Exhibit 3

EXHIBIT 3

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

SUMMARY OF PLAINTIFFS' COUNSEL'S LODESTAR AND EXPENSES

TAB	FIRM	HOURS	LODESTAR	EXPENSES
A	Bernstein Litowitz Berger & Grossmann LLP	191,050.00	$86,686,266.25	$4,348,566.15
B	Brower Piven, PC	57,795.35	$27,749,016.65	$1,337,477.41
C	Milberg LLP	71,483.80	$29,301,018.75	$2,284,275.85
D	Stull Stull & Brody	99,714.36	$47,457,094.60	$1,400,229.35
E	Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.	4,350.30	$3,016,817.00	$3,241.53
F	DeCotiis, Fitzpatrick & Cole, LLP	12,882.60	$5,322,764.00	$6,952.50
G	Brickfield & Donahue	499.70	$252,780.00	$444.71
H	Dreier LLP	3,354.25	$1,378,017.50	$5,654.59
I	The Whitehead Law Firm, L.L.C.	1,823.61	$1,614,688.00	$18,798.51
J	Kahn Swick & Foti, LLC	1,109.70	$606,122.00	$1,901.18
K	Goforth Lewis Sanford LLP & Sanford Law Firm	908.30	$558,718.75	$13,797.25
L	Law Offices Bernard M. Gross PC	1,252.75	$559,387.50	$2,910.70
M	Wolf Haldenstein Adler Freeman & Herz LLP	786.20	$445,729.00	$19,572.26
N	Harwood Feffer LLP	533.00	$251,116.50	$14,900.60
O	Much Shelist, P.C.	418.50	$152,216.00	$7,963.25
P	Law Office of Klari Neuwelt	192.10	$111,332.50	$103.43
Q	Seeger Weiss LLP	116.70	$102,209.50	$3,128.88
R	Barry, Palmer, Thaggard, May & Bailey, LLP	210.00	$38,759.90	$2,729.43
S	Lowe, Stein, Hoffman, Allweiss & Hauver LLP	21.50	$7,722.50	$708.44
	TOTAL:	**448,502.72**	**$205,611,776.90**	**$9,473,356.02**

#982652

Exhibit 3A

REDACTED VERSION
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No. 1658 (SRC)
THIS DOCUMENT RELATES TO: THE CONSOLIDATED SECURITIES ACTION	Civil Action No. 05-1151 (SRC) Civil Action No. 05-2367 (SRC)

DECLARATION OF MAX W. BERGER AND SALVATORE J. GRAZIANO IN SUPPORT OF CO-LEAD COUNSEL BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

REDACTED VERSION
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MAX W. BERGER and SALVATORE J. GRAZIANO declare as follows:

I. INTRODUCTION

1. I, Max W. Berger, am a member of the bars of the State of New York, the U.S. District Courts for the Southern and Eastern Districts of New York, the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court. I am a founding Partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the claims asserted on behalf of the Settlement Class (defined below) in this consolidated securities class action lawsuit (the "Action").[1]

2. I, Salvatore ("Sal") J. Graziano, am a member of the bars of the State of New York, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. Courts of Appeals for the First, Second, Third, Ninth, and Eleventh Circuits. I have been admitted to appear *pro hac vice* before this Court in the Action. I am also a Partner of the law firm of BLB&G. I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the claims asserted on behalf of the class in this Action from the time I became involved in this Action in 2007 and based on available records and my conversations with counsel regarding events before my involvement in this Action.

3. BLB&G is Court-appointed co-lead counsel ("Co-Lead Counsel") for the Court-appointed lead plaintiffs The Public Employees' Retirement System of Mississippi ("Miss. PERS"), Richard Reynolds, Steven LeVan and Jerome Haber (collectively, "Lead Plaintiffs") and

[1] Unless otherwise noted, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of February 8, 2016 (the "Stipulation"), entered into by and among Lead Plaintiffs and Defendants. ECF No. 949-2. (All references to ECF numbers herein are to the Securities Action Docket, No. 05-cv-2356.)

the certified Class in the Action.

4. We respectfully submit this Declaration in support of BLB&G's request for an award of attorneys' fees and the reimbursement of litigation expenses in connection with Co-Lead Counsel's motion for award of attorneys' fees from the Settlement Funds (*i.e.*, a combined $1.062 billion, plus interest earned thereon) and reimbursement of BLB&G's litigation expenses in the amount of $4,348,566.15, as well as an application pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA") for reimbursement of the costs and expenses incurred by Miss. PERS in connection with its representation of the Settlement Class in the amount of $98,712.50. A summary of BLB&G's lodestar by timekeeper, expenses by category, including litigation fund contributions is attached hereto as Exhibits 1 and 2, a chart summarizing contributions to, and expenditures from, the litigation fund is attached hereto as Exhibit 3, and a brief biography of our firm and attorneys from our firm who were involved in this Action is attached hereto as Exhibit 4.

II. THE OUTSTANDING RECOVERY ACHIEVED

5. Lead Plaintiffs have succeeded in obtaining a recovery of $1,062,000,000.00 (the "Settlement Funds") in cash for the Settlement Class (including funds for attorneys' fees and expenses). The proposed Settlement is an outstanding result that would bring to a close more than 12 years of contentious litigation between Lead Plaintiffs and Defendants. We believe the proposed Settlement achieved in this case is exceptional. It is the product of arduous and protracted litigation, which ended after a successful appeal to the Supreme Court of the United States and less than three months before trial was set to begin.

III. SUMMARY OF BLB&G'S LITIGATION EFFORTS

6. We are submitting this Declaration to provide a summary of BLB&G's involvement, by project, in the litigation and the great risks that Lead Plaintiffs overcame. For the

reasons set forth below, we respectfully submit that BLB&G's fee and expense application is supported by the facts and the law and should be granted in all respects. In summary, since the time of its appointment as Co-Lead Counsel in this Action, BLB&G:

- Successfully briefed, and former BLB&G Partner Sean Coffey successfully argued, Plaintiffs' appeal of the Court's original dismissal of the Action to the Third Circuit;
- Identified, retained and worked directly with Plaintiffs' Supreme Court specialist to achieve a groundbreaking, unanimous 9-0 Supreme Court victory;
- Briefed, and BLB&G Partner Sal Graziano successfully argued in substantial part, Plaintiffs' Opposition to Defendants' Motions to Dismiss;
- Drafted the Class Certification Reply Brief, Sal Graziano deposed Defendants' Class Certification expert, and we worked to effectively exclude that expert;
- Briefed Plaintiffs' successful Motion to Amend the Complaint;
- Briefed the Opposition to, and largely withstood, Defendants' Motion for Judgment on the Pleadings;
- Identified, retained and worked directly with all Lead Plaintiffs' experts;
- Took 19 of 31 fact depositions of Defendants' witnesses and 6 of the 7 of Defendants' expert depositions;
- Drafted Plaintiffs' extensive and detailed Responses to Defendants' Contention Interrogatories, citing over 1,350 documents;
- Briefed Plaintiffs' successful Opposition to Defendants' Motion for Summary Judgment, citing over 750 exhibits;
- Retained Lead Plaintiffs' jury consultant and BLB&G Partners Sal Graziano and David Wales conducted a successful mock trial;
- Identified, and moved to exclude, the two defense experts most subject to attack at the *Daubert* stage, and defended all Plaintiffs' experts from *Daubert* attack;
- Spearheaded Plaintiffs' Motion *in Limine* strategy;
- Drafted, and BLB&G Partner Adam Wierzbowski primarily managed, the exchange of all pretrial materials with Defendants and filed the Pretrial Order with the Court;

- Led (by BLB&G Partner Max Berger) Plaintiffs' settlement negotiations with Defendants and responded to the Court's and mediator's questions; and

- Finalized the settlement, settlement papers and motion for preliminary approval of the settlement.

7. BLB&G also spearheaded novel and critical strategic approaches to the case. These include that BLB&G:

- Deposed critical fact witnesses, including Drs. Scolnick, Reicin, FitzGerald, Patrono, Oates, Laine and Neaton;

- Challenged the statistical power of Merck's Vioxx data;

- Challenged Merck's "4%" subgroup claims;

- Demonstrated the cardiovascular ("CV") risk inherent in Merck's Alzheimer's trials data;

- Challenged the validity of the Naproxen Hypothesis[2] from an epidemiological perspective;

- Explored in depth the proposed studies that Merck's consultants proposed and Merck refused to perform;

- Challenged Merck's reliance on early animal and other studies;

- [redacted]

- [redacted]

- Strengthened the claim that Dr. Scolnick engaged in insider trading to sell $32.4 million of his and his wife's Merck stock at a highly suspicious time;

- [redacted]

- Managed the risks from several potentially case-dispositive cases being heard at the U.S. Supreme Court (*i.e.*, *Matrixx*, *Janus*, *Halliburton* and *Omnicare*).

[2] The "Naproxen Hypothesis" is Merck's claim that all of the between-arm difference in heart attacks observed in Merck's VIGOR trial (between the Vioxx arm and the Naproxen arm) was attributable to Naproxen's purported cardio-protective effect, rather than an increased CV risk with Vioxx.

8. BLB&G also took the lead to address numerous serious risks that the class might recover nothing. These include that BLB&G:

- Overcame the outright dismissal of the Action at the outset of its appointment as additional Co-Lead Counsel;
- Pursued novel approaches to prove Defendants' scienter;
- Worked to rebut Defendants' truth on the market defense;
- Countered Merck's defenses that only the FDA may change a drug's warning label, and that the FDA repeatedly determined Vioxx was safe;
- Challenged Defendants' statistical defenses;
- Retained and worked with statistical experts qualified to respond to Defendants' defense that the APPROVe results were "new" information;
- Researched and defended a valid damages methodology; and
- Simplified the complex scientific issues in the case through mock trial presentations and other pretrial preparations.

IV. A BRIEF HISTORY OF THE LITIGATION PRIOR TO MISSISSIPPI PERS' MOTION TO INTERVENE

9. On November 6, 2003, an individual plaintiff, Frank Pringle, filed the first securities class action complaint against Merck related to Vioxx in the Eastern District of Louisiana, captioned *Pringle v. Merck & Co., Inc., et al.*, No. 03.cv-3125 (E.D. La.).[3]

10. On January 26, 2004, a group of investors that included Richard Reynolds ("Reynolds") and Steven LeVan ("LeVan") filed a motion seeking to be appointed as Lead Plaintiffs. At that time, Reynolds and LeVan were represented by Milberg Weiss Bershad Hynes

[3] The named defendants of the complaint did not include Drs. Scolnick or Reicin. The basis of the *Pringle* complaint was the drop in Merck's stock price following the October 2003 release of a Harvard study that questioned Vioxx's CV safety compared to Celebrex and an alleged decline in Merck stock price starting in 2001. [redacted]

& Lerach ("Milberg"). On January 27, 2004, a group of individual investors that included Jerome Haber ("Haber") and Marc Nathanson ("Nathanson") also filed a motion seeking to be appointed as Lead Plaintiffs. Haber and Nathanson were represented by Stull Stull & Brody ("SSB").

11. On February 23, 2004, after the Court set a hearing date for Lead Plaintiffs' motions, Lead Plaintiff movants Reynolds, LeVan, Haber and Nathanson submitted to the Court a Stipulation and Order agreeing to: (i) the appointment of Reynolds, LeVan, Haber and Nathanson as Lead Plaintiffs pursuant to Section 21D(a)(3)(B) of the PSLRA, 15 U.S.C. §78u-4(a)(3)(B); and (ii) the appointment of Milberg and SSB as Co-Lead Counsel. Judge Engelhardt of the Eastern District of Louisiana approved the Stipulation and Order (the "Lead Plaintiff Order") on February 26, 2004.

V. BLB&G'S PROSECUTION OF THE ACTION

A. Mississippi PERS Moved to Intervene

12. BLB&G represents Lead Plaintiff Miss. PERS, which is the only institutional investor Lead Plaintiff in the case, as well as individual Lead Plaintiff Reynolds. As discussed below, Miss. PERS moved to intervene in this Action in 2006 in order to protect the interests of its own beneficiaries and the interests of other Class members. Since the time of its appointment as Lead Plaintiff, Miss. PERS has actively monitored BLB&G's prosecution of the litigation through countless communications, active participation in the Action (including by having two of its representatives deposed at the class certification stage) and attending key Court appearances including at the District Court, Third Circuit and U.S. Supreme Court. Miss. PERS also has already served to reduce the attorneys' fees requested by the Co-Lead Counsel in this Action, because the original retainers between the individual Lead Plaintiffs and the original Co-Lead Counsel would have permitted an award of attorneys' fees in the case of up to 33 1/3%. The

chronological history of Miss. PERS' motion to intervene is set forth in detail below.

13. On October 26, 2006, Miss. PERS filed a motion to intervene in the Action and to require the Lead Plaintiffs to appear at a hearing concerning their adequacy under the PSLRA and Rule 23 of the Federal Rules of Civil Procedure.

14. On November 14, 2006, the then-existing Lead Plaintiffs opposed Miss. PERS' motion to intervene and filed a Cross-Motion for an Order Approving Lead Plaintiffs' Selection of Brower Piven as Co-Lead Counsel. On November 20, 2006, Miss. PERS filed a Reply Memorandum in Further Support of its Motion and opposed the Lead Plaintiffs' cross-motion.

15. On November 27, 2006, the Court held a hearing at which the then-Lead Plaintiffs and Miss. PERS presented arguments to the Court concerning Miss. PERS' motion and the Lead Plaintiffs' cross-motion. Gerald Silk of BLB&G argued Miss. PERS' side of the motions. During the November 27, 2006 hearing, and by Order signed on December 13, 2006, the Court: (i) granted Miss. PERS' motion to intervene for the limited purpose of pursuing the issue of whether or not the Lead Plaintiffs were appropriate lead plaintiffs for the class in this matter; (ii) ordered the Lead Plaintiffs to attend a hearing on January 8, 2007, at which time the representatives of the plaintiff class would be available to testify; and (iii) denied without prejudice Lead Plaintiffs' cross-motion to approve the selection of Brower Piven as Co-Lead Counsel.

16. The Court held a hearing on January 8, 2007, which BLB&G former partner Erik Sandstedt attended. During the hearing, the Court set January 25, 2007 as the date when the Plaintiffs would provide additional submissions to the Court concerning the lead plaintiffs' adequacy.

17. Former lead plaintiff Nathanson voluntarily withdrew as a Lead Plaintiff in the Action, and the remaining individual Lead Plaintiffs – Reynolds, LeVan, and Haber – determined

that it was in the best interests of the class to add Miss. PERS as Lead Plaintiff and its counsel, BLB&G, as Co-Lead Counsel in the Action. As a result, on January 12, 2007, the then-current Lead Plaintiffs wrote Judge Chesler to inform the Court of their agreement to resolve Miss. PERS' Motion to Intervene. The letter stated that Miss. PERS would be substituted as Lead Plaintiff for Lead Plaintiff Marc Nathanson. The letter further added BLB&G and Brower Piven as Co-Lead Counsel and attached a Stipulation and Proposed Order setting forth that structure. The letter also enclosed the Declaration of Geoffrey Morgan, Chief of Staff for the Office of the Attorney General for the State of Mississippi, setting forth Miss. PERS' support for the Stipulation. The Morgan Declaration also confirmed that the leadership structure set forth in the Stipulation had the support of institutional investors the New York State Teachers' Retirement System, the State of Wisconsin Investment Board and the Office of the Attorney General of the State of Minnesota.

18. In a letter to the Court dated January 19, 2007, Thomas Dubbs of Labaton Sucharow LLP, counsel for the State-Boston Retirement System, wrote to Judge Chesler objecting to the Lead Plaintiffs' Stipulation and Proposed Order. Specifically, Mr. Dubbs argued that to add new lead plaintiffs under the PSLRA, the Court must first consider motions filed by other class members. He further argued that the proposed Stipulation to appoint new Lead Plaintiffs conflicted with Miss. PERS' own motion, which Mr. Dubbs argued sought to re-open the lead plaintiff process to all members of the class. Lastly, Mr. Dubbs argued for the Court to reinforce the existing Lead Plaintiff and Lead Counsel structure or to appoint new leadership entirely.

19. In a letter dated January 24, 2007, researched and principally drafted by BLB&G Partners Erik Sandstedt and Adam Wierzbowski, the parties to the proposed Stipulation wrote to Judge Chesler in response to Mr. Dubbs' January 19, 2007 letter. The January 24 letter argued that the State-Boston Retirement System's contentions that the Court must reinitiate the lead

plaintiff procedure as outlined in the PSLRA were both legally and factually incorrect and should be rejected. The Plaintiffs argued that the proposed Stipulation addressed the concerns of the major institutional investors and the Court in this case and noted that the PSLRA did not require them to repeat the entire lead plaintiff notice and appointment process, as asserted by Mr. Dubbs' letter.

20. The Court held a hearing on January 25, 2007 concerning the proposed leadership structure that was attended and argued by BLB&G Partners Gerald Silk and Erik Sandstedt. The Court rejected Mr. Dubbs' arguments and, that day, signed the Proposed Stipulation, which, as discussed above, provided that: (i) Nathanson was withdrawn as lead plaintiff in the Action; (ii) Miss. PERS was appointed as Lead Plaintiff; and (iii) BLB&G and Brower Piven were appointed as Co-Lead Counsel in the action, along with Milberg and SSB.

B. The Court Dismissed the Fourth Amended Class Action Complaint on Statute of Limitation Grounds

21. On August 12, 2005, prior to Miss. PERS' appointment as Lead Plaintiff and BLB&G's appointment as Co-Lead Counsel, Defendants Merck, Scolnick, Reicin, and all other previously-named defendants moved to dismiss the Fourth Amended Complaint (which Milberg and SSB had drafted and filed). Defendants argued that all of Plaintiffs' claims were time-barred because, by November 2001, more than two years before the first securities fraud complaint was filed in November 2003: (i) there was a well-publicized debate about the CV safety of Vioxx, which provided adequate "storm warnings" to investors of Defendants' fraud; (ii) numerous claimants had already filed Vioxx-related product liability suits against Merck, including class action lawsuits; and (iii) in September 2001, the FDA issued a public Warning Letter to Merck asserting that the Company had misrepresented the CV safety profile of Vioxx. Thus, Defendants argued, investors were placed on "inquiry notice" of the facts upon which Plaintiffs' claims are

based by April 2000, or at the latest by September 2001, and this barred Plaintiffs' claims under the applicable statute of limitations because Plaintiffs did not file suit until more than two years later, in November 2003.

22. On March 16, 2006, the lead plaintiffs at the time (before Miss. PERS' appointment) filed their omnibus brief in opposition to Defendants' motion to dismiss, arguing, among other things, that Plaintiffs' Complaint was timely because Defendants failed to establish that Plaintiffs were on inquiry notice as evidenced by the speculative nature of reports by company outsiders, Defendants' alleged continuing scheme to conceal Vioxx's risks, the failure of product liability suits to put Plaintiffs on inquiry notice, and the market's shock at the ultimate revelation of the truth about Vioxx's risks.

23. At a March 26, 2007 hearing, Melvyn Weiss of Milberg and David Brower of Brower Piven argued Plaintiffs' Opposition to Defendants' motions to dismiss.

24. In a letter filed with the Court on March 30, 2007, Lead Plaintiffs wrote to Judge Chesler to clarify issues addressed at the March 27, 2007 hearing on Defendants' motions to dismiss. Specifically, Lead Plaintiffs argued that Defendants misrepresented and omitted information regarding Vioxx's pro-thrombotic properties and overstated the drug's commercial value or viability, and because neither the FDA letter nor the product liability suits constituted "storm warnings," Lead Plaintiffs could not have been on inquiry notice of Defendants' fraud until well after November 2001. Specifically, Lead Plaintiffs stated:

> During the argument, Your Honor asked Plaintiffs' counsel whether statements in the FDA Letter criticizing the failure of Merck to discuss both sides of the so-called "Naproxen hypothesis" in certain presentations, including promotional materials and seminars for physicians, described conduct that constituted securities fraud. Plaintiffs' counsel responded in the affirmative without making clear that this would only be the case in the hypothetical situation where a plaintiff's securities fraud claim was based on Merck's failure to disclose other "potential" explanations for the CV events reflected in the VIGOR study. As noted above, this is not

> Plaintiffs' case here and, based on undisputed facts recounted below, ***that theory would not state a claim for securities fraud*** because all of the information contained in the FDA Letter was already in the public domain. Thus, Mr. [Evan] Chesler's characterization of Plaintiffs' counsel's statement as an "admission" could never, in the context of this case, constitute an admission that investors were on inquiry notice of the fraud alleged here.

ECF No. 207.

25. In a letter filed April 2, 2007, Defendants responded to Lead Plaintiffs' letter to Judge Chesler, writing that Lead Plaintiffs' submission constituted an improper supplemental brief, and that multiple "storm warnings" of securities fraud existed prior to November 2001.

26. On April 12, 2007, Judge Chesler granted Defendants' motions to dismiss Plaintiffs' Complaint on statute of limitations grounds and dismissed the action in its entirety as time-barred. The Court held that investors were on inquiry notice on or before November 6, 2001 because, by that time, the FDA issued Merck a Warning Letter that:

> charge[d] Merck with engaging in deceptive and misleading conduct with regard to the safety profile of VIOXX. In particular, and in no uncertain terms, the FDA accuse[d] Merck of misrepresentation by endorsing the naproxen hypothesis as fact, despite knowing that the cardioprotective effect of naproxen was merely hypothetical and unsupported by evidence. In addition, it publicly reprimand[ed] Merck for downplaying the potential safety problems with the drug by failing to disclose the known possibility that Vioxx increases the risk of myocardial infarction.

In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig., 483 F. Supp. 2d 407, 419 (D.N.J. 2007).

27. The Court also found the following with respect to an October 9, 2001 *New York Times* article that quoted Dr. Scolnick:

> The article quotes defendant Dr. Scolnick - who was then president of Merck's research laboratories - as saying with regard to the VIGOR study results: "There are two possible interpretations. Naproxen lowers the heart attack rate, or Vioxx raises it." Dr. Scolnick's statement admitted that Merck recognized the possibility that VIOXX may increase a user's risk of heart attack. It therefore represents a

> significant departure from Merck's company line as to the explanation for the VIGOR study results.

Id. at 420 (internal citation omitted).

28. The Court held that, "[b]ecause the instant securities fraud action was filed over two years from the time that Plaintiffs were on inquiry notice of their claims, the Complaint's Exchange Act claims are barred by the applicable statute of limitations." *Id.* at 424. Because the Court held that Plaintiffs' claims were untimely filed, the Court did not address the other arguments raised by Defendants in their motions to dismiss.

C. BLB&G Successfully Appealed the District Court's Dismissal of the Action to the Third Circuit

29. The District Court's dismissal of the Action in its entirety was a serious blow to the class and it created the strong likelihood that Class members would recover nothing in this litigation. On May 9, 2007, Lead Plaintiffs appealed the dismissal to the U.S. Court of Appeals for the Third Circuit. In connection with the appeal, BLB&G developed Plaintiffs' litigation strategy, Sean Coffey, Erik Sandstedt and Adam Wierzbowski principally drafted Plaintiffs' opening and reply briefs (which were signed by Erik Sandstedt and Sean Coffey, respectively), and former BLB&G Senior Partner Sean Coffey successfully argued the appeal before the Third Circuit.

30. Specifically, on August 3, 2007, BLB&G filed Lead Plaintiffs' opening Appellants' Brief with the Third Circuit. In that brief, Lead Plaintiffs argued that Plaintiffs were not on "inquiry notice" on or before November 6, 2001. More specifically, Lead Plaintiffs argued that: (i) the Third Circuit should consider the gravamen of Plaintiffs' claims – that Defendants knowingly or recklessly made misrepresentations concerning the purported commercial prospects of Vioxx, which they knew was not safe and should not be widely marketed; (ii) none of the

disclosures that Defendants cited put any of the Plaintiffs on inquiry notice of a viable securities fraud claim; and (iii) Defendants' repeated reassurances to investors – including that Merck was in possession of its own Vioxx CV safety data that it described as "very, very reassuring" – dissipated any "storm warnings" that arguably may have gathered.

31. Lead Plaintiffs also argued that even if storm warnings existed as of November 6, 2001, Plaintiffs cannot be deemed on inquiry notice because an investor should not be deemed on inquiry notice of a securities fraud claim before facts necessary to state such a claim are publicly-available and before the market reacts to a corrective disclosure. In addition, Lead Plaintiffs argued that the claims of investors who purchased Merck stock on or after November 6, 2001 are timely. Similarly, Lead Plaintiffs argued that the Plaintiffs' claims under Section 20A of the Exchange Act were timely, because they are subject to a five-year statute of limitations (rather than being governed by the two-year inquiry notice period), regardless of whether Plaintiffs' Rule 10b-5 claims were timely.

32. On October 7, 2007, Defendants filed their Appellees' brief. Defendants argued that the District Court correctly determined that Plaintiffs were on inquiry notice of their claims on or before November 6, 2001. Specifically, Defendants argued that "storm warnings" existed by October 9, 2001 because: (i) the "mix of information" available to investors by October 9, 2001 was sufficient to trigger "storm warnings"; (ii) Plaintiffs' arguments as to why "storm warnings" did not exist by the October 9, 2001 *New York Times* article are unavailing; and (iii) the "storm warnings" that had gathered by October 9, 2001 were not dissipated by Defendants' alleged reassurances. Defendants further argued that because Plaintiffs failed to investigate the "storm warnings," the District Court correctly determined that Plaintiffs were on inquiry notice by October 9, 2001.

33. Defendants also argued that Plaintiffs waived their argument that the District Court erred in dismissing their insider trading claims under Section 20A of the Exchange Act and failed to satisfy the pleading requirements for their Section 20A claims. Defendants contended that Plaintiffs never raised this argument and never disputed that Plaintiffs' assertions were subject to a two-year limitations period.

34. On October 26, 2007, BLB&G filed Lead Plaintiffs' reply brief with the Third Circuit. Lead Plaintiffs argued that: (i) Defendants applied the wrong standard for "inquiry notice"; (ii) Defendants again ignored the gravamen of Plaintiffs' securities fraud claim; (iii) the claims of investors who purchased shares on or after November 6, 2001 were timely; and (iv) Plaintiffs alleged timely claims under Section 20A of the Exchange Act.

35. On June 24, 2008, Sean Coffey argued Plaintiffs' appeal before the Third Circuit against Evan Chesler of Cravath, Swaine & Moore LLP ("Cravath"). George W. Neville, Special Assistant Attorney General for the State of Mississippi and legal counsel to Miss. PERS, personally attended on behalf of Miss. PERS. On September 9, 2008, the Third Circuit reversed the District Court's dismissal of the Action in a 2-1 decision. The Third Circuit adopted the arguments advanced by BLB&G and wrote in its Opinion:

> [W]e conclude that the District Court acted prematurely in finding as a matter of law that Appellants were on inquiry notice of the alleged fraud before October 9, 2001. As of that date, market analysts, scientists, the press, and even the FDA agreed that the naproxen hypothesis was plausible, at the very least. None suggested that Merck believed otherwise. Accordingly, in April 2002, the FDA approved a labeling change for Vioxx which stated that "[t]he significance of the cardiovascular findings [from the VIGOR study] is unknown." Merck continued to reassure the investing public at this time, explaining that the naproxen hypothesis was "a position Merck has always had and now its [sic] quite clearly laid out in the labeling."

In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig., 543 F.3d 150, 172 (3d Cir. 2008). BLB&G's achievement of this victory was a critical turning point in the litigation that saved the

Action from dismissal and paved the way for the eventual recovery on behalf of the Settlement Class. However, many years of litigation were necessary before the Settlement could be reached.

D. BLB&G Identified Plaintiffs' Supreme Court Specialist and Worked to Defeat Defendants' Appeal to the U.S. Supreme Court

36. On January 15, 2009, Defendants filed their petition for *writ of certiorari* of the Third Circuit's decision to the U.S. Supreme Court. In order to respond to Defendants' petition, BLB&G identified David Frederick of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. as the Supreme Court specialist most qualified to handle the likely appeal. At BLB&G's recommendation, Co-Lead Counsel retained Mr. Frederick, and Sean Coffey, Bill Fredericks, Adam Wierzbowski and others at BLB&G worked closely with him on drafting the Supreme Court briefs, coordinating Plaintiffs' *amicus* strategy, and on David Frederick arguing Plaintiffs' side of the appeal. George W. Neville also personally attended the oral argument at the Supreme Court on behalf of Miss. PERS.

37. BLB&G's choice of Frederick proved to be a wise decision, and it was critical to Plaintiffs' success at the Supreme Court. Frederick had earned numerous accolades from leading attorneys and jurists. As former Solicitor General Paul Clement described Frederick in March 2009: "He wrote the book on oral advocacy. He is very gifted at the podium." In fact, in the introduction to Frederick's book, Supreme Court and Appellate Advocacy, Justice Ruth Bader Ginsburg called Frederick "an accomplished advocate" whose treatise on oral advocacy "can arm an attorney to perform to best effect" before the Supreme Court and other appellate tribunals.

38. In Defendants' petition for *writ of certiorari*, they argued that the Courts of Appeals used three different "approaches" for determining when the statute of limitations begins to run and that, under the law of any Circuit other than the Third and Ninth Circuits, Plaintiffs' claims would be untimely. Defendants specifically argued that this case would have come out differently in the

First, Fifth, Sixth, Seventh, and Eighth Circuits because "[i]n these circuits ... the timeliness of respondents' claims would depend upon the results of a reasonable diligent investigation." In their petition, Defendants asked the Supreme Court to resolve that Circuit split.

39. On March 23, 2009, Lead Plaintiffs opposed Defendants' petition. BLB&G attorneys Sean Coffey, Bill Fredericks and Adam Wierzbowski (among others) participated in strategy discussions about the opposition and participated in drafting it. In the opposition, Lead Plaintiffs argued that the statute of limitations had not expired when Plaintiffs first filed their securities fraud suit. Plaintiffs also argued that the Third Circuit properly concluded that no "storm warnings" of the alleged fraud existed more than two years prior to the filing of the original complaint. Because the Third Circuit found no "storm warnings," it had no need to (and did not) address the second prong of the statute of limitations test at the time: whether, once Plaintiffs allegedly received "storm warnings," a reasonably diligent investigation would have yielded sufficient details of the fraud to file a complaint. Thus, Lead Plaintiffs argued that Defendants' petition did not implicate any Circuit split or warrant further review. Lead Plaintiffs further argued that the Third Circuit's decision to reverse the District Court turned on the specific facts surrounding the Plaintiffs' claims, not on the inquiry notice standard.

40. On April 7, 2009, Defendants filed a reply brief in further support of their petition. In it, Defendants argued that:

> It cannot seriously be disputed that the Courts of Appeals are sharply divided on the proper interpretation of the "inquiry notice" standard for the accrual of securities fraud claims. Indeed, since this petition was filed, the Third Circuit has issued an opinion in another case that reaffirms the split and solidifies the Third Circuit's position on the outskirts of inquiry notice jurisprudence.

Reply Brief for Petitioners, *Merck & Co., Inc. v. Reynolds*, 2009 WL 953638, at *1 (U.S. 2009).

41. On April 22, 2009, then-Solicitor General Elena Kagan submitted a Brief for the

United States as *amicus curiae* in connection with the petition for *writ of certiorari* in *Trainer Wortham & Co. v. Betz*, No. 07-1489 ("*Betz*"), which posed the same Question Presented as the petition here. That *amicus* brief significantly increased the likelihood that the Supreme Court would grant Defendants' petition in this Action. In the *Betz amicus* brief, the Solicitor General wrote that "the courts of appeal have been inconsistent in their application" of the inquiry notice standard. The Solicitor General also added that the *Betz* action did not provide an opportunity for the Supreme Court's resolution of those questions to have an impact on the outcome of the *Betz* case, but that "[t]he petition for a writ of certiorari in [*Merck v. Reynolds*] might present an opportunity for the Court to explore the various approaches in a case in which the differences could affect the outcome." Brief for the United States as *Amicus Curiae, Trainer Wortham & Company, Inc. v. Betz*, 2009 WL 1090416, at *18 n.6 (U.S.).

42. On May 11, 2009, Defendants submitted a Supplemental Brief to the Supreme Court in further support of their petition. In it, they called the Supreme Court's attention to the briefing filed in *Betz*. Defendants argued that the Government recognized in its *amicus* brief in *Betz* that the Third Circuit's opinion below, like the Ninth Circuit's opinion in *Betz*, "squarely held" that inquiry notice arises only when a plaintiff possesses evidence that the defendant acted with scienter. According to Defendants, the Government observed that this holding places the Third Circuit at odds with the majority of the Courts of Appeals, which are "sharply divided" in multiple ways on the proper interpretation of the inquiry notice standard. Defendants also noted that the Government also recognized that Defendants' petition in this Action was a "superior vehicle" to *Betz* for addressing these critical divisions.

43. On May 13, 2009, BLB&G filed with the Supreme Court a Supplemental Brief to address Defendants' arguments on the *Betz* case. Plaintiffs argued that the Solicitor General was

incorrect to suggest that this Action would be a proper vehicle for resolving the issues on appeal.

44. On May 26, 2009, the Supreme Court granted Defendants' petition for *writ of certiorari*, and Defendants filed their opening brief with the Supreme Court on August 10, 2009. Defendants argued that Plaintiffs were on inquiry notice of their securities fraud claim more than two years before the original complaint was filed because: (i) the limitations period for claims under Exchange Act Section 10(b) is triggered by constructive, we well as actual, discovery of the "facts constituting the violation"; (ii) to be on inquiry notice of a claim for purposes of the discovery rule, a plaintiff need not possess information that the defendant acted with scienter; (iii) to trigger the applicable limitations period, a plaintiff need not possess sufficient information to survive a motion to dismiss; and (iv) under any standard, Plaintiffs were on inquiry notice of their securities fraud claim more than two years before the initial version of the complaint was filed. Defendants further argued that because Plaintiffs were on inquiry notice of their securities-fraud claim more than two years before the initial complaint, yet failed to conduct a reasonably diligent investigation, their claim was untimely.

