*, Case No. 11-md-02258-AJB (S.D. Cal.).

Ms. Blatt has received three Outstanding Trial Lawyer awards from the Consumer Attorneys of San Diego. She was recognized as one of the Top Plaintiff's Lawyers in California for 2021 and Top Women Lawyers 2021 by the Daily Journal. She has been named one of San Diego's Top 25 Female Attorneys 2007, 2009 and from 2013 to 2022 and the Top 10 San Diego Lawyers for 2019 to 2022 by *San Diego Super Lawyers*. Ms. Blatt was named one of San Diego's Best Attorneys of 2019 to 2021 by San Diego Daily Metro, one of San Diego's most influential women 2018 to 2020 and one of the top 50 Influential Professionals by the San Diego Daily Transcript. Blatt was named one of the Top 500 Influential Business Leaders, San Diego Business Journal 2019. She was named one of the Lawdragon 500 Leading Plaintiff Consumer Lawyers 2019 to 2022 and is listed annually in Best Lawyers.

For ten years, Ms. Blatt served on the Board of Directors of the Consumer Attorneys of San Diego and served as President of the organization in 2007. As President, she was honored as Trial Lawyer Association Chapter President of the Year by Consumer Attorneys of California. She received a President's Award from Consumer Attorneys of San Diego. Ms. Blatt currently serves on the Board of Trustees for her alma mater, California Western School of Law. She also serves on

the board of the Tom Homann Law Association Foundation and is a past president of the San Diego County Bar Foundation.

Frederick Schenk

Frederick Schenk is a tenacious litigator and CaseyGerry partner for decades and concentrates his practice on products liability, serious personal injury, and asbestos law. In fact, Frederick, who has been with CaseyGerry for more than 30 years, achieved the largest verdict ever in San Diego against an asbestos manufacturer – Owens Corning Fiberglass – obtaining a \$2.4 million verdict in punitive damages as well as economic losses.

In addition, he is a specialist in auto collision litigation and co-author of the LexisNexis California Automobile Litigation Handbook. Over the years, Schenk has received numerous awards and honors for his work – including recognition as an Outstanding Trial Lawyer from the Consumer Attorneys of San Diego, and twice recognized by Best Lawyers as San Diego’s Trial Lawyer of the Year in the area of mass torts and class actions. He has remained active in both community and professional groups and finds tremendous gratification in his work as an attorney, especially when he provided services to the families of the victims of 9/11 via Trial Lawyers Care, the largest pro bono program in the history of American jurisprudence.

Mr. Schenk received numerous awards, including the San Diego County Bar Association’s Community Service Award and Consumer Attorneys of San Diego’s Outstanding Trial Lawyer Award. He serves on the Board of Governors for the American Association for Justice. He is current president for the San Diego Chapter of American Board of Trial Advocates.

Schenk served as president of the San Diego County Fair board and was re-appointed by California Governor Jerry Brown to serve another four-year term on the board which oversees all activities at the Del Mar Fairgrounds.

Jeremy K. Robinson

Jeremy Robinson is the Chair of Casey Gerry’s Motion and Appellate Practice and is widely acknowledged as one of the premier legal writers and analysts in the state. As a result, he has been named the Consumer Advocate of the Year for 2020 by the Consumer Attorneys of San Diego.

Most recently, Robinson secured a precedent-setting decision against online retail titan Amazon. See, *Bolger v. Amazon.com* (2020) 53 Cal.App.5th 431. The decision marked the first time a state appellate court anywhere in the country has ruled against Amazon on this issue, and currently is the only published appellate decision in the nation holding Amazon strictly liable. The result was significant

enough to be featured in stories by Bloomberg, The Washington Post, The New York Times, USA Today, CNBC, and many other national and international news and tech outlets.

In this same vein, Robinson also helped co-author, with National Advocacy Group, Public Justice amicus briefs in two other key appeals involving Amazon, *Oberdorf v. Amazon.com Inc.*, 930 F.3d 136, *rehearing en banc granted and opinion vacated*, 936 F.3d 182 (3rd Cir. 2019) and *McMillan v. Amazon.com, Inc.*, (Fifth Cir. No. 20-20108). And Robinson worked tirelessly behind the scenes on AB 3262, a bill aimed at holding online marketplaces to the same standard as traditional retailers.

Mr. Robinson is admitted to practice in all state and federal courts in California and the Third, Fifth, and Ninth Circuit Courts of Appeals. In addition to the *Bolger* decision, he also secured a precedent-setting ruling in *M.F. v. Pacific Pearly Hotel Management, LLC* (2017) 16 Cal.App.5th 693, a case in which Robinson successfully urged the expansion of FEHA provisions to a rape committed by an intruder on the premises. Robinson has also worked extensively in the class action arena, playing key roles in nationwide Multi-District Litigation cases like *In re: Yahoo! Inc. Customer Data Security Breach Lit.*, 16-MD-02752-LHK (N.D. Cal.) and *In re: Wells Fargo Collateral Protection Insurance Lit.*, 8:17-ML-2797-AG-KES (C.D. Cal.)

Outside of his case work, Robinson is a prolific and in-demand writer and speaker on emerging legal issues. This includes regular articles for the *Daily Journal* and *Daily Transcript*, many CLE-approved presentations and webinars, and a book chapter. He is also a charter member and Barrister in the San Diego Appellate Inns of Court and is a member of the Consumer Attorneys of San Diego, Consumer Attorneys of California, San Diego County Bar Association, and Lawyers' Club. He was named Consumer Advocate of the year 2021 by the Consumer Attorneys of San Diego, a San Diego Super Lawyer, Best Lawyers 2020 and 2021 and Leaders in Law 2020 by the San Diego Business Journal.

Robert J. Francavilla

Mr. Francavilla is a widely respected trial lawyer and was recently honored as Consumer Attorneys of San Diego's Trial Lawyer of the Year for 2017. He has made an important difference in the lives of many, as well as earned many accolades and high-profile verdicts and settlements over the years. Specializing in serious personal injury, premises liability and highway design cases, he has successfully handled the gamut of complex cases, including tragic losses involving wrongful death, paraplegia, quadriplegia, severe burns, loss of limbs and major orthopedic injuries.

Mr. Francavilla has received honors including LA Daily Journal's Top 25 Plaintiff's Lawyers 2015 and 2020, Trial Lawyer of the Year 2016 by the Consumer Attorneys of San Diego and a six-time awardee of the Consumer Attorneys of San Diego's Outstanding Trial Lawyers Award. He has been named Best Lawyers "Lawyer of the Year" 2022, he is a San Diego Super Lawyer 2007 to 2021, Lawdragon 500 Leading Plaintiff Lawyers, among other awards.

Thomas D. Penfield

During his almost 30-year tenure with the firm, Mr. Penfield has handled numerous multi-million-dollar cases, concentrating his practice on personal injury, products liability and class actions, including serving as co-counsel in a jury trial representing H&H Cerritos against U.S. Mineral Products, Inc., obtaining a \$14.1 million verdict. He has also been involved in numerous class action lawsuits, including a case against the City of San Diego – an effort that helped residents reclaim millions in damages that was mischarged for sewer services – which was settled for \$40 million.

