

‘IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (BOSTON)

_____)	
KAREN L. BACCHI, Individually and on)	
Behalf of all Persons Similarly Situated,)	Civil Action No. 12-cv-11280-DJC
)	
Plaintiff,)	
)	
v.)	
)	
MASSACHUSETTS MUTUAL LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	
_____)	

**DECLARATION OF JASON B. ADKINS IN SUPPORT OF
PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL**

Jason B. Adkins
ADKINS, KELSTON & ZAVEZ, P.C.
90 Canal Street, 5th Floor
Boston, MA 02114
Phone: (617) 367-1040
Fax: (617) 742-8280

Dated: March 13, 2017

I, Jason B. Adkins, state upon the pains and penalties of perjury, based on my own direct knowledge or staff upon whom I rely, the following:

1. I am an attorney in good standing in the state and federal courts of Massachusetts, and represent Plaintiff in this case.

2. With this declaration and affidavit, I attach true and correct copies of the documents referenced as Exhibits, and attest to the facts set forth herein

3. Plaintiff Karen L. Bacchi filed this action in July 2012 contending that the Massachusetts “Safety Fund” law, M.G.L. c. 175, §§ 140 & 141, sets a statutory percentage limit on the maximum amount of surplus a Massachusetts-domiciled life insurance company may withhold from its participating policyholders and that MassMutual exceeded the Safety Fund limit in each year during the Class Period (January 1, 2001 to December 31, 2016). The parties held significantly divergent interpretations of the Safety Fund law and of the significance and interpretation of MassMutual’s reported financial results over that period, as reflected in the divergent opinions of the parties’ 11 respective expert witnesses. Over the course of the litigation, the parties participated in many hotly contested discovery disputes and they litigated various procedural, discovery and case dispositive motions.

4. The litigation was hard fought for more than four years and was briefed through summary judgment, during the pendency of which the parties engaged in arms’ length negotiations and a mediation through their counsel, all of whom are experienced in complex insurance and class action litigation. The mediation and negotiations occurred on December 5, 2016. The negotiations were unquestionably adversarial and were overseen by Professor Eric D. Green, from Resolutions, LLC, in Boston, Massachusetts. Prof. Green’s involvement further supports the conclusion that the Settlement is the product of arms’ length negotiation untainted by collusion or other improper influences.

5. Fact discovery in this case began in 2013 and concluded on October 15, 2015. Over the course of discovery, MassMutual produced (and Plaintiff's counsel reviewed) over 145,000 pages of documents, including many complex native spread sheets. This discovery covered all substantive issues raised by the Complaint and proposed First Amended Complaint and other matters raised by Plaintiff throughout the Action.

6. Plaintiffs' Counsel also deposed ten (10) MassMutual fact witnesses, and conducted other informal investigation prior to the completion of fact discovery in the Action.

7. Before entering into settlement negotiations, the Parties exchanged initial and rebuttal expert disclosure reports. All told, Plaintiff served disclosures for five (5) experts and MassMutual served disclosures for six (6) experts. The Parties conducted depositions of their primary respective experts.

8. All fact and expert discovery was completed well before the Parties began to explore settlement. In addition, before commencing settlement negotiations the Parties completed briefing and presented oral argument on MassMutual's motion for summary judgment. Subject to the Court's ruling on MassMutual's summary judgment motion, the trial in this Action was set to commence on February 6, 2017. [ECF 178]. As such, this Action had progressed through the conclusion of discovery and pretrial motion practice and was poised for trial when the Settlement was reached.

9. MassMutual aggressively defended this case from the outset, and absent the Settlement would continue to do so. At trial, MassMutual would have presented testimony from an array of highly qualified experts, including actuaries, accountants and insurance finance experts. MassMutual also would offer testimony of experienced company executives, including actuarial and accounting personnel, risk management officers and management personnel responsible for calculating the Company's Safety Fund, interacting with Division of Insurance officials and

determining annual dividends. MassMutual argued, with some force, that it had a long history of declaring dividends consistent with those distributed by its industry peers and that payment of additional dividends in the amounts claimed by Plaintiff posed a risk of competitive harm to the Company. Adding to these significant risks, in August of 2016 the Massachusetts Legislature amended Section 141 to increase the Safety Fund percentage limit from 12% to 20%, while retaining language allowing MassMutual to argue that the new limit created a safe harbor immunizing the Company from liability for the prior statutory violations alleged by Plaintiff. If the case were not settled, MassMutual would have argued at trial (if not beforehand) that the statutory amendments to Section 141 vitiated Plaintiff's claims in their entirety.