45. On October 19, 2009, Plaintiffs filed their brief in opposition to Defendants' appeal. Numerous BLB&G attorneys worked with Mr. Frederick to prepare this Opposition, including Sean Coffey, Bill Fredericks, Adam Wierzbowski, Boaz Weinstein and Ann Lipton (who had been a Clerk for U.S. Supreme Court Justice David Souter and Third Circuit Appeals Judge Edward Becker). Plaintiffs argued that the limitations period begins with discovery of the elements of a violation, including scienter. More specifically, Plaintiffs argued that: (i) the reference to the "violation" that triggers the statute of limitations is a violation of Section 10(b); (ii) "discovery" of facts occurs when those facts were or should have been known; (iii) "inquiry notice," properly understood, is only a part of the doctrine of constructive discovery; and (iv) statutory structure

confirms a focus on what was or should have been known.

46. Plaintiffs also argued that neither text nor precedent supported Merck's proposed standard. More specifically, Plaintiffs argued that: (i) inquiry notice does not exist without means to inquire; (ii) mere suspicion of wrongdoing does not commence the limitations period; (iii) the established constructive-discovery standard presents no undue difficulty; (iv) the "facts constituting a violation" under the applicable statute of limitations ***include scienter***; and (v) Congress never "ratified" Merck's version of inquiry notice. Plaintiffs further argued that the Complaint was timely filed because: (i) Plaintiffs were not on inquiry notice prior to November 2001; and (ii) Plaintiffs had no means to discover the facts constituting Merck's violation.[4]

47. Sean Coffey and others at BLB&G also worked with numerous persons and organizations to help encourage the submission of *amicus curiae* briefs in support of Lead Plaintiffs' position at the Supreme Court. Indeed, on October 26, 2009, the following persons and organizations submitted *amicus curiae* briefs in support of Lead Plaintiffs at the Supreme Court:

- ***Ohio and 25 Other States and Commonwealths***: Ohio, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wyoming;

- ***Numerous Public Pension Funds***: The Connecticut Retirement Plans and Trust Funds; Los Angeles County Employees Retirement Association; Thomas P. DiNapoli, Comptroller of the State of New York, as Trustee of the New York State Common Retirement Fund and as Administrative Head of the New York State and Local Retirement Systems; Pennsylvania Public School Employees' Retirement

[4] To support these arguments, Lead Plaintiffs relied on, among other things, treatise research conducted at the Columbia Law School Law Library by Adam Wierzbowski, and cited by the U.S. Supreme Court in this case. *See Merck & Co. v. Reynolds*, 559 U.S. 633, 645-46, 656 (2010) (citing 2 H. Wood, Limitations of Actions (4th ed. 1916); Dawson, Undiscovered Fraud and Statutes of Limitation, 31 Mich. L. Rev. 591 (1933); 2 C. Corman, Limitation of Actions (1991)).

System; the Pennsylvania State Employees' Retirement System; and the General Treasurer of the State of Rhode Island and Providence Plantations;

- ***The Council of Institutional Investors***: The Council is a not-for-profit association of more than 120 public, labor, and corporate pension funds with assets exceeding $3 trillion. Its members are major long-term shareholders with duties to protect the retirement assets of millions of American workers. The Council is an advocate for strong corporate-governance standards, and its members seek to protect fund assets through proxy votes, shareholder resolutions, negotiations with regulators, discussions with management, and, when necessary, litigation;

- ***AARP and The Detectives' Endowment Association Annuity Fund***: AARP is a non-partisan, non-profit organization with nearly 40 million members, working and retired, dedicated to addressing the needs and interests of people aged 50 and older. The Detectives' Endowment Association Annuity Fund is a retirement fund for the benefit of over 9,100 active and retired New York City Police Department detectives;

- ***Numerous Esteemed Faculty at U.S. Law and Business Schools***: Bruce E. Aronson, Associate Professor of Law, Creighton University School of Law; Jayne W. Barnard, James Goold Cutler Professor of Law, William & Mary Law School; William A. Birdthistle, Assistant Professor of Law, Chicago-Kent College of Law; Barbara Black, Charles Hartsock Professor of Law, University of Cincinnati College of Law; Douglas Branson, Professor of Law, University of Pittsburgh Law School; Christopher M. Bruner, Associate Professor of Law, Washington and Lee University School of Law; Ronald J. Colombo, Associate Professor of Law, Hofstra University School of Law; Lynne L. Dallas, Professor of Law, University of San Diego School of Law; Lisa M. Fairfax, Leroy Sorenson Merrifield Research Professor of Law, The George Washington University Law School; Tamar Frankel, Professor of Law, Boston University Michaels Faculty Research Scholar; Theresa A. Gabaldon, Lyle T. Alverson Professor of Law, The George Washington University Law School; Thomas Lee Hazen, Cary C. Boshamer Distinguished Professor School of Law, The University of North Carolina at Chapel Hill; Joan MacLeod, Heminway College of Law Distinguished Professor of Law, The University of Tennessee College of Law; Andrew C.W. Lund, Associate Professor of Law, Pace Law School; Lisa H. Nicholson, Professor of Law, University of Louisville Louis D. Brandeis School of Law; Jennifer O'Hare, Professor of Law, Villanova University School of Law; Richard W. Painter, S. Walter Richey Professor of Corporate Law, University of Minnesota Law School; Alan R. Palmiter, Professor of Law, Wake Forest University School of Law; Frank Partnoy, George E. Barrett Professor of Law, and Finance University of San Diego School of Law; Margaret V. Sachs, Robert Cotten Alston Professor of Law, University of Georgia School of Law; Marc I. Steinberg, Radford Professor of Law, Dedman School of Law Southern Methodist University; Faith Stevelman, Professor of Law, New York Law School; Celia Taylor, Professor of Law, University of Denver Sturm College of Law; and Jennifer S. Taub, Lecturer and Coordinator of the

Business Law Program, Isenberg School of Management, University of Massachusetts, Amherst;

- ***Change to Win (and the Change to Win Investment Group)***: Change to Win is an alliance of five unions with 5.5 million members, united to build a new movement of working people that can meet the challenges of the global economy and restore the American Dream: a paycheck that can support a family, affordable health care, a secure retirement, and dignity on the job. The Change to Win partner unions are the International Brotherhood of Teamsters, Laborers' International Union of North America, Service Employees International Union, United Farm Workers of America, and the United Food and Commercial Workers International Union;

- ***The National Coordinating Committee for Multiemployer Plans ("NCCMP")***: The NCCMP is a nonprofit, tax-exempt organization that has participated for over thirty years in the development of the law applicable to employee benefit plans. The NCCMP numbers hundreds of multi-employer plans and related organizations among its membership, and it represents their interests in Congress, in rulemaking and in judicial proceedings;

- ***Drs. Harlan M. Krumholz, M.D., S.M., and Joseph S. Ross, M.D., M.H.S.***: Dr. Krumholz is the Harold H. Hines, Jr., Professor of Medicine and Epidemiology and Public Health at Yale University School of Medicine, where he is Director of the Robert Wood Johnson Clinical Scholars Program. Dr. Ross is an Assistant Professor in the Department of Geriatrics and Palliative Medicine at the Mount Sinai School of Medicine in New York, N.Y., and a staff physician at the James J. Peters VA Medical Center in Bronx, NY, within the HSR&D Research Enhancement Award Program; and

- ***The National Association of Shareholder and Consumer Attorneys ("NASCAT")***: NASCAT is a nonprofit membership organization founded in 1988. NASCAT's member law firms represent investors (both institutions as well as individuals) in securities fraud and shareholder derivative cases throughout the United States.

48. On November 12, 2009, Defendants filed their reply to Lead Plaintiffs' opposition brief at the Supreme Court. Defendants argued that Plaintiffs were on inquiry notice of their securities fraud claim more than two years before the initial complaint was filed because: (i) to be on inquiry notice, a plaintiff need not possess information specifically relating to scienter; (ii) under any standard, respondents were on inquiry notice more than two years before the initial complaint was filed; and (iii) Plaintiffs offered no alternative explanation for when they were on

inquiry notice.

49. On November 30, 2009, the U.S. Supreme Court held oral argument on Defendants' appeal, and David Frederick argued the issues on behalf of Lead Plaintiffs. Attorneys from BLB&G helped Mr. Frederick prepare for the argument (including at numerous moot court sessions in Washington, DC in November 2009, in which Bill Fredericks and other attorneys at BLB&G participated), and they and George W. Neville, on behalf of Miss. PERS, personally attended the oral argument. Mr. Frederick's opponent was Kannon Shanmugam, a former Assistant to the Solicitor General in the U.S. Department of Justice ("DOJ"), and former Law Clerk for Supreme Court Justice Antonin Scalia and Judge J. Michael Luttig on the U.S. Court of Appeals for the Fourth Circuit.

50. On April 27, 2010, in a unanimous 9-0 decision drafted by Justice Breyer, the U.S. Supreme Court affirmed the decision of the Court of Appeals for the Third Circuit that Lead Plaintiffs' Complaint was timely filed and remanded the action to the District Court. The U.S. Supreme Court held, in conformity with arguments advanced by BLB&G, that:

> Construing this limitations statute for the first time, we hold that a cause of action accrues (1) when the plaintiff did in fact discover, or (2) when a reasonably diligent plaintiff would have discovered, "the facts constituting the violation" – whichever comes first. We also hold that the "facts constituting the violation" ***include the fact of scienter***, "a mental state embracing intent to deceive, manipulate, or defraud…"

Merck & Co. v. Reynolds, 559 U.S. 633, 637 (2010) (internal citations omitted; emphasis added). The Supreme Court's decision on this matter was a landmark victory for investors that clarified the statute of limitations standards for securities fraud claims and returned the Action to the District Court.

E. BLB&G Investigated and Drafted the Consolidated Fifth Amended Class Action Complaint

51. While Defendants' appeal was pending at the Supreme Court, BLB&G researched

and drafted a Fifth Amended Complaint that significantly reshaped the allegations and focused on the science underlying Merck's claims that Vioxx was safe to a greater degree than the prior Complaint. The Complaint reflected new factual developments and was drafted to withstand the Court's scrutiny under evolving legal standards. On March 10, 2010, BLB&G filed the Consolidated Fifth Amended Complaint with the District Court.

F. BLB&G Drafted Lead Plaintiffs' Opposition to Defendants' Motion to Dismiss the Fifth Amended Complaint and Successfully Argued that Motion

52. On June 18, 2010, following the Supreme Court's April 27, 2010 decision in Plaintiffs' favor, the Defendants again moved to dismiss the Action (on grounds other than the statute of limitations, which the Court had not previously considered). In particular, with respect to Lead Plaintiffs' Section 10(b) claims, Defendants principally argued that:

a. Lead Plaintiffs failed to adequately allege actionable misstatements or omissions;

b. Lead Plaintiffs failed to show that each Defendant actually believed Vioxx was pro-thrombotic and that the Naproxen Hypothesis was false, thereby failing to adequately plead scienter;

c. Lead Plaintiffs had not adequately pled loss causation, as Lead Plaintiffs had not connected any decline in Merck's stock price to the disclosure of the alleged concealed facts; and

d. Lead Plaintiffs failed to state a claim for alleged misstatements or omissions concerning the safety profile of Vioxx because they were judicially estopped from making those claims, and the alleged misstatements were immaterial based on the Vioxx CV risk information that was already present in the market during the Class Period.

53. Also on June 18, 2010, Defendant Scolnick filed a motion to dismiss Plaintiffs' Complaint, in which he incorporated the arguments in Defendants' motion to dismiss. Scolnick's motion also argued that the Section 10(b) claim against him must be dismissed because he did not make the majority of the alleged misstatements and omissions at issue, the few statements attributed to him were not actionable, and the Complaint's scienter allegations as to him were

insufficient as a matter of law.

54. On August 9, 2010, BLB&G filed Lead Plaintiffs' Omnibus Opposition to Defendants' Motion to Dismiss. This briefing was written by, among others at BLB&G, Sal Graziano, Bill Fredericks and Adam Wierzbowski. The brief argued, among other things, that Defendants made false assurances as to Vioxx's lack of pro-thrombotic effect, materially misleading statements regarding the Naproxen Hypothesis, and misrepresentations concerning Vioxx's safety profile and its role in Merck's sales and revenue. Plaintiffs further argued that Defendants' attempts to dismiss claims tied to misrepresentations and omissions made prior to Merck's announcement of the Naproxen Hypothesis should fail, as Defendants repeatedly made material misstatements regarding Vioxx's safety and commercial viability prior to that time.

55. With regard to scienter, BLB&G stressed the argument that Lead Plaintiffs needed only to plead facts sufficient to support a strong inference that Defendants were *reckless* in making their false and misleading statements (and also asserted that Plaintiffs possessed evidence of Defendants' actual knowledge of the truth), and that Defendants' attempts to scrutinize each scienter allegation in isolation, rather than collectively as required by law, was improper.

56. Regarding loss causation, Lead Plaintiffs argued that they need not show that Merck's stock price declines at issue followed a "mirror-image" curative disclosure, but rather, that the element could be satisfied through partial disclosures where the truth leaked out over time. Lead Plaintiffs also argued that claims regarding the safety profile of Vioxx were not judicially estopped as Defendants argued they were.

57. In response to Defendants' control person arguments, Lead Plaintiffs contended that, by law, they need only allege, not prove, that the Officer Defendants were control persons under Exchange Act Section 20(a). With regard to their insider trading claims, asserted by Miss.

PERS, Lead Plaintiffs argued they had met the pleading standard under Section 20A, which did not require Lead Plaintiffs to assert an underlying 10(b) claim as Defendants argued they did.

58. On September 17, 2010, the Defendants filed reply briefs in further support of their Motions to Dismiss the Fifth Amended Class Action Complaint.

59. In a letter filed October 5, 2010, and principally drafted by Sal Graziano, Bill Fredericks and Adam Wierzbowski at BLB&G, Plaintiffs drew the Court's attention to *Schleicher v. Wendt*, 618 F.3d 679 (7th Cir. 2010), a recent Seventh Circuit decision that addressed a line of Fifth Circuit cases that Defendants relied on for the first time in their reply memorandum of law in support of their motion to dismiss. Plaintiffs' October 5, 2010 letter argued that *Schleicher* rebutted Defendants' theory that the September 2004 announcement of Vioxx's withdrawal from the market negated investors' ability to show loss causation with respect to the further losses they suffered when the full extent of the fraud was revealed on November 1, 2004.

60. On October 14, 2010, Defendants (other than Scolnick) filed a response to Plaintiffs' October 5, 2010 letter. Defendants' letter argued that (1) failure to plead loss causation may result in dismissal; (2) loss causation and reliance are inextricably intertwined and no investor could reasonably have believed that Vioxx had any meaningful commercial viability after it was withdrawn; and (3) *Schleicher* rejected one of Plaintiffs' main loss causation arguments, "materialization of risk." On October 15, 2010, Scolnick wrote to the Court and adopted in full and joined in the other Defendants' October 14, 2010 letter.

61. On March 31, 2011, Plaintiffs wrote a letter to the Court principally drafted by Adam Wierzbowski and Boaz Weinstein at BLB&G to draw the Court's attention to the then-recent Third Circuit decision in *In re: DVI, Inc. Securities Litigation*, 639 F.3d 623 (3d Cir. 2011). The *DVI* decision also rejected the line of Fifth Circuit cases that Defendants had relied upon in

their reply brief in support of their motions to dismiss. In *DVI*, the Third Circuit "decline[d] to require plaintiffs to demonstrate loss causation at class certification." 639 F.3d at 637. It thus followed, Plaintiffs' letter argued, that if Plaintiffs did not need to prove loss causation at the class certification stage in that case, they certainly did not need to prove it at the pleading stage here.

62. On April 4, 2011, Defendants filed with the Court a letter response to Plaintiffs' March 31, 2011 letter and Defendant Scolnick joined in it. Defendants argued that *DVI* did not undermine the legal basis for dismissal presented in their then-pending motion to dismiss. Defendants acknowledged that in *DVI*, the Third Circuit held that plaintiffs do not need to prove loss causation to invoke the presumption of reliance at the class certification stage. However, they added that unlike the Seventh Circuit holding in *Schleicher*, the Third Circuit holding in *DVI* permitted Defendants to offer evidence to rebut the presumption of reliance at the class certification stage. In an attempt to sidestep the issue entirely, Defendants argued that, under *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2009), the Complaint should be dismissed because the Complaint did not plausibly connect Plaintiffs' losses to a revelation of Defendants' actual beliefs. Finally, Defendants repeated their argument that under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), revelations of publicly-available information, in this instance the CV risk profile of Vioxx, could not have caused the alleged losses.

63. On July 12, 2011, Sal Graziano argued Plaintiffs' Opposition to Defendants' motions to dismiss (on issues other than loss causation), and Miss. PERS' representative George W. Neville attended the oral argument.

64. On August 8, 2011, the Court largely denied Defendants' motions to dismiss. The Court upheld Plaintiffs' Section 10(b) claims as to Defendants Merck, Reicin and Scolnick (and dismissed the other individual Section 10(b) defendants), and upheld the Section 20A insider

trading claim as to Defendant Scolnick (and dismissed that claim against defendants Gilmartin, Frazier, Lewent, Anstice, Wold-Olsen, Clark and Kelley). The Court also dismissed Plaintiffs' claim that the Class Period should continue after September 30, 2004 through the news that was reported by *The Wall Street Journal* ("*WSJ*") on November 1, 2004. The Court dismissed Plaintiffs' Exchange Act Section 20(a) control person claim against Scolnick to the extent it was based on misrepresentations following Scolnick's retirement from Merck.

65. BLB&G's briefing and successful argument of Plaintiffs' Opposition to Defendants' motions to dismiss was another critical turning point for Plaintiffs and the class, as it meant that, after already pending for almost eight years, the Action could finally proceed into discovery.

G. BLB&G Was Instrumental in Certifying the Class

66. One of the key issues at the class certification stage in this Action was a dispute between each side's experts on whether Plaintiffs' expert, David Tabak of NERA, had put forth sufficient evidence to support that the market for Merck common stock and options was efficient. BLB&G was instrumental in Plaintiffs' success on this argument and in certifying the Certified Class (as defined below). Sal Graziano of BLB&G originally recruited David Tabak of NERA to serve as Plaintiffs' expert after facing NERA as defense experts in numerous other cases and speaking at NERA programs.

67. On April 10, 2012, Lead Plaintiffs filed their opening motion to certify the Action as a class action, seeking the Court's certification of a class comprised of all persons and entities who, from May 21, 1999 to September 29, 2004, inclusive, purchased or otherwise acquired Merck common stock or call options, or sold Merck put options, and were damaged thereby (the "Certified Class"). Plaintiffs' motion included Dr. Tabak's expert Declaration, which set forth the

evidence in support of the efficiency of the market for Merck securities.

68. The parties then engaged in extensive class certification discovery. As mentioned above, BLB&G directly represents two of the four Lead Plaintiffs, Miss. PERS and Reynolds, and BLB&G worked with these two Lead Plaintiffs to collect their documents and to prepare them for their depositions. Defendants also served on Plaintiffs specific class certification discovery, to which BLB&G responded:

a. On December 21, 2011, Defendants served their First Set of Requests for the Production of Documents on the Lead Plaintiffs. The First Set was comprised of 14 document requests. BLB&G led Plaintiffs' responses and objections to those Requests, served on Defendants on February 6, 2012.

b. On January 27, 2012, Defendants served on Lead Plaintiffs their First Set of Interrogatories. Lead Plaintiffs responded to those interrogatories on March 6, 2012, with each Lead Plaintiff submitting its own separate Set of Responses. On June 26, 2012, BLB&G and Miss. PERS served Defendants with a further amended Response to Defendants' interrogatories.

c. On April 16, 2012, Defendant Scolnick served his First Set of Document Requests on Miss. PERS concerning Miss. PERS' claim that it purchased Merck stock contemporaneously with Scolnick's sales of Merck stock on October 25, 2000. Miss. PERS is the only Lead Plaintiff who traded contemporaneously with Dr. Scolnick on that date and the only Lead Plaintiff with standing to assert a Section 20A insider trading claim against Dr. Scolnick. BLB&G and Miss. PERS responded to that Request on May 16, 2012.

d. On April 24, 2012, Defendants served their Second Set of Requests for the Production of Documents on the Plaintiffs. The Second Set was comprised of eight document requests. BLB&G drafted and served Responses and Objections to those Requests on Defendants on May 24, 2012.

e. On May 17, 2012, Defendants served their Third Set of Requests for the Production of Documents on Miss. PERS. BLB&G and Miss. PERS responded and objected to those Requests on June 18, 2012.

69. In response to Defendants' Document Requests, BLB&G collected and produced documents from Lead Plaintiffs Reynolds and Miss. PERS. BLB&G also vigorously defended Plaintiffs' responses and objections to Defendants' First Set of Requests for the Production of Documents to Plaintiffs and to Defendants' First Set of Interrogatories. For example:

a. In a letter dated April 25, 2012 from Adam Wierzbowski of BLB&G to Karin DeMasi of Cravath, BLB&G reiterated Plaintiffs' objections in response to Defendants' First Set of Requests for the Production of Documents to Plaintiffs and to Defendants' First Set of Interrogatories.

b. In a letter dated May 2, 2012 from Adam Wierzbowski to Christopher Belelieu of Cravath, BLB&G responded to Defendants' April 24, 2012 letter requesting that Plaintiffs produce certain documents regarding Dr. David Tabak's April 10, 2012 Declaration in support of Plaintiffs' Motion for Class Certification. Specifically, BLB&G objected to Defendants' request for communications and other materials regarding Dr. Tabak's Declaration. BLB&G also proposed a protocol for the production and the format of third-party and expert documents and data exchanged between the parties.

c. In a letter dated May 29, 2012 from Adam Wierzbowski to Karin DeMasi, BLB&G responded to the issues raised by Defendants concerning Plaintiffs' document production and responses to Defendants' interrogatories. BLB&G confirmed the completeness of Plaintiffs' document production and responses to Defendants' interrogatories, subject to Plaintiffs' general and specific objections.

70. On July 11, 2012, Defendants deposed two representatives of Miss. PERS (George W. Neville and Lorrie Tingle). Sal Graziano defended Mr. Neville's deposition and Bill Fredericks defended Ms. Tingle's deposition. In a letter dated July 26, 2012 from Adam Wierzbowski of BLB&G to Shawn Crowley of Cravath, BLB&G responded to a request from Defendants as a follow-up to the Tingle deposition for documents relating to Miss. PERS' securities lending portfolio. BLB&G objected to the production because it was not reasonably calculated to lead to the discovery of admissible evidence and cited precedent in support of this objection. However, despite the objection, BLB&G conducted a search and located a small volume of documents responsive to Defendants' request to be produced to Defendants. Defendants also deposed Lead Plaintiff Reynolds on June 13, 2012. Sal Graziano defended Mr. Reynolds' deposition.

71. Defendants also deposed Lead Plaintiffs' investment advisors. BLB&G reviewed those advisors' documents and prepared for and participated in their depositions. Defendants deposed Miss. PERS' investment advisors on July 6, 2012 in Houston, Texas (Fayez Sarofim &

Co.), July 17, 2012 in New York City (ING), July 20, 2012 in New York City (J.P. Morgan), and July 23, 2012 in Chicago, Illinois (Northern Trust). Sal Graziano partially defended and asked questions during the depositions of Fayez Sarofim, J.P Morgan and Northern Trust. Adam Wierzbowski partially defended and asked questions during the deposition of ING.

72. Defendants opposed Plaintiffs' motion for class certification on August 13, 2012. Defendants principally argued that Lead Plaintiffs had failed to put forward sufficient evidence of the efficiency of the market for Merck securities and that the Lead Plaintiffs were inadequate to serve as class representatives. Defendants additionally argued that Plaintiffs were not entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972) ("*Affiliated Ute*"), that Plaintiffs had failed to show that the market for Merck options was efficient during the proposed class period, and that Plaintiffs lacked standing to bring Securities Act claims.[5] Finally, Defendants argued that any putative class period could not begin before March 22, 2000 because the Court had dismissed all of Plaintiffs' claims based on statements made before that date.

73. Defendant Scolnick also individually opposed Plaintiffs' motion to certify the Action as a class action on August 13, 2012. Scolnick filed a brief in which he incorporated the arguments contained in Defendants' Opposition to Plaintiffs' motion, and Scolnick also argued that Miss. PERS lacked standing to bring a Section 20A insider trading claim against him, and that Miss. PERS did not satisfy the "typicality" or the "adequacy" requirements of Rule 23(a).

74. In connection with Defendants' opposition to Plaintiffs' motion for class

[5] On October 25, 2012, Plaintiffs submitted to the Court a Stipulation and Proposed Order dismissing the Securities Act claims, which plaintiff Rhoda Kanter had asserted, and the Court So-Ordered that Stipulation on March 13, 2013.

certification, BLB&G argued that Defendants' expert (Professor Paul Gompers,[6] whom Sal Graziano had deposed in the past in other cases) adopted an impossibly high standard for proving market "efficiency" that would require proof that "every transaction price" for Merck stock during the Class Period fully, immediately and "correctly" reflected all information. However, BLB&G argued, Gompers' theories put forward in this Action found no support in the case law or the academic literature.

75. Sal Graziano effectively deposed Professor Gompers in Boston on the substance of his claims [redacted]

76. [redacted]

[6] Professor Gompers is the Eugene Holman Professor of Business Administration at Harvard Business School. He received his A.B. *summa cum laude* in biology from Harvard College in 1987. After spending a year working as a research biochemist for Bayer Chemical AG, he attended Oxford University on a Marshall Fellowship where he received an M.Sc. in Economics. Professor Gompers then completed his Ph.D. in Business Economics at Harvard University in 1993.

[redacted]

77. [redacted]

78. [redacted] BLB&G served a subpoena on Cornerstone Research on October 1, 2012, signed by Adam Wierzbowski, requesting documents concerning Cornerstone's work with Merck and Professor Gompers in connection with class certification and the payment arrangements among Merck, Cornerstone Research, and Professor Gompers.

79. On October 2, 2012, Lead Plaintiffs' counsel also sent a letter to Judge Chesler principally drafted by Sal Graziano and Adam Wierzbowski to request a 30-day extension of the deadline for Plaintiffs to file their reply brief in further support of their motion for class certification [redacted]

[redacted] Defendants had rejected the request and consented only to a one-week extension.

80. On October 3, 2012, Defendants filed a letter in response to Plaintiffs' October 2, 2012 letter. Defendants argued that the discovery issue pursued by Plaintiffs was irrelevant and non-discoverable.

81. On October 16, 2012, Defendants filed a letter with the Court requesting that the Court quash Plaintiffs' subpoena *duces tecum* on Cornerstone with respect to three requests for documents which they argued were protected from disclosure by the work product doctrine and the non-testifying expert privilege. For those reasons, Defendants also argued that documents concerning the retention agreement between Merck's counsel and Cornerstone was not discoverable.

82. On October 17, 2012, Lead Plaintiffs filed a letter with the Court, principally drafted by Adam Wierzbowski, requesting an extension until October 24, 2012 to respond to Defendants' October 16, 2012 letter. Plaintiffs' letter argued that Defendants failed to meet and confer with Plaintiffs before they submitted their October 16, 2012 letter, which violated the Court's Individual Practices and Local Rule 37.1. Plaintiffs also argued that the subpoena on Cornerstone sought highly relevant information in support of Plaintiffs' reply brief in further support of their motion for class certification. On October 17, 2012, Defendants other than Scolnick responded that they did not oppose Plaintiffs' requested extension.

83. On October 24, 2012, Plaintiffs filed a letter principally drafted by Adam Wierzbowski and Kristin Meister at BLB&G in response to Defendants' October 16, 2012 letter moving to quash Plaintiffs' subpoena on Cornerstone Research. [redacted]

[redacted]

84. On November 5, 2012, Cornerstone filed a letter with the Court, in opposition to Plaintiffs' October 24, 2012 motion to compel production pursuant to Plaintiffs' subpoena of Cornerstone. [redacted]

85. In a letter dated January 17, 2013, Cornerstone also filed a motion before Magistrate Judge Waldor, [redacted]

[redacted]

86. Following a January 28, 2013 status conference with Magistrate Judge Waldor, attended by Sal Graziano, David Wales and Kristin Meister of BLB&G, and additional discussions between the parties and Cornerstone, Defendants effectively agreed that they would not continue with Professor Gompers as their expert, and that if they did, they would grant Plaintiffs an opportunity to depose a representative from Cornerstone concerning Gompers' compensation from Cornerstone. David Wales of BLB&G negotiated that agreement with the Defendants and the parties memorialized it in a Stipulation filed with the Court on February 14, 2013, which the Court entered on February 15, 2013 (discussed in more detail below). As a result, Defendants later retained a different expert on damages issues (Christopher James), [redacted] and Professor Gompers never offered additional expert opinions in the litigation.

87. On November 8, 2012, amidst the parties' disputes on the Cornerstone documents, Lead Plaintiffs filed their reply brief in further support of their motion for class certification, which

included a reply Declaration by Dr. Tabak. In Lead Plaintiffs' reply brief, drafted principally by Sal Graziano and Adam Wierzbowski, Lead Plaintiffs argued that the market for Merck stock was efficient, investors in Merck stock options were entitled to a presumption of reliance, Plaintiffs had properly invoked the presumption of reliance under *Affiliated Ute*, the Lead Plaintiffs met the standard of "typicality" and "adequacy" under Rule 23(a), and Miss. PERS had standing to represent investors with Section 20A claims against Defendant Scolnick.

88. On January 30, 2013, following this full briefing, the Court granted Lead Plaintiffs' motion and certified a class consisting of all persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the "Certified Class Period"), purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the "Certified Class"), and appointed the Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel. The Court agreed with Plaintiffs' and NERA's position that the markets for Merck securities were efficient because Merck traded on a highly-efficient market, the New York Stock Exchange.

89. Adam Wierzbowski and others at BLB&G then drafted the notice of pendency for the Certified Class. BLB&G recommended, and determined to include in the notice, language about the risk to class members of opting out of the action because of the risks posed by the statute of repose, and also worked with defense counsel regarding any comments they had on the proposed notice. On July 30, 2013, Lead Plaintiffs advised Judge Chesler that Lead Plaintiffs and Defendants had reached agreement on the form of the class notice. Plaintiffs submitted therewith a proposed Order Approving Notice and Summary Notice of Pendency of Class Action, which would approve the form and content of the proposed Notice of Pendency of Class Action and the proposed Summary Notice of Pendency of Class Action. On August 6, 2013, the Court entered an Order directing that notice be sent to potential members of the Certified Class ("Certified Class

Notice"). Among other things, the Court found that the Certified Class Notice met the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled to receive notice.

90. Beginning on September 4, 2013, the Certified Class Notice was sent to putative Certified Class members. Pursuant to the Court's August 6, 2013 Order, the Certified Class Notice provided putative members of the Certified Class with the opportunity to request exclusion from the Certified Class. The Certified Class Notice explained Certified Class Members' right to request exclusion from the Certified Class, set forth the procedure for doing so, stated that it is within the Court's discretion whether to permit a second opportunity to request exclusion if there is a settlement, and provided a deadline of November 3, 2013 for the submission of requests for exclusion. The Certified Class Notice further stated that Certified Class Members who choose to remain a member of the class "will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable." More than 1.5 million copies of the Certified Class Notice were mailed to potential members of the Certified Class.

91. Attorneys at BLB&G, including Rochelle Hansen and David Duncan, took the lead role in overseeing the Notice Administrator's mailing of the Certified Class Notice, the establishment of a website related to the case, the publication of the Summary Notice of Pendency of Class Action, reviewing the requests for exclusion received in response to the Certified Class Notice and coordinating the filing of several declarations by representatives of the notice administrator reporting on the dissemination of the Certified Class Notice and the requests for exclusion.

H. BLB&G Successfully Moved to Amend Plaintiffs' Complaint and Filed a Sixth Amended Complaint

92. On March 15, 2013, BLB&G filed a motion for leave to file a Sixth Amended Complaint and a brief in support thereof. The brief (and its accompanying amended Complaint) was primarily drafted by BLB&G attorneys Sal Graziano, Adam Wierzbowski, Kristin Meister, Abe Alexander, and Brett Van Benthysen. Lead Plaintiffs sought to amend their Complaint to add allegations concerning, and to bring within the scope of this Action, the November 1, 2004 publication by the *WSJ* of an exposé of previously-undisclosed internal Merck documents showing that Merck knew of Vioxx's CV risks years before its withdrawal from the market. Upon release of that news, the price of Merck stock had fallen sharply, and it was Lead Plaintiffs' position that that stock price decline was properly within the scope of Plaintiffs' claims, although the Court had dismissed this alleged corrective disclosure in denying Defendants' motions to dismiss.

93. Lead Plaintiffs also moved to add two materially false and misleading statements by Defendants Merck and Reicin regarding the 4% aspirin-indicated subgroup claim. Specifically, Defendants publicly buttressed the Naproxen Hypothesis with the false and misleading claim that the excess in heart attacks observed in VIGOR was disproportionately due to the effects observed in only 4% of the VIGOR patients whom Merck claimed needed, but did not receive, aspirin prophylaxis and for whom they claimed Naproxen treatment thus acted as a substitute for such prophylaxis (the "4% Claim").

94. The parties heavily disputed the issues on this motion. Lead Plaintiffs argued that the proposed Amended Complaint provided ample new factual evidence not previously considered by the Court that the November 1, 2004 *WSJ* article caused the market to reassess Merck's Vioxx-related liability exposure, which was a substantial and direct cause of the sharp decline in Merck's stock price that day. As such, Plaintiffs argued that the proposed Amended Complaint adequately

pled loss causation for the November 1, 2004 *WSJ* disclosure, and its filing was not futile. Plaintiffs also pointed to internal Merck documents showing that Merck understood the 4% Claim to be "too shaky" to assert publicly, yet Merck made those statements to the market regardless in support of the Naproxen Hypothesis.