With a distinguished legal background, he was a supervising trial lawyer with the Defenders Program of San Diego and then a clinical Professor at the University of San Diego School of Law before joining CaseyGerry in 1988. Mr. Penfield continues to teach as an adjunct professor at the University of San Diego School of Law, and regularly lectures both nationally and internationally on trial techniques and persuasion.

Mr. Penfield served as President of the North County Bar Association. He is one of only nine attorneys in California to earn the recognition of Diplomate in the National College of Advocacy for American Association for Justice. He is also a member of the American Board of Trial Advocates and a Master in the American Inns of Court.

Thomas D. Luneau

With a legal career spanning three decades, Mr. Luneau has had his share of formidable opponents in the courtroom over the years. He started his career as a state-licensed private investigator, joining CaseyGerry in 1982 as an investigator.

Now a talented litigator who has prosecuted many complex cases, he focuses his practice primarily on premises and products liability and serious personal injury cases, earning numerous multi-million verdicts and settlements — including cases involving defective industrial drilling machinery, motorcycle lane splitting injuries, concussion injuries, wrongful death and more. Other high profile matters he has handled include cases involving abuse by a CHP officer who

intentionally broke the ankle of a handcuffed suspect (4th amendment violation excessive force), and the wrongful death of an inmate at Donovan State Prison (8th amendment violation cruel and unusual punishment).

In addition, he has successfully represented numerous military and law enforcement personnel and their family members from entities including the San Diego Police Department, the San Diego County Sheriff's Department, Riverside County Sheriff's Department, California Highway Patrol, and the United States Border Patrol.

Luneau is a member of the American Board of Trial Advocates. He has received numerous awards, including the Consumer Attorneys of San Diego's Outstanding Trial Lawyer Award.

Jason C. Evans

Jason C. Evans is an attorney specializing in complex litigation and personal injury. Throughout his career, he has handled hearings, pleadings, depositions, trial, mediations, and memoranda for a number of multi-million dollar civil and class actions.

He previously worked for the San Diego Volunteer Lawyer program, drafting requests for restraining orders for victims of domestic and elder abuse, and was a legal assistant for Spach, Capaldi and Waggaman, LLP, in Newport Beach.

He was selected as one of the San Diego Business Journal's Next Top Business Leaders under 40 for 2020, Top 40 Under 40, 2020 by the Daily Transcript, Super Lawyers Rising Star 2015-2021, San Diego Super Lawyers 2018, 2015 SD Metro 40 Under 40 Awards, and 2017 CASD Outstanding Trial Lawyer Award.

P. Camille Guerra

P. Camille Guerra is a key member of the complex litigation team, working with partner Gayle M. Blatt to concentrate on data security cases like Yahoo Inc., consumer fraud litigation such as Volkswagen Diesel, Fiat/Chrysler Diesel, and Wells Fargo; as well as other high profile consumer class actions, including a national case involving anti-competitive behavior by the major tuna companies in the U.S.

With a Master of Advanced Studies in health policy and the law, Camille is keenly focused on addressing complex healthcare issues related to the law. Her research on counterfeit Avastin was the subject of an article she co-authored in the prestigious Nature Reviews Clinical Oncology. Her most recent publication is "USA Criminal and Civil Prosecutions Associated with Illicit On-line Pharmacies: Legal Analysis and Global Implications," which appeared in Med Access.

Guerra attended Eotvos Lorand University in Budapest, Hungary, and University of Prishtina in the former Yugoslav Republic of Kosova. Camille has been a member of the Alumni Association Board of Directors at Thomas Jefferson School of Law and an alumni mentor to the Middle Eastern, Armenian, and Muslim student associations. Camille is a past member of the Consumer Attorneys of San Diego Educational Committee and a member of Lawyers Club, San Diego County Bar Association, South Asian Bar Association, and a prior member of San Diego State University President's Latino Advisory Council. She is fluent in Spanish and has studied Arabic, French, Italian, Russian, and Farsi.

Adam B. Levine

Adam B. Levine is a key member of the serious personal injury team, focusing on product defect, premises, auto and aviation cases. He has worked on a variety of serious cases including: a federal product defect case involving a military parachute that deployed inside an airplane, killing a decorated Navy Seal; a federal case against the Border Patrol after one its agents crashed a truck into a client riding a motorcycle; a product defect and negligence case where his client suffered a serious arm injury while riding as a passenger in a UTV; a case against the City of San Diego that settled for \$1 million after his client tripped over uneven concrete in a crosswalk and suffered permanent injuries; and high-profile litigation against Big Tobacco involving smokeless tobacco or "dip."

He is on the board of directors for the Consumer Attorneys of San Diego, is co-chair of the personal injury section of the North County Bar Association, is on the board of directors for the NLD section of the Consumer Attorneys of California and writes for the product defect column in the Trial Bar News.

Levine was named a San Diego Super Lawyers Rising Star in 2017- 2020. He was also awarded the North County Bar Association's Rising Star award in 2018 and was named in the top 40 Under 40 by The Daily Transcript and San Diego Metro Magazine. He was named in the Best Lawyers: Ones to Watch and has received 14 American Jurisprudence Awards, CWSL, Kennedy Scholar, Academic Excellence Award, Trustees' Award, CWSL, Academic Excellence Award, CWSL and Trustees' Award, CWSL.

David S. Casey III

David Casey III is an attorney specializing in personal injury. He has worked extensively for both the complex litigation and personal injury teams at Casey Gerry. Recently, he participated in the TAP program as one of the first participants, during which time he tried multiple criminal cases as a volunteer deputy district attorney with the South Bay office of the San Diego County District Attorney.

Casey III attended the University of San Diego and focused his time at school on trial advocacy and complex litigation. He received a CALI award for his paper analyzing American and European attitudes toward online privacy and the “right to be forgotten.” David externed for the Honorable Anthony Battaglia at the United States District Court for the Southern District of California. He also interned and graduated from Gerry Spence’s acclaimed Trial Lawyers College in 2018.

Casey III has been accepted to the Wallace inn as an Associate Member and was names in Best Lawyers: Ones to Watch 2021 and 2022.

Eric Ganci

Eric Ganci is a graduate of Thomas Jefferson School of Law. He is an associate attorney and member of the personal injury team. Before joining CaseyGerry, Eric ran his own firm focused on representing people arrested for driving under the influence. During that time, he tried 72 cases to verdict: 70 jury trials and 2 bench trials. In that work, after completing required coursework and passing a certification exam, Eric earned the designation as a Lawyer-Scientist by the American Chemical Society, Chemistry and the Law Division.

Ganci is a member of Consumer Attorneys of San Diego, Lawyers Club of San Diego (Board Member 2012-2016, Photography Co-Chair 2011-2013, and Champagne & Chocolates Affair Co-Chair 2012), San Diego County Bar Association (New Lawyers Division Board of Directors, Community Service Chair 2012, New Lawyers Division Board of Directors, Newsletter Chair 2011), and former President and Vice President of Thomas Jefferson SOL Alumni Association (2009-2014).