10. The Settlement is inarguably valuable because it will, if approved, provide members of the Settlement Class with an immediate, tangible financial benefit while avoiding all risk of receiving nothing. MassMutual has agreed to a common fund settlement of \$37.5 million for the benefit of the Settlement Class. Stipulation of Settlement, § II, p. 4. Members of the Settlement Class with in force policies will automatically receive Paid-Up Additions increasing the face amount of their life insurance policies, with no need to file any claim form. *Id.*, § X(A). Members of the Settlement Class who are former participating policyholders will receive cash payments, also without the need for any claim form. *Id.* All members of the Settlement Class will receive their respective *pro rata* shares of the Net Cash Settlement Amount determined with reference to the total annual dividends they received during the Settlement Class Period. *Id.* In addition, MassMutual has agreed to pay all costs associated with the provision of the Settlement Class Notice and settlement administration. Stipulation, § VIII(E). MassMutual will pay these costs in addition to the \$37.5 million common fund amount. *Id.* Finally, under the Settlement, MassMutual has agreed to continue for at least ten years to provide voluntary annual Safety Fund calculations to the Massachusetts Division of Insurance. Stipulation, § X(B)(1).

11. The Settlement achieves a favorable outcome for the Settlement Class, especially considering the substantial costs, risks, and delay of continued litigation.

12. The Parties have agreed on certification of the Settlement Class for settlement purposes only as stated in the Stipulation, § III. Based on the books and records of MassMutual as conveyed to Plaintiff's counsel, the Settlement Class encompasses approximately 2.9 million MassMutual policyholders, in jurisdictions across the country.

13. The parties have agreed to the form and content of the Settlement Class Notice which will be distributed directly to the Settlement Class Members, subject to approval of the Court. Stipulation, § VII. The notice is to be distributed within a reasonable time after Preliminary Approval of the Settlement, by the Court-approved Settlement Administrator who will be given a list containing the names and last known addresses of Settlement Class Members, assembled from the records of MassMutual or its transfer agent and updated by MassMutual or the Settlement Administrator through reasonable tracking procedures to include at minimum consulting the National Change of Address database. No later than 35 days after Preliminary Approval of this Stipulation, the Settlement Administrator will disseminate notice of the Settlement via first class mail to the addresses provided by MassMutual. For mail that is returned as undeliverable, the Settlement Administrator will use reasonable efforts (i.e., utilizing change of address databases, such as Accurint) to identify an updated address for the Settlement Class Member and to send the Settlement Class Notice to that updated address. *Id.* No later than 35 days after Preliminary Approval of this Stipulation, including the form and content of the Settlement Class Notice, the Settlement Administrator will cause the Settlement Website to be activated on the Internet.

14. To satisfy commonality a plaintiff must show that the class claims "depend upon a common contention" and that determining the truth or falsity of that contention "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc.*

v. Dukes, 131 S. Ct. 2541, 2554 (2011). The Settlement Class Members here share just such a significant common issue: whether MassMutual breached a contractual duty in its calculation of the permissible Safety Fund. Resolution of whether MassMutual's action constitutes a breach of duty to its participating policyholders would resolve an issue central to the validity of the alleged class claim "in one stroke." Moreover, it is clear that Plaintiff's alleged injury is premised on the same act (that is, MassMutual's alleged miscalculation of the Safety Fund limit) and on the same legal theory (breach of contract) as that of every other member of the Settlement Class, meeting the typicality requirement.

15. Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This element is generally characterized as an inquiry into whether the attorneys together with the named plaintiffs will act diligently on behalf of the class. *Amchem*, 521 U.S. at 625; *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 63-64 (D. Mass. 1997). The First Circuit employs a two-part test in analyzing adequacy: (1) the class representatives' interests must not conflict with the interests of the class; and (2) class counsel is experienced, qualified and able to vigorously conduct the proposed litigation. *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985); *In re Bos. Scientific Corp. Sec. Litig.*, 604 F. Supp. 2d at 282. Both requirements are met here. First, there is no conflict or antagonism between the Plaintiff and members of the Settlement Class. Second, Plaintiff's counsel are experienced class action lawyers whose diligence and commitment to this litigation has fully demonstrated their ability to adequately protect the interests of the Settlement Class. *See* Exhibits A (firm bio for Adkins, Kelston & Zavez, PC firm bio); B (firm bio for Bonnett, Fairbourn, Friedman & Balint); C (firm bio for Chavez & Gertler).

16. Rule 23(b)(3) allows for class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual

members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *See generally, In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, 275 F.R.D. 382, 392-93 (D. Mass. 2011).