95. Defendants strongly opposed Plaintiffs' motion to amend the Complaint. Defendants, including Defendant Scolnick, filed their Opposition to Plaintiffs' Motion for Leave to File Amended Complaint on April 22, 2013. Defendants asserted that the November 1, 2004 *WSJ* article revealed "nothing about Merck's substantial Vioxx-related litigation exposure" and argued that Merck's increased litigation exposure was not within the "zone of risk" concealed by the alleged fraud. Defendants also argued that their statements concerning the 4% Claim were neither false nor misleading. Furthermore, Defendants argued that, under *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), the *New England Journal of Medicine* ("*NEJM*"), and not Merck or Dr. Reicin, "made" the misstatement concerning the 4% Claim appearing in the November 23, 2000 *NEJM* article publishing the full VIGOR results.

96. On May 6, 2013, Lead Plaintiffs filed a reply brief to Defendants' opposition to the motion for leave to file an Amended Complaint that was drafted by Sal Graziano and Adam Wierzbowski. The risk of Plaintiffs' motion being denied was significant given the importance of the 4% Claim to Plaintiffs' cause of action. On May 29, 2013, the Court granted Plaintiffs' request to file a Sixth Amended Complaint with respect to the 4% Claim statements, but denied it with respect to the November 1, 2004 *WSJ* article because, according to the Court, "This lawsuit is not premised on allegations that Merck misrepresented or concealed from investors material facts concerning Merck's exposure to liability stemming from products liability suits and consumer fraud claims related to the alleged cardiovascular risks of Vioxx."

I. BLB&G Opposed Defendants' Motion for Judgment on the Pleadings

97. On May 3, 2012, the Defendants filed a motion for judgment on the pleadings, arguing that: (a) certain of the alleged misrepresentations were not actionable under the securities laws; and (b) Lead Plaintiffs did not state a claim under Section 20(a) of the Exchange Act for control person liability with respect to certain current and former Merck officers who had previously been dismissed from Plainitffs' Section 10(b) claims.

98. On June 4, 2012, BLB&G opposed that motion in a brief drafted by Bill Fredericks and Adam Wierzbowski. Plaintiffs argued that (a) Defendants' statements concerning Vioxx sales performance and outlook were materially false and misleading when made; (b) Defendants' purportedly accurate factual recitations in fact misled investors concerning the true commercial value of Vioxx at the time they were made; (c) Defendants' projections of future growth were not "puffery"; and (d) Defendants' statements were not protected by the safe harbor. Plaintiffs additionally argued that they pled the control person Defendants' "culpable participation" in the fraud with particularity and that they were not required to do so to state a Section 20(a) claim.

99. On August 29, 2012, the Court granted in part and denied in part Defendants' motion. The Court dismissed Plaintiffs' Section 10(b) claims predicated on inactionable statements. The Court also dismissed the Exchange Act Section 20(a) control person claim as to individual defendants Anstice, Frazier, Gilmartin, Henriques, Kim, Lewent and Wold-Olsen. However, BLB&G was successful in upholding alleged false statements where the Defendants attributed Vioxx's commercial performance in part to Vioxx's "overall safety profile."

J. BLB&G Led Co-Lead Counsel's Discovery Efforts and Pursued Novel Theories of Recovery on Behalf of the Class

1. BLB&G Pursued Extensive Discovery from Defendants

100. Over the course of the litigation, BLB&G vigorously pursued the production of

documents by Defendants, and pressed Defendants to correct numerous specific deficiencies in Defendants' production.

101. On October 3, 2011, November 18, 2011, and December 5, 2011, the parties held meet-and-confers regarding Defendants' document production to date, attended by Sal Graziano, Bill Fredericks and Adam Wierzbowski of BLB&G. In a letter dated December 9, 2011 from Adam Wierzbowski to Karin DeMasi, BLB&G followed up on issues discussed during those meetings, which included the following:

a. BLB&G objected to Defendants' refusal to produce materials related to foreign proceedings related to Vioxx and requested immediate production of such documents;

b. BLB&G requested a list and description of specific shared drives and databases that were available for production, as well as the efforts Defendants had undertaken to ensure that all Vioxx-related documents from these drives and databases were produced to Lead Plaintiffs in this case; and

c. BLB&G made additional production requests, and requested a confirmation that Defendants had produced all of the documents that Defendants had collected or provided to anyone in connection with the preparation of the Report of the Honorable John S. Martin Jr. to the Special Committee of the Board of Directors Concerning the Conduct of Senior Management in the Development and Marketing of Vioxx.

102. On January 13, 2012, BLB&G served on Defendants Lead Plaintiffs' First Set of Requests for the Production of Documents to Defendants, signed by Sal Graziano, which was comprised of 100 Requests. That day, the parties also exchanged their Initial Disclosures.[7]

[7] BLB&G was responsible for serving on Defendants Lead Plaintiffs' remaining discovery requests, which included the following. On August 10, 2012, BLB&G served on Defendants Lead Plaintiffs' Second Set of Requests for the Production of Documents, which comprised a single request for all documents concerning Scolnick's sale of Merck stock on or about October 25, 2000. BLB&G also served on Defendants a single Interrogatory that day requesting the identification of all trade information concerning Scolnick's October 25, 2000 sale of Merck stock. On October 9, 2012, BLB&G served on Defendants Plaintiffs' Second Set of Interrogatories on Defendants, which was comprised of 8 interrogatories. On October 11, 2012, BLB&G also served on Defendants Plaintiffs' Second Set of Interrogatories on Defendant Scolnick (which comprised two

103. On March 1, 2012, Defendants served their Responses and Objections to Lead Plaintiffs' First Set of Requests for the Production of Documents. In a letter dated March 8, 2012 from Adam Wierzbowski of BLB&G to Karin DeMasi of Cravath, BLB&G raised Lead Plaintiffs' concerns with Defendants' Responses and Objections, and further demanded the production of documents and information as requested in Plaintiffs' First Set of Document Requests. BLB&G also requested a meet-and-confer with Cravath to discuss the issues raised in this letter.

104. The parties held a meet-and-confer regarding Defendants' document production on March 15, 2012 attended by Sal Graziano and Adam Wierzbowski from BLB&G. In a letter dated April 20, 2012 from Adam Wierzbowski to Karin DeMasi, BLB&G raised additional issues regarding Defendants' Responses and Objections to Plaintiffs' First Set of Requests for the Production of Documents, and further demanded production of certain documents and information.

105. On May 25, 2012, BLB&G wrote a letter to Magistrate Judge Shipp signed by Sal Graziano to bring to the Court's attention disputes concerning deficiencies in Defendants' document production. The disputes at issue included: (i) documents that Defendants had previously produced in connection with governmental, including DOJ, investigations concerning Vioxx, over which Defendants at the time of the letter claimed privilege; (ii) documents concerning the decline in the price of Merck's securities following the publication of the November 1, 2004

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interrogatories focused on Scolnick's stated explanations for his October 2000 stock sales) and Plaintiffs' Third Set of Document Requests on Defendant Scolnick (which comprised four document requests focused on Scolnick's stated explanations for his October 2000 stock sales). On February 1, 2013, BLB&G served on Defendants Plaintiffs' Third Set of Interrogatories, which consisted of a single interrogatory requesting that Defendants identify the names and titles of each person who participated in drafting or revising Merck's public statements that Plaintiffs alleged were materially false and misleading. On May 10, 2013, BLB&G served Plaintiffs' First Set of Requests for Admissions Directed to Defendants concerning the authenticity and admissibility of certain of Plaintiffs' deposition exhibits.

WSJ article that disclosed internal Merck emails concerning Defendants' knowledge of Vioxx's CV risks during the Class Period; (iii) specific categories of documents from outside the January 1, 1998 through December 31, 2004 time period, concerning, for example, Vioxx clinical trial data and analyses, medical journal articles, and work performed by public relations or media consulting firms; (iv) custodial files concerning Vioxx belonging to or used by Merck statisticians, statistical programmers, and/or other key personnel whom Plaintiffs have specifically identified and whose files were not previously produced; (v) a complete set of the "audit files" for Merck's statistical database files concerning Vioxx; and (vi) responsive documents stored on Merck's shared drives. In addition, the parties had a dispute over whether Merck would agree to search its backup tapes, which it had as yet refused to do.

106. Defendants submitted a letter to the Court on May 29, 2012, arguing that any discovery disputes needed to be raised with the Court jointly by both sides, and BLB&G responded to that letter on May 31, 2012. On June 11, 2012, Defendants then filed a letter to substantively respond to Plaintiffs' May 25, 2012 letter [redacted]

[redacted]

107. In a letter dated July 12, 2012 from Adam Wierzbowski of BLB&G to Karin DeMasi of Cravath, BLB&G requested an update regarding the restoration and review of back-up tapes along with an update regarding the production of documents from specific custodians. BLB&G also provided a list of statisticians and statistical programmers from whom Plaintiffs were requesting documents. BLB&G also requested an update regarding the production of OCR files, the database of CV adjudications, and all drafts of the VIGOR press release, and BLB&G attached copies of deposition subpoenas for Christopher Lines, Scott Reines and Joshua Chen.

108. The parties held a telephonic meet-and-confer on July 25, 2012 attended by Sal Graziano and Adam Wierzbowski of BLB&G to discuss discovery issues. In a letter dated July 26, 2012 from Sal Graziano of BLB&G to Damaris Hernandez of Cravath, BLB&G followed up on the July 25, 2012 telephonic meet-and-confer, in which the parties discussed: (i) the total numbers of depositions that Plaintiffs may take in this case; (ii) the extent to which Plaintiffs would

agree to Defendants' requests concerning – (a) permitting Defendants an unrestricted ability to admit testimony in this case by previously-deposed witnesses in any other Vioxx litigation and (b) limiting Plaintiffs' depositions in this case of any previously-deposed witnesses in any prior Vioxx case only to "new" topics, shared with Defendants in advance.

109. BLB&G attempted to facilitate a resolution and compromise on these issues with Defendants. In a letter dated July 30, 2012 from Sal Graziano to Damaris Hernandez of Cravath, BLB&G proposed a resolution regarding issues between the parties without intervention of the Court in order to keep the currently-scheduled depositions on the already-scheduled dates. Then, in a letter dated July 31, 2012 from Sal Graziano to Ms. Hernandez, BLB&G noted that Defendants had rejected Plaintiffs' offer of compromise on depositions. In addition, because of the uncertainty surrounding the number and scope of depositions to be taken, Plaintiffs had no choice but to adjourn without date the already-scheduled depositions until the issues were resolved. BLB&G agreed that these matters should be raised with the Court so that the parties may reach certainty on them before Plaintiffs' depositions began.

110. On August 8, 2012, Plaintiffs filed a letter with the Court that was principally drafted by BLB&G. The letter informed the Court of a dispute between the parties concerning the number and scope of depositions that Plaintiffs would take in the case. At bottom, Defendants were resisting Plaintiffs' efforts to take any depositions in this Action beyond the 10 permitted by the Federal Rules of Civil Procedure because, according to them, Plaintiffs should rely on the depositions that other plaintiffs had taken in prior Vioxx-related personal injury cases. As a result, Plaintiffs sought an Order from the Court that would, in substance: (i) permit Plaintiffs to depose 40 witnesses plus the named individual defendants; and (ii) adopt Plaintiffs' proposal concerning the admissibility of prior testimony. Plaintiffs argued that they were unable to examine the

witnesses, or object to improper questions or non-responsive answers, in the prior depositions taken in other cases. In addition, Plaintiffs argued that 40 non-Defendant witnesses was an appropriate number because the case was complex and spanned many years.

111. On August 10, 2012, Defendants responded to Plaintiffs' letter. Defendants argued that the number and scope of depositions should be limited because of the large body of existing testimony from prior cases. First, Defendants argued that deposition discovery in the action should make use of the existing sworn testimony of witnesses previously deposed. Second, Defendants argued that the parties should be permitted no more than 30 depositions per side.

112. On August 15, 2012, the Court set a status conference for August 20, 2012. During the August 20, 2012 status conference the Court made certain discovery rulings on the disputes between the parties that are memorialized below. Max Berger, Sal Graziano and Adam Wierzbowski of BLB&G attended the conference.

113. In a letter dated August 28, 2012 from Adam Wierzbowski to Damaris Hernandez of Cravath, Plaintiffs requested that Defendants produce responsive documents from certain custodians' files and missing metadata from certain documents. The letter detailed that Defendants had agreed three months earlier to produce documents from the files of five particular custodians, had agreed two months earlier to conduct a reasonable search of the files of another 19 custodians, had agreed two months earlier to produce documents from another 12 custodians, and had agreed one month prior to search the custodial files of 13 other custodians. Yet, as of the time of the August 28, 2012 letter, Defendants had produced only documents from one such custodial file. The letter asked for confirmation that Defendants would produce the agreed-upon documents, requested that documents be produced without further delay, particularly in light of Defendants' contention that Plaintiffs would not have an opportunity to re-depose witnesses despite a delay in

production of relevant documents, and separately requested missing metadata for documents that were produced without it.

114. On September 19, 2012, Plaintiffs sent a letter to the Court providing, as the Court requested, a joint proposed Order (drafted by BLB&G) that memorialized the Court's August 20, 2012 discovery rulings. The rulings, as set forth in the Order were that: (i) Plaintiffs and Defendants were granted leave to take 40 non-expert depositions; (ii) the issue of whether Defendants would be required to produce to Plaintiffs certain documents that Defendants previously produced to the government in connection with Vioxx-related investigations would be further considered by the Court; (iii) Plaintiffs' motion to compel Defendants to produce documents concerning the decline in Merck's stock price on or after November 1, 2004 was denied; (iv) Defendants would conduct a search of the custodial files of a list of named individuals and produce responsive documents created between September 30, 2004 and June 30, 2008, that demonstrate Merck's and/or any of the individual Defendants' possession or knowledge of information concerning Vioxx and/or Naproxen prior to Vioxx's withdrawal from the market on September 30, 2004; and (v) Defendants would produce un-redacted copies of the audit files for Merck's CTS database related to Vioxx. The Court entered that Order on September 26, 2012.

115. On October 5, 2012, Judge Waldor issued a Letter Opinion deciding Plaintiffs' motion on the question of whether Defendants must produce documents to Plaintiffs that they previously produced to the DOJ. In that Opinion, Judge Waldor held that Defendants must produce those documents. Specifically, Judge Waldor found that, pursuant to *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1431 (3d Cir. 1991), because Merck had voluntarily disclosed documents to the government over which it now claimed privilege, it could not establish that those documents were privileged.

116. In a letter dated October 9, 2012 from Adam Wierzbowski to Damaris Hernandez of Cravath, Plaintiffs wrote to follow up on several discovery issues. First, Plaintiffs proposed a list of search terms for Defendants to use to search their files pursuant to the Court's September 26, 2012 Order. Second, they provided a list of Vioxx study protocols, in order of priority, for Defendants to search pursuant to the September 26, 2012 order that they produce CTS audit files. Third, Plaintiffs provided a list of custodians in order of priority, whose files Defendants had previously agreed to search and Plaintiffs requested that Defendants produce in the next 20-45 days. Fourth, Plaintiffs proposed a deadline for substantial completion of Defendants' document production of 60 days from the time of the letter. Finally, Plaintiffs requested that Defendants produce documents previously produced to the government pursuant to Magistrate Judge Waldor's October 5, 2012 letter opinion.

117. On October 12, 2012, Defendants filed a letter with the Court requesting a stay of the Court's October 5, 2012 ruling that required Merck to produce purportedly privileged material that Merck had previously provided to the government. Defendants requested that the ruling be stayed pending review by Judge Chesler of Defendants' appeal. First, Defendants argued that if they were required to produce the documents immediately their appeal would be moot. Second, they argued that the issue was one of first impression in the Circuit and thus it would be premature to compel Merck to begin producing its privileged documents. Third, Defendants informed the Court that they were reviewing the documents pursuant to the Court's Order and would continue doing so if a stay were granted.

118. On October 19, 2012, Defendants filed their appeal of Magistrate Judge Waldor's ruling requiring them to produce documents to Plaintiffs that they previously produced to the DOJ. On November 5, 2012, BLB&G opposed Defendants' appeal in a brief drafted by Adam

Wierzbowski, which argued that the Third Circuit has rejected the principle of "selective waiver," and also rejected the Second Circuit's approach to the issue. On November 13, 2012, Defendants filed their reply briefs in further support of their appeal of Judge Waldor's ruling.

119. On December 12, 2012, the Court issued an Opinion and Order denying Defendants' appeal of Judge Waldor's October 5, 2012 Opinion and Order insofar as the October 5, 2012 Opinion and Order held that Defendants must produce to Plaintiffs documents that had been produced by Merck to the DOJ in connection with a government investigation.

120. After Plaintiffs' success on their motion to compel documents from Defendants related to the DOJ's investigation relating to Vioxx, BLB&G engaged in hard-fought discovery related to Defendants' compliance with Magistrate Judge Waldor's October 5, 2012 Order. For example:

a. In a letter dated January 3, 2013 from Adam Wierzbowski of BLB&G to Karin DeMasi of Cravath, Plaintiffs wrote to follow up on documents produced pursuant to the October 5, 2012 Opinion. Specifically, Plaintiffs asked whether Defendants excluded any documents from their December 22, 2012 production of the documents that were previously produced to the U.S. Attorney's Office ("USAO") pursuant to the Confidentiality and Non-Waiver Agreement based on Defendants' view that they were non-responsive to Plaintiffs' Document Requests. If any documents were excluded, Plaintiffs requested identification of the excluded categories of documents and explanation as to why those documents were not responsive to Plaintiffs' Document Requests. Plaintiffs also requested that Defendants produce a log with the document identifications and explanations. Plaintiffs also requested custodian information and metadata for the December 22, 2012 production.

b. In a letter dated January 8, 2013, Defendants refused to provide parameters by which Defendants limited their production of documents previously produced to the USAO.

c. In a letter dated January 10, 2013 from Adam Wierzbowski to Karin DeMasi, Plaintiffs repeated their request that Defendants identify which categories of documents were excluded from Defendants' production of the DOJ document production to Plaintiffs based on a finding of non-responsiveness. Plaintiffs argued they were entitled to understand the nature and scope of all of the limitations placed

on the previously-produced USAO documents in determining which documents to produce to Plaintiffs in response to the Court's Order.

121. In a letter dated January 23, 2013, principally drafted by Brett Van Benthysen at BLB&G, counsel for Lead Plaintiffs wrote to Magistrate Judge Waldor in advance of the status conference scheduled on January 28, 2013 to identify the following outstanding discovery issues:

a. In contravention of the Court's Order on October 5, 2012 to turn over to Lead Plaintiffs the documents produced to the DOJ, Plaintiffs alerted the Court that Defendants inappropriately limited their production of DOJ-related documents without explanation concerning those limitations. At the time of the letter, Lead Plaintiffs still had not received the results of Defendants' review of the DOJ documents.

b. Defendants had refused to produce documents dated post-September 29, 2004 from the custodial file of then-Merck CEO Kenneth Frazier on the basis that the review was purportedly overly burdensome and would likely produce privileged documents. Lead Plaintiffs argued that they sought the production of documents related to Frazier's role as Senior Vice President of Merck's Public Affairs division, which were highly relevant to Lead Plaintiffs' claims and would not be privileged, especially since Merck's current production at the time included relevant non-privileged documents involving Frazier in this capacity.

c. Lead Plaintiffs previously requested a search for and production of draft public statements by conducting "exact phrase" searches based on the materially false and misleading statements that were not dismissed from the case, which Defendants refused to conduct, claiming that "exact phrase" searches were inefficient and unnecessary.

d. Lead Plaintiffs alerted the Court to Defendants' non-responsiveness to discovery issues identified in Plaintiffs' prior letters, including issues with Defendants' production of documents from specific custodians and objections to redactions to Arcoxia-related documents. Plaintiffs noted that some of the issues had been open for several months and requested that the issues be resolved in light of the imminent close of fact discovery.

122. On January 25, 2013, Defendants wrote to Magistrate Judge Waldor in response to Lead Plaintiffs' January 23, 2013 letter. Defendants argued that:

a. Defendants complied with the Court's October 5 Letter Opinion because Defendants' review determined which documents were "otherwise responsive to Plaintiffs' Requests", as dictated by the Letter Opinion and a re-review of the

documents for responsiveness revealed an error in their production that Defendants immediately corrected.

b. Lead Plaintiffs were not entitled to post-September 29, 2004 documents from Frazier's custodial files because the review would be unduly burdensome, and would produce only a small number of responsive non-privileged documents. Defendants further argued that any documents after September 29, 2004, which, by Court Order, should only be produced as they relate to the issue of scienter, would be privileged or work product documents generated in Frazier's capacity as chief legal advisor for Merck. Furthermore, Defendants argued that documents related to Frazier's role in Public Affairs would only be relevant during the Class Period of May 21, 1999 to September 29, 2004 and that Defendants already agreed to review and produce relevant documents through December 31, 2004.

c. Merck should not be required to conduct "exact phrase" searches in order to produce all non-privileged draft public statements because it would be ineffective, unnecessary, and duplicative. Defendants argued that their current search method was reasonable and sufficient to product all responsive, non-privileged drafts of public statements.

123. On January 28, 2013, the Court held an in-person status conference to discuss discovery issues (which included the issues related to Cornerstone and Professor Gompers, discussed above in connection with class certification). Sal Graziano, David Wales, Adam Wierzbowski and Kristin Meister attended from BLB&G. In a letter dated February 14, 2013, Plaintiffs wrote to Magistrate Judge Waldor attaching a proposed Order memorializing the Court's rulings at the January 28, 2013 status conference and to alert Judge Waldor of Judge Chesler's January 30, 2013 decision to certify the case as a class action. Counsel stated that all parties, including Cornerstone Research agreed to the form of Order. The proposed Order: (i) permitted Lead Plaintiffs to depose a representative from Cornerstone Research regarding payments made to Professor Gompers; (ii) granted Cornerstone Research's request for heightened protection and limited disclosure of the deposition, transcript, and exhibits; and (iii) ordered Defendants to produce all non-privileged documents from Frazier's custodial files created between January 1, 2005 and December 31, 2005 that are responsive to Merck's or any of the Individual Defendants'

possession or knowledge of information concerning Vioxx and/or Naproxen prior to Vioxx's withdrawal.

2. BLB&G Managed the Extensive Document Review and Reviewed Millions of Pages of Documents

124. BLB&G worked to identify the targets of third party discovery and worked on the follow-up with third parties in their production of documents. In total, Lead Plaintiffs served more than 60 subpoenas on third parties requesting the production of documents.

125. BLB&G also actively managed the review of documents produced by Defendants and third parties. BLB&G set up the hosting of the documents in an Internet-based document hosting database, distributed the documents among attorneys who reviewed them, and held regular meetings over the course of the Action to review with BLB&G attorneys, and Co-Lead Counsel, the most relevant or "hot" documents that the reviewing attorneys found.

126. In total, attorneys reviewed more than ***35.89 million*** pages of documents in the Action.

127. Over the course of this Action, BLB&G employed 35 full-time attorneys to review Merck's documents. As set forth in the attorney biographies in the BLB&G firm resume submitted herewith as Exhibit 4, several of these attorneys also have significant medical or scientific backgrounds relevant to this case, including an M.D. degree and degrees in Biomedical Engineering, Biochemistry, and Microbiology. Below is a chart identifying the BLB&G Staff Attorneys, the number of years each has been with BLB&G, and the number of years they have spent on the *Vioxx* litigation, all of which is a testament to their significant experience prosecuting securities actions like this one and the depth of their invaluable experience prosecuting this Action specifically:

Staff Attorney	Time with BLB&G	Time on the *Vioxx* Case
Erwin Abalos	4.0 years	2.75 years
Evan Ambrose	7.75 years	5.0 years
Leila Amineddoleh	0.25 years	0.25 years
Tamara Bedic	5.75 years	1 year
Jim Briggs	2.5 years	1.5 years
Girolamo Brunetto	2.0 years	0.25 years
Alexa Butler	7.5 years	3.0 years
David Carlet	8.0 years	3.0 years
Erika Connolly	2.0 years	0.5 years
Lauren Cormier Taylor	2.25 years	0.75 years
Cynthia Gill	8.25 years	0.75 years
Daniel Gruttadaro	2.0 years	1.25 years
Mary Hansel	2.75 years	1 year
Jessica Juste	2 years	0.75 years
Stavros Katsetos	3.25 years	2.5 years
Thomas Keevins	6.75 years	0.25 years
Donatella Keohane	3.5 years	1.5 years
Gerald Kirschbaum	3.25 years	3.25 years
Jed Koslow	7.0 years	1.25 years
Arthur Lee	5.25 years	0.5 years
Danielle Leon	2.25 years	1 year
Adrienne Lester-Fitje	2.0 years	0.5 years
Andrew McGoey	7.0 years	3.25 years
Alison Merle	3.5 years	0.5 years
Matt Mulligan	7.5 years	1.75 years
Kirstin Peterson	1.75 years	1.75 years
Stephen Roehler	5.0 years	2.0 years
Noreen Rhosean Scott	7.5 years	1.75 years
Lewis Smith	4.0 years	1.75 years
Robert Stinson	9.0 years	2.75 years
Jennifer Trenery	2.5 years	0.75 years
Mark van der Harst	8.75 years	0.5 years
Catherine van Kampen	10.25 years	0.25 years
Kimberly Whitehead	0.25 years	0.25 years
Kit Wong	3.75 years	2.75 years

128. In addition to the critical substantive task of reviewing documents for relevance, BLB&G's above-listed Staff Attorneys actively participated in preparing for fact and expert depositions; researching Plaintiffs' Responses to Defendants' Contention Interrogatories; researching and briefing Lead Plaintiffs' Opposition to Defendants' motions for summary

judgment; researching issues related to Plaintiffs' oppositions to Defendants' motions to preclude Plaintiffs' experts; and preparing for trial. For example, BLB&G's Staff Attorneys:

a. Analyzed, digested and summarized large volumes of documents through a variety of means including, electronically through the Lextranet web interface, in hard copy, in PDF, Word, and Excel format, off-site using microfiche readers and in audio and video formats;

b. Identified key "hot" documents that they personally presented and discussed in regular meetings at BLB&G;

c. Prepared custodian-specific research memoranda on key Merck employees;

d. Created a timeline of key events;

e. Created spreadsheets of analyst reports pertaining to Merck during and after the Class Period, and analyzed those reports in detail;

f. Searched for relevant medical journal articles through publicly-available databases;

g. Conducted research in preparation for settlement conferences and mediations;

h. Conducted in-depth factual research into discrete topics;

i. Created and updated an internal database of attorney work product on the case;

j. Prepared for Plaintiffs' mock trial exercise through the research and preparation of draft mock trial presentations;

k. For fact and expert depositions taken by BLB&G (and all other Plaintiff firms):

   i. Identified and compiled key documents related to the deponent and prepared witness kits;

   ii. Conducted background research regarding the deponent;

   iii. Drafted memoranda summarizing the deponent and witness kit;

   iv. Assisted with drafting deposition outlines;

   v. Prepared the final witness kit for use during the deposition;

   vi. Digested the final deposition transcript; and

   vii. Compiled and summarized exhibits used during the depositions.

l. Identified and compiled documents requested by experts, including Merck-produced documents and external documents such as journal articles, analyst reports and other publications;

m. Compiled experts' prior expert reports, prior testimony, key publications, *Daubert* history, background information, and criticism, and conducted video searches, Internet research, as well as PACER and Westlaw searches in the expert database;

n. Reviewed all evidence on record (depositions, exhibits, hot documents, expert reports, contention interrogatories, internal summaries and memoranda) in support of specific key issues;

o. Conducted factual and legal research in support of Plaintiffs' Opposition to Defendants' motions for summary judgment, and proofread for content drafts of the Opposition and supporting papers;

p. Conducted factual and legal research in support of Plaintiffs' Oppositions to Defendants' *Daubert* motions and proofread for content drafts of the Oppositions;

q. Drafted portions of Plaintiffs' proposed Stipulated and Contested facts based on the evidence on record;

r. Prepared potential trial exhibits from all evidence on record and assisted with trimming and finalizing the exhibit list;

s. Reviewed depositions and prepared designated testimony;

t. Drafted proof outlines for specific issues;

u. Conducted factual and legal research on draft motions *in limine*, and drafted opposition arguments for potential motions *in limine* from Defendants; and

v. Prepared for, attended, analyzed issues during, and followed up regarding the pretrial meet-and-confers.

3. BLB&G Pursued Extensive Deposition Discovery

129. During the extensive fact and expert discovery in the case that ensued, BLB&G took 19 out of the 31 fact depositions, including the depositions of critical witnesses Scolnick, Reicin, FitzGerald, Oates, Patrono, Shapiro, Bolognese, Laine, Morrison, Neaton, Silverman, and Nies; took six out of seven defense expert depositions in the case; defended all of the Defendants'

depositions of Plaintiffs' experts; and played a key supporting role in the remaining depositions.[8] For example, Sal Graziano conducted numerous successful depositions of Defendants' witnesses and experts, and secured testimony that Plaintiffs cited repeatedly in their summary judgment briefing and detailed contention interrogatory responses. The names of the depositions handled by BLB&G, their dates and locations, and the BLB&G attorneys who took or defended them, as well as critical points elicited during their testimony, are below:

Date and Location	**Deponent**	**Key Elicited Testimony Included**	**BLB&G Attorney Responsible**
12/20/2012 Princeton, NJ	Scott A. Reines, M.D, Ph.D., Merck Vice President, Central Nervous System	• [redacted]	David Wales
1/24/2013 New York, NY	Barry Gertz, M.D., Ph.D., Merck Executive Vice President, Clinical Sciences	• [redacted] • [redacted]	David Wales
3/1/2013 Roseland, NJ	Joshua Chen, Ph.D., Merck Biometrician	• [redacted]	David Wales
3/6/2013 New York, NY	Deborah Shapiro, Ph.D., Merck Director, Biostatistics and Research Decision Sciences	• [redacted]	Sal Graziano

[8] Of the 19 fact depositions taken by BLB&G, 16 of those witnesses were listed as witnesses in the Joint Pretrial Order submitted to the Court on November 20, 2015.

3/21/2013 Philadelphia, PA	Raymond Bain, Ph.D., Merck Vice President and Head, Biostatistics and Research Decision Sciences	• [redacted] • [redacted] • [redacted]	Sal Graziano
4/16/2013 Houston, TX	Alan Nies, M.D., Merck Senior Vice President, Clinical Sciences	• [redacted] • [redacted] • [redacted]	Sal Graziano
4/23/2013 Philadelphia, PA	Garret FitzGerald, M.D. Chairman, Department of Pharmacology, University of Pennsylvania	• [redacted] • [redacted] • [redacted]	Sal Graziano

		• [redacted] • [redacted] • [redacted]	
5/8/2013 Rahway, NJ	James Bolognese Merck Biostatistician, Biostatistics and Research Decision Sciences	• [redacted] • [redacted] • [redacted]	Sal Graziano
5/14/2013 New York, NY	Briggs Morrison, M.D. Merck Senior Director, Pulmonary-	• [redacted] • [redacted]	David Wales

	Immunology Group	[redacted]	
5/16/2013 Nashville, TN	John Oates, M.D. Senior Professor of Medicine and Pharmacology, Vanderbilt University School of Medicine	• [redacted] • [redacted] • [redacted] • [redacted]	Sal Graziano
5/21/2013 Philadelphia, PA	Eliav Barr, M.D. Merck Senior Director, Biologics Clinical Research	• [redacted] • [redacted] • [redacted]	Sal Graziano
5/22/2013 Philadelphia, PA	Douglas J. Watson, Ph.D. Merck Director, Epidemiology Group, Biostatistics and Research Decision Sciences	• [redacted]	David Wales

		• [redacted] • [redacted]	
5/31/2013 Boston, MA	Edward Scolnick, M.D. ***Defendant***, President, Merck Research Laboratories; member of Merck's Board of Directors; member of Merck Management Committee	• [redacted] • [redacted]	Sal Graziano
6/4/2013 Philadelphia, PA	Peter Kim, Ph.D. President, Merck Research Laboratories; member of Merck Management Committee	• [redacted] • [redacted]	David Wales
6/7/2013	Alise Reicin, M.D. ***Defendant***,	• [redacted]	Sal Graziano

New York, NY	Merck Senior Director, Pulmonary-Immunology Group	[redacted]	
6/13/2013 Minneapolis, MN	James Neaton, Ph. D. Professor of Biostatistics, School of Public Health, University of Minnesota	• [redacted]	David Wales
6/19/2013 Blue Bell, PA	Robert E. Silverman, M.D., Ph.D. Merck Senior Director, Domestic Regulatory Affairs	• [redacted]	Sal Graziano
8/5/2013 New Haven, CT	Loren Laine, M.D. Former Merck consultant, Gastroenterologist	• [redacted] • [redacted]	Sal Graziano

		• [redacted]	
8/13/2013 Rome, Italy	Carlo Patrono, M.D. Professor of Pharmacology, University of Rome "La Sapienza" School of Medicine in Rome, Italy	• [redacted] • [redacted] • [redacted] • [redacted] • [redacted]	Sal Graziano
10/9/2013 New York, NY	Dean David Madigan Plaintiffs' statistics expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano
10/11/2013 New York, NY	Dr. Mark Woodward Plaintiffs' epidemiology expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano

10/16/2013 New York, NY	Dr. Douglas Zipes Plaintiffs' cardiovascular and pharmacology expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano
10/18/2013 San Francisco, CA	Dr. David Kessler Plaintiffs' FDA and regulatory expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	David Wales
10/23/2013 New York, NY	Mr. Harry Boghigian Plaintiffs' pharmaceutical marketing expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano
10/29/2013 Washington, DC	Lisa Rarick, M.D. Merck FDA and regulatory expert witness	• [redacted]	David Wales
11/1/2013 Chicago, IL	Robert Gibbons, Ph. D. Merck statistics expert witness	• [redacted]	Sal Graziano
11/6/2013 New York, NY	Dr. David Y. Graham Plaintiffs' gastroenterology rebuttal expert witness	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano
11/8/2013 New York, NY	Douglas Vaughan, M.D. Merck cardiovascular expert witness	• [redacted]	David Wales
11/8/2013	Dr. David Tabak Plaintiffs'	• Defended his expert opinions submitted on behalf of Plaintiffs.	Sal Graziano

New York, NY	damages expert witness		
11/14/2013 New York, NY	Nicholas Flavahan, Ph.D. Merck pharmacology/ cardiovascular expert witness	• [redacted] • Later withdrew from the case as a defense expert witness.	David Wales
11/15/2013 Philadelphia, PA	Lawrence Brent, M.D. Merck rheumatology expert witness	• [redacted]	Sal Graziano
11/22/2013 New York, NY	Christopher James, Ph.D. Merck damages expert witness	• [redacted]	Sal Graziano

4. BLB&G Took Extraordinary Measures to Obtain Important New Discovery from Certain Critical Witnesses

a. Dr. Edward Scolnick

130. Sal Graziano of BLB&G deposed Dr. Scolnick and explored with him numerous new areas of inquiry. For example, BLB&G conducted a lengthy and detailed investigation into the facts surrounding Dr. Scolnick's highly suspicious sales of Merck stock on October 25, 2000 (just months after learning the VIGOR results) and explored those issues during his deposition. BLB&G also represented the only Lead Plaintiff, Miss. PERS, that had standing to bring a Section 20A insider trading claim against Dr. Scolnick for those sales. BLB&G's investigation revealed that, on October 25, 2000, [redacted] Scolnick cashed in every exercisable Merck stock option he and his wife owned, for over $32 million in proceeds, netting profits of $25 million. This sale represented almost 60% of the total Merck stock Scolnick could

have sold at the time and over 30 times his base salary. Scolnick's sale was unusual because it was timed to avoid feared losses as a result of increasing FDA scrutiny of Vioxx.