He was awarded Thomas Jefferson SOL Adjunct Professor of the Year, Thomas Jefferson SOL A. Thomas Golden Honorary Alumnus of the Year, San Diego’s Top 40 Under 40 (2011) and Outstanding Service by a New Lawyer by San Diego County Bar Association (2011). He is a former graduate of the Trial Lawyers College, and has been teaching at the College since 2016, and assisting with civil and criminal trials across the country.

Katie McBain

Katie McBain is a graduate of California Western School of Law. She is a member of the complex litigation team. Prior to joining CaseyGerry, Katie successfully litigated bench trials, counseled retirement and pension systems regarding compliance with local, state and federal laws, with particular focus on the County Employees Retirement Law of 1937, and consulted business owners regarding labor and employment issues. She is a member of Lawyers Club of San Diego, Contributor to the Conference of California Bar Associations, and a member and volunteer of Think Dignity, a non-profit focused on empowering our community to advance basic dignity for those living on the street. Katie is proficient in Spanish.

Michael J. Morphew

Michael Morphew specializes in class and representative actions and has extensive experience with wage and hour complex litigation. Prior to joining CaseyGerry, Michael represented individuals as well as local, regional, and national entities in individual, class action, and Private Attorneys General Act (“PAGA”) employment claims. Michael has track record of successfully informally resolving pre-litigation and legal cases.

Michael graduated Cum Laude from the University of San Diego School of Law and earned his undergraduate degree from the University of Washington in Seattle. He also completed the Straus Institute for Dispute Resolution’s STAR: A Systematic Approach to Mediation Strategies program. While in law school, he worked for two and half years as a judicial intern for the Honorable Judith F. Hayes (Ret.). Michael also interned for the Center for Public Interest Law and reported on the California Public Utilities Commission and Board of Accountancy activities and compliance with their legal requirements.

Samantha Kaplan

Samantha Kaplan is an associate attorney at CaseyGerry where she works with the personal injury team. She received her Juris Doctor from Georgetown University and a Bachelor of Arts degree in International Development and Africana Studies from Tulane University. Prior to joining CaseyGerry, Samantha worked as a law clerk with the U.S. State Department Office of the Assistant Legal Advisor where she wrote legal briefs as part of the U.S. submissions to the Iran-U.S. Claims Tribunal, conducted legal research, wrote memoranda on Investor State Dispute Settlements and Bilateral Investment issues, and more.

Michael Benke

Michael is part of the CaseyGerry complex litigation team. He received his JD degree from Berkeley Law School (Boalt Hall) with a concurrent degree from Berkeley’s Goldman School of Public Policy, where he focused on quantitative methods. During law school, he externed for Judge M. Margaret McKeown of the Ninth Circuit Court of Appeals.

Following law school Michael served as an attorney in the chambers of California Supreme Court Justice Joyce L. Kennard, and subsequently, received trial and appellate experience with the economic crimes and appellate divisions of the San Diego County District Attorney. Michael has served in the Fourth District Court of Appeal, Division One, as a research assistant to Associate Justice Joan Irion, and has argued cases before the California Court of Appeal, Division Two (San Bernardino).

Michael is also a medical doctor. Following his legal education and experience, he attended and received his MD degree at Saint George's University, where testing and academics earned him the highest merit scholarship at entry. Most recently, in his clinical years he rotated through Eisenhower Hospital and Desert Regional Medical Center in Palm Springs, Arrowhead Regional Medical Center in San Bernardino, and the Santa Clara County hospital system. He completed sub-internships in medicine, hospital-based family medicine, and psychiatry. While in medical school, Michael worked as a law clerk for CaseyGerry.

Michael is licensed to practice law in California and the state of New York, including the federal Southern District of New York. He is fluent in Spanish.

Noah Moss

Noah Moss is a civil trial lawyer at CaseyGerry where he works with the personal injury team. He joined the firm after working with a prestigious Personal Injury law firm in Bakersfield, CA as a trial attorney. Prior to that, Noah worked for a big New York firm where he represented pharmaceutical companies in Patent litigation. During his time representing large corporations, Noah realized that he wanted to join a law practice that worked for the individual not against them. This led to his transition to personal injury law.

Noah received his Juris Doctorate from Loyola University, Chicago School of Law, with a certificate in Advocacy and International Law. In addition, he received a Master of Laws degree in IP & Information Technology Law from Fordham Law School, New York. For his undergraduate studies, he attended University of California San Diego, graduating with a Bachelor of Science in Biology and Molecular Biology.

SELECT LEADERSHIP POSITIONS

- *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Lit.*,
MDL No. 2672
- *In re: Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Lit.*,
MDL No. 2777
- *In re: ZF-TRW Airbag Control Units Products Liability Lit.*,
Case No. 19-ml-02905 JAK (C.D. Cal.)
- *In re: Chrysler Pacifica Fire Recall Products Liability Lit.*, MDL No. 3040
- *In re: Waste Management Data Breach Lit.*,
Case No. 21-cv-06199-DLC (S.D. N.Y.)
- *In re: Netgain Technology, LLC, Consumer Data Breach Lit.*,
Case No. 21-cv-1210-SRN-LIB (D. Minn.)
- *DeSue v. 20/20 Eye Care Network, Inc. et al.*,
Case No. 21-cv-61275-RAR (S.D. Fla.)
- *In re: Bank of America California Unemployment Benefits Lit.*,
Case No. 3:21-md-02992-LAB-MSB (S.D. Cal.)
- *In re the Exxon Valdez*,
Case No. CV-89-00095-HRH,
Exxon Shipping Co v. Baker, 554 U.S. 471 (2008)
- *Vinsant v. US Fertility, LLC*,
Case No. 8:21-cv-00225 (S.D. Md.)
- *In re: Warner Music Group Data Breach*,
Case No. 1:20-cv-07473-PGG (S.D. N.Y.)
- *In re: RadNet, Inc. Data Breach*,
Case No. 2:20-cv-09553 (C.D. Cal.)
- *In re: Citrix Data Breach Lit.*,
Case No. No:19-cv-61350 (S.D. Fla.)

- *In re: EyeMed Vision Care, LLC Data Security Breach Lit.*,
Case No. 1:21-cv-00036-DRC (S.D. Oh.)
- *In re: Intel Corp. CPU Marketing, Sales Practices*,
MDL No. 2828
- *In re: Apple Inc. Device Performance Lit.*,
MDL No. 2827
- *In re: Wells Fargo Collateral Protection Insurance Lit.*,
MDL No. 2797
- *In re: YAHOO! Inc. Customer Data Security Breach Lit.*,
MDL No. 2752
- *In re: National Football League Players' Concussion Injury Lit.*,
MDL No. 2323
- *In re: World War II Era Japanese Forced Labor*,
MDL No. 1347
- *In re: Apple and AT&T iPad Unlimited Data Plan Lit.*,
Case No. 10-cv-02553(N.D. Cal.)
- *In re: Hydroxycut Marketing and Sales Practice Lit.*,
MDL No. 2087
- *In re: Sony Gaming Networks & Customer Data Security Breach Lit.*,
MDL No. 2258
- *In re: Incretin Mimetics Products Liability Lit.*,
MDL No. 2452
- *Ellis v. R.J. Reynolds Tobacco Co.*,
San Diego Super. Ct., Case No. 706458
- *Scott v. American Tobacco*,
No. 01-2498 (La. 9/25/01), 795 So.2d 1176, and No. 02-2449 (La.
11/15/02), 830 So.2d 294, and No. 2004-2095 (La. App. 4th Cir. 2/7/07)
- *In re: American Honda Motor Co., Inc. Dealerships Relations Lit.*,
MDL No. 1069