17. “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623, 117 S.Ct. 2231; *Smilow*, 323 F.3d at 39 (“Rule 23(b)(3) requires merely that common issues predominate, not that all issues be common to the class.”). Predominance requires only that “a sufficient constellation of common issues binds class members together.” *Waste Mgmt. Holdings*, 208 F.3d at 296. Moreover, “[w]here ... common questions predominate regarding liability, then courts generally find the predominance requirement to be satisfied even if individual damages issues remain.” *Otte ex rel. Estate of Reynolds v. Life Ins. Co. of N. Am.*, 275 F.R.D. 50, 58 (D. Mass. 2011) (applying *Smilow*). Applying the foregoing principles, courts routinely find that predominance is met in cases involving breaches of written form contracts. *Smilow*, 323 F.3d at 39 (predominance found “where the common factual basis is found in the terms of the contract....”). Here, every member of the Settlement Class was by definition issued a participating policy by a Massachusetts domiciled mutual life insurance company, from which their right to divisible surplus is derived as a matter of Massachusetts law. With respect to liability, the overriding common question is whether MassMutual failed to perform its contractual obligations in its common calculation of the Safety Fund limit.

18. Rule 23(b)(3) requires that a class action be “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The claims of individual participating policyholder could not be cost-effectively litigated on an individual basis. (Plaintiff incurred expert fees alone in excess of \$1.3 million). Not surprisingly, therefore, there is no known individual prosecution of the claims alleged by Plaintiff, demonstrating the lack of

interest in individually controlling the prosecution or defense of separate actions. Nor would it make sense for any court other than this Court to resolve claims alleged under Massachusetts law against a Massachusetts domiciled issuing insurer.

19. Plaintiff is an adequate representative of the Settlement Class. Plaintiff has devoted several years of her time and effort to pursuing this litigation on behalf of the putative class, including reviewing pleadings, responding to discovery, and sitting for deposition. Plaintiff is fully aware of her responsibilities as a representative for the Settlement Class.

20. Similarly, the undersigned Plaintiff's Counsel are appropriately appointed as Class Counsel for the Settlement Class pursuant to Rule 23(g), as they are experienced in complex insurance and class action litigation, including specifically allegations concerning safety funds in excess of the limits set forth by M.G.L. c. 175, Sections 140 and 141. *See* Exhibits A, B and C. Proposed Class Counsel have devoted substantial resources to this case over five years, and have been successful in obtaining a compromise resolution which they can and do endorse as a fair, reasonable and adequate settlement of the putative class claims.

Signed under the pains and penalties of perjury this 13th day of March, 2017.

/s/ Jason B. Adkins
Jason B. Adkins, BBO #558560
ADKINS, KELSTON & ZAVEZ, P.C.
90 Canal Street, 5th Floor
Boston, MA 02114
Phone: (617) 367-1040
Fax: (617) 742-8280

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on March 13th, 2017.

Dated: March 13, 2017

/s/ Jason B. Adkins
Jason B. Adkins

EXHIBIT A

ADKINS, KELSTON & ZAVEZ, P.C.

90 Canal Street, Boston, MA 02114

(617) 367-1040

FIRM BIOGRAPHY

Adkins, Kelston & Zavez, P.C. specializes in class action matters, particularly involving corporate wrongdoing, policyholder protection and related insurance regulatory matters, demutualizations, improper corporate reorganizations, environmental pollution, and violations of consumer rights and interests. Adkins, Kelston & Zavez, P.C. also has a broad range of experience in the areas of business and partnership disputes, intellectual property litigation, landlord-tenant matters, civil rights matters, environmental torts, business reorganizations and a wide variety of other transactions.

REPRESENTATIVE CASES

In *Weldon v. Blue Cross Blue Shield of Florida, Inc.*, we represented a policyholder in challenging the adequacy of the insurer's proxy statement concerning its proposed reorganization from a mutual health insurer into a mutual holding company and a failure to distribute dividends, which matter was amicably resolved in 2015.

In *In Re Harleysville Mutual*, we were part of a team of law firms that litigated and then negotiated a class-wide settlement in 2012 of \$26 million in damages on behalf of Harleysville Mutual policyholders who alleged unfairness in the merger between Harleysville and Nationwide Mutual Insurance Company.

In *Gintis et al. v. Bouchard Transportation Co. Inc. et al.*, we represented in Massachusetts federal court a class of hundreds of property owners on a 90 mile stretch of the Buzzards Bay coastline whose waterfront property was polluted by an oil spill on April 27, 2003. After extensive litigation, including a successful appeal of the district court's initial denial of class certification, we settled the matter in 2010 for \$11.45 million.