131. Specifically, BLB&G's investigation revealed the following sequence of events, which BLB&G presented to Scolnick at his deposition and later to the Court at summary judgment:

- [redacted]
- On July 14, 2000, the price of Merck stock fell the day after an FDA Advisory Committee recommended that the FDA deny Merck's proposal to sell a cholesterol medication over-the-counter. [redacted]
- [redacted]
- [redacted]
- On October 25, 2000, [redacted] Scolnick exercised and sold all 381,200 of his and his wife's exercisable Merck stock options for total proceeds of $32.4 million and a net gain of $24.8 million.
- [redacted]
- [redacted]

132. On August 10, 2012, BLB&G served on Defendants Lead Plaintiffs' First Set of

Interrogatories, requesting information concerning Dr. Scolnick's October 2000 stock sale, i Dr. Scolnick served his Responses and Objections on September 10, 2012

133.

134.

135. [redacted]

136. [redacted]

137. [redacted]

[redacted]

138. On June 13, 2013, [redacted] BLB&G propounded a Contention Interrogatory on Dr. Scolnick after his deposition [redacted] On December 13, 2013, Dr. Scolnick served a response to this interrogatory [redacted]

139. Upon receiving Dr. Scolnick's response to Plaintiffs' Contention Interrogatories, counsel for Plaintiffs and Dr. Scolnick engaged in a meet-and-confer, and, subsequently exchanged letters on the issue. On January 9, 2014, Dr. Scolnick's counsel sent a letter to Plaintiffs' counsel [redacted]

[redacted]

140. The parties were unable to resolve that dispute and Plaintiffs accordingly requested a response from Dr. Scolnick [redacted] On January 23, 2014, Lead Plaintiffs moved to compel Scolnick to provide a full response to Plaintiffs' Contention Interrogatory. That letter motion, drafted by Sal Graziano and Adam Wierzbowski at BLB&G, set forth the history of the dispute between the parties. [redacted]

141. On November 5, 2014, BLB&G wrote to Magistrate Judge Waldor to inform the Court that the parties had reached an agreement on Lead Plaintiffs' motion to compel. Pursuant to that agreement, Dr. Scolnick agreed to supplement his responses to Plaintiffs' Contention Interrogatory [redacted] On November 7, 2014, Dr. Scolnick served his Supplemental Response to Plaintiffs' Interrogatory [redacted]

142. [redacted]

[redacted]

b. Dr. Garret FitzGerald

143. On January 7, 2013, BLB&G issued subpoenas on Dr. Garret FitzGerald for documents and deposition testimony. Dr. FitzGerald (a Professor of Medicine at the University of Pennsylvania School of Medicine) was a critical fact witness in this case who created the "FitzGerald Hypothesis" that explained Vioxx's mechanism of CV harm. Yet he had never been deposed in any *Vioxx* litigation including in any of the personal injury litigation. Prior to Vioxx's FDA approval and introduction to the market, Merck retained Dr. FitzGerald to perform an important Merck clinical trial (Protocol 023), which showed that Vioxx upset the body's homeostatic balance between the chemical that reduces blood clots (prostacyclin) and the chemical that promotes blood clots (thromboxane). Dr. FitzGerald personally shared those findings with Merck before Vioxx was approved by the FDA and was on the market and recommended additional studies of Vioxx CV risk, which Merck refused to conduct. In addition, after Merck later completed VIGOR in 2000 (which further demonstrated Vioxx's CV risks), Merck again consulted with Dr. FitzGerald in an attempt to gain support for Merck's explanation that it was Vioxx's comparator drug in VIGOR (Naproxen) that lowered the CV risk of patients, rather than Vioxx increasing that risk. In non-public communications with Merck, however, Dr. FitzGerald directly conveyed to Merck that Naproxen "had no significant effect" on the risk of suffering a heart attack.

144. On January 15, 2013, counsel for Dr. FitzGerald sent Adam Wierzbowski of

BLB&G a letter objecting to the subpoenas and indicating that he would file a motion to quash them if Plaintiffs refused to withdraw the subpoenas. Plaintiffs refused, and on February 15, 2013, Dr. FitzGerald filed a motion to quash Plaintiffs' subpoena on him in the U.S. District Court for the Eastern District of Pennsylvania. As noted, Dr. FitzGerald had never testified in any prior *Vioxx* litigation and he fought vigorously to avoid testifying in this case. He argued that his deposition would impose an undue burden on him and that Plaintiffs were attempting through their deposition subpoena to "conscript" him into Plaintiffs' service as an expert witness "against his will." On March 4, 2013, BLB&G filed a memorandum of law in opposition to Dr. FitzGerald's motion to quash Lead Plaintiffs' subpoena that was principally drafted by Adam Wierzbowski. As Plaintiffs argued, Plaintiffs sought factual information from Dr. FitzGerald to support Plaintiffs' allegations that Defendants made materially false and misleading statements and omissions during the Class Period with scienter. Given the significant relevance of his testimony to Plaintiffs' claims, there was a substantial risk of loss to Plaintiffs on this motion.

145. On March 28, 2013, Judge Sanchez of the Eastern District of Pennsylvania held oral argument on Plaintiffs' motion. Sal Graziano argued Plaintiffs' side of that motion and Adam Wierzbowski also attended the hearing. Judge Sanchez denied Dr. FitzGerald's motion to quash the subpoena and ordered Dr. FitzGerald to submit to a deposition, but limited Plaintiffs' questioning to fact issues and precluded Plaintiffs from posing questions that solicited expert testimony. It was critically important for BLB&G to achieve this victory because of Dr. FitzGerald's importance to this case. Indeed, Dr. FitzGerald's deposition, taken by Sal Graziano, proved to be among the most important depositions in the case. Moreover, BLB&G's favorable outcome on the FitzGerald motion served as an important precedent when, as discussed below, various other key witnesses who had never previously been deposed in any prior Vioxx-related

litigation moved to quash Plaintiffs' subpoenas on them as well.

c. Dr. John Oates

146. On February 20, 2013, Plaintiffs issued a subpoena on Dr. John Oates. Dr. Oates is a Professor of Medicine at Vanderbilt University who served as a member, and Chair, of Merck's Board of Scientific Advisors ("BSA") prior to and during the Class Period. As a Merck consultant and Chair of the BSA, Dr. Oates personally provided factual evidence and key information to Merck that put Defendants on notice of critical scientific findings that contradicted the Company's public statements about Vioxx's CV safety. Dr. Oates also urged Merck to conduct numerous studies of Vioxx that would have further identified and isolated the CV risks of Vioxx years before the drug was withdrawn from the market, but Merck affirmatively chose ***not*** to conduct them. Indeed, Judge Chesler cited to facts that Dr. Oates provided to Merck when the Court denied Defendants' second round of motions to dismiss on August 8, 2011, finding that Plaintiffs had sufficiently alleged that Defendants knowingly or recklessly made materially false or misleading public statements. As with Dr. FitzGerald, Dr. Oates had never previously been deposed by any *Vioxx* litigant.

147. On February 27, 2012, Dr. Oates' counsel sent a letter to Brett Van Benthysen of BLB&G informing Plaintiffs that he represented Dr. Oates and to direct future communications to him. On April 5, 2013, counsel for Dr. Oates filed a motion to quash Plaintiffs' subpoena on Dr. Oates in the Middle District of Tennessee (where Dr. Oates lives and works). Dr. Oates argued that the Court should quash Plaintiffs' subpoena on him because it attempted to enlist him as an expert witness "against his will," and because the supposedly "marginal" evidentiary value of Dr. Oates' testimony did not outweigh the burden it would impose on him. Dr. Oates also argued that Plaintiffs had so much documentary evidence of Dr. Oates' contacts with Merck that the

documents underlying those communications should suffice, and that Plaintiffs do not need Dr. Oates' live deposition testimony, and that his deposition would be unduly burdensome.

148. On April 22, 2013, BLB&G filed Lead Plaintiffs' opposition to Dr. Oates' motion to quash Lead Plaintiffs' subpoena seeking his deposition. This Opposition was drafted by Sal Graziano and Abe Alexander of BLB&G. In it, Plaintiffs argued that, during the Class Period, Merck learned of numerous adverse facts concerning the safety of Vioxx (including facts conveyed to Merck directly by Dr. Oates), failed to disclose certain of those facts to investors, and affirmatively misrepresented the safety profile of Vioxx. Plaintiffs' Opposition brief, which BLB&G filed under seal, provided significant factual detail about the evidence supporting those assertions. Accordingly, Plaintiffs argued, there should be no real dispute that Plaintiffs' deposition subpoena on Dr. Oates seeks highly relevant factual testimony. BLB&G also argued that Dr. Oates should not be insulated from being deposed simply because he is a respected academic researcher, in part because Dr. FitzGerald is also a respected academic researcher whom the Eastern District of Pennsylvania had already ruled should be required to give deposition testimony. In sum, Plaintiffs argued, Dr. Oates is the individual best suited to testify about the meaning of the information that he personally provided to Merck, including whether he provided to, or received from, Merck critical information that is not reflected in the documents themselves.

149. On May 6, 2013, Dr. Oates' counsel filed a motion to file a reply brief in further support of its motion, which argued that the Court should quash Plaintiffs' subpoena on Dr. Oates because it imposes an "undue burden" on him. The Court granted the motion to file a reply brief on May 7, 2013.

150. On May 8, 2013, the Tennessee court ordered that Plaintiffs could depose Dr. Oates concerning his knowledge regarding research, studies, and data relating to Vioxx but limited

Plaintiffs' questioning of Dr. Oates to fact issues. The Court thus used the prior FitzGerald Order as a guide for how it ruled on Dr. Oates' motion. And, like Dr. FitzGerald's deposition, the deposition of Dr. Oates, conducted by Sal Graziano in Tennessee, provided Plaintiffs with additional strong evidence of how Merck's outside consultants communicated their serious concerns to Merck about the serious risks of Vioxx, which largely went ignored.

d. Dr. Carlo Patrono

151. On May 16, 2013, Lead Plaintiffs wrote to Magistrate Judge Waldor requesting approval of a proposed form of Order for the issuance of Letters of Request through the Hague Convention, which was necessary to depose a key witness, Carlo Patrono, in Italy before the end of fact discovery. The Letters were prepared by Kristin Meister of BLB&G.

152. Dr. Carlo Patrono was another outside consultant with whom Merck discussed the CV risk of Vioxx and the purported cardio-protective effect of Naproxen. [redacted] Lead Plaintiffs deposed Dr. Patrono on August 13, 2013 in Rome, Italy, after negotiating the date and time of his deposition with his counsel. Only Sal Graziano and Adam Wierzbowski of BLB&G attended the deposition for Plaintiffs. As with the depositions of Drs. FitzGerald and Oates, Plaintiffs argued that the testimony of Dr. Patrono proved to be a powerful example of yet another outside expert (the third of the three trusted wise men) [redacted] privately pointing Merck to evidence undermining its Naproxen Hypothesis at the time Merck's public statements were being made. As with Drs. Oates and

FitzGerald, Dr. Patrono had never been previously deposed in any prior *Vioxx* litigation.[9]

e. Dr. Loren Laine

153. On May 9, 2013, BLB&G served subpoenas on counsel for Dr. Loren Laine seeking Dr. Laine's deposition and the production of documents. Dr. Laine is an expert gastroenterologist who consulted for Merck on the VIGOR trial. Dr. Laine was listed as the second author of the *NEJM* medical journal article that published the formal VIGOR results. In addition to his consulting duties for Merck related to VIGOR, Dr. Laine was also a key paid spokesperson and opinion leader for Merck about Vioxx throughout the Class Period, attending conferences and presenting to members of the public on the GI benefits of the drug. Dr. Laine also gave video interviews for Merck describing the GI benefits of Vioxx versus traditional NSAIDs and, in outtakes not publicly disclosed during the Class Period, described data that Merck used on the GI risks of NSAIDs as "totally incorrect" and "bogus."

154. Plaintiffs sought Dr. Laine's testimony concerning his communications with Merck on critical issues, such as the VIGOR results, to provide important evidence concerning Merck's state of mind during the Class Period. Dr. Laine was a percipient witness during the relevant time period and was compensated by Merck for his consulting services.

155. On May 22, 2013, counsel for Dr. Laine sent Adam Wierzbowski a letter setting forth Dr. Laine's objections to Plaintiffs' subpoena. Dr. Laine's counsel also asked Plaintiffs to

[9] On January 6, 2014, Lead Plaintiffs wrote to Magistrate Judge Waldor to request formal withdrawal of the Letter of Request to permit discovery of evidence in Italy through the deposition of Dr. Patrono. Since the parties had reached an agreement regarding the deposition outside of the formal Hague Convention process (and BLB&G deposed Dr. Patrono on August 13, 2013), the Italian Judicial Authority required a formal withdrawal of the request, and the letter included a proposed Order and Withdrawal Letter for the Court's approval. The Court granted that request the next day.

withdraw the subpoena seeking Dr. Laine's deposition, and stated that if it is not withdrawn, Dr. Laine's counsel would file a motion to quash it, or for a Protective Order.

156. Plaintiffs did not agree to withdraw their subpoena on Dr. Laine, and on June 13, 2013, counsel for Dr. Laine filed a motion to quash Plaintiffs' subpoena in the U.S. District Court for the District of New Jersey. Dr. Laine moved to quash the subpoena on the grounds that (i) Plaintiffs sought Dr. Laine's unsolicited expert opinion; and (ii) since Dr. Laine is a full time academic and had been once previously deposed in Vioxx-related litigation, the deposition would impose an unjustifiable burden on him. On July 1, 2013, BLB&G filed a memorandum in opposition to Dr. Laine's motion to quash the subpoena on him, or in alternative, for protective order. Lead Plaintiffs disputed Dr. Laine's claim that his prior deposition provided sufficient information on "his prior communications and activities in connection with Vioxx and/or Merck."

[redacted] Moreover, Plaintiffs did not participate in that deposition since discovery was stayed in this case at the time and Plaintiffs did not have the opportunity to examine him on issues relevant to this case. The risk of losing this motion was substantial, as Plaintiffs would be at a distinct disadvantage if they did not have the opportunity to examine Dr. Laine.

157. On July 30, 2013, Lead Plaintiffs wrote to Magistrate Judge Waldor requesting an update on the Court's ruling on the motion to quash Lead Plaintiffs' subpoena filed by Dr. Laine. Dr. Laine's deposition was tentatively scheduled for August 5, 2013, depending upon the Court's ruling on the motion to quash. If the Court ruled in favor of Dr. Laine, Lead Plaintiffs would not be able to depose this key witness. However, BLB&G subsequently reached an agreement with Dr. Laine's counsel regarding the motion to quash, whereby Lead Plaintiffs were permitted to depose Dr. Laine and stipulated to limiting Plaintiffs' questions to fact issues. BLB&G informed

the Court of this agreement in a letter to Judge Waldor dated August 1, 2013, which attached a proposed Stipulation and Order for the Court's approval, setting forth the terms of the agreement and resolving Laine's pending motion to quash. Sal Graziano subsequently deposed Dr. Laine on August 5, 2013, which was the first time Dr. Laine was confronted at a Vioxx deposition with his video outtakes where he described data that Merck used on the GI risks of NSAIDs as "totally incorrect" and "bogus."

f. Dr. Saurabh Mukhopadhyay

158. On January 11, 2013, BLB&G filed a motion for Issuance of Letters Rogatory for the deposition of Saurabh Mukhopadhyay that was drafted by Matthew Berman of BLB&G. Dr. Mukhopadhyay was Associate Director at Merck Research Laboratories from October 1995 through February 2005. [redacted] Dr. Mukhopadhyay was not available for deposition in the United States, and BLB&G prepared Letters of Request to secure the power to compel production of documents by, and sworn testimony of, Dr. Mukhopadhyay in the Republic of India. India recognizes no other process or procedure for compelling documents or testimony from witnesses in civil actions pending in other countries. Dr. Mukhopadhyay was not previously deposed in any prior *Vioxx* litigation.

159. On April 4, 2013, Lead Plaintiffs wrote to Magistrate Judge Waldor to request an update on Lead Plaintiffs' motion for the issuance of Letters of Request on Dr. Mukhopadhyay (filed on January 11, 2013), and the Court issued those Letters on April 5, 2013. Thereafter,

BLB&G heard from Dr. Mukhopadhyay directly and on May 18, 2013, BLB&G attorneys Sal Graziano and Adam Wierzbowski obtained from Dr. Mukhopadyay an email [redacted] which in fact obviated the need for his deposition [redacted]

K. BLB&G Retained and Worked Closely with All Experts

160. BLB&G was also responsible for identifying, retaining, and working one-on-one with all of Plaintiffs' retained experts. Specifically, throughout the proceedings, the main point of contact between all Plaintiffs' experts and Plaintiffs' Co-Lead Counsel was an attorney from BLB&G, who worked closely with the experts in the research and preparation of their reports and for their depositions. The names of Plaintiffs' experts and their main BLB&G liaisons are listed below:

a. Dr. David Tabak: Sal Graziano

Dr. Tabak was testifying as an expert in market efficiency, loss causation and damages resulting from securities law violations. Dr. Tabak is a Senior Vice President at National Economic Research Associates, Inc. ("NERA") Consulting. In the area of securities class actions, Dr. Tabak and others at NERA have testified for prominent defendants on topics including class certification, liability, materiality, affected trading volume, and damage calculations in cases with allegations such as improper valuations, accounting irregularities, and merger disputes. As noted, Dr. Tabak was successfully recruited to testify in this action by Sal Graziano, who remained his primary point of contact thereafter.

b. Dr. Douglas Zipes: Adam Wierzbowski

Dr. Zipes was testifying as an expert in cardiology and pharmacology. Dr. Zipes is a Distinguished Professor at Indiana University School of Medicine and *Emeritus* Professor of Medicine, Pharmacology, and Toxicology at the Krannert Institute of Cardiology at Indiana University, a practicing cardiologist, an experienced basic scientist and clinical trial investigator, a published author of numerous medical journal articles and textbooks, as well as co-editor of Braunwald's Heart Disease, regarded as the authoritative text in cardiology.

c. Dean David Madigan: Abe Alexander

Dean David Madigan was testifying as an expert in statistics and biostatistics. He is Professor and former Chair of Statistics at Columbia University ("Columbia") where he teaches both introductory and advanced statistics. He also serves as Executive Vice President for Arts and Sciences and Dean of the Faculty at Columbia. Prior to his appointments at Columbia, Dean Madigan served as Dean of Physical and Mathematical Sciences at Rutgers University, where he also was Professor of Statistics and Director of the Institute of Biostatistics, and as Assistant, then Associate Professor in Statistics at the University of Washington.

d. Dr. Mark Woodward: Abe Alexander

Professor Mark Woodward was testifying as an expert in biostatistics and epidemiology. He currently serves as Professor of Statistics and Epidemiology at the University of Oxford (UK), Conjoint Professor of Biostatistics at the University of Sydney, Australia, and Adjunct Professor of Epidemiology at Bloomberg School of Public Health, Johns Hopkins School of Medicine in Baltimore.

e. Dr. David Kessler: David Wales

Dr. David A. Kessler was testifying as a regulatory expert on the U.S. Food and Drug Administration ("FDA"). He is currently Professor of Pediatrics and Epidemiology and Biostatistics at the University of California, San Francisco. In 1990, Dr. Kessler was appointed by President George H.W. Bush as Commissioner of the FDA and confirmed by the Senate. He continued to serve in that position under President Clinton until February 1997. As FDA Commissioner, Dr. Kessler had ultimate responsibility for implementing and enforcing the United States Food, Drug and Cosmetic Act and was responsible for overseeing five Centers within the FDA.

f. Mr. Harry Boghigian: Kristin Meister

Mr. Harry C. Boghigian was testifying as an expert in pharmaceutical marketing and sales. He is a pharmaceutical executive with over 40 years of domestic and international experience in product portfolio management, product commercialization, and marketing of pharmaceutical products who has extensive experience in general management, sales, marketing, direct-to-consumer advertising, strategic planning, and business execution of pharmaceutical companies. Mr. Boghigian is currently President of Pharma Consultants LLC, a consulting firm which he founded in 2001 which assists entrepreneurs, start-up and small to medium size healthcare companies, as well as advertising agencies, in all areas of pharmaceutical sales and marketing. Prior to this, Mr. Boghigian worked at the pharmaceutical company Hoffmann-La Roche Ltd. for 30 years. Mr. Boghigian was identified by Adam Wierzbowski, and, thereafter, Kristin Meister became his primary point of contact in the litigation.

g. Dr. David Y. Graham: Kristin Meister

Dr. David Y. Graham was testifying as a rebuttal expert in gastroenterology. He is a Professor of Medicine and Molecular Virology and Microbiology at Baylor University College of Medicine in Houston, Texas ("Baylor") where he teaches medical students, physician assistant students, graduate students, residents, and gastroenterology fellows on such topics as NSAID damage, peptic ulcers and their complications. Dr. Graham has been teaching at Baylor for over 30 years.

161. BLB&G attorneys worked closely to identify and then support each of these highly-credential experts to help them research their extensive expert reports. Specifically, on July 12, 2013, Plaintiffs served on Defendants expert reports by Dr. Tabak (368 pages, including substantive exhibits), Dr. Zipes (128 pages), Dean Madigan (80 pages), Dr. Woodward (66 pages), Dr. Kessler (38 pages), and Mr. Boghigian (78 pages).

162. Dr. Tabak's Opening Report opined that: (i) Merck's common stock and options traded in efficient markets over the Class Period; (ii) the information disclosed on September 30, 2004 in connection with Vioxx's withdrawal worldwide was material to investors and caused investors to suffer losses; and (iii) damages could be calculated based on various alternative assumptions about what Plaintiffs would have proven that Defendants should have disclosed at various points during the Class Period.

163. Dr. Zipes' Opening Report opined that: [redacted] (iii) Merck's Vioxx trials were designed and reported in a manner that obscured Vioxx's CV risks; (iv) selective COX-2 inhibition caused by Vioxx promotes blood clot formation; and (v) there was increasing scientific

consensus about the increased CV risk posed by Vioxx.

164. Dr. Madigan's Opening Report opined that:

- In February 1998, after concerns were raised about Vioxx's CV risk by Dr. FitzGerald's Protocol 023 analysis, Merck conducted an internal meta-analysis known as the Watson Analysis that attempted to quantify Vioxx's CV risk. While several aspects of the analysis actually served to mask Vioxx's CV risk, the analysis still revealed an adverse CV signal against Vioxx with reference to a neutral comparator.

- In March of 2000, Merck announced results of the VIGOR trial. Despite the fact that the study's protocol called for the exclusion of patients at high risk for adverse CV events, the CV safety results still showed that patients on Vioxx were twice as likely to suffer adverse CV events and five times more likely to suffer myocardial infarction ("MI") than patients receiving Naproxen.

- In reporting VIGOR's CV results, Merck advanced the hypothesis that the difference in adverse CV events, and in MIs in particular, observed between arms in VIGOR was likely due entirely to a putative cardio-protective effect of Naproxen, rather than a cardiotoxic effect of Vioxx (*i.e.*, the Naproxen Hypothesis). In support of the Naproxen Hypothesis, Merck stated that, in a post-hoc analysis, it had discovered that 4% of the VIGOR population were actually at high risk for CV events, and had been enrolled in the study in violation of the protocol.

- In the wake of the VIGOR trial, Merck publicly claimed that "[a]n extensive review of the safety data from all other completed and ongoing clinical trials, as well as the post-marketing experience with Vioxx showed no indication of a difference in the incidence of thromboembolic events between Vioxx, placebo, and comparator NSAIDs." [redacted]

- [redacted]

- [redacted]

- [redacted]
- [redacted]

165. Dr. Woodward's Opening Report opined that: (i) Merck's Naproxen Hypothesis was not supported by the clinical trial data or observational data available to Merck; (ii) Merck attempted to support the Naproxen Hypothesis by analogy, claiming that the difference observed in VIGOR was consistent with the risk reduction observed in other cardio-protective therapies, particularly aspirin, [redacted] (iii) Merck suggested that the fact that the VIGOR population was diagnosed with RA explained the magnitude of the difference in MIs observed in the trial because RA patients are at increased absolute risk for CV disease [redacted]

166. In his Opening Report, Dr. Kessler, Plaintiffs' FDA marketing expert, opined that: (i) practical realities prohibit the FDA from being the only guarantor of drug safety; (ii) the duties of a pharmaceutical company were based not only on FDA laws and regulations, but also on the risks and signals presented by a drug about which the company knew or was required to investigate before marketing a drug; [redacted]

[redacted]

167. In his Opening Report, Mr. Boghigian, Plaintiffs' pharmaceutical marketing expert, opined that: (i) prior to 1999, there was a substantial marketing opportunity for Vioxx – if Vioxx could be market as safe for patients – in an unsatisfied market for an effective analgesic and anti-inflammatory that reduced GI complications associated with traditional NSAIDs; (ii) because a number of Merck blockbuster drugs faced patent expiration, the financial success of Vioxx was critical to Merck's financial condition and stock price; (iii) unfavorable side effects, such as an increased risk of serious CV events, would undermine the commercial viability of Vioxx; (iv) Celebrex was the most successfully launched pharmaceutical product in the history of the pharmaceutical industry, creating steep competition for Vioxx when it was launched; (v) Vioxx was the most successful pharmaceutical launch in Merck history and the first Merck product to reach blockbuster status in such a short period of time; (vi) Merck aggressively promoted Vioxx and continued to do so very successfully after the VIGOR trial results; [redacted] (viii) Vioxx was marketed for the treatment of arthritis, which occurred largely in the elderly population – the population most susceptible to CV events; (ix) losing elderly patients with CV risks as potential customers would have impacted Vioxx sales severely, leaving only the significantly smaller short-term or acute pain patient segment of the market; (x) Vioxx's drug label was critical to its marketing success and commercial viability; (xi) if the Vioxx launch had been delayed to conduct further research to determine its CV risks, Vioxx would not have been commercially viable because Vioxx would not have been able to compete with Celebrex; (xii) Vioxx would not be commercially viable

with a CV Warning or with a Black Box CV Warning on its label at launch, or with a Black Box CV Warning following VIGOR; and (xiii) if aspirin had to be taken concomitantly with Vioxx for cardio-protection and effectively counteracted any CV risk of Vioxx, but eliminated the main GI benefit for which Vioxx was marketed, Vioxx would not have been a first line drug for a majority of patients.

168. On August 13, 2013, Defendants served seven expert reports on Plaintiffs by the following experts in the following disciplines: Dr. Lawrence H. Brent (rheumatology), Dr. Christopher M. James (damages), Dr. Lisa D. Rarick (FDA and pharmaceutical regulation), Dr. David J. Sales (gastroenterology), Dr. Douglas E. Vaughan (cardiology), Nicholas A. Flavahan (pharmacology), and Henry G. Grabowski (marketing). On August 20, 2013, Defendants served an additional expert report by Dr. Robert D. Gibbons (statistics) on Plaintiffs.

169. BLB&G then worked closely with Lead Plaintiffs' experts to help them research their extensive rebuttal reports, which Plaintiffs served on Defendants on September 4, 2013 (September 11, 2013 for the rebuttal reports of Dr. Madigan and Dr. Woodward due to Defendants' late submission of the Gibbons Report). The rebuttal reports spanned the following lengths: Dr. Tabak (319 pages, including substantive exhibits), Dr. Zipes (67 pages), Dr. Madigan (66 pages), Dr. Woodward (44 pages), Dr. Kessler (37 pages), Mr. Boghigian (57 pages), and Dr. Graham (83 pages).

170. Dr. Tabak's Rebuttal Report opined that: [redacted]

[redacted]

171. Dr. Zipes' Rebuttal Report opined that: [redacted]

[redacted]

[redacted]

172. Dr. Madigan's rebuttal report opined that none of the opinions offered by Defendants' expert witnesses changed his opinions that: [redacted]

[redacted]

[redacted]

173. Dr. Woodward's Rebuttal Report opined that Defendants' Reports failed to change the opinions Dr. Woodward offered in his Opening Report that: [redacted]

[redacted]

[redacted]

174. In his Rebuttal Report, Dr. Kessler opined that: [redacted] (ii) after withdrawal of Vioxx, the FDA was criticized by consumer groups, health professionals, and Congress and as a result the FDA's safety oversight processes were reformed; [redacted] (iv) Merck did not appropriately and timely disclose the potential risks of Vioxx; and (v) direct to consumer ("DTC") advertising can increase the harm that occurs when a drug poses safety risks and that drug is extensively promoted.

175. In his Rebuttal Report, Mr. Boghigian opined that: (i) Vioxx was an essential drug for Merck; (ii) the first mover advantage is well established in the literature and is usually only overcome with significant cost and effort, as was the case with Vioxx versus the first entrant, Celebrex; (iii) DTC advertising was crucial to the marketing of Vioxx; [redacted] (v) Merck's marketing repeatedly issued reassuring statements to the public during the Class Period that downplayed any potential CV risk related to Vioxx; (vi) a Black Box warning would have destroyed Vioxx's commercial viability; and (vii) studies and scientific debate post-dating the Class Period were irrelevant to the marketing issues in this case because contemporaneous information, not post-Class Period information, was the important factor in analyzing the marketing of Vioxx.

176. In his expert report in rebuttal to the expert report of Dr. Sales (Defendants' GI

expert), Dr. Graham opined that: (i) the GI risk related to traditional NSAIDs is both dose- and NSAID-related, meaning that the risks associated with NSAID use can be mitigated; (ii) during the Class Period, Merck made numerous statements that exaggerated the number of deaths and hospitalizations related to GI issues, the GI risks associated with traditional NSAIDs, and the GI benefits of Vioxx; [redacted] (vi) during the Class Period, numerous alternatives to Vioxx existed that posed reduced GI risk in comparison to full-dose NSAIDs alone, including NSAIDs in conjunction with a proton-pump inhibitor and Tylenol in short doses, and those therapies did not pose the same CV risks as Vioxx; and (vii) weighing Vioxx's serious CV risks (that Merck repeatedly minimized during the Class Period) against its limited GI benefits (that Merck repeatedly overstated during the Class Period), it would have been unsound medical practice to prescribe Vioxx to most patients as safer alternative pain therapies were available during the Class Period.

177. The parties' expert witnesses were deposed on the following dates and in the following locations:

Expert	Date	Location
Dr. David Tabak	July 12, 2012 (class certification) November 8, 2013 (merits)	New York, NY
Dr. Paul Gompers	September 11, 2012	Boston, MA

	(class certification)	
Dean David Madigan	October 9, 2013	New York, NY
Dr. Mark Woodward	October 11, 2013	New York, NY
Dr. Douglas Zipes	October 16, 2013	New York, NY
Dr. David Kessler	October 18, 2013	San Francisco, CA
Mr. Harry Boghigian	October 23, 2013	New York, NY
Dr. Lisa Rarick	October 29, 2013	Washington, D.C.
Dr. Robert D. Gibbons	November 1, 2013	Chicago, IL
Dr. David Y. Graham	November 6, 2013	New York, NY
Dr. Douglas E. Vaughan	November 8, 2013	New York, NY
Dr. David J. Sales	November 12, 2013	Chicago, IL
Dr. Nicholas A. Flavahan	November 14, 2013	New York, NY
Dr. Lawrence H. Brent	November 15, 2013	Philadelphia, PA
Dr. Christopher M. James	November 22, 2013	New York, NY

L. BLB&G Responded to Defendants' Contention Interrogatories

178. On June 13, 2013, Defendants served on Plaintiffs their First Set of Contention Interrogatories on Plaintiffs. One set was served by Defendants Merck and Reicin (styled as Defendants' Second Set of Interrogatories), and another set was served by Defendant Scolnick (styled as Defendant Scolnick's First Set of Interrogatories).

179. On December 13, 2013, BLB&G served on Defendants Plaintiffs' detailed Responses and Objections to the Defendants' Contention Interrogatories. The Responses, which BLB&G drafted, set forth in significant detail all of the facts supporting Lead Plaintiffs' claims

against the Defendants, cited more than 1,350 documents, and spanned 543 single-spaced pages. BLB&G's Responses were the product of thorough discovery review and months of work by numerous attorneys at the firm, led by Sal Graziano, David Wales, and Adam Wierzbowski.