- *Rose v. Bank of America*,
Case No. 11-cv-02390
- *Steinfeld v. Discover Financial Services, et al.*,
Case No. 12-cv-01118
- *Villa, et al. v. City of Chula Vista*,
San Diego Super. Ct., Case No. 37-2011-00093296
- *Gehrich, et al. v. Chase Bank USA, N.A., et al.*,
Case No. 12-cv-05510
- *Blue Shield of California Affordable Care Act Cases*,
JCCP 4800
- *Galvez v. Waste Management*,
JCCP 4534
- *Shames v. City of San Diego, et al.*,
San Diego Super. Ct., Case No. GIC 831539
- *Cardiff v. General Motors Corporation*, coordinated with *Valve Automation and Controls, Inc., et al v. General Motors Corp., et al.*,
San Diego Super. Ct., Case No. EC 016530

Sonn Law Group

SONN LAW GROUP PA

The law firm of Sonn Law Group (“the Firm”) concentrates its practice in securities litigation/arbitration, class actions, and business litigation, including substantial experience in Ponzi Schemes. The Firm has offices in Aventura, Florida, and Atlanta, Georgia. The Firm has represented thousands of individual and institutional investors in arbitrations, federal and state courts, as well as class actions. Jeffrey Sonn, Esq., the founding shareholder in the firm, has been selected to the 2022 Lawdragon 500 Leading Plaintiff Financial Lawyers guide, one of the Top 100 Civil Trial Lawyers in Florida by the National Trial Lawyers Association, and as a “Superlawyer” by the Superlawyers rating network. Jeffrey was also recognized by the MultiMillion Dollar Advocates forum, an award for attorneys who have obtained multimillion dollar verdicts or settlements. Jeffrey Sonn is also “AV” rated by Martindale-Hubbell.

The Firm has three attorneys in South Florida and Atlanta, licensed in Florida, New York and Georgia.

SECURITIES AND CONSUMER CLASS ACTIONS. The following is a list of securities and consumer class action cases in which the Firm or one or more of its attorneys are or have been involved at this or prior law firms:

In re: Woodbridge Investments Litigation, 18-cv-00103-DMG-MRW. Jeffrey Sonn and Sonn Law Group PA served as part of the Plaintiffs’ Executive Leadership, and filed an amended consolidated class action complaint against Comerica Bank on August 26, 2020 along with co-counsel. On December 17, 2021, the United States District Court for the Central District of California granted approval of a \$54.2 million settlement between Woodbridge investors and Comerica Bank for allegedly violating California statutory law and breaching its fiduciary duties by aiding and abetting an elaborate multi-billion-dollar Ponzi-scheme fraud committed by Robert H. Shapiro and the Woodbridge Group of Companies, a real estate investment company, which transacted the scheme through Comerica bank accounts. Plaintiffs in the case are investors who were harmed by the Ponzi-scheme. The settlement resolved claims for nearly 8,000 Woodbridge investors.

Tecku vs. Yieldstreet Inc., Case No 20-7327 (SDNY). Jeff Sonn was appointed as co-lead counsel for a putative class of investors, alleging violations of the securities laws in a series of private placements involving over \$90 million in investor losses.

In re: 1 Global Capital LLC, Case No 18-9121 (SDFL Bkr); Foster vs. Ruderman Adv 18-1438 (2020 WL 1486791 (SDFL Bkr 2020) Shore vs Wieniewitz et al, Case No 2019-016480 (Miami Dade, FL Cir Ct). Jeff Sonn serves as part of Plaintiff's executive leadership counsel for a class of investors in this \$280 million Ponzi scheme, resulting in millions in settlements for investors, resulting from claims against third party law firms and accountants alleging aiding and abetting fraud and aiding and abetting breach of fiduciary duty.

In re: Equialt; Gleinn et al vs. Paul Wassgren, DLA Piper and Fox Rothschild, Case No 20-1677 (MDFL); Jeff Sonn is on the Plaintiff Executive Committee for a putative class of investors against two national law firms, alleging aiding and abetting the \$180 million "Equialt" Ponzi scheme. The firm serves on the executive committee of Plaintiff counsel.

Katz v. MRT Holdings, LLC ., et al., 07-cv-61438 (S.D. Fla.). Jeff Sonn was appointed lead counsel for a class of investors in a Ponzi scheme and obtained a \$50 million judgment in a class action against Ponzi scheme operators as lead class counsel. Later, the firm was then appointed as counsel for the Federal Court appointed Receiver for MRT.

Zinner v. Securities America, Inc. et al., 10-cv-03051 (D. Neb. 2009) – Sonn was Plaintiffs' Counsel for a putative class alleging a Ponzi scheme relating to the \$400 million Medical Capital Ponzi Scheme. The case was resolved favorably via an earlier filed case.

Saca vs. Standard Chartered Bank, 2011-03480-VM (SDNY). Jeff Sonn represented investors against a bank that created a private fund which acted as a "feeder fund" to Bernard Madoff Securities, in cases pending in the Southern District of New York before Judge Marrero. The firm obtained a favorable settlement against the bank for investors, after defeating a motion to dismiss.

Cordova vs. Lehman Brothers, et al, 05-21169 (S.D.Fla.). Jeff Sonn acted as defense counsel for Defendant Oliva Investment Group in a large Ponzi scheme case

brought by investors in a class action. The firm obtained a dismissal of Oliva.

Sims vs. Lennar Corporation (Palm Beach Circuit Court)– Jeff Sonn was appointed as co-lead Plaintiff’s counsel in a consumer class action, alleging defective home automation systems. The firm obtained a favorable settlement for all homeowners.

SIGNIFICANT VERDICTS & SETTLEMENTS¹

Billetterri vs. Securities America, et al. 2009cv01568 (ND Texas). Jeff Sonn served on the national steering committee that represented over 1,000 investors relating to two Ponzi scheme investments sold by Ameriprise Financial, and Securities America. Jeff helped negotiate a \$70 million dollar settlement for investors with pending arbitration cases, a 46% recovery, an increase of 2.5 times the original class action offer. The settlement also included another \$80 million for members of the putative class. The total recovery was \$151 million for investors. The firm helped defeat a motion to approve a mandatory, non-opt out, “limited fund” class action settlement, and was instrumental in raising the ultimate recovery for all investors, closely working with class counsel in the process to obtain a superior result for thousands of investors.

Madhany v. Citigroup (FINRA 2013). In August, 2013, Jeffrey Sonn was the sole lead trial counsel that obtained a \$11.1 million dollar verdict against Citigroup Global Markets Inc. for a physician that was induced by a Citigroup financial advisor to invest in a large scale real estate development with the son of the former Governor of the State of Florida. The real estate development failed, and the investor had been hit with a \$10 million judgment by the lender. Jeffrey obtained all the equity lost in the investment and payment of the lender’s judgment, a total recovery of \$11.1 million.