In *Goldstein v. Savings Bank Life Ins. Co.*, we certified a contested class of 400,000 policyholders and successfully settled the matter in 2010 for a recovery valued at \$21.5 million. We litigated this complex action for over twelve years in Massachusetts state court to obtain the recovery for an alleged underpayment of dividends.

In *Rieff v. Evans et al.*, we represented a class of 300,000 members in which we succeeded in getting the Iowa Supreme Court to recognize the tort of de facto demutualization, certified the class and, after an extensive motion practice, settled the case on a nationwide class basis for \$128.5 million (plus \$110 million in forced dividends).

In *Crandall v. Alderfer*, we represented plaintiffs in a class action filed in federal court in Philadelphia that alleged that the defendant directors and Old Guard Mutual Insurance

Company had converted from a mutual insurance company without adequately compensating the class. After extensive motion practice and discovery, and certification of the class, the case settled on behalf of the class for approximately \$7 million.

In *In re New England Life Insurance Company Sales Practices Litigation*, in which the company was charged with deceptive sales practices, we assisted in litigating the case which settled on a class-wide basis for a value in excess of \$100 million. In a similar class action brought against Franklin Life Insurance Company, alleging the Company engaged in deceptive sales practices, AKZ assisted in litigating the case which settled on a class-wide basis for a value of \$50 million.

In *Micromuse, Inc. v. The Estate of Christopher Dawes*, USDC CV 12333 (D. Mass. 2002) we represented the defendant (the estate of a recently deceased high tech entrepreneur), where plaintiff claimed hundreds of millions of dollars in damages for breach of a joint venture agreement. After extensive discovery, our client prevailed on summary judgment, and final judgment entered for the estate, with costs, on March 2, 2004.

In *495Harrison LLC v. J&B, Inc.*, Suffolk Sup. Ct. C.A. No. 04-1849, we represented a plaintiff developer, and successfully established a new mechanics' lien law in Massachusetts discharging an encumbrance that was interfering with the project's completion.

In *Silverman v. Liberty Mutual Insurance Company*, we represented policyholders who alleged the insurer filed misleading proxies concerning its mutual holding company conversion which, as structured, would harm the policyholders' interests. Through settlement, the company agreed to substantive changes in how it operated and paid \$850,000 in costs.

In *Mitchell v. City of Boston, et al*, AKZ represented a plaintiff in a civil rights action against the City of Boston and two of its police officers when plaintiff was exonerated after spending over seven years in prison (we were the first to overturn a Massachusetts conviction through DNA evidence). AKZ obtained \$950,000 for the client.

In *Commonwealth v. Hardwood*, AKZ represented a criminal defendant against charges of larceny and workers' compensation fraud. On the eve of trial, the Massachusetts Superior Court granted our motion to suppress the Commonwealth's key witness. The Commonwealth took an interlocutory appeal and the SJC affirmed the trial judge's decision. As a result, the Commonwealth dropped all charges.

In *Commonwealth v. Cassino*, a heavily publicized criminal matter in which our client was charged with vehicular homicide, AKZ won a full acquittal after a jury trial.

ATTORNEYS

Jason B. Adkins

Jason Adkins graduated from the University of Michigan in 1982, and Harvard Law School in 1991. He is admitted to the Massachusetts bar, and federal courts (District of Massachusetts, U.S. Court of Appeals for the First Circuit; U.S. Court of Appeals for the District of Columbia; U.S. Supreme Court). He has also been admitted pro hac vice in numerous state courts.

Jason Adkins is a founder and director of Adkins, Kelston & Zavez, P.C. Previously, Jason was founder and executive director of the Center for Insurance Research from 1991 to 1997. The Center is a leading non-profit organization that conducts research and advocates on behalf of insurance policyholders nationwide. He has written, published and testified widely on insurance and related regulatory matters.

Mr. Adkins specializes in evaluating and prosecuting complex litigation and all aspects of major consumer class action litigation around the country. He has also represented state and national candidates for political office and political parties in election-related litigation, and represented clients before the U.S. Federal Election Commission, U.S. Federal Trade Commission, the Mass. Board of Medicine, Mass. Department of Environmental Protection, numerous state insurance departments, other governmental agencies, and before professional associations.

David L. Kelston

David Kelston graduated from Columbia College in 1967, the Kennedy School of Government, Harvard, M.P.A., in 1982, and Harvard Law School (magna cum laude) in 1982, where he served as articles editor for the Harvard Law Review. David is admitted to the Massachusetts bar, and federal courts (District of Massachusetts and U.S. Court of Appeals for the First Circuit).