M. BLB&G Drafted Plaintiffs' Successful Opposition to Defendants' Motions for Summary Judgment

180. On January 17, 2014, Defendants moved for summary judgment, arguing that there was no evidence that any Defendant intentionally or recklessly deceived investors and that Plaintiffs could not prove damages because the purportedly undisputed facts demonstrated that Vioxx was commercially viable. Defendants' Rule 56.1 statement had 407 paragraphs and Defendants submitted 174 exhibits in support of their motion. Defendant Scolnick also moved for summary judgment arguing that Plaintiffs could not establish their Section 10(b) claim against Dr. Scolnick, and that Miss. PERS' Section 20A claim failed against Dr. Scolnick. Scolnick also argued that Plaintiffs' Section 20(a) claim failed because Plaintiffs could not establish a predicate violation of the Exchange Act by Merck and could not show that Defendant Scolnick was a "culpable participant" in the alleged fraud. Dr. Scolnick's Rule 56.1 statement included 60 separate paragraphs of additional material and 54 exhibits.

181. Lead Plaintiffs opposed Defendants' motions for summary judgment on March 14, 2014. Lead Plaintiffs submitted a 90-page memorandum of law in opposition to Defendants' motions for summary judgment, which was drafted by BLB&G attorneys Sal Graziano, David Wales, Adam Wierzbowski, Kristin Meister, Abe Alexander and Catherine McCaw. The Opposition detailed the facts of the case including that: (i) Defendants rushed Vioxx to market to "preserve" Merck; (ii) Merck, Scolnick and Reicin made and caused false and misleading statements and omissions in the pre-VIGOR and post-VIGOR time periods; (iii) Merck designed VIGOR to minimize any adverse CV result; and (iv) Merck withdrew Vioxx from the market in

September 2004 and Vioxx remained off the market as of the filing, which is still true today.

182. Lead Plaintiffs' Opposition further argued that: (i) Defendants Scolnick and Reicin acted with scienter; (ii) Defendant Merck acted with scienter; (iii) Scolnick was liable for the false statements he made and those he controlled through the date of his retirement; (iv) Lead Plaintiff Miss. PERS had standing to bring the class's Section 20A insider trading claim against Scolnick; (v) Plaintiffs could prove damages at trial based on various jury determinations regarding Vioxx's commercial viability; and (vi) Scolnick was a "culpable participant" in the alleged fraud. Lead Plaintiffs' own Rule 56.1 statement had 1,078 paragraphs and Plaintiffs submitted 756 exhibits as part of the Graziano Declaration in support of their Opposition. BLB&G also drafted the lengthy and detailed Responses to Defendant's own Rule 56.1 Statements, and those Responses totaled 204 pages.

183. On April 11, 2014, Defendants Merck and Reicin filed their reply papers in further support of their motion for summary judgment. Defendants' reply memorandum argued that: (i) there was no evidence that Defendants knowingly or recklessly misled investors with the four pre-VIGOR statements regarding "the most common side effects reported in clinical trials" or Vioxx's "safety" profile; (ii) there was no evidence that Defendants intentionally or recklessly misled investors in making the 29 post-VIGOR statements regarding the Naproxen Hypothesis and Merck's clinical trial data for Vioxx; and (iii) there was no evidence to support Plaintiffs' damages model.

184. Also on April 11, 2014, Defendant Scolnick submitted his reply papers in further support of his motion for summary judgment in which he argued: (i) only four purportedly actionable statements remained against him; (ii) Plaintiffs had not set forth evidence to establish that Dr. Scolnick's opinion concerning Vioxx's safety was without a reasonable basis and therefore

objectively false; (iii) Plaintiffs had not set forth evidence establishing that Dr. Scolnick's opinion concerning the safety of Vioxx was rendered with scienter and therefore subjectively false; (iv) his 1999 Form 10-K statement and *Bloomberg News* statement should be dismissed; (v) Miss. PERS had not set forth evidence establishing that it could sustain its Section 20A claim against Dr. Scolnick; and (iv) Plaintiffs had not set forth evidence establishing Dr. Scolnick was liable as a control person under Section 20(a).

185. On May 13, 2015, the Court entered an Order largely denying Defendants' motions for summary judgment. Specifically, the Court granted Defendants' summary judgment motions ***only*** with respect to: (i) statements made by Merck between May 21, 1999 and March 26, 2000, i.e., the alleged misstatements prior to public announcement of the results of VIGOR on March 27, 2000 (and which dated back to the first-filed complaint in this Action); and (ii) a December 2001 statement by Dr. Scolnick in the *Bloomberg News* article. The Court otherwise denied summary judgment as to the remaining arguments and alleged false statements.

N. BLB&G Retained Lead Plaintiffs' Jury Consultant and Conducted a Successful Mock Trial

186. Max Berger and Sal Graziano identified and retained Plaintiffs' jury consultant, with whom BLB&G had worked previously and successfully in the *VYTORIN Securities Litigation*, to act as the Plaintiffs' jury consultant in this case. BLB&G worked with the consultant to prepare for, and conduct, a successful mock trial exercise from July 29-30, 2014. Sal Graziano and David Wales gave the presentations, with Sal presenting the Plaintiffs' case and David presenting the Defendants' case to approximately 36 mock jurors over the course of two days. At the time of settlement, BLB&G had several follow up meetings with Plaintiffs' jury consultant and was planning for a second round of mock jury exercises, which were originally scheduled for November 2015, but rescheduled for January 20-21, 2016, given the parties' substantial pretrial

disclosures due in November 2015, further described below.

O. BLB&G Drafted Plaintiffs' Motion for Bifurcation

187. Particularly after the Court consolidated this class action with the numerous pending opt-out actions for trial, there existed the risk that Defendants would frame the class action trial so as to emphasize issues that were specific to individual plaintiffs, including dozens of opt-out plaintiffs, and thereby attempt to distract jurors away from Merck's misconduct. As a result, BLB&G focused on that risk and Sal Graziano and Abe Alexander drafted a motion to bifurcate the common class issues to a first phase of the trial and leave the remainder of the plaintiff-specific issues to a post-liability second phase. That issue was still pending at the time of the settlement.

P. BLB&G Identified, and Moved to Exclude, the Two Defense Experts Most Subject to Attack at the *Daubert* Stage

188. On August 28, 2015, rather than follow Defendants' overbroad approach (discussed below) of moving to exclude nearly all but two of Plaintiffs' experts, BLB&G identified the two defense experts most subject to *Daubert* challenges (damages expert Christopher James, and FDA expert Lisa Rarick) and moved to exclude them. The parties settled the Action before the Court ruled on these motions.

1. BLB&G Moved to Exclude Defendants' Damages Expert, Dr. Christopher James

189. Testimony from Dr. Christopher James would have been critical to any attempt by Defendants to support their affirmative truth-on-the-market defense and Defendants' theory of damages. [redacted]

[redacted]

190. Defendants opposed Plaintiffs' motion on September 18, 2015, and, on September 28, 2015, Lead Plaintiffs filed a reply brief in support of their Motion to Limit Dr. James' Testimony, again principally drafted by Sal Graziano and Katherine Sinderson.

2. BLB&G Moved to Exclude Defendants' FDA Expert, Dr. Lisa Rarick

191. On August 28, 2015, BLB&G filed a Motion to Limit the Testimony of Dr. Lisa D. Rarick. The motion was drafted by BLB&G Partners David Wales and Katherine Sinderson. Dr. Rarick, Defendants' FDA expert, was a critical witness to supporting Defendants' arguments regarding Merck's compliance with FDA regulations and "sound scientific practice." [redacted] In their Motion to Limit the Testimony of Dr. Rarick, Lead Plaintiffs

argued, among other things, that Dr. Rarick's proffered opinions were irrelevant to the litigation, unreliable speculation, factually and legally wrong (including contrary to Supreme Court precedent), and far beyond the scope of her purported qualifications.

192. Defendants opposed Plaintiffs' motion on September 18, 2015, and on September 28, 2015, Lead Plaintiffs filed a reply brief in further support of their Motion to Limit the Testimony of Dr. Rarick principally drafted by David Wales and Katherine Sinderson.

Q. BLB&G Defended All of Plaintiffs' Experts from Attack at the *Daubert* Stage

193. On August 28, 2015, Defendants filed seven *Daubert* motions to exclude: (i) the proffered expert testimony of Dr. Tabak; (ii) certain expert opinions proffered by Dr. Zipes; (iii) certain expert opinions proffered by Dean Madigan; (iv) the proffered expert testimony of Mr. Boghigian; (v) certain expert opinions proffered by Dr. Kessler; (vi) the proffered expert testimony of Dr. David J. Graham of the FDA; and (vii) the proffered expert and/or lay opinion testimony of Drs. Gregory Curfman, James Fries, and Eric Topol. As of the time of the settlement in this Action, the Court had not yet ruled on these outstanding motions.

194. BLB&G drafted ***all*** of Plaintiffs' Oppositions to Defendants' motions to exclude this testimony, and filed them on September 18, 2015. Defendants' motions were still outstanding at the time of the settlement and presented risks to the Settlement Class's recovery. Below is the list of Plaintiffs' experts and the BLB&G attorneys who were principally responsible for drafting the corresponding briefs in opposition to Defendants' motions to preclude them:

a. Dr. David Tabak: Sal Graziano;

b. Dr. Douglas Zipes: Adam Wierzbowski;

c. Dean David Madigan: Abe Alexander;

d. Mr. Harry Boghigian: Kristin Meister;

e. Dr. David Kessler: David Wales;

f. Dr. David J. Graham: Katherine Sinderson; and

g. Drs. Curfman, Topol and Fries: John Rizio-Hamilton and Jai Chandrasekhar.

Additional details concerning the grounds on which Defendants moved to preclude this expert testimony is set forth below.

1. BLB&G Defended Plaintiffs' Damages Expert Dr. Tabak

195. On August 28, 2015, Defendants moved to preclude the expert opinions of Plaintiffs' damages expert, Dr. David Tabak. Lead Plaintiffs faced a significant risk of losing their ability to use Dr. Tabak's damages model due to Defendants' aggressive attack on his methodology and his use of assumptions that purportedly did not "fit" the case. Defendants argued that [redacted]

196. On September 18, 2015, BLB&G filed the brief in opposition to Defendants' motion to exclude Dr. Tabak's expert opinions. In their Opposition, principally drafted by Sal Graziano, BLB&G argued that Defendants did not take issue with Dr. Tabak's qualifications, his analyses of market efficiency, or his event study damages methodology. Rather, Defendants took issue with Lead Plaintiffs' other affirmative evidence. In other words, Defendants were merely

disagreeing with whether Plaintiffs' trial proof supported Dr. Tabak's damages analysis, which was not a basis to disqualify Dr. Tabak under *Daubert*.

197. BLB&G further argued that [redacted]

198. Plaintiffs argued that [redacted]

[redacted]

[redacted] Limiting or excluding Dr. Tabak's testimony could have left Lead Plaintiffs without a reliable method of calculating the damages suffered by Settlement Class members, or alternatively, could have significantly decreased the amount of damages awarded to Class members, and Defendants' motion thus presented a significant risk to recovery.

2. BLB&G Defended Plaintiffs' Cardiology Expert Dr. Zipes

199. On August 28, 2015, Defendants moved to exclude large portions of Dr. Zipes' expert opinions, such as (i) Dr. Zipes' opinion that Merck should have never brought Vioxx to market; (ii) Dr. Zipes' opinions on Vioxx's proper labeling; and (iii) Dr. Zipes' opinion that Vioxx is more harmful than Celebrex. Defendants also argued that the Court should broadly prohibit Dr. Zipes from reciting factual narratives at trial.

200. On September 18, 2015, BLB&G filed Lead Plaintiffs' brief in opposition to Defendants' motion to exclude Dr. Zipes' testimony, principally drafted by Adam Wierzbowski. Plaintiffs' brief explained that under the Third Circuit's "trilogy of restrictions on expert testimony: qualification, reliability and fit," Dr. Zipes was well qualified to opine that Merck should have withdrawn Vioxx or sold it only with a CV Black Box warning after VIGOR. Plaintiffs argued that, as a cardiovascular expert, Dr. Zipes understands the grave danger of CV risk, has extensive experience, including on advisory committees, and relies on drug labels every day when prescribing drugs to patients. Indeed, doctors like Dr. Zipes have repeatedly given such testimony in prior cases.

201. Plaintiffs' brief also described [redacted]

[redacted]

[redacted]

[redacted]

202. Dr. Zipes was a key expert witness for Plaintiffs on the complex scientific issues surrounding Vioxx's CV risk. Any limitations on Dr. Zipes' pivotal testimony could have severely jeopardized the Settlement Class's recovery. Without Dr. Zipes' testimony, it might have been more difficult for the jury to understand CV issues key to the case. For example, on March 9, 2000, Dr. Scolnick discussed urinary metabolites as indicative of the mechanism by which he believed Vioxx caused CV events. That connection might be mysterious to a layman.

3. BLB&G Defended Plaintiffs' Statistics Expert Dean David Madigan

203. On August 28, 2015, Defendants moved to preclude the expert opinions of Plaintiffs' statistics expert, Dean David Madigan. In their motion to exclude Dean Madigan's testimony, Defendants argued [redacted]

204. On September 18, 2015, BLB&G filed Lead Plaintiffs' Opposition to Defendants'

motion to preclude Dean Madigan's testimony, principally drafted by Abe Alexander. Plaintiffs argued that Defendants mischaracterized Dean Madigan's proffered opinions. Specifically, Dean Madigan opined that the analyses of Merck's Vioxx safety data he presented flowed entirely from Merck's pre-specified methodology, from Merck's own data, and from the Company's chosen endpoints. In arguing that Dean Madigan's opinions were supported by the record, Plaintiffs cited, among other things, the clinical protocols from Merck's own Alzheimer's trials and contemporaneous statements made by Merck personnel agreeing to perform the Alzheimer's analyses in question. Lead Plaintiffs also argued that the analyses that Merck performed during the Class Period made it clear that the challenged analyses were essential to evaluating Vioxx's safety.

205. Plaintiffs' arguments opposing Defendants' motion to exclude Dean Madigan's testimony were meritorious and would likely have prevailed, but Defendants' motion presented serious risks to the Settlement Class's recovery. Dean Madigan was a key expert witness for Plaintiffs, and his testimony was critical to establishing Defendants' scienter with respect to a number of alleged false and misleading statements, including Defendants' statements that Merck's data showed "no difference" in CV risk between Vioxx and non-Naproxen comparators. Any limitations imposed on his testimony would have made proving scienter with respect to those statements difficult.

4. BLB&G Defended Plaintiffs' Marketing Expert Harry Boghigian

206. On August 28, 2015, Defendants filed a motion to exclude the testimony of Plaintiffs' drug marketing expert witness, Harry Boghigian. In their *Daubert* motion, Defendants argued that Boghigian's testimony concerning the post-VIGOR time period should be excluded in its entirety because it was based on unsupported assumptions and no discernible or reliable

methodology. Defendants argued that Mr. Boghigian's "unsupported assumption" was the fact that Vioxx would have been marketed with a Black Box warning following VIGOR. Defendants also argued that to the extent that Mr. Boghigian provided a methodology for determining commercial viability, he failed to apply it to his opinion. [redacted]

207. On September 18, 2015, BLB&G filed Lead Plaintiffs' Opposition to Defendants' motion to limit or exclude Mr. Boghigian's testimony, principally drafted by Kristin Meister. Lead Plaintiffs argued, among other things, that: (i) Mr. Boghigian had extensive experience and specialized knowledge of pharmaceutical sales and marketing based on his over 40 years of employment in the industry; (ii) he utilized a reliable, standard cost/benefit methodology in arriving at his opinions regarding the commercial viability of Vioxx with a Black Box warning; (iii) the hypotheticals he opined upon were not only permissible, but extensive evidence existed to support them; and (iv) his opinions both "fit" with the facts of the pre-VIGOR market dynamics and were supported by the facts of the post-VIGOR time period. [redacted]

5. BLB&G Defended Plaintiffs' FDA Expert Dr. David Kessler

208. On August 28, 2015, Defendants filed a motion to preclude the testimony of Plaintiffs' FDA expert, Dr. David Kessler. Part of Defendants' strategy in this case was [redacted]

[redacted] Limitations or restrictions on Dr. Kessler's testimony would have weakened Lead Plaintiffs' counter-arguments.

209. In Defendants' motion, they argued that Dr. Kessler's opinions regarding the legal obligations of pharmaceutical companies should be excluded because his legal opinions usurped the Court's role to provide the law to the jury, and the independent duty that he imposed on pharmaceutical companies was baseless and contrary to law. Defendants further argued that Dr. Kessler's opinions regarding the FDA's lack of resources and post-withdrawal reforms were irrelevant and unduly prejudicial. To the extent that Dr. Kessler opined about CV safety signals prior to Vioxx's initial approval, Defendants noted that the Court had already rejected the relevance of evidence from that time period and it should likewise be excluded from Dr. Kessler's expert testimony.

210. On September 18, 2015, BLB&G filed Lead Plaintiffs' Opposition to Defendants' motion to exclude the expert opinions of Dr. Kessler, principally drafted by David Wales. In Plaintiffs' Opposition to Defendants' motion, BLB&G argued that Dr. Kessler was not offering opinions on Merck's legal obligations or on the ultimate legal conclusions of the case, but rather, he was explaining what was widely understood in the industry that informed how drug companies

such as Merck viewed their role versus that of the FDA regarding drug safety. Furthermore, courts had routinely ruled as admissible Dr. Kessler's testimony regarding the independent responsibilities of drug manufacturers (as understood by industry participants and by regulators). Lead Plaintiffs also argued that Dr. Kessler's opinions regarding pre-approval tests and post-Class Period events were relevant, and provided important context for his opinions regarding Class Period practices and to rebut Defendants' FDA experts.

6. BLB&G Defended Lead Plaintiffs' Reliance on the Testimony of Dr. David J. Graham

211. On August 28, 2015, Defendants moved to preclude Plaintiffs' reliance on the testimony of Dr. David J. Graham. Dr. Graham, the FDA's Associate Director for Science and Medicine, Office of Drug Safety, Center for Drug Evaluation and Research during the Class Period, was an important Plaintiffs' witness to rebut Defendants' heavy reliance on the FDA's approval of Vioxx. Plaintiffs relied on Dr. Graham's video testimony for his percipient factual testimony regarding a large study he performed of Vioxx (the "Kaiser" study), as well as his first-hand experiences at the FDA in monitoring and regulating drugs after the FDA approved them for marketing. However, in an abundance of caution, Plaintiffs designated Dr. Graham's testimony regarding the FDA's internal policies and procedures as potential expert testimony. Defendants moved to preclude that testimony by levying a number of attacks against Dr. Graham's reliability and qualifications.

212. First, Defendants argued [redacted]

[redacted]

213. On September 18, 2015, BLB&G filed Lead Plaintiffs' Opposition to Defendants' motion to limit or exclude the testimony of Dr. Graham, principally drafted by Katherine Sinderson. Plaintiffs argued that (i) Defendants did not challenge Dr. Graham's qualifications as a drug safety and FDA expert to offer his analyses; (ii) Dr. Graham's testimony regarding his first-hand experience at the FDA is percipient testimony and should not be subject to challenge as "unreliable"; (iii) Defendants wrongly contend that Dr. Graham's testimony does not "fit" this case; for example, they omitted any mention of Dr. Graham's Kaiser study and its role in this case, including that it relates to one of the specific false statements in this case as noted by the Court; and (iv) Defendants' contention that Dr. Graham cannot be heard to criticize the FDA because of vague and unsupported "preclusion" principles lacked any legal foundation. However, there remained the possibility that the Court might accept one of Defendants' attacks on Dr. Graham. If that was the case, then Plaintiffs would be at a distinct disadvantage, because Plaintiffs expected to also rely on Dr. Graham's testimony in rebutting Defendants' defense at trial that the FDA had approved Vioxx as safe and effective.

7. BLB&G Defended Lead Plaintiffs' Reliance on the Testimony of Drs. Curfman, Topol and Fries

214. On August 28, 2015, Defendants filed a motion to exclude the testimony of Drs. Gregory Curfman, James Fries, and Eric Topol, who were independent doctors critical of Merck's claims and conduct regarding Vioxx during the Class Period. In Defendants' motion, they argued that Drs. Curfman, Fries, and Topol did not qualify as specialized lay opinion witnesses because, as medical doctors, their opinions were based on their generalized expertise as scientists and physicians. Defendants further argued that Lead Plaintiffs could not offer their opinions as experts because Plaintiffs failed to disclose them as experts within the timeframe set by the Court's Scheduling Order, and Defendants would be prejudiced because the witnesses were never deposed in this case. Defendants also contended that even if Lead Plaintiffs were allowed to offer these witnesses as experts, their opinions were inadmissible under Rule 702 and *Daubert* because Plaintiffs had not shown that these witnesses employed reliable methodologies or that their opinions "fit" the facts and issues of the case.

215. On September 18, 2015, BLB&G filed Lead Plaintiffs' Opposition to Defendants' motion to exclude the testimony of Drs. Curfman, Topol and Fries, principally drafted by John Rizio-Hamilton and Jai Chandrasekhar. As BLB&G argued, these doctors were percipient witnesses to key events during the Class Period and participated in the supposed "debate" at the core of Merck's defense. These independent witnesses came to very different conclusions than Merck did about the safety of Vioxx, communicated their conclusions about Vioxx's dangers to Merck at the time of the events in question, and saw first-hand how Merck tried to silence Vioxx's critics. Limitation or exclusion of their testimony could have weakened Lead Plaintiffs' counter-arguments against Defendants' defense that a widespread debate was ongoing regarding the CV risks of Vioxx.

216. Specifically, in their Opposition to Defendants' motion, Lead Plaintiffs argued [redacted]

[redacted]

R. BLB&G Spearheaded Plaintiffs' Motion *in Limine* Strategy

217. Based on its prior experience in litigating other securities class actions, including the *VYTORIN Securities Litigation* in the same District, BLB&G led the formulation of the list of 19 potential Plaintiffs' motions *in limine* and five trial brief motions, drafted a number of those motions, and delegated other specific motions that it and the other Co-Lead Counsel were responsible for drafting, then edited and began the process of finalizing those motions (which were not due until after the parties reached the settlement).

218. In addition, in a series of letters to the Court in July 2015, Lead Plaintiffs and Defendants presented their positions regarding Lead Plaintiffs' proposed motion to further amend the Complaint. BLB&G sought to strengthen Lead Plaintiffs' claims case by conforming the

Complaint to include an additional false statement that Lead Plaintiffs had uncovered during discovery and to comply with the Court's decision on summary judgment. Specifically:

- On July 7, 2015, Lead Plaintiffs, in a letter principally drafted by Adam Wierzbowski of BLB&G, wrote to Magistrate Judge Waldor alerting the Court of Lead Plaintiffs' intention to file a motion to amend the Complaint to add an additional alleged false and misleading statement made by Defendant Scolnick. Scolnick made the statement during a videotaped December 12, 2000 Merck annual meeting with Wall Street analysts, in which Scolnick stated that the Naproxen Hypothesis was the "unambiguous" explanation for the five-fold increase in heart attacks observed in VIGOR, which the Court already considered in its May 13, 2015 Opinion denying summary judgment. The Court held and found that such statement was "relevant evidence" of Dr. Scolnick's "state of mind, and derivatively Merck's scienter, in expressing belief in the Naproxen Hypothesis." The Court had noted in its summary judgment decision that this statement was not pled in the Complaint, and Plaintiffs argued that it was only produced in discovery on one of over 100 unmarked and unrelated video files and first discovered after the deadline to amend the Complaint.

- On July 8, 2015, Defendants Merck and Reicin responded to Lead Plaintiffs' July 7, 2015 letter and opposed Lead Plaintiffs' intended motion to amend the Complaint.

- On July 9, 2015, Defendant Scolnick also wrote to Magistrate Judge Waldor to oppose Lead Plaintiffs' intended motion to amend the Complaint.

219. During a conference with the Court on July 13, 2015, Judge Waldor indicated that she would deny a motion to amend the Complaint if Plaintiffs made it at that time. As a result, BLB&G adopted the strategy of including on their list of intended trial brief motions the motion that, if Defendants argued to the jury that Defendants never stated publicly that it was "certain" or "unambiguous" (or using similar words) that Naproxen's purported cardio-protective effect explained the difference in CV events in the VIGOR trial, then Plaintiffs would be permitted to add Dr. Scolnick's December 12, 2000 statement that the Naproxen Hypothesis was the unambiguous explanation for the VIGOR results to the verdict sheet. Other motions *in limine* that BLB&G planned to file included:

- Motion *in Limine* No. 1: To preclude any suggestion that the FDA's or other drug agencies' review or approval for sale of Vioxx means that Defendants' statements regarding the safety of Vioxx cannot be challenged, that the government endorsed or approved the accuracy and completeness of Defendants' public statements regarding Vioxx's safety or Defendants' public statements concerning Naproxen, or that the information Defendants provided to the FDA satisfied Defendants' disclosure obligations under the securities laws.

- Motion *in Limine* No. 2: To preclude any reference to whether any Plaintiffs, Defendants, their employees, investment advisers, consultants, witnesses or their family members took Vioxx, Celebrex, Bextra or other selective Cox-2 inhibitors.

- Motion *in Limine* No. 3: To preclude Defendants from presenting evidence that a black box warning was added to Celebrex and other NSAIDs after the end of the Class Period.

- Motion *in Limine* No. 4: To preclude testimony by Drs. FitzGerald, Oates or Patrono regarding Defendants' state of mind.

- Motion *in Limine* No. 5: To preclude reference to the SEC's supposed approval of Merck's public disclosures or the SEC's failure to prosecute or take action against Merck.

- Motion *in Limine* No. 6: To preclude Defendants from arguing that Plaintiffs and class members "gambled" on their investments or "took a risk" on Merck securities, or making similar claims.

- Motion *in Limine* No. 7: To preclude reference to Merck's, and current and former Merck employees' (including the Individual Defendants'), alleged good works, commitment to patient safety, life-saving efforts or products, scientific research and development efforts or expenditures, charitable contributions, and/or character.

- Motion *in Limine* No. 8: To preclude reference to the number of persons Merck employs in New Jersey, or the size of Merck's operations in New Jersey.

- Motion *in Limine* No. 9: To preclude reference to any effect that a judgment for Plaintiffs might have on Merck or the Individual Defendants, the ability of patients to purchase or have available medications, the cost of medicine or insurance, the viability of the pharmaceutical industry, or that a judgment against Defendants may result in layoffs or people losing their jobs.

- Motion *in Limine* No. 10: To preclude reference to the Class's or individual plaintiffs' actual or estimated aggregate damages.

- Motion *in Limine* No. 11: To preclude reference to the Plaintiffs; or, in the alternative, to preclude reference to Plaintiffs' investments, investment strategies,

size, purported sophistication, location, other litigation experience, arrangements with counsel, and other irrelevant and/or prejudicial information.

- Motion *in Limine* No. 12: To preclude reference to any purported "litigation crisis," "lawsuit crisis," "lawsuit abuse," "lawyer driven litigation" or similar terms or phrases, or attacks on the integrity of Plaintiffs' counsel or references to the conduct of Plaintiffs' counsel unrelated to this litigation.

- Motion *in Limine* No. 13: To preclude reference to Plaintiffs' (or the Court's) dismissal, amendment, changes to or withdrawal of any claims, Defendants, Plaintiffs, theories of liability or allegations.

- Motion *in Limine* No. 14: To preclude introduction of complaints filed against Merck and/or Pfizer during the Class Period, including personal injury and securities complaints.

- Motion *in Limine* No. 15: To preclude introduction of post-Class Period sales of Celebrex and introduction of Pfizer Form 10-Ks, 10-Qs and other post-Class Period Pfizer public filings.

- Motion *in Limine* No. 16: To preclude Defendants from offering expert or specialized lay opinion testimony through witnesses not identified as offering such testimony in the parties' Joint Pretrial Order.

- Motion *in Limine* No. 17: To preclude any mention of, or introduction of evidence regarding, any statements or proposals by Plaintiffs in the *Honeywell* Action with respect to attempting to opt back into the Class.

- Motion *in Limine* No. 18: To preclude evidence or argument regarding declines in Merck's stock price without evidence that the declines were statistically significant.

- Motion *in Limine* No. 19: To preclude Defendants from arguing or offering evidence of Individual Plaintiffs' purported lack of standing.

- Plaintiffs' Trial Brief Motions:

    a. Motion that, if Defendants argue to the jury that Defendants never stated publicly that it was "certain" or "unambiguous" (or using similar words) that Naproxen's purported cardio-protective effect explained the difference in cardiovascular events in the VIGOR trial, or that Defendants Reicin or Merck did not author the November 2000 *NEJM* article about the VIGOR results, then Plaintiffs would be permitted to add Dr. Scolnick's December 12, 2000 statement that the Naproxen Hypothesis was the unambiguous explanation for the VIGOR results, and Merck's November 23, 2000 press release announcing the VIGOR *NEJM* paper, to the verdict sheet.

b. Motion that, if Defendants presented a truth-on-the-market defense, Plaintiffs would be permitted to present evidence concerning the Vioxx-related disclosures in the November 1, 2004 *Wall Street Journal* article, and Merck's corresponding stock price decline in response to the article, to rebut Defendants' truth-on-the-market defense.

c. Motion to preclude Defendants from asserting a reliance on counsel defense related to the drafting, review, editing, making, or approval of Defendants' allegedly false and misleading public statements, including because Defendants did not produce the contents of privileged communications during discovery.

d. Motion to preclude Defendants from arguing that Lead Plaintiff Mississippi PERS or other Plaintiffs or Class members must have purchased the actual Merck shares sold by Scolnick in order to sustain their Section 20A claim against him, or to ensure that a charge in accordance with the Court's prior rulings on this issue is read to the jury.

e. Motion to preclude Defendants from arguing that Plaintiffs must prove Vioxx actually "causes" heart attacks to a medical degree of certainty (including the preclusion of defense expert Dr. Vaughan's "causation" conclusion).

S. BLB&G Drafted and Managed the Exchange of All Pretrial Materials with Defendants and Filed the Pretrial Order

220. During the Summer of 2015, in a series of letters to the Court, counsel for Lead Plaintiffs and Defendants disputed the scheduled date for the final pre-trial conference and the deadline for submission of the joint pre-trial order ("JPTO") to the Court. In connection with a July 13, 2015 status conference, Judge Waldor ordered that the Court would hold the final pretrial conference on September 25, 2015, and that the final JPTO was due to be filed on or before September 11, 2015. The Court also directed the parties to meet and confer with regard to the scheduling of *Daubert* and *in limine* motions. BLB&G attendees at the status conference included Max Berger, Sal Graziano and Adam Wierzbowski, and Max Berger and Sal Graziano presented Plaintiffs' positions at the conference.

221. Plaintiffs faced the serious risk that, if the Court did not set a trial date within the near future, they would perform a significant amount of pretrial work, and disclose their trial

arguments to Defendants through the JPTO, but give Defendants a significant amount of time to prepare and mount a trial defense before trial occurred. Lead Plaintiffs thus vigorously opposed Defendants' proposal, based on a conflict of one of Defendants' attorneys, to maintain the original September 11, 2015 deadline for the submission of the JPTO, while rescheduling the final pre-trial conference (and therefore the trial) to an undefined future date:

- On July 17, 2015, Lead Plaintiffs, in a letter principally drafted by Adam Wierzbowski at BLB&G, wrote to Magistrate Judge Waldor confirming the date for the final pre-trial conference (September 25, 2015) and the date for the submission of the JPTO (September 11, 2015) as set by the Court. Lead Plaintiffs also alerted the Court of Defendants' intention to seek to move the date for the pre-trial conference to an undefined future date, which Lead Plaintiffs opposed because it would be unfair to Plaintiffs and to the Court.

- In a letter dated July 17, 2015, counsel for Defendants wrote to Magistrate Judge Waldor to remind the Court that Defendants' attorney, Evan Chesler of Cravath, was scheduled to be on a trial in Michigan on the date then scheduled for the final pre-trial conference and that Defendants' counsel raised this issue as a courtesy to Lead Plaintiffs' counsel in the course of negotiating a schedule to exchange materials for the JPTO. Defendants argued that although the date for the pre-trial conference should be adjourned to accommodate Defendants' counsel's schedule, it should not affect the September 11, 2015 deadline for the JPTO.

- Later that same day (July 17, 2015), Lead Plaintiffs, in a letter principally drafted by Sal Graziano and Adam Wierzbowski, wrote to Magistrate Judge Waldor in response to Defendants' letter. Lead Plaintiffs reiterated that neither the September 11, 2015 deadline for the submission of the JPTO nor the September 25, 2015 final pre-trial conference should be adjourned, since the Court previously indicated that these dates were set in "stone." Alternatively, Lead Plaintiffs proposed that if the final pre-trial conference were to be adjourned, the submission of the JPTO should also be adjourned to 14 days before the newly-scheduled final pre-trial conference, because there would be no reason for the parties to rush to complete the JPTO if the final pre-trial conference were adjourned. Lead Plaintiffs also noted that Defendants should not be allowed to "time" their request to adjourn the September 25 pre-trial conference until after the September 11 JPTO submissions were complete.

- On July 21, 2015, Judge Waldor set the date for the final pre-trial conference for September 25, 2015 and a trial date of October 6, 2015. On July 22, 2015, counsel for Defendants wrote to Judge Chesler regarding that Order and requested that those two dates (and no other dates) be adjourned due to defense counsel's prior commitments.

- On July 22, 2015, in a letter principally drafted by Sal Graziano and Adam Wierzbowski at BLB&G, counsel for Lead Plaintiffs wrote to Judge Chesler in response to Defendants' July 22, 2015 letter. Lead Plaintiffs reiterated that the final pre-trial conference and trial dates should not be changed because the Action had been pending for over a decade and Defendants have numerous other qualified counsel that could adequately defend the case at trial if one attorney has a trial conflict. Alternatively, Lead Plaintiffs proposed that if the Court were to adjourn the final pre-trial conference or trial, the Court should also adjourn the deadlines for the JPTO and pretrial motions, since the timing of the JPTO and motion briefing should be tied to the final pre-trial conference and trial, and re-scheduling only the final pre-trial conference and the trial would severely prejudice the Plaintiffs.