Katz v. MRT Holdings, LLC ., et al., 07-cv-61438 (S.D. Fla.). Jeff Sonn was the sole lead class counsel that obtained a \$50 million judgment in a class action against Ponzi scheme operators as class counsel. Jeffrey Sonn was then appointed

¹ References to results obtained by “the firm” or the attorney, means the information includes results from Mr. Sonn’s prior law firms as well.

as counsel to a Federal Court Appointed Receiver for Ponzi scheme operators.

Puerto Rico Bond litigation. Over the past seven years, the firm obtained in excess of \$50 million in verdicts and settlements alleging securities fraud over the sale of Puerto Rico Bonds for hundreds of investors.

Lacey Winston Keith vs. JP Morgan Chase (2021 FINRA arbitration): Jeff Sonn of Sonn Law Group, along with co-counsel, obtained a \$4 million dollar verdict following a FINRA arbitration, alleging mismanagement of complex investments involving currency trading, margin loans, initial public offerings and ETFs of midstream pipeline master limited partnerships.

First Union National Bank v. FDIC, et al., 95-cv-708 (S.D. Fla). Jeffrey Sonn, Esq. served as co-counsel for Hollywood Associates in a complex contract action against the Resolution Trust Corporation and won a \$16 million verdict on appeal before the 11th Circuit Court of Appeals.

Young vs. Success Trade and Brahmhatt. The firm obtained a \$2 million verdict for an NBA player, including \$1 million of punitive damages for an NBA player.

Banamex v. MSDW (FINRA 2014). The firm obtained a \$4.5 million verdict against Morgan Stanley & Co. on Fraud case involving an alleged forgery of loan documents and the related sale of complex structured products.

In re: Premium Sales Corp. Mr. Sonn served as co-counsel for the creditors committee in a \$160 million dollar Ponzi Scheme. Investors recovered a significant portion of their losses.

Goldberg v. Michael J. Malik, Case No. 08-cv-60870 (S.D. Fla). Jeffrey Sonn served as special counsel to *S.E.C. Receiver, Michael Goldberg*, in a \$350 million dollar Ponzi scheme, to recover fraudulent transfers of assets. The Firm won a favorable settlement for the receiver.

Cordova vs. Lehman Brothers, et al, 05-cv-21169 (S.D. Fla.). The Firm successfully defended a financial advisory firm in a securities fraud class action that alleged a Ponzi scheme involving complex transactions in life insurance and securities.

Sims v. Lennar Corp., Case. No. 97-8577 (Palm Beach Cir. Ct.). Plaintiff's counsel in a class action alleging consumer fraud for over 2000 homeowners. The class action was settled favorably for all Plaintiffs.

In re: Samco Financial Services (FINRA). The Firm represented over 60 investors in a series of securities fraud arbitrations that involved complex derivatives known as inverse floaters. Investor losses exceeded \$10 million. The Firm obtained a favorable settlement for all the investors.

Regas v. PaineWebber, (NASD). Jeffrey Sonn obtained a \$2.2 million dollar verdict against PaineWebber in a case alleging forgery and theft.

Toledo vs. UBS. Jeffrey Sonn obtained a \$3 million settlement for a customer that alleged fraud involving the sale of bonds, and forgery.

Kirk v. E-Net, Inc., 99-cv-8810 (S.D. Fla.). Jeffrey Sonn represented a group of investors against a public company in a dispute over securities and stock registration rights. The firm obtained a favorable settlement of \$1.35 million.

Maple Fund Ltd. et al. v. Sutana Inc. (C.D. Cal.). The Firm represented a hedge fund against a hedge fund manager for breach of fiduciary duty, alleging damages in the millions of dollars. The Firm obtained a favorable settlement for the hedge fund.

Tartell, et al. v. Krieger Fin. Servs, et al. (FINRA). Jeffrey Sonn obtained a \$1.7 million dollar verdict in a Ponzi scheme case.

Cobb vs. Morgan Keegan & Co. (FINRA). The firm obtained a \$1.1 million dollar verdict against Morgan Keegan, in a case alleging securities fraud over the sale of Morgan Keegan closed-end and open-end mutual funds, known as RMK Mult-Sector High Income Fund (RHY), RMK Advantage Income Fund (RMA), RMK Select High Income (MKHIX), RMK High Income Fund (RMH), RMK Strategic Income Fund (RSF). The verdict and subsequent recovered amounted to 80% of the investor's net losses.

Miniaci et al vs. Morgan Keegan & Co. The firm obtained a \$1,080,000 million dollar verdict against Morgan Keegan, in a case alleging securities fraud over the sale of Morgan Keegan mutual funds. The verdict and subsequent

recovery amounted to 100% of the investor's net losses.

Fornell vs. Morgan Keegan. The firm obtained a verdict to recover in a complex structured finance securities product case and recovered all of the retiree's losses against Morgan Keegan. The case alleged securities fraud over the sale of a Morgan Keegan proprietary mutual funds, known as the RMK Funds. Moreover, the firm obtained sanctions against Morgan Keegan after it filed an unsuccessful appeal of the verdict, and was awarded, interest, attorneys fees and costs.

In re: Louis Beloff, Debtor. The firm won a verdict for investors in a bankruptcy adversary proceeding against debtors who perpetrated a Ponzi scheme involving swamp land near Walt Disney World, obtaining an award against the promoter and his pension fund.

City of Beaumont vs. Ewton. (S.D. Fla. 1988). Jeffrey Sonn successfully defended Ronald Ewton and his wife against the City of Beaumont Texas in a Ponzi scheme related securities-fraud claim, where Ronald Ewton (the E, in ESM Government Securities Ponzi scheme) was accused of perpetrating a \$500 million dollar Ponzi scheme.

OUR ATTORNEYS

JEFFREY R. SONN Mr. Sonn was admitted to the Florida Bar in 1988, and focuses



his practice principally on securities litigation and arbitration matters, and business litigation, including class actions. Mr. Sonn also has experience with bankruptcy litigation and fraudulent transfers in Ponzi Schemes. Mr. Sonn has served as a television commentator on securities fraud and Ponzi scheme cases for CNBC, CBS, BBC Radio, ABC and MSNBC.

Mr. Sonn was recognized as a Top 100 Civil Trial Lawyer in Florida by the National Trial Lawyers Association and as a Top 500 Financial Lawyers by LawDragon. Mr. Sonn was also recognized as a Super Lawyer by the SuperLawyers ratings organization and a "Top Lawyer" by Martindale.com where he has an "AV" rating. Mr. Sonn is the author of "Ponzi Schemes, Picking up the Pieces from a Fallen House of Cards" (Practicing Law Institute, 2009, Securities Arbitration in the Meltdown Era), and lectured at the Practicing Law Institute on Ponzi Schemes. Mr. Sonn also

authored “The ABC’s of Mortgage Backed Securities” (Public Investor Arbitration Bar Association, 2008), “The Broker Went Bankrupt—Now What?”, “Elder Abuse and the Securities Industry”, as well as other securities-related publications.