David Kelston is a founder of Adkins, Kelston & Zavez, P.C. He is an experienced trial and appellate litigator who, after clerking for the Federal District Judge Robert Keeton following law school, was an associate and then partner at prominent Boston law firms until the formation of this law firm in 1997. Mr. Kelston is the author of various articles concerning trial practice and related matters, and has served as a member and on the board of directors of numerous law-related groups.

Mr. Kelston has litigated cases that resulted in significant impact involving: class actions, constitutional first amendment rights; business cases concerning investors' property interests; intellectual property disputes; and criminal cases establishing evidentiary rules for informant testimony and automobile searches by police.

John Peter Zavez

John Peter Zavez graduated from Harvard College in 1981, served on active duty in the US Army from 1981-85, and graduated from Harvard Law School in 1989. He has been a member of the Massachusetts bar since 1989, and federal courts (District of Massachusetts, U.S. Court of Appeals for the First Circuit; U.S. Court of Appeals for the Seventh Circuit; U.S. Supreme Court).

Mr. Zavez is a founder and director of Adkins, Kelston & Zavez, P.C. His previous legal experience includes clerking for a Federal District Judge William G. Young, and working 8 years for two prominent Boston law firms. Mr. Zavez has been involved in every aspect of approximately 30 nationwide consumer and shareholder class action lawsuits, from investigating and filing complaints to negotiating settlements.

Outside of work, Mr. Zavez is the father of three girls, a Colonel in the US Army Reserve, and a "middle of the pack" endurance athlete who has completed the Boston Marathon each of the last 18 years.

Noah R. Rosmarin

Noah Rosmarin is a graduate of the University of Tampa, B.A. in 1992, and Southern New England School of Law, where he received his J.D. in 1995. While in law school, Noah served as an officer of the International Law Society (1993-1995), was a member of the Environmental Law Society (1994-1995) and was Outstanding Oralist on the Phillip C. Jessup International Law Moot Court Team. Mr. Rosmarin is admitted to the Massachusetts bar, and federal courts (District of Massachusetts and U.S. Court of Appeals for the 1st Circuit).

A native of Boston, Mr. Rosmarin was selected as one of Massachusetts' five outstanding young lawyers in 1997 for his participation in high-profile civil rights litigation. He was most recently commended for his successful effort, through the use of DNA evidence, in freeing a Massachusetts citizen who had been wrongly imprisoned for almost a decade. Noah joined the firm at its inception in 1997 and is involved in all aspects of the firm's litigation practice.

Brendan M. Bridgeland

Brendan Bridgeland graduated from Johns Hopkins University in 1996, and the Boston University School of Law in 2000. He was admitted to the Massachusetts bar in 2001. While in law school, Brendan earned a Business and Financial Institutions Concentration with Honors.

Following his graduation, Brendan worked at the Center for Insurance Research in several capacities and served as the executive director of the organization from 2005-2009. He still serves as a director of the organization. The Center is a leading non-profit

organization that conducts research and advocates on behalf of insurance policyholders nationwide.

Brendan specializes in evaluating and prosecuting complex consumer class action litigation, in insurance and environmental areas of law. He has also represented clients before numerous state insurance departments and other governmental agencies.

Jeffrey G. Thorn

Jeffrey Thorn graduated from Yale College in 1999 and Harvard Law School in 2006. He served in the U.S. Peace Corps in Namangan, Uzbekistan from 1999 - 2001. He is a member of the Massachusetts bar, the New York bar, and federal courts in the Southern and Eastern Districts of New York.

Before joining Adkins, Kelston & Zavez, P.C., in 2010, Jeff was an associate in the New York litigation group of Shearman & Sterling LLP. He has worked on complex commercial litigation involving corporate law, contractual breaches, securities disputes, and tortious actions, as well as civil rights, consumer protection, and various class action litigation. Jeff also holds a post-graduate research fellowship from Harvard Law School for the study of, among other topics, legal reform in post-Soviet Central Asia.

FIRM AFFILIATIONS

Adkins, Kelston & Zavez, P.C. works closely with prominent firms around the country to identify and litigate complex matters, particularly those involving insurance.

EXHIBIT B



ABOUT THE FIRM

Bonnett, Fairbourn, Friedman & Balint, P.C. is an AV rated firm of 23 lawyers. Our clients include many individuals and local businesses, as well as major national and international companies in a wide range of civil litigation in both federal and state courts.