222. On August 11, 2015, the Court held another conference with all parties to discuss pretrial scheduling. BLB&G attendees at the status conference included Max Berger, Sal Graziano, David Wales and Adam Wierzbowski, and Max Berger and Sal Graziano presented Plaintiffs' positions at the conference. On August 27, 2015, as a follow-up to the August 11 conference, the Court issued an Order setting trial in the Action to begin on March 1, 2016, with the final pretrial conference to occur on January 8, 2016.

223. In September through November, 2015, in a series of letters to Magistrate Judge Waldor, counsel for Lead Plaintiffs and Defendants discussed the proper length and form of the JPTO. Defendants opposed the length and comprehensiveness of Lead Plaintiffs' proposed factual summary and the number of exhibits Lead Plaintiffs planned to include in the JPTO. However, Lead Plaintiffs understood Defendants' objections as an attempt to circumscribe Lead Plaintiffs' factual presentation at trial, limit Plaintiffs' evidence and weaken Plaintiffs' case against Defendants:

- On September 25, 2015, counsel for Defendants wrote to Magistrate Judge Waldor to seek the Court's guidance regarding the acceptable length of the parties' stipulated and contested facts to be submitted with the JPTO. Defendants sought guidance regarding Lead Plaintiffs' approach and the level of factual detail in their factual summary, noting that while Defendants' factual summary totaled approximately 50 pages and 200 paragraphs, Lead Plaintiffs' factual summary totaled 790 pages and over 4,000 paragraphs.

- On September 25, 2015, in a letter principally drafted by Adam Wierzbowski at BLB&G, counsel for Lead Plaintiffs wrote to Magistrate Judge Waldor in response to Defendants' September 25, 2015 letter. Lead Plaintiffs argued that the JPTO stated that the parties are required to provide a comprehensive list of all facts that the parties intend to prove at trial. Plaintiffs also argued that Defendants were in fact seeking comfort that they would not be precluded from ambushing Lead Plaintiffs at trial by introducing evidence not disclosed in Defendants' submission of vague, conclusory statements in their factual summary. Lead Plaintiffs further argued that any "comfort" sought by Defendants could not be made at the time of the letter, but rather could only be made at the time of trial when the Court could compare the evidence presented with the disclosures in the JPTO.

- On September 28, 2015, counsel for Defendants wrote to Magistrate Judge Waldor in response to Lead Plaintiffs' September 25, 2016 letter, stating that Defendants did not intend to "ambush" Plaintiffs at trial and were instead seeking guidance from the Court on whether Defendants' approach to its proposed facts was sufficient or if the Court required more detail.

- In a letter dated October 26, 2015, counsel for Defendants again wrote to Judges Chesler and Waldor regarding Lead Plaintiffs' exchanges for the JPTO. Defendants argued that Lead Plaintiffs' exchanges were not appropriate because Lead Plaintiffs identified 80 trial witnesses and 4,780 preliminary trial exhibits, designated more than 70 hours of video depositions, and proposed thousands of paragraphs of facts. Defendants noted that Lead Plaintiffs would not be able to present this much evidence in the 60 hours of trial time allotted to Lead Plaintiffs.

- On October 30, 2015, in a letter principally drafted by Sal Graziano and Adam Wierzbowski at BLB&G, counsel for Plaintiffs wrote to Judges Chesler and Waldor in response to Defendants' October 30, 2015 letter. Plaintiffs reiterated that Defendants' September 25, 2015 letter was asking the Court for comfort that Defendants' brief factual summary for the JPTO would not cause Defendants to be precluded from presenting more facts at trial. Lead Plaintiffs argued that Defendants were prejudicing Lead Plaintiffs through their vague pretrial submissions and objections. Plaintiffs added that, through their objections, Defendants were attempting to distract the Court from Defendants' failure to provide Plaintiffs with adequate notice of their defenses. In fact, Defendants had contested more than 98% of Plaintiffs' proposed stipulated facts, objected to more than 90% of Plaintiffs' transcript designations and objected to 99.8% of Plaintiffs' exhibits. Defendants' approach was simply to try and limit Plaintiffs' proof at trial.

- On November 2, 2015, Defendants wrote to Judges Chesler and Waldor in response to Lead Plaintiffs' October 30, 2015 letter, arguing that Defendants were trying to ensure that the parties submit a realistic JPTO that reasonably disclosed the witnesses, fact, and documents that parties actually expect to present in their allotted time at trial.

224. In the late Summer and Fall of 2015, BLB&G, and specifically Adam Wierzbowski, worked directly with Defendants' counsel to schedule and coordinate the parties' numerous pretrial exchanges of the proposed contents of the final JPTO. This included BLB&G's extensive drafting and revision of the parties': (i) positions on bifurcation; (ii) proposed Stipulated Facts, Requests for Judicial Facts and Contested Facts; (iii) page and line numbers of designated testimony (and objections and counter-designations thereto); (iv) statements of jurisdiction; (v) lists of pending and contemplated motions/trial briefs; (vi) consents and objections to witnesses; (vii) consents and objections to the qualifications of experts; (viii) exhibit lists (and objections thereto); (ix) lists of legal issues; and (x) the draft and final Pretrial Order. These were voluminous documents.

225. Specifically, the parties negotiated to exchange pretrial materials on the following dates:

- Positions on Bifurcation: August 21, 2015;
- Deposition designations of Plaintiffs and their advisors: September 1, 2015;
- Stipulated Facts, Requests for Judicial Facts and Contested Facts, as well as Deposition pages and line numbers: September 22, 2015;
- Exhibit Lists: September 25, 2015;
- Statements of Jurisdiction, Lists of pending and contemplated motions/trial briefs; Plaintiffs' Causes of Action; Defendants' Affirmative Defenses; Consent/Objections to Witnesses; Consent/Objection to Qualification of Experts; Counter deposition designations and Consent/Objection to deposition designations of Plaintiffs and their advisors; Legal issues; Trial counsel; Estimated length of trial; and Consent/Objection to Bifurcation positions: October 2, 2015
- Counter-counter deposition designations and Objections to counter deposition designations of Plaintiffs and their advisors disclosed for the first time on October 2, 2015: October 16, 2015
- Consent/Objection to Stipulated Facts; Objections to Requests for Judicial Notice; Any Consent to Contested Facts; Counter deposition designations and

Consent/Objection to deposition designations of all other witnesses: October 20, 2015;

- Objections to counter-counter deposition designations of Plaintiffs and their advisors disclosed for the first time on October 16, 2015: October 23, 2015;
- Counter-counter deposition designations and Objections to counter deposition designations of all other witnesses disclosed for the first time on October 20, 2015; Supplemental Trial Exhibits in response to exhibit lists exchanged on September 25, 2015; and Consent to Admissibility and Authenticity/Objection to Trial Exhibits: October 28, 2015;
- Consent/Objection to Statement of Jurisdiction; List of Supplemental Pending and Contemplated Motions; Objections to counter-counter deposition designations of all other witnesses disclosed for the first time on October 28, 2015: November 2, 2015;
- Consent to Admissibility and Authenticity/Objection to Trial Exhibits disclosed for the first time on October 28, 2015: November 9, 2015;
- Plaintiffs circulated a draft of final JPTO: November 10, 2015;
- Plaintiffs circulated a near-final draft of final JPTO: November 17, 2015;
- Defendants provided to Plaintiffs edits to JPTO: November 19, 2015; and
- Submission of Joint Final Pretrial Order to the Court: November 20, 2015.

226. During this process, among other things, all Plaintiffs' counsel attended meetings at BLB&G's offices, and Adam Wierzbowski and other BLB&G Partners led the interaction with Defendants' counsel on behalf of Plaintiffs. BLB&G proposed ways for the parties to streamline the proof introduced through the JPTO. This included discussions about the possibility of: (i) entering into Stipulations on the issue of market efficiency (on which the parties agreed); (ii) removing certain witnesses from Plaintiffs' witness list if Defendants could agree on certain factual points from those witnesses' deposition testimony (on which the parties were not able to reach a final agreement); and (iii) stipulating to the fact of the Lead Plaintiffs' transactions in Merck stock (on which the parties were close to reaching an agreement). To facilitate this process, BLB&G drafted proposed Stipulations setting forth these terms for Defendants' review (and coordinated

proposed revisions thereto).

227. On November 10, 2015, Magistrate Judge Waldor held a teleconference with counsel to discuss the status of the JPTO. Sal Graziano spoke on behalf of Lead Plaintiffs and informed the Court that Defendants were taking issue with the volume of Plaintiffs' submissions, although Defendants originally took no issue with the amount of detail in Plaintiffs' facts but were in fact concerned about the lack of detail in their own. Sal Graziano also informed the Court that Defendants had in fact repeatedly ignored and not adhered to the deadlines on which the parties had agreed. He also noted that the parties had not yet met and conferred on the issues that the Defendants chose to raise on the call with the Court.

228. On November 12 and 16, 2015, BLB&G hosted (on the Plaintiffs' side) and led the two meet-and-confers with Defendants on the JPTO. During the meet-and-confers, the parties discussed the possibility of reaching agreements with respect to proposed trial witnesses; exhibits; stipulated facts; contested facts; motions *in limine*; confidentiality at trial; sequestration of witnesses; and judicial notice.

229. On November 17, 2015, Magistrate Judge Waldor held a teleconference with counsel to discuss the status of the meet-and-confers and the JPTO. Sal Graziano spoke on behalf of Lead Plaintiffs and informed the Court that, as part of the parties' meet-and-confer process, Lead Plaintiffs had offered to remove eight witnesses from their witness list and offered to remove more than 500 exhibits from Plaintiffs' exhibit list, and that the Defendants had withdrawn many objections to Plaintiffs' submissions.

230. On November 20, 2015, following numerous exchanges between the parties of proposed material for the JPTO, BLB&G filed the final Pretrial Order (a massive undertaking, which spanned 2,170 pages) with the Court.

231. On November 24, 2015, the Court held a conference to discuss the JPTO submitted by BLB&G, during which Max Berger and Sal Graziano presented Plaintiffs' positions on the issues, and the Court requested that the parties continue to engage in meet-and-confers to further narrow any issues in dispute.

232. Lead Plaintiffs and Defendants then participated in lengthy meet-and-confer sessions on December 9, 2015 and December 14, 2015 hosted by BLB&G (on the Plaintiffs' side), and led by Adam Wierzbowski and other BLB&G Partners, to discuss, negotiate, and resolve issues regarding the JPTO.

T. BLB&G Led Plaintiffs' Efforts to Withstand Potentially Dispositive U.S. Supreme Court Decisions

233. During the course of the *Vioxx* litigation, the U.S. Supreme Court issued numerous major decisions impacting the scope of securities fraud liability, and BLB&G was instrumental in arguing that those decisions should not result in the dismissal of any of Plaintiffs' claims in this Action. These decisions include many on which Judge Chesler ruled on for the first time in any action. Each of these decisions – *Matrixx*, *Janus*, *Halliburton*, and *Omnicare* – was directly on point with Lead Plaintiffs' case and could have been case-dispositive.

1. *Matrixx*

234. Plaintiffs faced substantial risks related to Defendants' arguments. BLB&G diligently worked to reduce those risks by staying abreast of the developing case law relevant to the case, and informing the Court of its potential impact on this case. For example, on March 23, 2011, while Defendants' motions to dismiss were pending, BLB&G drew the Court's attention to the Supreme Court's unanimous decision in *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011). In their motions to dismiss, citing the then-governing Third Circuit precedent of *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000), Defendants argued that none of their statements concerning

Vioxx's safety or commercial prospects was materially false or misleading because none of the adverse information concerning Vioxx's safety that they omitted to disclose "would [have] establish[ed] a definitive link between Vioxx and increased cardiovascular risk." In *Matrixx*, the Supreme Court expressly rejected the argument that adverse information relating to a drug's safety must rise to the level of statistical significance in order to be material. BLB&G's letter, principally drafted by Adam Wierzbowski, argued that applying the *Matrixx* analysis in this case led to the conclusion that Plaintiffs adequately pled materiality based on the existence of an undisclosed "plausible causal relationship" between Vioxx and CV events. The letter also drew parallels between the scienter allegations in *Matrixx* and the scienter allegations in this case. The letter noted that the Complaint alleged concern about the drug, pressure and intimidation of the medical community, and affirmatively false statements which were found to be sufficient indicia of scienter in *Matrixx*. Plaintiffs' letter also chronicled how the Complaint alleged indicia of scienter exceeding that in *Matrixx*, with allegations regarding internal emails evincing Defendants' belief that Vioxx was pro-thrombotic, intentional design of studies to avoid generating adverse data, and manipulation of statistically significant adverse clinical trial data.

235. Defendants responded to Plaintiffs' March 23, 2011 letter in a letter filed March 25, 2011. In the letter, Defendants argued that *Matrixx* was of "very limited relevance." Additionally, Defendants denied that they had argued there must be "an allegation of statistical significance to establish a strong inference of scienter." Further, they argued that the "deliberate recklessness" standard the Supreme Court applied in *Matrixx* was inapplicable to this case, which they characterized as a misstatement of opinion case. Defendants also stated in their letter that *Matrixx* did not impact their primary argument which was that the alleged misstatements could not be material because Defendants as well as substantial medical, scientific and lay press coverage

had rendered investors already aware of the CV risk of Vioxx.

236. In the Court's August 8, 2011 Opinion denying Defendants' motions to dismiss, Judge Chesler cited *Matrixx* for the point that, "Merck's position—that the lack of data supporting a conclusive link between Vioxx and heart attacks precludes the undisclosed information from meeting the materiality standard—is belied by the Supreme Court's recent discussion of materiality in *Matrixx*."

2. *Janus*

237. On July 6, 2011, while Dr. Scolnick's motion to dismiss was pending before the Court, Scolnick brought to the Court's attention the Supreme Court's recent decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011). In *Janus*, the Supreme Court held that only the person who actually "makes" an alleged misstatement can be liable to a private plaintiff under Section 10(b) of the Exchange Act, and that the "making" of a statement requires that the speaker have "ultimate authority" to issue it. Seven statements in Plaintiffs' Complaint were signed or otherwise attributed to Scolnick, but under Scolnick's interpretation of *Janus* they were not "made" by him because he lacked "ultimate authority" over them. The letter argued that there was a parallel between *Janus* and this case because Merck, not Scolnick personally, was required to file the Company's annual reports, Form 10-Ks and registration statements with the SEC. On July 7, 2011, BLB&G responded in a letter principally drafted by Adam Wierzbowski and Ann Lipton, that Scolnick was directly quoted in the documents in question, personally signed SEC filings, and, as a corporate officer, director, and a member of Merck's Management Committee, caused Merck to issue numerous allegedly false and misleading public statements. BLB&G also argued that *Janus* applies to a situation where two separate corporate entities are at issue, not to the actions of internal corporate agents. In the Court's August 8, 2011 decision

denying Defendants' motions to dismiss, Judge Chesler adopted that rationale and rejected Scolnick's *Janus* argument. As noted above, Defendants also raised later in the litigation whether, under *Janus*, Defendants or the *NEJM* made Merck's 4% Claim in the *NEJM* VIGOR article. The Court rejected that argument in granting Plaintiffs' motion to amend the Complaint to include those alleged false statements.

3. *Halliburton*

238. In a letter dated November 23, 2013, Defendants wrote to Judge Chesler to alert the Court of the U.S. Supreme Court's grant of certiorari in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) ("*Halliburton II*"), to review the fraud-on-the-market presumption under *Basic Inc. v Levinson*, 485 U.S. 224 (1988), and to seek a stay of dispositive motions in this Action pending a decision in *Halliburton II*. Defendants argued that the decision in *Halliburton II* would have a significant impact on the merits of this case, since this Action is based upon the fraud-on-the-market presumption of reliance. In a letter dated November 25, 2013, Max Berger wrote to Judge Chesler opposing Defendants' request for an open-ended stay of dispositive motion briefing pending a decision in *Halliburton II*, because it would severely prejudice the Plaintiffs and the class, and because, even if *Halliburton II* overturned the fraud-on-the-market doctrine under *Basic*, Lead Plaintiffs would still be entitled to a presumption of reliance under *Affiliated Ute*.

239. Defendants and BLB&G then exchanged an additional round of letters on the issue on November 27, 2013. Defendants argued that Lead Plaintiffs could not invoke a presumption of reliance under *Affiliated Ute* in the absence of the fraud-on-the-market presumption because the Court had already implicitly determined that Lead Plaintiffs primarily alleged misrepresentations rather than both misrepresentations and omissions, and as such, the presumption under *Basic*

applied rather than the presumption under *Affiliated Ute*. Defendants further reiterated that the sole issue before the Court was whether it made sense for the parties to expend substantial resources briefing dispositive motions with the possibility that the decision in *Halliburton II* could dispose of Lead Plaintiff's case ***in its entirety***. In response, in a letter filed that same day, counsel for Lead Plaintiffs wrote to Judge Chesler in further opposition to Defendants' request for an open-ended stay of the case. In the letter, signed by Max Berger and drafted by Max Berger, Sal Graziano and Adam Wierzbowski, Lead Plaintiffs argued that: (i) the only court at the time of the letter that decided the same issue denied the request for a stay; (ii) Defendants previously raised and lost their arguments on numerous occasions regarding the *Affiliate Ute* presumption; (iii) Defendants ignored controlling Third Circuit precedent that rejected their view that the *Affiliated Ute* presumption did not apply where a combination of misrepresentations and omissions was alleged; and (iv) if Defendants have other grounds for summary judgments independent of issues raised in *Halliburton II*, there would be no reason for Defendants not to file their summary judgment motions on those issues.

240. On December 19, 2013, Magistrate Judge Waldor denied Defendants' request for a stay. In its decision in *Halliburton II*, the Supreme Court ultimately declined to overrule the presumption of reliance in securities fraud suits based on the "fraud on the market" doctrine set forth in *Basic v. Levinson*.

4. *Omnicare* and *Freidus*

241. In a letter dated March 25, 2015, Sal Graziano wrote to Judge Chesler to alert the Court of the recent decision in *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318 (2015) ("*Omnicare*"), which supported Lead Plaintiffs' theory of the case and directly rejected Defendant Scolnick's arguments in his summary judgment motion that Lead

Plaintiffs must prove that Scolnick subjectively disbelieved the statements at issue. Lead Plaintiffs had argued that Scolnick subjectively disbelieved his statements about the Naproxen Hypothesis and, as BLB&G developed, that he also lacked a reasonable basis for those statements, and *Omnicare* confirmed that Lead Plaintiffs did not need to prove subjective disbelief to survive summary judgment. Since the time of the motion to dismiss briefing, through the summary judgment stage, BLB&G recognized the risks involved with proving their claims based solely on the premise that the Individual Defendants knowingly lied about their personal opinions and actively pursued demonstrating that Defendants lacked a reasonable basis for them. On March 31, 2015, Defendants responded to Lead Plaintiffs' March 25, 2015 letter, arguing that *Omnicare* addressed the falsity of statements under Section 11 of the Securities Act, and not Lead Plaintiffs' Section 10(b) claims; and that *Omnicare* acknowledged that certain fields of study necessarily involve legitimate debates involving dissenting opinions about genuinely-held beliefs.

242. In addition, in a letter dated April 2, 2015 from Sal Graziano, Lead Plaintiffs alerted the Court to a recent U.S. Supreme Court decision in *Freidus v. ING Groep*, 135 S. Ct. 1698 (2015) ("*Freidus*") as supplemental authority to *Omnicare*. Lead Plaintiffs argued that in vacating and remanding *Freidus* with instructions to reconsider it in light of *Omnicare*, the Supreme Court confirmed that *Omnicare* effectively overruled the holding in *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. 2011) ("*Fait*"), on which Defendant Scolnick relied to support his contention that Lead Plaintiffs must prove that Defendants subjectively disbelieved the statements at issue. Lead Plaintiffs alerted the Court of the decision in *Freidus* in further support of their opposition to Defendants' motions for summary judgment. On April 6, 2015, Scolnick wrote to Judge Chesler in response to Lead Plaintiffs' April 2, 2015 letter. Scolnick reiterated his arguments set forth in his March 31, 2015 letter to the Court that: (i) under *Omnicare*, a plaintiff alleging affirmative

misrepresentations in opinions must demonstrate that the defendant did not genuinely believe the opinion; and (ii) the standard under Section 11 articulated in *Omnicare* did not apply to the standard under Section 10(b), in which scienter is a required element. Scolnick further distinguished *Freidus* and *Fait* from the issues in this case, noting that *Freidus* and *Fait* both involved claims under the Securities Act, not the Exchange Act, which is at issue here.

243. On May 13, 2015, when the Court largely denied Defendants' motions for summary judgment, Judge Chesler agreed with Plaintiffs and found that, on the issue of falsity, "[t]he Supreme Court's *Omnicare* decision, dealing with a securities fraud claim based on statements of opinion, illuminates this Court's Section 10(b) scienter analysis as it relates to Defendants' expressed support of the naproxen hypothesis." The Court also found that, "as Plaintiffs have argued, the *Omnicare* Court's analysis squares with the earlier holdings in this case, by both this Court and the Third Circuit, that Defendants' opinion concerning the naproxen hypothesis may constitute securities fraud if Defendants either subjectively disbelieved the opinion they asserted or lacked a reasonable basis for their expressed belief."

U. BLB&G Led Lead Plaintiffs' Efforts to Mitigate Other Serious Risks to the Class

244. BLB&G also took the lead to address and avoid many other very serious risks that the class could recover nothing in this Action. For example, BLB&G pursued novel approaches to show Defendants' scienter. Defendants' principle defense in their motions for summary judgment was the argument that they were embroiled in a reasonable and public scientific debate and embarked on a quest for the truth. To rebut those claims, BLB&G developed a record demonstrating that, not only did Defendants believe that Vioxx was pro-thrombotic, but numerous third parties (including the FDA and Merck's own consultants) privately put them on notice that Vioxx was harmful, and that Defendants lacked a reasonable basis for their public claims that

Naproxen is cardio-protective. For example, on the issue of scienter, Defendants repeatedly claimed that they and their family members used Vioxx during the Class Period, and that, therefore it was not plausible for Plaintiffs to argue that Defendants believed Vioxx increased CV risk. BLB&G countered that argument [redacted] BLB&G also drafted and planned to file a motion *in limine* on this issue.

245. BLB&G also focused on Defendants' purported truth-on-the-market defense. Even after winning Plaintiffs' appeal to the Third Circuit and demonstrating to the Supreme Court that the market was not on notice of Defendants' fraud as of November 2001 (two years before Plaintiffs filed suit), BLB&G still needed to rebut Defendants' purported evidence that the market was aware of Defendants' understanding that Vioxx could be pro-thrombotic. [redacted] BLB&G's motion to preclude James' testimony, drafted by Katherine Sinderson, emphasized [redacted] In addition, to prepare for James' deposition, and to rebut Defendants' claims of truth on the market, BLB&G performed an exhaustive review of all analyst coverage concerning Vioxx over the entire Class

Period. BLB&G also set forth (including in its pretrial submission) how Merck immediately countered any negative study result or public claim about Vioxx's CV risk with its own claims of Vioxx's safety, including by discrediting academic professors who challenged Vioxx, such as Drs. Topol and Gurkirpal Singh.

246. BLB&G worked to rebut Merck's defense that only the FDA may change a drug's warning label, and that the FDA repeatedly determined Vioxx was safe. Another of Defendants' arguments was that the FDA, and not Merck, was responsible for Vioxx's labeling. [redacted] BLB&G's motion to preclude Rarick's testimony, drafted by Katherine Sinderson [redacted]

247. BLB&G worked to rebut Defendants' statistical defense. BLB&G developed several cogent rebuttals to Defendants' complicated defense [redacted]

[redacted]

248. The class also faced the risk that Defendants would argue to the jury that the fact that Merck designed and conducted the APPROVe trial undercut any inference that Defendants understood Vioxx raised CV risk. In other words, according to Defendants, Merck would not have conducted a trial like APPROVe (which compared Vioxx to placebo) at all if they truly believed the trial would likely demonstrate Vioxx increased CV risk. BLB&G mitigated this risk by demonstrating that when APPROVe was designed, high-risk CV patients were specifically excluded from the trial to avoid any adverse result demonstrating Vioxx CV risk. [redacted] However, despite Merck's affirmative measures to mask Vioxx's CV risk in the APPROVe trial, APPROVe still showed a large difference in CV risk between Vioxx and placebo and led to the withdrawal of Vioxx from the market.

249. BLB&G retained and worked with statistical experts qualified to respond to

Defendants' defense that the APPROVe results were "new" information. Throughout the litigation, Defendants repeatedly argued that, prior to the fall of 2004, they did not have placebo-controlled data showing that Vioxx was harmful, and that, as soon as they first had that information from the APPROVe trial in 2004, they promptly withdrew Vioxx, and therefore did not commit securities fraud. To rebut that argument, BLB&G worked with Plaintiffs' statistical expert, Dean Madigan [redacted] APPROVe trial that finally led to Vioxx's withdrawal from the market was repeatedly disregarded by Merck much earlier, starting in July 2000, and thereafter with the steady accumulation of more adverse Vioxx trial data.

250. BLB&G also researched and defended a viable damages methodology. Plaintiffs' damages expert, Dr. Tabak, segregated the negative impact of Vioxx's withdrawal on Merck's stock price into three distinct causes: lost Vioxx sales; the negative impact on the approvability of Merck's follow-on Cox-2 inhibitor, Arcoxia; and the increased litigation liability caused by Vioxx's withdrawal. Dr. Tabak's analysis supported the inclusion of all three of these elements of loss in Plaintiffs' damages calculations. However, there was a real risk that the Court might determine that, for example, only the Vioxx sales component of the stock drop was attributable to Plaintiffs' claims. As Plaintiffs demonstrated in their opposition to Defendants' motion to exclude Dr. Tabak's testimony, BLB&G developed numerous facts that supported inclusion of all elements of Dr. Tabak's analysis in the calculation of damages. [redacted]

[redacted] The dismissal of the *Pfizer* securities fraud class action concerning Celebrex on the eve of trial in that case based on a claimed flawed damages methodology (which the Second Circuit Court of Appeals only recently overturned) strongly demonstrates the risks Plaintiffs faced in navigating complex damages issues in this Action.

251. BLB&G also simplified the complex scientific issues in the case through mock trial presentations and follow-on discussions and preparations with their jury consultant. A serious risk in the litigation was the highly complex medical and statistical issues at the heart of this case based on the CV risk of an FDA-approved drug. BLB&G grappled with how to present these highly complex issues in numerous ways, including by formulating analogies and explanations to describe the issues to a lay audience. In that regard, Sal Graziano and David Wales prepared and presented both the Plaintiffs' and defense sides of the material to three mock juries in New Jersey and obtained three verdicts in favor of Plaintiffs despite the scientific complexity at issue, and continued to work thereafter with the jury consultant, including on a follow-on mock jury exercise scheduled for January 20-21, 2016.

V. Max Berger Led Plaintiffs' Settlement Negotiations, and Responded to the Court's and Mediator's Questions, and BLB&G Was Responsible for Negotiating the Settlement and Drafting the Stipulation of Settlement and Preliminary Approval Papers

252. The Action only settled after Max Berger actively participated in, and personally led from the Plaintiffs' side, numerous in-court settlement conferences and mediation sessions with Judges Chesler, and Waldor, the mediator (The Honorable Layn R. Phillips) and defense counsel.

253. The Court held settlement conferences with the parties on October 27, 2011, March

23, 2012, May 14, 2012, and September 30, 2013, that were attended and led from the Plaintiffs' side by Max Berger. In addition to actively participating in these sessions, BLB&G compiled binders of Plaintiffs' strongest allegations for the Court's review in connection with the settlement conference on September 30, 2013, which was also attended by Miss. PERS representative George W. Neville. Despite the Court's and the parties' best efforts, these settlement discussions took years of effort.

254. On September 19, 2014, the parties agreed to retain Judge Phillips as a private mediator after the Court suggested private mediation. On October 8, 2014, in advance of an upcoming mediation session on October 13, 2014, Judge Phillips held a meeting with only the Plaintiffs' side of the mediation led by Max Berger for Lead Plaintiffs. BLB&G prepared all written responses to the mediator's questions in advance of the joint mediation, including the extensive package prepared by Sal Graziano and Adam Wierzbowski submitted to Judge Phillips in response to his October 12, 2014 mediators' questions, and collected and submitted to Judge Phillips all documents (including sets of the hottest documents collected by Plaintiffs) for Judge Phillips' review. The October 13, 2014 mediation was unsuccessful and a previously-scheduled second day of mediation for November 5, 2014 was cancelled. There were no settlement talks between the Parties thereafter for a substantial period of time.

255. Following the Court's May 2015 ruling on summary judgment, Judge Phillips next held the mediation session on September 11, 2015 in New York, which Max Berger, Sal Graziano, and Adam Wierzbowski attended and Max Berger led on behalf of Lead Plaintiffs. Following that mediation and a series of discussions between Max Berger, the Court, defense counsel and the mediator, the parties reached an agreement in principle to settle the Action on December 17, 2015, over one year after the prior mediation efforts and less than three months before trial. Thereafter,

the parties held teleconferences with the Court to apprise the Court of the terms of the settlement and to discuss related issues.

256. After the Action settled, BLB&G attorneys Adam Wierzbowski, Joseph Cohen and David Duncan drafted the settlement Stipulation and Adam Wierzbowski coordinated all edits to the papers with Co-Lead Counsel and Defendants. BLB&G attorneys, including Adam Wierzbowski, Joseph Cohen, David Duncan and John Mills, took the lead role, and were the sole points of contact, in working with Plaintiffs' damages expert at NERA to draft the proposed plan of allocation of the net proceeds of the Settlement to Settlement Class Members. They also took the lead role in drafting the Settlement Notice and Claim Form to be mailed to potential Settlement Class Members and the Summary Settlement Notice to be published in the *WSJ* and disseminated over Internet newswires, as well as the other exhibits to the Stipulation.

257. Joseph Cohen and David Duncan of BLB&G also drafted Plaintiffs' motion for preliminary approval of the settlement. On February 8, 2016, BLB&G filed that motion and worked with Liaison Counsel to write to Judge Chesler to seek approval of Plaintiffs' Motion for (i) preliminary approval of the settlement; (ii) approval of the Notice to the Settlement Class; and (iii) scheduling of the final approval hearing. Lead Plaintiffs also proposed for the Court's approval a schedule for the mailing and publication of notice to the Settlement Class, and the deadlines for submitting Claims and opting out of, opting back into the Settlement Class, or objecting to, the proposed Settlement.

258. On February 11, 2016, the Court entered the Preliminary Approval Order, which preliminarily approved the Settlement, certified the Settlement Class for settlement purposes and set a schedule to govern deadlines for the settlement proceedings. BLB&G attorneys, including Joseph Cohen and David Duncan, took the lead role in working with the Claims Administrator to

finalize and mail the Settlement Notice and Claim Form to potential Settlement Class Members, to respond to inquiries received from Settlement Class Members, and to revise the website, www.MerckVioxxSecuritiesLitigation.com, to reflect the fact that the case had settled and to provide class members with information related thereto.

VI. LODESTAR AND EXPENSES

259. As set forth above, on a project-by-project basis, numerous BLB&G attorneys played a critical and primary role in the successful prosecution and resolution of this Action over the course of many years.

260. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the attorneys and professional support staff of our firm who were involved in, and billed ten or more hours to, this Action, and the lodestar calculation for those individuals based on our firm's 2016 billing rates. For personnel who are no longer employed by our firm, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment by our firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by our firm.

261. Time expended on the Action after February 15, 2016, has not been included in this request. In addition, all time expended on Co-Lead Counsel's application for fees and reimbursement of litigation expenses has been excluded.

262. The hourly rates for the attorneys and professional support staff of our firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

263. The total number of hours reflected in Exhibit 1 from inception through and including February 15, 2016, is 191,050.00. The total lodestar reflected in Exhibit 1 for that period

is $86,686,266.25, consisting of $82,077,282.50 for attorneys' time and $4,608,983.75 for professional support staff time, at full contingent risk.

264. Our firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in our firm's billing rates.

265. As detailed in Exhibit 2, our firm is seeking reimbursement for a total of $4,348,566.15 in expenses incurred in connection with the prosecution of this Action. The expenses incurred in this Action are reflected on the books and records of our firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

266. BLB&G's expense amount includes $2,598,000 in contributions that BLB&G made to the litigation fund for the Action, which was by far the largest amount of the four Co-Lead Counsel firms. *See* Exhibit 3 (summarizing the contributions to, and expenditures from, the litigation fund). Notwithstanding that Lead Plaintiffs' expenses continued as we approached trial, including substantial expert witness expenses, after November 5, 2014, BLB&G carried the full burden of funding the litigation fund. At that time, private mediation had not been successful, the Court had not yet ruled on Defendants' motions for summary judgment and the Court had not yet set a trial date (which did not occur until the summer of 2015, after summary judgment was denied). Between November 5, 2014 and the present, BLB&G made $793,000 in contributions to the litigation fund in order to pay out-of-pocket expenses that were essential to our continued prosecution of this case.

267. The litigation fund was used to pay most of the largest expenses of Lead Plaintiffs, including the costs of retention of experts, the costs of acquiring and maintaining the electronic

database for review of documents, and fees for court reporting and outside copying services. BLB&G maintained the litigation fund from April 2009, following its appointment as Co-Lead Counsel, to the present.