Mr. Sonn served a Director of the Public Investor Advocates Bar Association for over 15 years , the national bar association for attorneys who represent investors in securities actions. Mr. Sonn lectures, and participates at national seminars on the topic of securities fraud. Mr. Sonn has been a lecturer at the Miami Dade County Police College on the subject of financial advisor fraud. Mr. Sonn has been a guest lecturer on securities fraud at the University of Miami Securities Law Clinic.

During his career, Mr. Sonn has litigated numerous cases to successful resolution, recovering over \$250 million dollars in verdicts and settlements for victims of investment fraud.

Mr. Sonn served as a CNBC legal contributor on the Bernard Madoff Ponzi Scheme for the CNBC shows “On the Money” and the documentary “Scam of the Century, Bernie Madoff and the \$50 Billion Dollar Heist.” Mr. Sonn also appeared in the television show “American Greed” on CNBC, describing the \$1 Billion Dollar Ponzi Scheme by conducted by convicted Fort Lauderdale attorney Scott Rothstein. The firm represented victims in the Rothstein case and filed the involuntary petition for bankruptcy of the Rothstein law firm.

Mr. Sonn graduated from the University of Florida in 1984 and from University of Miami Law School in 1988. Mr. Sonn was an Associate Editor of the University of Miami InterAmerican Law Review. Mr. Sonn is “AV” rated by Martindale Hubbell, the highest rating for ethics and legal ability available by this independent ratings organization.

Mr. Sonn is admitted to practice law in the State of Florida, the United States District Courts for the Middle and Southern Districts of Florida, and the 11th Circuit Court of Appeals.

ADOLFO ANZOLA is a partner (nonequity) in the firm. Mr. Anzola is a graduate of Florida International University with a business degree, and in 1997 from Temple University School of Law. Mr. Anzola clerked for New Jersey Superior Court. Mr. Anzola served as Deputy Attorney General for the New Jersey Bureau of Securities. Mr. Anzola was recognized as a Top 100 Attorney by the National Trial Lawyers.



Mr. Anzola also served on defense side in securities and professional liability cases, and later in his career, began to represent investors harmed by financial advisors, banks and broker dealers.

BRIAN PASTOR Brian Pastor is a nonequity partner in the firm, in Atlanta, Georgia. Mr. Pastor graduated with a degree in accounting from the University of Florida in 1986 and graduated summa cum laude from the University of Florida School of Law in 1991. Mr. Pastor served an associate at national law firms of Alston & Bird and Sutherland, Asbill and Brennan where he had substantial responsibility representing clients in both plaintiff and defendant mass torts, led the effort representing class plaintiffs in a tort class action that successfully concluded in a large settlement for the class, advised throughout on a Plaintiff's class action for fraud that was successfully resolved, defended over \$500,000,000.00 in claims a mass plaintiff tort case, and where he also practiced in commercial and tort litigation before opening his practice in Atlanta. Mr. Pastor concentrates his practice on commercial litigation, securities litigation, fraud/negligence cases and personal injury.



Law Offices of Leonard Simon

LAW OFFICES OF LEONARD B. SIMON
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San Diego, CA 92101
Phone (619) 818 0644
lens@rgrdlaw.com

Mr. Simon run his own law firm, and is also Of Counsel to Robbins Geller Rudman and Dowd, and an Adjunct Professor who has taught at Duke, the University of Southern California and the University of San Diego. He handles complex civil litigation, including class actions, securities and antitrust cases, and matters relating to the sports world. He is admitted to practice in California, D.C. and New York.

PRIOR EMPLOYMENT

Robbins, Geller, Rudman & Dowd LLP, San Diego. Mr. Simon was an associate, a partner and a managing partner of this firm. He created and ran the appellate department of the firm, while also handling cases at the trial court level. His practice involved complex civil litigation, plus a few sports-related cases. He handled trials and appeals in federal and state courts throughout the United States, including the U.S. Supreme Court and the majority of the Circuits.

Adjunct Professor of Law, Duke University, U.S.C., and the University of San Diego. Mr. Simon has taught one course every academic year since 2001 at one or the other of these law schools, either Complex Civil Litigation or Sports and the Law.

Attorney, Arnold & Porter, Washington, D.C., 1974-1982. Complex litigation, primarily in the federal courts. Associate in charge of pro bono program, 1978-79.

Law Clerk, The Hon. Irving Hill, U.S. District Judge, Los Angeles, 1973-74.

PROFESSIONAL AND COMMUNITY ACTIVITIES

Lawyer Representative, Ninth Circuit Judicial Conference, 2006-2011; Elected Member of Ninth Circuit Conference Executive Committee, 2009-2011.

Judge Pro Tem, San Diego Superior Court.

Private Arbitrator and Mediator.

Board of Directors, American Civil Liberties Union, San Diego, 1998-2008.

Board of Directors, Equal Justice Works, Washington, D.C, six years.

Board of Directors, San Diego Affiliate, American Constitution Society, formation through 2019.

Board of Directors, San Diego Padres, eight years.

EDUCATION

J.D., Duke University School of Law, 1973. Order of the Coif; *Duke Law Journal*, editorial board member; Moot Court Board President, and national and regional moot court team member.

B.A., Union College, Schenectady, New York, 1970.

PERSONAL

Born December 15, 1948, Hartford CT. Married, three grown children.

Russomanno & Borrello

HERMAN J. RUSSOMANNO

RUSSOMANNO & BORRELLO, P.A.
Museum Tower - Penthouse 2800
150 West Flagler Street
Miami, Florida 33130
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hrussomanno@russomanno.com

Partner - Russomanno & Borrello, P.A.

Partner - Floyd Pearson Richman Greer Weil Brumbaugh & Russomanno, P.A.
1980-1996

Board Certified and Re-Certified Civil Trial Lawyer State of Florida (1986)
Board Certified by the National Board of Trial Advocacy
(Re-Certified 1991, 1996, 2001, 2006, 2011 & 2017)

Admitted to Practice

State of Alabama
State of Florida
United States Supreme Court
United States Court of Appeals - 11th Circuit
United States Court of Appeals - 5th Circuit
United States District Courts for the Southern, Middle
and Northern Districts of Florida
United States District Court Southern District of Alabama
Florida Public Service Commission

Education

Rutgers University, New Jersey - 1971
B.A. Magna Cum Laude and with College Wide Honors
Phi Beta Kappa
Samford University-Cumberland School of Law-J.D. Birmingham, Alabama-1975
Law Clerk, Honorable Daniel H. Thomas, U.S. District Court
Mobile, Alabama 1975-1976
Law Clerk, Associate Justice Hugh Maddox, Alabama
Supreme Court - 1976-1977
Corporate Counsel - Southern Bell Telephone -1977-1980

Bar Activities

Fellow - American College of Trial Lawyers
Fellow - International Academy of Trial Lawyers