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

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

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

Bonnett, Fairbourn, Friedman & Balint, P.C.
2325 E. Camelback Road, Suite 300
Phoenix, Arizona 85016
Phone: (602) 274-1100
Toll Free Number: (800) 847-9094
Facsimile: (602) 274-1199

PRACTICE AREAS

CLASS ACTION

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

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

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

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

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

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

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

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

SECURITIES

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

APPELLATE LITIGATION

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



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

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

Securities Fraud

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

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

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

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

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

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

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

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

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

Deceptive Marketing of Insurance Products

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

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

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

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

Universal Life Cost of Insurance Increases

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

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

Captive Reinsurance Transactions

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

Health Insurance

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

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

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

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

Civil Rights

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

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

Data Breach Litigation

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

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

Professional Associations

Mr. Friedman has lectured at numerous continuing legal education programs, including panel discussions and presentations on the Private Securities Litigation Reform Act (1996 Federal Bar Convention), prosecution of nationwide class actions in state courts (1996 ABA Annual Convention), litigation of life insurance market conduct cases (1997, 1999 and 2000 PLI conferences), class action best practices (2011 Arizona State Bar), consumer rights litigation (2008), the Arizona Securities Act (2013 Arizona State Bar), mediation of complex cases (2016 American Bar Association) and other litigation programs sponsored by the 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 is a former President of the Arizona Association of Defense Counsel (1999-2000), a former member of its board of directors and former chairman of its Amicus Committee.

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

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

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

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

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

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

ATTORNEYS

JERRY C. BONNETT, born Canton, Illinois, April 3, 1946; admitted to bar, 1973, Arizona; 1977, United States Supreme Court; U.S. Court of Appeals, Seventh, Eighth and Ninth Circuits; U.S. District Court, District of Arizona, and U.S. Tax Court. Education: University of Illinois (B.S., with highest honors, 1969; LL.M., 1974); Arizona State University (J.D., *magna cum laude*, 1973). Articles Editor, *Arizona State Law Journal*, 1972-1973. Judge Pro Tem, Arizona Court of Appeals, Division One, 1986 and 1992. Member, American Law Institute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TONNA K. FARRAR, born Sedalia, Missouri, April 9, 1972; admitted to Missouri bar, 1997; Kansas bar, 1998, California bar, 2005; U.S. District Court, Eastern and Western Districts of Missouri; U.S. District Court, District of Kansas; U.S. District Court, Central, Eastern, Northern and Southern Districts of California. Education: University of Missouri, Columbia (B.A. 1994); University of Missouri, Kansas City School of Law (J.D. 1997).

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.

ANDREW M. EVANS, born Hanover, New Hampshire, September 26, 1973; admitted to Arizona bar, 2006. Education: University of Colorado at Boulder (B.S., *cum laude*, 1997); Arizona State University College of Law (J.D., 2006).

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

ERIC D. ZARD, born Brainerd, Minnesota, April 4, 1984; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: University of Minnesota (B.S., 2006); University of Saint Thomas, Minneapolis (J.D., 2009).

KENDALL K. WILSON, born Tacoma, Washington, August 7, 1981; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: Brigham Young University (B.S., 2006); Arizona State University College of Law (J.D., *summa cum laude*, 2009).

LAURA A. VAN BUREN, born Tucson, Arizona, July 16, 1989; admitted to Arizona bar, 2014; U.S. District Court, District of Arizona. Education: Rice University (B.A., 2011); Arizona State University College of Law (J.D., *cum laude*, 2014).

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

EXHIBIT C

CHAVEZ & GERTLER LLP

ATTORNEYS AT LAW

42 MILLER AVENUE
MILL VALLEY, CA 94941
TELEPHONE: (415) 381-5599
FACSIMILE: (415) 381-5572
info@chavezgertler.com

FIRM RESUME

Chavez & Gertler LLP is a nationally recognized law firm located in Mill Valley, California. The firm's team of dedicated professionals represents plaintiffs in consumer, civil rights, and employment class actions and catastrophic personal injury cases. In litigation in state and federal courts around the country, Chavez & Gertler has recovered in excess of \$1.8 billion in damages, restitution and debt forgiveness for its clients.

The firm and its attorneys have received a number of honors and awards for its work. Chavez & Gertler was named Law Firm of the Year by the Los Angeles Center for Law & Justice in 2001. The founding partners of the firm, Mark A. Chavez and Jonathan E. Gertler, have received the highest rating available (AV) from Martindale-Hubbell for their professional accomplishments and ethics. Mr. Chavez and Mr. Gertler have been named Northern California Super Lawyers by Law & Politics and San Francisco Magazine six to eight times. In 2006, Mr. Chavez received the Champion of Justice Award from the Bar Association of San Francisco. The firm was presented with the Equal Justice Award from the Law Foundation of Silicon Valley in 2007. In March 2012, Mr. Chavez was honored as a Guardian of Justice by Bay Area Legal Aid. Mr. Chavez received the Consumer Attorney of the Year Award from the National Association of Advocates in November 2013.