268. The expenses incurred directly by BLB&G for which reimbursement is sought include the costs of on-line legal and factual research, photocopying, out-of-town travel, local transportation and working meals. All of these expenses were reasonable and necessary to the prosecution of the Action and have been subject to the following caps on certain expenses such as dollar limits on working meals and limitations on out-of-town travel costs:

a. Out-of-town travel: Airfare is capped at coach rates, hotel charges per night are capped at $350 for large cities and $250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

b. Out-of-office meals: Capped at $25 per person for lunch and $50 per person for dinner.

c. In-office working meals: Capped at $20 per person for lunch and $30 per person for dinner.

d. Local transportation: All charges for waiting time are removed.

e. Internal copying: Charged at $0.10 per page.

f. Online research: Charges are for out-of-pocket payments to the vendors for research done in connection with this litigation. Online research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

269. In addition, Miss. PERS seeks reimbursement of its reasonable costs and expenses incurred directly in connection with its representation of the Class in the amount of $98,712.50.[10] The amount of time and effort devoted to this Action by Miss. PERS is detailed in the Declaration

[10] In light of the fact that Lead Plaintiff Richard Reynolds is a retiree who has no current hourly rate for which to utilize as a basis for seeking reimbursement for the hours he has spent on behalf of the Class in this Action, Mr. Reynolds is not seeking a reimbursement award.

of George W. Neville. This requested amount is fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional and other plaintiffs to take an active role in bringing and supervising actions of this type.

270. In view of the complex nature of the Action, the lodestar and expenses incurred by BLB&G were reasonable and necessary to represent the Class and achieve the Settlement.

271. With respect to the standing of our firm, attached hereto as Exhibit 4 is a brief biography of our firm and attorneys in our firm who were involved in this Action.

We each declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of our knowledge.

Dated: April 28, 2016
New York, New York

MAX W. BERGER

SALVATORE J. GRAZIANO

EXHIBIT 1

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

TIME REPORT
Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Max Berger	842.25	995.00	$ 838,038.75
Sean Coffey	432.25	850.00	367,412.50
William Fredericks	2,112.75	875.00	1,848,656.25
Salvatore Graziano	4,343.00	945.00	4,104,135.00
Jeroen Van Kwawegen	74.50	750.00	55,875.00
John Rizio-Hamilton	105.00	750.00	78,750.00
Erik Sandstedt	550.50	595.00	327,547.50
Gerald Silk	359.00	945.00	339,255.00
Katherine Sinderson	1,118.25	700.00	782,775.00
David Wales	2,777.75	845.00	2,347,198.75
Adam Wierzbowski	9,414.00	700.00	6,589,800.00
Senior Counsel			
Jai Chandrasekhar	246.25	700.00	172,375.00
Joseph Cohen	174.25	700.00	121,975.00
Rochelle Hansen	126.25	700.00	88,375.00
Lauren A. Ormsbee	170.00	675.00	114,750.00
Of Counsel			
Bruce Bernstein	3,230.75	600.00	1,938,450.00
Tony Gelderman	47.50	750.00	35,625.00
Kurt Hunciker	5,082.50	700.00	3,557,750.00
Elliott Weiss	710.75	740.00	525,955.00

Associates			
Abe Alexander	7,109.75	575.00	4,088,106.25
Geoffrey Brounell	78.50	380.00	29,830.00
David L. Duncan	305.75	600.00	183,450.00
Laura Gundersheim	11.00	550.00	6,050.00
David R. Hassel	42.25	515.00	21,758.75
Ann Lipton	408.00	550.00	224,400.00
Catherine McCaw	1,989.75	450.00	895,387.50
Kristin Meister	4,106.50	600.00	2,463,900.00
John Mills	16.00	600.00	9,600.00
Brett Van Benthysen	4,348.75	450.00	1,956,937.50
Boaz Weinstein	1,676.00	550.00	921,800.00
Staff Associates			
Matthew Berman	2,783.00	465.00	1,294,095.00
Catherine Tierney	1,457.75	425.00	619,543.75
Staff Attorneys			
Erwin Abalos	6,994.75	375.00	2,623,031.25
Evan Ambrose	12,198.25	395.00	4,818,308.75
Leila Amineddoleh	273.50	375.00	102,562.50
Tamara Bedic	2,271.25	395.00	897,143.75
Jim Briggs	3,490.00	340.00	1,186,600.00
Girolamo Brunetto	160.25	340.00	54,485.00
Alexa Butler	5,991.75	395.00	2,366,741.25
David C. Carlet	8,107.75	395.00	3,202,561.25
Erika Connolly	1,504.50	340.00	511,530.00
Cynthia Gill	1,202.75	395.00	475,086.25
Daniel Gruttadaro	2,548.75	340.00	866,575.00
Mary Hansel	2,466.75	395.00	974,366.25
Mark van der Harst	1,452.75	375.00	544,781.25
Jessica Juste	1,117.50	340.00	379,950.00
Catherine Van Kampen	664.50	395.00	262,477.50
Stavros Katsetos	6,236.00	340.00	2,120,240.00
Thomas Keevins	866.25	395.00	342,168.75

Donatella Keohane	2,273.00	395.00	897,835.00
Gerald Kirschbaum	6,787.00	395.00	2,680,865.00
Jed Koslow	2,757.75	375.00	1,034,156.25
Arthur Lee	1,007.75	375.00	377,906.25
Danielle Leon	1,976.00	340.00	671,840.00
Adrienne Lester-Fitje	957.00	340.00	325,380.00
Andrew McGoey	8,610.00	395.00	3,400,950.00
Alison Merle	965.75	340.00	328,355.00
Matt Mulligan	4,076.00	375.00	1,528,500.00
Kirstin Peterson	3,959.25	395.00	1,563,903.75
Stephen Roehler	4,194.00	395.00	1,656,630.00
Noreen Rhosean Scott	2,841.00	395.00	1,122,195.00
Lewis Smith	4,360.50	340.00	1,482,570.00
Robert Stinson	6,402.50	395.00	2,528,987.50
Lauren Cormier Taylor	1,531.00	340.00	520,540.00
Jennifer Trenery	1,665.50	375.00	624,562.50
Kimberly Whitehead	635.25	375.00	238,218.75
Kit Wong	6,115.75	395.00	2,415,721.25
Financial Analysts			
Amanda Beth Hollis	16.00	295.00	4,720.00
Ryan S. Ting	20.00	235.00	4,700.00
Adam Weinschel	32.50	415.00	13,487.50
Investigators			
Amy Bitkower	64.00	495.00	31,680.00
David Kleinbard	21.00	345.00	7,245.00
Joelle (Sfeir) Landino	190.75	290.00	55,317.50
Communications			
Dalia El-Newehy	193.25	225.00	43,481.25

Paralegals			
Ricia Augusty	330.00	310.00	102,300.00
Maureen Duncan	37.75	310.00	11,702.50
Amanda Figueroa	1,147.25	290.00	332,702.50
Leigh Gagliardi	1,955.75	310.00	606,282.50
Larry Silvestro	88.50	310.00	27,435.00
Virgilio Soler Jr.	48.75	310.00	15,112.50
Norbert Sygdziak	968.50	310.00	300,235.00
Gary Weston	3,891.50	325.00	1,264,737.50
Erik Andrieux	105.50	245.00	25,847.50
Yvette Badillo	66.25	285.00	18,881.25
Martin Braxton	157.50	245.00	38,587.50
Jose Echegaray	319.50	245.00	78,277.50
Ellen Jordan	4,460.50	245.00	1,092,822.50
Tracy Jordan	230.25	205.00	47,201.25
Cathleen Laporte	46.25	230.00	10,637.50
Matthew Mahady	79.00	310.00	24,490.00
Aaron McNaughton	220.00	245.00	53,900.00
Ruben Montilla	267.25	245.00	65,476.25
Nyema Taylor	39.75	285.00	11,328.75
Litigation Support			
Sheron P. Brathwaite	115.50	250.00	28,875.00
Michael Hartling	36.75	225.00	8,268.75
Babatunde Pedro	610.50	275.00	167,887.50
Andrea R. Webster	276.25	310.00	85,637.50
Jessica M. Wilson	45.25	275.00	12,443.75
Managing Clerk			
Errol Hall	55.75	310.00	17,282.50
TOTALS	**191,050.00**		**$86,686,266.25**

#966275

EXHIBIT 2

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

EXPENSE REPORT

CATEGORY	AMOUNT
Paid Expenses:	
Court Fees	$ 5,769.00
On-Line Legal Research*	527,206.45
On-Line Factual Research*	74,227.09
Special Publications	11,660.42
Document Management/Litigation Support	57,728.18
Telephone/Faxes	4,452.46
Postage & Express Mail	19,497.23
Hand Delivery Charges	3,296.39
Local Transportation	86,196.44
Internal Copying	141,235.40
Outside Copying	19,053.53
Out of Town Travel**	88,630.69
Working Meals	76,643.57
Deposition/Meeting Hosting	19,865.60
Specialized & Local Counsel	37,090.76
Mediation Fees	18,467.85
Court Reporters and Transcripts	406.77
Contributions to Litigation Fund	2,598,000.00
Total Paid:	**$3,789,427.83**
Outstanding Expenses:	
Document Management/Litigation Support	447,120.01
Outside Copying	21,548.19
Court Reporters and Transcripts	98,431.60
Total Outstanding:	**$567,099.80**
Refund from Litigation Fund:	**($7,961.48)**
TOTAL EXPENSES:	**$4,348,566.15**

Notes

* Charges are for out-of-pocket payments to the vendors for research done in connection with this litigation. Online research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

** Out of town travel includes hotels in the following "large" cities capped at $350 per night: San Francisco, Palo Alto, New York, Boston, Washington, D.C., Chicago, New Orleans, Baltimore, Philadelphia, and Rome, Italy, and the following "small" cities capped at $250 per night: Houston, Texas, Princeton, N.J., Lebanon, N.J., Secaucus, N.J., West Orange, N.J., Nashville, Tenn., Minneapolis, Minn., New Haven, Conn., and Fort Myers, Fla.

#966259

EXHIBIT 3

In Re Merck & Co. Securities, Derivative & "ERISA" Litigation
MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC)
Civil Action No. 05-2367 (SRC)
[This Document Relates To: The Consolidated Securities Action]

CONTRIBUTIONS TO AND
EXPENDITURES FROM THE LITIGATION FUND

CONTRIBUTIONS:

FIRM	AMOUNT
Bernstein Litowitz Berger & Grossmann LLP	$ 2,598,000.00
Milberg LLP	1,507,858.87
Brower Piven, A Professional Corporation	1,218,437.50
Stull Stull & Brody	1,252,861.38
TOTAL CONTRIBUTED:	**$6,577,157.75**

DISBURSEMENTS:

CATEGORY OF EXPENSE	AMOUNT
Court Fees	$ 2,387.00
Service of Process	33,752.90
Special Publications	200.00
Document Management/Litigation Support	1,028,114.71
Hand Delivery Charges	327.00
Outside Copying	227,657.73
Out of Town Travel	1,088.21
Experts	4,328,944.63
Specialized & Local Counsel	675,764.79
Mediation Fees	91,137.52
Court Reporting and Transcripts	179,821.78
TOTAL DISBURSED:	**$6,569,196.27**
BALANCE:*	**$7,961.48**

* The balance in the litigation fund will be repaid to BLB&G. The amount reflected in BLB&G's Schedule of Expenses has been reduced by the amount of the balance in the litigation fund.

#966264

Exhibit 4

BLB&G

Trusted Advocacy. Proven Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

Firm Resume

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BLB&G Bernstein Litowitz Berger & Grossmann LLP

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BLB&G Bernstein Litowitz Berger & Grossmann LLP

Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over $27 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

FIRM OVERVIEW

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), a national law firm with offices located in New York, California, Louisiana and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Ontario Teachers' Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden ("AP1"); Fjarde AP-fonden ("AP4"); the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over $27 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained four of the ten largest securities recoveries in history:

- *In re WorldCom, Inc. Securities Litigation* – $6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – $3.3 billion recovery

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – $2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation* ("Nortel II") – $1.07 billion recovery

For over a decade, Securities Class Action Services (SCAS – a division of ISS Governance) has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on SCAS's "Top 100 Settlements" report, having recovered 39% of all the settlement dollars represented in the report (over $23 billion); and having prosecuted more than a third of all the cases on the list (34 of 100).

Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, as well as M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedents which have increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

Advocacy for Victims of Corporate Wrongdoing

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco's African-American employees in *Roberts v. Texaco Inc*., which resulted in a recovery of $176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco's human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class's losses – an extraordinary result in consumer class cases.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class and derivative litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

General Commercial Litigation and Alternative Dispute Resolution

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

Distressed Debt and Bankruptcy Creditor Negotiation

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to completion of successful settlements.

Consumer Advocacy

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

THE COURTS SPEAK

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

IN RE WORLDCOM, INC. SECURITIES LITIGATION

THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

"I have the utmost confidence in plaintiffs' counsel…they have been doing a superb job…. The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy…. The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative. . . . Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

IN RE CLARENT CORPORATION SECURITIES LITIGATION

THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

"It was the best tried case I've witnessed in my years on the bench . . ."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]. . . . We've all been treated to great civility and the highest professional ethics in the presentation of the case…."

"These trial lawyers are some of the best I've ever seen."

LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY

"I do want to make a comment again about the excellent efforts . . . put into this case. . . . This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system . . . you hold up this case as an example of what to do."

MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)

THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

SECURITIES CLASS ACTIONS

CASE: ***IN RE WORLDCOM, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $6.19 billion securities fraud class action recovery – the second largest in history; unprecedented recoveries from Director Defendants.

CASE SUMMARY: Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the **New York State Common Retirement Fund**, we obtained unprecedented settlements totaling more than $6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a $2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly $3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over $60 million to settle the claims against them. An unprecedented first for outside directors, $24.75 million of that amount came out of the pockets of the individuals – 20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as literally having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for $65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over $6.19 billion.

CASE: ***IN RE CENDANT CORPORATION SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

CASE SUMMARY: The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for $2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for $335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs **CalPERS –** the **California Public Employees' Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

CASE: ***IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

DESCRIPTION: The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the **Ohio Public Employees Retirement System**, and the **Teacher Retirement System of Texas** in this securities class action filed on behalf of shareholders of Bank of America Corporation ("BAC") arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

CASE: ***IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION ("NORTEL II")***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Over $1.07 billion in cash and common stock recovered for the class.

DESCRIPTION: This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the **Ontario Teachers' Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay $2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay $228.5 million toward the settlement, bringing the total amount of the global settlement to approximately $2.7 billion, and the total amount of the Nortel II settlement to over $1.07 billion.

CASE: ***IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Northern District of California**

HIGHLIGHTS: $1.05 billion recovery for the class.

DESCRIPTION: This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a $960 million settlement from the company; $72.5 million in cash from Arthur Andersen; and, on the eve of trial, a $10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than $1 billion.

CASE: ***IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $735 million in total recoveries.

DESCRIPTION: Representing the **Government of Guam Retirement Fund**, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of $735 million in recoveries consisting of: a $426 million settlement with underwriters of Lehman securities offerings; a $90 million settlement with former Lehman directors and officers; a $99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a $120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and that the auditors never disavowed the statements.

CASE: ***HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION***

COURT: **United States District Court for the Northern District of Alabama**

HIGHLIGHTS: $804.5 million in total recoveries.

DESCRIPTION: In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the **Retirement Systems of Alabama**. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over $2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of $804.5 million was obtained in this litigation through a series of settlements, including an approximately $445 million settlement for shareholders and bondholders, a $100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants (collectively, "UBS"), and $33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded $230 million, recouping over a third of bond purchaser damages.

CASE: ***IN RE CITIGROUP, INC. BOND ACTION LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

DESCRIPTION: In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a $730 million cash recovery – the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

CASE: ***IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION***

COURT: **United States District Court for the District of Arizona**

HIGHLIGHTS: Over $750 million – the largest securities fraud settlement ever achieved at the time.

DESCRIPTION: BLB&G was appointed Chair of the Executive Committee responsible for litigating the action on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over $750 million – then the largest securities fraud settlement ever achieved.

CASE: ***IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $688 million in combined settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

DESCRIPTION: After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytorin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined $688 million in settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25 settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs **Arkansas Teacher Retirement System,** the **Public Employees' Retirement System of Mississippi,** and the **Louisiana Municipal Police Employees' Retirement System**.

CASE: ***IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

DESCRIPTION: BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the **Parnassus Fund**, **Teamsters Locals 175 & 505 D&P Pension Trust**, **Anchorage Police and Fire Retirement System** and the **Louisiana School Employees' Retirement System.** The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly $679 million in fiscal 2000. The settlement obtained in this case is valued at approximately $667 million, and is composed of cash, stock and warrants.

CASE: ***IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $627 million recovery – among the 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

DESCRIPTION: This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multi-billion dollar option-ARM (adjustable rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined $627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs **Orange County Employees Retirement System** and **Louisiana Sheriffs' Pension and Relief Fund** in this action.

CASE: ***OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC***

COURT: **United States District Court for the Southern District of Ohio**

HIGHLIGHTS: $410 million settlement.

DESCRIPTION: This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** alleging that Federal Home Loan Mortgage Corporation ("Freddie Mac") and certain of its current and former officers issued false and misleading statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than $5 billion in earnings. A settlement of $410 million was reached in the case just as deposition discovery had begun and document review was complete.

CASE: ***IN RE REFCO, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Over $407 million in total recoveries.

DESCRIPTION: The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over $407 million. BLB&G represented Co-Lead Plaintiff **RH Capital Associates LLC**.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

CASE: ***UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the District of Minnesota**

HIGHLIGHTS: Litigation recovered over $920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

DESCRIPTION: This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over $920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement]…. [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the **St. Paul Teachers' Retirement Fund Association**, the **Public Employees' Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs' Pension & Relief Fund**, the **Louisiana Municipal Police Employees' Retirement System** and **Fire & Police Pension Association of Colorado**.

CASE: ***CAREMARK MERGER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Landmark Court ruling orders Caremark's board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by $7.50 per share, equal to more than $3.3 billion in additional consideration to Caremark shareholders.

DESCRIPTION: Commenced on behalf of the **Louisiana Municipal Police Employees' Retirement System** and other shareholders of Caremark RX, Inc. ("Caremark"), this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation ("CVS"), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to shareholders by $7.50 per share in cash (over $3 billion in total).

CASE: ***IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated $75 million fund.

DESCRIPTION: In the wake of Pfizer's agreement to pay $2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana**

Sheriffs' Pension and Relief Fund and **Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

CASE: ***IN RE EL PASO CORP. SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Landmark Delaware ruling chastises Goldman Sachs for M&A conflicts of interest.

DESCRIPTION: This case aimed a spotlight on ways that financial insiders – in this instance, Wall Street titan Goldman Sachs – game the system. The Delaware Chancery Court harshly rebuked Goldman for ignoring blatant conflicts of interest while advising their corporate clients on Kinder Morgan's high-profile acquisition of El Paso Corporation. As a result of the lawsuit, Goldman was forced to relinquish a $20 million advisory fee, and BLB&G obtained a $110 million cash settlement for El Paso shareholders – one of the highest merger litigation damage recoveries in Delaware history.

CASE: ***IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

DESCRIPTION: As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least $55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of $49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

CASE: ***QUALCOMM BOOKS & RECORDS LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

DESCRIPTION: The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

CASE: ***IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **Delaware Court of Chancery – Kent County**

HIGHLIGHTS: An unprecedented settlement in which News Corp. recoups $139 million and enacts significant corporate governance reforms that combat self-dealing in the boardroom.

DESCRIPTION: Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder

concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped $139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

CASE: ***IN RE ACS SHAREHOLDER LITIGATION (XEROX)***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a $69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

DESCRIPTION: Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for $69 million. In the settlement, Deason agreed to pay $12.8 million, while ACS agreed to pay the remaining $56.1 million.

CASE: ***IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION***

COURT: **Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville**

HIGHLIGHTS: Holding Board accountable for accepting below-value "going private" offer.

DESCRIPTION: A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a $40 million settlement in favor of the shareholders, with a potential for $17 million more for the Class.

CASE: ***LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional $14.5 million cash payment for the class.

DESCRIPTION: In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed of $14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at $65 million.

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

CASE: ***ROBERTS V. TEXACO, INC.***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: BLB&G recovered $170 million on behalf of Texaco's African-American employees and engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

DESCRIPTION: Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over $170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

CASE: ***ECOA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION***

COURT: **Multiple jurisdictions**

HIGHLIGHTS: Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing practices nationwide.

DESCRIPTION: The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

NMAC: The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.

GMAC: The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

DAIMLERCHRYSLER: The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute $1.8 million to provide consumer education and assistance programs on credit financing.

FORD MOTOR CREDIT: The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

COLUMBIA LAW SCHOOL – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

FIRM SPONSORSHIP OF HER JUSTICE

NEW YORK, NY – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at www.herjustice.org.

THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

COLUMBIA LAW SCHOOL – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

FIRM SPONSORSHIP OF CITY YEAR NEW YORK

NEW YORK, NY – BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

MAX W. BERGER PRE-LAW PROGRAM

BARUCH COLLEGE – In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

NEW YORK SAYS THANK YOU FOUNDATION

NEW YORK, NY – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.

OUR ATTORNEYS

MEMBERS

MAX W. BERGER, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated six of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* ($3.3 billion); *Citigroup–WorldCom* ($2.575 billion); *Bank of America/Merrill Lynch* ($2.4 billion); *JPMorgan Chase–WorldCom* ($2 billion); *Nortel* ($1.07 billion); and *McKesson* ($1.04 billion).

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the Bank of Amer*ica/Merrill Lynch Merger* litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a $627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a $516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger's role in the *WorldCom* case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

One of the "100 Most Influential Lawyers in America"

Widely recognized for his professional excellence and achievements, Mr. Berger was named one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over $5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.

Described as a "standard-bearer" for the profession in a career spanning over 40 years, he is the 2014 recipient of *Chambers USA's* award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger's "numerous headline-grabbing successes," as well as his unique stature among colleagues – "warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table."

Law360 published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," and also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York's "local litigation stars" by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*). *Law360* also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

Since their various inceptions, he has also been named a "leading lawyer" by the *Legal 500 US* guide, one of "10 Legal Superstars" by *Securities Law360*, and one of the "500 Leading Lawyers

in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America* guide has named Mr. Berger a leading lawyer in his field.

Mr. Berger also serves the academic community in numerous capacities as a member of the Dean's Council to Columbia Law School, and as a member of the Board of Trustees of Baruch College. He has taught Profession of Law, an ethics course at Columbia Law School, and currently serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine.*

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York's "Idealist of the Year," for his long-time service and work in the community. He and his wife, Dale, have also established the Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

GERALD H. SILK's practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

A member of the firm's Management Committee, Mr. Silk is one of the partners who oversee the firm's New Matter department, in which he, along with a group of financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of "Picking Winning Securities Cases," a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. A decade later, in December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" – one of 50 lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies – in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters. In addition, *Lawdragon* magazine, which has named Mr. Silk one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers

in America" and one of America's top 500 "rising stars" in the legal profession, also recently profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, Mr. Silk is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by *New York Super Lawyers* every year since 2006.

Mr. Silk is currently advising institutional investors worldwide on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk is also representing the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation – which led to an increase of approximately $3.5 billion in the consideration offered to shareholders.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation.* A case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a $200 million secondary offering of ADRs by the U.K.-based Independent Energy, the litigation was resolved for $48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for $3.2 billion.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, Fall 2006; "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," 75 *St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He is a frequent commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

SALVATORE J. GRAZIANO, an experienced trial attorney, has taken a leading role in a number of major securities fraud class actions over the past twenty years on behalf of institutional investors and hedge funds nationwide. These high-profile cases include *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century* (C.D. Cal.).

Widely recognized by observers, peers and adversaries as one of the top securities and class action litigators in the country, Mr. Graziano has been cited as "wonderfully talented…excellent judgment…a smart, aggressive lawyer who works hard for his clients" (*Chambers USA*); an attorney who performs "top quality work" (*Benchmark Litigation*); and a "highly effective litigator" (*US Legal500*). One of three Legal MVPs in the nation heralded by *Law360* for his work in class actions, he is regularly named as one of *Lawdragon's* 500 Leading Lawyers in America, a leading mass tort and plaintiff class action litigator by *Best Lawyers*®, and a *New York Super Lawyer*.

Mr. Graziano is a member of the firm's Management Committee. He has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York.

Upon graduation from law school, Mr. Graziano served as an Assistant District Attorney in the Manhattan District Attorney's Office.

Mr. Graziano regularly lectures on securities fraud litigation and shareholder rights.

EDUCATION: New York University College of Arts and Science, B.A., psychology, *cum laude*, 1988. New York University School of Law, J.D., *cum laude*, 1991.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York; U.S. Courts of Appeals for the First, Second, Third, Ninth and Eleventh Circuits.

DAVID L. WALES, an experienced trial and appellate attorney, prosecutes class and private actions in both federal and state courts, specializing in complex commercial and securities litigation, as well as arbitrations.

He has taken more than 15 cases to trial, including obtaining a jury verdict for more than $11 million in a derivative action against the general partner of a hedge fund, and a multi-million dollar class action settlement with an accounting firm reached during trial.

Mr. Wales has extensive experience litigating securities fraud class actions, derivative actions, shareholders rights and residential mortgage backed securities ("RMBS") cases. He has led or is currently lead or co-lead counsel in the following cases:

- *In Re Merck & Co., Inc. Securities Litigation,* a certified class action on behalf of investors in Merck Securities;
- *In Re Kinder Morgan Energy Partners, L.P. Capex Litigation;*
- *In Re Nu Skin Enterprises, Inc. Shareholder Derivative Litigation;* and
- *In Re Intuitive Surgical Shareholder Derivative Litigation.*

As lead trial counsel in numerous securities class actions and derivative actions, as well as actions on behalf of private clients, he has recovered hundreds of millions of dollars on behalf of institutional investor clients. Some of his significant recoveries include:

- *In Re Citigroup Inc. Bond Litigation*, a class action on behalf of investors in numerous securities offerings ($730 million settlement);
- *Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc.*, $315 million settlement in a class action on behalf of investors in RMBS;
- *In re Pfizer Inc. Shareholder Derivative Action*, a $75 million settlement and substantial corporate governance changes in a derivative action;
- *In Re Jefferies Group, Inc. Shareholders Litigation*, a $70 million settlement on behalf of shareholders in the sale of the company;
- *Bayerische Landesbank v. Deutsche Bank, A.G.*, private action on behalf of institutional investor in RMBS;
- *TIAA-CREF v. Dexia Holdings and Deutsche Bank, A.G.*, two consolidated private actions on behalf of institutional investors in RMBS;
- *In re Sepracor Corp. Securities Litigation*, a $52.5 million recovery in a securities fraud class action;
- *In re Cablevision Systems Corp. Derivative Litigation*, a $34.4 million settlement in a back dated stock option action;
- *Public Employees' Retirement System of Mississippi v. Goldman Sachs Group Inc.*, a class action on behalf of investors in RMBS ($25.3 million settlement on behalf of RMBS investors);
- *In re Marque Partners LP Derivative Action*, an $11 million jury verdict in a derivative action; and
- *In re Jennifer Convertibles Securities Litigation*, a $9.55 million recovery in a securities fraud class action, part of the recovery obtained in the middle of trial.

His representative clients have included a variety of public pension funds, Taft-Hartley pension funds, insurance companies, banks, hedge funds and private investment funds.

As a former Assistant United States Attorney for the Southern District of New York, Mr. Wales specialized in investigating and prosecuting fraud and white collar criminal cases.

A member of the Federal Bar Council and the Federal Courts Committee of the New York County Lawyers Association, he is rated AV, the highest rating possible from Martindale-Hubbell®, the country's foremost legal directory. He is also regularly recognized as *New York Super Lawyer* for his work in securities litigation by *Super Lawyers.*

EDUCATION: State University of New York at Albany, B.A., *magna cum laude*, 1984. Georgetown University Law Center, J.D., *cum laude*, 1987; Notes and Comments Editor for the *Journal of Law and Technology*.

BAR ADMISSIONS: New York; District of Columbia; U.S. Courts of Appeals for the Second and Fourth Circuits; U.S. District Courts for the Eastern, Southern and Western Districts of New York; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the District of Columbia; U.S. District Court for the Northern District of Illinois and Trial Bar.

JOHN RIZIO-HAMILTON is involved in a variety of the firm's litigation practice areas, focusing specifically on securities fraud, corporate governance, and shareholder rights. He currently represents the firm's institutional investor clients as counsel in a number of major pending actions, including the securities class action arising from Facebook's IPO, captioned *In re Facebook, Inc. IPO Securities Litigation*, and the securities class action arising from JPMorgan's

notorious "London Whale" trading losses, captioned *In re JPMorgan Chase & Co. Securities Litigation*.

Mr. Rizio-Hamilton was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which settled for $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation settlements obtained of all time. He also served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for $730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. In addition, Mr. Rizio-Hamilton was a member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of $627 million on behalf of investors, one of the 15 largest securities class action recoveries in history.

Mr. Rizio-Hamilton has also been a member of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among other matters, he was part of the trial teams that prosecuted *Eastwood Enterprises LLC v. WellCare*, *In re MBIA, Inc. Securities Litigation*, and *In re RAIT Financial Trust Securities Litigation*.

For his remarkable accomplishments, Mr. Rizio-Hamilton was recognized by *Law360* as one of the country's "Top Attorneys Under 40," and a national "Rising Star" in the area of class action litigation.

Before joining BLB&G, Mr. Rizio-Hamilton clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit, and the Honorable Sidney H. Stein of the United States District Court for the Southern District of New York.

EDUCATION: The Johns Hopkins University, B.A., *with honors*, 1997. Brooklyn Law School, J.D., *summa cum laude;* Editor-in-Chief of the *Brooklyn Law Review;* first-place winner of the J. Braxton Craven Memorial Constitutional Law Moot Court Competition.

BAR ADMISSION: New York; U.S. District for the Southern District of New York.

JEROEN VAN KWAWEGEN is a partner in the New York office of BLB&G. A senior member of the firm's Corporate Governance Litigation team, his practice focuses on the fiduciary duties of boards of directors and senior executives, shareholder appraisal actions, shareholder activism, and regulatory compliance. For his professional achievements, he has been recognized as a New York *Super Lawyer* and a New York "Rising Star" by Thomson Reuters, and a leading practitioner in his field by *Legal 500 US*.

Mr. van Kwawegen has extensive experience in litigation on behalf of shareholders involving the oversight of board and management misconduct. He has represented institutional investors in numerous high profile derivative actions, including actions involving Board entrenchment and shareholder voting rights violations, as well as merger and acquisitions disputes and shareholder appraisals. Mr. van Kwawegen has also prosecuted a variety of securities class actions on behalf of large institutional investors, including numerous matters relating to the credit crisis and disputes regarding the sale of residential mortgage-backed securities.

Recent cases include:

- Representation of shareholders challenging the merger of Globe Specialty Metals with Grupo FerroAtlántica in Delaware Chancery Court resulting in $32.5 million additional consideration for Globe shareholders and significant governance improvements for shareholders in the combined Globe/FerroAtlántica entity;

- Representation of a union-owned bank and public employee retirement fund from Louisiana in a derivative action in the U.S. District Court for the Southern District of New York asserting breach of fiduciary duty claims against Pfizer's board of directors in connection with off-label marketing of prescription drugs resulting in extensive corporate governance changes, including the establishment of a new Board committee and payment of $75 million;
- Representation of shareholders in a derivative action in Maryland State Court challenging an unfair asset management agreement between Altisource Residential and its former sister company Altisource Asset Management resulting in a renegotiated asset management agreement and at least $144 million in savings over the next five years;
- Representation of shareholders in a class and derivative action in Florida State Court challenging the adoption of new bylaws by the board of directors of Darden Restaurants in response to a shareholder activist resulting in the successful reversal of the new bylaws and withdrawal of a poison pill;
- Representation of European banks in common law fraud actions in New York State Court against JPMorgan, Bear Stearns and Washington Mutual in connection with the sale of $5 billion in residential mortgage-backed securities;
- Representation of public employee retirement funds from Mississippi and California in a securities class action in the U.S. District Court for the Southern District of New York against Merrill Lynch concerning the sale of residential mortgage-backed securities, recovering $315 million for the investor class; and
- Representation of public employee retirement fund from Louisiana in a class action in Delaware Chancery Court asserting breach of fiduciary duty claims against the largest shareholder and Chairman/CEO and a special committee of directors of Landry's Restaurants in connection with a proposed going-private transaction resulting in $78.5 million recovery, including $14.5 million for a novel sellers' class.

Mr. van Kwawegen is a frequent speaker at industry events on a wide range of corporate governance and securities related issues, and recently co-authored "Of Babies and Bathwater: Deterring Frivolous Stockholder Suits Without Closing the Courthouse Doors to Legitimate Claims," *Delaware Journal of Corporate Law* (DJCL), Vol. 40, 2015 (forthcoming).

EDUCATION: University of Amsterdam School of Law, LLM, 1998. Columbia University Law School, J.D., 2003; Harlan Fiske Stone Scholar.

BAR ADMISSIONS: New York; U.S. Courts of Appeals for the Second and Third Circuits; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. District Court for the District of Colorado.

KATHERINE M. SINDERSON is involved in a variety of the firm's practice areas, including securities fraud, corporate governance, and advisory services. Among other matters, she is currently a member of the teams prosecuting *In re Wilmington Trust Securities Litigation, In re Merck Securities Litigation,* and *In re Salix Pharmaceuticals, Ltd. Securities Litigation.*

Ms. Sinderson was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which resulted in a recovery of $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act and one of the largest shareholder recoveries in history. Ms. Sinderson was also a member of the trial team that prosecuted the action against Washington Mutual, Inc. and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations, an action which resulted in a recovery of $208.5 million and represents one of the largest settlements achieved in a case related to the fallout of the subprime crisis and the largest recovery ever achieved in a securities class action in the Western District of Washington.

Ms. Sinderson has also been part of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among numerous other matters, she was a part of the trial teams that prosecuted the *In re Bristol-Myers Squibb Co. Securities Litigation*, which resulted in a recovery of $125 million, as well as *In re Biovail Corporation Securities Litigation*, which resulted in a recovery of $138 million for defrauded investors and represents the second largest recovery in any securities case involving a Canadian issuer.