Fellow - International Society of Barristers
Fellow – Litigation Counsel of America
President – Roscoe Pound Civil Justice Institute
President - The Florida Bar (2000)
President-Elect – The Florida Bar (1999)
Board of Governors - The Florida Bar
Member – American Bar Association Commission on Ethics 20/20
Immediate Past President – The International Academy of Trial Lawyers
President-Elect – The International Academy of Trial Lawyers
Vice President – The International Academy of Trial Lawyers
President Elect - International Academy of Trial Lawyers Foundation
Dean – The International Academy of Trial Lawyers
Secretary of International Relations – The International Academy of Trial Lawyers
Chair, Budget Committee - The Florida Bar
Chair Admissions Committee- International Academy of Trial Lawyers
Executive Committee - The Florida Bar
Past President- The Florida Supreme Court Historical Society
Delegate - American Bar Association House of Delegates
Board of Governors – American Association for Justice
Executive Committee- American Association for Justice
Member AAJ Endowment
Board of Directors - Florida Justice Association
Past President, Florida Board of Trial Advocates (FLABOTA-2005)
Past President, Dade County Bar Association (1993-94)
Past President - American Board of Trial Advocates (Miami Chapter)
Past President, Dade County Trial Lawyers Association (1990-91)
Past President, Dade County Bar Association, Young Lawyers Section (1983-84)
Past-Chair: Section & Litigation Group Coordination Committee, AJA
Chair: Chief Justice’s Advisory Committee – Tobias Simon Pro Bono Service Award
Chair: Committee on Ethical Conduct, AJA
Co-Chair: Bar Liaison Committee, AJA
Chair: Florida Bar Liaison Committee - FJA
Past-Chair: Continuing Legal Education - FJA
Past-Chair: Budget Preparation Committee - FJA
Past Chair: Civil Trial Certification Committee - Florida Bar
Standing Committee on Pro Bono Legal Services - The Florida Bar
Executive Committee, Dade County Bar Association 1988-1993
State Delegate - AJA (1987-1993)
Executive Council Trial Lawyers Section Florida Bar
Bencher & Counsellor - The Peter T. Fay American Inn of Court
Past-President Catholic Lawyers Guild of Dade County
Membership Committee – National Conference of Bar Presidents
Member - AJA - PAC
Fellow - American Bar Association
Treasurer and Fellow - Roscoe Pound Foundation
Liaison- National Board College of Advocacy Board of Trustees
Member - Trial Lawyers for Public Justice

Member - Rules of Civil Procedures Committee, Florida Bar
Member - Judicial Nominating Procedures Committee, Florida Bar
Member - Individual Rights and Responsibilities Committee, Florida Bar
Member - State Relations, AJA
Member – Coalition for Justice, American Bar Association
Member – Standing Committee on Judicial Independence, American Bar Association
Member – Standing Committee on Professionalism, American Bar Association
Member – Committee on Issues of Concern to the Legal Profession, American Bar Association
Member – Florida State Committee, American College of Trial Lawyers
Member – Alternatives for Dispute Resolution Committee, American College of Trial Lawyers
Member – State Chair South Florida International Society of Barristers
Member- The Florida Bar Elections Committee
Member- ABOTA Judicial Liaison Committee
Member- ABOTA Legislative Committee
Member- Trial Lawyers Care 9-11 Victims
Member- AJA Road to Justice Committee (1990-91)
Member- AJA Law Schools Program Committee (1988-89)
Member- AJA Lawyers Challenge for Children Committee (1998-99)
Member- Committee to Study Special Education Programs
Member- State Delegate Joint Membership Committee
Member- ABA State Justice Initiatives
Member- American College of Trial Lawyers Florida Access to Justice Committee
Member ABOTA- Hurricane Katrina Special Committee
Member- AJA Publications Committee
Member- Florida Bar Eleventh Circuit Fee Arbitration Committee
Member- Professionalism Committee Eleventh Judicial Circuit
Member- AJA Propositions and Initiative Task Force
Member- AJA Key Person Committee
Member- AJA Membership Task Force Committee
Senior Counsel Member – American College of Barristers

Honors

Member – The National Association of Distinguished Counsel Top One Percent
Member – Best Lawyers in America
Leading Florida Attorneys - Selected in all editions Personal Injury and Commercial
Recipient - Florida Trial Lawyer of the Year, The American Board of Trial Advocates (2001)
Recipient - The National Trial Lawyers- Top 100 Trial Lawyers
Recipient - Anti-Defamation League Jurisprudence Award (2014)
Recipient - Howard Twigg AAJ Commitment to Justice Award (2014)

- Recipient- David Dyer Professionalism Award Dade County Bar Association (2004)
- Recipient - Justice Harry Lee Anstead Professionalism Award Dade County Trial Lawyers Association (2002)
- Recipient - Pursuit of Justice Award – Tort and Insurance Practice Section Task Force on Plaintiffs’ Involvement American Bar Association (2002)
- Recipient - B.J. Masterson Award for Professionalism Florida Justice Association (2001)
- Recipient - Jon Krupnick Award for Perseverance – Florida Justice Association (2010)
- Recipient - Doctor of Laws, St. Thomas University School of Law (2000)
- Recipient - Silver Medallion Award NCCJ (2002)
- Recipient - Joe Tonahill Award - New Lawyers Division - American Association for Justice (1997)
- Recipient - Distinguished Alumnus Cumberland School of Law (1995)
- Recipient- Wiedman Wysocki Citation of Excellence
- Recipient - Florida Justice Association Silver Eagle Award (1994)
- Recipient - Outstanding Young Men of America (1984)
- Recipient - Young Lawyers Section of the Florida Bar Award As The Most Productive Lawyer in The State of Florida (1981-82)
- Recipient - Dade County Bar Association Young Lawyers Section Outstanding Young Lawyer Award (1982)
- Recipient - The St. Thomas More Award (1989)
- Recipient - Outstanding Faculty Teaching Award St. Thomas University School of Law (2012)

Other Activities

- Past Chair - National Conference for Community and Justice, Greater Miami Region
- Member - 1989-90 Florida Legislature Motor Vehicle Insurance Task Force
- Past Chair - St. Thomas University Board of Trustees
- Past Chair - Development Committee, St. Thomas University
- Chair - Executive Committee, St. Thomas University School of Law, Board of Advisors
- Adjunct Professor - St. Thomas University School of Law
- Past President - Cumberland School of Law, National Alumni Association (1989-91)
- Member - Advisory Board of Cumberland School of Law - Merit Selection Panel, United States Magistrate, Southern District of Florida
- Member - Committee for Selection of General Masters (11th Judicial Circuit)
- Past Director - Legal Services of Greater Miami
- Member - St. Louis Catholic Church
- Boy Scouts (Benefactor)
- Charles Evans Hughes Task Force Fore- The National Conference
- Past President - Continental Kendall Boys and Girls Baseball Khoury League
- Citizen’s Fraud Prevention & Education Foundation

Miami Project to Cure Paralysis, Legal Advocates Committee
Past - Palmer Trinity School Board of Trustees, Secretary
Past - President - Palmer Trinity School Booster's Club
Adjunct Professor – St. Thomas University School of Law for past 34 years
teaching Trial Advocacy
Outstanding Adjunct Faculty Member 2012
Board Member - Gulliver Prep Booster Club
Leadership Miami
United Way

Faculties of various continuing legal programs include:

National Judicial College
Florida Circuit Judges Conference
The National College of Advocacy
The Florida Bar
ABOTA Masters in Trial
Florida Justice Association
American Association for Justice
Dade County Trial Lawyers Association
New Jersey ATLA Lawyers Association
National Business Institute
Young Lawyers Section - The Florida Bar
Young Lawyers Section - Florida Justice Association
Interdisciplinary Rape Science Training Institute - Jackson Memorial Hospital
ABOTA- Miami Chapter
ABOTA- Palm Beach

(rev. 1/22/18)

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ADMITTED TO PRACTICE LAW

- Florida
- United States District Court Southern, Middle, and Northern Districts of Florida
- United States Court of Appeals for the Eleventh Circuit

LEGAL EXPERIENCE

- Russomanno & Borrello, P.A.
Partner Fall 2006-Present; Miami, Florida
- Honorable James Lawrence King, U.S. District Court, S.D. of Florida
Legal Clerkship Fall 2004-2006; Miami, Florida
- Honorable William M. Hoeveler, U.S. District Court, S.D. of Florida
Judicial Internship Summer 2003; Miami, Florida

PROFESSIONAL AWARDS & ACTIVITIES

- *President*, Dade County Bar Association (2014-2015)
- *Executive Council* of The Trial Lawyer's Section of The Florida Bar (2014-2015)
- Named a *Rising Star* by Florida Super Lawyers Magazine
- Named *Top Lawyers in South Florida* by South Florida Legal Guide
- *Recipient of Award*, Top 40 Outstanding Lawyers in Miami, FL. Under Age of 40
- *Fellow*, The Florida Bar Leadership Academy (Inaugural Class) (2013-2014)
- *Committee Chair*, Dade County Bar Association Bench and Bar Conference
- *Board of Director*, Young Lawyers Section – Florida Justice Association
- *Board of Director*, Young Lawyers Section – Dade County Bar Association
- *Committee Member*, Federal Court Practice Committee – The Florida Bar
- *Committee Member*, Long Range Planning Committee, Dade County Bar Association
- *Committee Member*, Civil Litigation Committee, Dade County Bar Association
- *Committee Member*, Business Law Committee, Dade County Bar Association
- *Member*, Florida Supreme Court Historical Society
- *Advisory Board*, Miami-Dade Legal Aid
- *Florida Delegate*, Young Lawyers Division – American Bar Association
- *Committee Chair*, Pro-Bono Services Committee– Dade County Bar Association
- *Committee Chair*, The Miami-Dade Pro Bono Fair
- *Committee Member*, The Spellman-Hoeveler American Inns of Court
- *Committee Member*, Professionalism Committee – Dade County Bar Association
- *Committee Member*, Mock Trial Committee – Florida Justice Association
- *Member*, Florida Justice Association -Young Lawyers Section
- *Member*, Cuban-American Bar Association
- *Member*, Peter T. Fay Inns of Court
- *Member*, American Bar Association – Young Lawyers Division
- *Member*, St. Thomas University Law Alumni Association

- *Committee Member*, Host Committee for Anti-Defamation League Awards Luncheon
- *Judge-Volunteer*, Honorable E. Earle Zehmer Memorial Mock Trial Competition
- *Judge-Volunteer*, American Bar Association Negotiation Competition
- *Judge-Volunteer*, Miami-Dade County High School Mock Trial Competition
- *Attorney-Participant*, Federal Court Mock-Trial Exhibition; Hosted by the Honorable James Lawrence King – United States District Court Judge
- *Certificate of Merit*, Board of Directors – Dade County Bar Association YLS Section
- *Panel Speaker*, Professionalism Seminar at St. Thomas University School of Law
- *Panel Speaker*, Third District Court of Appeal for New Inductees to The Florida Bar
- *Panel Speaker*, Reader of the Constitution for Constitutional Day
- *Panel Speaker*, 11th Judicial Circuit Court Committee on Professionalism and Civility
- *Panel Speaker*, ADA Call to Action Summit
- *Panel Speaker*, “Unique Bar Association Committee Projects” American Bar Association – Young Lawyers Division

PUBLICATIONS

- Author, *Initiatives for Presidential Year*, June 2014 Dade County Bar Association Bulletin
- Author, *Standards for Professional Courtesy and Civility*, July 2014 Dade County Bar Association Bulletin
- Author, *Initiatives for New Dade County Courthouse*, August 2014 Dade County Bar Association Bulletin
- Author, *Award Recipients for DCBA’s Over the Rainbow Program*, September 2014 Dade County Bar Association Bulletin
- Author, *Update on Courthouse Initiative*, October 2014 Dade County Bar Association Bulletin
- Author, *Bar-Related Activities to Ensure Compliance with all ADA and Access Requirements*, November 2014 Dade County Bar Association Bulletin
- Author, *What All Lawyers Need To Know About The Supreme Court of Florida’s New 2010 Amendments To Rule 4-7.6 Of The Rules Regulating The Florida Bar*, January 2010 Journal of The Florida Justice Association
- Author, *Make Sure That Your Motion for Summary Judgment Addresses More Than Just the Typical Argument That There Are No Genuine Issues as to Any Material Fact*, September/October 2010 Journal of The Florida Justice Association
- Author, *Put a Stop to Speaking Objections Intended to Coach the Deponent – Such Objections are Improper and Unprofessional*, February 2012 Dade County Bar Association Bulletin

EDUCATION

- St. Thomas University School of Law Miami, Florida (Juris Doctor, 2004)
Mock Trial Award: Most Outstanding Competitor of the Year Award (2004)
- St. Thomas University Miami, Florida (B.B.A. Business Management, 2001)
Delta Epsilon Sigma: National Honor Society, *Member*
St. Thomas University Collegiate Baseball Team: (1997-2001); Captain (2001)
Academic All-American: St. Thomas University Baseball Team: (2003, 2004)

EXHIBIT 2

EXHIBIT 2

Investor Counsel's Litigation Expenses

PLAINTIFFS' COUNSEL	Travel	Copies	Filing / Service Fees	Transcripts / Videos	Electronic Research (Lexis, Westlaw, Pacer, etc.)	Fed-Ex, Overnight Delivery, Postage, Messenger	E-Discovery Vendors (Teris and E-Hounds)	Experts (YIP Associates)	Mediation (JAMS)	Misc. (Bank Fees, etc.)	TOTAL EXPENSES
Bonnett, Fairbourn, Friedmann & Balint		\$355.40	\$2,906.38		\$38,853.44	\$283.68	\$487.50				\$42,886.40
The Moskowitz Law Firm	\$897.90		\$10,176.55	\$4,073.70	\$11,084.60	\$344.75					\$26,577.50
Casey Gerry			\$1,504.62		\$2,230.47	\$7.56				\$10.80	\$3,753.45
Russonanno & Borrello		\$23.75	\$850.00		\$229.95						\$1,103.70
LITIGATION FUND							\$41,739.14	\$140,179.50	\$12,282.97	\$85.13	\$194,286.74
TOTAL EXPENSES	\$897.90	\$379.15	\$15,437.55	\$4,073.70	\$52,398.46	\$635.99	\$42,226.64	\$140,179.50	\$12,282.97	\$95.93	\$268,607.79