Chavez & Gertler is committed to the vigorous pursuit of its clients' interests and public justice. The firm has achieved an outstanding record of success in litigation and its lawyers are actively involved in the public interest community. Further information about the firm and its accomplishments is available on its website, www.chavezgertler.com.

PARTNERS

Mark A. Chavez

Mr. Chavez received his Juris Doctorate degree from Stanford Law School where he served as a Judicial Extern for the Honorable Mathew O. Tobriner of the California Supreme Court, was a co-founder and the first Managing Editor of the Stanford Environmental Law Journal and was a founding member of the Stanford Public Interest Law Foundation. He was selected through the Attorney General's Honors Program and joined the Civil Division of the United States Department of Justice in Washington, D.C.

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after graduating from law school. Mr. Chavez entered private practice working first at Pillsbury Winthrop Shaw Pittman LLP and subsequently at Farrow, Bramson, Chavez & Baskin before founding the law firm of Chavez & Gertler LLP with Jonathan E. Gertler.

In the course of his career, Mr. Chavez has represented plaintiffs in a wide variety of consumer class actions and other complex civil litigation matters. His significant class action experience includes arguing *Olszewski v. ScrippsHealth*, 30 Cal.4th 798 (2003) and *Linder v. Thrifty Oil*, 23 Cal.4th 429 (2000) before the California Supreme Court and acting as co-counsel for the plaintiffs in *In re Tobacco Cases II*, (2007) 41 Cal.4th 1257 and *Briseno v. Washington Mutual*, 24 Cal.4th 906 (2001). He has served or is currently serving as lead or co-lead counsel in over 110 class actions filed in federal and state courts in Arizona, California, Colorado, Florida, Idaho, Massachusetts, Missouri, Nevada, New Jersey, Ohio, Tennessee and Washington. These cases have resulted in some of the largest recoveries ever achieved in consumer class actions. (See, e.g., *Richardson v. Wells Fargo*, Case No., CGC-08-481662 (San Francisco Superior Court) (\$232 million); *Smith v. General Motors Acceptance Corporation*, Case No. 776152 (Santa Clara County Superior Court) (\$105 million); *In Re Transouth Cases*, (Santa Clara County Superior Court) (\$76 million).)

Mr. Chavez is A-V rated by Martindale-Hubbell and has been named a Northern California Super Lawyer eight times. He was one of the founders of the National Association of Consumer Advocates and is its former Co-Chair. Mr. Chavez currently serves as a Chair of the Board of Directors of Public Citizen in Washington, D.C.

Jonathan E. Gertler

Jonathan E. Gertler is one of the leading personal injury trial lawyers in California. In 2006 Mr. Gertler earned the Trial Lawyer of the Year Award from the San Francisco Trial Lawyers Association, and was a finalist for the Consumer Attorneys of California's "Consumer Attorney of the Year." Mr. Gertler was a finalist for SFTLA's award again in 2008. He is also an accomplished class action attorney and is a Northern California Super Lawyer.

Mr. Gertler has successfully handled catastrophic injury and death cases for his clients since 1984. In his first year of practice, and his very first jury trial, he won a verdict of more than \$1 million for a cement mason disabled in a construction accident. In recent jury trials, he has won verdicts of over \$3.1 million in an aviation accident case, almost \$9 million in a railroad crossing accident case, and nearly \$3 million in a truck crash case. In his last consumer trial, Mr. Gertler obtained a judgment worth nearly \$12 million in consumer refunds and credits. He is currently acting as lead or co-counsel in a series of wage-and-hour class actions against both small and large corporations.

Mr. Gertler is also a leader in professional organizations. He is a past president of Consumer Attorneys of Marin. In addition, he serves as officer and board member of San Francisco Trial Lawyers Association and will assume the presidency of that organization

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in 2011. Mr. Gertler is committed to providing legal help to the indigent. He sits on the boards of Legal Aid of Marin and Bay Area Legal Aid.

Mr. Gertler received his bachelor's degree in 1978 from the University of Illinois and his Juris Doctorate from Hastings College of the Law, University of California in 1983.

Nance F. Becker

After graduating Phi Beta Kappa from Harpur College of the State University of New York at Binghamton in 1978, Nance Becker attended Stanford Law School. She earned her Juris Doctorate, Order of the Coif, in 1981. Ms. Becker completed an externship with the Environmental Defense Fund, and she received the Hilmer Oehlmann Jr. Award for Excellence in Research and Legal Writing, while at Stanford.