EDUCATION: Baylor University, B.A., *cum laude*, 2002. Georgetown University, J.D., *cum laude*, 2006; Dean's Scholar; Articles Editor for *The Georgetown Journal of Gender and the Law*.

BAR ADMISSIONS: New York; U.S. District Court for the Southern District of New York; U.S. Court of Appeals for the Second Circuit.

ADAM H. WIERZBOWSKI has represented institutional investors and other plaintiffs in numerous complex litigations that include securities class actions and derivative suits.

In *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, Mr. Wierzbowski was a senior member of the team that achieved a total settlement of $688 million on behalf of investors. The combined $688 million in settlements is the second largest securities class action settlement in the Third Circuit and among the top 25 securities class action settlements of all time. The cases settled after nearly five years of litigation and less than a month before trial. In the *UnitedHealth Derivative Litigation*, which involved executives' illegal backdating of UnitedHealth stock options, Mr. Wierzbowski helped recover in excess of $920 million from the individual Defendants. Mr. Wierzbowski also represents investors in the securities litigation against General Motors and certain of its senior executives stemming from that company's delayed recall of vehicles with defective ignition switches, where the parties have reached a $300 million settlement that is currently pending Court approval. In addition, in the *Merck Vioxx Securities Litigation*, which arises out of Merck's failure to disclose adverse facts regarding the risks of Vioxx, the plaintiffs achieved a unanimous and groundbreaking victory for investors at the U.S. Supreme Court and that case is currently pending.

Mr. Wierzbowski has additionally played a key role in obtaining significant recoveries on behalf of investors in *Spahn v. Edward D. Jones* (settlement value of $127.5 million), *In re American Express Financial Advisors Securities Litigation* ($100 million recovery), *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.* ($85 million recovery), and the *Monster Worldwide Derivative Litigation* (recovery valued at $32 million). He is currently a member of the teams prosecuting *In re Merck Vioxx Securities Litigation*, *In re Facebook, Inc. IPO Securities Litigation*, *Bach v. Amedisys*, and *In re Altisource Portfolio Solutions, S.A. Securities Litigation*.

Mr. Wierzbowski was recognized as one of *Super Lawyers'* 2014 New York "Rising Stars." No more than 2.5% of the lawyers in New York are selected to receive this honor each year.

EDUCATION: Dartmouth College, B.A., *magna cum laude*, 2000. The George Washington University Law School, J.D., *with honors*, 2003; Notes Editor for *The George Washington International Law Review*; Member of the Moot Court Board.

BAR ADMISSIONS: New York; U.S. Supreme Court; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. District Court for the Eastern District of Michigan; U.S. Courts of Appeals for the Third and Sixth Circuits.

JOHN P. ("SEAN") COFFEY (former partner) was a Commissioned Officer in the United States Navy before graduating from law school, where he served as a P-3C Orion patrol plane mission commander, an Intern in the Organization for the Joint Chiefs of Staff, and the personal military aide to Vice President George H.W. Bush. After leaving active duty to pursue his legal career, Mr. Coffey continued to serve in the Navy Reserve, where he commanded a P-3C squadron and the Reserve component of the *Enterprise* carrier battle group staff, and served for four years as a Captain in the Office of the Secretary of Defense at the Pentagon. In August 2004, he retired from the Navy after thirty years of uniformed service.

Mr. Coffey served as an Assistant United States Attorney for the Southern District of New York from 1991 to 1995, where he conducted numerous complex fraud investigations and tried many cases to verdict.

Mr. Coffey joined BLB&G in 1998 and served as the lead trial attorney in two of the most notable fraud cases ever to go to trial. In April 2005, Mr. Coffey and his BLB&G team completed their prosecution of the *WorldCom* securities class action—a prosecution that yielded a record-breaking recovery for defrauded investors of over $6.15 billion—by taking the lone non-settling defendant, WorldCom's former auditor Arthur Andersen LLP, to trial. Mr. Coffey's role in the *WorldCom* prosecution was featured in a December 2004 article in *The American Lawyer* entitled "*Taking Citi To School*" and a November 2005 article in *The American Lawyer* entitled "*Breaking The Banks*."

In 2002, in another trial against Andersen, this time arising out of the collapse of the Baptist Foundation of Arizona, *BFA Liquidation Trust v. Arthur Andersen LLP*, the largest non-profit bankruptcy in U.S. history, Mr. Coffey obtained a $217 million settlement, one of the largest amounts ever paid by an accounting firm.

EDUCATION: United States Naval Academy ("U.S.N.A."), B.S., Ocean Engineering, *with merit*, in 1978. Georgetown University Law Center, J.D., *magna cum laude*, 1987; Articles Editor for the *Georgetown Law Journal*; Order of the Coif; Charles A. Keigwin Award.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern, Southern and Western Districts of New York; U.S. Courts of Appeals for the Second and Third Circuits; New Jersey.

WILLIAM C. FREDERICKS (former partner) practiced securities and complex commercial litigation for seven years as an associate at Simpson Thacher & Bartlett and Willkie Farr & Gallagher. He moved to the plaintiffs' side of the bar in 1997. Since then, Mr. Fredericks has represented investors as a lead or co-lead counsel in over two dozen securities class actions, notably *In re Rite Aid Securities Litigation* (E.D. Pa.) (total settlements of $323 million, including the then-second largest securities fraud settlement ever against a Big Four accounting firm); *In re Sears Roebuck & Co. Securities Litigation* (N.D. Ill.) ($215 million settlement); and *Irvine v. Imclone Systems, Inc.* (S.D.N.Y.) ($75 million settlement).

In addition to obtaining numerous recoveries for investors in shareholder class actions, Mr. Fredericks also represented the Trustee of a Creditors Trust in connection with obtaining recoveries for creditors from the former officers, auditors, attorneys and investment advisors of the former Friedman's, Inc. See *Cohen v. Morgan Schiff & Co., Inc. (In re Friedman's Inc.)*, 385 B.R. 381 (S.D. Ga. 2008). Mr. Fredericks has also successfully represented several private institutional clients (including Mexico's TV Azteca and Australia's Australis Media Group) in private commercial disputes at both the trial and appellate level. See, e.g., *National Broadcasting Co. v. Bear Stearns & Co., et al.*, 165 F.3d 184 (2d Cir. 1999); *News Ltd. v. Australis Holdings Pty. Limited*, 728 N.Y.S. 2d 667 (1st Dep't 2001) and 742 N.Y.S. 2d 190 (1st Dep't 2002).

Mr. Fredericks graduated from Columbia University School of Law in 1988, where he was awarded the Toppan Prize in Advanced Constitutional Law, the Beck Prize in Property Law, and

the Greenbaum prize for Legal Writing. A panel chaired by Justice Antonin Scalia also awarded him the Gov. Thomas E. Dewey Prize for best oral argument in the final round of Columbia's 1988 Harlan Fiske Stone Moot Court Competition. After law school, Mr. Fredericks clerked for the Hon. Robert S. Gawthrop III of the U.S. District Court for the Eastern District of Pennsylvania.

EDUCATION: Swarthmore College, B.A., Political Science, high honors, 1983. Oxford University (England), M.Litt., International Relations, 1988. Columbia University, J.D., 1988; three-time Harlan Fiske Stone Scholar; Columbia University International Fellow, Articles Editor of *The Columbia Journal of Transnational Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York and the District of Colorado; U.S. Courts of Appeals for the Second, Third, Sixth and Tenth Circuits.

Of Counsel

G. ANTHONY GELDERMAN, III heads the firm's Louisiana office and is responsible for the firm's institutional investor and client outreach. He is a frequent speaker at U.S. investor conferences and has written numerous articles on securities litigation and asset protection.

Earlier in his career, Mr. Gelderman served as Chief of Staff and General Counsel to the Treasurer of the State of Louisiana, (1992-1996) and prior to that served as General Counsel to the Louisiana Department of the Treasury. Mr. Gelderman also coordinated all legislative matters for the State Treasurer during his tenure with the Treasury Department. Earlier in Mr. Gelderman's legal career, he served as law clerk to U.S. District Judge Charles Schwartz, Jr., Eastern District of Louisiana (1986-1987).

Mr. Gelderman is a former adjunct professor of law at the Tulane Law School where he has taught a course in legislative process.

Mr. Gelderman is a member of the Louisiana State Bar Association, where he served as Chairman for the Young Lawyers Continuing Legal Education Committee between 1990 and 1993, and the American Bar Association.

BAR ADMISSIONS: Louisiana; U.S. District Courts for the Eastern and Middle Districts of Louisiana.

KURT HUNCIKER's practice is concentrated in complex business and securities litigation. Prior to joining BLB&G, Mr. Hunciker represented clients in a number of class actions and other actions brought under the federal securities laws and the Racketeer Influenced and Corrupt Organizations Act. He has also represented clients in actions brought under intellectual property laws, federal antitrust laws, and the common law governing business relationships.

Mr. Hunciker served as a member of the trial team for the *In re WorldCom, Inc. Securities Litigation* and, more recently, teams that prosecuted various litigations arising from the financial crisis, including *In re Citigroup, Inc. Bond Litigation, In re Wachovia Preferred Securities and Bond/Notes Litigation, In re MBIA Inc. Securities Litigation* and, *In re Ambac Financial Group, Inc. Securities Litigation.* Mr. Hunciker also was a member of the team that prosecuted the *In re Schering-Plough Corp./Enhance Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation.* He presently is a member of the team prosecuting the *In re Merck & Co., Inc. Securities Litigation,* which arises out of Merck's alleged failure to disclose adverse facts to investors regarding the risks of Vioxx.

EDUCATION: Stanford University, B.A.; Phi Beta Kappa. Harvard Law School, J.D., Founding Editor of the *Harvard Environmental Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second, Fourth and Ninth Circuits.

SENIOR COUNSEL

ROCHELLE FEDER HANSEN has handled a number of high profile securities fraud cases at the firm, including *In re StorageTek Securities Litigation*, *In re First Republic Securities Litigation*, and *In re RJR Nabisco Securities Litigation*. Ms. Hansen has also acted as Antitrust Program Coordinator for Columbia Law School's Continuing Legal Education Trial Practice Program for Lawyers.

EDUCATION: Brooklyn College of the City University of New York, B.A., 1966; M.S., 1976. Benjamin N. Cardozo School of Law, J.D., *magna cum laude*, 1979; Member, *Cardozo Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit.

JAI K. CHANDRASEKHAR prosecutes securities fraud litigation for the firm's institutional investor clients. He has been a member of the litigation teams on several of the firm's high-profile securities cases including *In re Refco, Inc. Securities Litigation*, in which multiple settlements were achieved by Lead Plaintiffs resulting in a total recovery of $367.3 million for the benefit of the settlement class, and *In re Bristol Meyers Squibb Co. Securities Litigation*, in which a settlement of $125 million was achieved for the class.

Mr. Chandrasekhar is currently counsel for the plaintiffs in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising from misrepresentations and omissions concerning the trading activities of JPMorgan's Chief Investment Officer and the losses suffered by investors following JPMorgan's surprise announcement in May 2012 that it had suffered over $2 billion in losses on trades tied to complex credit derivative products. He is also counsel for the plaintiffs in *In re MF Global Holdings Ltd. Securities Litigation*, a securities class action arising out of the collapse of MF Global – formerly a leading derivatives brokerage firm – and concerning a series of materially false and misleading statements and omissions about MF Global's business and financial results.

Prior to joining BLB&G, Mr. Chandrasekhar was a Staff Attorney with the Division of Enforcement of the United States Securities and Exchange Commission, where he investigated securities law violations and coordinated investigations involving multiple SEC offices and other government agencies. Before his tenure at the SEC, he was an associate at Sullivan & Cromwell LLP, where he represented corporate issuers and underwriters in public and private offerings of stocks, bonds, and complex securities and advised corporations on periodic reporting under the Securities Exchange Act of 1934, compliance with the Sarbanes-Oxley Act of 2002, and other corporate and securities matters.

Mr. Chandrasekhar currently serves as a member of the Board of Directors of the New York County Lawyers' Association, and is a member of the New York City Bar Association.

EDUCATION: Yale University, B.A., *summa cum laude*, 1987; Phi Beta Kappa. Yale Law School, J.D., 1997; Book Review Editor of the *Yale Law Journal*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for Second, Third and Federal Circuits.

LAUREN MCMILLEN ORMSBEE's practice focuses on complex commercial and securities litigation out of the firm's New York office.

Following law school, Ms. Ormsbee served as a law clerk for the Honorable Colleen McMahon, District Court Judge for the Southern District of New York.

Prior to joining the firm in 2007, Ms. Ormsbee was a litigation associate at a prominent defense firm where she had extensive experience in securities litigation and complex commercial litigation.

Since joining the firm in 2007, Ms. Ormsbee has represented institutional and private investors in a number of class and direct actions involving securities fraud and other violations. She has been an integral part of the teams that prosecuted *In re HealthSouth Bondholder Litigation*, which obtained $230 million for the Class; *In re New Century Securities Litigation*, which obtained $125 million for the benefit of the Class; *In re State Street Corporation Securities Litigation*, which obtained $60 million for the Class, *In re Ambac Financial Group Securities Litigation*, which obtained $33 million from the now-bankrupt insurer; *In re Goldman Sachs Mortgage Pass-Through Litigation*, which obtained $26.6 million for the benefit of the class of RMBS purchasers and *Barron v. Union Bancaire Privée*, which obtained $8.9 million on behalf of the class of investors harmed by the fund's investments with Bernard Madoff.

Ms. Ormsbee is currently a member of the teams prosecuting *In re Wilmington Trust Securities Litigation*, *In re Altisource Portfolio Solutions S.A. Securities Litigation*, *Levy v. GT Advanced Technologies Inc.*, *In re Tower Group International, Ltd. Securities Litigation* and *In re Cooper Tire & Rubber Company Securities Litigation*.

EDUCATION: Duke University, B.A., History, 1996. University of Pennsylvania Law School, J.D., *cum laude*, 2000; Research Editor for the *University of Pennsylvania Law Review*.

BAR ADMISSIONS: New York; U. S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit.

JOSEPH COHEN has extensive complex civil litigation experience and currently practices in the firm's settlement department where he has primary responsibility for negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Department of Motor Vehicles*, 100 Cal. App. 4th 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle $300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a $665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Resources, Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over $200 million); *In re Community Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of $55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) ($30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) ($24 million settlement); *In re Metris Companies, Inc., Sec. Litig.* (D. Minn.) ($7.5 million settlement); *In re Landry's Seafood Restaurants, Inc. Sec. Litig.* (S.D. Tex.) ($6 million settlement); and *Freedman v. Maspeth Federal Loan and Savings Association*, (E.D.N.Y) (favorable resolution of issue of first impression under RESPA and full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately $2 billion); *In re Washington Mutual Mortgage-Backed Securities Litigation* (W.D.

Wash.) (settlement of $26 million); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company* (E.D. Pa.) ($8 million recovery on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Retirement Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of $7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig*. (Cal. Super. Ct.) ($7.6 million recovery).

EDUCATION: University of Rhode Island, B.S., Marketing, *cum laude*, 1986; Case Western Reserve University School of Law, J.D., 1989; New York University School of Law, LL.M., 1990.

BAR ADMISSIONS: California; District of Columbia; U.S. Court of Appeals for the Ninth Circuit; U.S. District Courts for the Central, Northern and Southern Districts of California.

ASSOCIATES

ABE ALEXANDER practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation. He was a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, which settled on the eve of trial for a combined $688 million. This $688 million settlement represents the largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind. As lead associate on the firm's trial team, Mr. Alexander helped achieve a $150 million settlement of investors' claims against JPMorgan Chase arising from alleged misrepresentations concerning the trading activities of the so-called "London Whale." He is currently prosecuting securities claims against Merck and others arising from alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX.

Prior to joining the firm, Mr. Alexander represented institutional clients in a number of high-profile securities, corporate governance, and antitrust matters.

Mr. Alexander was an award-winning member of his law school's national moot court team. Following law school, he served as a judicial clerk to Chief Justice Michael L. Bender of the Colorado Supreme Court.

Super Lawyers selected Mr. Alexander as a New York "Rising Star" in recognition of his accomplishments.

EDUCATION: New York University - The College of Arts and Science, B.A., Analytic Philosophy, *cum laude*, 2003. University of Colorado Law School, J.D., 2008; Order of the Coif.

BAR ADMISSIONS: Delaware; New York; U.S. District Court for the District of Delaware; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

DAVID L. DUNCAN's practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, Mr. Duncan worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, Mr. Duncan served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

EDUCATION: Harvard College, A.B., Social Studies, *magna cum laude*, 1993. Harvard Law School, J.D., *magna cum laude*, 1997.

BAR ADMISSIONS: New York; Connecticut; U.S. District Court for the Southern District of New York.

JOHN J. MILLS' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law;* Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

KRISTIN A. MEISTER (former associate) has extensive experience in commercial and class action litigation. She has argued motions in both state and federal court and has represented plaintiffs and defendants in securities fraud class actions, derivative suits, white collar criminal investigations, federal antitrust multi-district litigation, banking litigation, and federal and state criminal matters.

Ms. Meister served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which resulted in a $730 million cash recovery – the second largest in history in a securities class action brought on behalf of purchasers of debt securities, and one of the fifteen largest recoveries in any securities class action. It is also the second largest settlement of a litigation arising out of the subprime meltdown and financial crisis. She also served as counsel representing a union-owned bank and public employee retirement fund from Louisiana asserting breach of fiduciary duty claims in the *Pfizer Derivative Litigation* against the senior management and Board of Directors of Pfizer, Inc., which resulted in a $75 million payment and creation of a new Healthcare Law Regulatory Committee, setting an improved standard for regulatory compliance oversight by a public company board of directors.

Prior to joining the firm, she was a Litigation and Trial Practice Group associate at Alston & Bird LLP.

EDUCATION: Kenyon College, B.A., *magna cum laude*, Political Science and English, 2000; Elmer Graham Scholar Full Scholarship Award Recipient; Student Council Vice-President; Editor in Chief of *The Kenyon Observer*. University of Michigan Law School, J.D., 2004; Associate/Contributing Editor of *Michigan Telecommunications and Technology Law Review*; Elected Law School Student Senator.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

BRETT VAN BENTHYSEN (former associate) prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Mr. Van Benthysen interned at the New Jersey Office of the Attorney General, Securities Fraud Prosecution Section, as well as at the Seton Hall Center for Social Justice, assisting Newark homeowners who were defrauded by a predatory lending scheme.

EDUCATION: The College of New Jersey, B.A., magna cum laude, 2004. New York University, M.S., 2006. Seton Hall University School of Law, J.D., cum laude, 2009; Civil Litigation Clinic Practitioner Award.

BAR ADMISSION: New Jersey; New York.

STAFF ATTORNEYS

The BLB&G staff attorneys are involved with every stage of litigation, including conducting e-discovery, legal research, preparing for depositions, and assisting with pleadings, expert discovery, summary judgment and trial preparation.

ERWIN ABALOS has worked on numerous matters at BLB&G, including *In re Facebook, Inc., IPO Securities and Derivative Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.*

Prior to joining the firm in 2012, Mr. Abalos was an associate at Jacoby & Meyers and Associates LLP. Prior to attending law school, Mr. Abalos was a Senior Scientist at F. Hoffmann-LaRoche Ltd.

EDUCATION: Georgetown University, B.S., 2000. Rutgers University School of Law, J.D., 2006.

BAR ADMISSIONS: New Jersey, New York.

EVAN AMBROSE has worked on numerous matters at BLB&G, including *In re Allergan, Inc. Proxy Violation Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *YouTube Class Action*.

Prior to joining the firm in 2008, Mr. Ambrose worked as an attorney on several complex litigation matters for major law firms in New York City.

EDUCATION: New York University, B.A., 1998. New York University School of Law, J.D., 2001.

BAR ADMISSIONS: New York.

LEILA AMINEDDOLEH has worked on *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2012, Ms. Amineddoleh was an associate at Fitzpatrick, Cella, Harper & Scinto.

EDUCATION: New York University, B.A., 2002. Boston College Law School, J.D., 2006.

BAR ADMISSIONS: New York.

TAMARA BEDIC has worked on numerous matters at BLB&G, including *JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re The Mills Corporation Securities Litigation* and *In re R&G Financial Corporation Securities Litigation*.

Prior to joining the firm in 2008, Ms. Bedic was a contract attorney at Milberg LLP. Ms. Bedic also interned and translated for The Croatian Privatization Fund and the War Crimes Tribunal at The Hague.

EDUCATION: New York University Graduate School of Arts and Sciences, M.A., *cum laude*, 1993. University of Virginia School of Law, J.D., 1998.

BAR ADMISSIONS: New Jersey, New York.

JIM BRIGGS has worked on numerous matters at BLB&G, including *In re JPMorgan Chase & Co. Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2013, Mr. Briggs was a contract attorney at Paul, Weiss, Rifkind, Wharton & Garrison LLP and Stull, Stull & Brody.

EDUCATION: Cornell University, College of Agriculture and Life Sciences, B.S. in Biological Science, *cum laude*, May 2007. Fordham University School of Law, J.D., 2010.

BAR ADMISSIONS: New York.

GIROLAMO BRUNETTO has worked on numerous matters at BLB&G, including *In re Genworth Financial Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation* and *In re JPMorgan Chase & Co. Securities Litigation.*

Prior to joining the firm in 2013, Mr. Brunetto was a volunteer assistant attorney general, Investor Protection Bureau, Office of the New York State Attorney General.

EDUCATION: University of Florida, B.S.B.A. and B.A., *cum laude*, May 2007. New York Law School, J.D., *cum laude*, 2011.

BAR ADMISSIONS: New York.

ALEXA BUTLER has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re JPMorgan Chase & Co. Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re MBIA Inc. Securities Litigation, In re Washington Mutual, Inc. Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re Refco, Inc. Securities Litigation* and *Affiliated Computer Services, Inc. Shareholder Derivative Litigation.*

Prior to joining the firm in 2007, Ms. Butler was a contract attorney at Whatley Drake & Kallas, LLC.

EDUCATION: Georgia Institute of Technology, B.S., 1993. St. John's University School of Law, J.D., 1997.

BAR ADMISSIONS: New York.

DAVID CARLET has worked on numerous matters at BLB&G, including *In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re The Mills Corporation Securities Litigation* and *In re Scottish Re Group Securities Litigation.*

Prior to joining the firm in 2008, Mr. Carlet was an associate at Baker & McKenzie LLP and Katten Muchin Rosenman LLP.

EDUCATION: Boston College, B.A., *magna cum laude*, 1993. Loyola University Chicago School of Law, J.D., *magna cum laude*, 1996. New York University School of Law, LL.M., 2008.

BAR ADMISSIONS: California.

ERIKA CONNOLLY has worked on several matters at BLB&G, including *In re Green Mountain Coffee Roasters, Inc. Securities Litigation, In re MF Global Holdings Limited Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2014, Ms. Connolly was an attorney at Stull, Stull & Brody.

EDUCATION: Boston University, B.A., *magna cum laude*, 2007. Fordham University School of Law, J.D., 2011.

BAR ADMISSIONS: New York.

CYNTHIA GILL has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation* and *In re Refco, Inc. Securities Litigation.*

Prior to joining the firm in 2005, Ms. Gill was an associate at Davis, Saperstein & Salomon, P.C.

EDUCATION: Rutgers University, B.A., 1987. Georgetown University Law Center, J.D., 1990.

BAR ADMISSIONS: New Jersey, New York.

DANIEL GRUTTADARO has worked on numerous matters at BLB&G, including *General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*

Prior to joining the firm in 2014, Mr. Gruttadaro was a staff attorney at Stull, Stull & Brody.

EDUCATION: State University of New York at Geneseo, B.S., 2005. State University of New York at Buffalo Law School, J.D., *cum laude*, 2009.

BAR ADMISSIONS: New York.

MARY HANSEL has worked on numerous matters at BLB&G, including *In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Police & Fire Retirement System of the City of Detroit v. SafeNet, Inc., et al., In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re Bristol-Myers Squibb Co. Securities Litigation, In re The Mills Corporation Securities Litigation* and *In re Openwave Systems Securities Litigation.*

Prior to joining the firm in 2008, Ms. Hansel was an associate at Robins, Kaplan, Miller & Ciresi LLP and Irell & Manella LLP.

EDUCATION: Vassar College, B.A., 1996. University of Southern California Law School, J.D., 2002. London School of Economics and Political Science, LL.M., 2006.

BAR ADMISSIONS: California.

MARK VAN DER HARST has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation, In re Refco, Inc. Securities Litigation, In re Converium Holding AG Securities Litigation* and *Stonington Partners, Inc. v. Dexia Bank Belgium*.

Prior to joining the firm in 2005, Mr. van der Harst was an associate at PricewaterhouseCoopers.

EDUCATION: Leiden University, Faculty of Law, J.D, 1999. University of San Diego School of Law, LL.M., 2004.

BAR ADMISSIONS: New York.

JESSICA JUSTE (SARENAC) has worked on numerous matters at BLB&G, including *Allstate Insurance Company v. Morgan Stanley & Co., Inc., Dexia Holdings, Inc. v. JP Morgan* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2012, Ms. Juste was an associate at Hofmann & Schweitzer.

EDUCATION: University at Albany, State University of New York, B.A., 2002. Fordham University School of Law, J.D., 2007.

BAR ADMISSIONS: New Jersey, New York.

CATHERINE VAN KAMPEN has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation, In re Pfizer Inc. Shareholder Derivative Litigation, In re Wellcare Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re State Street Bank and Trust Co. ERISA Litigation, In re Converium Holding AG Securities Litigation, In re Monster Worldwide, Inc. Derivative Litigation* and *Stonington Partners, Inc. v. Dexia Bank Belgium*.

Prior to joining the firm in 2005, Ms. van Kampen was corporate counsel at Centric Communications Worldwide.

EDUCATION: Indiana University, B.A, 1988. Seton Hall University, School of Law, J.D., 1998.

BAR ADMISSIONS: New Jersey.

STAVROS KATSETOS has worked on *In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2012, Mr. Katsetos was a contract attorney at Gibson Dunn and Kenyon & Kenyon LLP.

EDUCATION: University of Rochester, B.S., 2000. Fordham University School of Law, J.D., 2008.

BAR ADMISSIONS: Connecticut, New York, U.S. Patent and Trademark Office.

THOMAS KEEVINS has worked on numerous matters at BLB&G, including *JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan, Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al., In re Citigroup Inc. Bond Litigation, In re Pfizer Inc. Shareholder Derivative Litigation, YouTube Class Action* and *In re HealthSouth Bondholders Litigation.*

Prior to joining the firm in 2007, Mr. Keevins worked as an assistant district attorney at the Kings County District Attorney's Office.

EDUCATION: Loyola University of Maryland, B.A., 1997. St. John's University School of Law, J.D., 2000.

BAR ADMISSIONS: New York.

DONATELLA KEOHANE has worked on numerous matters at BLB&G, including *In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re Refco, Inc. Securities Litigation* and *In re Nortel Networks Corporation Securities Litigation.*

Prior to joining the firm in 2005, Ms. Keohane was an associate at Pinheiro Neto Advogados in Brazil.

EDUCATION: Universidad Federal do Rio de Janeiro Law School, Degree in Law, 1998. Fordham University School of Law, LL.M., 2002.

BAR ADMISSIONS: New York, Brazil.

GERALD KIRSCHBAUM has worked on *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2010, Mr. Kirschbaum was Vice President and General Counsel at The Hartz Mountain Corporation.

EDUCATION: Hofstra University, B.A., 1962. Brooklyn Law School, J.D., 1965.

BAR ADMISSIONS: New Jersey, New York.

JED KOSLOW has worked on numerous matters at BLB&G, including *In re NII Holdings, Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan* and *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*.

Prior to joining the firm in 2009, Mr. Koslow was Of Counsel at Lebowitz Law Office, LLC.

EDUCATION: Wesleyan University, B.A., 1999. Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New York.

ARTHUR LEE has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation* and *In re Pfizer Inc. Shareholder Derivative Litigation.*

Prior to joining the firm in 2010, Mr. Lee worked as an associate at Sichenzia Ross Friedman Ference LLP.

EDUCATION: Rutgers, The State University of New Jersey, B.A., 2003; B.S, 2003. Fordham University School of Law, J.D., 2006.

BAR ADMISSIONS: New York.

DANIELLE LEON has worked on numerous matters at BLB&G, including *In re MF Global Holdings Limited Securities Litigation and In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2013, Ms. Leon was a staff attorney at Brower Piven.

EDUCATION: University of Florida, B.A., *magna cum laude*, 2007. The George Washington University Law School, J.D., 2010.

BAR ADMISSIONS: New York.

ADRIENNE LESTER-FITJE has worked on *In re MF Global Holdings Limited Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2014, Ms. Lester-Fitje was an attorney at Stull, Stull & Brody.

EDUCATION: Pomona College, B.A., 2005. University of Pittsburgh School of Law, J.D., 2011.

BAR ADMISSIONS: New York.

ANDREW MCGOEY has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), Police & Fire Retirement System of the City of Detroit v. SafeNet, Inc., et al., In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re Bristol-Myers Squibb Co. Securities Litigation, In re The Mills Corporation Securities Litigation* and *In re Openwave Systems Securities Litigation*.

Prior to joining the firm in 2008, Mr. McGoey was a contract attorney on several major class action litigations.

EDUCATION: State University of New York at Albany, B.A., *summa cum laude*, 1991. Brooklyn Law School, J.D., 1997.

BAR ADMISSIONS: New York.

ALISON MERLE (KIMPLER) has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2010, Ms. Merle was a litigation associate at Katten Muchin Rosenman LLP.

EDUCATION: Emory University, B.A., 2003. Northwestern University School of Law, J.D., 2008.

BAR ADMISSIONS: Illinois, New York.

MATTHEW MULLIGAN has worked on numerous matters at BLB&G, including *In re Green Mountain Coffee Roasters, Inc. Securities Litigation, In re Wilmington Trust Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re State Street Corporation Securities Litigation, Dexia Holdings, Inc. v. JP Morgan, Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al., In re Pfizer Inc. Shareholder Derivative Litigation* and *In re The Mills Corporation Securities Litigation.*

Prior to joining the firm in 2008, Mr. Mulligan worked as a contract attorney on several complex litigations.

EDUCATION: Trinity University, B.A, 2001. Tulane Law School, J.D., 2004.

BAR ADMISSIONS: Texas.

KIRSTIN PETERSON has worked on *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2011, Ms. Peterson was an associate at Davis Polk & Wardell, Richards & O'Neil, LLP and Wollmuth Maher & Deutsch, LLP.

EDUCATION: Northwestern University, B.A., 1985; Phi Beta Kappa. Yale University, M.A., 1989. Northwestern University Medical School, M.D., 1990. Harvard Law School, J.D., *cum laude*, 1993.

BAR ADMISSIONS: New York.

STEPHEN ROEHLER has worked on numerous matters at BLB&G, including *In re Allergan, Inc. Proxy Violation Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2010, Mr. Roehler worked as a contract attorney at Milberg LLP and Constantine & Cannon, LLP and an associate at Latham & Watkins LLP.

EDUCATION: University of California, San Diego, B.A., 1993. University of Southern California Law School, J.D., 1999.

BAR ADMISSIONS: New York.

RHOSEAN SCOTT has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re JPMorgan Chase & Co. Securities Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation, In re R&G Financial Corporation Securities Litigation* and *In re HealthSouth Bondholders Litigation.*

Prior to joining the firm in 2008, Ms. Scott was a contract attorney at Milberg LLP.

EDUCATION: Emory University, B.A, 1999. Tulane Law School, J.D., 2002.

BAR ADMISSIONS: Louisiana, New York.

LEWIS SMITH has worked on numerous matters at BLB&G, including *Allstate Insurance Company v. Morgan Stanley & Co., Inc., Dexia Holdings, Inc. v. JP Morgan* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2012, Mr. Smith was a contract attorney at Kenyon & Kenyon.

EDUCATION: Cal Poly State University, B.S., 2001. Brunel University, M.A., 2002. Seton Hall University School of Law, J.D., 2007.

BAR ADMISSIONS: New York.

ROBERT STINSON has worked on numerous matters at BLB&G, including *In re JPMorgan Chase & Co. Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action) and In re Converium Holding AG Securities Litigation.*

Prior to joining the firm in 2006, Mr. Stinson was an associate at Freiberg & Peck LLP.

EDUCATION: University at Texas at Austin, B.A., 1988. University of Texas at Arlington, M.S., 1994. Brooklyn Law School, J.D., 2001. New York University School of Law, LL.M., 2002.

BAR ADMISSIONS: New York.

LAUREN CORMIER TAYLOR has worked on *In re MF Global Holdings Limited Securities Litigation and In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2013, Ms. Cormier Taylor was a staff attorney at Brower Piven.

EDUCATION: University of Richmond, B.A., *cum laude*, 2002. St. John's University School of Law, J.D., 2010.

BAR ADMISSIONS: New York.

JENNIFER TRENERY has worked on numerous matters at BLB&G, including *In re Bank of New York Mellon Corp. Forex Transactions Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *In re MBIA Inc. Securities Litigation*.

Prior to joining the firm in 2011, Ms. Trenery was a contract attorney at Brune & Richard, LLP and Constantine Cannon, LLP.

EDUCATION: Rutgers College, B.A., 1998. Brooklyn Law School, J.D., 2003.

BAR ADMISSIONS: New Jersey, New York.

KIMBERLY WHITEHEAD has worked on *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2012, Ms. Whitehead was an associate at Dickstein Shapiro LLP, Baker Hostetler LLP and Burns & Levinson, LLP.

EDUCATION: University of Pennsylvania, B.S., 2000. Georgetown University Law Center, J.D., 2003.

BAR ADMISSIONS: Virginia, District of Columbia.

KIT WONG has worked on *In re Wilmington Trust Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2012, Ms. Wong was staff attorney at Labaton Sucharow LLP.

EDUCATION: City College of New York, B.A., *magna cum* laude, 1994; Phi Beta Kappa. New York Law School, J.D., 1999.

BAR ADMISSIONS: New York.