Prior to joining Chavez & Gertler in 2007, Ms. Becker was a member of the law firm now known as Rogers Joseph and a partner in the Law Offices of Jeffrey Banchemo. During those periods she handled a wide range of complex commercial litigation, including unfair business practices, contract and insurance coverage disputes, fraud in connection with accounting and investments, environmental issues, plaintiff personal injury and toxic torts. At Chavez & Gertler, she continues to work on complex litigation matters and has expanded her practice to consumer and civil rights class actions.

Ms. Becker has co-counseled on several significant disability discrimination cases, including *Smith v. Hotels.com*, in which plaintiffs sued to compel one of the largest online travel services to make changes to its reservation system so that individuals with disabilities could research and reserve lodgings with the accommodations they need, and *Celano v. Marriott*, in which plaintiffs successfully sued to compel Marriott International, Inc., owner and operator of dozens of public golf courses throughout the United States, to provide accessible motorized golf carts for the use of players with mobility disabilities. Ms. Becker has participated in a number of lawsuits to enforce consumers' rights under the Rees-Levering Automobile Sale and Finance Act; challenging discriminatory lending practices by major financial institutions; and remedying systematic violations of San Francisco's rent control laws, among others.

Ms. Becker also has extensive experience and expertise with appeals and writs. Admitted to the California Bar in 1981, she has also been admitted to all United States District Courts in the State of California, the Ninth Circuit Court of Appeals and the United States Court of Claims, and has appeared before the California Supreme Court, California Courts of Appeal and appellate courts in Washington and Utah.

Ms. Becker is currently a member of Public Justice and the Consumer Attorneys of Marin. She was a co-founder and former board member of Bay Legal Assistance for Women, a member of the AIDS Legal Referral Panel, and a board member and officer of the Marin Audubon Society. Ms. Becker is Secretary of the Board of Directors and principal flutist with Mill Valley Philharmonic.

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Christian Schreiber

Christian Schreiber joined the firm in July 2009 as a class action litigation associate. Mr. Schreiber works primarily on cases involving consumer rights, employment, and financial services matters.

Mr. Schreiber earned a JD from the UCLA School of Law in 2006, where he completed the Program in Public Interest Law & Policy and the Concentration in Critical Race Studies. During law school, Mr. Schreiber won the school's Roscoe Pound Moot Court Competition and served on the Moot Court Executive Board. He was a staff member on the Journal of Sexual Orientation Law, and served as co-chair of UCLA's Public Interest Law Fund. He was a co-founder of the UCLA chapter of the American Constitution Society.

Prior to law school, he worked in Sacramento as a legislative aide for former California State Senator Joe Dunn, and served as Chief Investigator for the State Senate Select Committee to Investigate Price Manipulation of the Wholesale Energy Market. Mr. Schreiber worked several years as a freelance writer. Mr. Schreiber was a class action litigation associate at Schneider Wallace Cottrell Brayton Konecky LLP in San Francisco before joining the firm.

Mr. Schreiber is a member of the American Constitution Society, the Public Justice Foundation, and the Consumer Attorneys of California. Mr. Schreiber received his B.A. from UCLA in 1996.

ASSOCIATE

Samuel Cheadle

Samuel Cheadle joined Chavez & Gertler in October, 2012 as a class action litigation associate, working primarily on cases involving consumer rights, employment, and financial services matters. Mr. Cheadle received his law degree from The George Washington University Law School in 2009, graduating with honors. He received his B.A., with high honors, from the University of California at Santa Barbara in 2005.

Before he came to work at Chavez & Gertler, Mr. Cheadle was an associate at the law firm of Sedgwick, Detert, Moran & Arnold LLP, where he practiced construction law on behalf of developers, general contractors and specialty subcontractors as well as representing sureties involving contract and commercial bonds. He also spent one year practicing immigration law, representing refugees applying for asylum in the United States through the non-profit The East Bay Sanctuary Covenant. Mr. Cheadle clerked for the U.S. Environmental Protection Agency's Region Office of General Counsel and the U.S. Department of Justice's Environmental Enforcement Section.

From 2011 to 2013, Mr. Cheadle served as co-chair of the San Francisco Bar Association's "Bridging the Gap" Barristers Committee, assisting law students with the transition to professional practice. He is currently in his third year as a co-coach of Abraham Lincoln High School's Mock Trial Team. Mr. Cheadle has been published in the American Bar Association's Public Contract Law Journal.